



THE NATIONAL ASSOCIATION OF WATERFRONT EMPLOYERS

Capital Construction Fund Proposed Expansion

Background

The Capital Construction Fund (“CCF”) is a tax deferral program established under Section 607 of the Merchant Marine Act, 1936, and administered by the Maritime Administration (“MARAD”). Under the current program, U.S. vessel owners may establish a CCF, with MARAD approval, in which they may deposit certain amounts representing taxable income from the operation of U.S. vessels in domestic or foreign trade, depreciation on such vessels, net proceeds from the disposition of such vessels, and earnings on amounts held in the CCF.

Taxation is deferred on amounts deposited into the CCF. Taxation is also deferred on amounts withdrawn from the CCF to the extent they are used to purchase, construct, reconstruct or retire indebtedness on certain “qualified” vessels. In turn, the basis of the “qualified” vessel is reduced to reflect the amount of tax-deferred funds withdrawn from the CCF to purchase, construct, reconstruct or retire indebtedness on such vessel. In this manner, the U.S. taxpayer is made “whole” by the reduced depreciation that the CCF participant can take on the “qualified” vessel. The CCF has been used by U.S. vessel owners to fund the construction of numerous vessels over the past 50 years, providing a significant portion of the funding for the construction of vessels operating in Puerto Rico, Alaska, and Hawaii trades, as well as virtually all U.S.-flag vessels supporting offshore construction and operations in the domestic oil and gas industry.

Proposal

NAWE proposes to expand the permissible uses of the CCF to allow for :



- the deposit of taxable income derived from (i) the operation of U.S. marine terminals, (ii) depreciation on marine terminal operator (“MTO”) cargo handling equipment, (iii) net proceeds from the disposition of MTO cargo handling equipment, and (iv) earnings on amounts held in the CCF, into a CCF established by the MTO and approved by MARAD, on tax-deferred basis; and



- the withdrawal of deposited CCF funds, on a tax-deferred basis, to purchase, construct, reconstruct or retire indebtedness on MTO cargo handling equipment and related infrastructure (collectively, “Qualified Equipment”). Consistent with the current CCF program structure, the basis of the Qualified Equipment would be reduced to reflect the amount of tax-deferred funds withdrawn from the CCF to purchase, construct, reconstruct or retire indebtedness on such equipment.



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Considerations

- 1 Budget Scoring:** Because the CCF is a tax deferral program in which the taxpayer is made whole through reduced depreciation, it historically has not been scored by the Congressional Budget Office (“CBO”). Accordingly, a budget offset should not be required to implement this amendment. In addition, because the CCF is funded by the participant’s own income, no appropriations are required.
- 2 Congressional Committees:** Because this a MARAD program, and is not governed by the Internal Revenue Service, it falls under the jurisdiction of the House Transportation and Infrastructure Committee and the Senate Committee on Commerce, Science, and Transportation.
- 3 Precedent:** Congress significantly expanded the CCF program under amendments in the National Defense Authorization Act of 2023 (“NDAA”). Prior to the expansion, the program was only open to vessel operators constructing, reconstructing, or retiring indebtedness on “qualified” vessels in certain limited trades (U.S. foreign, Great Lakes, noncontiguous domestic, or fisheries). Following the amendment, vessel operators in virtually all trades are eligible to participate in the CCF, including those operating in all facets of the coastwise trade. We estimate that there is currently about \$7 billion in CCF deposits, which we anticipate will significantly increase following the NDAA amendment. Notably, the amendment was enacted with little discussion or opposition and without input from House Ways and Means or Senate Finance and – as noted above – no CBO scoring.
- 4 MARAD Support:** MARAD (and, in turn, the U.S. Department of Transportation) has vocally supported greater financial assistance to support capital investment in the maritime industry and should support the amendment. Indeed, during a prior CCF rulemaking process, MARAD appeared to support this very proposition:
 - Comments:** One commenter recommends that MARAD permit the use of a CCF to pay for shoreside container cranes and terminal container-handling equipment, where the purpose of such cranes and equipment is to load and discharge containers to and from qualified vessels. The commenter noted that the regulations already permit the use of CCF to make payments for container-handling equipment, such as shipboard cranes and ro-ro ramps. For non-self-sustaining vessels, the equipment is onshore. The commenter argues that it is logical to permit CCF payments for such equipment as long as the vessels serviced by such equipment are qualified vessels.
 - Response:** MARAD agrees with the logic of the commenter’s recommendation. It makes no sense to differentiate between onboard container-handling equipment and onshore container-handling equipment. However, MARAD believes that legislation is required in order to amend the statute to include shoreside container cranes and terminal container-handling equipment within the scope of the term “qualified agreement vessel.” Therefore, the regulation cannot be amended at this time.
- 5** The legislation includes Buy America requirements as well as language that would not allow withdrawals to be used for the purchase of fully automated cargo handling equipment.
- 6** The proposal also includes language that would ban the purchase of cargo handling equipment from the People’s Republic of China under the CCF program.