

a qualified withdrawal unless the Maritime Administrator determines that no portion of such payment constitutes a dividend, a return of capital or a contribution of capital under the Internal Revenue Code. Transactions which include payments to a related person, will be approved if the cost of the item to be acquired, constructed or reconstructed through qualified withdrawals is or was at the time of the acquisition, construction or reconstruction its fair market value. The party must obtain the prior written permission of the Maritime Administrator before any qualified withdrawals may be paid to a related person. Any such withdrawal prior to approval shall be a nonqualified withdrawal.

(d) *Permission to make qualified withdrawals.* Once a program has been approved, prior approval of the Maritime Administrator is not required for specific qualified withdrawals except as provided in paragraphs (c)(4) and (c)(5) of this section. However, the Maritime Administrator will give prior approval to qualified withdrawals upon written request.

[41 FR 4265, Jan. 29, 1976, as amended at 55 FR 34929, Aug. 27, 1990]

§ 390.10 Nonqualified withdrawals.

(a) *In general*—(1) *Defined.* Any withdrawal from a fund which is not a qualified withdrawal is a nonqualified withdrawal.

(2) *Tax aspects of a nonqualified withdrawal.* For the tax aspects of a nonqualified withdrawal, see section 607(h) of the Act and § 3.7 of the joint regulations (§ 391.7 of this chapter).

(b) *Permission required*—(1) *In general.* The prior written permission of the Maritime Administrator is required before a nonqualified withdrawal may be made.

(2) *Failure to secure permission.* A nonqualified withdrawal made without the prior written permission of the Maritime Administrator shall constitute a material breach of the agreement unless the Maritime Administrator shall determine that failure to obtain prior written consent was excusable. See § 390.13 (relating to failure to fulfill a substantial obligation under the agreement).

(3) *Types of nonqualified withdrawals which will be permitted.* Generally, the Maritime Administrator will give permission to make nonqualified withdrawals when:

(i) The party has incurred operating losses from the operations of agreement vessels which have impaired his working capital and it becomes necessary to reimburse its general funds to the extent of such losses;

(ii) The party desires to make an expenditure for research, development or design and such an expenditure is incident to new and advanced ship design, machinery and equipment;

(iii) The withdrawal would be a qualified withdrawal except for the fact that there is no tax basis left that can be reduced; or

(iv) The party demonstrates, to the satisfaction of the Maritime Administrator, that it cannot fulfill its program due to circumstances beyond its control or due to a change in circumstances which makes the completion of its program economically unfeasible.

§ 390.11 Sale or other disposition of agreement vessels.

(a) *Eligible agreement vessels.* The sale or other disposition (including mortgages) of eligible agreement vessels shall not require prior approval of the Maritime Administrator, but shall require written notification within 10 days after the sale or other disposition. Such notification shall include a description of the transaction, the identity of the transferee, the proceeds to be realized, the date of the transaction and whether the proceeds will be deposited into the fund.

(b) *Qualified agreement vessels*—(1) *In general.* If a qualified agreement vessel whose basis has been reduced through the application of qualified withdrawals is sold or disposed of (including mortgaged) within one year, interest on the amount of gain attributable to the basis reduction shall attach if the Maritime Administrator determines that the disposition was contrary to the policies of the Act, the joint regulations or these regulations. See § 390.13 (relating to failure to fulfill a substantial obligation under the agreement).