

107TH CONGRESS
1ST SESSION

H. R. 3262

To revitalize the international competitiveness of the United States-flag maritime industry through international tax parity, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 8, 2001

Mr. OBERSTAR (for himself and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To revitalize the international competitiveness of the United States-flag maritime industry through international tax parity, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Merchant Marine Cost
5 Parity Act of 2001”.

1 **TITLE I—INTERNATIONAL TAX**
 2 **PARITY**

3 **SEC. 101. ELECTION TO DETERMINE TAXABLE INCOME**
 4 **FROM CERTAIN INTERNATIONAL SHIPPING**
 5 **ACTIVITIES USING PER TON RATE.**

6 (a) IN GENERAL.—Chapter 1 of the Internal Rev-
 7 enue Code of 1986 is amended by inserting after sub-
 8 chapter Q the following new subchapter:

9 **“Subchapter R—Election To Determine Tax-**
 10 **able Income From Certain International**
 11 **Shipping Activities Using per Ton Rate**

“Sec. 1352. Alternative tax on qualifying shipping activities.

“Sec. 1353. Taxable income from qualifying shipping activities.

“Sec. 1354. Qualifying shipping tax election; revocation; termi-
 nation.

“Sec. 1355. Definitions and special rules.

“Sec. 1356. Qualifying shipping activities.

“Sec. 1357. Items not subject to regular tax; depreciation; inter-
 est.

“Sec. 1358. Allocation of credits, income, and deductions.

“Sec. 1359. Disposition of qualifying shipping assets.

12 **“SEC. 1352. ALTERNATIVE TAX ON QUALIFYING SHIPPING**
 13 **ACTIVITIES.**

14 “(a) IN GENERAL.—The taxable income of an elect-
 15 ing corporation from qualifying shipping activities shall be
 16 the amount determined under this subchapter, and the
 17 corporate percentages of the items of income, gain, loss,
 18 deduction, or credit of an electing corporation and of other
 19 members of the electing group of such corporation which
 20 would otherwise be taken into account by reason of its

1 qualifying shipping activities shall be taken into account
2 to the extent provided in section 1357.

3 “(b) ALTERNATIVE TAX.—The taxable income of an
4 electing corporation from qualifying shipping activities, if
5 otherwise taxable under section 11, 882, or 887, shall be
6 subject to tax only under this section at the maximum rate
7 specified in section 11(b).

8 “(c) TRANSFERS TO FEDERAL VESSEL FINANCING
9 FUND.—The Secretary of the Treasury shall transfer to
10 the Federal Vessel Financing Fund created under title XI
11 of the Merchant Marine Act, 1936, the taxes collected
12 under subsection (b).

13 **“SEC. 1353. TAXABLE INCOME FROM QUALIFYING SHIPPING**
14 **ACTIVITIES.**

15 “(a) IN GENERAL.—For purposes of this subchapter,
16 the taxable income of an electing corporation from quali-
17 fying shipping activities shall be its corporate income per-
18 centage of the sum of the amounts determined under sub-
19 section (b) for each qualifying vessel operated by such
20 electing corporation or other electing entity.

21 “(b) AMOUNTS.—For purposes of subsection (a), the
22 amount of taxable income of an electing entity for each
23 qualifying vessel shall equal the product of—

1 “(1) the daily notional taxable income from the
2 operation of the qualifying vessel in United States
3 foreign trade, and

4 “(2) the number of days during the taxable
5 year that the electing entity operated such vessel as
6 a qualifying vessel in United States foreign trade.

7 “(c) DAILY NOTIONAL TAXABLE INCOME.—For pur-
8 poses of subsection (b), the daily notional taxable income
9 from the operation of a qualifying vessel is 40 cents for
10 each 100 tons of the net tonnage of the vessel, up to
11 25,000 net tons, and 20 cents for each 100 tons of the
12 net tonnage of the vessel, in excess of 25,000 net tons.

13 “(d) MULTIPLE OPERATORS OF VESSEL.—If 2 or
14 more persons have a joint interest in a qualifying vessel
15 and are considered as operators of that vessel, the taxable
16 income from the operation of such vessel for that time (as
17 determined under this section) shall be allocated among
18 such persons on the basis of their ownership and charter
19 interests in such vessel or on such other basis as the Sec-
20 retary may prescribe by regulations.

21 “(e) NONCORPORATE PERCENTAGE.—Notwith-
22 standing any contrary provision of this subchapter, the
23 nongovernmental percentage of any item of income, gain, loss,
24 deduction, or credit of any member of an electing group

1 shall be taken into account for all purposes of this subtitle
2 as if this subchapter were not in effect.

3 **“SEC. 1354. QUALIFYING SHIPPING TAX ELECTION; REV-**
4 **OCATION; TERMINATION.**

5 “(a) IN GENERAL.—Except as provided in sub-
6 sections (b) and (f), a qualifying shipping tax election may
7 be made in respect of any qualifying entity.

8 “(b) CONDITION OF ELECTION.—An election may be
9 made by a member of a controlled group under this sub-
10 section for any taxable year only if all qualifying entities
11 that are members of the controlled group join in the elec-
12 tion.

13 “(c) WHEN MADE.—An election under subsection (a)
14 may be made by a qualifying entity in such form as pre-
15 scribed by the Secretary. Such election shall be filed with
16 the qualifying entity’s return for the first taxable year to
17 which the election shall apply, by the due date for such
18 return (including any applicable extensions).

19 “(d) YEARS FOR WHICH EFFECTIVE.—An election
20 under subsection (a) shall be effective for the taxable year
21 of the qualifying entity for which it is made and for all
22 succeeding taxable years of the entity, until such election
23 is terminated under subsection (e).

24 “(e) TERMINATION.—

25 “(1) BY REVOCATION.—

1 “(A) IN GENERAL.—An election under
2 subsection (a) may be terminated by revocation.

3 “(B) WHEN EFFECTIVE.—Except as pro-
4 vided in subparagraph (C)—

5 “(i) a revocation made during the tax-
6 able year and on or before the 15th day of
7 the 3d month thereof shall be effective on
8 the 1st day of such taxable year, and

9 “(ii) a revocation made during the
10 taxable year but after such 15th day shall
11 be effective on the 1st day of the following
12 taxable year.

13 “(C) REVOCATION MAY SPECIFY PROSPEC-
14 TIVE DATE.—If the revocation specifies a date
15 for revocation which is on or after the day on
16 which the revocation is made, the revocation
17 shall be effective on and after the date so speci-
18 fied.

19 “(2) BY ENTITY CEASING TO BE QUALIFYING
20 ENTITY.—

21 “(A) IN GENERAL.—An election under
22 subsection (a) shall be terminated whenever (at
23 any time on or after the 1st day of the 1st tax-
24 able year for which the entity is an electing en-

1 tity) such entity ceases to be a qualifying enti-
2 ty.

3 “(B) WHEN EFFECTIVE.—Any termination
4 under this paragraph shall be effective on and
5 after the date of cessation.

6 “(f) ELECTION AFTER TERMINATION.—If a quali-
7 fying entity has made an election under subsection (a) and
8 if such election has been terminated under subsection (e),
9 such entity (and any successor entity) shall not be eligible
10 to make an election under subsection (a) for any taxable
11 year before its 5th taxable year which begins after the 1st
12 taxable year for which such termination is effective, unless
13 the Secretary consents to such election.

14 **“SEC. 1355. DEFINITIONS AND SPECIAL RULES.**

15 “(a) DEFINITIONS.—For purposes of this sub-
16 chapter:

17 “(1) The term ‘controlled group’ means any
18 group of trusts and business entities whose members
19 would be treated as a single employer under the
20 rules of section 52(a) (without regard to paragraphs
21 (1) and (2) thereof) and section 52(b)(1).

22 “(2) The term ‘corporate income percentage’
23 means the least aggregate share, expressed as a per-
24 centage, of any item of income or gain of an electing
25 corporation or electing group of which such corpora-

1 tion is a member from qualifying shipping activities
2 that would, but for an election in effect under this
3 subchapter, be required to be reported on the Fed-
4 eral income tax return of an electing corporation
5 during any taxable period. In the case of an electing
6 group which includes two or more electing corpora-
7 tions, the corporate income percentage of each such
8 corporation shall be determined on the basis of such
9 corporations' direct and indirect ownership and
10 charter interests in qualifying vessels of the electing
11 group or on such other basis as the Secretary may
12 prescribe by regulations.

13 “(3) The term ‘corporate loss percentage’
14 means the greatest aggregate share, expressed as a
15 percentage, of any item of loss, deduction or credit
16 of an electing corporation or electing group of which
17 such corporation is a member from qualifying ship-
18 ping activities that would, but for an election in ef-
19 fect under this subchapter, be required to be re-
20 ported on the Federal income tax return of an elect-
21 ing corporation during any taxable period.

22 “(4) The term ‘corporate percentages’ means
23 the corporate income percentage and the corporate
24 loss percentage.

1 “(5) The term ‘electing corporation’ means any
2 C corporation that is an electing entity or that
3 would, but for an election in effect under this sub-
4 chapter, be required to report any item of income,
5 gain, loss, deduction, or credit of an electing entity
6 on its Federal income tax return.

7 “(6) The term ‘electing entity’ means any quali-
8 fying entity for which an election is in effect under
9 this subchapter.

10 “(7) The term ‘electing group’ means a con-
11 trolled group of which one or more members is an
12 electing entity.

13 “(8) The term ‘noncorporate percentage’ means
14 the difference between one hundred percent and the
15 corporate income percentage or corporate loss per-
16 centage, as applicable.

17 “(9) The term ‘qualifying entity’ means a trust
18 or business entity that—

19 “(A) operates one or more qualifying ves-
20 sels, and

21 “(B) meets the shipping activity require-
22 ment in subsection (c).

23 “(10) The term ‘qualifying shipping assets’
24 means any qualifying vessel and other assets which

1 are used in core qualifying activities as described in
2 section 1356(b).

3 “(11) The term ‘qualifying vessel’ means a self-
4 propelled (or a combination self-propelled and non-
5 self-propelled) United States flag vessel of not less
6 than 10,000 deadweight tons used in the United
7 States foreign trade.

8 “(12) The term ‘United States domestic trade’
9 means the transportation of goods or passengers be-
10 tween places in the United States.

11 “(13) The term ‘United States flag vessel’
12 means any vessel documented under the laws of the
13 United States.

14 “(14) The term ‘United States foreign trade’
15 means the transportation of goods or passengers be-
16 tween a place in the United States and a foreign
17 place or between foreign places.

18 “(b) OPERATING A VESSEL.—For purposes of this
19 subchapter:

20 “(1) Except as provided in paragraph (2), an
21 entity is treated as operating any vessel owned by,
22 or chartered (including a time charter) to, the enti-
23 ty.

24 “(2) An entity is treated as operating a vessel
25 that it has chartered out on bareboat charter terms

1 only if the vessel is temporarily surplus to the enti-
2 ty's requirements and the term of the charter does
3 not exceed three years.

4 “(c) SHIPPING ACTIVITY REQUIREMENT.—For pur-
5 poses of this section, the shipping activity requirement is
6 met for a taxable year only by an entity described in para-
7 graph (1), (2), or (3).

8 “(1) An entity in the first taxable year of its
9 qualifying shipping tax election if, for the preceding
10 taxable year, the test in paragraph (4) is met.

11 “(2) An entity in the second or any subsequent
12 taxable year of its qualifying shipping tax election if,
13 for each of the two preceding taxable years, the test
14 in paragraph (4) is met.

15 “(3) An entity that would be described in para-
16 graph (1) or (2) if the test in paragraph (4) were
17 applied on an aggregate basis to the controlled
18 group of which such entity is a member, and vessel
19 charters between members of the controlled group
20 were disregarded.

21 “(4) The test in this paragraph is met if on av-
22 erage at least 10 percent of the aggregate tonnage
23 of qualifying vessels operated by the entity were
24 owned by the entity or chartered to the entity on
25 bareboat charter terms. For purposes of the pre-

1 ceding sentence, vessels chartered to an entity by a
2 member of a controlled group which includes the en-
3 tity shall be treated as chartered to the entity on
4 bareboat charter terms.

5 “(d) EFFECT OF TEMPORARILY CEASING TO OPER-
6 ATE A QUALIFYING VESSEL.—

7 “(1) A temporary cessation by an electing enti-
8 ty in operation of a qualifying vessel shall be dis-
9 regarded for purposes of subsections (b) and (c)
10 until an occurrence described in paragraph (3) if the
11 electing entity gives timely notice to the Secretary
12 stating—

13 “(A) that it has temporarily ceased to op-
14 erate the qualifying vessel, and

15 “(B) its intention to resume operating the
16 qualifying vessel.

17 “(2) Notice shall be deemed timely if given not
18 later than the due date (including extensions) for
19 the electing entity’s tax return (as set forth in sec-
20 tion 6072(b)) for the taxable year in which the tem-
21 porary cessation begins.

22 “(3) The disregard provided by paragraph (1)
23 continues until the earlier to occur of—

1 “(A) the electing entity abandoning its in-
2 tention to resume operation of the qualifying
3 vessel, or

4 “(B) the electing entity resuming operation
5 of the qualifying vessel.

6 “(e) EFFECT OF TEMPORARILY OPERATING A
7 QUALIFYING VESSEL IN THE UNITED STATES DOMESTIC
8 TRADE.—

9 “(1) The temporary operation in the United
10 States domestic trade of any qualifying vessel which
11 had been used in the United States foreign trade
12 shall be disregarded for purposes of this subchapter
13 until an occurrence described in paragraph (3) if the
14 electing entity gives timely notice to the Secretary
15 stating—

16 “(A) that it temporarily operates or has
17 operated in the United States domestic trade a
18 qualifying vessel which had been used in the
19 United States foreign trade, and

20 “(B) its intention to resume operation of
21 the vessel in the United States foreign trade.

22 “(2) Notice shall be deemed timely if given not
23 later than the due date (including extensions) for
24 the electing entity’s tax return (as set forth in sec-

1 tion 6072(b)) for the taxable year in which the tem-
2 porary cessation begins.

3 “(3) The disregard provided by paragraph (1)
4 continues until the earlier to occur of—

5 “(A) the electing entity abandoning its in-
6 tention to resume operations of the vessel in the
7 United States foreign trade, or

8 “(B) the electing entity resuming operation
9 of the vessel in the United States foreign trade.

10 “(f) EFFECT OF CHANGE IN USE.—

11 “(1) Except as provided in subsection (e), a
12 vessel that is used other than for operations in the
13 United States foreign trade on other than a tem-
14 porary basis ceases to be a qualifying vessel when
15 such use begins.

16 “(2) For purposes of this subsection, a change
17 in use of a vessel, other than a commencement of
18 operation in the United States domestic trade, is
19 taken to be permanent unless there are cir-
20 cumstances indicating that it is temporary.

21 “(g) REGULATIONS.—The Secretary shall prescribe
22 such regulations as may be necessary or appropriate to
23 carry out the purposes of this section.

1 **“SEC. 1356. QUALIFYING SHIPPING ACTIVITIES.**

2 “(a) QUALIFYING SHIPPING ACTIVITIES.—For pur-
3 poses of this subchapter the ‘qualifying shipping activities’
4 of an electing entity consist of—

5 “(1) its core qualifying activities,

6 “(2) its qualifying secondary activities, and

7 “(3) its qualifying incidental activities.

8 “(b) CORE QUALIFYING ACTIVITIES.—

9 “(1) The ‘core qualifying activities’ of an elect-
10 ing entity are its—

11 “(A) activities in operating qualifying ves-
12 sels in United States foreign trade, and

13 “(B) other vessel-related activities of the
14 electing entity and other members of its electing
15 group that are a necessary and integral part of
16 its business of operating qualifying vessels in
17 United States foreign trade, including owner-
18 ship and operation of barges and containers
19 that are the complement of a qualifying vessel
20 and terminal facilities.

21 “(2) ‘Core qualifying activities’ do not include
22 the provision by an entity of facilities or services to
23 any person other than another member of such enti-
24 ty’s electing group.

25 “(c) QUALIFYING SECONDARY ACTIVITIES.—For
26 purposes of this subsection—

1 “(1) the term ‘secondary activities’ means the
2 active management or operation of vessels in the
3 United States foreign trade and such other activities
4 as may be prescribed by the Secretary pursuant to
5 regulations, and

6 “(2) the term ‘qualified secondary activities’
7 means the secondary activities of an electing entity,
8 but only to the extent that, without regard to this
9 subchapter, the gross income derived by such entity
10 from such activities does not exceed 20 percent of
11 the gross income derived by such entity from its core
12 qualifying activities.

13 “(d) QUALIFYING INCIDENTAL ACTIVITIES.—Ship-
14 ping-related activities carried on by an electing entity are
15 qualified incidental activities if—

16 “(1) they are incidental to its core qualifying
17 activities,

18 “(2) they are not qualifying secondary activi-
19 ties, and

20 “(3) without regard to this subchapter, the
21 gross income derived by such entity from such activi-
22 ties does not exceed 0.1 percent of the entity’s gross
23 income from its core qualifying activities.

1 **“SEC. 1357. ITEMS NOT SUBJECT TO REGULAR TAX; DEPRE-**
2 **CIATION; INTEREST.**

3 “(a) **EXCLUSION FROM GROSS INCOME.**—Gross in-
4 come of an electing entity shall not include the corporate
5 income percentage of—

6 “(1) its income from qualifying shipping activi-
7 ties in the United States foreign trade,

8 “(2) its income from money, bank deposits and
9 other temporary investments which are reasonably
10 necessary to meet the working capital requirements
11 of its qualifying shipping activities, and

12 “(3) its income from money or other intangible
13 assets accumulated pursuant to a plan to purchase
14 qualifying shipping assets.

15 “(b) **ELECTING GROUP MEMBER.**—Gross income of
16 a member of an electing group that is not an electing enti-
17 ty shall not include the corporate income percentage of
18 its income from qualifying shipping activities that are
19 taken into account under this subchapter as qualifying
20 shipping activities of an electing entity.

21 “(c) **DENIAL OF LOSSES, DEDUCTIONS, AND CRED-**
22 **ITS.**—

23 “(1) **GENERAL RULE.**—Subject to paragraph
24 (2), the corporate loss percentage of each item of
25 loss, deduction (other than for interest expense), or
26 credit of any taxpayer with respect to any activity

1 the income from which is excluded from gross in-
2 come under this section shall be disallowed.

3 “(2) DEPRECIATION.—Notwithstanding para-
4 graph (1), an owner but not operator of qualifying
5 shipping assets shall be allowed the deduction for de-
6 preciation.

7 “(A) Except as provided in subparagraph
8 (B), the straight line method of depreciation
9 shall apply to the corporate income percentage
10 of qualifying shipping assets the income from
11 operation of which is excluded from gross in-
12 come under this section.

13 “(B) Subparagraph (A) shall not apply to
14 any qualifying shipping asset which is subject
15 to a charter entered into prior to the effective
16 date of this subchapter.

17 “(3) INTEREST.—The corporate loss percentage
18 of an electing entity’s interest expense shall be dis-
19 allowed in the ratio that the fair market value of its
20 qualifying vessel assets bears to the fair market
21 value of its total assets.

22 **“SEC. 1358. ALLOCATION OF CREDITS, INCOME, AND DE-**
23 **DUCTIONS.**

24 “(a) QUALIFYING SHIPPING ACTIVITIES.—For pur-
25 poses of this chapter the qualifying shipping activities of

1 an electing entity shall be treated as a separate trade or
2 business activity distinct from all other activities con-
3 ducted by the entity.

4 “(b) EXCLUSION OF CREDITS OR DEDUCTIONS.—

5 “(1) No deduction shall be allowed against the
6 taxable income of an electing corporation from quali-
7 fying shipping activities, and no credit shall be al-
8 lowed against the tax imposed by section 1352(b).

9 “(2) No deduction shall be allowed for any net
10 operating loss attributable to the qualifying shipping
11 activities of a corporation to the extent that such
12 loss is carried forward by the corporation from a
13 taxable year preceding the first taxable year for
14 which such corporation was an electing corporation.

15 “(c) TRANSACTIONS NOT AT ARM’S LENGTH.—Sec-
16 tion 482 applies in accordance with this subsection to a
17 transaction or series of transactions—

18 “(1) as between an electing entity and another
19 person, or

20 “(2) as between an entity’s qualifying shipping
21 activities and other activities carried on by it.

22 **“SEC. 1359. DISPOSITION OF QUALIFYING SHIPPING AS-**
23 **SETS.**

24 “(a) IN GENERAL.—If an electing entity sells or dis-
25 poses of qualifying shipping assets (as defined in sub-

1 section (c)) in an otherwise taxable transaction, at the
2 election of the entity no gain shall be recognized if replace-
3 ment qualifying shipping assets are acquired during the
4 period specified in subsection (b), except to the extent that
5 the amount realized upon such sale or disposition exceeds
6 the cost of the replacement qualifying shipping assets.

7 “(b) PERIOD WITHIN WHICH PROPERTY MUST BE
8 REPLACED.—The period referred to in subsection (a) shall
9 be the period beginning one year prior to the disposition
10 of the qualifying shipping assets and ending—

11 “(1) 3 years after the close of the first taxable
12 year in which the gain is realized, or

13 “(2) subject to such terms and conditions as
14 may be specified by the Secretary, on such later date
15 as the Secretary may designate on application by the
16 taxpayer. Such application shall be made at such
17 time and in such manner as the Secretary may by
18 regulations prescribe.

19 “(c) TIME FOR ASSESSMENT OF DEFICIENCY AT-
20 TRIBUTABLE TO GAIN.—If an electing entity has made the
21 election provided in subsection (a), then—

22 “(1) the statutory period for the assessment of
23 any deficiency, for any taxable year in which any
24 part of the gain is realized, attributable to such gain
25 shall not expire prior to the expiration of 3 years

1 from the date the Secretary is notified by the entity
2 (in such manner as the Secretary may by regulations
3 prescribe) of the replacement tonnage tax property
4 or of an intention not to replace, and

5 “(2) such deficiency may be assessed before the
6 expiration of such 3-year period notwithstanding the
7 provisions of section 6212(c) or the provisions of any
8 other law or rule of law which would otherwise pre-
9 vent such assessment.

10 “(d) BASIS OF REPLACEMENT QUALIFYING SHIP-
11 PING ASSETS.—In the case of replacement qualifying ship-
12 ping assets purchased by an electing entity which resulted
13 in the nonrecognition of any part of the gain realized as
14 the result of a sale or other disposition of qualifying ship-
15 ping assets, the basis shall be the cost of such property
16 decreased in the amount of the gain not so recognized;
17 and if the property purchased consists of more than one
18 piece of property, the basis determined under this sentence
19 shall be allocated to the purchased properties in propor-
20 tion to their respective costs.

21 “(e) REPLACEMENT QUALIFYING SHIPPING ASSETS
22 MUST BE ACQUIRED FROM UNRELATED PERSON IN CER-
23 TAIN CASES.—

24 “(1) IN GENERAL.—Subsection (a) shall not
25 apply if the replacement qualifying shipping assets

1 are acquired from a related person except to the ex-
2 tent that the related person acquired the replace-
3 ment qualifying shipping assets from an unrelated
4 person during the period applicable under subsection
5 (b).

6 “(2) RELATED PERSON.—For purposes of this
7 subsection, a person is related to another person if
8 the person bears a relationship to the other person
9 described in section 267(b) or 707(b)(1).”

10 (b) TECHNICAL AND CONFORMING AMENDMENT.—
11 The second sentence of section 56(g)(4)(B)(i) is amended
12 by striking “or under section 114.” and inserting “, under
13 section 114 or under section 1357.”

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 the date of the enactment of this Act.

17 **SEC. 102. INCOME OF MERCHANT SEAMAN EXCLUDABLE**
18 **FROM GROSS INCOME AS FOREIGN EARNED**
19 **INCOME.**

20 (a) SECTION 911 EXCLUSION.—Section 911(d) of the
21 Internal Revenue Code of 1986 (relating to citizens or
22 residents of the United States living abroad) is amended
23 by redesignating paragraph (9) as paragraph (10) and by
24 inserting after paragraph (8) the following:

1 “(9) APPLICATION TO CERTAIN MERCHANT MA-
2 RINE CREWS.—In applying this section to an indi-
3 vidual who is a citizen or resident of the United
4 States and who is employed for a minimum of 90
5 days during a taxable year as a regular member of
6 the crew of a qualified vessel (as defined in section
7 1355)—

8 “(A) the individual shall be treated as a
9 qualified individual without regard to the re-
10 quirements of paragraph (1), and

11 “(B) any earned income attributable to
12 services performed by that individual so em-
13 ployed on such a vessel while it is engaged in
14 transportation between the United States and a
15 foreign country or possession of the United
16 States shall be treated (except as provided by
17 subsection (b)(1)(B)) as foreign earned income
18 regardless of where payments of such income
19 are made.”

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to taxable years beginning after
22 the date of the enactment of this Act.

1 **TITLE II—INSPECTION AND**
2 **INSURANCE PARITY**

3 **SEC. 201. CERTIFICATE OF INSPECTION.**

4 Section 3309 of title 46, United States Code, is
5 amended by adding at the end the following:

6 “(d) CERTIFICATE OF INSPECTION.—

7 “(1) IN GENERAL.—A qualified vessel (as de-
8 fined in section 1355 of the Internal Revenue Code
9 of 1986) shall be eligible for a certificate of inspec-
10 tion if the Secretary determines that—

11 “(A) the vessel is classed by and designed in ac-
12 cordance with the rules of the American Bureau of
13 Shipping or another classification society accepted
14 by the Secretary;

15 “(B) the vessel complies with applicable inter-
16 national agreements and associated guidelines, as
17 determined by the country in which the vessel was
18 documented immediately before becoming a docu-
19 mented vessel (as defined in that section); and

20 “(C) that country has not been identified by the
21 Secretary as inadequately enforcing international
22 vessel regulations as to that vessel.

23 “(2) CONTINUED ELIGIBILITY FOR CERTIFI-
24 CATE.—Paragraph (1) does not apply to a vessel
25 after any date on which the vessel fails to comply

1 with the applicable international agreements and as-
2 sociated guidelines referred to in paragraph (1)(B).”

3 **SEC. 202. AGREEMENTS REGARDING INJURY OR DEATH OF**
4 **CREW.**

5 (a) AGREEMENTS.—Notwithstanding the Death on
6 the High Seas Act (46 U.S.C. App. 761 et seq.) or any
7 other provision of law (other than subsection (b)), includ-
8 ing general maritime law—

9 (1) the operator of a qualified vessel (as defined
10 in section 1355 of the Internal Revenue Code of
11 1986) and the operating crew of such a vessel may
12 agree to any mutually-acceptable system limiting or
13 otherwise controlling liability and damages from
14 death or injury of a crew member; and

15 (2) the terms of any such agreement shall take
16 precedence over, and apply in lieu of, any otherwise
17 applicable provision of any law of the United States
18 with respect to the liability of the owner, employer,
19 and operator, and damages, for such injury or
20 death.

21 (b) EVIDENCE OF FINANCIAL RESPONSIBILITY RE-
22 QUIRED.—Subsection (a)(2) shall not apply to an agree-
23 ment under subsection (a)(1) unless the owner or oper-
24 ation of the vessel to which the agreement relates has in-
25 surance or other evidence of financial responsibility that

1 has been approved by the Secretary of Transportation to
2 provide for compensation in accordance with the agree-
3 ment for death or injury of seamen engaged on the vessel.

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