

Election to Determine Corporate Tax on Certain International Shipping Activities Under Tonnage Tax Regime

Notice 2005-2

This notice provides guidance on the procedure for making an election to determine corporate tax on certain international shipping activities under the tonnage tax regime.

Code section 1354(a), as added by section 248 of the American Jobs Creation Act of 2004, P.L. 108-357, 118 Stat. 1418 (October 22, 2004), allows a qualifying vessel operator to elect to be subject to the tonnage tax regime, under which tax is imposed on notional income from qualifying shipping activities rather than on actual income from such activities. A corporation is a qualifying vessel operator if the corporation operates one or more qualifying vessels within the meaning of section 1355(a)(4) and meets the shipping activity requirement of section 1355(c). Pursuant to section 1355(c)(2), the shipping activity requirement is satisfied with respect to the first year for which the election is made only if the requirement of section 1355(c)(4) is satisfied for the preceding taxable year. Thus, a corporation cannot be considered a qualifying vessel operator prior to the first day of the first year for which the election is made.

A corporation making the election is subject to tax with respect to its income from qualifying shipping activities at the maximum corporate income tax rate on a notional amount based on the net tonnage of the corporation's qualifying vessels. An election made by a member of a controlled group, as defined in section 1355(a)(2)(B), applies to all qualifying vessel operators that are members of such group. The election is available for taxable years beginning after October 22, 2004, and is effective for the taxable year for which it is made and for all succeeding taxable years until terminated. If a corporation ceases to be a qualifying vessel operator, the election is terminated effective on or after the date of such cessation.

The election must be made before the due date (including extensions) of the income tax return for the year for which the corporation elects to be subject to the tonnage tax regime. An election may be made prior to the filing of such return by filing a statement with the Internal Revenue Service at the address where the corporation ordinarily files its income tax return. The statement must set forth the name, address, and employer identification number of the electing corporation and the taxable year for which the section 1354(a) election is being made. A copy of the statement must be attached to the income tax return for the year for which the corporation elects to be subject to the tonnage tax regime.

An election to be subject to the tonnage tax regime is effective only if the corporation is a qualifying vessel operator for the taxable year for which the election is made. If a corporation that files the statement does not satisfy the requirements to be a qualifying vessel operator, the election is not valid.

All electing corporations must provide such additional information relating to the tonnage tax as is required by the applicable corporate income tax return and the instructions thereto, which will include information regarding satisfaction of the requirements to be a qualifying vessel operator.

DRAFTING INFORMATION

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