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In this article, Bracuti examines President Trump's Executive Order 14269, "Restoring America's Maritime Dominance," and the tax provisions of the Shipbuilding and Harbor Infrastructure for Prosperity and Security for America Act of 2025.

I. Introduction

April 19, 2025, marked the 250th anniversary of the Battle of Lexington and Concord, the flashpoint of the American Revolution. Ignited by the December 16, 1773, Boston Tea Party, tensions between the colonists and the British Crown had been rapidly escalating over the winter of 1775, causing the British Parliament to declare on February 5, 1775, that a state of rebellion existed in the Massachusetts Bay Province. The colonists feared that British Army soldiers stationed in Boston would be dispatched to capture the Massachusetts Militia's weapons stock at Concord. Paul Revere and his fellow patriots devised a plan. American spies would infiltrate the British garrison in Boston and alert the Massachusetts Militia of the impending attack. Because Boston was then a peninsula, the British troops enroute to Concord either would have to take an indirect route over a narrow land bridge known as the Boston Neck or take a direct route to the mainland by rowboat through the waters of the Back Bay and across the mouth of Charles River. Revere's plan included having the spies telegraph the British soldiers' chosen route by placing lanterns in the steeple of Boston's Old North Church, with the number of lanterns placed in the steeple designating the route of the British attack: One, if by land and two, if by sea. Late in the evening of April 18, spies placed two lanterns in the steeple of the Old North Church and alerted the colonists that the British troops would be arriving via the Charles River. Soon thereafter came the "shot heard 'round the world" that started the American Revolutionary War.[1]

On April 9, 2025, President Donald J. Trump signed Executive Order 14269, titled "Restoring America's Maritime Dominance" (the Shipping EO), which contains its own ominous national security warning and promises its own revolution:

> The commercial shipbuilding capacity and maritime workforce has been weakened by decades of Government neglect, leading to the decline of a once strong industrial base while simultaneously empowering our adversaries and eroding United States national security. Both our allies and our strategic competitors produce ships for a fraction of the cost needed in the United States. Recent data shows that the United States constructs less than one percent of commercial ships globally, while the People's Republic of China (PRC) is responsible for producing approximately half.
>
> Rectifying these issues requires a comprehensive approach that includes

[1] Ralph Waldo Emerson, "Concord Hymn," line 4. To be sure, there is some American mythology here. First, the lantern portion of the plan was a built-in redundancy in case Paul Revere and other designated scouts were captured and were unable to warn fellow colonists of the attack. Revere finished his famous ride, and it is unclear how many colonists were alerted to the British attack by the lanterns, by Revere, or by the other designated riders that fateful evening. Second, the poet Henry W. Longfellow wrote the famous lantern quote in line 10 of his epic poem, "Paul Revere's Ride." Revere's exact words in this regard are unknown, but they were probably less poetic.

> securing consistent, predictable, and durable Federal funding, making United States-flagged and built vessels commercially competitive in international commerce, rebuilding America's maritime manufacturing capabilities (the Maritime Industrial Base), and expanding and strengthening the recruitment, training, and retention of the relevant workforce.[2]

The Shipping EO proclaims that the policy of the United States is "to revitalize and rebuild domestic maritime industries and workforce to promote national security and economic prosperity."[3]

On April 30, 2025, Sens. Mark Kelly, D-Ariz., and Todd Young, R-Ind., and Reps. John Garamendi, D-Calif., and Trent Kelly, R-Miss., introduced the Shipbuilding and Harbor Infrastructure for Prosperity and Security for America Act of 2025 (the SHIPS Act of 2025). Originally introduced in December 2024 as the Shipbuilding and Harbor Infrastructure for Prosperity for America Act of 2024 (the SHIPS Act of 2024), the SHIPS Act of 2025 proposes large changes to the U.S. law as it applies to the shipbuilding, shipping, and maritime industries and proposes to codify many of the proposals contained in the Shipping EO. The proposed legislation also contains an entire title providing amendments to the Internal Revenue Code that are designed to provide additional economic incentives to revitalize the domestic shipbuilding and shipping industries.

This article will discuss some of relevant history that informs the Shipping EO and the SHIPS Act of 2025 and will discuss in detail the U.S. tax provisions in the SHIPS Act of 2025.

[2] Shipping EO, section 1, 90 F.R. 15635.

[3] *Id.* at section 2.

II. The Call to Arms and the Plan of Attack

A. Background

The plight of the U.S. shipping industry is a long story and one that has received considerable attention by both conservative and liberal think tanks, as well as by those affected by the continual decline in the industry.[4] The plight of the U.S. shipping industry refers to the precipitous decline in U.S.-built and U.S. Coast Guard-registered vessels (also known as "U.S. documented vessels" or "U.S. flag vessels"); the decline in the size, quantity, and quality of such vessels; the reduction in the number of U.S. merchant mariners available to crew U.S. documented vessels; the general inability of the U.S. commercial fleet to compete in international shipping and its general inability to fulfill its occasional military or national emergency role (that is, participating in sealift operations); and the production of modern military vessels. For many in the national security community, the emergence and now dominance of the People's Republic of China in the international shipbuilding and shipping industries has raised this plight to a national security crisis.[5]

The libertarian-leaning Cato Institute has been commenting on the decline of the U.S. shipping and maritime industry for decades.[6] Unsurprisingly, the Cato Institute blames the decline on protectionist policies and recommends free-market solutions to rescue the U.S. shipping industry. In doing so, the Cato Institute lays much

[4] *See, e.g.*, Aaron Klein and Bruce Jones, "Why Maritime Infrastructure Is About More Than the U.S. Navy," Brookings Institute (May 21, 2021); Colin Grabow, Inu Manak, and Daniel Ikenson, "The Jones Act: A Burden America Can No Longer Bear," Cato Institute Policy Analysis No. 845 (Jun. 28, 2018); Klein, "Decline in the U.S. Shipbuilding Industry: A Cautionary Tale of Foreign Subsidies Destroying U.S. Jobs," Eno Center for Transportation (Sept. 1, 2015).

[5] *See, e.g.*, January 29, 2024, letter to President Biden from 19 senators and House members on maritime affairs (congressional shipping letter), discussed *infra*; report released by then-Rep. Mike Waltz, Sen. Kelly, then-Sen. Marco Rubio, and Rep. Garamendi, "Congressional Guidance for a National Maritime Strategy Reversing the Decline of America's Maritime Power" (Apr. 30, 2024) (congressional maritime strategy paper), discussed *infra*; Sen. Dan Sullivan, R-Alaska, "Congress Must Step In to Fix America's Shipbuilding Crisis," *Washington Examiner*, June 11, 2004.

[6] *See, e.g.*, Rob Quartel, "America's Welfare Queen Fleet: The Need for Maritime Policy Reform," 14(3) *Regulation* (Summer 1991); Allen R. Ferguson, "Reform of Maritime Policy: Building Blocks of an Integrated Program," 17(2) *Regulation* (Spring 1994); Grabow, Manak, and Ikenson, *supra* note 4.

of the blame for the decline in the U.S. shipping and maritime industry on the U.S. cabotage laws created, in part, by the Jones Act.[7] U.S. cabotage laws address the carriage of cargo or passengers between two points in the United States and generally require vessels so engaged to (1) be owned by U.S. citizens (or by partnerships or domestic corporations owned primarily by U.S. citizens), (2) be U.S. documented, (3) obtain a "coastwise endorsement" that allows a U.S.-built vessel to transport cargo or passengers between points in the United States; and (4) be primarily crewed by U.S. citizens. Even though the U.S. cabotage laws contain exceptions and waivers, the laws are mostly effective in ensuring that only U.S. persons operate U.S.-built and U.S.-documented vessels with respect to domestic shipping activities. The Cato Institute recommends amending the U.S. cabotage laws to eliminate the Jones Act requirements, as well as a slew of other free-market recommendations to save the related industries.[8]

Other commentators argue that the precipitous decline in the maritime industry is directly attributable to the U.S. government's 1981 decision to end construction differential subsidies, which were a form of government subsidy to build ships.[9] According to these commentators, the U.S. government's cessation of construction differential subsidies, coupled with foreign governments' continued and increased subsidizing of local shipbuilding and related industries, has created the current plight in the U.S. shipping industry. The economic debate regarding the fledgling U.S. shipping industry is much like other American economic policy debates: The purported causes and cures are reduced to the classical debate involving the relative vices and virtues of the "invisible hand" and "industrial policy."

The decline in the U.S. shipping industry and its related national security effects has also captured the attention of both political parties in both houses of Congress. On January 29, 2024, a bipartisan group of 19 senators and House members sent a letter (the congressional shipping letter) to President Biden claiming that the U.S. was at an "inflection point" with respect to reversing the negative trajectory of the U.S. shipbuilding and commercial shipping industries.[10] Like the Shipping EO, the congressional shipping letter also blamed the industry decline on years of government neglect and highlighted perceived dangers created by the emerging dominance of China in the commercial maritime industry.

The congressional shipping letter outlined a three-point plan to "reinvigorate American and allied maritime power on the seas" but warned that success in this regard would be "measured in decades, not days, months, or years."

On April 30, 2024, four of the congressional shipping letter's 19 signatories issued a position paper titled "Congressional Guidance for a National Maritime Strategy: Reversing the Decline in American Maritime Power" (the congressional maritime strategy paper). The congressional maritime strategy paper is similar to the Congressional Letter in many respects, but it is more detailed, containing a 10-point plan and specific data. Page three of the congressional maritime strategy paper compares the U.S. and PRC maritime industries through four rather stark and alarming metrics: (1) the U.S. flag fleet consists of fewer than 200 vessels; the Chinese flag fleet has over 7,000 vessels; (2) U.S. shipbuilders had fewer than five orders to build ships in 2023, and the Chinese shipbuilders had over 1,700 orders to build ships in 2023; (3) the U.S. shipbuilding workforce consists of fewer than 153,000 workers; the Chinese shipbuilding

[7]The U.S. cabotage laws derive from two separate acts, the Merchant Marine Act of 1920 (the Jones Act) and the Passenger Vessels Services Act of 1886, both of which were enacted for national security and commercial protection reasons. The relevant portions of the Jones Act address the carriage of cargo within the United States, while the Passenger Vessels Services Act of 1886 addresses the carriage of passengers within the United States. The Cato Institute's focus is on the Jones Act provision, because the carriage of passengers is a much smaller segment of the shipping industry.

[8]*See* Grabow, "U.S. Maritime Policy Needs an Overhaul," Cato Institute (Sept. 6, 2024).

[9]*See, e.g.*, Klein and Jones, *supra* note 4; Klein, *supra* note 4; Ted Williams, "The Degradation and Recovery of U.S. Shipbuilding," *Marine Log* Op-Ed, Dec. 3, 2014.

[10]The signatories included then-Senator and now-Secretary of State and National Security Adviser Marco Rubio and then-member of Congress and now-U.N. Ambassador nominee Michael Waltz.

workforce has over 600,000 workers; and (4) the U.S. has fewer than 12,000 merchant mariners; China has over 1.7 million seafarers.

Sens. Kelly and Young, along with Reps. Garamendi and Kelly, introduced the SHIPS Act of 2024 in the waning days of the 118th Congress. The SHIPS Act of 2024 was consistent with the suggestions in the congressional maritime strategy paper, but the act was more detailed and specific, suggesting the creation of new executive branch positions and responsibilities, the creation of special dedicated funds, and outlining scores of directives and programs designed to support the commercial and military shipbuilding industries, the maritime workforce, port infrastructure, mariner education and training, and related supply chains and industries.

B. The Shipping EO

Issued on April 9, 2025, the Shipping EO is modeled after the SHIPS Act of 2024 and directs sweeping and ambitious changes to the federal government and how it interacts with the shipping industry. The Shipping EO directs various departments and agencies within the executive branch to draft and submit multiple reports and to craft legislative proposals designed to revitalize domestic shipbuilders, domestic shippers, merchant mariners, and various businesses involved in the maritime supply chain. The Shipping EO contains 24 sections, some of which are discussed below.

Section 3 of the Shipping EO tasks the assistant to the president for national security affairs with submitting to the president a maritime action plan, which is designed to achieve the stated policy of revitalizing and rebuilding the domestic maritime industries and workforce. Due on November 6, 2025, the assistant to the president for national security affairs is to develop the maritime action plan in coordination with secretaries of state, defense, commerce, labor, transportation, and homeland security and with the U.S. trade representative. Multiple departments and agencies are tasked with drafting specific reports and developing related legislative proposals, most of which will be included in the maritime action plan.

Section 4 requires the secretary of defense, in cooperation with the secretaries of commerce, transportation, and homeland security, to provide:

> an assessment of options both for the use of available authorities and resources, such as the Defense Production Act Title III authorities, and for the use of private capital to the maximum extent possible to invest in and expand the Maritime Industrial Base including, but not limited to, investment and expansion of commercial and defense shipbuilding capabilities, component supply chains, ship repair and marine transportation capabilities, port infrastructure, and adjacent workforce.

Section 9 requires the director of the Office of Management and Budget to develop a legislative proposal to create a maritime security trust fund that can provide a funding source for many of the programs and initiatives described in the maritime action plan. The legislative proposal "should consider how new or existing tariff revenue, fines, fees, or tax revenue could further the goal of establishing a more reliable, dedicated funding source for programs support by the [maritime action plan]."

Section 11 proposes the creation of "maritime prosperity zones," which will be designed to identify "opportunities to incentivize and facilitate domestic and allied investment in the United States maritime industries and waterfront communities." The maritime prosperity zones are to be modeled on the Opportunity Zones provisions of section 1400Z of the IRC.

Section 12 requires the secretary of transportation, in coordination with the secretary of homeland security, to deliver a report by July 8, 2025, that "inventories Federal programs that could be used to sustain and grow the supply of and demand for the United States maritime industry." The report is also supposed to identify "other available means that could further support the industry, including modifications of existing programs, establishment of new programs, and tax and regulatory relief."

C. Overview of the SHIPS Act of 2025

A bipartisan group of senators and House members have responded to the Shipping EO in

short order by introducing the SHIPS Act of 2025 on April 30, 2025.[11] The SHIPS Act of 2025 is a massive bill that would codify many of the proposals contained in the Shipping EO. The bill contains seven separate titles that propose to rearrange the federal government's relationship with the shipbuilding and shipping industries, including:

- creating a maritime security trust fund, funded by harbor tonnage taxes and various tariffs, fees, duties, and penalties, that will be used to fund many of the initiatives and programs contained in the SHIPS Act of 2025;[12]
- ensuring that the U.S. has adequate sealift capabilities to meet military and national emergency contingencies;[13]
- creating a strategic commercial fleet of up to 250 privately owned, commercially viable, militarily useful vessels to assist in national security and emergency purposes, including sealift operations;[14]
- overhauling the cargo preference laws to ensure that all U.S. government cargo is transported on U.S. documented vessels, to ensure that there is proper regulation and oversight of such laws, to reimburse providers of international assistance from the maritime security trust fund, to ensure that 10 percent of U.S.-bound cargo from the PRC is transported on U.S. documented vessels within 15 years, and to create a Ship America Office within the Maritime Administration to coordinate and assist the various public and private actors involved in the movement of cargo to and from the U.S.;[15]
- creating special incentives to revitalize the U.S. shipbuilding industry;[16]
- creating special incentives designed to increase the number and extend the retention of U.S. mariners;[17] and
- adding amendments to the IRC to help effectuate the provisions contained in the SHIPS Act of 2025.

III. Overview of Relevant Tax Law

A. In General

U.S. persons (U.S. citizens, U.S. resident alien individuals, and domestic corporations) are subject to U.S. income tax on all income from whatever source derived.[18] A foreign tax credit and/or a bilateral income tax treaty can mitigate some effects of double taxation created by the imposition of tax by other countries.[19]

Foreign persons (nonresident alien individuals and foreign corporations) are subject to U.S. income tax only on three forms of income that are generally from U.S. sources. First, a foreign person is subject to U.S. income tax on certain items of income from U.S. sources that are fixed, determinable, annual, or periodical income.[20] A foreign person's U.S.-source FDAP income is subject to a gross-basis 30 percent tax, which is often collected by a withholding regime.[21] A bilateral income tax treaty can mitigate the effect of double taxation imposed on certain items of income.[22]

Second, a foreign person who engages in activities in the United States that rise to the level of a trade or business in the United States is subject to U.S. income tax on any income that is effectively connected to the U.S. trade or business (effectively connected income).[23] The tax on ECI is a net-basis tax (deductions allowed) and is paid at

[11] Although not identical to the SHIPS Act of 2024, the SHIPS Act of 2025 contains many of the same provisions. The reintroduction of the amended bill seems to be a response to the Shipping EO and the attention it has received, suggesting that both political parties in the Congress support the Trump administration's efforts in this regard.

[12] *See* SHIPS Act of 2025, sections 201-203.

[13] *See id.*, sections 301-303.

[14] *See id.*, sections 401-404. The strategic commercial fleet is supposed to include at least 10 vessels within three years of the SHIPS Act of 2025's enactment, at least 20 vessels within five years after enactment, and eventually up to 250 vessels. *See* 46 U.S.C. section 53602(b), as amended by section 401 of the SHIPS Act of 2025.

[15] *See* SHIPS Act of 2025, sections 411-433.

[16] *See id.*, sections 501-523.

[17] *See id.*, sections 601-636.

[18] *See* sections 1, 11, 61.

[19] *See generally* sections 901-909, 894(a), and U.S. model income tax convention.

[20] *See* sections 871(a), 881.

[21] *See* sections 1441, 1442.

[22] *See* section 894(a) and U.S. model income tax convention.

[23] *See* sections 871(b), 882.

applicable graduated income tax rates.[24] A bilateral income tax treaty can mitigate the effect of double taxation imposed on certain items of income.[25]

Third, foreign persons are also subject to special rules that apply to direct or indirect investments in U.S. real property. Codified in section 897 of the code, the 1980 Foreign Investment in Real Property Tax Act treats any gain or loss attributable to a foreign person's disposition of a U.S. real property interest as gain or loss that is ECI.[26] A U.S. real property interest generally is any direct interest in real property located in the United States or in the U.S. Virgin Islands and any equity type interest in a domestic corporation whose assets consist primarily of U.S. real property interests.[27] Much of the tax collected under FIRPTA is collected by a withholding regime contained in section 1445 and the regulations thereunder.[28]

B. Shipping Activities

The U.S. income tax law applicable to shipping activities is divided neatly into the taxation of income generated by domestic shipping activities and the taxation of income from international shipping activities. Domestic shipping income generally is income earned from the carriage of passengers or goods between two points in the United States.[29] Shipping income also includes income derived from the use (or hiring or leasing for use) of a vessel engaged in shipping activities, income derived from the performance of services directly related to the use of a vessel engaged in shipping activities, and income derived from shipping containers.[30] Domestic shipping activity is restricted by the above-described U.S. cabotage laws and, thus, applies almost entirely to U.S. persons.

International shipping income is income earned from the carriage of passengers or goods between a point in the United States and a point in a foreign country and is subject to different taxing rules.[31] International shipping income is treated as 50 percent from U.S. sources and 50 percent from foreign sources.[32] A U.S. person earning international shipping income is subject to U.S. income tax on all such income, with the availability of an FTC to mitigate the effect of double taxation on the foreign-source portion of such income.[33]

A foreign person earning international shipping income generally is subject to a 4 percent gross-basis U.S. income tax on the U.S.-source portion of international shipping income.[34] A foreign person that has a fixed place of business in the U.S. and that earns substantially all of its international shipping income from regularly scheduled voyages attributable to the fixed place of business in the United States may avoid the 4 percent tax by treating the shipping income as ECI, thereby subjecting the income to net-basis U.S. income tax at ordinary income tax rates.[35] A foreign person earning international shipping income may be exempt from U.S. income tax under a bilateral income tax treaty.[36] A foreign person earning international shipping income also may be exempt from U.S. income tax if the foreign person is a resident of or is organized in a foreign country that grants an "equivalent

[24] *See* sections 873, 882(c).

[25] *See* section 894(a) and U.S. model income tax convention.

[26] *See* section 897(a).

[27] *See* section 897(c)(1)(A). Special rules exist for U.S. real property interests owned through domestic and foreign partnerships. *See* section 897(g).

[28] For a thorough discussion of FIRPTA and related withholding rules, see Guy A. Bracuti, Joshua S. Kaplan, and Michael H. Plowgian, "U.S. Taxation of Foreign Investment in U.S. Real Property," 6540 *Tax Mgmt. Portfolio* (2019).

[29] *See* section 863(c)(1). Section 863 uses the broader term "transportation income" because it applies to both shipping income and income generated by aircraft. This article is limited to shipping issues; therefore, this article will use the phrase "shipping income," even when the underlying statute or regulation uses the term transportation income.

[30] *See* section 863(c)(3).

[31] *See* section 863(c)(2), (3); *see also* reg. section 1.883-1(f).

[32] See section 863(c)(2).

[33] *See generally* sections 901-909. Bilateral income tax treaties also may mitigate the effect of double taxation attributable to international shipping income. *See generally* section 894(a) and U.S. model income tax convention, art. 8.

[34] *See* section 887(a).

[35] *See* sections 1, 11(d), 871(b), 882(a), 887(b)(4).

[36] *See generally* section 894(a) and U.S. model income tax convention, art. 8.

exemption" to a U.S. citizen, U.S. resident, or a domestic corporation.[37]

A corporation also may avoid the application of U.S. income tax to income earned from certain forms of international shipping income if the corporation elects to use a "U.S. tonnage tax regime" contained in sections 1352 through 1359 of the code. Not to be confused with the harbor tonnage tax regime contained in 46 U.S.C. sections 60301-60312, the U.S. tonnage tax contained in the code is an elective tax regime that operates by excluding from gross taxable income certain income attributable to "qualifying shipping activities" and by applying a daily tax on the net tonnage of "qualifying vessels" operating in "United States foreign trade."[38]

Qualifying vessels generally are U.S. documented vessels that operate exclusively in U.S. foreign trade.[39] U.S. foreign trade is the "transportation of goods or passengers between a place in the United States and a foreign place or between foreign places."[40]

Qualifying shipping activities are "core qualifying activities," "qualifying secondary activities," and "qualifying incidental activities."[41] All income attributable to core qualifying activities is excluded from gross taxable income, but the exclusion for income attributable to qualifying secondary activities and for income attributable to qualifying incidental activities is limited to 20 percent of the total core qualifying income amount (in the case of secondary qualifying income) and to 0.1 percent of the total core qualifying income (in the case of incidental activities income).[42]

The U.S. tonnage tax was enacted in 2004 in a previous Congressional attempt to revitalize the domestic shipping industry.[43] Because of its limited benefits, limited application, and the prohibitively high labor costs associated with U.S. crewing requirements on U.S documented vessels, very few taxpayers have availed themselves of the U.S. tonnage tax regime. For these reasons, the U.S. tonnage tax regime has not been effective in revitalizing the U.S. shipping industry.

IV. Tax Provisions of the SHIPS Act of 2025

A. Additional Necessary Background

The domestic shipping industry for these purposes consists not of a single industry but rather several industries that form a sprawling — yet highly specialized — network of interrelated businesses. These industries include military and civilian shipbuilding, ownership of military and civilian ships, commercial shipping operators, freight forwarders, mariners and crew, ship repair and parts supply chains, and harbor operations and the related businesses required to load and unload cargo and persons from vessels. Each of these businesses has its own footprint and capital requirements and requires its own highly trained workforce and intellectual property. Accordingly, each segment of the shipping industry network will respond to tax incentives that are tailored to the specific segment of the industry.

A review and some additional discussion of the U.S. cabotage laws and the related U.S. documentation rules are also necessary to help understand some of the following discussion. As discussed above, the U.S. cabotage laws generally require that any waterborne domestic carriage of cargo or passengers must occur on vessels that (1) are owned by U.S. citizens (or by partnerships or domestic corporations owned primarily by U.S. citizens), (2) are U.S. documented, (3) have a "coastwise endorsement" that allows a U.S.-built vessel to transport cargo or passengers between points in the United States, and (4) are crewed primarily by U.S. persons. Vessels that satisfy these requirements are known as the "Jones Act Fleet." Vessels that involve the international carriage of cargo or passengers are not required to adhere to the Jones Act requirements.

The Jones Act Fleet requirements, however, are more precise than the general statement above. There are two separate ownership requirements in the cabotage rules, one for the

[37] *See* sections 872(b) and 883(a); reg. sections 1.872-2(a), 1.883-1 through -5.

[38] *See* sections 1352, 1357(a).

[39] *See* section 1355(a)(2)(4).

[40] *See* section 1355(a)(7).

[41] *See* section 1356(a).

[42] *See* section 1356(b)-(d).

[43] *See* H.R. Rep. No. 108-548, pt. 1 at 177 (June 6, 2004); *see also* Staff of Joint Committee on Taxation, "General Explanation of Tax Legislation Enacted in the 108th Congress," JCS-5-05, at 215 (2005).

Jones Act rule and the other for documentation purposes. The Jones Act rule is in 46 U.S.C. section 55102 and provides that the waterborne transportation of cargo between points in the U.S. must be on a vessel that is "wholly owned by citizens of the United States" and that has a "certificate of documentation with a coastwise endorsement." 46 U.S.C. section 50501 contains a special rule for the Jones Act ownership requirement that treats certain U.S. citizen-controlled domestic corporations, partnerships, and associations as U.S. citizens. Control for these purposes is defined as 75 percent ownership by U.S. citizens.

The documentation ownership requirement is in 46 U.S.C. section 12103(a) and provides in relevant part that a vessel may be documented only if the vessel is wholly owned by one or more "eligible owners." 46 U.S.C. section 12103(b) defines eligible owners as:

- U.S. citizens;
- partnerships, if all general partners are U.S. citizens and U.S. citizens own a 75 percent controlling interest in the partnership;
- domestic corporations if the corporation:
  - is 75 percent controlled by U.S. citizens,
  - has a chief executive officer and a chairman of the board that is a U.S. citizen, and
  - has a board of directors in which persons who are not U.S. citizens cannot raise a quorum;
- associations, trusts, joint ventures, or other entities whose members are all U.S. citizens;
- the U.S. government; and
- the government of a state.[44]

A coastwise endorsement may be issued only to a vessel that was (1) built in the U.S. or (2) captured in war, forfeited to the U.S. government for breach of U.S. law, or wrecked on the U.S. coast and refurbished.[45] 46 U.S.C. section 12112(a)(3) provides that a coastwise endorsement also may be issued for a vessel if there is special legislation granting coastwise privileges to the vessel.

46 U.S.C. section 8103 provides the crewing requirements for U.S. documented vessels. The master, chief engineer, radio officer, and officer in charge of a deck watch or engineering watch must all be U.S. citizens.[46] The remaining unlicensed seaman crew must consist of U.S. citizens, foreign nationals who are enrolled in the U.S. Merchant Marine Academy, and aliens lawfully admitted to the U.S. for permanent residence (but the number of lawfully admitted aliens is limited to 25 percent of the unlicensed crew).[47]

B. The U.S. Tax Provisions of the SHIPS Act of 2025

Title VII of the SHIPS Act of 2025 contains proposed amendments to the IRC, which consist of U.S. tonnage tax amendments, the new Maritime Opportunity Zone provision, tax credits, gross income exclusions, and a fuel tax provision.

1. U.S. tonnage tax amendments.

Sections 703, 704, and 705 of the SHIPS Act of 2025 propose to amend the U.S. tonnage tax regime.

Section 703 would eliminate the 30-day U.S. domestic trade limitation in section 1355(f)(4). A vessel that is eligible for tonnage tax must operate "exclusively" in U.S. foreign trade for the tax year.[48] This means that the vessel must be used exclusively for the carriage of goods or passengers between a U.S. port and a foreign port or between two foreign ports.

The use of the term "exclusively" in section 1355(a)(4), however, is a misnomer because sections 1355(e) and (f) provide grace from the exclusivity rule. Section 1355(e) provides that a temporary cessation of shipping activity will not disqualify a vessel if the cessation is temporary and the taxpayer provides notice of the temporary cessation of international shipping operations. Section 1355(f) goes further by providing that the use of a vessel in U.S. domestic trade — the carriage of goods or passengers between two points in the United States — will not disqualify a

[44] *See also* 46 C.F.R. section 67.30-47 (for special rules on control and special thresholds for coastwise endorsements).

[45] *See* 46 U.S.C. section 12112(a)(2).

[46] *See* 46 U.S.C. section 8103(a).

[47] *See* 46 U.S.C. section 8103(b).

[48] *See* section 1355(a)(4), (7).

vessel under the exclusivity requirement if the taxpayer provides notice and the use of the vessel in U.S. domestic trade does not exceed 30 days in the tax year. If the vessel is used in U.S. domestic trade for more than 30 days during the tax year, the vessel will fail the exclusivity requirement and none of the income it generates will be eligible for exclusion from taxable income under the U.S. tonnage tax rules.

Section 703 of the SHIPS Act of 2025 would remove the 30-day U.S. domestic trade limitation and allow vessels to engage in both U.S. foreign trade and U.S. domestic trade for indefinite periods during the tax year without violating the exclusivity requirement. The proposed amendment would not treat the income earned while the vessel is engaged in U.S. domestic trade as income from "core qualifying activities," but the operation of the vessel in U.S. domestic trade presumably would be treated as a "qualifying secondary activity" under section 1356(c)(2)(A), thereby generating income that could be excluded from taxable gross income under the U.S. tonnage tax regime up to the 20 percent limitation in section 1356(c)(1).

Section 704 would amend the definition of "core qualifying activities" in section 1356(b) to mean "the carriage of goods (as defined in section 1 of the Carriage of Goods by Sea Act (46 U.S.C. 30701)) by qualifying vessels in United States foreign trade." The purpose of this change is to clarify that core qualifying activities include "all transportation services that a carrier is obligated to provide under a bill of lading covering the transportation of goods by ocean to or from U.S. ports in foreign trade as set forth in the Carriage of Goods by Sea Act (COGSA), which is the industry standard for 'core' activities."[49] This amendment would clarify an issue that can arise under current law regarding the transportation of cargo, but the amendment has a possibly unintended consequence of eliminating the activities related to the transportation of passengers in U.S. foreign trade from core qualifying activities. Therefore, the proposed amendment would limit the scope of the tonnage tax by eliminating the 100 percent income tax exclusion for income attributable to carriage of passengers in U.S. foreign trade. Presumably, the carriage of passengers in U.S. foreign trade would become a qualifying secondary activity, and the income attributable to such activities would be excludable up to the 20 percent limitation provided in section 1356(c). This does not appear to be an intended consequence of the proposed amendment.

Section 705 would amend the definition of "qualifying vessel" in section 1355(a)(4) to include "United States-owned foreign flag vessels." A U.S.-owned foreign flag vessel would be defined in new section 1355(a)(8) as a vessel that is registered under the laws of a foreign country that is not a "foreign country of concern"[50] and that:

> (A) is owned by persons that:
>
> (1)(a) are U.S. citizens (as determined under 46 U.S.C. section 50501)), or
>
> (b) are controlled (within the meaning of section 954(d)(3)) by U.S. citizens (as determined under 46 U.S.C. section 50501); and
>
> (2) own a fleet of U.S. documented vessels;
>
> (B) is strategically and commercially managed from within the U.S.; and
>
> (C) has entered into an "emergency preparedness agreement," a "contingency agreement," or any other agreement with the Maritime Administrator pursuant to authority contained in the Defense Production Act.[51]

Amendments to the U.S. tonnage tax regime present the most immediate opportunity to provide an economic boost to the domestic shipping industry. Recent changes to global international taxation (namely, the pillar 2 rules, the related enactment of corporate income tax

[49] Explanation to the SHIPS for America Act, Sens. Kelly and Young, and Reps. Kelly and Garamendi (Apr. 30, 2025).

[50] A "foreign country of concern" is defined in section 4(4) of the SHIPS Act of 2025 as a "covered nation" as defined in 10 U.S.C. section 4872(d) (North Korea, China, the Russian Federation, and Iran) and any country that the maritime administrator determines to "be engaged in conduct that is detrimental to the national security or foreign policy of the United States."

[51] The agreements designated in (C) are designed to allow the U.S. government to access vessels in times of national emergency, including providing sea lift operations in preparation for military deployment.

regimes in Bermuda and the Bahamas, and proposed section 899 of the U.S. IRC) have created significant uncertainty for international shipping companies. Many international shipping companies are reassessing their current corporate structures and their headquarters and operational locations to reduce regulatory compliance costs and to make global operations more efficient. Taxation is a significant driver of both goals. The flexibility, lower compliance costs, and ultimately lower tax outlay associated with liberal foreign tonnage tax regimes make certain foreign countries with liberal tonnage tax regimes attractive destinations for international shipping companies.

The current uncertainty in the international shipping industry, coupled with the U.S. policy goal of revitalizing the domestic shipping industry, suggests that the U.S. tonnage tax regime should be amended to make it competitive with liberal foreign tonnage tax regimes to entice international shipping companies to relocate to the United States. A shipping company's decision to avail itself of a tonnage tax regime can bring an almost immediate economic infusion to the host country because tonnage tax regimes usually require local strategic and commercial management of the vessels, which requires the relocation of personnel and logistics operations to the new host country. This means that shipping companies would relocate most of their operations to the new host country, and the host country's crewing requirements would increase employment of local merchant mariners. Unfortunately, the amendments contained in the SHIPS Act of 2025 would not achieve this purpose because, even with the proposed amendments, the U.S. tonnage tax would be too limited in scope to provide the financial incentives required for relocation to the United States.

The following additional amendments to the U.S. tonnage tax regime could alter this conclusion and make the United States the preferred headquarter destination for many international shipping companies. These suggestions are consistent with sections 4 and 12 of the Shipping EO, which propose using private capital and tax incentives to facilitate the policy of revitalizing and rebuilding the domestic maritime industries and workforce.

First, Congress should consider including a new requirement that vessels eligible for the U.S. tonnage tax regime should be subject to a U.S. strategic and commercial management requirement. Section 705 of the SHIPS Act of 2025 does require U.S.-owned foreign flag vessels to be strategically and commercially managed in the United States, but the remainder of the vessels in a taxpayer's U.S. tonnage tax fleet (U.S. documented vessels) would not be required to be strategically and commercially managed in the United States. Requiring all vessels in the U.S. tonnage tax fleet to be strategically and commercially managed in the United States would be in line with other tonnage tax regimes and would ensure the most onshoring of related shipping activity and employment.

Second, Congress could make the operation of a vessel in U.S. domestic trade a "core qualifying activity," thereby making income earned from U.S. domestic trade eligible for the full exclusion under the tonnage tax regime. This, coupled with the other suggested changes to the U.S. tonnage tax, could dramatically change the movement of cargo within the United States. According to Colin Grabow and his colleagues at the Cato Institute, the domestic shipping industry has become so depleted that goods are rarely transported between U.S. destinations via the U.S. waterways.[52] Instead, 98 percent of goods are transported up and down the U.S. coasts via the highways and railroads, creating significant inefficiencies, increasing pollution, clogging the roads and railways, and taxing the related physical infrastructure.[53] Expanding the U.S. tonnage tax regime to include U.S. domestic trade could significantly alter the movement of cargo in the U.S. by moving most of the coastal transportation of cargo to the waterways, creating significantly more employment in the various shipping industry sectors (for example, merchant mariners and harbor- and dock-related services) and reducing strain on road and rail infrastructure.

Third, Congress could make certain foreign-built vessels eligible to engage in U.S. domestic

[52] Grabow, Manak, and Ikenson, *supra* note 4.

[53] *See id.*

trade. This would require Congress to amend the coastwise endorsement rule in 46 U.S.C. section 12112(a)(2) to include a new class of foreign-built vessels or provide special legislation described in 46 U.S.C. section 12112(a)(3) and to relax the ownership requirements in 46 U.S.C. section 55102 to include publicly traded companies and certain foreign owners that are trusted allies.

This change may become necessary — even if only temporarily — because the domestic shipbuilding industry has withered and become "sclerotic," with "nearly 9 out 10 commercial vessels produced in U.S. shipyards since 2010 [being] barges or tugboats," rather than the state-of-the-art self-propelled oceangoing vessels necessary to transport cargo along the coasts of the United States.[54] According to most estimates, it will take several years for U.S. shipyards to retool, restaff, design, and build state-of-the-art oceangoing vessels that could move cargo or passengers along the coasts of the United States.[55] This delay will have two effects: (1) purely domestic cargo delivery will continue to be transported via the highways and railroads, with all the related deleterious effects for the foreseeable future, and (2) international shipping companies will be kept out of the U.S. domestic trade market, which may influence them to relocate operations to countries with foreign tonnage tax regimes that do not have Jones Act restrictions. Allowing foreign-built vessels to engage in U.S. domestic trade — even if only temporarily — could provide a significant and near-immediate economic infusion to the U.S. shipping industry because a revamped U.S. tonnage tax regime would provide an incentive to move operations to the United States.

This change also may be required to achieve Congress's ambitious goals for improving the U.S. sealift capabilities, as set forth in titles III and IV of the SHIPS Act of 2025.[56] Because the existing fleet of U.S.-built available vessels is rapidly decreasing and consists of much older and less efficient vessels, Congress may need to make this change to make the sealift goals attainable. This problem is particularly acute in the context of the specific numeric goals of the strategic commercial fleet — 10 vessels in three years, 20 vessels in five years, and up to 250 vessels eventually. The long runway that the U.S. shipbuilding yards will require to build adequate sealift vessels may force Congress's hand in this regard. To further complicate matters, the proposed strategic commercial fleet provisions expressly prohibit a vessel that is or was part of the strategic commercial fleet from ever competing with the Jones Act Fleet in U.S. domestic trade.[57] This restriction would probably need to be lifted to attain the sealift goals.

Fourth, Congress could make U.S.-owned foreign flag vessels eligible to engage in U.S. domestic trade and, thus, eligible to earn the same core qualifying income that U.S. documented vessels earn under the U.S. tonnage tax regime. This change also would require Congress to amend the coastwise endorsement rule in 46 U.S.C. section 12112(a)(2), which is essentially a change to the Jones Act rule.

Fifth, Congress could relax the U.S. crewing requirements in 46 U.S.C. section 8103 to increase the permitted number of lawfully admitted aliens that may serve as a crew on a U.S. documented vessel. Like the foreign-built vessel suggestion, this change may become necessary — if only temporarily — because there is a current shortage of U.S. mariners.[58] While Title VI of the 2025 SHIPS Act is designed to increase the numbers and retention periods of the U.S. merchant mariners with a variety of programs offering tuition assistance, loan forgiveness, spousal reimbursements, and additional training opportunities, these provisions will likely take years to restock the U.S. merchant mariner pool. Qualified foreign mariners that are lawfully admitted to the United States for permanent residence will be needed to help crew the additional vessels under strategic and commercial

[54] *See id.* Indeed, as of 2018, 75 percent of the existing U.S.-built container vessels were over 20 years old, the typical economically useful life of a container vessel, and 65 percent of the vessels were over 30 years old. *See id.*

[55] *See, e.g.*, congressional shipping letter, *supra* note 5; congressional maritime strategy paper, *supra* note 5.

[56] *See* SHIPS Act of 2025, sections 301-433.

[57] *See* 46 U.S.C. section 56303(b)(1)(A)(iii), (1)(B), (3), (h)(2) (making any vessel that is participating or has participated in the strategic commercial fleet permanently ineligible to receive a coastwise endorsement).

[58] *See, e.g.*, SHIPS Act of 2025, section 2(11).

management in the United States in accordance with a robust and competitive U.S. tonnage tax regime.

Sixth, because the labor costs are so high for operating U.S. documented vessels, Congress could also provide a tax credit for the portion of employer-provided employment tax paid under section 3111.

Seventh, Congress could make waterborne services (in U.S. waters, international waters, and foreign waters) permitted operations of a qualifying vessel under section 1355(a)(4) and a core qualifying activity under section 1356(b). Ideally, such services would include activities related to the construction and maintenance of offshore energy projects, submarine cable installation and repair, and rescue-related activities.[59]

Finally, Congress should amend section 704 of the SHIPS Act of 2025 to make clarifying changes regarding the activities that qualify as "core qualifying activities" as the term relates to the passenger transportation in U.S. foreign trade. This addition would provide symmetry to the existing proposed amendment in section 704 that clarifies core qualifying activities in the context of cargo transportation. The additional language should incorporate by reference the existing standard that addresses passenger services. This would mean either cross-referencing article 8 of the U.S. model income tax convention or section 883 of the code.[60]

These suggested changes could make the U.S. tonnage tax an attractive alternative to foreign tonnage tax regimes, which could encourage foreign shipping companies to relocate many operations to the United States. The relocation of foreign shipping companies to the United States would support many of the goals of the Shipping EO and the SHIPS Act of 2025 because relocated shipping companies could (1) increase domestic shipping operations, (2) increase international shipping operations that are managed in the United States and use vessels that have significantly more U.S. nexus, (3) employ many U.S. citizens and U.S. mariners, and (4) contract with other U.S.-based businesses as part of general operations (for example, ship acquisition and repair, maritime logistics, and onboard supplies). Relocated international shipping companies would also be more likely to invest in the revitalization of U.S. shipyards and U.S. harbors, both of which are stated goals of the Shipping EO and the SHIPS Act of 2025. None of this will be possible, however, if Congress does not relax the above-described cabotage laws, which include U.S. citizenship ownership requirements in 46 U.S.C. sections 12103 and 50501, as well as the coastwise endorsement requirement that the Jones Act Fleet consist entirely of U.S.-built vessels.

Enacted in the 1920s with little amendment over the past 100 years, the U.S. cabotage laws might have served legitimate national security and industrial policy goals in a pre-World War II era, but U.S. national security and both national and international commerce have changed dramatically since the first quarter of the last century. The current cabotage laws do not contemplate modern corporate ownership rules that enable greater transparency with respect to corporate governance, nor do they reflect the possibility that Congress can craft special corporate governance rules that include special veto rights and disclosures to ensure that any U.S. governmental interest or national security concerns are addressed. The recent negotiations involving Nippon Steel's acquisition of ownership interests in U.S. Steel are an example of these security measures. In that deal, the parties (including the U.S. government) negotiated corporate governance provisions that included honoring existing labor contracts, requirements for U.S. citizen corporate officers and board members, and the provision of a "golden share" to the U.S. government.[61] While the Nippon Steel/U.S. Steel deal was an ad hoc negotiation involving senior members of the U.S. government, Congress in this context can create its own statutory requirements or delegate the procedures to an executive department so that the

[59] *See* Karl Berlin and Daniel Rath, "Offshore Support Vessels Navigate Tonnage Tax and Pillar 2 Waters," *Tax Notes Int'l*, Dec. 9, 2024, p. 1509, for an interesting discussion on the waterborne service sector and the associated taxation issues.

[60] The section 883 statutory standard has been developed in reg. section 1.883-1.

[61] Martine Powers, "Trump Tells Rally in Pa. He's Doubling Steel Tariffs," *The Washington Post*, May 31, 2025, at A1.

procedures and requirements would be mostly uniform and would not require senior members of the executive branch to negotiate such matters on an ad hoc basis. The relaxation of the cabotage laws would be consistent with the goals of the Shipping EO and the SHIPS Act of 2025, both of which acknowledge that revitalizing the U.S. shipping and maritime industries will require the assistance of allies, the use of private capital, and facilitative tax laws.

2. Maritime Opportunity Zones.

Section 710 of the SHIPS Act of 2025 proposes to amend section 1400Z of the code to include new section 1400Z-3, titled "Treatment of Maritime Prosperity Zones as Opportunity Zones." Sections 1400Z-1 and -2 provide tax incentives to invest in certain designated tracts of real property located in low-income communities. The U.S. tax incentives include the deferral and exclusion of certain gains that are reinvested in "qualified opportunity funds."[62]

Qualified opportunity funds generally are investment vehicles that hold direct investments or indirect investments (through a corporation or a partnership) in certain tangible property located in "qualified opportunity zones."[63] A QOZ generally is a population census tract that the secretary of the Treasury has designated as a low-income community.[64]

New section 1400Z-3 would extend the opportunity zone tax deferral rules to "maritime prosperity zones" and make the opportunity zone rules applicable to investments made after the SHIPS Act of 2025's enactment.[65] A maritime prosperity zone would be any population census tract that (1) contains or is determined by the maritime administrator to be a viable site for (i) a shipyard of the United States, (ii) a port, or (iii) a harbor facility and (2) is officially designated as a maritime prosperity zone under special procedures.[66]

In addition to the maritime opportunity zone provision, Congress could also stimulate foreign direct investment in shipping-related U.S. real property and its associated physical infrastructure by providing an exemption from the FIRPTA rules in section 897. The home country tax cost plus the U.S. FIRPTA tax applicable to foreign investment in U.S. real property significantly reduces the return on investment and, thus, can be an impediment to FDI in U.S. real property. If Congress intends to incentivize investment in U.S. maritime real property and the related physical infrastructure, it will need to consider the high barriers of entry associated with such investment. Real property — especially maritime-related real property — is an illiquid asset that requires substantial capital investment and significant time to construct the physical improvements that are necessary to exploit the real property for maritime use. As a result, the willing and able investor population tends to be a limited class of institutional investors that can make large investments with long-time horizons. Finally, because shipping-related real property could implicate national security considerations, Congress can tailor the exemption accordingly by excluding foreign persons associated with foreign countries of concern and/or providing special ownership requirements under the Committee on Foreign Investment in the United States.[67]

3. Tax credits.

Sections 701 and 706 of the SHIPS Act of 2025 propose to amend sections 38, 46, and 48 of the code by creating new general business credits for the acquisition of certain U.S. vessels and for the construction of U.S. shipyards.

Section 701 of the SHIPS Act of 2025 would create new section 48F, titled "United States Vessel Investment Credit," which would provide a tax credit for up to 40 percent of a "qualified investment" in a "qualified vessel." The base credit amount would be 33 percent of a qualified

[62] *See* section 1400Z-2(a)-(c).

[63] *See* section 1400Z-2(d).

[64] *See* section 1400Z-1.

[65] *See* section 1400Z-3(a), (b)(2)(A), as amended by the SHIPS Act of 2025.

[66] *See* section 1400Z-3(c), as amended by the SHIPS Act of 2025.

[67] *See* Bracuti, "Infrastructure and Alternative Energy in the 21st Century: Does Unclear U.S. Tax Policy Leave Us Tilting at Windmills?" 40 *Tax Mgmt. Int'l J.* 3 (Jan. 2011), for a discussion of tax issues involving foreign investment in U.S. real property, physical infrastructure related to U.S. real property, sovereign wealth funds, and the Committee on Foreign Investment in the United States.

investment, but the credit would be increased by 5 percent, if the taxpayer obtains indemnity protection for the vessel from an insurance company that is domiciled and headquartered in the United States, and by another 2 percent, if the vessel is designed in accordance with the American Bureau of Shipping or another classification society headquartered in the United States and recognized by the U.S. Coast Guard as operating in accordance with 46 U.S.C. section 3316.[68]

A qualified investment would be an amount paid or incurred in connection with the "construction, repowering, or reconstruction" of a qualified vessel, provided such activities are performed in a U.S. shipyard and by an entity that is not a foreign entity of concern.[69]

A qualified vessel would be a U.S. documented and U.S.-built specified cargo vessel that provides transportation in U.S. foreign trade.[70] A specified cargo vessel would be a vessel that is not a passenger vessel and is a bulk carrier, tanker vessel, roll-on/roll-off vessel, multi-purpose vessel, cable vessel, heavy lift vessel, or any other type of vessel the maritime administrator so designates.[71]

The qualified vessel also may not have been previously owned or operated by a foreign entity of concern; constructed, repowered, or reconstructed in a shipyard that is owned by a foreign entity of concern; or registered as a vessel of a foreign country of concern.[72]

The owner of a qualified vessel must agree with the maritime administrator to operate the vessel as "a vessel of the United States" for a period of at least 10 years and must agree to enter into an "emergency preparedness agreement," a "contingency agreement," or any other agreement with the maritime administrator under authority contained in the Defense Production Act.[73]

If a taxpayer violates the 10-year agreement to operate the vessel as a vessel of the United States, the taxpayer must recapture the tax benefit by increasing its tax for the year of the violation by the benefit amount obtained under section 48F.[74]

Congress should consider expanding the credit to include passenger ships as well as linking the new section 48F qualified vessel credit to the U.S. tonnage tax, as amended by the suggestions in this article. Accordingly, a qualified vessel would include vessels used in U.S. domestic trade and would be a vessel that is subject to the U.S. tonnage tax regime and, thus, strategically controlled and managed in the United States.

Section 706 of the SHIPS Act of 2025 would create new section 48G, titled "Credit for Construction of Shipyard Facilities," which would create a tax credit equal to 25 percent of the tax basis of "qualified property" that is placed in service during the tax year and is part of a "qualified shipyard facility."[75]

Qualified property would be property placed in service during the tax year that (1) is tangible property; (2) with respect to which depreciation or amortization, is allowable; (3) is (i) constructed, reconstructed, or created by the taxpayer or (ii) acquired by the taxpayer, if the original use of such property commences with the taxpayer; and (4) is integral to the operation of a qualified shipyard facility.

Qualified property would include a building or structural components of a building but not the portion of a building used for offices, administrative services, or other functions unrelated to the operation of the shipyard.[76]

A qualified shipyard facility would be a facility located in the United States (including any

[68] *See* section 48F(b), as proposed by the SHIPS Act of 2025.

[69] *See* section 48F(c), as proposed by the SHIPS Act of 2025. A foreign entity of concern is an entity designated as a bad actor under various statutory provisions in U.S. law or owned or controlled by a foreign country of concern. *See* section 48F(c)(2), as proposed by the SHIPS Act of 2025 (cross-referencing section 4(6) of the SHIPS Act of 2025).

[70] *See* section 48F(d)(1)(A)-(E), as proposed by the SHIPS Act of 2025. As discussed above, section 1355(a)(7) defines U.S. foreign trade to mean the carriage of goods or passengers between a place in the United States and a foreign place or between foreign places.

[71] *See* section 48F(d)(1)(E), as proposed by the SHIPS Act of 2025.

[72] *See* section 48F(d)(2), as proposed by the SHIPS Act of 2025.

[73] *See* section 48F(d)(1)(F), (G), as proposed by the SHIPS Act of 2025. A vessel of the United States is a vessel that is U.S. documented or exempt from documentation under 46 U.S.C. section 12102(c), a "numbered vessel" under 46 U.S.C. sections 12301-09, or a vessel titled under the law of a state. *See* SHIPS Act of 2025, section 4(7) (cross-referencing 46 U.S.C. section 116).

[74] *See* section 50(a)(6), as proposed by the SHIPS Act of 2025.

[75] *See* section 48G(a), (b)(1), as proposed by the SHIPS Act of 2025.

[76] *See* section 48G(b)(2), as proposed by the SHIPS Act of 2025 (cross-referencing section 48D(b)(2) with certain modifications).

territory of the United States) that has a primary purpose of (1) constructing or repairing commercial or military oceangoing vessels, (2) manufacturing components that are critical to the operation of commercial or military oceangoing vessels (as determined by the secretary of the Treasury in consultation with the secretary of the Navy and the maritime administrator), or (3) manufacturing equipment that is used to produce or repair commercial or military oceangoing vessels.[77]

The credit would not apply to property placed in service after December 31, 2032, and would exclude property that is covered by the tax credit allowed under section 48F, as proposed by the SHIPS Act of 2025.

4. Gross income exclusions.

Sections 702 and 708 of the SHIPS Act of 2025 propose to amend section 139 of the code by providing exclusions from gross income for maritime security payments and amounts paid under student incentive payment agreements authorized under 46 U.S.C. section 51509.

Section 702 of the SHIPS Act of 2025 proposes to amend section 139 by creating a new section 139J, titled "Maritime Security Payments." Section 139J would exclude from a taxpayer's gross income payments made by the federal government to taxpayers for (1) operating agreements for vessels that participate in the maritime security fleet under 46 U.S.C. sections 53101-53111; (2) the construction of a new vessel of the United States or investments in certain shipyards capable of constructing or repairing military vessels or vessels used in foreign commerce, all amounts of which would be paid under a new program created by Title V of the SHIPS Act of 2025; (3) operating agreements for vessels in the cable security fleet described in 46 U.S.C. sections 53201-53209; (4) operating agreements for vessels that participate in the strategic commercial fleet, another new program created in Title IV of the SHIPS Act of 2025; and (5) assistance to small shipyards provided by 46 U.S.C. section 54101, as amended by the SHIPS Act of 2025.

Section 139J(b) would deny a deduction or credit for any expenditure to the extent that the expenditure relates to an amount excluded under section 139J(a). Similarly, the adjusted basis of any property would be reduced by an expenditure that relates to an amount excluded under section 139J(a).

Proposed section 139J would provide an exclusion for taxpayers that participate in new U.S. government programs designed to revitalize the U.S. shipbuilding and shipping industries. Congress should consider the extent to which it can link section 139J and the related government programs with the U.S. tonnage tax regime, as amended consistent with this article. The coordination of these programs and incentives could result in significantly larger participation and ultimately a more successful revitalization of the ship building and shipping industry.

Section 708 of the SHIPS Act of 2025 proposes to amend section 139 by creating a new section 139K, titled "Student Incentive Payment Agreements." Section 139K would exclude from a taxpayer's gross income payments made by the federal government to students enrolled in state maritime academies who have entered into a "student incentive payment agreement" under 46 U.S.C. section 51509.

Congress could also consider whether other amounts paid under tuition assistance programs and reimbursement programs created by Title VI of the SHIPS Act of 2025 should also be excluded from gross income under section 139.

Section 707 of the SHIPS Act of 2025 proposes to amend section 7518 of the code, which provides tax incentives related to "merchant marine capital construction funds." Section 707's proposed income tax changes correspond to section 505 of the SHIPS Act of 2025, which proposes to overhaul the existing Merchant Marine Capital Construction Fund program described in 46 U.S.C. chapter 535.

The existing Merchant Marine Capital Construction Fund rules allow U.S. citizens that own or lease eligible vessels to create designated capital construction funds to provide for the replacement of existing eligible vessels, the acquisition of additional eligible vessels, and the

[77] *See* section 48G(b)(3), as proposed by the SHIPS Act of 2025. *See also* section 48G(b)(4), as proposed by the SHIPS Act of 2025 (incorporating "progress expenditure rules" that were in effect before the enactment of the Revenue Reconciliation Act of 1990).

reconstruction of existing eligible vessels.[78] The Merchant Marine Capital Construction Fund tax rules provide a deduction for qualified contributions to the fund and permit the long-term deferral of U.S. income taxes on certain income and gains attributable to vessels that operate under designated operating agreements.[79]

The SHIPS Act of 2025 would expand the Merchant Marine Capital Construction Fund rules to include funds created by operators of marine terminals to establish, replace, reconstruct, or acquire additional "cargo handling equipment."[80] Cargo handling equipment would be "any vehicle or land-based equipment (excluding marine container chassis), and the associated marine terminal or port landside infrastructure, used at a marine terminal or lift of move cargo."[81] The equipment must be produced in the United States or, if outside the United States, only "if such equipment is not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality as determined by the Secretary [of Transportation]."[82]

5. Fuel tax provision.

Section 709 of the SHIPS Act of 2025 proposes to amend section 4041(g) of the code to provide an exemption from the fuel tax imposed by section 4041. The exemption would apply to "any vessel designed primarily for use on the high seas which has a draft of more than 12 feet" and which is "actually engaged in trade between the Atlantic or Pacific ports of the United States (including any territory or possession of the United States)."[83]

V. Conclusion

The SHIPS Act of 2025 was introduced on April 30, 2025, less than a month after Trump issued the Shipping EO. Although the bill is intended to be a discussion draft, the SHIPS Act of 2025 is detailed and proposes making sweeping changes to federal law to address the predicament in the U.S. shipbuilding and U.S. shipping industries. Under section 3 of the Shipping EO, the assistant to the president for national security affairs is scheduled to deliver by November 6, 2025, the maritime action plan with its own legislative proposal. Congress can then consider any additional changes contained in the maritime action plan (as well as the amendments proposed by the various Congressional committees of jurisdiction) as it drafts legislation that will be debated and potentially presented to the president for signature. Presumably, this legislative action will occur throughout calendar year 2026.

Whether any shipping-related legislation is signed by the president and creates a revolution in the U.S. maritime industry depends on many variables. There seems to be a broadly recognized need for action that is supported by the executive branch, as well as by both parties in both houses of Congress. Also, there seems to be general agreement on the magnitude of the problem and the general outline of the solution. This provides reason for optimism that shipping-related legislation could become law. This article highlights that more can be done from a tax perspective, but the tax suggestions implicate controversial and long-standing policy questions about the U.S. cabotage laws and more specifically the Jones Act.

There are other hurdles as well. Adequate funding may prove to be a major impediment to passage. While the SHIPS Act of 2025 contains a self-funding mechanism in the maritime security trust fund, the sheer magnitude of the

[78] *See* 46 U.S.C. section 53503.

[79] *See* section 7815; 46 U.S.C. sections 53507-53513.

[80] *See* 46 U.S.C. section 53503(b)(2), as amended by the SHIPS Act of 2025.

[81] *See* 46 U.S.C. section 53501(2), as amended by the SHIPS Act of 2025.

[82] *See id.* There is some uncertainty in the proposed statutory language of the SHIPS Act of 2025 as to whether the specific determination is to be made by the secretary of transportation or the secretary of commerce. The current Merchant Marine Capital Construction Fund rules define "secretary" either to be the secretary of transportation or the secretary of commerce, depending on whether the applicable rule addresses vessels in general (transportation) or specific vessels that are "operated in the fisheries of the United States" (commerce). *See* 46 U.S.C. section 53501(6). The proposed amendments in the SHIPS Act of 2025 involve cargo handling equipment, which presumably relate to vessels other than vessels operated in the fisheries of the United States; therefore, it is more likely the secretary of transportation who will make these determinations.

[83] *See* section 4041(g), as amended by the SHIPS Act of 2025 (cross-referencing section 4042(c)(1)).

undertaking will require additional funding mechanisms. The political milieu surrounding the FY 2026 budget negotiations will make raising public capital for large projects — whether through taxation or debt financing — more challenging. Incentivized private capital is another source of funding that can support large policy priorities, and the SHIPS Act of 2025 does provide some of that through the proposed tax incentives. Those tax incentives come with their own fiscal cost that will have to be justified. Moreover, in their current proposed form, the tax incentives will fall short in attracting sufficient capital to make a substantive difference.

While the SHIPS Act of 2025 provides plenty of economic stimulus in the form of direct subsidies and tax incentives, the bill does not include any market-based incentives created by deregulation of the industry. In short, the bill is all industrial policy and no invisible hand. The suggested tax code amendments contained in this article could change that because many of the suggested amendments require deregulation in the form of relaxation or repeal of the Jones Act and relaxation of other cabotage law restrictions. The result could be that international shipping companies would relocate to the United States to qualify for the U.S. tonnage tax regime and, in doing so, could inject significant private capital into the U.S. shipping industry. This injection of private capital would have its own multiplier effect because relocated international shipping companies would engage with multiple business segments of the domestic shipping industry, as well as with unrelated industries. Yet, without the changes suggested in this article, the U.S. tonnage tax will continue to be a backwater provision with little utility in revitalizing the U.S. shipping industry.

Members of the national security community contend that the plight of the U.S. shipbuilding and shipping industries has risen to the level of a national security crisis, a true tragedy when one considers that not long ago the United States was the unchallenged preeminent maritime power. A well-publicized national security crisis can create a juggernaut that overwhelms traditional political constraints, but whether the national security community can convince the American public that the matter has become so pressing that it requires revolutionary change is yet to be seen. In this sense, the question really boils down to national priorities and whether there are currently two lanterns in the proverbial steeple.[84] ■

[84]The foregoing information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser. This article represents the views of the author(s) only and does not necessarily represent the views or professional advice of KPMG LLP.