

Internal Revenue Service, Treasury

§ 1.904(j)-1

affiliate with respect to that other includible corporation.

(C) This exception does not apply where the acquisition of an includible corporation is used to avoid the application of this section.

(2) *Includible corporation.* The term *includible corporation* has the same meaning it has in section 1504(b).

(c) *Taxable years.* If all of the affiliates use the same U.S. taxable year, then that taxable year must be used for purposes of applying this section. If, however, the affiliates use more than one U.S. taxable year, then an appropriate taxable year must be used for applying this section. The determination whether a taxable year is appropriate must take into account all of the relevant facts and circumstances, including the U.S. taxable years used by the affiliates for general U.S. income tax purposes. The taxable year chosen by the affiliates for purposes of applying this section must be used consistently from year to year. The taxable year may be changed only with the prior consent of the Commissioner. Those affiliates that do not use the year determined under this paragraph (c) as their U.S. taxable year for general U.S. income tax purposes must, for purposes of this section, use their U.S. taxable year or years ending within the taxable year determined under this paragraph (c). If, however, the stock of an affiliate is disposed of so that it ceases to be an affiliate, then the taxable year of that affiliate will be considered to end on the disposition date for purposes of this section.

(d) *Consistent treatment of foreign taxes paid.* All affiliates must consistently either elect under section 901(a) to claim a credit for foreign income taxes paid or accrued, or deemed paid or accrued, or deduct foreign taxes paid or accrued under section 164. See also § 1.1502-4(a); § 1.905-1(a).

(e) *Effective date.* Except as provided in paragraph (b)(1)(iii) of this section (relating to newly acquired affiliates), this section is effective for taxable years of affiliates beginning after December 31, 1993.

[T.D. 8627, 60 FR 56119, Nov. 7, 1995]

§ 1.904(j)-0 Outline of regulation provisions.

This section lists the headings for § 1.904(j)-1.

§ 1.904(j)-1 Certain individuals exempt from foreign tax credit limitation.

(a) Election available only if all foreign taxes are creditable foreign taxes.

(b) Coordination with carryover rules.

(1) No carryovers to or from election year.

(2) Carryovers to and from other years determined without regard to election years.

(3) Determination of amount of creditable foreign taxes.

(c) Examples.

(d) Effective date.

[T.D. 9371, 72 FR 72603, Dec. 21, 2007]

§ 1.904(j)-1 Certain individuals exempt from foreign tax credit limitation.

(a) *Election available only if all foreign taxes are creditable foreign taxes.* A taxpayer may elect to apply section 904(j) for a taxable year only if all of the taxes for which a credit is allowable to the taxpayer under section 901 for the taxable year (without regard to carryovers) are creditable foreign taxes (as defined in section 904(j)(3)(B)).

(b) *Coordination with carryover rules—*

(1) *No carryovers to or from election year.* If the taxpayer elects to apply section 904(j) for any taxable year, then no taxes paid or accrued by the taxpayer during such taxable year may be deemed paid or accrued under section 904(c) in any other taxable year, and no taxes paid or accrued in any other taxable year may be deemed paid or accrued under section 904(c) in such taxable year.

(2) *Carryovers to and from other years determined without regard to election years.* The amount of the foreign taxes paid or accrued, and the amount of the foreign source taxable income, in any year for which the taxpayer elects to apply section 904(j) shall not be taken into account in determining the amount of any carryover to or from any other taxable year. However, an election to apply section 904(j) to any year does not extend the number of taxable years to which unused foreign taxes may be carried under section 904(c) and § 1.904-2(b). Therefore, in determining the number of such carryover years, the taxpayer must take

into account years to which a section 904(j) election applies.

(3) *Determination of amount of creditable foreign taxes.* Otherwise allowable carryovers of foreign tax credits from other taxable years shall not be taken into account in determining whether the amount of creditable foreign taxes paid or accrued by an individual during a taxable year exceeds \$300 (\$600 in the case of a joint return) for purposes of section 904(j)(2)(B).

(c) *Examples.* The following examples illustrate the provisions of this section:

Example 1. In 2006, X, a single individual using the cash basis method of accounting for income and foreign tax credits, pays \$100 of foreign taxes with respect to general limitation income that was earned and included in income for United States tax purposes in 2005. The foreign taxes would be creditable under section 901 but are not shown on a payee statement furnished to X. X's only income for 2006 from sources outside the United States is qualified passive income, with respect to which X pays \$200 of creditable foreign taxes shown on a payee statement. X may not elect to apply section 904(j) for 2006 because some of X's foreign taxes are not creditable foreign taxes within the meaning of section 904(j)(3)(B).

Example 2. (i) In 2009, A, a single individual using the cash basis method of accounting for income and foreign tax credits, pays creditable foreign taxes of \$250 attributable to passive income. Under section 904(c), A may also carry forward to 2009 \$100 of unused foreign taxes paid in 2005 with respect to passive income, \$300 of unused foreign taxes paid in 2005 with respect to general limitation income, \$400 of unused foreign taxes paid in 2006 with respect to passive income, and \$200 of unused foreign taxes paid in 2006 with respect to general limitation income. In 2009, A's only foreign source income is passive income described in section 904(j)(3)(A)(i), and this income is reported to A on a payee statement (within the meaning of section 6724(d)(2)). If A elects to apply section 904(j) for the 2009 taxable year, the unused foreign taxes paid in 2005 and 2006 are not deemed paid in 2009, and A therefore cannot claim a foreign tax credit for those taxes in 2009.

(ii) In 2010, A again is eligible for and elects the application of section 904(j). The carryforwards from 2005 expire in 2010. The carryforward period established under section 904(c) is not extended by A's election under section 904(j). In 2011, A does not elect the application of section 904(j). The \$600 of unused foreign taxes paid in 2006 on passive and general limitation income are deemed paid in 2011, under section 904(c), without

any adjustment for any portion of those taxes that might have been used as a foreign tax credit in 2009 or 2010 if A had not elected to apply section 904(j) to those years.

(d) *Effective date.* Section 1.904(j)-1 applies to taxable years beginning after July 20, 2004.

[T.D. 9141, 69 FR 43316, July 20, 2004]

§ 1.905-1 When credit for taxes may be taken.

(a) *In general.* The credit for taxes provided in subpart A (section 901 and following), part III, subchapter N, chapter 1 of the Code, may ordinarily be taken either in the return for the year in which the taxes accrued or in which the taxes were paid, dependent upon whether the accounts of the taxpayer are kept and his returns filed using an accrual method or using the cash receipts and disbursements method. Section 905(a) allows the taxpayer, at his option and irrespective of the method of accounting employed in keeping his books, to take such credit for taxes as may be allowable in the return for the year in which the taxes accrued. An election thus made under section 905(a) (or under the corresponding provisions of prior internal revenue laws) must be followed in returns for all subsequent years, and no portion of any such taxes accrued in a year in which a credit is claimed will be allowed as a deduction from gross income in any year. See also § 1.905-4.

(b) *Foreign income subject to exchange controls.* If, however, under the provisions of the regulations under section 461, an amount otherwise constituting gross income for the taxable year from sources without the United States is, owing to monetary, exchange, or other restrictions imposed by a foreign country, not includible in gross income of the taxpayer for such year, the credit for income taxes imposed by such foreign country with respect to such amount shall be taken proportionately in any subsequent taxable year in which such amount or portion thereof is includible in gross income.

§ 1.905-2 Conditions of allowance of credit.

(a) *Forms and information.* (1) Whenever the taxpayer chooses, in accordance with paragraph (d) of § 1.901-1, to