§ 1.863–10T Source of income from a qualified fails charge (temporary).

(a) In general. Unless paragraph (b) or (c) of this section applies, the source of income from a qualified fails charge shall be determined by reference to the residence of the taxpayer as determined under section 988(a)(3)(B)(i).

(b) Qualified business unit exception. Income from a qualified fails charge that arises from a transaction that under the principles described in §1.864–4(c)(5)(iii) (substituting “qualified business unit” for “U.S. office”) is effectively connected with a United States trade or business shall be sourced in the United States and the income from the qualified fails charge shall be treated as effectively connected with the conduct of a United States trade or business to the same extent as the transaction from which it arises.

(c) Effectively connected income exception. Income from a qualified fails charge that arises from a transaction that under the principles described in §1.864–4(c) is effectively connected with a United States trade or business shall be sourced in the United States and the income from the qualified fails charge shall be treated as effectively connected with the conduct of a United States trade or business to the same extent as the transaction from which it arises.

(d) Definitions—(1) Qualified fails charge. For purposes of this section, a qualified fails charge is a payment that compensates a party to a transaction that provides for delivery of a Treasury security in exchange for the
§ 1.864–1 Meaning of sale, etc.

For purposes of §§1.861 through 1.864–7, the word "sale" includes "exchange"; the word "sold" includes "exchanged"; the word "produced" includes "created", "fabricated", "manufactured", "extracted", "processed", "cured", and "aged".

[T.D. 6948, 33 FR 5090, Mar. 28, 1968]

§ 1.864–2 Trade or business within the United States.

(a) In general. As used in part I (section 861 and following) and part II (section 871 and following), subchapter N, chapter 1 of the Code, and chapter 3 (section 1441 and following) of the Code, and the regulations thereunder, the term "engaged in trade or business within the United States" does not include the activities described in paragraphs (c) and (d) of this section, but includes the performance of personal services within the United States at any time within the taxable year except to the extent otherwise provided in this section.

(b) Performance of personal services for foreign employer—(1) Exempted services. For purposes of paragraph (a) of this section, the term "engaged in trade or business within the United States" does not include the performance of personal services—

(i) For a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States at any time during the taxable year, or

(ii) For an office or place of business maintained in a foreign country or in a possession of the United States by an individual who is a citizen or resident of the United States or by a domestic partnership or a domestic corporation, by a nonresident alien individual who is temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year and whose compensation for such services does not exceed the aggregate gross amount of $3,000.

(2) Rules of application. (i) As a general rule, the term "day", as used in subparagraph (1) of this paragraph, means a calendar day during any portion of which the nonresident alien individual is physically present in the United States.

(ii) Solely for purposes of applying this paragraph, the nonresident alien individual, foreign partnership, or foreign corporation for which the nonresident alien individual is performing personal services in the United States shall not be considered to be engaged in trade or business in the United States by reason of the performance of such services by such individual.

(iii) In applying subparagraph (1) of this paragraph it is immaterial whether the services performed by the nonresident alien individual are performed as an employee for his employer or under any form of contract with the person for whom the services are performed.

(iv) In determining for purposes of subparagraph (1) of this paragraph whether compensation received by the nonresident alien individual exceeds in the aggregate a gross amount of $3,000, any amounts received by the individual from an employer as advances or reimbursements for travel expenses incurred on behalf of the employer shall