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magnetic tapes, disks, and other machine-sensible media used for recording, consolidating, and summarizing accounting transactions and records within a taxpayer's automatic data processing system. The corporation need not maintain at its office equipment capable of reading the machine-sensible media. That equipment, however, must be situated in a location that is readily accessible to the corporation. The equipment need not be owned by the corporation.

Q–15. How long must the documentation required under section 922(a)(1)(D)(ii) be maintained?

A–15. The documentation required under section 922(a)(1)(D)(ii) for a taxable year must be maintained at the FSC's office described in section 922(a)(1)(D)(i) until the period of limitations for assessment of tax for the taxable year has expired under section 6501.

Q–16. Under what circumstances will a coporation be considered to satisfy the requirement of section 922(a)(1)(D)(iii) that it maintain the records it is required to keep under section 6001 at a location within the United States?

A–16. A corporation will be considered to satify this requirement if the records required under section 6001 are kept by any person at any location in the United States provided that the records are retained in accordance with section 6001 and the regulations thereunder.

(j) *Board of directors*.

Q–17. What is a corporation's ''board of directors'' for purposes of the requirement under section 922(a)(1)(E) that, at all times during the taxable year, the corporation must have a board of directors which includes at least one individual who is not a resident of the United States?

A–17. The ''board of directors'' is the body that manages and directs the corporation according to the law of the qualifying country or eligible possession under the laws of which the corporation was created or organized.

Q–18. Can the member of the board of directors who is a nonresident of the United States be a citizen of the United States?

A–18. Yes. For purposes of meeting the requirement under section 922(a)(1)(E), the member of the board who cannot be a United States resident can be a United States citizen. The principles of section 7701(b) shall be used to determine whether a United States citizen is a United States resident.

Q–19. If the only member of the board of directors who is not a resident of the United States dies, or resigns, is removed from the board or becomes a resident of the United States will the corporation be considered to fail the requirement under section 922(a)(1)(E)?

A–19. If the corporation appoints a new member who is a nonresident of the United States to the board within 30 days after the death, resignation or removal of the former nonresident member, the corporation will be considered to satisfy the requirement under section 922(a)(1)(E). Also, the corporation will be considered to satisfy the requirement under section 922(a)(1)(E) if the corporation appoints a new member who is a nonresident of the United States to the board within 30 days after the corporation has knowledge, or reason to know, that the board's former nonresident member was in fact a resident of the United States.

Q–20. Is a nonresident alien individual who elects to be treated as a resident of the United States for a taxable year under section 6013(g) considered a nonresident of the United States for purposes of the requirement under section 922(a)(1)(E)?

A–20. Yes.

Q–21. Will the requirement that a FSC's board of directors have a nonresident member at all times during the taxable year be satisfied if the nonresident member is elected or appointed to the board of directors no later than 30 days after the first day for which the FSC election is effective?

A–21. Yes.

[T.D. 8127, 52 FR 6470, Mar. 3, 1987]

§ 1.923–1T Temporary regulations; exempt foreign trade income.

(a) *Foreign trade income*. Foreign trade income of a FSC is the FSC's gross income attributable to its foreign trading gross receipts. (Any further

reference to a FSC in this section shall include a small FSC unless indicated otherwise.) If the FSC is the principal on the sale of export property which it purchased from a related supplier, the FSC's gross income is determined by subtracting from its foreign trading gross receipts the transfer price determined under the transfer pricing methods of section 925(a). If the FSC is the commission agent on the sale of export property by its related supplier, the FSC's gross income is the commission paid or payable by the related supplier to the FSC with respect to the transactions that would have generated foreign trading gross receipts had the FSC been the principal on the transaction. See §1.925(a)–1T(f) *Examples 1* and *6* for illustrations of the computation of a FSC's foreign trade income, exempt foreign trade income and taxable income.

(b) *Exempt foreign trade income*—(1) *Determination*. (i) If a FSC uses either of the two administrative pricing rules, provided for by sections 925(a)(1) and (2), to determine its income from a transaction, or group of transactions, to which section 925 applies (see §1.925(a)–1T(b)(2) (ii) and (iii)), 15/23 of the foreign trade income that it earns from the transaction, or group of transactions, will be exempt foreign trade income. If a FSC has a non-corporate shareholder (shareholders), 16/23 of its foreign trade income attributable to the noncorporate shareholder's (shareholders') proportionate interest in the FSC will be exempt foreign trade income. See section 291(a)(4).

(ii) If a FSC does not use the administrative pricing rules to determine its income from a transaction, or group of transactions, which gives rise to foreign trade income, 30 percent of its foreign trade income will be exempt foreign trade income. If a FSC has a noncorporate shareholder (shareholders), 32 percent of its foreign trade income attributable to the non-corporate shareholder's (shareholders') proportionate interest in the FSC will be exempt foreign trade income. See section 291(a)(4).

(iii) Exempt foreign trade income so determined under subdivisions (1)(i) and (ii) of this paragraph is treated as foreign source income which is not effectively connected with the conduct of a trade or business within the United States. See section 921(a).

(2) *Special rule for foreign trade income allocable to a qualified cooperative*. (i) Pursuant to section 923(a)(4), if a qualified cooperative is a shareholder of a FSC, the FSC's non-exempt foreign trade income determined by use of either of the administrative pricing methods of section 925(a)(1) or (2) which is allocable to the marketing of agricultural or horticultural products, or the providing of related services, for any taxable year will be treated as exempt foreign trade income to the extent that it is distributed to the qualified cooperative shareholder. A qualified cooperative is defined as any organization to which chapter 1, subchapter T, part 1 of the Code applies. See section 1381(a).

(ii) This special rule of section 923(a)(4) shall apply only if the distribution is made before the due date under section 6072(b), including extensions, for filing the FSC's income tax return for that year. Any distribution which satisfies this requirement will be treated as made on the last day of the FSC's taxable year. In addition, this special rule shall apply only if the income of the cooperative is based on arm's length transactions between the cooperative and its members or patrons.

(iii) Income attributable to the marketing of agricultural or horticultural products, or the providing of related services, shall be allocated to the FSC shareholders on a per share basis. See §1.926(a)–1T(b) for ordering rules for distributions from a FSC.

(3) *Special rule for military property*. (i) Under section 923(a)(5), the exempt foreign trade income of a FSC relating to the disposition of, or services relating to, military property shall be equal to 50 percent of the amount which, but for section 923(a)(5), would be treated as exempt foreign trade income under section 923(a)(2) or (3). The foreign trade income no longer treated as exempt because of this special rule of section 923(a)(5) will remain income of the FSC and will be treated as non-exempt foreign trade income.

(ii) The term ''military property'' is defined in section 995(b)(3)(B) and includes any property which is an arm, ammunition, or implement of war designated in the munitions list published pursuant to section 38 of the International Security Assistance and Arms Export Control Act of 1976 (22 U.S.C. 2778) (which repealed and replaced the Military Security Act of 1954).

[T.D. 8126, 52 FR 6438, Mar. 3, 1987]

§ 1.924(a)–1T Temporary regulations; definition of foreign trading gross receipts.

(a) *In general.* The term ''foreign trading gross receipts'' means any of the five amounts described in paragraphs (b) through (f) of this section, except to the extent that any of the five amounts is an excluded receipt within the meaning of paragraph (g) of this section. These amounts will not be foreign trading gross receipts if the FSC is not managed outside the United States, pursuant to section 924(c), or if the economic processes with regard to a transaction, or group of transactions, that are required of a FSC by section 924(d) do not take place outside the United States. The requirement that these activities take place outside the United States does not apply to a small FSC. The activities required by sections 924 (c) and (d) may be performed either by the FSC or by any person (whether or not related to the FSC) acting under contract with the FSC for the performance of the required activities. Sections 1.924(c)–1 and 1.924(d)–1 provide rules to determine whether these requirements have been met. For purposes of this section—

(1) *FSC.* All references to a FSC in this section mean a FSC, except when the context indicates that such term means a corporation in the process of meeting the conditions necessary for that corporation to become a FSC. All references to a FSC in this section shall include a small FSC unless indicated otherwise.

(2) *Sale and lease.* The term ''sale'' includes an exchange or other disposition and the term ''lease'' includes a rental or a sublease. The term ''license'' includes a sublicense. All rules under this section applicable to leases of export property apply in the same manner to licenses of export property. See § 1.927(a)–1T(f)(3) for a description of intangible property which cannot be export property.

(3) *Gross receipts.* The term ''gross receipts'' is defined by section 927(b) and § 1.927(b)–1T.

(4) *Export property.* The term ''export property'' is defined by section 927(a) and § 1.927(a)–1T.

(5) *Controlled group.* The term ''controlled group'' is defined by paragraph (h) of this section.

(6) *Related supplier and related party.* The terms related supplier and related party are defined by § 1.927(d)–2T.

(b) *Sales of export property.* Foreign trading gross receipts of a FSC include gross receipts from the sale of export property by the FSC, or by any principal for whom the FSC acts as a commission agent (whether or not the principal is a related supplier), pursuant to the terms of a contract entered into with a purchaser by the FSC or by the principal at any time or by any other person and assigned to the FSC or the principal at any time prior to the shipment of the property to the purchaser. Any agreement, oral or written, which constitutes a contract at law, satisfies the contractual requirements of this paragraph. Gross receipts from the sale of export property, whenever received, do not constitute foreign trading gross receipts unless the seller (or the corporation acting as commission agent for the seller) is a FSC at the time of the shipment of the property to the purchaser. For example, if a corporation which sells export property under the installment method is not a FSC for the taxable year in which the property is shipped to the purchaser, gross receipts from the sale do not constitute foreign trading gross receipts for any taxable year of the corporation.

(c) *Leases of export property*—(1) *In general.* Foreign trading gross receipts of a FSC include gross receipts from the lease of export property provided that—

(i) The property is held by the FSC (or by a principal for whom the FSC acts as commission agent with respect to the lease) either as an owner or lessee at the beginning of the term of the lease, and