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(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to section 38 of the International Security Assistance and Arms Export Control Act of 1976 (22 U.S.C. 2778) (which repealed and replaced the Military Security Act of 1954).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

(ii) The FSC qualified (or was treated) as a FSC for its taxable year in which the term of the lease began.

(2) *Prepayment of lease receipts.* If the gross receipts from a lease of export property are prepaid, then—

(i) All the prepaid gross receipts are foreign trading gross receipts of a FSC if it is reasonably expected at the time of the prepayment that, throughout the term of the lease, the lease will meet the requirements of this paragraph and the property will be export property; or

(ii) If it is reasonably expected at the time of the prepayment that the prepaid receipts would not be foreign trading gross receipts throughout the term of the lease if those receipts were not received as a prepayment, then only those prepaid receipts, for the taxable years of the FSC for which they would be foreign trading gross receipts, are foreign trading gross receipts. Thus, for example, if a lessee makes a prepayment of the first and last years' rent, and it is reasonably expected that the leased property will be export property for the first half of the lease period but not the second half of such period, the amount of the prepayment which represents the first year's rent will be considered foreign trading gross receipts if it would otherwise qualify, whereas the amount of the prepayment which represents the last year's rent will not be considered foreign trading gross receipts.

(d) *Related and subsidiary services*—(1) *In general.* Foreign trading gross receipts of a FSC include gross receipts from services furnished by the FSC which are related and subsidiary to any sale or lease (as described in paragraph (b) or (c) of this section) of export property by the FSC or with respect to which the FSC acts as a commission agent, provided that the FSC derives foreign trading gross receipts from the sale or lease. The services may be performed within or without the United States.

(2) *Services furnished by the FSC.* Services are considered to be furnished by a FSC for purposes of this paragraph if the services are provided by—

(i) The person who sold or leased the export property to which the services are related and subsidiary, provided that the FSC acts as a commission agent with respect to the sale or lease of the property and with respect to the services,

(ii) The FSC as principal, or any other person pursuant to a contract with the FSC, provided the FSC acted as principal or commission agent with respect to the sale or lease of the property, or

(iii) A member of the same controlled group as the FSC if the sale or lease of the export property is made by another member of the controlled group provided, however, that the FSC acts as principal or commission agent with respect to the sale or lease and as commission agent with respect to the services.

(3) *Related services.* Services which may be related to a sale or lease of export property include but are not limited to warranty service, maintenance service, repair service, and installation service. Transportation (including insurance related to such transportation) will be related to a sale or lease of export property, if the cost of the transportation is included in the sale price or rental of the property or, if the cost is separately stated, is paid by the FSC (or its principal) which sold or leased the property to the person furnishing the transportation service. Financing or the obtaining of financing for a sale or lease is not a related service for purposes of this paragraph. A service is related to a sale or lease of export property if—

(i) The service is of the type customarily and usually furnished with the type of transaction in the trade or business in which the sale or lease arose, and

(ii) The contract to furnish the service—

(A) Is expressly provided for in or is provided for by implied warranty under the contract of sale or lease,

(B) Is entered into on or before the date which is 2 years after the date on which the contract under which the sale or lease was entered into, provided that the person described in paragraph (d)(2) of this section which is to furnish the service delivers to the purchaser or lessor a written offer or option to furnish the services on or before the date on which the first shipment of goods

with respect to which the service is to be performed is delivered, or

(C) Is a renewal of the services contract described in subdivisions (ii)(A) and (B) of this paragraph.

(4) *Subsidiary services*—(i) *In general.* Services related to a sale or lease of export property are subsidiary to the sale or lease only if it is reasonably expected at the time of the sale or lease that the gross receipts from all related services furnished by the FSC (as defined in this paragraph (d)(2)) will not exceed 50 percent of the sum of the gross receipts from the sale or lease and the gross receipts from related services furnished by the FSC (as described in this paragraph (d)(2)). In the case of a sale, reasonable expectations at the time of the sale are based on the gross receipts from all related services which may reasonably be performed at any time before the end of the 10-year period following the date of the sale. In the case of a lease, reasonable expectations at the time of the lease are based on the gross receipts from all related services which may reasonably be performed at any time before the end of the term of the lease (determined without regard to renewal options).

(ii) *Allocation of gross receipts from services.* In determining whether the services related to a sale or lease of export property are subsidiary to the sale or lease, the gross receipts to be treated as derived from the furnishing of services may not be less than the amount of gross receipts reasonably allocated to the services as determined under the facts and circumstances of each case without regard to whether—

(A) The services are furnished under a separate contract or under the same contract pursuant to which the sale or lease occurs, or

(B) The cost of the services is specified in the contract of sale or lease.

(iii) *Transactions involving more than one item of export property.* If more than one item of export property is sold or leased in a single transaction pursuant to one contract, the total gross receipts from the transaction and the total gross receipts from all services related to the transaction are each taken into account in determining whether the services are subsidiary to the transaction. However, the provisions of this subdivision apply only if the items could be included in the same product line, as determined under §1.925(a)–1T(c)(8).

(iv) *Renewed service contracts.* If under the terms of a contract for related services, the contract is renewable within 10 years after a sale of export property, or during the term of a lease of export property, related services to be performed under the renewed contract are subsidiary to the sale or lease if it is reasonably expected at the time of the renewal that the gross receipts from all related services which have been and which are to be furnished by the FSC (as described in paragraph (d)(2) of this section) will not exceed 50 percent of the sum of the gross receipts from the sale or lease and the gross receipts from related services furnished by the FSC (as so described). Reasonable expectations are determined as provided in subdivision (i) of this paragraph.

(v) *Parts used in services.* If a services contract described in paragraph (d)(3) of this section provides for the furnishing of parts in connection with the furnishing of related services, gross receipts from the furnishing of the parts are not taken into account in determining whether under this paragraph (d)(4) the services are subsidiary. See paragraph (b) or (c) of this section to determine whether the gross receipts from the furnishing of parts constitute foreign trading gross receipts. See §1.927(a)–1T (c)(2) and (e)(3) for rules regarding the treatment of the parts with respect to the manufacture of export property and the foreign content of the property, respectively.

(5) *Relation to leases.* If the gross receipts for services which are related and subsidiary to a lease of property have been prepaid at any time for all the services which are to be performed before the end of the term of the lease, then the rules in paragraph (c)(2) of this section (relating to prepayment of lease receipts) will determine whether prepaid services under this paragraph (d)(5) are foreign trading gross receipts. Thus, for example, if it is reasonably expected that leased property will be export property for the first year of the term of the lease but will not be export property for the second year of the

term, prepaid gross receipts for related and subsidiary services to be furnished in the first year may be foreign trading gross receipts. However, any prepaid gross receipts for the services to be furnished in the second year cannot be foreign trading gross receipts.

(6) *Relation with export property determination.* The determination as to whether gross receipts from the sale or lease of export property constitute foreign trading gross receipts does not depend upon whether services connected with the sale or lease are related and subsidiary to the sale or lease. Thus, for example, assume that a FSC receives gross receipts of $1,000 from the sale of export property and gross receipts of $1,100 from installation and maintenance services which are to be furnished by the FSC within 10 years after the sale and which are related to the sale. The $1,100 which the FSC receives for the services would not be foreign trading gross receipts since the gross receipts from the services exceed 50 percent of the sum of the gross receipts from the sale and the gross receipts from the related services furnished by the FSC. The $1,000 which the FSC receives from the sale of export property would, however, be foreign trading gross receipts if the sale met the requirements of paragraph (b) of this section.

(e) *Engineering and architectural services*—(1) *In general.* Foreign trading gross receipts of a FSC include gross receipts from engineering services (as described in paragraph (e)(5) of this section) or architectural services (as described in paragraph (e)(6) of this section) furnished by such FSC (as described in paragraph (e)(7) of this section) for a construction project (as defined in paragraph (e)(8) of this section) located, or proposed for location, outside the United States. Such services may be performed within or without the United States.

(2) *Services included.* Engineering and architectural services include feasibility studies for a proposed construction project whether or not such project is ultimately initiated.

(3) *Excluded services.* Engineering and architectural services do not include—

(i) Services connected with the exploration for oil or gas, or

(ii) Technical assistance or know-how. For purposes of this paragraph, the term ''technical assistance or know-how'' includes activities or programs designed to enable business, commerce, industrial establishments, and governmental organizations to acquire or use scientific, architectural, or engineering information.

(4) *Other services.* Receipts from the performance of construction activities other than engineering and architectural services constitute foreign trading gross receipts to the extent that the activities are related and subsidiary services (within the meaning of paragraph (d) of this section) with respect to a sale or lease of export property.

(5) *Engineering services.* For purposes of this paragraph, engineering services in connection with any construction project (within the meaning of paragraph (e)(8) of this section) include any professional services requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, or engineering sciences to those professional services as consultation, investigation, evaluation, planning, design, or responsible supervision of construction for the purpose of assuring compliance with plans, specifications, and design.

(6) *Architectural services.* For purposes of this paragraph, architectural services include the offering or furnishing of any professional services such as consultation, planning, aesthetic and structural design, drawings and specifications, or responsible supervision of construction (for the purpose of assuring compliance with plans, specifications, and design) or erection, in connection with any construction project (within the meaning of paragraph (e)(8) of this section).

(7) *Definition of ''furnished by the FSC''.* For purposes of this paragraph, the term ''furnished by the FSC'' means architectural and engineering services furnished:

(i) By the FSC,

(ii) By another person (whether or not that person is a United States person) pursuant to a contract entered into with the FSC at any time prior to

the furnishing of the services, provided that the FSC acts as principal, or

(iii) By another person (whether or not that person is a United States person) pursuant to a contract for the furnishing of the services entered into by, or assigned to, the person at any time, provided that the FSC acts as a commission agent for the furnishing of the services.

(8) *Definition of ''construction project''.* For purposes of this paragraph, the term ''construction project'' includes the erection, expansion, or repair (but not including minor remodeling or minor repairs) of new or existing buildings or other physical facilities including, for example, roads, dams, canals, bridges, tunnels, railroad tracks, and pipelines. The term also includes site grading and improvement and installation of equipment necessary for the construction. Gross receipts from the sale or lease of construction equipment are not foreign trading gross receipts unless the equipment is export property.

(f) *Managerial services*—(1) *In general.* Foreign trading gross receipts of a first FSC for its taxable year include gross receipts from the furnishing of managerial services provided for an unrelated FSC or unrelated interest charge DISC to aid the unrelated FSC or unrelated interest charge DISC in deriving foreign trading gross receipts or qualified export receipts, as the case may be, provided that at least 50 percent of the first FSC's gross receipts for such year consists of foreign trading gross receipts derived from the sale or lease of export property and the furnishing of related and subsidiary services. For purposes of this paragraph, managerial services are considered furnished by a FSC if the services are provided—

(i) By the first FSC,

(ii) By another person (whether or not a United States person) pursuant to a contract entered into by that person with the first FSC at any time prior to the furnishing of the services, provided that the first FSC acts as principal with respect to the furnishing of the services, or

(iii) By another person (whether or not a United States person) pursuant to a contract for the furnishing of services entered into at any time prior to the furnishing of the services provided that the first FSC acts as commission agent with respect to those services.

(2) *Definition of ''managerial services''.* The term ''managerial services'' as used in this paragraph means activities relating to the operation of an unrelated FSC or an unrelated interest charge DISC which derives foreign trading gross receipts or qualified export receipts as the case may be from the sale or lease of export property and from the furnishing of services related and subsidiary to those sales or leases. The term includes staffing and operational services necessary to operate the unrelated FSC or unrelated interest charge DISC, but does not include legal, accounting, scientific, or technical services. Examples of managerial services are: conducting export market studies, making shipping arrangements, and contacting potential foreign purchasers.

(3) *Status of recipient of managerial services.* Foreign trading gross receipts of a first FSC include receipts from the furnishing of managerial services during any taxable year of a recipient of such services if the recipient qualifies as a FSC or interest charge DISC for the taxable year. For purposes of this paragraph, a recipient is deemed to qualify as a FSC or interest charge DISC for its taxable year if the first FSC obtains from the recipient a copy of the recipient's election to be treated as a FSC or interest charge DISC together with the recipient's sworn statement that an election has been timely filed with the Internal Revenue Service Center. The recipient may mark out the names of its shareholders on a copy of its election to be treated as a FSC or interest charge DISC before submitting it to the first FSC. The copy of the election and the sworn statement of the recipient must be received by the first FSC within six months after the first FSC furnishes managerial services for the recipient. The copy of the election and the sworn statement of the recipient need not be obtained by the first FSC for subsequent taxable years of the recipient. A recipient of managerial services is not treated as a FSC or interest charge DISC with respect to the services performed during a taxable year for which the recipient does not

qualify as a FSC or interest charge DISC if the first FSC performing such services does not believe or if a reasonable person would not believe (taking into account the furnishing FSC's managerial relationship with such recipient FSC or interest charge DISC) at the beginning of such taxable year that the recipient will qualify as a FSC or an interest charge DISC for such taxable year.

(g) *Excluded receipts*—(1) *In general.* Notwithstanding the provisions of paragraphs (b) through (f) of this section, foreign trading gross receipts of a FSC do not include any of the six amounts described in paragraphs (g)(2) through (7) of this section.

(2) *Sales and leases of property for ultimate use in the United States.* Property which is sold or leased for ultimate use in the United States does not constitute export property. See §1.927(a)–1T(d)(4) relating to determination of where the ultimate use of the property occurs. Thus, foreign trading gross receipts of a FSC described in paragraph (b) or (c) of this section do not include gross receipts of the FSC from the sale or lease of this property.

(3) *Sales or leases of export property and furnishing of services accomplished by subsidy.* Foreign trading gross receipts of a FSC do not include gross receipts described in paragraphs (b) through (f) of this section if the sale or lease of export property or the furnishing of services is accomplished by a subsidy granted by the United States or any instrumentality thereof, see section 924(f)(1)(B). Subsidies covered by section 924(f)(1)(B) are listed in subdivisions (i) through (vi) of this paragraph.

(i) The development loan program, or grants under the technical cooperation and development grants program of the Agency for International Development, or grants under the military assistance program administered by the Department of Defense, pursuant to the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151) unless the FSC shows to the satisfaction of the Commissioner that, under the conditions existing at the time of the sale (or at the time of lease or at the time the services were rendered), the purchaser (or lessor or recipient of the services) had a reasonable opportunity to purchase (or lease or contract for services) on competitive terms and from a seller (or lessor or performer of services) who was not a U.S. person, goods (or services) which were substantially identical to such property (or services) and which were not manufactured, produced, grown, or extracted in the United States (or performed by a U.S. person);

(ii) The Public Law 480 program authorized under title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1691, 1701–1714);

(iii) The Export Payment program of the Commodity Credit Corporation authorized by sections 5 (d) and (f) of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714c (d) and (f));

(iv) The section 32 export payment programs authorized by section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c);

(v) The Export Sales program of Commodity Credit Corporation authorized by sections 5 (d) and (f) of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714c (d) and (f)), other than the GSM–4 program provided under 7 CFR part 1488, and section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427), for the purpose of disposing of surplus agricultural commodities and exporting or causing to be exported agricultural commodities; and

(vi) The Foreign Military Sales direct credit program (22 U.S.C. 2763) or the Foreign Military Sales loan guaranty program (22 U.S.C. 2764) if—

(A) The borrowing country is released from its contractual liability to repay the United States government with respect to those credits or guaranteed loans;

(B) The repayment period exceeds twelve years; or

(C) The interest rate charged is less than the market rate of interest as defined in 22 U.S.C. 2763(c)(2)(B);

unless the FSC shows to the satisfaction of the Commissioner that, under the conditions existing at the time of the sale, the purchaser had a reasonable opportunity to purchase, on competitive terms from a seller who was not a U.S. person, goods which were

substantially identical to this property and which were not manufactured, produced, grown, or extracted in the United States. Information regarding whether an export is financed, in whole or in part, with funds derived from the programs identified in this subdivision may be obtained from the Comptroller, Defense Security Assistance Agency, Department of Defense, Washington, DC 20301.

(4) *Sales or leases of export property and furnishing of architectural or engineering services for use by the United States*—(i) *In general.* Foreign trading gross receipts of a FSC do not include gross receipts described in paragraph (b), (c), or (e) of this section if a sale or lease of export property, or the furnishing of architectural or engineering services, is for use by the United States or an instrumentality thereof in any case in which any law or regulation requires in any manner the purchase or lease of property manufactured, produced, grown, or extracted in the United States or requires the use of architectural or engineering services performed by a United States person. See section 924(f)(1)(A)(ii). For example, a sale by a FSC of export property to the Department of Defense for use outside the United States would not produce foreign trading gross receipts for the FSC if the Department of Defense purchased the property from appropriated funds subject to either any provision of the Department of Defense Federal Acquisition Regulations Supplement (48 CFR chapter 2) or any appropriations act for the Department of Defense for the applicable year if the regulations or appropriations act requires that the items purchased must have been grown, reprocessed, reused, or produced in the United States. The Department of Defense's regulations do not require that items purchased by the Department for resale in post or base exchanges and commissary stores located on United States military installations in foreign countries be items grown, reprocessed, reused or produced in the United States. Therefore, receipts arising from the sale by a FSC to those post or base exchanges and commissary stores will not be excluded from the definition of foreign trading gross receipts by this paragraph (g)(4).

(ii) *Direct or indirect sales or leases.* Any sale or lease of export property is for use by the United States or an instrumentality thereof if such property is sold or leased by a FSC (or by a principal for whom the FSC acts as commission agent) to—

(A) A person who is a related person with respect to the FSC or such principal and who sells or leases the property for use by the United States or an instrumentality thereof, or

(B) A person who is not a related person with respect to the FSC or such principal if, at the time of the sale or lease, there is an agreement or understanding that the property will be sold or leased for use by the United States or an instrumentality thereof (or if a reasonable person would have known at the time of the sale or lease that the property would be sold or leased for use by the United States or an instrumentality thereof) within 3 years after the sale or lease.

(iii) *Excluded programs.* The provisions of subdivisions (4)(i) and (ii) of this paragraph do not apply in the case of a purchase by the United States or an instrumentality thereof if the purchase is pursuant to—

(A) The Foreign Military Sales Act, as amended (22 U.S.C. 2751 *et seq.*), or a program under which the United States government purchases property for resale, on commercial terms, to a foreign government or agency or instrumentality thereof, or

(B) A program (whether bilateral or multilateral) under which sales to the United States government are open to international competitive bidding.

(5) *Services.* Foreign trading gross receipts of a FSC do not include gross receipts described in paragraph (d) of this section (concerning related and subsidiary services) if the services from which such gross receipts are derived are related and subsidiary to the sale or lease of property which results in excluded receipts under this paragraph.

(6) *Receipts within controlled group.* (i) For purposes of the transfer pricing methods of section 925(a), gross receipts of a corporation do not constitute foreign trading gross receipts for any taxable year of the corporation if at the time of the sale, lease, or other transaction resulting in the gross

receipts, the corporation and the person from whom the gross receipts are directly or indirectly derived (whether or not such corporation and such person are the same person) are members of the same controlled group, and either

(A) The corporation and the person each qualifies as a FSC (or if related FSCs are commission agents of each party to the transaction) for its taxable year in which its receipts arise, or

(B) With regard to sale transactions, a sale of export property to a FSC (or to a related person if the FSC is the commission agent of the related person) by a non-FSC within the same controlled group follows any sale of the export property to a FSC (or to a related person if the FSC is the commission agent of the related person) within the same controlled group if foreign trading gross receipts resulted from the sale. Thus for example, assume that R, S, X, and Y are members of the same controlled group and that X and Y are FSCs. If R sells property to S and pays X a commission relating to that sale and if S sells the same property to an unrelated foreign party and pays Y a commission relating to that sale, the receipts received by X from the sale of such property by R to S will be considered to be derived from Y, a FSC which is a member of the same controlled group as X, and thus will not result in foreign trading gross receipts to X. The receipts received by Y from the sale to an unrelated foreign party may, however, result in foreign trading gross receipts to Y. For another example, if R and S both assign the commissions to X, receipts derived from the sale from R to S will be considered to be derived from X acting as commission agent for S and will not result in foreign trading gross receipts to X. Receipts derived by X from the sale of property by S to an unrelated foreign party may, however, constitute foreign trading gross receipts.

(ii) Section 1.927(a)–1T(f)(2) provides rules regarding property not constituting export property in certain cases where such property is leased to any corporation which is a member of the same controlled group as the lessor.

(7) *Factoring of receivables by a related supplier*. If an account receivable arising with respect to export property is transferred to any person for an amount reflecting a discount from the selling price of the export property, then the gross receipts from the sale which are treated as foreign trading gross receipts for purposes of computing a FSC's profit under the administrative pricing methods of section 925(a)(1) and (2) shall be reduced by the amount of the discount. See §1.925(a)–1T(f) *Example 11* for illustration of how this special rule affects computation of combined taxable income of a FSC and its related supplier.

(h) *Definition of ''controlled group''*. For purposes of sections 921 through 927 and the regulations under those sections, the term ''controlled group'' has the same meaning as is assigned to the term ''controlled group of corporations'' by section 1563(a), except that (1) the phrase ''more than 50 percent'' is substituted for the phrase ''at least 80 percent'' each place the latter phrase appears in section 1563(a), and (2) section 1563(b) shall not apply. Thus, for example, a foreign corporation subject to tax under section 882 may be a member of a controlled group. Furthermore, two or more corporations (including a foreign corporation) are members of a controlled group at any time such corporations meet the requirements of section 1563(a) (as modified by this paragraph).

(i) *FSC's entitlement to income*—(1) *Application of administrative pricing rules of section 925(a)*. A corporation which meets the requirements of section 922(a) (or section 922(b) if the corporation elects small FSC status) and §1.921–2(a) (Q&A1) to be treated as a FSC (or small FSC) for a taxable year is entitled to income, and the administrative pricing rules of section 925(a)(1) or (2) apply, in the case of any transaction described in §1.925(a)–1T(b)(iii) between the FSC and its related supplier (as defined in §1.927(d)–2T(a)) as long as the FSC, or someone under contract to it, satisfies the requirements of section 925(c). The requirements of section 925(c) must be met by a commission FSC as well as by a buy-sell FSC. See §1.925 (a)–1T(a)(3)(i) and (b)(2)(ii).

(2) *Other transactions*. In the case of a transaction to which the provisions of

paragraph (i)(1) of this section do not apply but from which a FSC derives gross receipts, the income to which the FSC is entitled as a result of the transaction is determined pursuant to the terms of the contract for the transaction and, if applicable, section 482 and the regulations under that section. For applicability of the section 482 transfer pricing method, see §1.925(a)–1T (a)(3)(ii) and (b)(2)(i).

(j) *Small FSC limitation*—(1) *In general.* Under section 924(b)(2)(B), in determining exempt foreign trade income of a small FSC, the foreign trading gross receipts of the small FSC for the taxable year which exceed $5 million are not taken into account. The foreign trading gross receipts of the small FSC not taken into account for purposes of computing the small FSC's exempt foreign trade income shall be taken into account in computing the small FSC's non-exempt foreign trade income. If the foreign trading gross receipts of the small FSC exceed the $5 million limitation, the small FSC may select the gross receipts to which the limitation is allocated. See section 922(b) and §1.921–2(b) (Q&A3) for a definition of a small FSC.

(2) *Members of a controlled group limited to one $5 million amount*—(i) *General rule.* All small FSCs which are members of a controlled group on a December 31, shall, for their taxable years which include that December 31, be limited to one $5 million amount. The $5 million amount shall be allocated equally among the member small FSCs of the controlled group for their taxable years including that December 31, unless all of the member small FSCs consent to an apportionment plan providing for an unequal allocation of the $5 million amount. The apportionment plan shall provide for the apportionment of a fixed dollar amount to one or more of the corporations, and the sum of the amounts so apportioned shall not exceed the $5 million amount. If the taxable year including the December 31 of any member small FSC is a short period (as defined in section 443), the portion of the $5 million amount allocated to that member small FSC for that short period under the preceding sentence shall be reduced to the amount which bears the same ratio to the amount so allocated as the number of days in such short period bears to 365. The consent of each member small FSC to the apportionment plan for the taxable year shall be signified by completing the form (*i.e.*, Schedule O or any successor to that form) which satisfies the requirements of and is filed in the manner specified in §1.1561–3. An apportionment plan may be amended in the manner prescribed in §1.1561–3(a), except that an original or an amended plan may not be adopted with respect to a particular December 31 if at the time the original or amended plan is sought to be adopted, less than 12 full months remain in the statutory period (including extensions) for the assessment of a deficiency against any shareholder of a member small FSC the tax liability of which would change by the adoption of the original or amended plan. If less than 12 full months of the period remain with respect to any such shareholder, the director of the service center with which the shareholder files its income tax return will, upon request, enter into an agreement extending the statutory period for the limited purpose of assessing any deficiency against that shareholder attributable to the adoption of the original or amended apportionment plan.

(ii) *Membership determined under section 1563(b).* For purposes of this paragraph (j)(2), the determination of whether a small FSC is a member of a controlled group of corporations with respect to any taxable year shall be made in the manner prescribed in section 1563(b) and the regulations under that section.

(iii) *Certain short taxable years*—(A) *General rule.* If a small FSC has a short period (as defined in section 443) which does not include a December 31, and that small FSC is a member of a controlled group of corporations which includes one or more other small FSC's with respect to the short period, then the amount described in section 924(b)(2)(B) with respect to the short period of that small FSC shall be determined by—

(*1*) Dividing $5 million by the number of small FSCs which are members of that group on the last day of the short period, and

(*2*) Multiplying the result by a fraction, the numerator of which is the number of days in the short period and the denominator of which is 365.

For purposes of the preceding sentence, section 1563(b) shall be applied as if the last day of the short period were substituted for December 31. Except as provided in subdivision (2)(iii)(B) of this paragraph, the small FSC having a short period not including a December 31 may not enter into an apportionment plan with respect to the short period.

(B) *Exception.* If the short period not including a December 31 of two or more small FSCs begins on the same date and ends on the same date and those small FSCs are members of the same controlled group, those small FSCs may enter into an apportionment plan for such short period in the manner provided in subdivision (2)(i) of this paragraph with respect to the combined amount allowed to each of those small FSCs under subdivision (2)(iii)(A) of this paragraph.

[T.D. 8126, 52 FR 6438, Mar. 3, 1987, as amended by T.D. 9304, 71 FR 76907, Dec. 22, 2006; T.D. 9476, 74 FR 68531, Dec. 28, 2009]

§ 1.924(c)–1 Requirement that a FSC be managed outside the United States.

(a) *In general.* Section 924(b)(1)(A) provides that a FSC shall be treated as having foreign trading gross receipts for the taxable year only if the management of the FSC during the year takes place outside the United States, as provided in section 924(c). Section 924(c) and this section set forth the management activities that must take place outside the United States in order to satisfy the requirement of section 924(b)(1)(A). Paragraph (b) of this section provides rules for determining whether the requirements of section 924(c)(1) have been met. Section 924(c)(1) requires that all meetings of the board of directors of the FSC during the taxable year and all meetings of the shareholders of the FSC during the taxable year take place outside the United States. Paragraph (c) of this section provides rules for maintaining the FSC's principal bank account outside the United States as provided in section 924(c)(2). Paragraph (d) of this section provides rules for disbursements required by section 924(c)(3) to be made from bank accounts of the FSC maintained outside the United States.

(b) *Meetings of board of directors and meetings of shareholders must be outside the United States.* All meetings of the board of directors of the FSC and all meetings of the shareholders of the FSC that take place during a taxable year must take place outside the United States to meet the requirements of section 924(c)(1). Only meetings that are formally convened as meetings of the board of directors or as shareholder meetings will be taken into account in determining whether those requirements have been met. In addition, all such meetings must comply with the local laws of the foreign country or possession of the United States in which the FSC was created or organized. The local laws determine whether a meeting must be held, when and where it must be held (if it is held at all), who must be present, quorum requirements, use of proxies, and so on. Where the local law permits action by the board of directors or shareholders to be taken by written consent without a meeting, use of such procedure will not constitute a meeting for purposes of section 924(c)(1). Section 924(c)(1) and this section impose no other requirements except the requirement that meetings that are actually held take place outside the United States. If the participants in a meeting are not all physically present in the same location, the location of the meeting is determined by the location of the persons exercising a majority of the voting power (including proxies) participating in the meeting. For example, a FSC has five directors, and is organized in country A. Country A's law requires that a majority of the directors of a corporation must participate in a meeting to constitute a quorum (and, thus, a meeting), but there is no requirement that the meeting be held in country A or that the directors must be physically present to participate. One director is in country A, another director is in country B, and a third director is in the United States.

These three directors convene a meeting by telephone that constitutes a meeting under the law of country A.