AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

(B) Out of earnings and profits attributable to other exempt foreign trade income,

(C) Out of earnings and profits attributable to non-exempt foreign trade income determined under either of the administrative pricing methods of section 925(a)(1) or (2),

(D) Out of earnings and profits attributable to section 923(a)(2) non-exempt income, and

(E) Out of other earnings and profits.

(ii) *Distributions by a FSC received by a shareholder in a taxable year of the shareholder beginning after December 31, 1989.* Any actual distribution to a shareholder by a FSC that is received by the shareholder in a taxable year beginning after December 31, 1989, and that is made out of earnings and profits shall be treated as made in the following order, to the extent thereof—

(A) Out of earnings and profits attributable to exempt foreign trade income determined solely because of the operation of section 923(a)(4),

(B) Out of earnings and profits attributable to foreign trade income (other than exempt foreign trade income determined solely because of the operation of section 923(a)(4)) allocable to the marketing of agricultural or horticultural products (or the providing of related services) by a qualified cooperative which is a shareholder of the FSC,

(C) Out of earnings and profits attributable to non-exempt foreign trade income and other exempt foreign trade income determined under either of the administrative pricing methods of section 925(a)(1) and (2). Distributions out of this classification will be made on a pro rata basis so that 15/23 (16/23 with regard to distribution to a non-corporate shareholder) of each distribution will be out of earnings and profits attributable to exempt foreign trade income and the remainder will be out of earnings and profits attributable to non-exempt foreign trade income. To the extent the distributions are out of earnings and profits attributable to the disposition of, or services related to, military property, 7.5/23 (8/23 with regard to distributions to a non-corporate shareholder) of each distribution will be out of earnings and profits attributable to exempt foreign trade income and the remainder will be out of earnings and profits attributable to non-exempt foreign trade income,

(D) Out of earnings and profits attributable to other exempt foreign trade income determined under the transfer pricing method of section 925(a)(3),

(E) Out of earnings and profits attributable to section 923(a)(2) non-exempt income,

(F) Out of earnings and profits attributable to effectively connected income, as defined in section 245(c)(4)(B), and

(G) Out of other earnings and profits.

(2) *Determination of earnings and profits.* [Reserved]. For guidance, see §1.926(a)–1T(b)(1).

(c) *Definition of ''former FSC''.* [Reserved]. For guidance, see §1.926(a)–1T(c).

(d) *Personal holding company income.* [Reserved]. For guidance, see §1.926(a)–1T(d).

(e) *Sale of stock if section 1248 applies.* [Reserved]. For guidance, see §1.926(a)–1T(e).

[T.D. 8340, 56 FR 11093, Mar. 15, 1991]

§1.926(a)–1T Temporary regulations; distributions to shareholders.

(a) *Treatment of distributions.* Any distribution by a FSC (or former FSC) to its shareholder with respect to its stock will be includible in the shareholder's gross income in accordance with the provisions of section 301. (Any further reference to a FSC in this section shall include a small FSC unless indicated otherwise.) See section 245(c) for treatment of distributions to domestic corporate shareholders of the FSC. If earnings and profits of a FSC (or former FSC) attributable to foreign trade income are distributed to a shareholder which is a foreign person (or a nonresident alien individual), that distribution shall be treated as United States source income which is effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States. For this purpose, distributions to a foreign partnership, foreign trust, foreign estate or other foreign entities that would be treated as pass-through entities under U.S. law shall be treated as made directly to the partners of

beneficiaries in proportion to their respective interest in the entity.

(b) *Order of distributions*—(1) *In general.* For guidance, see §1.926(a)–1(b)(1).

(2) *Determination of earnings and profits.* For purposes of this section, the earnings and profits of a FSC (or former FSC) shall be the earnings and profits computed in accordance with the rules, where applicable, prescribed in §1.964–1 (relating to determination of the earnings and profits of a foreign corporation) other than subsections (d) and (e) of that section.

(c) *Definition of ''former FSC''.* Under section 926(c), the term ''former FSC'' refers to a corporation which is not a FSC for a taxable year but which was a FSC for a prior taxable year. However, a corporation is not a former FSC for a taxable year unless such corporation has, at the beginning of such taxable year, earnings and profits attributable to foreign trade income. A corporation which is a former FSC for a taxable year is a former FSC for all purposes of the Code.

(d) *Personal holding company income*—(1) *Treatment of dividends.* Any amount includible in a shareholder's gross income as a dividend with respect to the stock of a FSC (or former FSC) under paragraph (a) of this section shall be treated as a dividend for all purposes of the Code, except that that part of the dividend attributable to foreign trade income, other than an amount attributable to section 923(a)(2) non-exempt income, shall not be considered in applying the personal holding company and foreign personal holding company provisions (sections 541 through 547 and 551 through 558, respectively).

(2) *Look through option.* With regard to distributions from a FSC (or former FSC) which are not treated as personal holding company income under paragraph (d)(1) of this section, the shareholder may, however, treat any amount of that distribution as an item of income described under section 543 (or section 553) (for example, rents) if it establishes to the satisfaction of the Commissioner that such amount is attributable to earnings and profits of the FSC derived from such item of income. For example, distributions from a FSC relating to section 923(a)(2) nonexempt income will be treated as dividends for purposes of the personal holding company provisions of sections 541 through 547 unless the look through option is elected. Under this option, if earnings and profits out of which those distributions are made are attributable to the lease of export property, the FSC shareholder may treat the distribution for purposes of the personal holding company provisions as rents rather than as dividends. This may be beneficial to the shareholder because rents are not considered under section 543(a)(2) as personal holding company income, if in general, rents constitute 50% or more of the shareholder's adjusted ordinary gross income.

(e) *Sale of stock if section 1248 applies.* For purposes of section 1248, the earnings and profits of a FSC (or former FSC) shall not include earnings and profits attributable to foreign trade income.

[T.D. 8126, 52 FR 6458, Mar. 3, 1987, as amended by T.D. 8340, 56 FR 11093, Mar. 15, 1991]

§1.927(a)–1T Temporary regulations; definition of export property.

(a) *General rule.* Under section 927(a), except as otherwise provided with respect to excluded property in paragraphs (f), (g) and (h) of this section and with respect to certain short supply property in paragraph (i) of this section, export property is property in the hands of any person (whether or not a FSC) (any further reference to a FSC in this section shall include a small FSC unless indicated otherwise)—

(1) *U.S. manufactured, produced, grown or extracted.* Manufactured, produced, grown, or extracted in the United States by any person or persons other than a FSC (see paragraph (c) of this section),

(2) *Foreign use, consumption or disposition.* Held primarily for sale, lease or rental in the ordinary course of a trade or business by a FSC to a FSC or to any other person for direct use, consumption, or disposition outside the United States (see paragraph (d) of this section),

(3) *Foreign content.* Not more than 50 percent of the fair market value of which is attributable to articles imported into the United States (see paragraph (e) of this section), and