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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

(4) *Non-related FSC purchaser or user.* Which is not sold, leased or rented by a FSC, or with a FSC as commission agent, to another FSC which is a member of the same controlled group (as defined in section 927(d)(4) and §1.924(a)–1T(h)) as the FSC.

(b) *Services.* For purposes of this section, services (including the written communication of services in any form) are not export property. Whether an item is property or services shall be determined on the basis of the facts and circumstances attending the development and disposition of the item. Thus, for example, the preparation of a map of a particular construction site would constitute services and not export property, but standard maps prepared for sale to customers generally would not constitute services and would be export property if the requirements of this section were otherwise met.

(c) *Manufacture, production, growth, or extraction of property*—(1) *By a person other than a FSC.* Export property may be manufactured, produced, grown, or extracted in the United States by any person, provided that that person does not qualify as a FSC. Property held by a FSC which was manufactured, produced, grown or extracted by it at a time when it did not qualify as a FSC is not export property of the FSC. Property which sustains further manufacture, production or processing outside the United States prior to sale or lease by a person but after manufacture, production, processing or extraction in the United States will be considered as manufactured, produced, grown or extracted in the United States by that person only if the property is reimported into the United States for further manufacturing, production or processing prior to final export sale. In order to be considered export property, the property manufactured, produced, grown or extracted in the United States must satisfy all of the provisions of section 927(a) and this section.

(2) *Manufactured, produced or processed.* For purposes of this section, property which is sold or leased by a person is considered to be manufactured, produced or processed by that person or by another person pursuant to a contract with that person if the property is manufactured or produced, as defined in §1.954–3(a)(4). For purposes of this section, however, in determining if the 20% conversion test of §1.954–3(a)(4)(iii) has been met, conversion costs include assembly and packaging costs but do not include the value of parts provided pursuant to a services contract as described in §1.924(a)–1T(d)(3). In addition, for purposes of this section, the 20% conversion test is extended and applied to the export property's adjusted basis rather than to its cost of goods sold if it is leased or held for lease.

(d) *Foreign use, consumption or disposition*—(1) *In general.* (i) Under paragraph (a)(2) of this section, export property must be held primarily for the purpose of sale, lease or rental in the ordinary course of a trade or business, by a FSC to a FSC or to any other person, and the sale or lease must be for direct use, consumption, or disposition outside the United States. Thus, property cannot qualify as export property unless it is sold or leased for direct use, consumption, or disposition outside the United States. Property is sold or leased for direct use, consumption, or disposition outside the United States if the sale or lease satisfies the destination test described in subdivision (2) of this paragraph, the proof of compliance requirements described in subdivision (3) of this paragraph, and the use outside the United States test described in subdivision (4) of this paragraph.

(ii) *Factors not taken into account.* In determining whether property which is sold or leased to a FSC is sold or leased for direct use, consumption, or disposition outside the United States, the fact that the acquiring FSC holds the property in inventory or for lease prior to the time it sells or leases it for direct use, consumption, or disposition outside the United States will not affect the characterization of the property as export property. Fungible export property must be physically segregated from non-export property at all times after purchase by or rental by a FSC or after the start of the commission relationship between the FSC and related supplier with regard to the export property. Non-fungible export property

need not be physically segregated from non-export property.

(2) *Destination test.* (i) For purposes of paragraph (d)(1) of this section, the destination test of this paragraph is satisfied with respect to property sold or leased by a seller or lessor only if it is delivered by the seller or lessor (or an agent of the seller or lessor) regardless of the F.O.B. point or the place at which title passes or risk of loss shifts from the seller or lessor—

(A) Within the United States to a carrier or freight forwarder for ultimate delivery outside the United States to a purchaser or lessee (or to a subsequent purchaser or sublessee),

(B) Within the United States to a purchaser or lessee, if the property is ultimately delivered outside the United States (including delivery to a carrier or freight forwarder for delivery outside the United States) by the purchaser or lessee (or a subsequent purchaser or sublessee) within 1 year after the sale or lease,

(C) Within or outside the United States to a purchaser or lessee which, at the time of the sale or lease, is a FSC or an interest charge DISC and is not a member of the same controlled group as the seller or lessor,

(D) From the United States to the purchaser or lessee (or a subsequent purchaser or sublessee) at a point outside the United States by means of the seller's or lessor's own ship, aircraft, or other delivery vehicle, owned, leased, or chartered by the seller or lessor,

(E) Outside the United States to a purchaser or lessee from a warehouse, storage facility, or assembly site located outside the United States, if the property was previously shipped by the seller or lessor from the United States, or

(F) Outside the United States to a purchaser or lessee if the property was previously shipped by the seller or lessor from the United States and if the property is located outside the United States pursuant to a prior lease by the seller or lessor, and either (*1*) the prior lease terminated at the expiration of its term (or by the action of the prior lessee acting alone), (*2*) the sale occurred or the term of the subsequent lease began after the time at which the term of the prior lease would have expired, or (*3*) the lessee under the subsequent lease is not a related person with respect to the lessor and the prior lease was terminated by the action of the lessor (acting alone or together with the lessee).

(ii) For purposes of this paragraph (d)(2) (other than paragraphs (d)(2)(i)(C) and (F)(3)), any relationship between the seller or lessor and any purchaser, subsequent purchaser, lessee, or sublessee is immaterial.

(iii) In no event is the destination test of this paragraph (d)(2) satisfied with respect to property which is subject to any use (other than a resale or sublease), manufacture, assembly, or other processing (other than packaging) by any person between the time of the sale or lease by such seller or lessor and the delivery or ultimate delivery outside the United States described in this paragraph (d)(2).

(iv) If property is located outside the United States at the time it is purchased by a person or leased by a person as lessee, such property may be export property in the hands of such purchaser or lessee only if it is imported into the United States prior to its further sale or lease (including a sublease) outside the United States. Paragraphs (a)(3) and (e) of this section (relating to the 50 percent foreign content test) are applicable in determining whether such property is export property. Thus, for example, if such property is not subjected to manufacturing or production (as defined in paragraph (c) of this section) within the United States after such importation, it does not qualify as export property.

(3) *Proof of compliance with destination test*—(i) *Delivery outside the United States.* For purposes of paragraph (d)(2) of this section (other than subdivision (i)(C) thereof), a seller or lessor shall establish ultimate delivery, use, or consumption of property outside the United States by providing—

(A) A facsimile or carbon copy of the export bill of lading issued by the carrier who delivers the property,

(B) A certificate of an agent or representative of the carrier disclosing delivery of the property outside the United States,

(C) A facsimile or carbon copy of the certificate of lading for the property

executed by a customs officer of the country to which the property is delivered,

(D) If that country has no customs administration, a written statement by the person to whom delivery outside the United States was made,

(E) A facsimile or carbon copy of the Shipper's Export Declaration, a monthly shipper's summary declaration filed with the Bureau of Customs, or a magnetic tape filed in lieu of the Shipper's Export Declaration, covering the property, or

(F) Any other proof (including evidence as to the nature of the property or the nature of the property or the nature of the transaction) which establishes to the satisfaction of the Commissioner that the property was ultimately delivered, or directly sold, or directly consumed outside the United States within 1 year after the sale or lease.

(ii) The requirements of subdivision (i)(A), (B), (C), or (E) of this paragraph will be considered satisfied even though the name of the ultimate consignee and the price paid for the goods is marked out provided that, in the case of a Shipper's Export Declaration or other document listed in subdivision (i)(E) of this paragraph or a document such as an export bill of lading, such document still indicates the country in which delivery to the ultimate consignee is to be made and, in the case of a certificate of an agent or representative of the carrier, that the document indicates that the property was delivered outside the United States.

(iii) A seller or lessor shall also establish the meeting of the requirement of paragraph (d)(2)(i) of this section (other than subdivision (i)(C) thereof), that the property was delivered outside the United States without further use, manufacture, assembly, or other processing within the United States.

(iv) For purposes of paragraph (d)(2)(i)(C) of this section, a purchaser or lessee of property is deemed to qualify as a FSC or an interest charge DISC for its taxable year if the seller or lessor obtains from the purchaser or lessee a copy of the purchaser's or lessee's election to be treated as a FSC or interest charge DISC together with the purchaser's or lessee's sworn statement that the election has been timely filed with the Internal Revenue Service Center. The copy of the election and the sworn statement of the purchaser or lessee must be received by the seller or lessor within 6 months after the sale or lease. A purchaser or lessee is not treated as a FSC or interest charge DISC with respect to a sale or lease during a taxable year for which the purchaser or lessee does not qualify as a FSC or interest charge DISC if the seller or lessor does not believe or if a reasonable person would not believe at the time the sale or lease is made that the purchaser or lessee will qualify as a FSC or interest charge DISC for the taxable year.

(v) If a seller or lessor fails to provide proof of compliance with the destination test as required by this paragraph (d)(3), the property sold or leased is not export property.

(4) *Sales and leases of property for ultimate use in the United States*—(i) *In general.* For purposes of paragraph (d)(1) of this section, the use test in this paragraph (d)(4) is satisfied with respect to property which—

(A) Under subdivision (4)(ii) through (iv) of this paragraph is not sold for ultimate use in the United States, or

(B) Under subdivision (4)(v) of this paragraph is leased for ultimate use outside the United States.

(ii) *Sales of property for ultimate use in the United States.* For purposes of subdivision (4)(i) of this paragraph, a purchaser of property (including components, as defined in subdivision (4)(vii) of this paragraph) is deemed to use the property ultimately in the United States if any of the following conditions exist:

(A) The purchaser is a related party with respect to the seller and the purchaser ultimately uses the property, or a second product into which the property is incorporated as a component, in the United States.

(B) At the time of the sale, there is an agreement or understanding that the property, or a second product into which the property is incorporated as a component, will be ultimately used by the purchaser in the United States.

(C) At the time of the sale, a reasonable person would have believed that the property or the second product

would be ultimately used by the purchaser in the United States unless, in the case of a sale of components, the fair market value of the components at the time of delivery to the purchaser constitutes less than 20 percent of the fair market value of the second product into which the components are incorporated (determined at the time of completion of the production, manufacture, or assembly of the second product).

For purposes of subdivision (4)(ii)(B) of this paragraph, there is an agreement or understanding that property will ultimately be used in the United States if, for example, a component is sold abroad under an express agreement with the foreign purchaser that the component is to be incorporated into a product to be sold back to the United States. As a further example, there would also be such an agreement or understanding if the foreign purchaser indicated at the time of the sale or previously that the component is to be incorporated into a product which is designed principally for the United States market. However, such an agreement or understanding does not result from the mere fact that a second product, into which components exported from the United States have been incorporated and which is sold on the world market, is sold in substantial quantities in the United States.

(iii) *Use in the United States.* For purposes of subdivision (4)(ii) of this paragraph, property (including components incorporated into a second product) is or would be ultimately used in the United States by the purchaser if, at any time within 3 years after the purchase of such property or components, either the property is or the components (or the second product into which the components are incorporated) are resold by the purchaser for use by a subsequent purchaser within the United States or the purchaser or subsequent purchaser fails, for any period of 365 consecutive days, to use the property or second product predominantly outside the United States (as defined in subdivision (4)(vi) of this paragraph).

(iv) *Sales to retailers.* For purposes of subdivision (4)(ii)(C) of this paragraph, property sold to any person whose principal business consists of selling from inventory to retail customers at retail outlets outside the United States will be considered to be used predominantly outside the United States.

(v) *Leases of property for ultimate use outside the United States.* For purposes of subdivision (4)(i) of this paragraph, a lessee of property is deemed to use property ultimately outside the United States during a taxable year of the lessor if the property is used predominantly outside the United States (as defined in subdivision (4)(vi) of this paragraph) by the lessee during the portion of the lessor's taxable year which is included within the term of the lease. A determination as to whether the ultimate use of leased property satisfies the requirements of this subdivision is made for each taxable year of the lessor. Thus, leased property may be used predominantly outside the United States for a taxable year of the lessor (and thus, constitute export property if the remaining requirements of this section are met) even if the property is not used predominantly outside the United States in earlier taxable years or later taxable years of the lessor.

(vi) *Predominant use outside the United States.* For purposes of this paragraph (d)(4), property is used predominantly outside the United States for any period if, during that period, the property is located outside the United States more than 50 percent of the time. An aircraft, railroad rolling stock, vessel, motor vehicle, container, or other property used for transportation purposes is deemed to be used predominantly outside the United States for any period if, during that period, either the property is located outside the United States more than 50 percent of the time or more than 50 percent of the miles traversed in the use of the property are traversed outside the United States. However, property is deemed to be within the United States at all times during which it is engaged in transport between any two points within the United States, except where the transport constitutes uninterrupted international air transportation within the meaning of section 4262(c)(3) and the regulations under that section (relating to tax on air transportation of

persons). An orbiting satellite is deemed to be located outside the United States. For purposes of applying section 4262(c)(3) to this subdivision, the term ''United States'' includes the Commonwealth of Puerto Rico.

(vii) *Component.* For purposes of this paragraph (d)(4), a component is property which is (or is reasonably expected to be) incorporated into a second product by the purchaser of such component by means of production, manufacture, or assembly.

(e) *Foreign content of property*—(1) *The 50 percent test.* Under paragraph (a)(3) of this section, no more than 50 percent of the fair market value of export property may be attributable to the fair market value of articles which were imported into the United States. For purposes of this paragraph (e), articles imported into the United States are referred to as ''foreign content.'' The fair market value of the foreign content of export property is computed in accordance with paragraph (e)(4) of this section. The fair market value of export property which is sold to a person who is not a related person with respect to the seller is the sale price for such property (not including interest, finance or carrying charges, or similar charges.)

(2) *Application of 50 percent test.* The 50 percent test is applied on an item-by-item basis. If, however, a person sells or leases a large volume of substantially identical export property in a taxable year and if all of that property contains substantially identical foreign content in substantially the same proportion, the person may determine the portion of foreign content contained in that property on an aggregate basis.

(3) *Parts and services.* If, at the time property is sold or leased the seller or lessor agrees to furnish parts pursuant to a services contract (as provided in §1.924(a)–1T(d)(3)) and the price for the parts is not separately stated, the 50 percent test is applied on an aggregate basis to the property and parts. If the price for the parts is separately stated, the 50 percent test is applied separately to the property and to the parts.

(4) *Computation of foreign content*—(i) *Valuation.* For purposes of applying the 50 percent test, it is necessary to determine the fair market value of all articles which constitutes foreign content of the property being tested to determine if it is export property. The fair market value of the imported articles is determined as of the time the articles are imported into the United States.

(A) *General rule.* Except as provided in paragraph (e)(4)(i)(B), the fair market value of the imported articles which constitutes foreign content is their appraised value, as determined under section 403 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with their importation. The appraised value of the articles is the full dutiable value of the articles, determined, however, without regard to any special provision in the United States tariff laws which would result in a lower dutiable value.

(B) *Special election.* If all or a portion of the imported article was originally manufactured, produced, grown, or extracted in the United States, the taxpayer may elect to determine the fair market value of the imported articles which constitutes foreign content under the provisions of this paragraph (e)(4)(i)(B) if the property is subjected to manufacturing or production (as defined in paragraph (c) of this section) within the United States after importation. A taxpayer making the election under this paragraph may determine the fair market value of the imported articles which constitutes foreign content to be the fair market value of the imported articles reduced by the fair market value at the time of the initial export of the portion of the property that was manufactured, produced, grown, or extracted in the United States. The taxpayer must establish the fair market value of the imported articles and of the portion of the property manufactured, produced, grown, or extracted in the United States at the time of the initial export in accordance with subdivision (4)(ii)(B) of this paragraph.

(ii) *Evidence of fair market value*—(A) *General rule.* For purposes of subdivision (4)(i)(A) of this paragraph, the fair market value of the imported articles is their appraised value, which may be evidenced by the customs invoice

issued on the importation of such articles into the United States. If the holder of the articles is not the importer (or a related person with respect to the importer), the appraised value of the articles may be evidenced by a certificate based upon information contained in the customs invoice and furnished to the holder by the person from whom the articles (or property incorporating the articles) were purchased. If a customs invoice or certificate described in the preceding sentences is not available to a person purchasing property, the person shall establish that no more than 50 percent of the fair market value of such property is attributable to the fair market value of articles which were imported into the United States.

(B) *Special election.* For purposes of the special election set forth in subdivision (4)(i)(B) of this paragraph, if the initial export is made to a controlled person within the meaning of section 482, the fair market value of the imported articles and of the portion of the articles that are manufactured, produced, grown, or extracted within the United States shall be established by the taxpayer in accordance with the rules under section 482 and the regulations under that section. If the initial export is not made to a controlled person, the fair market value must be established by the taxpayer under the facts and circumstances.

(iii) *Interchangeable component articles.* (A) If identical or similar component articles can be incorporated interchangeably into property and a person acquires component articles that are imported into the United States and other component articles that are not imported into the United States, the determination whether imported component articles were incorporated in the property that is exported from the United States shall be made on a substitution basis as in the case of the rules relating to drawback accounts under the customs laws. See section 313(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(b)).

(B) The provisions of subdivision (4)(iii)(A) of this paragraph may be illustrated by the following example:

Example. Assume that a manufacturer produces a total of 20,000 electronic devices. The manufacturer exports 5,000 of the devices and subsequently sells 11,000 of the devices to a FSC which exports the 11,000 devices. The major single component article in each device is a tube which represents 60 percent of the fair market value of the device at the time the device is sold by the manufacturer. The manufacturer imports 8,000 of the tubes and produces the remaining 12,000 tubes. For purposes of this subdivision, in accordance with the substitution principle used in the customs drawback laws, the 5,000 devices exported by the manufacturer are each treated as containing an imported tube because the devices were exported prior to the sale to the FSC. The remaining 3,000 imported tubes are treated as being contained in the first 3,000 devices purchased and exported by the FSC. Thus, since the 50 percent test is not met with respect to the first 3,000 devices purchased and exported by the FSC, those devices are not export property. The remaining 8,000 devices purchased and exported by the FSC are treated as containing tubes produced in the United States, and those devices are export property (if they otherwise meet the requirements of this section).

(f) *Excluded property*—(1) *In general.* Notwithstanding any other provision of this section, the following property is not export property—

(i) Property described in subdivision (2) of this paragraph (relating to property leased to a member of controlled group),

(ii) Property described in subdivision (3) of this paragraph (relating to certain types of intangible property),

(iii) Products described in paragraph (g) of this section (relating to oil and gas products), and

(iv) Products described in paragraph (h) of this section (relating to certain export controlled products).

(2) *Property leased to member of controlled group*—(i) *In general.* Property leased to a person (whether or not a FSC) which is a member of the same controlled group as the lessor constitutes export property for any period of time only if during the period—

(A) The property is held for sublease, or is subleased, by the person to a third person for the ultimate use of the third person;

(B) The third person is not a member of the same controlled group; and

(C) The property is used predominantly outside the United States by the third person.

(ii) *Predominant use.* The provisions of paragraph (d)(4)(vi) of this section apply in determining under subdivision (2)(i)(C) of this paragraph whether the property is used predominantly outside the United States by the third person.

(iii) *Leasing rule.* For purposes of this paragraph (f)(2), leased property is deemed to be ultimately used by a member of the same controlled group as the lessor if such property is leased to a person which is not a member of the controlled group but which subleases the property to a person which is a member of the controlled group. Thus, for example, if X, a FSC for the taxable year, leases a movie film to Y, a foreign corporation which is not a member of the same controlled group as X, and Y then subleases the film to persons which are members of the controlled group for showing to the general public, the film is not export property. On the other hand, if X, a FSC for the taxable year, leases a movie film to Z, a foreign corporation which is a member of the same controlled group as X, and Z then subleases the film to Y, another foreign corporation, which is not a member of the same controlled group for showing to the general public, the film is not disqualified from being export property.

(iv) *Certain copyrights.* With respect to a copyright which is not excluded by subdivision (3) of this paragraph from being export property, the ultimate use of the property is the sale or exhibition of the property to the general public. Thus, if A, a FSC for the taxable year, leases recording tapes to B, a foreign corporation which is a member of the same controlled group as A, and if B makes records from the recording tape and sells the records to C, another foreign corporation, which is not a member of the same controlled group, for sale by C to the general public, the recording tape is not disqualified under this paragraph from being export property, notwithstanding the leasing of the recording tape by A to a member of the same controlled group, since the ultimate use of the tape is the sale of the records (*i.e.*, property produced from the recording tape).

(3) *Intangible property.* Export property does not include any patent, invention, model, design, formula, or process, whether or not patented, or any copyright (other than films, tapes, records, or similar reproductions, for commercial or home use), goodwill, trademark, tradebrand, franchise, or other like property. Although a copyright such as a copyright on a book or computer software does not constitute export property, a copyrighted article (such as a book or standardized, mass marketed computer software) if not accompanied by a right to reproduce for external use is export property if the requirements of this section are otherwise satisfied. Computer software referred to in the preceding sentence may be on any medium, including, but not limited to, magnetic tape, punched cards, disks, semi-conductor chips and circuit boards. A license of a master recording tape for reproduction outside the United States is not disqualified under this paragraph from being export property.

(g) *Oil and gas*—(1) *In general.* Under section 927(a)(2)(C), export property does not include oil or gas (or any primary product thereof).

(2) *Primary product from oil or gas.* A primary product from oil or gas is not export property. For purposes of this paragraph—

(i) *Primary product from oil.* The term ''primary product from oil'' means crude oil and all products derived from the destructive distillation of crude oil, including—

(A) Volatile products,

(B) Light oils such as motor fuel and kerosene,

(C) Distillates such as naphtha,

(D) Lubricating oils,

(E) Greases and waxes, and

(F) Residues such as fuel oil.

For purposes of this paragraph, a product or commodity derived from shale oil which would be a primary product from oil if derived from crude oil is considered a primary product from oil.

(ii) *Primary product from gas.* The term ''primary product from gas'' means all gas and associated hydrocarbon components from gas wells or oil wells, whether recovered at the lease or upon further processing, including—

(A) Natural gas,

(B) Condensates,

(C) Liquefied petroleum gases such as ethane, propane, and butane, and

(D) Liquid products such as natural gasoline.

(iii) *Primary products and changing technology.* The primary products from oil or gas described in subdivisions (2)(i) and (ii) of this paragraph and the processes described in those subdivisions are not intended to represent either the only primary products from oil or gas, or the only processes from which primary products may be derived under existing and future technologies. For example, petroleum coke, although not derived from the destructive distillation of crude oil, is a primary product from oil derived from an existing technology.

(iv) *Non-primary products.* For purposes of this paragraph, petrochemicals, medicinal products, insecticides and alcohols are not considered primary products from oil or gas.

(h) *Export controlled products*—(1) *In general.* Section 927(a)(2)(D) provides that an export controlled product is not export property. A product or commodity may be an export controlled product at one time but not an export controlled product at another time. For purposes of this paragraph, a product or commodity is an ''export controlled product'' at a particular time if at that time the export of such product or commodity is prohibited or curtailed under section 7(a) of the Export Administration Act of 1979, to effectuate the policy relating to the protection of the domestic economy set forth in paragraph (2)(C) of section 3 of the Export Administration Act of 1979. That policy is to use export controls to the extent necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

(2) *Products considered export controlled products*—(i) *In general.* For purposes of this paragraph, an export controlled product is a product or commodity, which is subject to short supply export controls under 15 CFR part 377. A product or commodity is considered an export controlled product for the duration of each control period which applies to such product or commodity. A control period of a product or commodity begins on and includes the initial control date (as defined in subdivision (2)(ii) of this paragraph) and ends on and includes the final control date (as defined in subdivision (2)(iii) of this paragraph).

(ii) *Initial control date.* The initial control date of a product or commodity which is subject to short supply export controls is the effective date stated in the regulations to 15 CFR part 377 which subjects the product or commodity to short supply export controls. If there is no effective date stated in these regulations, the initial control date of the product or commodity will be thirty days after the effective date of the regulations which subject the product or commodity to short supply export controls.

(iii) *Final control date.* The final control date of a product or commodity is the effective date stated in the regulations to 15 CFR part 377 which removes the product or commodity from short supply export controls. If there is no effective date stated in those regulations, the final control date of the product or commodity is the date which is thirty days after the effective date of the regulations which remove the product or commodity from short supply export control.

(iv) *Expiration of Export Administration Act.* An initial control date and final control date cannot occur after the expiration date of the Export Administration Act under the authority of which the short supply export controls were issued.

(3) *Effective dates*—(i) *Products controlled on January 1, 1985.* If a product or commodity was subject to short supply export controls on January 1, 1985, this paragraph shall apply to all sales, exchanges, other dispositions, or leases of the product or commodity made after January 1, 1985, by the FSC or by the FSC's related supplier if the FSC is the commission agent on the transaction.

(ii) *Products first controlled after January 1, 1985.* If a product or commodity becomes subject to short supply export controls after January 1, 1985, this paragraph applies to sales, exchanges, other dispositions, or leases of such product or commodity made on or after the initial control date of such product or commodity, and to owning such

product or commodity on or after such date.

(iii) *Date of sales, exchange, lease, or other disposition.* For purposes of this paragraph (h)(3), the date of sale, exchange, or other disposition of a product or commodity is the date as of which title to such product or commodity passes. The date of a lease is the date as of which the lessee takes possession of a product or commodity. The accounting method of a person is not determinative of the date of sale, exchange, other disposition, or lease.

(i) *Property in short supply.* If the President determines that the supply of any property which is otherwise export property as defined in this section is insufficient to meet the requirements of the domestic economy, he may by Executive Order designate such property as in short supply. Any property so designated will be treated under section 927(a)(3) as property which is not export property during the period beginning with the date specified in such Executive Order and ending with the date specified in an Executive Order setting forth the President's determination that such property is no longer in short supply.

[T.D. 8126, 52 FR 6459, Mar. 3, 1987]

§ 1.927(b)–1T Temporary regulations; Definition of gross receipts.

(a) *General rule.* Under section 927(b), for purposes of sections 921 through 927, the gross receipts of a person for a taxable year are—

(1) *Business income.* The total amounts received or accrued by the person from the sale or lease of property held primarily for sale or lease in the ordinary course of a trade or business, and

(2) *Other income.* Gross income recognized from whatever source derived, such as, for example, from—

(i) The furnishing of services (whether or not related to the sale or lease of property described in subdivision (1) of this paragraph),

(ii) Dividends and interest (including tax exempt interest),

(iii) The sale at a gain of any property not described in subdivision (1) of this paragraph, and

(iv) Commission transactions to the extent described in paragraph (e) of this section.

(b) *Non-gross receipts items.* For purposes of paragraph (a) of this section, gross receipts do not include amounts received or accrued by a person from—

(1) *Loan transactions.* The proceeds of a loan or of the repayment of a loan, or

(2) *Non-taxable transactions.* A receipt of property in a transaction to which section 118 (relating to contribution to capital) or section 1032 (relating to exchange of stock for property) applies.

(c) *Non-reduction of total amounts.* For purposes of paragraph (a) of this section, the total amounts received or accrued by a person are not reduced by costs of goods sold, expenses, losses, a deduction for dividends received, or any other deductible amounts. The total amounts received or accrued by a person are reduced by returns and allowances.

(d) *Method of accounting.* For purposes of paragraph (a) of this section, the total amounts received or accrued by a person shall be determined under the method of accounting used in computing its taxable income. If, for example, a FSC receives advance or installment payments for the sale or lease of property described in paragraph (a)(1) of this section, for the furnishing of services, or which represent recognized gain from the sale of property not described in paragraph (a)(1) of this section, any amount of such advance payments is considered to be gross receipts of the FSC for the taxable year for which such amount is included in the gross income of the FSC.

(e) *Commission transactions*—(1) *In general*—(i) *With a related supplier.* In the case of transactions which give rise to a commission from the FSC's related supplier on the sale or lease of property or the furnishing of services by a principal, the FSC's gross income from all such transactions is the commission paid or payable to the FSC by the related supplier. The FSC's gross receipts for purposes of computing its profit under the administrative pricing methods of section 925(a)(1) and (2) shall be the gross receipts (other than gross receipts which would not be foreign trading gross receipts had they been received by the FSC) derived by