

(ii) On December 31, 1987, Corporation A distributes a 10u dividend to Corporation M and a 90u dividend to Corporation Z. At the time of the distribution, Corporation A has 50u of post-1986 undistributed earnings and 150u of current earnings and profits. Thus, 50u of the dividend distribution (5u to Corporation M and 45u to Corporation Z) is a dividend out of post-1986 undistributed earnings. The remaining 50u is a dividend out of current earnings and profits under section 316(a)(2), but Corporation M is not deemed to have paid any additional foreign income taxes paid by Corporation A with respect to that 50u dividend out of current earnings and profits. See § 1.902-1(b)(4). Note that even if there were no current earnings and profits in Corporation A, the remaining 50u of the 100u distribution cannot be deemed paid out of accumulated profits of a pre-1987 year because Corporation A has an accumulated deficit as of the end of 1986 that eliminated all pre-1987 accumulated profits. See paragraph (b)(2) of this section. Corporation A has \$120 of post-1986 foreign income taxes. Foreign taxes deemed paid by Corporation M under section 902 with respect to the 5u dividend out of post-1986 undistributed earnings are \$12 ($\$120 \times 10\% [5u/50u]$). Corporation M includes this amount in gross income as a dividend under section 78. Both the foreign taxes deemed paid and the deemed dividend are subject to a separate limitation for dividends from noncontrolled section 902 Corporation A. As of January 1, 1988, Corporation A has (50u) in its post-1986 undistributed earnings (50u - 100u) and -0- in its post-1986 foreign income taxes, \$120 reduced by \$120 of foreign taxes that would have been deemed paid had section 902 applied to the entire dividend out of post-1986 undistributed earnings ($\$120 \times 100\% [50u/50u]$).

(iii) On December 31, 1989, Corporation A distributes a 10u dividend to Corporation M and a 90u dividend to Corporation Z. Although the distribution is considered a dividend in its entirety out of 1989 earnings and profits pursuant to section 316(a)(2), post-1986 undistributed earnings are (100u). Accordingly, for purposes of section 902, no portion of the dividend is deemed to be out of post-1986 undistributed earnings, and Corporation M is deemed to have paid no post-1986 foreign income taxes. See § 1.902-1(b)(4). Corporation A's post-1986 undistributed earnings as of January 1, 1990, are (200u) ((100u) - 100u). Corporation A's post-1986 foreign income taxes are not reduced because no taxes were deemed paid.

(iv) On December 31, 1990, Corporation A distributes a 5u dividend to Corporation M and a 45u dividend to Corporation Z. At that time Corporation A has 50u of post-1986 undistributed earnings, and \$150 of post-1986 foreign income taxes. Foreign taxes deemed paid by Corporation M under section 902 with respect to the 5u dividend are \$15 ($\$150 \times 10\% [5u/50u]$). Post-1986 undistributed earnings as of January 1, 1991, are -0- (50u - 50u). Post-1986 foreign income taxes as of January 1, 1991, also are -0-, \$150 reduced by \$150 ($\$150 \times 100\% [50u/50u]$) of foreign income taxes that would have been deemed paid had section 902 applied to the entire dividend of 50u.

Par. 4. Newly designated § 1.902-3 is amended by revising the section heading, paragraph (a) introductory text, and paragraph (l) to read as follows:

§ 1.902-3 Credit for domestic corporate shareholder of a foreign corporation for foreign income taxes paid with respect to accumulated profits of taxable years of the foreign corporation beginning before January 1, 1987.

(a) *Definitions.* For purposes of section 902 and §§ 1.902-3 through 1.902-4—

* * * * *

(l) *Effective date.* Except as provided in § 1.902-4, this section applies to any distribution received from a first-tier corporation by its domestic shareholder after December 31, 1964, and before the beginning of the foreign corporation's first taxable year beginning after December 31, 1986. If, however, the first day on which the ownership requirements of section 902(c)(3)(B) and § 1.902-1(a) (1) through (4) are met with respect to the foreign corporation is in a taxable year of the foreign corporation beginning after December 31, 1986, then this § 1.902-3 shall apply to all taxable years beginning after December 31, 1964, and before the year in which the ownership requirements are first met. See § 1.902-1(a)(13)(iii). For corresponding rules applicable to distributions received by the domestic shareholder prior to January 1, 1965, see § 1.902-5 as contained in the 26 CFR part 1 edition revised as of April 1, 1976.

Margaret Milner Richardson,

Commissioner of Internal Revenue

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 138, NY20-1-6729b; FRL-5124-6]

Approval and Promulgation of Implementation Plans; State of New York; Clean Fuel Fleet Opt Out

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of New York related to the requirement that the State submit either the Clean Fuel Fleet program (CFFP) or a substitute program that meets the requirements of the Clean Air Act. The State has submitted such

a substitute measure for a portion of the required program. In the final rules section of this **Federal Register**, EPA is partially approving and partially disapproving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before February 6, 1995.

ADDRESSES: All comments should be addressed to:

William S. Baker, Chief, Air Programs Branch, Air and Waste Management Division, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the State submittal are available at the following address for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Library, 26 Federal Plaza, room 402, New York, New York 10278.

New York Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Environmental Engineer, Technical Evaluation Section, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, Room 1034A, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: November 21, 1994.

William J. Muszynski, P.E.

Acting Regional Administrator.

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