

provisions, see sections 5(b) of Pub. L. 89-572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.]

EFFECTIVE DATE OF 1960 AMENDMENT

Section 523(b) of Pub. L. 86-707, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Paragraphs (1) and (2) of section 912 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a) of this section, shall apply only with respect to amounts received on or after the date of the enactment of this Act [Sept. 6, 1960] in taxable years ending on or after such date."

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 201(a) of Pub. L. 87-293, cited as a credit to this section, was repealed by Pub. L. 89-572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89-572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Function of determining the portion of living allowances constituting basic compensation for Peace Corps volunteers or volunteer leaders under par. (3) of this section delegated by President to Director of Peace Corps to be performed in consultation with the Secretary of the Treasury, see section 1-104 of Ex. Ord. No. 12137, May 16, 1979, 44 F.R. 29023, set out as a note under section 2501 of Title 22, Foreign Relations and Intercourse.

Authority of President under par. (2) of this section delegated to Secretary of Defense with respect to military departments, and to Secretary of the Treasury with respect to Coast Guard, concerning civilian employees of nonappropriated fund instrumentalities of the armed forces, see section 201 of Ex. Ord. No. 11137, Jan. 7, 1964, set out as a note under section 5921 of Title 5, Government Organization and Employees.

TREATMENT OF EMPLOYEES OF PANAMA CANAL COMMISSION AND DEPARTMENT OF DEFENSE

Pub. L. 99-514, title XII, § 1232(b), Oct. 22, 1986, 100 Stat. 2564, provided that: "Employees of the Panama Canal Commission and civilian employees of the Defense Department of the United States stationed in Panama may exclude from gross income allowances which are comparable to the allowances excludable under section 912(1) of the Internal Revenue Code of 1986 by employees of the State Department of the United States stationed in Panama. The preceding sentence shall apply to taxable years beginning after December 31, 1986."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6011 of this title; title 22 section 3310.

[§ 913. Repealed. Pub. L. 97-34, title I, § 112(a), Aug. 13, 1981, 95 Stat. 194]

Section, added Pub. L. 95-615, title II, § 203(a), Nov. 8, 1978, 92 Stat. 3100; amended Pub. L. 96-222, title I, § 108(a)(1)(B), (F), Apr. 1, 1980, 94 Stat. 223, 225; Pub. L. 96-608, § 1(a), Dec. 28, 1980, 94 Stat. 3550, related to a deduction for certain expenses of living abroad.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L.

97-34, set out as an Effective Date of 1981 Amendment note under section 911 of this title.

SUBPART C—TAXATION OF FOREIGN SALES CORPORATIONS

Sec.	
921.	Exempt foreign trade income excluded from gross income.
922.	FSC defined.
923.	Exempt foreign trade income.
924.	Foreign trading gross receipts.
925.	Transfer pricing rules.
926.	Distributions to shareholders.
927.	Other definitions and special rules.

§ 921. Exempt foreign trade income excluded from gross income

(a) Exclusion

Exempt foreign trade income of a FSC shall be treated as foreign source income which is not effectively connected with the conduct of a trade or business within the United States.

(b) Proportionate allocation of deductions to exempt foreign trade income

Any deductions of the FSC properly apportioned and allocated to the foreign trade income derived by a FSC from any transaction shall be allocated between—

- (1) the exempt foreign trade income derived from such transaction, and
- (2) the foreign trade income (other than exempt foreign trade income) derived from such transaction, on a proportionate basis.

(c) Denial of credits

Notwithstanding any other provision of this chapter, no credit (other than a credit allowable under section 27(a), 33, or 34) shall be allowed under this chapter to any FSC.

(d) Foreign trade income, investment income, and carrying charges treated as effectively connected with United States business

For purposes of this chapter—

- (1) all foreign trade income of a FSC other than—
 - (A) exempt foreign trade income, and
 - (B) section 923(a)(2) non-exempt income,
- (2) all interest, dividends, royalties, and other investment income received or accrued by a FSC, and
- (3) all carrying charges received or accrued by a FSC,

shall be treated as income effectively connected with a trade or business conducted through a permanent establishment of such corporation within the United States. Income described in paragraph (1) shall be treated as derived from sources within the United States.

(Added Pub. L. 98-369, div. A, title VIII, § 801(a), July 18, 1984, 98 Stat. 985.)

PRIOR PROVISIONS

A prior section 921, acts Aug. 16, 1954, ch. 736, 68A Stat. 290; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1901(a)(116), 90 Stat. 1784, defined Western Hemisphere trade corporation, prior to repeal by Pub. L. 94-455, title X, § 1052(b), Oct. 4, 1976, 90 Stat. 1648, effective with respect to taxable years beginning after Dec. 31, 1979.

EFFECTIVE DATE

Section 805(a) of title VIII of div. A of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, title XVIII, § 1876(i),

(o), (p)(4), Oct. 22, 1986, 100 Stat. 2095, 2900–2902, provided that:

“(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this title [enacting this section and sections 922 to 927 of this title, amending sections 245, 246, 274, 275, 441, 901, 904, 906, 934, 936, 951, 956, 992, 993, 995, 996, 999, 1248, 6011, 6072, 6501, 6686, and 7651 of this title, and enacting provisions set out as notes under this section and section 991 of this title] shall apply to transactions after December 31, 1984, in taxable years ending after such date.

“(2) SPECIAL RULE FOR CERTAIN CONTRACTS.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, any event or activity required to occur or required to be performed, before January 1, 1985, by section 924(c) or (d) or 925(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be treated as meeting the requirements of such section if such event or activity is with respect to—

“(A) any lease of more than 3 years duration which was entered into before January 1, 1985,

“(B) any contract with respect to which the taxpayer uses the completed contract method of accounting which was entered into before January 1, 1985, or

“(C) in the case of any contract other than a lease or contract described in subparagraph (A) or (B), any contract which was entered into before January 1, 1985; except that this subparagraph shall only apply to the first 3 taxable years of the FSC ending after January 1, 1985, or such later taxable years as the Secretary of the Treasury or his delegate may prescribe.

“(3) SECTION 801(d)(10).—The amendment made by section 801(d)(10) [amending section 996 of this title] shall apply to distributions on or after June 22, 1984.

“(4) SECTION 803.—The amendments made by section 803 [amending section 441 of this title] shall apply to taxable years beginning after December 31, 1984.”

QUADRENNIAL REPORTS TO CONGRESS

Section 804(a) of title VIII of div. A of Pub. L. 98–369, as amended by Pub. L. 100–647, title VI, § 6252(b)(2)(A), Nov. 10, 1988, 102 Stat. 3753, provided that: “The Secretary of the Treasury shall, during 1990 and each fourth calendar year thereafter, submit a report to the Congress (using the most recent information available) setting forth an analysis of the operation and effect of the provisions of this title [see Effective Date note above for classification].”

[Section 6252(b)(2)(B) of Pub. L. 100–647 provided that: “The amendment made by subparagraph [sic] (A) [amending section 804(a) of Pub. L. 98–369, set out above] shall take effect as if included in the amendments made by section 804(a) of the Tax Reform Act of 1984 [Pub. L. 98–369, set out above].”]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 56, 884, 925, 927, 952 of this title.

§ 922. FSC defined

(a) FSC defined

For purposes of this title, the term “FSC” means any corporation—

(1) which—

(A) was created or organized—

(i) under the laws of any foreign country which meets the requirements of section 927(e)(3), or

(ii) under the laws applicable to any possession of the United States,

(B) has no more than 25 shareholders at any time during the taxable year,

(C) does not have any preferred stock outstanding at any time during the taxable year,

(D) during the taxable year—

(i) maintains an office located outside the United States in a foreign country which meets the requirements of section 927(e)(3) or in any possession of the United States,

(ii) maintains a set of the permanent books of account (including invoices) of such corporation at such office, and

(iii) maintains at a location within the United States the records which such corporation is required to keep under section 6001,

(E) at all times during the taxable year, has a board of directors which includes at least one individual who is not a resident of the United States, and

(F) is not a member, at any time during the taxable year, of any controlled group of corporations of which a DISC is a member, and

(2) which has made an election (at the time and in the manner provided in section 927(f)(1)) which is in effect for the taxable year to be treated as a FSC.

(b) Small FSC defined

For purposes of this title, a FSC is a small FSC with respect to any taxable year if—

(1) such corporation has made an election (at the time and in the manner provided in section 927(f)(1)) which is in effect for the taxable year to be treated as a small FSC, and

(2) such corporation is not a member, at any time during the taxable year, of a controlled group of corporations which includes a FSC unless such other FSC has also made an election under paragraph (1) which is in effect for such year.

(Added Pub. L. 98–369, div. A, title VIII, § 801(a), July 18, 1984, 98 Stat. 986.)

PRIOR PROVISIONS

A prior section 922, acts Aug. 16, 1954, ch. 736, 68A Stat. 291; Dec. 10, 1971, Pub. L. 92–178, title V, § 502(c), 85 Stat. 550; Oct. 4, 1976, Pub. L. 94–455, title X, § 1052(a), (c)(1), 90 Stat. 1647, 1648; Nov. 6, 1978, Pub. L. 95–600, title III, § 301(b)(15), 92 Stat. 2822, related to a special deduction for a Western Hemisphere trade corporation, prior to repeal by Pub. L. 94–455, title X, § 1052(b), Oct. 4, 1976, 90 Stat. 1648, effective with respect to taxable years beginning after Dec. 31, 1979.

EFFECTIVE DATE

Section applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, set out as a note under section 921 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 927 of this title.

§ 923. Exempt foreign trade income

(a) Exempt foreign trade income

For purposes of this subpart—

(1) In general

The term “exempt foreign trade income” means the aggregate amount of all foreign trade income of a FSC for the taxable year which is described in paragraph (2) or (3).

(2) Income determined without regard to administrative pricing rules

In the case of any transaction to which paragraph (3) does not apply, 32 percent of the foreign trade income derived from such transaction shall be treated as described in this paragraph. For purposes of the preceding sentence, foreign trade income shall not include any income properly allocable to excluded property described in subparagraph (B) of section 927(a)(2) (relating to intangibles).

(3) Income determined with regard to administrative pricing rules

In the case of any transaction with respect to which paragraph (1) or (2) of section 925(a) (or the corresponding provisions of the regulations prescribed under section 925(b)) applies, 16/23 of the foreign trade income derived from such transaction shall be treated as described in this paragraph.

(4) Special rule for foreign trade income allocable to a cooperative**(A) In general**

In any case in which a qualified cooperative is a shareholder of a FSC, paragraph (3) shall be applied with respect to that portion of the foreign trade income of such FSC for any taxable year which is properly allocable to the marketing of agricultural or horticultural products (or the providing of related services) by such cooperative by substituting "100 percent" for "16/23".

(B) Paragraph only to apply to amounts FSC distributes

Subparagraph (A) shall not apply for any taxable year unless the FSC distributes to the qualified cooperative the amount which (but for such subparagraph) would not be treated as exempt foreign trade income. Any distribution under this subparagraph for any taxable year—

(i) shall be made before the due date for filing the return of tax for such taxable year, but

(ii) shall be treated as made on the last day of such taxable year.

(5) Special rule for military property

Under regulations prescribed by the Secretary, that portion of the foreign trading gross receipts of the FSC for the taxable year attributable to the disposition of, or services relating to, military property (within the meaning of section 995(b)(3)(B)) which may be treated as exempt foreign trade income shall equal 50 percent of the amount which (but for this paragraph) would be treated as exempt foreign trade income.

(6) Cross reference

For reduction in amount of exempt foreign trade income, see section 291(a)(4).

(b) Foreign trade income defined

For purposes of this subpart, the term "foreign trade income" means the gross income of a FSC attributable to foreign trading gross receipts.

(Added Pub. L. 98-369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 986; amended Pub. L.

99-514, title XVIII, §1876(b)(3), Oct. 22, 1986, 100 Stat. 2898.)

AMENDMENTS

1986—Subsec. (a)(6). Pub. L. 99-514 added par. (6).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as a note under section 921 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 245, 275, 291, 901, 904, 906, 921, 927, 951, 1248 of this title.

§ 924. Foreign trading gross receipts**(a) In general**

Except as otherwise provided in this section, for purposes of this subpart, the term "foreign trading gross receipts" means the gross receipts of any FSC which are—

(1) from the sale, exchange, or other disposition of export property,

(2) from the lease or rental of export property for use by the lessee outside the United States,

(3) for services which are related and subsidiary to—

(A) any sale, exchange, or other disposition of export property by such corporation, or

(B) any lease or rental of export property described in paragraph (2) by such corporation,

(4) for engineering or architectural services for construction projects located (or proposed for location) outside the United States, or

(5) for the performance of managerial services for an unrelated FSC or DISC in furtherance of the production of foreign trading gross receipts described in paragraph (1), (2), or (3).

Paragraph (5) shall not apply to a FSC for any taxable year unless at least 50 percent of its gross receipts for such taxable year is derived from activities described in paragraph (1), (2), or (3).

(b) Foreign management and foreign economic process requirements**(1) In general**

Except as provided in paragraph (2)—

(A) a FSC shall be treated as having foreign trading gross receipts for the taxable

year only if the management of such corporation during such taxable year takes place outside the United States as required by subsection (c), and

(B) a FSC has foreign trading gross receipts from any transaction only if economic processes with respect to such transaction take place outside the United States as required by subsection (d).

(2) Exception for small FSC

(A) In general

Paragraph (1) shall not apply with respect to any small FSC.

(B) Limitation on amount of foreign trading gross receipts of small FSC taken into account

(i) In general

Any foreign trading gross receipts of a small FSC for the taxable year which exceed \$5,000,000 shall not be taken into account in determining the exempt foreign trade income of such corporation and shall not be taken into account under any other provision of this subpart.

(ii) Allocation of limitation

If the foreign trading gross receipts of a small FSC exceed the limitation of clause (i), the corporation may allocate such limitation among such gross receipts in such manner as it may select (at such time and in such manner as may be prescribed in regulations).

(iii) Receipts of controlled group aggregated

For purposes of applying clauses (i) and (ii), all small FSC's which are members of the same controlled group of corporations shall be treated as a single corporation.

(iv) Allocation of limitation among members of controlled group

The limitation under clause (i) shall be allocated among the foreign trading gross receipts of small FSC's which are members of the same controlled group of corporations in a manner provided in regulations prescribed by the Secretary.

(c) Requirement that FSC be managed outside the United States

The management of a FSC meets the requirements of this subsection for the taxable year if—

(1) all meetings of the board of directors of the corporation, and all meetings of the shareholders of the corporation, are outside the United States,

(2) the principal bank account of the corporation is maintained in a foreign country which meets the requirements of section 927(e)(3) or in a possession of the United States at all times during the taxable year, and

(3) all dividends, legal and accounting fees, and salaries of officers and members of the board of directors of the corporation disbursed during the taxable year are disbursed out of bank accounts of the corporation maintained outside the United States.

(d) Requirement that economic processes take place outside the United States

(1) In general

The requirements of this subsection are met with respect to the gross receipts of a FSC derived from any transaction if—

(A) such corporation (or any person acting under a contract with such corporation) has participated outside the United States in the solicitation (other than advertising), the negotiation, or the making of the contract relating to such transaction, and

(B) the foreign direct costs incurred by the FSC attributable to the transaction equal or exceed 50 percent of the total direct costs attributable to the transaction.

(2) Alternative 85-percent test

A corporation shall be treated as satisfying the requirements of paragraph (1)(B) with respect to any transaction if, with respect to each of at least 2 paragraphs of subsection (e), the foreign direct costs incurred by such corporation attributable to activities described in such paragraph equal or exceed 85 percent of the total direct costs attributable to activities described in such paragraph.

(3) Definitions

For purposes of this subsection—

(A) Total direct costs

The term “total direct costs” means, with respect to any transaction, the total direct costs incurred by the FSC attributable to activities described in subsection (e) performed at any location by the FSC or any person acting under a contract with such FSC.

(B) Foreign direct costs

The term “foreign direct costs” means, with respect to any transaction, the portion of the total direct costs which are attributable to activities performed outside the United States.

(4) Rules for commissions, etc.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (e) in the case of commissions, rentals, and furnishing of services.

(e) Activities relating to disposition of export property

The activities referred to in subsection (d) are—

(1) advertising and sales promotion,

(2) the processing of customer orders and the arranging for delivery of the export property,

(3) transportation from the time of acquisition by the FSC (or, in the case of a commission relationship, from the beginning of such relationship for such transaction) to the delivery to the customer,

(4) the determination and transmittal of a final invoice or statement of account and the receipt of payment, and

(5) the assumption of credit risk.

(f) Certain receipts not included in foreign trading gross receipts**(1) Certain receipts excluded on basis of use; subsidized receipts and receipts from related parties excluded**

The term “foreign trading gross receipts” shall not include receipts of a FSC from a transaction if—

- (A) the export property or services—
- (i) are for ultimate use in the United States, or
 - (ii) are for use by the United States or any instrumentality thereof and such use of export property or services is required by law or regulation,

(B) such transaction is accomplished by a subsidy granted by the United States or any instrumentality thereof, or

(C) such receipts are from another FSC which is a member of the same controlled group of corporations of which such corporation is a member.

In the case of gross receipts of a FSC from a transaction involving any property, subparagraph (C) shall not apply if such FSC (and all other FSC's which are members of the same controlled group and which receive gross receipts from a transaction involving such property) do not use the pricing rules under paragraph (1) of section 925(a) (or the corresponding provisions of the regulations prescribed under section 925(b)) with respect to any transaction involving such property.

(2) Investment income; carrying charges

The term “foreign trading gross receipts” shall not include any investment income or carrying charges.

(Added Pub. L. 98-369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 987; amended Pub. L. 99-514, title XVIII, §1876(e)(2), (l), Oct. 22, 1986, 100 Stat. 2899, 2901.)

AMENDMENTS

1986—Subsec. (c)(2). Pub. L. 99-514, §1876(e)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “the principal bank account of the corporation is maintained outside the United States at all times during the taxable year, and”.

Subsec. (f)(1). Pub. L. 99-514, §1876(l), inserted at end “In the case of gross receipts of a FSC from a transaction involving any property, subparagraph (C) shall not apply if such FSC (and all other FSC's which are members of the same controlled group and which receive gross receipts from a transaction involving such property) do not use the pricing rules under paragraph (1) of section 925(a) (or the corresponding provisions of the regulations prescribed under section 925(b)) with respect to any transaction involving such property.”

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1876(e)(2) of Pub. L. 99-514 provided that the amendment made by that section is effective for periods after Mar. 28, 1985.

Amendment by section 1876(l) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, with a special

rule for application of subsecs. (c) and (d) for certain contracts, see section 805(a)(1) and (2) of Pub. L. 98-369, set out as a note under section 921 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 925, 927 of this title.

§ 925. Transfer pricing rules**(a) In general**

In the case of a sale of export property to a FSC by a person described in section 482, the taxable income of such FSC and such person shall be based upon a transfer price which would allow such FSC to derive taxable income attributable to such sale (regardless of the sales price actually charged) in an amount which does not exceed the greatest of—

- (1) 1.83 percent of the foreign trading gross receipts derived from the sale of such property by such FSC,
- (2) 23 percent of the combined taxable income of such FSC and such person which is attributable to the foreign trading gross receipts derived from the sale of such property by such FSC, or
- (3) taxable income based upon the sale price actually charged (but subject to the rules provided in section 482).

Paragraphs (1) and (2) shall apply only if the FSC meets the requirements of subsection (c) with respect to the sale.

(b) Rules for commissions, rentals, and marginal costing

The Secretary shall prescribe regulations setting forth—

- (1) rules which are consistent with the rules set forth in subsection (a) for the application of this section in the case of commissions, rentals, and other income, and
- (2) rules for the allocation of expenditures in computing combined taxable income under subsection (a)(2) in those cases where a FSC is seeking to establish or maintain a market for export property.

(c) Requirements for use of administrative pricing rules

A sale by a FSC meets the requirements of this subsection if—

- (1) all of the activities described in section 924(e) attributable to such sale, and
- (2) all of the activities relating to the solicitation (other than advertising), negotiation, and making of the contract for such sale,

have been performed by such FSC (or by another person acting under a contract with such FSC).

(d) Limitation on gross receipts pricing rule

The amount determined under subsection (a)(1) with respect to any transaction shall not

exceed 2 times the amount which would be determined under subsection (a)(2) with respect to such transaction.

(e) Taxable income

For purposes of this section, the taxable income of a FSC shall be determined without regard to section 921.

(f) Special rule for cooperatives

In any case in which a qualified cooperative sells export property to a FSC, in computing the combined taxable income of such FSC and such organization for purposes of subsection (a)(2), there shall not be taken into account any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

(Added Pub. L. 98-369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 990.)

EFFECTIVE DATE

Section applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as a note under section 921 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 923, 924, 927 of this title.

§ 926. Distributions to shareholders

(a) Distributions made first out of foreign trade income

For purposes of this title, any distribution to a shareholder of a FSC by such FSC which is made out of earnings and profits shall be treated as made—

- (1) first, out of earnings and profits attributable to foreign trade income, to the extent thereof, and
- (2) then, out of any other earnings and profits.

(b) Distributions by FSC to nonresident aliens and foreign corporations treated as United States connected

For purposes of this title, any distribution by a FSC which is made out of earnings and profits attributable to foreign trade income to any shareholder of such corporation which is a foreign corporation or a nonresident alien individual shall be treated as a distribution—

- (1) which is effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States, and
- (2) of income which is derived from sources within the United States.

(c) FSC includes former FSC

For purposes of this section, the term “FSC” includes a former FSC.

(Added Pub. L. 98-369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 991.)

EFFECTIVE DATE

Section applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as a note under section 921 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 884 of this title.

§ 927. Other definitions and special rules

(a) Export property

For purposes of this subpart—

(1) In general

The term “export property” means property—

- (A) manufactured, produced, grown, or extracted in the United States by a person other than a FSC,
- (B) held primarily for sale, lease, or rental, in the ordinary course of trade or business, by, or to, a FSC, for direct use, consumption, or disposition outside the United States, and
- (C) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States.

For purposes of subparagraph (C), the fair market value of any article imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation.

(2) Excluded property

The term “export property” shall not include—

- (A) property leased or rented by a FSC for use by any member of a controlled group of corporations of which such FSC is a member,
- (B) patents, inventions, models, designs, formulas, or processes whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, and other than computer software (whether or not patented), for commercial or home use), good will, trademarks, trade brands, franchises, or other like property,
- (C) oil or gas (or any primary product thereof),
- (D) products the export of which is prohibited or curtailed to effectuate the policy set forth in paragraph (2)(C) of section 3 of the Export Administration Act of 1979 (relating to the protection of the domestic economy), or
- (E) any unprocessed timber which is a softwood.

For purposes of subparagraph (E), the term “unprocessed timber” means any log, cant, or similar form of timber.

(3) Property in short supply

If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, he may by Executive order designate the property as in short supply. Any property so designated shall not be treated as export property during the period beginning with the date specified in the Executive order and ending with the date specified in an Executive order setting forth the President’s determination that the property is no longer in short supply.

(4) Qualified cooperative

The term “qualified cooperative” means any organization to which part I of subchapter T

applies which is engaged in the marketing of agricultural or horticultural products.

(b) Gross receipts

(1) In general

For purposes of this subpart, the term “gross receipts” means—

(A) the total receipts from the sale, lease, or rental of property held primarily for sale, lease, or rental in the ordinary course of trade or business, and

(B) gross income from all other sources.

(2) Gross receipts taken into account in case of commissions

In the case of commissions on the sale, lease, or rental of property, the amount taken into account for purposes of this subpart as gross receipts shall be the gross receipts on the sale, lease, or rental of the property on which such commissions arose.

(c) Investment income

For purposes of this subpart, the term “investment income” means—

(1) dividends,

(2) interest,

(3) royalties,

(4) annuities,

(5) rents (other than rents from the lease or rental of export property for use by the lessee outside of the United States),

(6) gains from the sale or exchange of stock or securities,

(7) gains from futures transactions in any commodity on, or subject to the rules of, a board of trade or commodity exchange (other than gains which arise out of a bona fide hedging transaction reasonably necessary to conduct the business of the FSC in the manner in which such business is customarily conducted by others),

(8) amounts includible in computing the taxable income of the corporation under part I of subchapter J, and

(9) gains from the sale or other disposition of any interest in an estate or trust.

(d) Other definitions

For purposes of this subpart—

(1) Carrying charges

The term “carrying charges” means—

(A) carrying charges, and

(B) under regulations prescribed by the Secretary, any amount in excess of the price for an immediate cash sale and any other unstated interest.

(2) Transaction

(A) In general

The term “transaction” means—

(i) any sale, exchange, or other disposition,

(ii) any lease or rental, and

(iii) any furnishing of services.

(B) Grouping of transactions

To the extent provided in regulations, any provision of this subpart which, but for this subparagraph, would be applied on a transaction-by-transaction basis may be applied by the taxpayer on the basis of groups of

transactions based on product lines or recognized industry or trade usage. Such regulations may permit different groupings for different purposes.

(3) United States defined

The term “United States” includes the Commonwealth of Puerto Rico.

(4) Controlled group of corporations

The term “controlled group of corporations” has the meaning given to such term by section 1563(a), except that—

(A) “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears therein, and

(B) section 1563(b) shall not apply.

(5) Possessions

The term “possession of the United States” means Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States.

(6) Section 923(a)(2) non-exempt income

The term “section 923(a)(2) non-exempt income” means any foreign trade income from a transaction with respect to which paragraph (1) or (2) of section 925(a) does not apply and which is not exempt foreign trade income. Such term shall not include any income which is effectively connected with the conduct of a trade or business within the United States (determined without regard to this subpart).

(e) Special rules

(1) Source rules for related persons

Under regulations, the income of a person described in section 482 from a transaction giving rise to foreign trading gross receipts of a FSC which is treated as from sources outside the United States shall not exceed the amount which would be treated as foreign source income earned by such person if the pricing rule under section 994 which corresponds to the rule used under section 925 with respect to such transaction applied to such transaction.

(2) Participation in international boycotts, etc.

Under regulations prescribed by the Secretary, the exempt foreign trade income of a FSC for any taxable year shall be limited under rules similar to the rules of clauses (ii) and (iii) of section 995(b)(1)(F).

(3) Exchange of information requirements

For purposes of this title, the term “FSC” shall not include any corporation which was created or organized under the laws of any foreign country unless there is in effect between such country and the United States—

(A) a bilateral or multilateral agreement described in section 274(h)(6)(C) (determined by treating any reference to a beneficiary country as being a reference to any foreign country and by applying such section without regard to clause (ii) thereof), or

(B) an income tax treaty which contains an exchange of information program—

(i) which the Secretary certifies (and has not revoked such certification) is satisfactory in practice for purposes of this title, and

(ii) to which the FSC is subject.

(4) Disallowance of treaty benefits

Any corporation electing to be treated as a FSC under subsection (f)(1) may not claim any benefits under any income tax treaty between the United States and any foreign country.

(5) Coordination with possessions taxation

(A) Exemption

No tax shall be imposed by any possession of the United States on any foreign trade income derived before January 1, 1987. The preceding sentence shall not apply to any income attributable to the sale of property or the performance of services for ultimate use, consumption, or disposition within the possession.

(B) Clarification that possession may exempt certain income from tax

Nothing in any provision of law shall be construed as prohibiting any possession of the United States from exempting from tax any foreign trade income of a FSC or any other income of a FSC described in paragraph (2) or (3) of section 921(d).

(C) No cover over of taxes imposed on FSC

Nothing in any provision of law shall be construed as requiring any tax imposed by this title on a FSC to be covered over (or otherwise transferred) to any possession of the United States.

(f) Election of status as FSC (and as small FSC)

(1) Election

(A) Time for making

An election by a corporation under section 922(a)(2) to be treated as a FSC, and an election under section 922(b)(1) to be a small FSC, shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

(B) Manner of election

An election under subparagraph (A) shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on the first day of the first taxable year for which such election is effective consent to such election.

(2) Effect of election

If a corporation makes an election under paragraph (1), then the provisions of this subpart shall apply to such corporation for the taxable year of the corporation for which made and for all succeeding taxable years.

(3) Termination of election

(A) Revocation

An election under this subsection made by any corporation may be terminated by revocation of such election for any taxable year of the corporation after the first taxable year of the corporation for which the elec-

tion is effective. A termination under this paragraph shall be effective with respect to such election—

(i) for the taxable year in which made, if made at any time during the first 90 days of such taxable year, or

(ii) for the taxable year following the taxable year in which made, if made after the close of such 90 days, and

for all succeeding taxable years of the corporation. Such termination shall be made in such manner as the Secretary shall prescribe by regulations.

(B) Continued failure to be a FSC

If a corporation is not a FSC for each of any 5 consecutive taxable years of the corporation for which an election under this subsection is effective, the election to be a FSC shall be terminated and not be in effect for any taxable year of the corporation after such 5th year.

(g) Treatment of shared FSC's

(1) In general

Except as provided in paragraph (2), each separate account referred to in paragraph (3) maintained by a shared FSC shall be treated as a separate corporation for purposes of this subpart.

(2) Certain requirements applied at shared FSC level

Paragraph (1) shall not apply—

(A) for purposes of—

(i) subparagraphs (A), (B), (D), and (E) of section 922(a)(1),

(ii) paragraph (2) of section 922(a),

(iii) subsections (b), (c), and (e) of section 924, and

(iv) subsection (f) of this section, and

(B) for such other purposes as the Secretary may by regulations prescribe.

(3) Shared FSC

For purposes of this subsection, the term “shared FSC” means any corporation if—

(A) such corporation maintains a separate account for transactions with each shareholder (and persons related to such shareholder),

(B) distributions to each shareholder are based on the amounts in the separate account maintained with respect to such shareholder, and

(C) such corporation meets such other requirements as the Secretary may by regulations prescribe.

(Added Pub. L. 98-369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 991; amended Pub. L. 99-514, title XVIII, §1876(a)(1), (e)(1), (f)(1), (p)(5), Oct. 22, 1986, 100 Stat. 2897, 2899, 2902; Pub. L. 100-647, title I, §1012(bb)(8)(A), Nov. 10, 1988, 102 Stat. 3536; Pub. L. 101-508, title XI, §11704(a)(10), Nov. 5, 1990, 104 Stat. 1388-518; Pub. L. 103-66, title XIII, §13239(a), Aug. 10, 1993, 107 Stat. 509; Pub. L. 105-34, title XI, §1171(a), Aug. 5, 1997, 111 Stat. 987.)

REFERENCES IN TEXT

Paragraph (2)(C) of section 3 of the Export Administration Act of 1979, referred to in subsec. (a)(2)(D), is

classified to section 2402(2)(C) of Title 50, Appendix, War and National Defense.

AMENDMENTS

1997—Subsec. (a)(2)(B). Pub. L. 105-34 inserted “, and other than computer software (whether or not patented)” before “, for commercial or home use”.

1993—Subsec. (a)(2). Pub. L. 103-66 added subpar. (E) and concluding provisions.

1990—Subsec. (g)(2)(B). Pub. L. 101-508 substituted “prescribe” for “prescribed”.

1988—Subsec. (g). Pub. L. 100-647 added subsec. (g).

1986—Subsec. (d)(6). Pub. L. 99-514, §1876(a)(1), inserted at end “Such term shall not include any income which is effectively connected with the conduct of a trade or business within the United States (determined without regard to this subpart).”

Subsec. (e)(2). Pub. L. 99-514, §1876(p)(5), substituted “clauses (ii) and (iii)” for “clauses (i) and (ii)”.

Subsec. (e)(3). Pub. L. 99-514, §1876(e)(1), in introductory provisions, substituted “unless there is” for “unless, at the same time such corporation was created or organized, there was”, in subpar. (A), inserted “(determined by treating any reference to a beneficiary country as being a reference to any foreign country and by applying such section without regard to clause (ii) thereof)”, and amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “an income tax treaty with respect to which the Secretary certifies that the exchange of information program with such country under such treaty carries out the purposes of this paragraph.”

Subsec. (e)(5). Pub. L. 99-514, §1276(f)(1), amended par. (5) generally. Prior to amendment, par. (5), exemption from certain other taxes, read as follows: “No tax shall be imposed by any jurisdiction described in subsection (d)(5) on any foreign trade income derived before January 1, 1987.”

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1171(b) of Pub. L. 105-34 provided that: “The amendment made by subsection (a) [amending this section] shall apply to gross receipts attributable to periods after December 31, 1997, in taxable years ending after such date.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to sales, exchanges, or other dispositions after Aug. 10, 1993, see section 13239(e) of Pub. L. 103-66, set out as a note under section 865 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(bb)(8)(B) of Pub. L. 100-647 provided that: “The amendment made by subparagraph (A) [amending this section] shall apply as if included in the provision of the Tax Reform Act of 1984 [Pub. L. 98-369] to which it relates.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as a note under section 921 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan

amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 56, 245, 901, 904, 922, 923, 924, 951, 1248 of this title.

SUBPART D—POSSESSIONS OF THE UNITED STATES

- | | |
|--------------|---|
| Sec.
931. | Income from sources within Guam, American Samoa, or the Northern Mariana Islands. |
| 932. | Coordination of United States and Virgin Islands income taxes. |
| 933. | Income from sources within Puerto Rico. |
| 934. | Limitation on reduction in income tax liability incurred to the Virgin Islands. |
| | [934A, 935. Repealed.] |
| 936. | Puerto Rico and possession tax credit. ¹ |

AMENDMENTS

1986—Pub. L. 99-514, title XII, §§1272(d)(12), 1274(d), 1275(c)(8), Oct. 22, 1986, 100 Stat. 2595, 2598, 2599, substituted “Guam, American Samoa, or the Northern Mariana Islands” for “possessions of the United States” in item 931, added item 932, and struck out former item 932 “Citizens of possessions of the United States”, item 934A “Income tax rate on Virgin Islands source income” and item 935 “Coordination of United States and Guam individual income taxes”.

1983—Pub. L. 97-455, §1(d)(1), Jan. 12, 1983, 96 Stat. 2498, added item 934A.

1972—Pub. L. 92-606, §1(f)(5), Oct. 31, 1972, 86 Stat. 1497, added item 935.

1960—Pub. L. 86-779, §4(a)(2), Sept. 14, 1960, 74 Stat. 999, added item 934.

§ 931. Income from sources within Guam, American Samoa, or the Northern Mariana Islands

(a) General rule

In the case of an individual who is a bona fide resident of a specified possession during the entire taxable year, gross income shall not include—

- (1) income derived from sources within any specified possession, and
- (2) income effectively connected with the conduct of a trade or business by such individual within any specified possession.

(b) Deductions, etc. allocable to excluded amounts not allowable

An individual shall not be allowed—

- (1) as a deduction from gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or
- (2) any credit,

properly allocable or chargeable against amounts excluded from gross income under this section.

(c) Specified possession

For purposes of this section, the term “specified possession” means Guam, American Samoa, and the Northern Mariana Islands.

(d) Special rules

For purposes of this section—

(1) Employees of the United States

Amounts paid for services performed as an employee of the United States (or any agency

¹ Editorially supplied. Section 936 added by Pub. L. 94-455 without corresponding amendment of subpart analysis.