

**(b) Export trade income**

For the purposes of this subpart, the term “export trade income” means net income from—

- (1) the sale to an unrelated person for use, consumption, or disposition outside the United States of export property (as defined in subsection (e)), or from commissions, fees, compensation, or other income from the performance of commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services in respect to such sales or in respect of the installation or maintenance of such export property;
- (2) commissions, fees, compensation, or other income from commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services performed in connection with the use by an unrelated person outside the United States of patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, and other like property acquired or developed and owned by the manufacturer, producer, grower, or extractor of export property in respect of which the export trade corporation earns export trade income under paragraph (1);
- (3) commissions, fees, rentals, or other compensation or income attributable to the use of export property by an unrelated person or attributable to the use of export property in the rendition of technical, scientific, or engineering services to an unrelated person; and
- (4) interest from export trade assets described in subsection (c)(4).

For purposes of paragraph (3), if a controlled foreign corporation receives income from an unrelated person attributable to the use of export property in the rendition of services to such unrelated person together with income attributable to the rendition of other services to such unrelated person, including personal services, the amount of such aggregate income which shall be considered to be attributable to the use of the export property shall (if such amount cannot be established by reference to transactions between unrelated persons) be that part of such aggregate income which the cost of the export property consumed in the rendition of such services (including a reasonable allowance for depreciation) bears to the total cost and expenses attributable to such aggregate income.

**(c) Export trade assets**

For purposes of this subpart, the term “export trade assets” means—

- (1) working capital reasonably necessary for the production of export trade income,
- (2) inventory of export property held for use, consumption, or disposition outside the United States,
- (3) facilities located outside the United States for the storage, handling, transportation, packaging, or servicing of export property, and
- (4) evidences of indebtedness executed by persons, other than related persons, in connection with payment for purchases of export property for use, consumption, or disposition outside the United States, or in connection with the payment for services described in subsections (b)(2) and (3).

**(d) Export promotion expenses**

For purposes of this subpart, the term “export promotion expenses” means the following expenses paid or incurred in the receipt or production of export trade income—

- (1) a reasonable allowance for salaries or other compensation for personal services actually rendered for such purpose,
- (2) rentals or other payments for the use of property actually used for such purpose,
- (3) a reasonable allowance for the exhaustion, wear and tear, or obsolescence of property actually used for such purpose, and
- (4) any other ordinary and necessary expenses of the corporation to the extent reasonably allocable to the receipt or production of export trade income.

No expense incurred within the United States shall be treated as an export promotion expense within the meaning of the preceding sentence, unless at least 90 percent of each category of expenses described in such sentence is incurred outside the United States.

**(e) Export property**

For purposes of this subpart, the term “export property” means any property or any interest in property manufactured, produced, grown, or extracted in the United States.

**(f) Unrelated person**

For purposes of this subpart, the term “unrelated person” means a person other than a related person as defined in section 954(d)(3).

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1029; amended Pub. L. 92-178, title V, §505(c), Dec. 10, 1971, 85 Stat. 553.)

## AMENDMENTS

1971—Subsec. (a)(3). Pub. L. 92-178 added par. (3).

## TREATMENT OF CERTAIN FORMER EXPORT TRADE CORPORATIONS

Pub. L. 99-514, title XVIII, §1876(m), Oct. 22, 1986, 100 Stat. 2901, provided that: “If—

“(1) a corporation which is not an export trading corporation for its most recent taxable year ending before the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984] but was an export trading corporation for any prior taxable year, and

“(2)(A) such corporation may not qualify as an export trade corporation for any taxable year beginning after December 31, 1984, by reason of section 971(a)(3) of the Internal Revenue Code of 1954 [now 1986], or (B) such corporation makes an election, before the date 6 months after the date of the enactment of this Act [Oct. 22, 1986], not to be treated as an export trade corporation with respect to taxable years beginning after December 31, 1984,

rules similar to the rules of paragraphs (2) and (4) of section 805(b) of the Tax Reform Act of 1984 [set out as a note under section 991 of this title] shall apply to such corporation. For purposes of the preceding sentence, the term ‘export trade corporation’ has the meaning given such term by section 971 of such Code.”

**[§ 972. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(120), Oct. 4, 1976, 90 Stat. 1784]**

Section, Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1031, related to the consolidation of a group of export trade corporations for treatment as a single controlled foreign corporation for tax purposes.

## [SUBPART H—REPEALED]

**[§ 981. Repealed. Pub. L. 94-455, title X, § 1012(b)(2), Oct. 4, 1976, 90 Stat. 1614]**

Section, Pub. L. 89-809, title I, §105(e)(1), Nov. 13, 1966, 80 Stat. 1565, related to income of certain nonresident United States citizens subject to foreign community property laws.

## SUBPART I—ADMISSIBILITY OF DOCUMENTATION MAINTAINED IN FOREIGN COUNTRIES

Sec.  
982. Admissibility of documentation maintained in foreign countries.

## AMENDMENTS

1982—Pub. L. 97-248, title III, §337(a), Sept. 3, 1982, 96 Stat. 629, added subpart I and item 982.

**§ 982. Admissibility of documentation maintained in foreign countries****(a) General rule**

If the taxpayer fails to substantially comply with any formal document request arising out of the examination of the tax treatment of any item (hereinafter in this section referred to as the “examined item”) before the 90th day after the date of the mailing of such request on motion by the Secretary, any court having jurisdiction of a civil proceeding in which the tax treatment of the examined item is an issue shall prohibit the introduction by the taxpayer of any foreign-based documentation covered by such request.

**(b) Reasonable cause exception****(1) In general**

Subsection (a) shall not apply with respect to any documentation if the taxpayer establishes that the failure to provide the documentation as requested by the Secretary is due to reasonable cause.

**(2) Foreign nondisclosure law not reasonable cause**

For purposes of paragraph (1), the fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the requested documentation is not reasonable cause.

**(c) Formal document request**

For purposes of this section—

**(1) Formal document request**

The term “formal document request” means any request (made after the normal request procedures have failed to produce the requested documentation) for the production of foreign-based documentation which is mailed by registered or certified mail to the taxpayer at his last known address and which sets forth—

(A) the time and place for the production of the documentation,

(B) a statement of the reason the documentation previously produced (if any) is not sufficient,

(C) a description of the documentation being sought, and

(D) the consequences to the taxpayer of the failure to produce the documentation described in subparagraph (C).

**(2) Proceeding to quash****(A) In general**

Notwithstanding any other law or rule of law, any person to whom a formal document request is mailed shall have the right to begin a proceeding to quash such request not later than the 90th day after the day such request was mailed. In any such proceeding, the Secretary may seek to compel compliance with such request.

**(B) Jurisdiction**

The United States district court for the district in which the person (to whom the formal document request is mailed) resides or is found shall have jurisdiction to hear any proceeding brought under subparagraph (A). An order denying the petition shall be deemed a final order which may be appealed.

**(C) Suspension of 90-day period**

The running of the 90-day period referred to in subsection (a) shall be suspended during any period during which a proceeding brought under subparagraph (A) is pending.

**(d) Definitions and special rules**

For purposes of this section—

**(1) Foreign-based documentation**

The term “foreign-based documentation” means any documentation which is outside the United States and which may be relevant or material to the tax treatment of the examined item.

**(2) Documentation**

The term “documentation” includes books and records.

**(3) Authority to extend 90-day period**

The Secretary, and any court having jurisdiction over a proceeding under subsection (c)(2), may extend the 90-day period referred to in subsection (a).

**(e) Suspension of statute of limitations**

If any person takes any action as provided in subsection (c)(2), the running of any period of limitations under section 6501 (relating to the assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which the proceeding under such subsection, and appeals therein, are pending.

(Added Pub. L. 97-248, title III, §337(a), Sept. 3, 1982, 96 Stat. 629; amended Pub. L. 98-369, div. A, title VII, §714(k), July 18, 1984, 98 Stat. 963.)

## AMENDMENTS

1984—Subsec. (d)(3), (4). Pub. L. 98-369 redesignated par. (4) as (3) and struck out former par. (3) which provided that an item was to be treated as foreign connected if directly or indirectly from a source outside the United States, or the item (in whole or in part) purported to arise outside the United States, or was otherwise dependent on transactions occurring outside the United States.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Respon-