

[SUBPART H—REPEALED]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 Repealed.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-

sibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE

Pub. L. 97-248, title III, §337(c), Sept. 3, 1982, 96 Stat. 630, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting this section] shall apply with respect to formal document requests (as defined in section 982(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by this section) mailed after the date of the enactment of this Act [Sept. 3, 1982]."

SUBPART J—FOREIGN CURRENCY TRANSACTIONS

- Sec. 985. Functional currency.
- 986. Determination of foreign taxes and foreign corporation's earnings and profits.
- 987. Branch transactions.
- 988. Treatment of certain foreign currency transactions.
- 989. Other definitions and special rules.

AMENDMENTS

1988—Pub. L. 100-647, title I, §1012(v)(1)(C), Nov. 10, 1988, 102 Stat. 3529, added item 986 and struck out former item 986 "Determination of foreign corporation's earnings and profits and foreign taxes".

§ 985. Functional currency

(a) In general

Unless otherwise provided in regulations, all determinations under this subtitle shall be made in the taxpayer's functional currency.

(b) Functional currency

(1) In general

For purposes of this subtitle, the term "functional currency" means—

(A) except as provided in subparagraph (B), the dollar, or

(B) in the case of a qualified business unit, the currency of the economic environment in which a significant part of such unit's activities are conducted and which is used by such unit in keeping its books and records.

(2) Functional currency where activities primarily conducted in dollars

The functional currency of any qualified business unit shall be the dollar if activities of such unit are primarily conducted in dollars.

(3) Election

To the extent provided in regulations, the taxpayer may elect to use the dollar as the functional currency for any qualified business unit if—

(A) such unit keeps its books and records in dollars, or

(B) the taxpayer uses a method of accounting that approximates a separate transactions method.

Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(4) Change in functional currency treated as a change in method of accounting

Any change in the functional currency shall be treated as a change in the taxpayer's meth-

od of accounting for purposes of section 481 under procedures to be established by the Secretary.

(Added Pub. L. 99-514, title XII, §1261(a), Oct. 22, 1986, 100 Stat. 2585.)

EFFECTIVE DATE

Pub. L. 99-514, title XII, §1261(e), Oct. 22, 1986, 100 Stat. 2591, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this subpart and amending sections 1092 and 1256 of this title] shall apply to taxable years beginning after December 31, 1986.

"(2) SPECIAL RULES FOR PURPOSES OF SECTIONS 902 AND 960.—For purposes of applying sections 902 and 960 of the Internal Revenue Code of 1986, the amendments made by this section shall apply to—

"(A) earnings and profits of the foreign corporation for taxable years beginning after December 31, 1986, and

"(B) foreign taxes paid or accrued by the foreign corporation with respect to such earnings and profits."

§ 986. Determination of foreign taxes and foreign corporation's earnings and profits

(a) Foreign income taxes

(1) Translation of accrued taxes

(A) In general

For purposes of determining the amount of the foreign tax credit, in the case of a taxpayer who takes foreign income taxes into account when accrued, the amount of any foreign income taxes (and any adjustment thereto) shall be translated into dollars by using the average exchange rate for the taxable year to which such taxes relate.

(B) Exception for certain taxes

Subparagraph (A) shall not apply to any foreign income taxes—

(i) paid after the date 2 years after the close of the taxable year to which such taxes relate, or

(ii) paid before the beginning of the taxable year to which such taxes relate.

(C) Exception for inflationary currencies

Subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any inflationary currency (as determined under regulations).

(D) Elective exception for taxes paid other than in functional currency

(i) In general

At the election of the taxpayer, subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any currency other than in the taxpayer's functional currency.

(ii) Application to qualified business units

An election under this subparagraph may apply to foreign income taxes attributable to a qualified business unit in accordance with regulations prescribed by the Secretary.

(iii) Election

Any such election shall apply to the taxable year for which made and all subse-