

“, and” at end of subpar. (D), and struck out subpar. (E) which read as follows: “such corporation is not a member of any controlled group of which a FSC is a member.”

1996—Subsec. (d)(3). Pub. L. 104-188 struck out “or 593” after “section 581”.

1984—Subsec. (a)(1)(E). Pub. L. 98-369 added subpar. (E).

1982—Subsec. (d)(7). Pub. L. 97-354 substituted “an S corporation” for “an electing small business corporation (as defined in section 1371(b))”.

1976—Subsecs. (a)(2), (b)(1), (3), (c)(2)(B). Pub. L. 94-455 struck out “or his delegate” after “Secretary” whenever appearing.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104-188, set out as a note under section 593 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, as amended, set out as a note under section 245 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

### § 993. Definitions

#### (a) Qualified export receipts

##### (1) General rule

For purposes of this part, except as provided by regulations under paragraph (2), the qualified export receipts of a corporation are—

(A) gross receipts from the sale, exchange, or other disposition of export property,

(B) gross receipts from the lease or rental of export property, which is used by the lessee of such property outside the United States,

(C) gross receipts for services which are related and subsidiary to any qualified sale, exchange, lease, rental, or other disposition of export property by such corporation,

(D) gross receipts from the sale, exchange, or other disposition of qualified export assets (other than export property),

(E) dividends (or amounts includible in gross income under section 951) with respect to stock of a related foreign export corporation (as defined in subsection (e)),

(F) interest on any obligation which is a qualified export asset,

(G) gross receipts for engineering or architectural services for construction projects located (or proposed for location) outside the United States, and

(H) gross receipts for the performance of managerial services in furtherance of the production of other qualified export receipts of a DISC.

##### (2) Excluded receipts

The Secretary may under regulations designate receipts from the sale, exchange, lease, rental, or other disposition of export property, and from services, as not being receipts de-

scribed in paragraph (1) if he determines that such sale, exchange, lease, rental, or other disposition, or furnishing of services—

(A) is for ultimate use in the United States;

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

(C) is for use by the United States or any instrumentality thereof where the use of such export property or services is required by law or regulation.

For purposes of this part, the term “qualified export receipts” does not include receipts from a corporation which is a DISC for its taxable year in which the receipts arise and which is a member of a controlled group (as defined in paragraph (3)) which includes the recipient corporation.

#### (3) Definition of controlled group

For purposes of this part, the term “controlled group” has the meaning assigned to the term “controlled group of corporations” by section 1563(a), except that the phrase “more than 50 percent” shall be substituted for the phrase “at least 80 percent” each place it appears therein, and section 1563(b) shall not apply.

#### (b) Qualified export assets

For purposes of this part, the qualified export assets of a corporation are—

(1) export property (as defined in subsection (c));

(2) assets used primarily in connection with the sale, lease, rental, storage, handling, transportation, packaging, assembly, or servicing of export property, or the performance of engineering or architectural services described in subparagraph (G) of subsection (a)(1) or managerial services in furtherance of the production of qualified export receipts described in subparagraphs (A), (B), (C), and (G) of subsection (a)(1);

(3) accounts receivable and evidences of indebtedness which arise by reason of transactions of such corporation or of another corporation which is a DISC and which is a member of a controlled group which includes such corporation described in subparagraph (A), (B), (C), (D), (G), or (H), of subsection (a)(1);

(4) money, bank deposits, and other similar temporary investments, which are reasonably necessary to meet the working capital requirements of such corporation;

(5) obligations arising in connection with a producer’s loan (as defined in subsection (d));

(6) stock or securities of a related foreign export corporation (as defined in subsection (e));

(7) obligations issued, guaranteed, or insured, in whole or in part, by the Export-Import Bank of the United States or the Foreign Credit Insurance Association in those cases where such obligations are acquired from such Bank or Association or from the seller or purchaser of the goods or services with respect to which such obligations arose;

(8) obligations issued by a domestic corporation organized solely for the purpose of financing sales of export property pursuant to an

agreement with the Export-Import Bank of the United States under which such corporation makes export loans guaranteed by such bank; and

(9) amounts (other than reasonable working capital) on deposit in the United States that are utilized during the period provided for in, and otherwise in accordance with, regulations prescribed by the Secretary to acquire other qualified export assets.

**(c) Export property**

**(1) In general**

For purposes of this part, the term “export property” means property—

(A) manufactured, produced, grown, or extracted in the United States by a person other than a DISC,

(B) held primarily for sale, lease, or rental, in the ordinary course of trade or business, by, or to, a DISC, 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.

In applying 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**

For purposes of this part, the term “export property” does not include—

(A) property leased or rented by a DISC for use by any member of a controlled group (as defined in subsection (a)(3)) which includes the DISC,

(B) patents, inventions, models, designs, formulas, or processes, whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, for commercial or home use), goodwill, trademarks, trade brands, franchises, or other like property,

(C) products of a character with respect to which a deduction for depletion is allowable (including oil, gas, coal, or uranium products) under section 613 or 613A,

(D) products the export of which is prohibited or curtailed under section 7(a) of the Export Administration Act of 1979 to effectuate the policy set forth in paragraph (2)(C) of section 3 of such Act (relating to the protection of the domestic economy), or

(E) any unprocessed timber which is a softwood.

Subparagraph (C) shall not apply to any commodity or product at least 50 percent of the fair market value of which is attributable to manufacturing or processing, except that subparagraph (C) shall apply to any primary product from oil, gas, coal, or uranium. For purposes of the preceding sentence, the term “processing” does not include extracting or handling, packing, packaging, grading, storing, or transporting. 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 be treated as property not described in paragraph (1) 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.

**(d) Producer’s loans**

**(1) In general**

An obligation, subject to the rules provided in paragraphs (2) and (3), shall be treated as arising out of a producer’s loan if—

(A) the loan, when added to the unpaid balance of all other producer’s loans made by the DISC, does not exceed the accumulated DISC income at the beginning of the month in which the loan is made;

(B) the obligation is evidenced by a note (or other evidence of indebtedness) with a stated maturity date not more than 5 years from the date of the loan;

(C) the loan is made to a person engaged in the United States in the manufacturing, production, growing, or extraction of export property determined without regard to subparagraph (C) or (D) of subsection (c)(2), (referred to hereinafter as the “borrower”); and

(D) at the time of such loan it is designated as a producer’s loan.

**(2) Limitation**

An obligation shall be treated as arising out of a producer’s loan only to the extent that such loan, when added to the unpaid balance of all other producer’s loans to the borrower outstanding at the time such loan is made, does not exceed an amount determined by multiplying the sum of—

(A) the amount of the borrower’s adjusted basis determined at the beginning of the borrower’s taxable year in which the loan is made, in plant, machinery, and equipment, and supporting production facilities in the United States;

(B) the amount of the borrower’s property held primarily for sale, lease, or rental, to customers in the ordinary course of trade or business, at the beginning of such taxable year; and

(C) the aggregate amount of the borrower’s research and experimental expenditures (within the meaning of section 174) in the United States during all preceding taxable years beginning after December 31, 1971,

by the percentage which the borrower’s receipts, during the 3 taxable years immediately preceding the taxable year (but not including any taxable year commencing prior to 1972) in which the loan is made, from the sale, lease, or rental outside the United States of property which would be export property (determined

without regard to subparagraph (C) or (D) of subsection (c)(2)) if held by a DISC is of the gross receipts during such 3 taxable years from the sale, lease, or rental of property held by such borrower primarily for sale, lease, or rental to customers in the ordinary course of the trade or business of such borrower.

**(3) Increased investment requirement**

An obligation shall be treated as arising out of a producer's loan in a taxable year only to the extent that such loan, when added to the unpaid balance of all other producer's loans to the borrower made during such taxable year, does not exceed an amount equal to—

(A) the amount by which the sum of the adjusted basis of assets described in paragraph (2)(A) and (B) on the last day of the taxable year in which the loan is made exceeds the sum of the adjusted basis of such assets on the first day of such taxable year; plus

(B) the aggregate amount of the borrower's research and experimental expenditures (within the meaning of section 174) in the United States during such taxable year.

**(4) Special limitation in the case of domestic film maker**

**(A) In general**

In the case of a borrower who is a domestic film maker and who incurs an obligation to a DISC for the making of a film, and such DISC is engaged in the trade or business of selling, leasing, or renting films which are export property, the limitation described in paragraph (2) may be determined (to the extent provided under regulations prescribed by the Secretary) on the basis of—

(i) the sum of the amounts described in subparagraphs (A), (B), and (C) thereof plus reasonable estimates of all such amounts to be incurred at any time by the borrower with respect to films which are commenced within the taxable year in which the loan is made, and

(ii) the percentage which, based on the experience of producers of similar films, the annual receipts of such producers from the sale, lease, or rental of such films outside the United States is of the annual gross receipts of such producers from the sale, lease, or rental of such films.

**(B) Domestic film maker**

For purposes of this paragraph, a borrower is a domestic film maker with respect to a film if—

(i) such borrower is a United States person within the meaning of section 7701(a)(30), except that with respect to a partnership, all of the partners must be United States persons, and with respect to a corporation, all of its officers and at least a majority of its directors must be United States persons;

(ii) such borrower is engaged in the trade or business of making the film with respect to which the loan is made;

(iii) the studio, if any, used or to be used for the taking of photographs and the recording of sound incorporated into such film is located in the United States;

(iv) the aggregate playing time of portions of such film photographed outside the United States does not or will not exceed 20 percent of the playing time of such film; and

(v) not less than 80 percent of the total amount paid or to be paid for services performed in the making of such film is paid or to be paid to persons who are United States persons at the time such services are performed or consists of amounts which are fully taxable by the United States.

**(C) Special rules for application of subparagraph (B)(v)**

For purposes of clause (v) of subparagraph (B)—

(i) there shall not be taken into account any amount which is contingent upon receipts or profits of the film and which is fully taxable by the United States (within the meaning of clause (ii)); and

(ii) any amount paid or to be paid to a United States person, to a non-resident alien individual, or to a corporation which furnishes the services of an officer or employee to the borrower with respect to the making of a film, shall be treated as fully taxable by the United States only if the total amount received by such person, individual, officer, or employee for services performed in the making of such film is fully included in gross income for purposes of this chapter.

**(e) Related foreign export corporation**

In determining whether a corporation (hereinafter in this subsection referred to as "the domestic corporation") is a DISC—

**(1) Foreign international sales corporation**

A foreign corporation is a related foreign export corporation if—

(A) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned directly by the domestic corporation,

(B) 95 percent or more of such foreign corporation's gross receipts for its taxable year ending with or within the taxable year of the domestic corporation consists of qualified export receipts described in subparagraphs (A), (B), (C), and (D) of subsection (a)(1) and interest on any obligation described in paragraphs (3) and (4) of subsection (b), and

(C) the adjusted basis of the qualified export assets (described in paragraphs (1), (2), (3), and (4) of subsection (b)) held by such foreign corporation at the close of such taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets held by it at the close of such taxable year.

**(2) Real property holding company**

A foreign corporation is a related foreign export corporation if—

(A) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned directly by the domestic corporation, and

(B) its exclusive function is to hold real property for the exclusive use (under a lease or otherwise) of the domestic corporation.

**(3) Associated foreign corporation**

A foreign corporation is a related foreign export corporation if—

(A) less than 10 percent of the total combined voting power of all classes of stock entitled to vote of such foreign corporation is owned (within the meaning of section 1563 (d) and (e)) by the domestic corporation or by a controlled group of corporations (within the meaning of section 1563) of which the domestic corporation is a member, and

(B) the ownership of stock or securities in such foreign corporation by the domestic corporation is determined (under regulations prescribed by the Secretary) to be reasonably in furtherance of a transaction or transactions giving rise to qualified export receipts of the domestic corporation.

**(f) Gross receipts**

For purposes of this part, the term “gross receipts” means 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 gross income from all other sources. In the case of commissions on the sale, lease, or rental of property, the amount taken into account for purposes of this part as gross receipts shall be the gross receipts on the sale, lease, or rental of the property on which such commissions arose.

**(g) United States defined**

For purposes of this part, the term “United States” includes the Commonwealth of Puerto Rico and the possessions of the United States.

(Added Pub. L. 92-178, title V, §501, Dec. 10, 1971, 85 Stat. 538; amended Pub. L. 93-482, §3(a), Oct. 26, 1974, 88 Stat. 1456; Pub. L. 94-12, title VI, §603(a), Mar. 29, 1975, 89 Stat. 64; Pub. L. 94-455, title XI, §1101(b), (c), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1658, 1834; Pub. L. 96-39, title II, §202(c)(2), July 26, 1979, 93 Stat. 202; Pub. L. 96-72, §22(c), Sept. 29, 1979, 93 Stat. 535; Pub. L. 98-369, div. A, title VIII, §802(c)(2), July 18, 1984, 98 Stat. 999; Pub. L. 103-66, title XIII, §13239(b), Aug. 10, 1993, 107 Stat. 509.)

## REFERENCES IN TEXT

Sections 3(2)(C) and 7(a) of the Export Administration Act of 1979, referred to in subsec. (c)(2)(D), are classified, respectively, to sections 4602(2)(C) and 4606(a) of Title 50, War and National Defense.

## AMENDMENTS

1993—Subsec. (c)(2). Pub. L. 103-66, §13239(b)(2), inserted at end “For purposes of subparagraph (E), the term ‘unprocessed timber’ means any log, cant, or similar form of timber.”

Subsec. (c)(2)(E). Pub. L. 103-66, §13239(b)(1), added subpar. (E).

1984—Subsec. (a)(3). Pub. L. 98-369 substituted “the term ‘controlled group of corporations’ by” for “such term by”.

1979—Subsec. (c)(1). Pub. L. 96-39 substituted “of the Tariff Act of 1930 (19 U.S.C. 1401a)” for “402a of the Tariff Act of 1930 (19 U.S.C., sec. 1401a or 1402)”.

Subsec. (c)(2)(D). Pub. L. 96-72 substituted “7(a) of the Export Administration Act of 1979” for “4(b) of the Export Administration Act of 1969 (50 U.S.C. App. 2403(b))” and “paragraph (2)(C)” for “paragraph (2)(A)”.

1976—Subsecs. (a)(2), (b)(9). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (c). Pub. L. 94-455, §§1101(b), 1906(b)(13)(A), in par. (1) in provisions following subpar. (C), struck out “or his delegate” after “Secretary”, in par. (2)(B) “or” after “like property”, and in par. (2)(C), substituted “under section 613 or 613A” for “under section 611” after “uranium products”.

Subsec. (d)(1)(C). Pub. L. 94-455, §1101(c)(1), inserted “determined without regard to subparagraph (C) or (D) of subsection (c)(2)” after “export property”.

Subsec. (d)(2). Pub. L. 94-455, §1101(c)(2), inserted “(determined without regard to subparagraph (C) or (D) of subsection (c)(2))” after “would be export property”.

Subsecs. (d)(4)(A), (e)(3)(B). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1975—Subsec. (c)(2). Pub. L. 94-12 added subpars. (C) and (D) and provisions following subpar. (D).

1974—Subsec. (b)(3). Pub. L. 93-482 inserted “or of another corporation which is a DISC and which is a member of a controlled group which includes such corporation” after “such corporation”.

## 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 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, as amended, set out as a note under section 245 of this title.

## EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96-72 effective upon the expiration of the Export Administration Act of 1969, which terminated on Sept. 30, 1979, or upon any prior date which the Congress by concurrent resolution or the President by proclamation designated, see References in Text note set out under section 4621 of Title 50, War and National Defense.

Amendment by Pub. L. 96-39 effective Jan. 1, 1981, with provision for an earlier effective date under certain circumstances, see section 204 of Pub. L. 96-39, set out as a note under section 1401a of Title 19, Customs Duties.

## EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XI, §1101(g)(2), Oct. 4, 1976, 90 Stat. 1659, provided that: “The amendments made by subsection (b) [amending this section] shall apply to sales, exchanges, and other dispositions made after March 18, 1975, in taxable years ending after such date.”

Pub. L. 94-455, title XI, §1101(g)(3), Oct. 4, 1976, 90 Stat. 1659, provided that: “The amendments made by subsections (c) and (f) [amending this section] shall apply to taxable years ending after March 18, 1975.”

## EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94-12, title VI, §603(b), Mar. 29, 1975, 89 Stat. 65, as amended by Pub. L. 94-455, title XI, §1101(f), Oct. 4, 1976, 90 Stat. 1659; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall apply to sales, exchanges, and other dispositions made after March 18, 1975, in taxable years ending after such date.

“(2) BINDING CONTRACT.—The amendments made by subsection (a) [amending this section] shall not apply to sales, exchanges, and other dispositions made after March 18, 1975, but before March 19, 1980, if such sales, exchanges, and other dispositions are made pursuant to a fixed contract. The term ‘fixed contract’ means a contract which was, on March 18, 1975, and is at all times thereafter binding on the DISC or a taxpayer which was

a member of the same controlled group (within the meaning of section 993(a)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) as the DISC, which was entered into after the date on which the DISC qualified as a DISC and the DISC and the taxpayer became members of the same controlled group, and under which the price and quantity of the products sold, exchanged, or otherwise disposed of cannot be increased.”

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-482, §3(b), Oct. 26, 1974, 88 Stat. 1456, provided that: “The amendment made by subsection (a) [amending this section] applies to taxable years beginning after December 31, 1973. The amendment shall, at the election of the taxpayer made within 90 days after the date of enactment of this Act [Oct. 26, 1974], also apply to any taxable year beginning after December 31, 1971, and before January 1, 1974.”

**§ 994. Inter-company pricing rules**

**(a) In general**

In the case of a sale of export property to a DISC by a person described in section 482, the taxable income of such DISC and such person shall be based upon a transfer price which would allow such DISC 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) 4 percent of the qualified export receipts on the sale of such property by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts,
- (2) 50 percent of the combined taxable income of such DISC and such person which is attributable to the qualified export receipts on such property derived as the result of a sale by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts, or
- (3) taxable income based upon the sale price actually charged (but subject to the rules provided in section 482).

**(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 DISC is seeking to establish or maintain a market for export property.

**(c) Export promotion expenses**

For purposes of this section, the term “export promotion expenses” means those expenses incurred to advance the distribution or sale of export property for use, consumption, or distribution outside of the United States, but does not include income taxes. Such expenses shall also include freight expenses to the extent of 50 percent of the cost of shipping export property aboard airplanes owned and operated by United States persons or ships documented under the laws of the United States in those cases where law or regulations does not require that such property be shipped aboard such airplanes or ships.

(Added Pub. L. 92-178, title V, §501, Dec. 10, 1971, 85 Stat. 543; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

SUBPART B—TREATMENT OF DISTRIBUTIONS TO SHAREHOLDERS

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|------|---|
| Sec. |   |
| 995. | Taxation of DISC income to shareholders.                      |
| 996. | Rules for allocation in the case of distributions and losses. |
| 997. | Special subchapter C rules.                                   |

**§ 995. Taxation of DISC income to shareholders**

**(a) General rule**

A shareholder of a DISC or former DISC shall be subject to taxation on the earnings and profits of a DISC as provided in this chapter, but subject to the modifications of this subpart.

**(b) Deemed distributions**

**(1) Distributions in qualified years**

A shareholder of a DISC shall be treated as having received a distribution taxable as a dividend with respect to his stock in an amount which is equal to his pro rata share of the sum (or, if smaller, the earnings and profits for the taxable year) of—

(A) the gross interest derived during the taxable year from producer’s loans,

(B) the gain recognized by the DISC during the taxable year on the sale or exchange of property, other than property which in the hands of the DISC is a qualified export asset, previously transferred to it in a transaction in which gain was not recognized in whole or in part, but only to the extent that the transferor’s gain on the previous transfer was not recognized,

(C) the gain (other than the gain described in subparagraph (B)) recognized by the DISC during the taxable year on the sale or exchange of property (other than property which in the hands of the DISC is stock in trade or other property described in section 1221(a)(1)) previously transferred to it in a transaction in which gain was not recognized in whole or in part, but only to the extent that the transferor’s gain on the previous transfer was not recognized and would have been treated as ordinary income if the property has been sold or exchanged rather than transferred to the DISC,

(D) 50 percent of the taxable income of the DISC for the taxable year attributable to military property,

(E) the taxable income of the DISC attributable to qualified export receipts of the DISC for the taxable year which exceed \$10,000,000,

(F) the sum of—

- (i) in the case of a shareholder which is a C corporation, one-seventeenth of the excess of the taxable income of the DISC for the taxable year, before reduction for any distributions during the year, over the sum of the amounts deemed distributed for the taxable year under subparagraphs (A), (B), (C), (D), and (E),