

come and dividends attributable to sales of) products with respect to which an election under [former] section 936(h)(5)(F) of the 1986 Code is not in effect.

“(3) The qualified research and experimental expenditures taken into account for purposes of subsection (a) shall be adjusted to reflect the amount of such expenditures included in computing the cost-sharing amount (determined under [former] section 936(h)(5)(C)(i)(I) of the 1986 Code).

“(4) The Secretary of the Treasury or his delegate may prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations providing for the source of gross income and the allocation and apportionment of deductions to take into account the adjustments required by paragraph (3).

“(5) Paragraph (6) of section 864(e) of the 1986 Code shall not apply to qualified research and experimental expenditures.

“(e) YEARS TO WHICH SECTION APPLIES.—

“(1) IN GENERAL.—Except as provided in this subsection, this section shall apply to the taxpayer's 1st taxable year beginning after August 1, 1987.

“(2) REDUCTION IN AMOUNTS TO WHICH SECTION APPLIES.—Notwithstanding paragraph (1), this section shall only apply to that portion of the qualified research and experimental expenditures for the taxable year referred to in paragraph (1) which bears the same ratio to the total amount of such expenditures as—

“(A) the lesser of 4 months or the number of months in the taxable year, bears to

“(B) the number of months in the taxable year.”

#### 1-YEAR MODIFICATION IN REGULATIONS PROVIDING FOR ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES

Pub. L. 99-514, title XII, §1216, Oct. 22, 1986, 100 Stat. 2549, provided that:

“(a) GENERAL RULE.—For purposes of section 861(b), section 862(b), and section 863(b) of the Internal Revenue Code of 1954 [now 1986], notwithstanding section 864(e) of such Code—

“(1) 50 percent of all amounts allowable as a deduction for qualified research and experimental expenditures shall be apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States, and

“(2) the remaining portion of such amounts shall be apportioned on the basis of gross sales or gross income.

The preceding sentence shall not apply to any expenditures described in section 1.861-8(e)(3)(i)(B) of the Income Tax Regulations.

“(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified research and experimental expenditures’ means amounts—

“(A) which are research and experimental expenditures within the meaning of section 174 of such Code, and

“(B) which are attributable to activities conducted in the United States.

“(2) TREATMENT OF DEPRECIATION, ETC.—Rules similar to the rules of [former] section 174(c) of such Code shall apply.

“(c) EFFECTIVE DATE.—This section shall apply to taxable years beginning after August 1, 1986, and on or before August 1, 1987.”

#### ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

Pub. L. 98-369, div. A, title I, §126, July 18, 1984, 98 Stat. 648, as amended by Pub. L. 99-272, title XIII, §13211, Apr. 7, 1986, 100 Stat. 324; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) IN GENERAL.—For purposes of section 861(b), section 862(b), and section 863(b) of the Internal Revenue

Code of 1986 [formerly I.R.C. 1954], all amounts allowable as a deduction for qualified research and experimental expenditures shall be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States.

“(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified research and experimental expenditures’ means amounts—

“(A) which are research and experimental expenditures within the meaning of section 174 of such Code, and

“(B) which are attributable to activities conducted in the United States.

“(2) TREATMENT OF DEPRECIATION, ETC.—Rules similar to the rules of [former] subsection (c) of section 174 of such Code shall apply.

“(c) EFFECTIVE DATES.—

“(1) IN GENERAL.—This section shall apply to taxable years beginning after August 13, 1983, and on or before August 1, 1986.

“(2) SPECIAL RULE.—If the taxpayer's 4th taxable year beginning after August 13, 1981, is not described in paragraph (1), this section shall apply also to such 4th taxable year.”

#### CONFORMITY OF AMENDMENTS MADE BY FOREIGN INVESTORS TAX ACT OF 1966 WITH TREATY OBLIGATIONS OF THE UNITED STATES

Pub. L. 89-809, title I, §110, Nov. 13, 1966, 80 Stat. 1575, provided that: “No amendment made by this title [see Short Title note above] shall apply in any case where its application would be contrary to any treaty obligation of the United States. For purposes of the preceding sentence, the extension of a benefit provided by any amendment made by this title shall not be deemed to be contrary to a treaty obligation of the United States.”

### § 862. Income from sources without the United States

#### (a) Gross income from sources without United States

The following items of gross income shall be treated as income from sources without the United States:

(1) interest other than that derived from sources within the United States as provided in section 861(a)(1);

(2) dividends other than those derived from sources within the United States as provided in section 861(a)(2);

(3) compensation for labor or personal services performed without the United States;

(4) rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like properties;

(5) gains, profits, and income from the sale or exchange of real property located without the United States;

(6) gains, profits, and income derived from the purchase of inventory property (within the meaning of section 865(i)(1)) within the United States and its sale or exchange without the United States;

(7) underwriting income other than that derived from sources within the United States as provided in section 861(a)(7);

(8) gains, profits, and income from the disposition of a United States real property interest (as defined in section 897(c)) when the real property is located in the Virgin Islands; and

(9) amounts received, directly or indirectly, from a foreign person for the provision of a guarantee of indebtedness of such person other than amounts which are derived from sources within the United States as provided in section 861(a)(9).

**(b) Taxable income from sources without United States**

From the items of gross income specified in subsection (a) there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as taxable income from sources without the United States. In the case of an individual who does not itemize deductions, an amount equal to the standard deduction shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

(Aug. 16, 1954, ch. 736, 68A Stat. 276; Pub. L. 92-178, title III, §314(b), Dec. 10, 1971, 85 Stat. 528; Pub. L. 94-455, title X, §1036(b), title XIX, §1901(b)(26)(C), Oct. 4, 1976, 90 Stat. 1633, 1798; Pub. L. 95-30, title I, §102(b)(10), May 23, 1977, 91 Stat. 138; Pub. L. 97-34, title VIII, §831(a)(2), Aug. 13, 1981, 95 Stat. 352; Pub. L. 99-514, title I, §104(b)(12), title XII, §1211(b)(1)(C), Oct. 22, 1986, 100 Stat. 2105, 2536; Pub. L. 100-647, title I, §1012(e)(4), Nov. 10, 1988, 102 Stat. 3500; Pub. L. 101-239, title VII, §7811(i)(2), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 111-240, title II, §2122(b), Sept. 27, 2010, 124 Stat. 2568.)

**Editorial Notes**

**AMENDMENTS**

2010—Subsec. (a)(9). Pub. L. 111-240 added par. (9).  
1989—Subsec. (a)(6). Pub. L. 101-239 substituted “865(i)(1)” for “865(h)(1)”.

1988—Subsec. (c). Pub. L. 100-647 repealed subsec. (c) which read as follows:

“(c) CROSS REFERENCE.—For source of amounts attributable to certain aircraft and vessels, see section 861(e).”

1986—Subsec. (a)(6). Pub. L. 99-514, §1211(b)(1)(C), substituted “inventory property (within the meaning of section 865(h)(1))” for “personal property”.

Subsec. (b). Pub. L. 99-514, §104(b)(12), substituted “the standard deduction” for “the zero bracket amount”.

1981—Subsec. (a)(8). Pub. L. 97-34 added par. (8).

1977—Subsec. (b). Pub. L. 95-30 provided that, in the case of an individual who does not itemize deductions, an amount equal to the zero bracket amount shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

1976—Subsec. (a)(5), (6). Pub. L. 94-455, §1901(b)(26)(C), inserted “or exchange” after “sale”.

Subsec. (a)(7). Pub. L. 94-455, §1036(b), added par. (7).

1971—Subsec. (c). Pub. L. 92-178 added subsec. (c).

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by Pub. L. 111-240 applicable to guarantees issued after Sept. 27, 2010, see section 2122(d) of

Pub. L. 111-240, set out as a note under section 861 of this title.

**EFFECTIVE DATE OF 1989 AMENDMENT**

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by section 104(b)(12) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1211(b)(1)(C) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99-514, set out as an Effective Date note under section 865 of this title.

**EFFECTIVE DATE OF 1981 AMENDMENT**

Amendment by Pub. L. 97-34 applicable to dispositions after June 18, 1980, in taxable years ending after such date, see section 831(i) of Pub. L. 97-34, set out as a note under section 897 of this title.

**EFFECTIVE DATE OF 1977 AMENDMENT**

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by section 1036(b) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1976, see section 1036(c) of Pub. L. 94-455, set out as a note under section 861 of this title.

Amendment by section 1901(b)(26)(C) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

**EFFECTIVE DATE OF 1971 AMENDMENT**

Amendment by Pub. L. 92-178 applicable to taxable years ending after Aug. 15, 1971, but only with respect to leases entered into after such date, see section 314(c) of Pub. L. 92-178, set out as a note under section 861 of this title.

**APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES**

For nonapplication of amendment by section 1211(b)(1)(C) of Pub. L. 99-514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

**QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES; ALLOCATION AND APPORTIONMENT; DEFINITIONS; SPECIAL RULES; EFFECTIVE DATES**

For allocation and apportionment of qualified research and experimental expenditures for purposes of sections 861 to 863 of this title, see section 4009 of Pub.

L. 100-647, set out as a note under section 861 of this title.

**1-YEAR MODIFICATION IN REGULATIONS PROVIDING FOR ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES**

For rule governing allocation under subsec. (b) of this section of amounts allowable as a deduction for qualified research and experimental expenditures during taxable years beginning after Aug. 1, 1986, and on or before Aug. 1, 1987, see section 1216 of Pub. L. 99-514, set out as a note under section 861 of this title.

**ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES**

For purposes of subsec. (b) of this section, all amounts allowable as a deduction for qualified research and experimental expenditures are to be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States for taxable years beginning after Aug. 13, 1983, and on or before Aug. 1, 1986, see section 126 of Pub. L. 98-369, set out as a note under section 861 of this title.

**§ 863. Special rules for determining source**

**(a) Allocation under regulations**

Items of gross income, expenses, losses, and deductions, other than those specified in sections 861(a) and 862(a), shall be allocated or apportioned to sources within or without the United States, under regulations prescribed by the Secretary. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the taxable income therefrom) the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as taxable income from sources within the United States.

**(b) Income partly from within and partly from without the United States**

In the case of gross income derived from sources partly within and partly without the United States, the taxable income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income; and the portion of such taxable income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Secretary. Gains, profits, and income—

(1) from services rendered partly within and partly without the United States,

(2) from the sale or exchange of inventory property (within the meaning of section 865(i)(1)) produced (in whole or in part) by the taxpayer within and sold or exchanged without the United States, or produced (in whole or in part) by the taxpayer without and sold or exchanged within the United States, or

(3) derived from the purchase of inventory property (within the meaning of section 865(i)(1)) within a possession of the United States and its sale or exchange within the United States,

shall be treated as derived partly from sources within and partly from sources without the United States. Gains, profits, and income from the sale or exchange of inventory property described in paragraph (2) shall be allocated and apportioned between sources within and without the United States solely on the basis of the production activities with respect to the property.

**(c) Source rule for certain transportation income**

**(1) Transportation beginning and ending in the United States**

All transportation income attributable to transportation which begins and ends in the United States shall be treated as derived from sources within the United States.

**(2) Other transportation having United States connection**

**(A) In general**

50 percent of all transportation income attributable to transportation which—

- (i) is not described in paragraph (1), and
- (ii) begins or ends in the United States,

shall be treated as from sources in the United States.

**(B) Special rule for personal service income**

Subparagraph (A) shall not apply to any transportation income which is income derived from personal services performed by the taxpayer, unless such income is attributable to transportation which—

- (i) begins in the United States and ends in a possession of the United States, or
- (ii) begins in a possession of the United States and ends in the United States.

In the case of transportation income derived from, or in connection with, a vessel, this subparagraph shall only apply if the taxpayer is a citizen or resident alien.

**(3) Transportation income**

For purposes of this subsection, the term “transportation income” means any income derived from, or in connection with—

- (A) the use (or hiring or leasing for use) of a vessel or aircraft, or
- (B) the performance of services directly related to the use of a vessel or aircraft.

For purposes of the preceding sentence, the term “vessel or aircraft” includes any container used in connection with a vessel or aircraft.

**(d) Source rules for space and certain ocean activities**

**(1) In general**

Except as provided in regulations, any income derived from a space or ocean activity—

- (A) if derived by a United States person, shall be sourced in the United States, and
- (B) if derived by a person other than a United States person, shall be sourced outside the United States.

**(2) Space or ocean activity**

For purposes of paragraph (1)—

**(A) In general**

The term “space or ocean activity” means—