

***In the Senate of the United States,***

*November 1 (legislative day, September 22), 2000.*

*Resolved*, That the bill from the House of Representatives (H.R. 4986) entitled “An Act to amend the Internal Revenue Code of 1986 to repeal the provisions relating to foreign sales corporations (FSCs) and to exclude extraterritorial income from gross income.”, do pass with the following

**AMENDMENT:**

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2       (a) *SHORT TITLE.*—*This Act may be cited as the*  
3 *“FSC Repeal and Extraterritorial Income Exclusion Act*  
4 *of 2000”.*

1           (b) *AMENDMENT OF 1986 CODE.*—*Except as otherwise*  
2 *expressly provided, whenever in this Act an amendment or*  
3 *repeal is expressed in terms of an amendment to, or repeal*  
4 *of, a section or other provision, the reference shall be consid-*  
5 *ered to be made to a section or other provision of the Inter-*  
6 *nal Revenue Code of 1986.*

7 **SEC. 2. REPEAL OF FOREIGN SALES CORPORATION RULES.**

8           *Subpart C of part III of subchapter N of chapter 1*  
9 *(relating to taxation of foreign sales corporations) is hereby*  
10 *repealed.*

11 **SEC. 3. TREATMENT OF EXTRATERRITORIAL INCOME.**

12           (a) *IN GENERAL.*—*Part III of subchapter B of chapter*  
13 *1 (relating to items specifically excluded from gross income)*  
14 *is amended by inserting before section 115 the following new*  
15 *section:*

16 **“SEC. 114. EXTRATERRITORIAL INCOME.**

17           “(a) *EXCLUSION.*—*Gross income does not include*  
18 *extraterritorial income.*

19           “(b) *EXCEPTION.*—*Subsection (a) shall not apply to*  
20 *extraterritorial income which is not qualifying foreign*  
21 *trade income as determined under subpart E of part III*  
22 *of subchapter N.*

23           “(c) *DISALLOWANCE OF DEDUCTIONS.*—

24                   “(1) *IN GENERAL.*—*Any deduction of a taxpayer*  
25 *allocated under paragraph (2) to extraterritorial in-*

1       *come of the taxpayer excluded from gross income*  
2       *under subsection (a) shall not be allowed.*

3               “(2) *ALLOCATION.*—*Any deduction of the tax-*  
4       *payer properly apportioned and allocated to the*  
5       *extraterritorial income derived by the taxpayer from*  
6       *any transaction shall be allocated on a proportionate*  
7       *basis between—*

8                       “(A) *the extraterritorial income derived*  
9                       *from such transaction which is excluded from*  
10                      *gross income under subsection (a), and*

11                      “(B) *the extraterritorial income derived*  
12                      *from such transaction which is not so excluded.*

13               “(d) *DENIAL OF CREDITS FOR CERTAIN FOREIGN*  
14       *TAXES.*—*Notwithstanding any other provision of this chap-*  
15       *ter, no credit shall be allowed under this chapter for any*  
16       *income, war profits, and excess profits taxes paid or ac-*  
17       *crued to any foreign country or possession of the United*  
18       *States with respect to extraterritorial income which is ex-*  
19       *cluded from gross income under subsection (a).*

20               “(e) *EXTRATERRITORIAL INCOME.*—*For purposes of*  
21       *this section, the term ‘extraterritorial income’ means the*  
22       *gross income of the taxpayer attributable to foreign trading*  
23       *gross receipts (as defined in section 942) of the taxpayer.”.*

1           (b) *QUALIFYING FOREIGN TRADE INCOME.—Part III*  
 2 *of subchapter N of chapter 1 is amended by inserting after*  
 3 *subpart D the following new subpart:*

4           **“Subpart E—Qualifying Foreign Trade Income**

                  “Sec. 941. Qualifying foreign trade income.

                  “Sec. 942. Foreign trading gross receipts.

                  “Sec. 943. Other definitions and special rules.

5           **“SEC. 941. QUALIFYING FOREIGN TRADE INCOME.**

6           “(a) *QUALIFYING FOREIGN TRADE INCOME.—For pur-*  
 7 *poses of this subpart and section 114—*

8                   “(1) *IN GENERAL.—The term ‘qualifying foreign*  
 9 *trade income’ means, with respect to any transaction,*  
 10 *the amount of gross income which, if excluded, will*  
 11 *result in a reduction of the taxable income of the tax-*  
 12 *payer from such transaction equal to the greatest of—*

13                           “(A) *30 percent of the foreign sale and leas-*  
 14 *ing income derived by the taxpayer from such*  
 15 *transaction,*

16                           “(B) *1.2 percent of the foreign trading gross*  
 17 *receipts derived by the taxpayer from the trans-*  
 18 *action, or*

19                           “(C) *15 percent of the foreign trade income*  
 20 *derived by the taxpayer from the transaction.*

21           *In no event shall the amount determined under sub-*  
 22 *paragraph (B) exceed 200 percent of the amount de-*  
 23 *termined under subparagraph (C).*

1           “(2) *ALTERNATIVE COMPUTATION.*—A taxpayer  
2           may compute its qualifying foreign trade income  
3           under a subparagraph of paragraph (1) other than  
4           the subparagraph which results in the greatest  
5           amount of such income.

6           “(3) *LIMITATION ON USE OF FOREIGN TRADING*  
7           *GROSS RECEIPTS METHOD.*—If any person computes  
8           its qualifying foreign trade income from any trans-  
9           action with respect to any property under paragraph  
10          (1)(B), the qualifying foreign trade income of such  
11          person (or any related person) with respect to any  
12          other transaction involving such property shall be  
13          zero.

14          “(4) *RULES FOR MARGINAL COSTING.*—The Sec-  
15          retary shall prescribe regulations setting forth rules  
16          for the allocation of expenditures in computing for-  
17          eign trade income under paragraph (1)(C) in those  
18          cases where a taxpayer is seeking to establish or  
19          maintain a market for qualifying foreign trade prop-  
20          erty.

21          “(5) *PARTICIPATION IN INTERNATIONAL BOY-*  
22          *COTTS, ETC.*—Under regulations prescribed by the  
23          Secretary, the qualifying foreign trade income of a  
24          taxpayer for any taxable year shall be reduced (but  
25          not below zero) by the sum of—

1           “(A) an amount equal to such income mul-  
2           tplied by the international boycott factor deter-  
3           mined under section 999, and

4           “(B) any illegal bribe, kickback, or other  
5           payment (within the meaning of section 162(c))  
6           paid by or on behalf of the taxpayer directly or  
7           indirectly to an official, employee, or agent in  
8           fact of a government.

9           “(b) *FOREIGN TRADE INCOME*.—For purposes of this  
10          subpart—

11           “(1) *IN GENERAL*.—The term ‘foreign trade in-  
12           come’ means the taxable income of the taxpayer at-  
13           tributable to foreign trading gross receipts of the tax-  
14           payer.

15           “(2) *SPECIAL RULE FOR COOPERATIVES*.—In  
16           any case in which an organization to which part I  
17           of subchapter T applies which is engaged in the mar-  
18           keting of agricultural or horticultural products sells  
19           qualifying foreign trade property, in computing the  
20           taxable income of such cooperative, there shall not be  
21           taken into account any deduction allowable under  
22           subsection (b) or (c) of section 1382 (relating to pa-  
23           tronage dividends, per-unit retain allocations, and  
24           nonpatronage distributions).

1           “(c) *FOREIGN SALE AND LEASING INCOME.*—For pur-  
2 *poses of this section—*

3           “(1) *IN GENERAL.*—The term ‘foreign sale and  
4 *leasing income’ means, with respect to any*  
5 *transaction—*

6           “(A) *foreign trade income properly allocable*  
7 *to activities which—*

8           “(i) *are described in paragraph*  
9 *(2)(A)(i) or (3) of section 942(b), and*

10           “(ii) *are performed by the taxpayer (or*  
11 *any person acting under a contract with*  
12 *such taxpayer) outside the United States, or*

13           “(B) *foreign trade income derived by the*  
14 *taxpayer in connection with the lease or rental*  
15 *of qualifying foreign trade property for use by*  
16 *the lessee outside the United States.*

17           “(2) *SPECIAL RULES FOR LEASED PROPERTY.*—

18           “(A) *SALES INCOME.*—The term ‘foreign  
19 *sale and leasing income’ includes any foreign*  
20 *trade income derived by the taxpayer from the*  
21 *sale of property described in paragraph (1)(B).*

22           “(B) *LIMITATION IN CERTAIN CASES.*—*Ex-*  
23 *cept as provided in regulations, in the case of*  
24 *property which—*

1           “(i) was manufactured, produced,  
2           grown, or extracted by the taxpayer, or

3           “(ii) was acquired by the taxpayer  
4           from a related person for a price which was  
5           not determined in accordance with the rules  
6           of section 482,

7           the amount of foreign trade income which may  
8           be treated as foreign sale and leasing income  
9           under paragraph (1)(B) or subparagraph (A) of  
10          this paragraph with respect to any transaction  
11          involving such property shall not exceed the  
12          amount which would have been determined if the  
13          taxpayer had acquired such property for the  
14          price determined in accordance with the rules of  
15          section 482.

16          “(3) SPECIAL RULES.—

17                 “(A) EXCLUDED PROPERTY.—Foreign sale  
18                 and leasing income shall not include any income  
19                 properly allocable to excluded property described  
20                 in subparagraph (B) of section 943(a)(3) (relat-  
21                 ing to intangibles).

22                 “(B) ONLY DIRECT EXPENSES TAKEN INTO  
23                 ACCOUNT.—For purposes of this subsection, any  
24                 expense other than a directly allocable expense



1           *shall not be taken into account in computing for-*  
2           *foreign trade income.*

3 **“SEC. 942. FOREIGN TRADING GROSS RECEIPTS.**

4           “(a) *FOREIGN TRADING GROSS RECEIPTS.—*

5           “(1) *IN GENERAL.—Except as otherwise provided*  
6           *in this section, for purposes of this subpart, the term*  
7           *‘foreign trading gross receipts’ means the gross re-*  
8           *ceipts of the taxpayer which are—*

9                   “(A) *from the sale, exchange, or other dis-*  
10                  *position of qualifying foreign trade property,*

11                  “(B) *from the lease or rental of qualifying*  
12                  *foreign trade property for use by the lessee out-*  
13                  *side the United States,*

14                  “(C) *for services which are related and sub-*  
15                  *sidary to—*

16                          “(i) *any sale, exchange, or other dis-*  
17                          *position of qualifying foreign trade prop-*  
18                          *erty by such taxpayer, or*

19                          “(ii) *any lease or rental of qualifying*  
20                          *foreign trade property described in subpara-*  
21                          *graph (B) by such taxpayer,*

22                          “(D) *for engineering or architectural serv-*  
23                          *ices for construction projects located (or proposed*  
24                          *for location) outside the United States, or*

1           “(E) for the performance of managerial  
2           services for a person other than a related person  
3           in furtherance of the production of foreign trad-  
4           ing gross receipts described in subparagraph (A),  
5           (B), or (C).

6           Subparagraph (E) shall not apply to a taxpayer for  
7           any taxable year unless at least 50 percent of its for-  
8           eign trading gross receipts (determined without re-  
9           gard to this sentence) for such taxable year is derived  
10          from activities described in subparagraph (A), (B), or  
11          (C).

12          “(2) CERTAIN RECEIPTS EXCLUDED ON BASIS OF  
13          USE; SUBSIDIZED RECEIPTS EXCLUDED.—The term  
14          ‘foreign trading gross receipts’ shall not include re-  
15          ceipts of a taxpayer from a transaction if—

16                 “(A) the qualifying foreign trade property  
17                 or services—

18                         “(i) are for ultimate use in the United  
19                         States, or

20                         “(ii) are for use by the United States  
21                         or any instrumentality thereof and such use  
22                         of qualifying foreign trade property or serv-  
23                         ices is required by law or regulation, or

24                 “(B) such transaction is accomplished by a  
25                 subsidy granted by the government (or any in-

1           *strumentality thereof) of the country or posses-*  
2           *sion in which the property is manufactured, pro-*  
3           *duced, grown, or extracted.*

4           “(3) *ELECTION TO EXCLUDE CERTAIN RE-*  
5           *CEIPTS.—The term ‘foreign trading gross receipts’*  
6           *shall not include gross receipts of a taxpayer from a*  
7           *transaction if the taxpayer elects not to have such re-*  
8           *ceipts taken into account for purposes of this subpart.*

9           “(b) *FOREIGN ECONOMIC PROCESS REQUIREMENTS.—*

10           “(1) *IN GENERAL.—Except as provided in sub-*  
11           *section (c), a taxpayer shall be treated as having for-*  
12           *oreign trading gross receipts from any transaction only*  
13           *if economic processes with respect to such transaction*  
14           *take place outside the United States as required by*  
15           *paragraph (2).*

16           “(2) *REQUIREMENT.—*

17           “(A) *IN GENERAL.—The requirements of*  
18           *this paragraph are met with respect to the gross*  
19           *receipts of a taxpayer derived from any trans-*  
20           *action if—*

21                   “(i) *such taxpayer (or any person act-*  
22                   *ing under a contract with such taxpayer)*  
23                   *has participated outside the United States*  
24                   *in the solicitation (other than advertising),*

1           *the negotiation, or the making of the con-*  
2           *tract relating to such transaction, and*

3           “(ii) *the foreign direct costs incurred*  
4           *by the taxpayer attributable to the trans-*  
5           *action equal or exceed 50 percent of the*  
6           *total direct costs attributable to the trans-*  
7           *action.*

8           “(B) *ALTERNATIVE 85-PERCENT TEST.*—A  
9           *taxpayer shall be treated as satisfying the re-*  
10           *quirements of subparagraph (A)(ii) with respect*  
11           *to any transaction if, with respect to each of at*  
12           *least 2 subparagraphs of paragraph (3), the for-*  
13           *ign direct costs incurred by such taxpayer at-*  
14           *tributable to activities described in such sub-*  
15           *paragraph equal or exceed 85 percent of the total*  
16           *direct costs attributable to activities described in*  
17           *such subparagraph.*

18           “(C) *DEFINITIONS.*—For purposes of this  
19           *paragraph—*

20           “(i) *TOTAL DIRECT COSTS.*—The term  
21           *‘total direct costs’ means, with respect to*  
22           *any transaction, the total direct costs in-*  
23           *curring by the taxpayer attributable to ac-*  
24           *tivities described in paragraph (3) per-*  
25           *formed at any location by the taxpayer or*

1           *any person acting under a contract with*  
2           *such taxpayer.*

3           “(ii) *FOREIGN DIRECT COSTS.*—*The*  
4           *term ‘foreign direct costs’ means, with re-*  
5           *spect to any transaction, the portion of the*  
6           *total direct costs which are attributable to*  
7           *activities performed outside the United*  
8           *States.*

9           “(3) *ACTIVITIES RELATING TO QUALIFYING FOR-*  
10          *EIGN TRADE PROPERTY.*—*The activities described in*  
11          *this paragraph are any of the following with respect*  
12          *to qualifying foreign trade property—*

13                 “(A) *advertising and sales promotion,*

14                 “(B) *the processing of customer orders and*  
15                 *the arranging for delivery,*

16                 “(C) *transportation outside the United*  
17                 *States in connection with delivery to the cus-*  
18                 *tomers,*

19                 “(D) *the determination and transmittal of*  
20                 *a final invoice or statement of account or the re-*  
21                 *ceipt of payment, and*

22                 “(E) *the assumption of credit risk.*

23           “(4) *ECONOMIC PROCESSES PERFORMED BY RE-*  
24          *LATED PERSONS.*—*A taxpayer shall be treated as*  
25          *meeting the requirements of this subsection with re-*

1        *spect to any sales transaction involving any property*  
2        *if any related person has met such requirements in*  
3        *such transaction or any other sales transaction in-*  
4        *volving such property.*

5        *“(c) EXCEPTION FROM FOREIGN ECONOMIC PROCESS*  
6        *REQUIREMENT.—*

7                *“(1) IN GENERAL.—The requirements of sub-*  
8                *section (b) shall be treated as met for any taxable*  
9                *year if the foreign trading gross receipts of the tax-*  
10               *payer for such year do not exceed \$5,000,000.*

11               *“(2) RECEIPTS OF RELATED PERSONS AGGRE-*  
12               *GATED.—All related persons shall be treated as one*  
13               *person for purposes of paragraph (1), and the limita-*  
14               *tion under paragraph (1) shall be allocated among*  
15               *such persons in a manner provided in regulations*  
16               *prescribed by the Secretary.*

17               *“(3) SPECIAL RULE FOR PASS-THRU ENTITIES.—*  
18               *In the case of a partnership, S corporation, or other*  
19               *pass-thru entity, the limitation under paragraph (1)*  
20               *shall apply with respect to the partnership, S cor-*  
21               *poration, or entity and with respect to each partner,*  
22               *shareholder, or other owner.*

23        **“SEC. 943. OTHER DEFINITIONS AND SPECIAL RULES.**

24               *“(a) QUALIFYING FOREIGN TRADE PROPERTY.—For*  
25        *purposes of this subpart—*

1           “(1) *IN GENERAL.*—*The term ‘qualifying foreign*  
2 *trade property’ means property—*

3                   “(A) *manufactured, produced, grown, or ex-*  
4 *tracted within or outside the United States,*

5                   “(B) *held primarily for sale, lease, or rent-*  
6 *al, in the ordinary course of trade or business for*  
7 *direct use, consumption, or disposition outside*  
8 *the United States, and*

9                   “(C) *not more than 50 percent of the fair*  
10 *market value of which is attributable to—*

11                           “(i) *articles manufactured, produced,*  
12 *grown, or extracted outside the United*  
13 *States, and*

14                           “(ii) *direct costs for labor (determined*  
15 *under the principles of section 263A) per-*  
16 *formed outside the United States.*

17 *For purposes of subparagraph (C), the fair market*  
18 *value of any article imported into the United States*  
19 *shall be its appraised value, as determined by the Sec-*  
20 *retary under section 402 of the Tariff Act of 1930 (19*  
21 *U.S.C. 1401a) in connection with its importation,*  
22 *and the direct costs for labor under clause (ii) do not*  
23 *include costs that would be treated under the prin-*  
24 *ciples of section 263A as direct labor costs attrib-*  
25 *utable to articles described in clause (i).*

1           “(2) *U.S. TAXATION TO ENSURE CONSISTENT*  
2           *TREATMENT.—Property which (without regard to this*  
3           *paragraph) is qualifying foreign trade property and*  
4           *which is manufactured, produced, grown, or extracted*  
5           *outside the United States shall be treated as quali-*  
6           *fying foreign trade property only if it is manufac-*  
7           *tured, produced, grown, or extracted by—*

8                     “(A) *a domestic corporation,*

9                     “(B) *an individual who is a citizen or resi-*  
10            *dent of the United States,*

11                    “(C) *a foreign corporation with respect to*  
12            *which an election under subsection (e) (relating*  
13            *to foreign corporations electing to be subject to*  
14            *United States taxation) is in effect, or*

15                    “(D) *a partnership or other pass-thru enti-*  
16            *ty all of the partners or owners of which are de-*  
17            *scribed in subparagraph (A), (B), or (C).*

18            *Except as otherwise provided by the Secretary, tiered*  
19            *partnerships or pass-thru entities shall be treated as*  
20            *described in subparagraph (D) if each of the partner-*  
21            *ships or entities is directly or indirectly wholly owned*  
22            *by persons described in subparagraph (A), (B), or*  
23            *(C).*

24            “(3) *EXCLUDED PROPERTY.—The term ‘quali-*  
25            *fying foreign trade property’ shall not include—*



1           “(A) property leased or rented by the tax-  
2 payer for use by any related person,

3           “(B) patents, inventions, models, designs,  
4 formulas, or processes whether or not patented,  
5 copyrights (other than films, tapes, records, or  
6 similar reproductions, and other than computer  
7 software (whether or not patented), for commer-  
8 cial or home use), goodwill, trademarks, trade  
9 brands, franchises, or other like property,

10           “(C) oil or gas (or any primary product  
11 thereof),

12           “(D) products the transfer of which is pro-  
13 hibited or curtailed to effectuate the policy set  
14 forth in paragraph (2)(C) of section 3 of Public  
15 Law 96–72, or

16           “(E) any unprocessed timber which is a  
17 softwood.

18           For purposes of subparagraph (E), the term ‘unproc-  
19 essed timber’ means any log, cant, or similar form of  
20 timber.

21           “(4) PROPERTY IN SHORT SUPPLY.—If the Presi-  
22 dent determines that the supply of any property de-  
23 scribed in paragraph (1) is insufficient to meet the  
24 requirements of the domestic economy, the President  
25 may by Executive order designate the property as in

1     *short supply. Any property so designated shall not be*  
2     *treated as qualifying foreign trade property during*  
3     *the period beginning with the date specified in the*  
4     *Executive order and ending with the date specified in*  
5     *an Executive order setting forth the President's deter-*  
6     *mination that the property is no longer in short sup-*  
7     *ply.*

8     “(b) *OTHER DEFINITIONS AND RULES.—For purposes*  
9     *of this subpart—*

10             “(1) *TRANSACTION.—*

11                     “(A) *IN GENERAL.—The term ‘transaction’*  
12             *means—*

13                             “(i) *any sale, exchange, or other dis-*  
14                     *position,*

15                             “(ii) *any lease or rental, and*

16                             “(iii) *any furnishing of services.*

17                     “(B) *GROUPING OF TRANSACTIONS.—To the*  
18             *extent provided in regulations, any provision of*  
19             *this subpart which, but for this subparagraph,*  
20             *would be applied on a transaction-by-trans-*  
21             *action basis may be applied by the taxpayer on*  
22             *the basis of groups of transactions based on*  
23             *product lines or recognized industry or trade*  
24             *usage. Such regulations may permit different*  
25             *groupings for different purposes.*

1           “(2) *UNITED STATES DEFINED.*—*The term*  
2           *‘United States’ includes the Commonwealth of Puerto*  
3           *Rico. The preceding sentence shall not apply for pur-*  
4           *poses of determining whether a corporation is a do-*  
5           *mestic corporation.*

6           “(3) *RELATED PERSON.*—*A person shall be re-*  
7           *lated to another person if such persons are treated as*  
8           *a single employer under subsection (a) or (b) of sec-*  
9           *tion 52 or subsection (m) or (o) of section 414, except*  
10          *that determinations under subsections (a) and (b) of*  
11          *section 52 shall be made without regard to section*  
12          *1563(b).*

13          “(4) *GROSS AND TAXABLE INCOME.*—*Section 114*  
14          *shall not be taken into account in determining the*  
15          *amount of gross income or foreign trade income from*  
16          *any transaction.*

17          “(c) *SOURCE RULE.*—*Under regulations, in the case*  
18          *of qualifying foreign trade property manufactured, pro-*  
19          *duced, grown, or extracted within the United States, the*  
20          *amount of income of a taxpayer from any sales transaction*  
21          *with respect to such property which is treated as from*  
22          *sources without the United States shall not exceed—*

23                 “(1) *in the case of a taxpayer computing its*  
24                 *qualifying foreign trade income under section*  
25                 *941(a)(1)(B), the amount of the taxpayer’s foreign*

1 *trade income which would (but for this subsection) be*  
2 *treated as from sources without the United States if*  
3 *the foreign trade income were reduced by an amount*  
4 *equal to 4 percent of the foreign trading gross receipts*  
5 *with respect to the transaction, and*

6 *“(2) in the case of a taxpayer computing its*  
7 *qualifying foreign trade income under section*  
8 *941(a)(1)(C), 50 percent of the amount of the tax-*  
9 *payer’s foreign trade income which would (but for*  
10 *this subsection) be treated as from sources without the*  
11 *United States.*

12 *“(d) TREATMENT OF WITHHOLDING TAXES.—*

13 *“(1) IN GENERAL.—For purposes of section*  
14 *114(d), any withholding tax shall not be treated as*  
15 *paid or accrued with respect to extraterritorial in-*  
16 *come which is excluded from gross income under sec-*  
17 *tion 114(a). For purposes of this paragraph, the term*  
18 *‘withholding tax’ means any tax which is imposed on*  
19 *a basis other than residence and for which credit is*  
20 *allowable under section 901 or 903.*

21 *“(2) EXCEPTION.—Paragraph (1) shall not*  
22 *apply to any taxpayer with respect to extraterritorial*  
23 *income from any transaction if the taxpayer com-*  
24 *putes its qualifying foreign trade income with respect*  
25 *to the transaction under section 941(a)(1)(A).*

1       “(e) *ELECTION TO BE TREATED AS DOMESTIC COR-*  
2 *PORATION.*—

3               “(1) *IN GENERAL.*—*An applicable foreign cor-*  
4 *poration may elect to be treated as a domestic cor-*  
5 *poration for all purposes of this title if such corpora-*  
6 *tion waives all benefits to such corporation granted*  
7 *by the United States under any treaty. No election*  
8 *under section 1362(a) may be made with respect to*  
9 *such corporation.*

10              “(2) *APPLICABLE FOREIGN CORPORATION.*—*For*  
11 *purposes of paragraph (1), the term ‘applicable for-*  
12 *ign corporation’ means any foreign corporation if—*

13                      “(A) *such corporation manufactures, pro-*  
14 *duces, grows, or extracts property in the ordi-*  
15 *nary course of such corporation’s trade or busi-*  
16 *ness, or*

17                      “(B) *substantially all of the gross receipts of*  
18 *such corporation are foreign trading gross re-*  
19 *ceipts.*

20              “(3) *PERIOD OF ELECTION.*—

21                      “(A) *IN GENERAL.*—*Except as otherwise*  
22 *provided in this paragraph, an election under*  
23 *paragraph (1) shall apply to the taxable year for*  
24 *which made and all subsequent taxable years un-*  
25 *less revoked by the taxpayer. Any revocation of*

1        *such election shall apply to taxable years begin-*  
2        *ning after such revocation.*

3            “(B) *TERMINATION.*—*If a corporation*  
4        *which made an election under paragraph (1) for*  
5        *any taxable year fails to meet the requirements*  
6        *of subparagraph (A) or (B) of paragraph (2) for*  
7        *any subsequent taxable year, such election shall*  
8        *not apply to any taxable year beginning after*  
9        *such subsequent taxable year.*

10           “(C) *EFFECT OF REVOCATION OR TERMI-*  
11        *NATION.*—*If a corporation which made an elec-*  
12        *tion under paragraph (1) revokes such election*  
13        *or such election is terminated under subpara-*  
14        *graph (B), such corporation (and any successor*  
15        *corporation) may not make such election for any*  
16        *of the 5 taxable years beginning with the first*  
17        *taxable year for which such election is not in ef-*  
18        *fect as a result of such revocation or termination.*

19           “(4) *SPECIAL RULES.*—

20           “(A) *REQUIREMENTS.*—*This subsection*  
21        *shall not apply to an applicable foreign corpora-*  
22        *tion if such corporation fails to meet the require-*  
23        *ments (if any) which the Secretary may pre-*  
24        *scribe to ensure that the taxes imposed by this*  
25        *chapter on such corporation are paid.*

1           “(B) *EFFECT OF ELECTION, REVOCATION,*  
2           *AND TERMINATION.*—

3           “(i) *ELECTION.*—*For purposes of sec-*  
4           *tion 367, a foreign corporation making an*  
5           *election under this subsection shall be treat-*  
6           *ed as transferring (as of the first day of the*  
7           *first taxable year to which the election ap-*  
8           *plies) all of its assets to a domestic corpora-*  
9           *tion in connection with an exchange to*  
10           *which section 354 applies.*

11           “(ii) *REVOCATION AND TERMI-*  
12           *NATION.*—*For purposes of section 367, if—*

13           “(I) *an election is made by a cor-*  
14           *poration under paragraph (1) for any*  
15           *taxable year, and*

16           “(II) *such election ceases to apply*  
17           *for any subsequent taxable year,*

18           *such corporation shall be treated as a domestic*  
19           *corporation transferring (as of the 1st day of the*  
20           *first such subsequent taxable year to which such*  
21           *election ceases to apply) all of its property to a*  
22           *foreign corporation in connection with an ex-*  
23           *change to which section 354 applies.*

24           “(C) *ELIGIBILITY FOR ELECTION.*—*The Sec-*  
25           *retary may by regulation designate one or more*

1           *classes of corporations which may not make the*  
2           *election under this subsection.*

3           “(f) *RULES RELATING TO ALLOCATIONS OF QUALI-*  
4 *FYING FOREIGN TRADE INCOME FROM SHARED PARTNER-*  
5 *SHIPS.—*

6           “(1) *IN GENERAL.—If—*

7                   “(A) *a partnership maintains a separate*  
8 *account for transactions (to which this subpart*  
9 *applies) with each partner,*

10                   “(B) *distributions to each partner with re-*  
11 *spect to such transactions are based on the*  
12 *amounts in the separate account maintained*  
13 *with respect to such partner, and*

14                   “(C) *such partnership meets such other re-*  
15 *quirements as the Secretary may by regulations*  
16 *prescribe,*

17 *then such partnership shall allocate to each partner*  
18 *items of income, gain, loss, and deduction (including*  
19 *qualifying foreign trade income) from any trans-*  
20 *action to which this subpart applies on the basis of*  
21 *such separate account.*

22           “(2) *SPECIAL RULES.—For purposes of this sub-*  
23 *part, in the case of a partnership to which paragraph*  
24 *(1) applies—*



1           “(A) any partner’s interest in the partner-  
2           ship shall not be taken into account in deter-  
3           mining whether such partner is a related person  
4           with respect to any other partner, and

5           “(B) the election under section 942(a)(3)  
6           shall be made separately by each partner with  
7           respect to any transaction for which the partner-  
8           ship maintains separate accounts for each part-  
9           ner.

10          “(g) *EXCLUSION FOR PATRONS OF AGRICULTURAL*  
11 *AND HORTICULTURAL COOPERATIVES.*—Any amount de-  
12 scribed in paragraph (1) or (3) of section 1385(a)—

13           “(1) which is received by a person from an orga-  
14           nization to which part I of subchapter T applies  
15           which is engaged in the marketing of agricultural or  
16           horticultural products, and

17           “(2) which is allocable to qualifying foreign  
18           trade income and designated as such by the organiza-  
19           tion in a written notice mailed to its patrons during  
20           the payment period described in section 1382(d),  
21 shall be treated as qualifying foreign trade income of such  
22 person for purposes of section 114. The taxable income of  
23 the organization shall not be reduced under section 1382  
24 by reason of any amount to which the preceding sentence  
25 applies.

1       “(h) *SPECIAL RULE FOR DISCS.*—Section 114 shall  
2 not apply to any taxpayer for any taxable year if, at any  
3 time during the taxable year, the taxpayer is a member of  
4 any controlled group of corporations (as defined in section  
5 927(d)(4), as in effect before the date of the enactment of  
6 this subsection) of which a DISC is a member.”

7 **SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.**

8           (1) *The second sentence of section 56(g)(4)(B)(i)*  
9 *is amended by inserting before the period “or under*  
10 *section 114”.*

11           (2) *Section 275(a) is amended—*

12                   (A) *by striking “or” at the end of para-*  
13 *graph (4)(A), by striking the period at the end*  
14 *of paragraph (4)(B) and inserting “, or”, and by*  
15 *adding at the end of paragraph (4) the following*  
16 *new subparagraph:*

17                           “(C) *such taxes are paid or accrued with re-*  
18 *spect to qualifying foreign trade income (as de-*  
19 *finied in section 941).”; and*

20                   (B) *by adding at the end the following the*  
21 *following new sentence: “A rule similar to the*  
22 *rule of section 943(d) shall apply for purposes of*  
23 *paragraph (4)(C).”.*

24           (3) *Paragraph (3) of section 864(e) is*  
25 *amended—*

1           (A) by striking “For purposes of” and in-  
2           serting:

3           “(A) *IN GENERAL.*—For purposes of”; and

4           (B) by adding at the end the following new  
5           subparagraph:

6           “(B) *ASSETS PRODUCING EXEMPT*  
7           *EXTRATERRITORIAL INCOME.*—For purposes of  
8           allocating and apportioning any interest ex-  
9           pense, there shall not be taken into account any  
10          qualifying foreign trade property (as defined in  
11          section 943(a)) which is held by the taxpayer for  
12          lease or rental in the ordinary course of trade or  
13          business for use by the lessee outside the United  
14          States (as defined in section 943(b)(2)).”.

15          (4) Section 903 is amended by striking “164(a)”  
16          and inserting “114, 164(a),”.

17          (5) Section 999(c)(1) is amended by inserting  
18          “941(a)(5),” after “908(a),”.

19          (6) The table of sections for part III of sub-  
20          chapter B of chapter 1 is amended by inserting before  
21          the item relating to section 115 the following new  
22          item:

          “Sec. 114. *Extraterritorial income.*”.

23          (7) The table of subparts for part III of sub-  
24          chapter N of chapter 1 is amended by striking the

1 *item relating to subpart E and inserting the following*  
2 *new item:*

*“Subpart E. Qualifying foreign trade income.”.*

3 (8) *The table of subparts for part III of sub-*  
4 *chapter N of chapter 1 is amended by striking the*  
5 *item relating to subpart C.*

6 **SEC. 5. EFFECTIVE DATE.**

7 (a) *IN GENERAL.—The amendments made by this Act*  
8 *shall apply to transactions after September 30, 2000.*

9 (b) *NO NEW FSCS; TERMINATION OF INACTIVE*  
10 *FSCS.—*

11 (1) *NO NEW FSCS.—No corporation may elect*  
12 *after September 30, 2000, to be a FSC (as defined in*  
13 *section 922 of the Internal Revenue Code of 1986, as*  
14 *in effect before the amendments made by this Act).*

15 (2) *TERMINATION OF INACTIVE FSCS.—If a FSC*  
16 *has no foreign trade income (as defined in section*  
17 *923(b) of such Code, as so in effect) for any period*  
18 *of 5 consecutive taxable years beginning after Decem-*  
19 *ber 31, 2001, such FSC shall cease to be treated as*  
20 *a FSC for purposes of such Code for any taxable year*  
21 *beginning after such period.*

22 (c) *TRANSITION PERIOD FOR EXISTING FOREIGN*  
23 *SALES CORPORATIONS.—*

24 (1) *IN GENERAL.—In the case of a FSC (as so*  
25 *defined) in existence on September 30, 2000, and at*

1 *all times thereafter, the amendments made by this Act*  
2 *shall not apply to any transaction in the ordinary*  
3 *course of trade or business involving a FSC which*  
4 *occurs—*

5 *(A) before January 1, 2002; or*

6 *(B) after December 31, 2001, pursuant to a*  
7 *binding contract—*

8 *(i) which is between the FSC (or any*  
9 *related person) and any person which is not*  
10 *a related person; and*

11 *(ii) which is in effect on September 30,*  
12 *2000, and at all times thereafter.*

13 *For purposes of this paragraph, a binding contract*  
14 *shall include a purchase option, renewal option, or*  
15 *replacement option which is included in such contract*  
16 *and which is enforceable against the seller or lessor.*

17 *(2) ELECTION TO HAVE AMENDMENTS APPLY*  
18 *EARLIER.—A taxpayer may elect to have the amend-*  
19 *ments made by this Act apply to any transaction by*  
20 *a FSC or any related person to which such amend-*  
21 *ments would apply but for the application of para-*  
22 *graph (1). Such election shall be effective for the tax-*  
23 *able year for which made and all subsequent taxable*  
24 *years, and, once made, may be revoked only with the*  
25 *consent of the Secretary of the Treasury.*

1           (3) *EXCEPTION FOR OLD EARNINGS AND PROFITS*  
2 *OF CERTAIN CORPORATIONS.—*

3           (A) *IN GENERAL.—In the case of a foreign*  
4 *corporation to which this paragraph applies—*

5           (i) *earnings and profits of such cor-*  
6 *poration accumulated in taxable years end-*  
7 *ing before October 1, 2000, shall not be in-*  
8 *cluded in the gross income of the persons*  
9 *holding stock in such corporation by reason*  
10 *of section 943(e)(4)(B)(i), and*

11           (ii) *rules similar to the rules of clauses*  
12 *(ii), (iii), and (iv) of section 953(d)(4)(B)*  
13 *shall apply with respect to such earnings*  
14 *and profits.*

15           *The preceding sentence shall not apply to earn-*  
16 *ings and profits acquired in a transaction after*  
17 *September 30, 2000, to which section 381 applies*  
18 *unless the distributor or transferor corporation*  
19 *was immediately before the transaction a foreign*  
20 *corporation to which this paragraph applies.*

21           (B) *EXISTING FSCS.—This paragraph shall*  
22 *apply to any controlled foreign corporation (as*  
23 *defined in section 957) if—*

24           (i) *such corporation is a FSC (as so*  
25 *defined) in existence on September 30, 2000,*

1           (ii) such corporation is eligible to  
2           make the election under section 943(e) by  
3           reason of being described in paragraph  
4           (2)(B) of such section, and

5           (iii) such corporation makes such elec-  
6           tion not later than for its first taxable year  
7           beginning after December 31, 2001.

8           (C) OTHER CORPORATIONS.—This para-  
9           graph shall apply to any controlled foreign cor-  
10          poration (as defined in section 957), and such  
11          corporation shall (notwithstanding any provi-  
12          sion of section 943(e)) be treated as an applica-  
13          ble foreign corporation for purposes of section  
14          943(e), if—

15           (i) such corporation is in existence on  
16           September 30, 2000,

17           (ii) as of such date, such corporation is  
18           wholly owned (directly or indirectly) by a  
19           domestic corporation (determined without  
20           regard to any election under section 943(e)),

21           (iii) for each of the 3 taxable years  
22           preceding the first taxable year to which the  
23           election under section 943(e) by such con-  
24           trolled foreign corporation applies—

1                   (I) all of the gross income of such  
2                   corporation is subpart F income (as  
3                   defined in section 952), including by  
4                   reason of section 954(b)(3)(B), and

5                   (II) in the ordinary course of such  
6                   corporation's trade or business, such  
7                   corporation regularly sold (or paid  
8                   commissions) to a FSC which on Sep-  
9                   tember 30, 2000, was a related person  
10                  to such corporation,

11                  (iv) such corporation has never made  
12                  an election under section 922(a)(2) (as in  
13                  effect before the date of the enactment of this  
14                  paragraph) to be treated as a FSC, and

15                  (v) such corporation makes the election  
16                  under section 943(e) not later than for its  
17                  first taxable year beginning after December  
18                  31, 2001.

19                  The preceding sentence shall cease to apply as of  
20                  the date that the domestic corporation referred to  
21                  in clause (ii) ceases to wholly own (directly or  
22                  indirectly) such controlled foreign corporation.

23                  (4) *RELATED PERSON*.—For purposes of this  
24                  subsection, the term “related person” has the meaning  
25                  given to such term by section 943(b)(3).



1           (5) *SECTION REFERENCES.*—*Except as otherwise*  
2           *expressly provided, any reference in this subsection to*  
3           *a section or other provision shall be considered to be*  
4           *a reference to a section or other provision of the Inter-*  
5           *nal Revenue Code of 1986, as amended by this Act.*

6           (d) *SPECIAL RULES RELATING TO LEASING TRANS-*  
7           *ACTIONS.*—

8           (1) *SALES INCOME.*—*If foreign trade income in*  
9           *connection with the lease or rental of property de-*  
10          *scribed in section 927(a)(1)(B) of such Code (as in ef-*  
11          *fect before the amendments made by this Act) is treat-*  
12          *ed as exempt foreign trade income for purposes of sec-*  
13          *tion 921(a) of such Code (as so in effect), such prop-*  
14          *erty shall be treated as property described in section*  
15          *941(c)(1)(B) of such Code (as added by this Act) for*  
16          *purposes of applying section 941(c)(2) of such Code*  
17          *(as so added) to any subsequent transaction involving*  
18          *such property to which the amendments made by this*  
19          *Act apply.*

20          (2) *LIMITATION ON USE OF GROSS RECEIPTS*  
21          *METHOD.*—*If any person computed its foreign trade*  
22          *income from any transaction with respect to any*  
23          *property on the basis of a transfer price determined*  
24          *under the method described in section 925(a)(1) of*  
25          *such Code (as in effect before the amendments made*

1        *by this Act), then the qualifying foreign trade income*  
2        *(as defined in section 941(a) of such Code, as in effect*  
3        *after such amendment) of such person (or any related*  
4        *person) with respect to any other transaction involv-*  
5        *ing such property (and to which the amendments*  
6        *made by this Act apply) shall be zero.*

Attest:

*Secretary.*

106TH CONGRESS  
2D SESSION

**H. R. 4986**

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**AMENDMENT**

HR 4986 EAS—2

HR 4986 EAS—3

HR 4986 EAS—4

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