

106TH CONGRESS
2D SESSION

H. R. 4986

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.

IN THE HOUSE OF REPRESENTATIVES

JULY 27, 2000

Mr. ARCHER introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

7 (b) AMENDMENT OF 1986 CODE.—Except as other-
8 wise expressly provided, whenever in this Act an amend-

1 ment or repeal is expressed in terms of an amendment
2 to, or repeal of, a section or other provision, the reference
3 shall be considered to be made to a section or other provi-
4 sion of the Internal Revenue Code of 1986.

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

6 Subpart C of part III of subchapter N of chapter 1
7 (relating to taxation of foreign sales corporations) is here-
8 by repealed.

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

10 (a) IN GENERAL.—Part III of subchapter B of chap-
11 ter 1 (relating to items specifically excluded from gross
12 income) is amended by inserting before section 115 the
13 following new section:

14 **“SEC. 114. EXTRATERRITORIAL INCOME.**

15 “(a) EXCLUSION.—Gross income shall not include
16 extraterritorial income.

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

21 “(c) DISALLOWANCE OF DEDUCTIONS.—

22 “(1) IN GENERAL.—Any deduction of a tax-
23 payer allocated under paragraph (2) to
24 extraterritorial income of the taxpayer excluded from

1 gross income under subsection (a) shall not be al-
2 lowed.

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
15 chapter, no credit shall be allowed under this chapter for
16 any income, war profits, and excess profits taxes paid or
17 accrued with respect to extraterritorial income which is ex-
18 cluded from gross income under subsection (a).

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

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
 7 purposes of this subpart and section 114—

8 “(1) IN GENERAL.—The term ‘qualifying for-
 9 eign trade income’ means, with respect to any trans-
 10 action, the amount of gross income which, if ex-
 11 cluded, will result in a reduction of the taxable in-
 12 come of the taxpayer from such transaction equal to
 13 the greatest of—

14 “(A) 30 percent of the foreign sale and
 15 leasing income derived by the taxpayer from
 16 such transaction,

17 “(B) 1.2 percent of the foreign trading
 18 gross receipts derived by the taxpayer from the
 19 transaction, or

20 “(C) 15 percent of the foreign trade in-
 21 come derived by the taxpayer from the trans-
 22 action.

1 In no event shall the amount determined under sub-
2 paragraph (B) exceed 200 percent of the amount de-
3 termined under subparagraph (C).

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

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

16 “(4) RULES FOR MARGINAL COSTING.—The
17 Secretary shall prescribe regulations setting forth
18 rules for the allocation of expenditures in computing
19 foreign trade income under paragraph (1)(C) in
20 those cases where a taxpayer is seeking to establish
21 or maintain a market for qualifying foreign trade
22 property.

23 “(5) PARTICIPATION IN INTERNATIONAL BOY-
24 COTTS, ETC.—Under regulations prescribed by the
25 Secretary, the qualifying foreign trade income of a

1 taxpayer for any taxable year shall be reduced (but
2 not below zero) by the sum of—

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

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

11 “(b) FOREIGN TRADE INCOME.—

12 “(1) IN GENERAL.—For purposes of this sub-
13 part, the term ‘foreign trade income’ means the tax-
14 able income of the taxpayer attributable to foreign
15 trading gross receipts of the taxpayer.

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

1 “(c) FOREIGN SALE AND LEASING INCOME.—For
2 purposes of this section, the term ‘foreign sale and leasing
3 income’ means, with respect to any transaction—

4 “(1) foreign trade income properly allocable to
5 activities—

6 “(A) which are described in paragraph
7 (2)(A)(i) or (3) of section 942(b), and

8 “(B) which are performed by the taxpayer
9 (or any person acting under a contract with
10 such taxpayer) outside the United States, and

11 “(2) foreign trade income derived by the tax-
12 payer from the lease or rental of qualifying foreign
13 trade property for use by the lessee outside the
14 United States.

15 Foreign sale and leasing income shall not include any in-
16 come properly allocable to excluded property described in
17 subparagraph (B) of section 943(a)(3) (relating to intan-
18 gibles).

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

20 “(a) FOREIGN TRADING GROSS RECEIPTS.—

21 “(1) IN GENERAL.—Except as otherwise pro-
22 vided in this section, for purposes of this subpart,
23 the term ‘foreign trading gross receipts’ means the
24 gross receipts of the taxpayer which are—

1 “(A) from the sale, exchange, or other dis-
2 position of qualifying foreign trade property,

3 “(B) from the lease or rental of qualifying
4 foreign trade property for use by the lessee out-
5 side the United States,

6 “(C) for services which are related and
7 subsidiary to—

8 “(i) any sale, exchange, or other dis-
9 position of qualifying foreign trade prop-
10 erty by such taxpayer, or

11 “(ii) any lease or rental of qualifying
12 foreign trade property described in sub-
13 paragraph (B) by such taxpayer,

14 “(D) for engineering or architectural serv-
15 ices for construction projects located (or pro-
16 posed for location) outside the United States, or

17 “(E) for the performance of managerial
18 services for a person other than a related per-
19 son in furtherance of the production of foreign
20 trading gross receipts described in subpara-
21 graph (A), (B), or (C).

22 Subparagraph (E) shall not apply to a taxpayer for
23 any taxable year unless at least 50 percent of its for-
24 eign trading gross receipts (determined without re-
25 gard to this sentence) for such taxable year is de-

1 rived from activities described in subparagraph (A),
2 (B), or (C).

3 “(2) CERTAIN RECEIPTS EXCLUDED ON BASIS
4 OF USE; SUBSIDIZED RECEIPTS EXCLUDED.—The
5 term ‘foreign trading gross receipts’ shall not in-
6 clude receipts of a taxpayer from a transaction if—

7 “(A) the qualifying foreign trade property
8 or services—

9 “(i) are for ultimate use in the United
10 States, or

11 “(ii) are for use by the United States
12 or any instrumentality thereof and such
13 use of qualifying foreign trade property or
14 services is required by law or regulation, or

15 “(B) such transaction is accomplished by a
16 subsidy granted by the United States or any in-
17 strumentality thereof.

18 “(3) ELECTION TO EXCLUDE CERTAIN RE-
19 CEIPTS.—The term ‘foreign trading gross receipts’
20 shall not include gross receipts of a taxpayer from
21 a transaction with respect to any property if the tax-
22 payer elects not to have such receipts taken into ac-
23 count for purposes of this subpart.

24 “(b) FOREIGN ECONOMIC PROCESS REQUIRE-
25 MENTS.—

1 “(1) IN GENERAL.—Except as provided in sub-
2 section (c), a taxpayer shall be treated as having for-
3 eign trading gross receipts from any transaction only
4 if economic processes with respect to such trans-
5 action take place outside the United States as re-
6 quired by paragraph (2).

7 “(2) REQUIREMENT.—

8 “(A) IN GENERAL.—The requirements of
9 this paragraph are met with respect to the
10 gross receipts of a taxpayer derived from any
11 transaction if—

12 “(i) such taxpayer (or any person act-
13 ing under a contract with such taxpayer)
14 has participated outside the United States
15 in the solicitation (other than advertising),
16 the negotiation, or the making of the con-
17 tract relating to such transaction, and

18 “(ii) the foreign direct costs incurred
19 by the taxpayer attributable to the trans-
20 action equal or exceed 50 percent of the
21 total direct costs attributable to the trans-
22 action.

23 “(B) ALTERNATIVE 85-PERCENT TEST.—A
24 taxpayer shall be treated as satisfying the re-
25 quirements of subparagraph (A)(ii) with respect

1 to any transaction if, with respect to each of at
2 least 2 subparagraphs of paragraph (3), the
3 foreign direct costs incurred by such taxpayer
4 attributable to activities described in such sub-
5 paragraph equal or exceed 85 percent of the
6 total direct costs attributable to activities de-
7 scribed in such subparagraph.

8 “(C) DEFINITIONS.—For purposes of this
9 paragraph—

10 “(i) TOTAL DIRECT COSTS.—The term
11 ‘total direct costs’ means, with respect to
12 any transaction, the total direct costs in-
13 curred by the taxpayer attributable to ac-
14 tivities described in paragraph (3) per-
15 formed at any location by the taxpayer or
16 any person acting under a contract with
17 such taxpayer.

18 “(ii) FOREIGN DIRECT COSTS.—The
19 term ‘foreign direct costs’ means, with re-
20 spect to any transaction, the portion of the
21 total direct costs which are attributable to
22 activities performed outside the United
23 States.

24 “(3) ACTIVITIES RELATING TO QUALIFYING
25 FOREIGN TRADE PROPERTY.—The activities de-

1 scribed in this paragraph are any of the following
2 with respect to qualifying foreign trade property—

3 “(A) advertising and sales promotion,

4 “(B) the processing of customer orders
5 and the arranging for delivery,

6 “(C) transportation from the time of ac-
7 quisition by the taxpayer (or, in the case of a
8 commission relationship, from the beginning of
9 such relationship for such transaction) to the
10 delivery to the customer,

11 “(D) the determination and transmittal of
12 a final invoice or statement of account and the
13 receipt of payment, and

14 “(E) the assumption of credit risk.

15 “(4) ECONOMIC PROCESSES PERFORMED BY
16 RELATED PERSONS.—A taxpayer shall be treated as
17 meeting the requirements of this subsection with re-
18 spect to any transaction involving any property if
19 any related person has met such requirements in
20 such transaction or any other transaction involving
21 such property.

22 “(c) EXCEPTION FROM FOREIGN ECONOMIC PROC-
23 ESS REQUIREMENT.—

24 “(1) IN GENERAL.—The requirements of sub-
25 section (b) shall be treated as met for any taxable

1 year if the foreign trading gross receipts of the tax-
2 payer for such year do not exceed \$5,000,000.

3 “(2) RECEIPTS OF RELATED PERSONS AGGRE-
4 GATED.—All related persons shall be treated as one
5 person for purposes of paragraph (1), and the limi-
6 tation under paragraph (1) shall be allocated among
7 such persons in a manner provided in regulations
8 prescribed by the Secretary.

9 “(3) SPECIAL RULE FOR PASS-THRU ENTI-
10 TIES.—In the case of a partnership, S corporation,
11 or other pass-thru entity, the limitation under para-
12 graph (1) shall apply with respect to the partner-
13 ship, S corporation, or entity and with respect to
14 each partner, shareholder, or other owner.

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

16 “(a) QUALIFYING FOREIGN TRADE PROPERTY.—For
17 purposes of this subpart—

18 “(1) IN GENERAL.—The term ‘qualifying for-
19 eign trade property’ means property—

20 “(A) manufactured, produced, grown, or
21 extracted within or outside the United States,

22 “(B) held primarily for sale, lease, or rent-
23 al, in the ordinary course of trade or business
24 for direct use, consumption, or disposition out-
25 side the United States, and

1 “(C) not more than 50 percent of the fair
2 market value of which is attributable to articles
3 manufactured, produced, grown, or extracted
4 outside the United States or other value added
5 outside the United States.

6 For purposes of subparagraph (C), the fair market
7 value of any article imported into the United States
8 shall be its appraised value, as determined by the
9 Secretary under section 402 of the Tariff Act of
10 1930 (19 U.S.C. 1401a) in connection with its im-
11 portation.

12 “(2) U.S. TAXATION TO ENSURE CONSISTENT
13 TREATMENT.—Property which (without regard to
14 this paragraph) is qualifying foreign trade property
15 and which is manufactured, produced, grown, or ex-
16 tracted outside the United States shall be treated as
17 qualifying foreign trade property only if it is manu-
18 factured, produced, grown, or extracted by—

19 “(A) a domestic corporation,

20 “(B) an individual who is a citizen or resi-
21 dent of the United States,

22 “(C) a foreign corporation with respect to
23 which an election under subsection (e) (relating
24 to foreign corporations electing to be subject to
25 United States taxation) is in effect, or

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

4 Except as otherwise provided by the Secretary,
5 tiered partnerships or pass-thru entities shall be
6 treated as described in subparagraph (D) if each of
7 the partnerships or entities is directly or indirectly
8 wholly owned by persons described in subparagraph
9 (A), (B), or (C).

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

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

14 “(B) patents, inventions, models, designs,
15 formulas, or processes whether or not patented,
16 copyrights (other than films, tapes, records, or
17 similar reproductions, and other than computer
18 software (whether or not patented), for com-
19 mercial or home use), goodwill, trademarks,
20 trade brands, franchises, or other like property,

21 “(C) oil or gas (or any primary product
22 thereof),

23 “(D) products the transfer of which is pro-
24 hibited or curtailed to effectuate the policy set

1 forth in paragraph (2)(C) of section 3 of Public
2 Law 96–72, or

3 “(E) any unprocessed timber which is a
4 softwood.

5 For purposes of subparagraph (E), the term ‘un-
6 processed timber’ means any log, cant, or similar
7 form of timber.

8 “(4) PROPERTY IN SHORT SUPPLY.—If the
9 President determines that the supply of any prop-
10 erty described in paragraph (1) is insufficient to
11 meet the requirements of the domestic economy, the
12 President may by Executive order designate the
13 property as in short supply. Any property so des-
14 ignated shall not be treated as qualifying foreign
15 trade property during the period beginning with the
16 date specified in the Executive order and ending
17 with the date specified in an Executive order setting
18 forth the President’s determination that the prop-
19 erty is no longer in short supply.

20 “(b) OTHER DEFINITIONS AND RULES.—For pur-
21 poses of this subpart—

22 “(1) TRANSACTION.—

23 “(A) IN GENERAL.—The term ‘transaction’
24 means—

1 “(i) any sale, exchange, or other dis-
2 position,

3 “(ii) any lease or rental, and

4 “(iii) any furnishing of services.

5 “(B) GROUPING OF TRANSACTIONS.—To
6 the extent provided in regulations, any provision
7 of this subpart which, but for this subpara-
8 graph, would be applied on a transaction-by-
9 transaction basis may be applied by the tax-
10 payer on the basis of groups of transactions
11 based on product lines or recognized industry or
12 trade usage. Such regulations may permit dif-
13 ferent groupings for different purposes.

14 “(2) UNITED STATES DEFINED.—The term
15 ‘United States’ includes the Commonwealth of Puer-
16 to Rico. The preceding sentence shall not apply for
17 purposes of determining whether a corporation is a
18 domestic corporation.

19 “(3) RELATED PERSON.—A person shall be re-
20 lated to another person if such persons are treated
21 as a single employer under subsection (a) or (b) of
22 section 52 or subsection (m) or (o) of section 414.

23 “(4) GROSS AND TAXABLE INCOME.—Section
24 114 shall not be taken into account in determining

1 the amount of gross income or foreign trade income
2 from any transaction.

3 “(c) SOURCE RULE.—Under regulations, the foreign
4 trade income of a taxpayer from any transaction which
5 is treated as from sources without the United States shall
6 not exceed—

7 “(1) in the case of a taxpayer computing its
8 qualifying foreign trade income under section
9 941(a)(1)(B), the amount of the taxpayer’s foreign
10 trade income which would (but for this subsection)
11 be treated as from sources without the United
12 States if the foreign trade income were reduced by
13 an amount equal to 4 percent of the foreign trading
14 gross receipts with respect to the transaction, and

15 “(2) in the case of a taxpayer computing its
16 qualifying foreign trade income under section
17 941(a)(1)(C), 50 percent of the amount of the tax-
18 payer’s foreign trade income which would (but for
19 this subsection) be treated as from sources without
20 the United States.

21 “(d) TREATMENT OF WITHHOLDING TAXES.—

22 “(1) IN GENERAL.—For purposes of section
23 114(d), any withholding tax (as defined in section
24 901(k)(1)(B)) shall not be treated as paid or ac-

1 crued with respect to extraterritorial income which is
2 excluded from gross income under section 114(a).

3 “(2) EXCEPTION.—Paragraph (1) shall not
4 apply to any taxpayer with respect to extraterritorial
5 income from any transaction if the taxpayer com-
6 putes its qualifying foreign trade income with re-
7 spect to the transaction under section 941(a)(1)(A).

8 “(e) ELECTION TO BE TREATED AS DOMESTIC COR-
9 PORATION.—

10 “(1) IN GENERAL.—An applicable foreign cor-
11 poration may elect to be treated as a domestic cor-
12 poration for all purposes of this title if such corpora-
13 tion waives all benefits to such corporation granted
14 by the United States under any treaty.

15 “(2) APPLICABLE FOREIGN CORPORATION.—
16 For purposes of paragraph (1), the term ‘applicable
17 foreign corporation’ means any foreign corporation
18 if, at the time of the election—

19 “(A) such corporation manufactures, pro-
20 duces, grows, or extracts property in the ordi-
21 nary course of such corporation’s trade or busi-
22 ness, or

23 “(B) substantially all of the gross receipts
24 of such corporation may reasonably be expected
25 to be foreign trading gross receipts.

1 “(3) PERIOD OF ELECTION.—

2 “(A) IN GENERAL.—Except as provided in
3 subparagraph (B), an election under paragraph
4 (1) shall apply to the taxable year for which
5 made and all subsequent taxable years unless
6 revoked.

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

14 “(4) SPECIAL RULES.—

15 “(A) REQUIREMENTS.—This subsection
16 shall not apply to an applicable foreign corpora-
17 tion unless such corporation meets such re-
18 quirements as the Secretary shall prescribe to
19 ensure that the taxes imposed by this chapter
20 on such corporation are paid.

21 “(B) EFFECT OF ELECTION OR TERMI-
22 NATION.—

23 “(i) ELECTION.—For purposes of sec-
24 tion 367, a foreign corporation making an
25 election under this subsection shall be

1 treated as transferring (as of the first day
2 of the first taxable year to which the elec-
3 tion applies) all of its assets to a domestic
4 corporation in connection with an exchange
5 to which section 354 applies.

6 “(ii) TERMINATION.—For purposes of
7 section 367, if—

8 “(I) an election is made by a cor-
9 poration under paragraph (1) for any
10 taxable year, and

11 “(II) such election ceases to
12 apply for any subsequent taxable year,
13 such corporation shall be treated as a domestic
14 corporation transferring (as of the 1st day of
15 such subsequent taxable year) all of its property
16 to a foreign corporation in connection with an
17 exchange to which section 354 applies.

18 “(C) ELIGIBILITY FOR ELECTION.—The
19 Secretary may by regulation designate one or
20 more classes of corporations which may not
21 make the election under this subsection.

22 “(f) RULES RELATING TO ALLOCATIONS OF QUALI-
23 FYING FOREIGN TRADE INCOME FROM SHARED PART-
24 NERSHIPS.—If—

1 “(1) a partnership maintains a separate ac-
2 count for transactions (to which this subpart ap-
3 plies) with each partner,

4 “(2) distributions to each partner with respect
5 to such transactions are based on the amounts in
6 the separate account maintained with respect to
7 such partner, and

8 “(3) such partnership meets such other require-
9 ments as the Secretary may by regulations prescribe,
10 then such partnership shall allocate to each partner items
11 of income, gain, loss, and deduction (including qualifying
12 foreign trade income) from any transaction to which this
13 subpart applies on the basis of such separate account.”

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

15 (1) The second sentence of section
16 56(g)(4)(B)(i) is amended by inserting before the
17 period “or under section 114”.

18 (2) Section 275(a) is amended—

19 (A) by striking “or” at the end of para-
20 graph (4)(A), by striking the period at the end
21 of paragraph (4)(B) and inserting “, or”, and
22 by adding at the end of paragraph (4) the fol-
23 lowing new subparagraph:

1 “(C) such taxes are paid or accrued with
2 respect to qualifying foreign trade income (as
3 defined in section 941).”, and

4 (B) by adding at the end the following the
5 following new sentence: “A rule similar to the
6 rule of section 943(d) shall apply for purposes
7 of paragraph (4)(C).”

8 (3) Paragraph (3) of section 864(e) is
9 amended—

10 (A) by striking “For purposes of” and in-
11 serting:

12 “(A) IN GENERAL.—For purposes of”, and

13 (B) by adding at the end the following new
14 subparagraph:

15 “(B) ASSETS PRODUCING EXEMPT
16 EXTRATERRITORIAL INCOME.—For purposes of
17 allocating and apportioning any interest ex-
18 pense, there shall not be taken into account any
19 qualifying foreign trade property (as defined in
20 section 943(a)) which is located outside the
21 United States (as defined in section 943(b)(2))
22 and which is held by the taxpayer for lease or
23 rental in the ordinary course of trade or busi-
24 ness for use by the lessee outside the United
25 States (as so defined).”

1 (4) Section 999(c)(1) is amended by inserting
2 “941(a)(5),” after “908(a),”.

3 (5) The table of sections for part III of sub-
4 chapter B of chapter 1 is amended by inserting be-
5 fore the item relating to section 115 the following
6 new item:

 “Sec. 114. Extraterritorial income.”

7 (6) The table of subparts for part III of sub-
8 chapter N of chapter 1 is amended by striking the
9 item relating to subpart E and inserting the fol-
10 lowing new item:

 “Subpart E. Qualifying foreign trade income.”

11 **SEC. 5. EFFECTIVE DATE.**

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

14 (b) **NO NEW FSCs.**—No corporation may elect after
15 September 30, 2000, to be a FSC (as defined in section
16 922 of the Internal Revenue Code of 1986, as in effect
17 before the amendments made by this Act).

18 (c) **TRANSITION PERIOD FOR EXISTING FOREIGN**
19 **SALES CORPORATIONS.**—Except as provided in subsection

20 (d)—

21 (1) **IN GENERAL.**—In the case of any trans-
22 action in the ordinary course of trade or business in-
23 volving a FSC (as so defined) in existence on Sep-

1 tember 30, 2000, and at all times thereafter, the
2 amendments made by this Act shall not apply to—

3 (A) transactions by the FSC before Janu-
4 ary 1, 2002, and

5 (B) transactions by the FSC after Decem-
6 ber 31, 2001, pursuant to a binding contract
7 (by the FSC) in effect on September 30, 2000,
8 and at all times thereafter.

9 (2) ELECTION TO HAVE AMENDMENTS APPLY
10 EARLIER.—A taxpayer may elect to have the amend-
11 ments made by this Act apply to any transaction by
12 a FSC to which such amendments would apply but
13 for the application of paragraph (1). Such election
14 shall be effective for the taxable year for which made
15 and all subsequent taxable years, and, once made,
16 may be revoked only with the consent of the Sec-
17 retary of the Treasury.

18 (d) CONSISTENT TREATMENT REQUIRED.—If, but
19 for this subsection, the amendments made by this Act
20 would apply to some but not all of the transactions in the
21 ordinary course of trade or business by related parties in-
22 volving the same property, such parties shall elect, at such
23 time and in such manner as the Secretary of the Treasury

- 1 shall prescribe, whether to have such amendments apply
- 2 to all or none of such transactions.

○