

106<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4986

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 2000

Received; read twice and referred to the Committee on Finance

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## 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.

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

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”.

5 (b) **AMENDMENT OF 1986 CODE.**—Except as other-  
6 wise expressly provided, whenever in this Act an amend-  
7 ment or repeal is expressed in terms of an amendment  
8 to, or repeal of, a section or other provision, the reference  
9 shall be considered to be made to a section or other provi-  
10 sion of the Internal Revenue Code of 1986.

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

12 Subpart C of part III of subchapter N of chapter 1  
13 (relating to taxation of foreign sales corporations) is here-  
14 by repealed.

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

16 (a) **IN GENERAL.**—Part III of subchapter B of chap-  
17 ter 1 (relating to items specifically excluded from gross  
18 income) is amended by inserting before section 115 the  
19 following new section:

20 **“SEC. 114. EXTRATERRITORIAL INCOME.**

21 “(a) **EXCLUSION.**—Gross income does not include  
22 extraterritorial income.

23 “(b) **EXCEPTION.**—Subsection (a) shall not apply to  
24 extraterritorial income which is not qualifying foreign  
25 trade income as determined under subpart E of part III  
26 of subchapter N.

1 “(c) DISALLOWANCE OF DEDUCTIONS.—

2 “(1) IN GENERAL.—Any deduction of a tax-  
3 payer allocated under paragraph (2) to  
4 extraterritorial income of the taxpayer excluded from  
5 gross income under subsection (a) shall not be al-  
6 lowed.

7 “(2) ALLOCATION.—Any deduction of the tax-  
8 payer properly apportioned and allocated to the  
9 extraterritorial income derived by the taxpayer from  
10 any transaction shall be allocated on a proportionate  
11 basis between—

12 “(A) the extraterritorial income derived  
13 from such transaction which is excluded from  
14 gross income under subsection (a), and

15 “(B) the extraterritorial income derived  
16 from such transaction which is not so excluded.

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

24 “(e) EXTRATERRITORIAL INCOME.—For purposes of  
25 this section, the term ‘extraterritorial income’ means the

1 gross income of the taxpayer attributable to foreign trad-  
 2 ing gross receipts (as defined in section 942) of the tax-  
 3 payer.”

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

7 **“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.

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

9 “(a) QUALIFYING FOREIGN TRADE INCOME.—For  
 10 purposes of this subpart and section 114—

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

17 “(A) 30 percent of the foreign sale and  
 18 leasing income derived by the taxpayer from  
 19 such transaction,

20 “(B) 1.2 percent of the foreign trading  
 21 gross receipts derived by the taxpayer from the  
 22 transaction, or

1           “(C) 15 percent of the foreign trade in-  
2           come derived by the taxpayer from the trans-  
3           action.

4           In no event shall the amount determined under sub-  
5           paragraph (B) exceed 200 percent of the amount de-  
6           termined under subparagraph (C).

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

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

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

1 or maintain a market for qualifying foreign trade  
2 property.

3 “(5) PARTICIPATION IN INTERNATIONAL BOY-  
4 COTTS, ETC.—Under regulations prescribed by the  
5 Secretary, the qualifying foreign trade income of a  
6 taxpayer for any taxable year shall be reduced (but  
7 not below zero) by the sum of—

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

11 “(B) any illegal bribe, kickback, or other  
12 payment (within the meaning of section 162(c))  
13 paid by or on behalf of the taxpayer directly or  
14 indirectly to an official, employee, or agent in  
15 fact of a government.

16 “(b) FOREIGN TRADE INCOME.—For purposes of  
17 this subpart—

18 “(1) IN GENERAL.—The term ‘foreign trade in-  
19 come’ means the taxable income of the taxpayer at-  
20 tributable to foreign trading gross receipts of the  
21 taxpayer.

22 “(2) SPECIAL RULE FOR COOPERATIVES.—In  
23 any case in which an organization to which part I  
24 of subchapter T applies which is engaged in the  
25 marketing of agricultural or horticultural products

1 sells qualifying foreign trade property, in computing  
2 the taxable income of such cooperative, there shall  
3 not be taken into account any deduction allowable  
4 under subsection (b) or (c) of section 1382 (relating  
5 to patronage dividends, per-unit retain allocations,  
6 and nonpatronage distributions).

7 “(c) FOREIGN SALE AND LEASING INCOME.—For  
8 purposes of this section—

9 “(1) IN GENERAL.—The term ‘foreign sale and  
10 leasing income’ means, with respect to any  
11 transaction—

12 “(A) foreign trade income properly allo-  
13 cable to activities which—

14 “(i) are described in paragraph  
15 (2)(A)(i) or (3) of section 942(b), and

16 “(ii) are performed by the taxpayer  
17 (or any person acting under a contract  
18 with such taxpayer) outside the United  
19 States, or

20 “(B) foreign trade income derived by the  
21 taxpayer in connection with the lease or rental  
22 of qualifying foreign trade property for use by  
23 the lessee outside the United States.

24 “(2) SPECIAL RULES FOR LEASED PROP-  
25 ERTY.—

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

5           “(B) LIMITATION IN CERTAIN CASES.—Ex-  
6           cept as provided in regulations, in the case of  
7           property which—

8                   “(i) was manufactured, produced,  
9                   grown, or extracted by the taxpayer, or

10                   “(ii) was acquired by the taxpayer  
11                   from a related person for a price which  
12                   was not determined in accordance with the  
13                   rules of section 482,

14           the amount of foreign trade income which may be  
15           treated as foreign sale and leasing income under  
16           paragraph (1)(B) or subparagraph (A) of this para-  
17           graph with respect to any transaction involving such  
18           property shall not exceed the amount which would  
19           have been determined if the taxpayer had acquired  
20           such property for the price determined in accordance  
21           with the rules of section 482.

22           “(3) SPECIAL RULES.—

23                   “(A) EXCLUDED PROPERTY.—Foreign sale  
24                   and leasing income shall not include any income  
25                   properly allocable to excluded property de-



1           scribed in subparagraph (B) of section  
2           943(a)(3) (relating to intangibles).

3           “(B) ONLY DIRECT EXPENSES TAKEN  
4           INTO ACCOUNT.—For purposes of this sub-  
5           section, any expense other than a directly allo-  
6           cable expense shall not be taken into account in  
7           computing foreign trade income.

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

9           “(a) FOREIGN TRADING GROSS RECEIPTS.—

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

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

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

19           “(C) for services which are related and  
20           subsidiary to—

21           “(i) any sale, exchange, or other dis-  
22           position of qualifying foreign trade prop-  
23           erty by such taxpayer, or

1                   “(ii) any lease or rental of qualifying  
2                   foreign trade property described in sub-  
3                   paragraph (B) by such taxpayer,

4                   “(D) for engineering or architectural serv-  
5                   ices for construction projects located (or pro-  
6                   posed for location) outside the United States, or

7                   “(E) for the performance of managerial  
8                   services for a person other than a related per-  
9                   son in furtherance of the production of foreign  
10                  trading gross receipts described in subpara-  
11                  graph (A), (B), or (C).

12                  Subparagraph (E) shall not apply to a taxpayer for  
13                  any taxable year unless at least 50 percent of its for-  
14                  eign trading gross receipts (determined without re-  
15                  gard to this sentence) for such taxable year is de-  
16                  rived from activities described in subparagraph (A),  
17                  (B), or (C).

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

22                         “(A) the qualifying foreign trade property  
23                         or services—

24                                 “(i) are for ultimate use in the United  
25                                 States, or

1                   “(ii) are for use by the United States  
2                   or any instrumentality thereof and such  
3                   use of qualifying foreign trade property or  
4                   services is required by law or regulation, or

5                   “(B) such transaction is accomplished by a  
6                   subsidy granted by the government (or any in-  
7                   strumentality thereof) of the country or posses-  
8                   sion in which the property is manufactured,  
9                   produced, grown, or extracted.

10                  “(3) ELECTION TO EXCLUDE CERTAIN RE-  
11                  CEIPTS.—The term ‘foreign trading gross receipts’  
12                  shall not include gross receipts of a taxpayer from  
13                  a transaction if the taxpayer elects not to have such  
14                  receipts taken into account for purposes of this sub-  
15                  part.

16                  “(b) FOREIGN ECONOMIC PROCESS REQUIRE-  
17                  MENTS.—

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

24                  “(2) REQUIREMENT.—

1           “(A) IN GENERAL.—The requirements of  
2 this paragraph are met with respect to the  
3 gross receipts of a taxpayer derived from any  
4 transaction if—

5                   “(i) such taxpayer (or any person act-  
6 ing under a contract with such taxpayer)  
7 has participated outside the United States  
8 in the solicitation (other than advertising),  
9 the negotiation, or the making of the con-  
10 tract relating to such transaction, and

11                   “(ii) the foreign direct costs incurred  
12 by the taxpayer attributable to the trans-  
13 action equal or exceed 50 percent of the  
14 total direct costs attributable to the trans-  
15 action.

16           “(B) ALTERNATIVE 85-PERCENT TEST.—A  
17 taxpayer shall be treated as satisfying the re-  
18 quirements of subparagraph (A)(ii) with respect  
19 to any transaction if, with respect to each of at  
20 least 2 subparagraphs of paragraph (3), the  
21 foreign direct costs incurred by such taxpayer  
22 attributable to activities described in such sub-  
23 paragraph equal or exceed 85 percent of the  
24 total direct costs attributable to activities de-  
25 scribed in such subparagraph.

1           “(C) DEFINITIONS.—For purposes of this  
2 paragraph—

3           “(i) TOTAL DIRECT COSTS.—The term  
4 ‘total direct costs’ means, with respect to  
5 any transaction, the total direct costs in-  
6 curred by the taxpayer attributable to ac-  
7 tivities described in paragraph (3) per-  
8 formed at any location by the taxpayer or  
9 any person acting under a contract with  
10 such taxpayer.

11           “(ii) FOREIGN DIRECT COSTS.—The  
12 term ‘foreign direct costs’ means, with re-  
13 spect to any transaction, the portion of the  
14 total direct costs which are attributable to  
15 activities performed outside the United  
16 States.

17           “(3) ACTIVITIES RELATING TO QUALIFYING  
18 FOREIGN TRADE PROPERTY.—The activities de-  
19 scribed in this paragraph are any of the following  
20 with respect to qualifying foreign trade property—

21           “(A) advertising and sales promotion,

22           “(B) the processing of customer orders  
23 and the arranging for delivery,

1           “(C) transportation outside the United  
2 States in connection with delivery to the cus-  
3 tomer,

4           “(D) the determination and transmittal of  
5 a final invoice or statement of account or the  
6 receipt of payment, and

7           “(E) the assumption of credit risk.

8           “(4) ECONOMIC PROCESSES PERFORMED BY  
9 RELATED PERSONS.—A taxpayer shall be treated as  
10 meeting the requirements of this subsection with re-  
11 spect to any sales transaction involving any property  
12 if any related person has met such requirements in  
13 such transaction or any other sales transaction in-  
14 volving such property.

15           “(c) EXCEPTION FROM FOREIGN ECONOMIC PROC-  
16 ESS REQUIREMENT.—

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

21           “(2) RECEIPTS OF RELATED PERSONS AGGRE-  
22 GATED.—All related persons shall be treated as one  
23 person for purposes of paragraph (1), and the limi-  
24 tation under paragraph (1) shall be allocated among

1 such persons in a manner provided in regulations  
2 prescribed by the Secretary.

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

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

10 “(a) QUALIFYING FOREIGN TRADE PROPERTY.—For  
11 purposes of this subpart—

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

14 “(A) manufactured, produced, grown, or  
15 extracted within or outside the United States,

16 “(B) held primarily for sale, lease, or rent-  
17 al, in the ordinary course of trade or business  
18 for direct use, consumption, or disposition out-  
19 side the United States, and

20 “(C) not more than 50 percent of the fair  
21 market value of which is attributable to—

22 “(i) articles manufactured, produced,  
23 grown, or extracted outside the United  
24 States, and

1                   “(ii) direct costs for labor (determined  
2                   under the principles of section 263A) per-  
3                   formed outside the United States.

4           For purposes of subparagraph (C), the fair market  
5           value of any article imported into the United States  
6           shall be its appraised value, as determined by the  
7           Secretary under section 402 of the Tariff Act of  
8           1930 (19 U.S.C. 1401a) in connection with its im-  
9           portation, and the direct costs for labor under clause  
10          (ii) do not include costs that would be treated under  
11          the principles of section 263A as direct labor costs  
12          attributable to articles described in clause (i).

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

20                           “(A) a domestic corporation,

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

23                           “(C) a foreign corporation with respect to  
24                           which an election under subsection (e) (relating



1 to foreign corporations electing to be subject to  
2 United States taxation) is in effect, or

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

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

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

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

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

23 “(C) oil or gas (or any primary product  
24 thereof),

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

5           “(E) any unprocessed timber which is a  
6           softwood.

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

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

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

24           “(1) TRANSACTION.—

1           “(A) IN GENERAL.—The term ‘transaction’  
2           means—

3                   “(i) any sale, exchange, or other dis-  
4                   position,

5                   “(ii) any lease or rental, and

6                   “(iii) any furnishing of services.

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

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

21          “(3) RELATED PERSON.—A person shall be re-  
22          lated to another person if such persons are treated  
23          as a single employer under subsection (a) or (b) of  
24          section 52 or subsection (m) or (o) of section 414,  
25          except that determinations under subsections (a)

1 and (b) of section 52 shall be made without regard  
2 to section 1563(b).

3 “(4) GROSS AND TAXABLE INCOME.—Section  
4 114 shall not be taken into account in determining  
5 the amount of gross income or foreign trade income  
6 from any transaction.

7 “(c) SOURCE RULE.—Under regulations, in the case  
8 of qualifying foreign trade property manufactured, pro-  
9 duced, grown, or extracted within the United States, the  
10 amount of income of a taxpayer from any sales transaction  
11 with respect to such property which is treated as from  
12 sources without the United States shall not exceed—

13 “(1) in the case of a taxpayer computing its  
14 qualifying foreign trade income under section  
15 941(a)(1)(B), the amount of the taxpayer’s foreign  
16 trade income which would (but for this subsection)  
17 be treated as from sources without the United  
18 States if the foreign trade income were reduced by  
19 an amount equal to 4 percent of the foreign trading  
20 gross receipts with respect to the transaction, and

21 “(2) in the case of a taxpayer computing its  
22 qualifying foreign trade income under section  
23 941(a)(1)(C), 50 percent of the amount of the tax-  
24 payer’s foreign trade income which would (but for

1 this subsection) be treated as from sources without  
2 the United States.

3 “(d) TREATMENT OF WITHHOLDING TAXES.—

4 “(1) IN GENERAL.—For purposes of section  
5 114(d), any withholding tax shall not be treated as  
6 paid or accrued with respect to extraterritorial in-  
7 come which is excluded from gross income under  
8 section 114(a). For purposes of this paragraph, the  
9 term ‘withholding tax’ means any tax which is im-  
10 posed on a basis other than residence and for which  
11 credit is allowable under section 901 or 903.

12 “(2) EXCEPTION.—Paragraph (1) shall not  
13 apply to any taxpayer with respect to extraterritorial  
14 income from any transaction if the taxpayer com-  
15 putes its qualifying foreign trade income with re-  
16 spect to the transaction under section 941(a)(1)(A).

17 “(e) ELECTION TO BE TREATED AS DOMESTIC COR-  
18 PORATION.—

19 “(1) IN GENERAL.—An applicable foreign cor-  
20 poration may elect to be treated as a domestic cor-  
21 poration for all purposes of this title if such corpora-  
22 tion waives all benefits to such corporation granted  
23 by the United States under any treaty. No election  
24 under section 1362(a) may be made with respect to  
25 such corporation.

1           “(2) APPLICABLE FOREIGN CORPORATION.—

2           For purposes of paragraph (1), the term ‘applicable  
3           foreign corporation’ means any foreign corporation  
4           if—

5                     “(A) such corporation manufactures, pro-  
6                     duces, grows, or extracts property in the ordi-  
7                     nary course of such corporation’s trade or busi-  
8                     ness, or

9                     “(B) substantially all of the gross receipts  
10                    of such corporation may reasonably be expected  
11                    to be foreign trading gross receipts.

12           “(3) PERIOD OF ELECTION.—

13                    “(A) IN GENERAL.—Except as otherwise  
14                    provided in this paragraph, an election under  
15                    paragraph (1) shall apply to the taxable year  
16                    for which made and all subsequent taxable  
17                    years unless revoked by the taxpayer. Any rev-  
18                    ocation of such election shall apply to taxable  
19                    years beginning after such revocation.

20                    “(B) TERMINATION.—If a corporation  
21                    which made an election under paragraph (1) for  
22                    any taxable year fails to meet the requirements  
23                    of subparagraph (A) or (B) of paragraph (2)  
24                    for any subsequent taxable year, such election

1 shall not apply to any taxable year beginning  
2 after such subsequent taxable year.

3 “(C) EFFECT OF REVOCATION OR TERMI-  
4 NATION.—If a corporation which made an elec-  
5 tion under paragraph (1) revokes such election  
6 or such election is terminated under subpara-  
7 graph (B), such corporation (and any successor  
8 corporation) may not make such election for  
9 any of the 5 taxable years beginning with the  
10 first taxable year for which such election is not  
11 in effect as a result of such revocation or termi-  
12 nation.

13 “(4) SPECIAL RULES.—

14 “(A) REQUIREMENTS.—This subsection  
15 shall not apply to an applicable foreign corpora-  
16 tion if such corporation fails to meet the re-  
17 quirements (if any) which the Secretary may  
18 prescribe to ensure that the taxes imposed by  
19 this chapter on such corporation are paid.

20 “(B) EFFECT OF ELECTION, REVOCATION,  
21 AND TERMINATION.—

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

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

5 “(ii) REVOCATION AND TERMI-  
6 NATION.—For purposes of section 367,  
7 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 the first such subsequent taxable year to which  
16 such election ceases to apply) all of its property  
17 to a foreign corporation in connection with an  
18 exchange to which section 354 applies.

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

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



1 “(1) IN GENERAL.—If—

2 “(A) a partnership maintains a separate  
3 account for transactions (to which this subpart  
4 applies) with each partner,

5 “(B) distributions to each partner with re-  
6 spect to such transactions are based on the  
7 amounts in the separate account maintained  
8 with respect to such partner, and

9 “(C) such partnership meets such other re-  
10 quirements as the Secretary may by regulations  
11 prescribe,

12 then such partnership shall allocate to each partner  
13 items of income, gain, loss, and deduction (including  
14 qualifying foreign trade income) from any trans-  
15 action to which this subpart applies on the basis of  
16 such separate account.

17 “(2) SPECIAL RULES.—For purposes of this  
18 subpart, in the case of a partnership to which para-  
19 graph (1) applies—

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

24 “(B) the election under section 942(a)(3)  
25 shall be made separately by each partner with

1           respect to any transaction for which the part-  
2           nership maintains separate accounts for each  
3           partner.

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

7           “(1) which is received by a person from an or-  
8           ganization to which part I of subchapter T applies  
9           which is engaged in the marketing of agricultural or  
10          horticultural products, and

11          “(2) which is designated by the organization as  
12          allocable to qualifying foreign trade income in a  
13          written notice mailed to its patrons during the pay-  
14          ment period described in section 1382(d),

15 shall be treated as qualifying foreign trade income of such  
16 person for purposes of section 114. The taxable income  
17 of the organization shall not be reduced under section  
18 1382 by reason of any amount to which the preceding sen-  
19 tence applies.”.

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

21           (1) The second sentence of section  
22          56(g)(4)(B)(i) is amended by inserting before the  
23          period “or under section 114”.

24           (2) Section 245 is amended by adding at the  
25          end the following new subsection:

1       “(d) CERTAIN DIVIDENDS ALLOCABLE TO QUALI-  
2 FYING FOREIGN TRADE INCOME.—In the case of a domes-  
3 tic corporation which is a United States shareholder (as  
4 defined in section 951(b)) of a controlled foreign corpora-  
5 tion (as defined in section 957), there shall be allowed as  
6 a deduction an amount equal to 100 percent of any divi-  
7 dend received from such controlled foreign corporation  
8 which is distributed out of earnings and profits attrib-  
9 utable to qualifying foreign trade income (as defined in  
10 section 941(a)).”.

11           (3) 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  
15 by adding at the end of paragraph (4) the fol-  
16 lowing new subparagraph:

17                           “(C) such taxes are paid or accrued with  
18 respect to qualifying foreign trade income (as  
19 defined 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  
23 of paragraph (4)(C).”.

24           (4) 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  
12 for lease or rental in the ordinary course of  
13 trade or business for use by the lessee outside  
14 the United States (as defined in section  
15 943(b)(2)).”.

16 (5) Section 903 is amended by striking  
17 “164(a)” and inserting “114, 164(a)”.

18 (6) Section 999(c)(1) is amended by inserting  
19 “941(a)(5),” after “908(a)”.

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

“Sec. 114. Extraterritorial income.”.

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

1 item relating to subpart E and inserting the fol-  
2 lowing new item:

“Subpart E. Qualifying foreign trade income.”.

3 (9) 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  
8 Act 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  
13 in section 922 of the Internal Revenue Code of  
14 1986, as in effect before the amendments made by  
15 this Act).

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

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

1           (1) IN GENERAL.—In the case of a FSC (as so  
2 defined) in existence on September 30, 2000, and at  
3 all times thereafter, the amendments made by this  
4 Act shall not apply to any transaction in the ordi-  
5 nary course of trade or business involving a FSC  
6 which occurs—

7                   (A) before January 1, 2002; or

8                   (B) after December 31, 2001, pursuant to  
9 a binding contract—

10                   (i) which is between the FSC (or any  
11 related person) and any person which is  
12 not a related person; and

13                   (ii) which is in effect on September  
14 30, 2000, and at all times thereafter.

15 For purposes of this paragraph, a binding contract  
16 shall include a purchase option, renewal option, or  
17 replacement option which is included in such con-  
18 tract and which is enforceable against the seller or  
19 lessor.

20           (2) ELECTION TO HAVE AMENDMENTS APPLY  
21 EARLIER.—A taxpayer may elect to have the amend-  
22 ments made by this Act apply to any transaction by  
23 a FSC or any related person to which such amend-  
24 ments would apply but for the application of para-  
25 graph (1). Such election shall be effective for the

1 taxable year for which made and all subsequent tax-  
2 able years, and, once made, may be revoked only  
3 with the consent of the Secretary of the Treasury.

4 (3) RELATED PERSON.—For purposes of this  
5 subsection, the term “related person” has the mean-  
6 ing given to such term by section 943(b)(3) of such  
7 Code, as added by this Act.

8 (d) SPECIAL RULES RELATING TO LEASING TRANS-  
9 ACTIONS.—

10 (1) SALES INCOME.—If foreign trade income in  
11 connection with the lease or rental of property de-  
12 scribed in section 927(a)(1)(B) of such Code (as in  
13 effect before the amendments made by this Act) is  
14 treated as exempt foreign trade income for purposes  
15 of section 921(a) of such Code (as so in effect), such  
16 property shall be treated as property described in  
17 section 941(c)(1)(B) of such Code (as added by this  
18 Act) for purposes of applying section 941(c)(2) of  
19 such Code (as so added) to any subsequent trans-  
20 action involving such property to which the amend-  
21 ments made by this Act apply.

22 (2) LIMITATION ON USE OF GROSS RECEIPTS  
23 METHOD.—If any person computed its foreign trade  
24 income from any transaction with respect to any  
25 property on the basis of a transfer price determined

1 under the method described in section 925(a)(1) of  
2 such Code (as in effect before the amendments made  
3 by this Act), then the qualifying foreign trade in-  
4 come (as defined in section 941(a) of such Code, as  
5 in effect after such amendment) of such person (or  
6 any related person) with respect to any other trans-  
7 action involving such property (and to which the  
8 amendments made by this Act apply) shall be zero.

Passed the House of Representatives September 13,  
2000.

Attest:

JEFF TRANDAHL,

*Clerk.*