

determine whether the proposed change will be permitted. Generally, a request for consent to revoke an election or make a new election will be granted if the basic nature of the taxpayer's business changes or if there are changes in conditions in a foreign country which substantially affect the taxpayer's business. For example, a taxpayer who enters substantial operations in a new foreign country or who loses an existing investment due to nationalization, expropriation, or war would be granted consent to revoke an election or make a new election.

(e) *Joint return*—(1) *General*. In the case of a husband and wife making a joint return, the applicable limitation prescribed by section 904(a) on the credit for taxes paid or accrued to foreign countries and possessions of the United States shall be applied with respect to the aggregate taxable income from sources within each such country or possession, or from sources without the United States, as the case may be, and the aggregate taxable income from all sources, of the spouses.

(2) *Electing the overall limitation*. If a husband and wife make a joint return for the current taxable year, but made a separate return for the preceding taxable year and the overall limitation applied for such preceding taxable year to one spouse or to both spouses (whether or not then married), then, unless revoked with the consent of the Commissioner, the overall limitation shall apply for the current taxable year and for subsequent taxable years of both spouses, whether or not they remain married, whether or not joint returns are filed for such subsequent taxable years, and whether or not one of such spouses could have elected the overall limitation for the current taxable year only with the consent of the Commissioner if he had filed a separate return for such year.

[T.D. 6789, 29 FR 19243, Dec. 31, 1964, as amended by T.D. 7294, 38 FR 33080, Nov. 30, 1973; T.D. 7490, 42 FR 30497, June 15, 1977; 42 FR 32536, June 27, 1977]

§ 1.904-2 Carryback and carryover of unused foreign tax.

(a) *Credit for foreign tax carryback or carryover*. A taxpayer who chooses to claim a credit under section 901 for a

taxable year is allowed a credit under that section not only for taxes otherwise allowable as a credit but also for taxes deemed paid or accrued in that year as a result of a carryback or carryover of an unused foreign tax under section 904(d). However, the taxes so deemed paid or accrued shall not be allowed as a deduction under section 164(a). The following paragraphs of this section provide rules for the computation of carryovers and carrybacks under section 904(d). For special rules regarding the application of section 904(d) and this section in the case of taxes paid or accrued with respect to section 904(f) interest see section 904(f) and § 1.904-4. For special rules regarding the application of section 904(d) and this section in the case of taxes paid, accrued, or deemed to be paid with respect to section 904(f) dividends see section 904(f) and § 1.904-5. For special rules regarding these computations in the case of taxes paid, accrued, or deemed to be paid with respect to foreign oil and gas extraction income or foreign oil related income, see section 907 (b), (e), and (f) and the regulations thereunder.

(b) *Years to which carried*—(1) *General*. If the taxpayer chooses the benefits of section 901 for a taxable year beginning after December 31, 1957, any unused foreign tax (as defined in subparagraph (2) of this paragraph) for such year shall, under section 904(d), be carried to the second preceding taxable year, the first preceding taxable year, and the first, second, third, fourth, and fifth succeeding taxable years, in that order and to the extent not absorbed as taxes deemed paid or accrued, under paragraph (c) of this section, in a prior taxable year. The entire unused foreign tax for any taxable year shall first be carried to the earliest of the taxable years to which, under the preceding sentence, such unused foreign tax may be carried. Any portion of such unused foreign tax not deemed paid or accrued under paragraph (c) of this section in such earliest taxable year shall then be carried to the next earliest taxable year to which such unused foreign tax may be carried, and any portion not absorbed in that year shall then be carried to the next earliest year, and so on.

(2) *Definitions.* (i) When used with reference to a taxable year for which the per-country limitation provided in section 904(a)(1) applies, the term “unused foreign tax” means, with respect to a particular foreign country or possession of the United States, the excess of (a) the income, war profits, and excess profits taxes paid or accrued (or deemed paid or accrued other than by reason of section 904(d)) in such year to such foreign country or possession, over (b) the applicable per-country limitation under section 904(a)(1) for such year.

(ii) When used with reference to a taxable year for which the overall limitation provided in section 904(a)(2) applies, the term “unused foreign tax” means the excess of (a) the income, war profits, and excess profits taxes paid or accrued (or deemed paid or accrued other than by reason of section 904(d)) in such year to all foreign countries and possessions of the United States, over (b) the overall limitation under section 904(a)(2) for such year.

(iii) The term “unused foreign tax” does not include any amount by which the income, war profits, and excess profits taxes paid or accrued, or deemed to be paid, to any foreign country or possession of the United States with respect to foreign mineral income are reduced under section 901(e)(1) and § 1.901-3(b)(1).

(3) *Taxable years beginning before January 1, 1958.* For purposes of this paragraph, the terms “second preceding taxable year” and “first preceding taxable year” do not include any taxable year beginning before January 1, 1958.

(c) *Tax deemed paid or accrued—(1) Unused foreign tax for per-country limitation year.* (i) The amount of an unused foreign tax with respect to a particular foreign country or possession of the United States, for a taxable year for which the per-country limitation under section 904(a)(1) applies, which shall be deemed paid or accrued in any taxable year to which such unused foreign tax may be carried under paragraph (b) of this section shall, except as provided in subdivision (iii) of this subparagraph, be equal to the smaller of—

(a) The portion of such unused foreign tax which, under paragraph (b) of

this section, is carried to such taxable year, or

(b) Any excess limitation for such taxable year with respect to such unused foreign tax (as determined under subdivision (ii) of this subparagraph).

(ii) The excess limitation for any taxable year (hereinafter called the “excess limitation year”) with respect to an unused foreign tax in respect of a particular foreign country or possession of the United States for another taxable year (hereinafter called the “year of origin”) shall be the amount, if any, by which the limitation for the excess limitation year with respect to that foreign country or possession (computed under section 904(a)(1)) exceeds the sum of—

(a) The income, war profits, and excess profits taxes actually paid or accrued to such foreign country or possession in the excess limitation year,

(b) The income, war profits, and excess profits taxes deemed paid or accrued in such year to such foreign country or possession other than by reason of section 904(d), and

(c) The portion of the unused foreign tax, with respect to such foreign country or possession for any taxable year earlier than the year of origin, which is absorbed as taxes deemed paid or accrued in the excess limitation year under subdivision (i) of this subparagraph.

(iii) An unused foreign tax for a taxable year for which the per-country limitation provided in section 904(a)(1) applies shall not be deemed paid or accrued in a taxable year for which the overall limitation provided in section 904(a)(2) applies, notwithstanding that under paragraph (b) of this section such overall limitation year is counted as one of the years to which such unused foreign tax may be carried.

(iv) Any portion of an unused foreign tax with respect to a particular foreign country or possession of the United States which is deemed paid or accrued under section 904(d) in the year to which it is carried shall be deemed paid or accrued to the same foreign country or possession to which such foreign tax was paid or accrued (or deemed paid or accrued other than by reason of section 904(d)) for the year in which it originated.

(v) For determination of excess limitation for a year for which the taxpayer does not choose to claim a credit under section 901, see paragraph (d) of this section.

(2) *Unused foreign tax for overall limitation year.* (i) The amount of an unused foreign tax with respect to all foreign countries and possessions of the United States, for a taxable year for which the overall limitation provided in section 904(a)(2) applies, which shall be deemed paid or accrued in any taxable year to which such unused foreign tax may be carried under paragraph (b) of this section shall, except as provided in subdivision (iii) of this subparagraph, be equal to the smaller of—

(a) The portion of such unused foreign tax which, under paragraph (b) of this section is carried to such taxable year, or

(b) Any excess limitation for such taxable year with respect to such unused foreign tax (as determined under subdivision (ii) of this subparagraph).

(ii) The excess limitation for any taxable year (hereinafter called the “excess limitation year”) with respect to an unused foreign tax in respect of all foreign countries and possessions of the United States for another taxable year (hereinafter called the “year of origin”) shall be the amount, if any, by which the limitation for the excess limitation year with respect to all foreign countries and possessions of the United States (computed under section 904(a)(2)) exceeds the sum of—

(a) The income, war profits, and excess profits taxes actually paid or accrued to all foreign countries and possessions in the excess limitation year,

(b) The income, war profits, and excess profits taxes deemed paid or accrued in such year to all foreign countries and possessions other than by reason of section 904(d), and

(c) The portion of the unused foreign tax, with respect to all foreign countries and possessions for any taxable year earlier than the year of origin, which is absorbed as taxes deemed paid or accrued in the excess limitation year under subdivision (i) of this subparagraph.

(iii) An unused foreign tax for a taxable year for which the overall limitation provided in section 904(a)(2) ap-

plies shall not be deemed paid or accrued in a taxable year for which the per-country limitation provided in section 904(a)(1) applies, notwithstanding that under paragraph (b) of this section such per-country limitation year is counted as one of the years to which such unused foreign tax may be carried.

(iv) For determination of excess limitation for a year for which the taxpayer does not choose to claim a credit under section 901, see paragraph (d) of this section.

(3) *Unused foreign tax with respect to foreign mineral income.* If any portion of an unused foreign tax for any taxable year beginning after December 31, 1969, consists of tax paid or accrued, or deemed to be paid, with respect to foreign mineral income, as defined in § 1.901-3(c), such portion shall not be deemed paid or accrued with respect to foreign mineral income in the taxable year to which it is carried under section 904(d).

(d) *Determination of excess limitation for certain years.* An excess limitation for a taxable year may exist, and may absorb all or some portion of an unused foreign tax, even though the taxpayer does not choose to claim a credit under section 901 for such year. In such case, the amount of the excess limitation, if any, for such year (hereinafter called the “deduction year”) shall be determined in the same manner as though the taxpayer had chosen to claim a credit under section 901 for that year. For purposes of the preceding sentence—

(1) If the taxpayer has not chosen the benefits of section 901 for any taxable year before the deduction year, the per-country limitation under section 904(a)(1) shall be considered to be applicable for such year, and

(2) If the taxpayer has chosen the benefits of section 901 for any taxable year before the deduction year, the limitation (per-country or overall) applicable for the last taxable year (preceding such deduction year for) which a credit was claimed under section 901 shall be considered to be applicable for such deduction year.

(e) *Periods of less than 12 months.* A fractional part of a year which is a taxable year under sections 441(b) and

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7701(a)(23) is a preceding or a succeeding taxable year for the purpose of determining under section 904(d) the years to which the unused foreign tax may be carried, and any unused foreign tax or excess limitation for such fractional part of a year is the unused foreign tax or excess limitation for a taxable year.

(f) *Statement with tax return.* Every taxpayer claiming the benefit of a carryback or carryover of the unused foreign tax to any taxable year for which he chooses to claim a credit under section 901 shall file with his return (or with his claim for refund, if appropriate) for that year as an attachment to his Form 1116 or 1118, as the case may be, a statement setting forth the unused foreign tax deemed paid or

accrued under this section and all material and pertinent facts relative thereto, including a detailed schedule showing the computation of the unused foreign tax so carried back or over.

(g) *Illustration of carrybacks and carryovers.* The application of this section may be illustrated by the following examples:

Example 1. (i) A, a calendar year taxpayer using the cash receipts and disbursements method of accounting, chooses to claim a credit under section 901 for each of the taxable years set forth below. Based upon the taxes actually paid to country X, and the section 904(a)(1) limitation applicable in respect of country X, in each of the taxable years, the unused foreign tax deemed paid under section 904(d) in each of the appropriate taxable years is as follows:

	Taxable years								
	1958	1959	1960	1961	1962	1963	1964	1965	1966
Per-country limitation	\$175	\$150	\$100	\$100	\$100	\$300	\$400	\$200	\$600
Taxes actually paid to country X in taxable year ...	75	60	830	170	150	100	200	140	400
Unused foreign tax to be carried back or over from year of origin .....	.....	.....	730	70	50	.....	.....	.....	.....
Excess limitation with respect to unused foreign tax for—									
1960	(100)	(90)	.....	.....	.....	(200)	(200)	(60)	.....
1961 .....	.....	.....	.....	.....	.....	.....	.....	.....	(200)
1962 .....	.....	.....	.....	.....	.....	.....	.....	.....	(130)
Unused foreign tax absorbed as taxes deemed paid under the carryback and carryover provisions as carried from—									
1960	100	90	.....	.....	.....	200	200	60	.....
1961 .....	.....	.....	.....	.....	.....	.....	.....	.....	70
1962 .....	.....	.....	.....	.....	.....	.....	.....	.....	50

(ii) The excess limitation for 1958, 1959, 1963, 1964, and 1965, respectively, which is available to absorb the unused foreign tax for 1960 is the amount by which the per-country limitation for each of those years exceeds the taxes actually paid to country X in each such year. The unused foreign tax for 1961 and 1962 are not taken into account, since neither of those years is a year earlier than 1960, the year of origin in respect of which the excess limitation is being determined. Thus, for example, the excess limitation for 1963 is \$200, unreduced by the unused foreign tax for 1961 and 1962. There is no excess limitation for 1966 with respect to the unused foreign tax for 1960, since the unused foreign tax may be carried forward only 5 taxable years. The unused foreign tax (\$730) for 1960 is thus absorbed as taxes deemed paid to the extent of the excess limitation for each of the taxable years 1958, 1959, 1963, 1964, and 1965, respectively, and in that order, leaving unused foreign tax in the amount of

\$80 which cannot be absorbed because it cannot be carried beyond 1965.

(iii) The amount of unused foreign tax for 1961 which is deemed paid in 1966 is \$70, the smaller of (a) that portion of the unused foreign tax carried to 1966 (\$70), or (b) the excess limitation for 1966 with respect to such unused foreign tax (\$200). The unused foreign tax for 1962 (\$50) is not taken into account for such purposes, since that year is not a year earlier than 1961, the year of origin in respect of which the excess limitation for 1966 is being determined.

(iv) The excess limitation for 1966 with respect to the unused foreign tax for 1962 is \$130, the amount by which the limitation applicable under section 904(a)(1) for 1966 (\$600) exceeds the sum of the taxes actually paid (\$400) to country X in that year and the unused foreign tax (\$70) for 1961 which is absorbed in 1966 as taxes deemed paid and which is carried from a taxable year earlier than 1962, the year of origin in respect of

which the excess limitation is being determined. The unabsorbed part (\$80) of the unused foreign tax for 1960, a year earlier than 1962, is not taken into account in computing the excess limitation for 1966, since the unused foreign tax for 1960 may not be carried beyond 1965. The unused foreign tax (\$50) for 1962 is thus absorbed in full in 1966 as taxes deemed paid, since the unused foreign tax does not exceed the excess limitation (\$130) for that year.

Example 2. Assume the same facts as those in example 1 except that the taxpayer does not choose to have the benefits of section 901 for 1961. In that case there is no unused foreign tax for that year to carry back or over to be absorbed in other taxable years as taxes deemed paid. Moreover, the excess limitation for 1966 which is available to absorb the unused foreign tax for 1962 is \$200, instead of \$130, that is, the amount by which the limitation applicable under section 904(a)(1) for 1966 (\$600) exceeds the taxes actually paid (\$400) to country X in that year. The amount of the unused foreign tax absorbed in each taxable year as taxes deemed paid is the same as in example 1 except for 1966. In that year only the unused foreign tax (\$50) for 1962 is absorbed as taxes deemed paid.

Example 3. Assume the same facts as those in example 1 except that the taxpayer does not choose the benefits of section 901 for 1959. Since the excess limitation for a taxable year for which the taxpayer does not claim a credit under section 901 is determined in the same manner as though the taxpayer had chosen such credit, the excess limitation for 1959 is determined to be \$90 just as in example 1. Moreover, even though such excess limitation absorbs a carryback of \$90 from the unused tax for 1960, none of such \$90 so deemed paid in 1959 is allowed as a deduction under section 164 or as a credit under section 901 for 1959 or for any other taxable year.

Example 4. (i) B, a calendar year taxpayer using the cash receipts and disbursements methods of accounting, chooses the benefits of section 901 for each of the taxable years 1957, 1958, and 1959. Based upon the taxes actually paid to country Y and the per-country limitation applicable with respect to country Y, in each of the taxable years, the unused foreign tax deemed paid under section 904(d) for taxable year 1959 is as follows:

	Taxable years		
	1957	1958	1959
Per-country limitation on credit for taxes paid to Y	\$300	\$200	\$250
Taxes actually paid to Y in taxable year	200	300	150
Unused foreign tax to be carried back or over from year of origin .....	.....	100	.....
Excess limitation applicable to unused credit .....	.....	.....	(100)
Unused foreign tax absorbed as taxes deemed paid .....	.....	.....	100

(ii) Since a taxable year beginning before January 1, 1958, cannot constitute a preceding taxable year in which the unused foreign tax for 1958 may be absorbed as taxes deemed paid, the entire unused foreign tax (\$100) is absorbed as taxes deemed paid in 1959.

Example 5. (i) C, a calendar year taxpayer using an accrual method of accounting, accrues foreign taxes for the first time in 1961. C chooses the benefits of section 901 for each of the taxable years set forth below and for 1962 elects the overall limitation provided by section 904(a)(2) which, with the Commissioner's consent, is revoked for 1966. Based upon the taxes actually accrued with respect to foreign countries X and Y for each of the taxable years, the unused foreign tax deemed accrued under section 904(d) in the appropriate taxable years is as follows:

	Per country	Overall	Overall	Overall	Overall	Per country
Taxable years	1961	1962	1963	1964	1965	1966
Limitation:						
Country X	\$175	.....	.....	.....	.....	\$290
Country Y	125	.....	.....	.....	.....	95
Overall .....	.....	\$250	\$800	\$300	\$400	.....
Taxes actually accrued:						
Country X	325	.....	.....	.....	.....	200
Country Y	85	.....	.....	.....	.....	100
Aggregate .....	.....	350	380	425	450	.....
Unused foreign tax to be carried back or over from year of origin:						
Country X	150	.....	.....	.....	.....	.....
Country Y .....	.....	.....	.....	.....	.....	5
Aggregate .....	.....	100	.....	125	50	.....
Excess limitation:						
Country X .....	.....	.....	.....	.....	.....	90
Country Y	40	.....	.....	.....	.....	.....
Overall .....	.....	.....	420	.....	.....	.....

	Per country	Overall	Overall	Overall	Overall	Per country
Unused foreign tax absorbed as taxes deemed accrued under section 904(d) and carried from—						
1961 (Country X)						(90)
1962 (Overall)			(100)			
1964 (Overall)			(125)			
1965 (Overall)			(50)			

(ii) Since the per-country limitation is applicable for 1961 and 1966 only, any unused foreign tax with respect to such years may not be deemed accrued in 1962, 1963, 1964, or 1965, years for which the overall limitation applies. However, the excess limitation for 1966 with respect to country X (\$90) is available to absorb a part of the unused foreign tax for 1961 with respect to country X. The difference with respect to country X between the unused foreign tax for 1961 (\$150) and the amount absorbed as taxes deemed accrued (\$90) in 1966, or \$60, may not be carried beyond 1966 since the unused foreign tax may be carried forward only 5 taxable years. There is no excess limitation with respect to country Y for 1961 in respect of the unused foreign tax of country Y for 1966, since the unused foreign tax may be carried back only 2 taxable years.

(iii) Since the overall limitation is applicable for 1962, 1963, 1964, and 1965, any unused foreign tax with respect to such years may not be absorbed as taxes deemed accrued in 1961 or 1966, years for which the per-country limitation applies. However, the excess limitation for 1963 (\$420) computed on the basis of the overall limitation is available to absorb the unused foreign tax for 1962 (\$100), the unused foreign tax for 1964 (\$125), and the unused foreign tax for 1965 (\$50), leaving an excess limitation above such absorption of \$145 (\$420-\$275).

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§ 1.904-3 Carryback and carryover of unused foreign tax by husband and wife.

(a) *In General.* This section provides rules, in addition to those prescribed in § 1.904-2, for the carryback and carryover of the unused foreign tax paid or accrued to a foreign country or possession by a husband and wife making a joint return for one or more of the taxable years involved in the computation of the carryback or carryover.

(b) *Joint unused foreign tax and joint excess limitation.* In the case of a hus-

band and wife the joint unused foreign tax or the joint excess limitation for a taxable year for which a joint return is made shall be computed on the basis of the combined income, deductions, taxes, and credit of both spouses as if the combined income, deductions, taxes, and credit were those of one individual.

(c) *Continuous use of joint return.* If a husband and wife make a joint return for the current taxable year, and also make joint returns for each of the other taxable years involved in the computation of the carryback or carryover of the unused foreign tax to the current taxable year, the joint carryback or the joint carryover to the current taxable year shall be computed on the basis of the joint unused foreign tax and the joint excess limitations.

(d) *From separate to joint return.* If a husband and wife make a joint return for the current taxable year, but make separate returns for all of the other taxable years involved in the computation of the carryback or carryover of the unused foreign tax to the current taxable year, the separate carrybacks or separate carryovers shall be a joint carryback or a joint carryover to the current taxable year. If for such current year the per-country limitation applies, then only the unused foreign tax for a taxable year of a spouse for which the per-country limitation applied to such spouse may constitute a carryover or carryback to the current taxable year. If for such current taxable year the overall limitation applies, then only the unused foreign tax for a taxable year of a spouse for which the overall limitation applied to such spouse may constitute a carryover or carryback to the current taxable year.

(e) *Amounts carried from or through a joint return year to or through a separate return year.* It is necessary to allocate to each spouse his share of an unused foreign tax or excess limitation for any