

§ 1.907(d)-1

establish port prices. Assume that this arrangement is a pricing arrangement described in section 907(d). Thus, Y does not tax the refinery income. The results are the same as in Example 3 even if \$12 per barrel is equal to, more than, or less than, the value of the primary products at the port. See paragraph (a)(5)(vi) of this section.

[T.D. 8338, 56 FR 11073, Mar. 15, 1991]

§ 1.907(d)-1 Disregard of posted prices for purposes of chapter 1 of the Code (for taxable years beginning after December 31, 1982).

(a) *In general*—(1) *Scope*. Section 907(d) applies if a person has FOGEI from the—

(i) Acquisition (other than from a foreign government) or

(ii) Disposition of minerals at a posted price that differs from the fair market value at the time of the transaction. Also, if a seller (other than a foreign government) derives FOGEI upon a disposition described in the preceding sentence, section 907(d) applies to the acquisition by the purchaser whether or not the purchaser has FOGEI. Thus, section 907(d) may apply in determining a person's FORI.

(2) *Initial computation requirement*. If section 907(d) applies to any person, income on the transaction as initially reflected on the person's return shall be computed as if the transaction were effected at fair market value. This requirement applies the first time a person has taxable income derived from either the transaction or an item (such as a dividend described in section 907(c)(3)(A)) determined with reference to that income.

(3) *Burden of proof*. The taxpayer must be able to demonstrate the transaction as it actually occurred and the basis for reporting the transaction under the principles of paragraph (a)(2) of this section.

(4) *Related parties*. Section 907(d) (as a rule of characterization) applies whether or not the parties to the transaction are related. Thus, the excess of the posted price over the fair market value may never be taken into account in determining a person's FOGEI under section 907(a) but may be taken into account in determining a person's FORI.

(b) *Adjustments*. If a taxpayer does not comply with the initial requirement of paragraph (a)(2) of this section,

adjustments under section 907(d) may be made only by the Commissioner in the same manner that section 482 is administered. Correlative and similar adjustments consistent with the substantive and procedural principles of section 482 and § 1.482-1(d) apply. However, section 907(d) is not a limitation on section 482. If a taxpayer disposing of minerals at a posted price does comply with the initial computation requirement of this section, adjustments and correlative and similar adjustments consistent with the substantive and procedural aspects of section 482 and § 1.482-1(d) shall apply, whether made on the return by the taxpayer or on a later audit. This paragraph (b) does not apply to an actual sale or exchange of minerals made between persons with respect to whom adjustments under section 482 would never apply (but see paragraph (a)(4) of this section).

(c) *Definitions*. For purposes of this section—

(1) *Foreign government*. The term *foreign government* means only the integral parts or controlled entities of a foreign sovereign and political subdivisions of a foreign country.

(2) *Minerals*. The term *minerals* has the same meaning as in § 1.907(c)-1(f)(1).

(3) *Posted price*. The term *posted price* means the price set by, or at the direction of, a foreign government to calculate income for purposes of its tax or at which minerals must be sold.

(4) *Other pricing arrangement*. The term *other pricing arrangement* in section 907(d) means a pricing arrangement having the effect of a posted price.

(5) *Fair market value*. The term *fair market value*, whether or not at the port prior to export, is determined in the same way that the wellhead price is determined under § 1.907(c)-1(b)(6).

[T.D. 8338, 56 FR 11075, Mar. 15, 1991]

§ 1.907(e)-1 [Reserved]

§ 1.907(f)-1 Carryback and carryover of credits disallowed by section 907(a) (for amounts carried between taxable years that each begin after December 31, 1982).

(a) *In general*. If a taxpayer chooses the benefits of section 901, any unused