

partnership. As amended, section 704(d) provides, in general, that the adjusted basis of a partner's interest in the partnership for the purpose of deducting partnership losses shall not include any portion of a partnership liability for which the partner has no personal liability. This restriction, however, does not apply to any activity to the extent that section 465 of the Code applies nor to any partnership whose principal activity is investing in real property, other than mineral property. Section 465 does not apply to corporations other than a subchapter S corporation or a personal holding company.

(ii) The restrictions in the amendment to section 704(d) will not apply to any corporate partner with respect to liabilities incurred in an activity described in section 465(c)(1). In all other respects the restrictions in the amendment will apply to all corporate partners unless the partnership's principal activity is investment in real property, other than mineral property.

[T.D. 7445, 41 FR 55344, Dec. 20, 1976]

§7.936-1 Qualified possession source investment income.

For purposes of this section, interest earned after September 30, 1976 (less applicable deductions), by a domestic corporation, engaged in the active conduct of a trade or business in Puerto Rico, which elects the application of section 936 with respect to deposits with certain Puerto Rican financial institutions will be treated as qualified possession source investment income within the meaning of section 936(d)(2) if (1) the interest qualifies for exemption from Puerto Rican income tax under regulations issued by the Secretary of the Treasury of Puerto Rico, as in effect on September 28, 1976, under the authority of section 2(j) of the Puerto Rico Industrial Incentive Act of 1963, as amended, (2) the interest is from sources within Puerto Rico (within the meaning of section 936(d)(2)(A)), and (3) the funds with respect to which the interest is earned are derived from the active conduct of a trade or business in Puerto Rico or from investment of funds so derived.

[T.D. 7452, 41 FR 56794, Dec. 30, 1976]

§7.999-1 Computation of the international boycott factor.

(a) *In general.* Sections 908(a), 952(a)(3), and 995(b)(1)(F) provide that certain benefits of the foreign tax credit, deferral of earnings of foreign corporations, and DISC are denied if a person or a member of a controlled group (within the meaning of section 993(a)(3)) that includes that person participates in or cooperates with an international boycott (within the meaning of section 999(b)(3)). The loss of tax benefits may be determined by multiplying the otherwise allowable tax benefits by the "international boycott factor." Section 999(c)(1) provides that the international boycott factor is to be determined under regulations prescribed by the Secretary. The method of computing the international boycott factor is set forth in paragraph (c) of this section. A special rule for computing the international boycott factor of a person that is a member of two or more controlled groups is set forth in paragraph (d). Transitional rules for making adjustments to the international boycott factor for years affected by the effective dates are set forth in paragraph (e). The definitions of the terms used in this section are set forth in paragraph (b).

(b) *Definitions.* For purposes of this section:

(1) *Boycotting country.* In respect of a particular international boycott, the term "boycotting country" means any country described in section 999(a)(1)(A) or (B) that requires participation in or cooperation with that particular international boycott.

(2) *Participation in or cooperation with an international boycott.* For the definition of the term "participation in or cooperation with an international boycott", see section 999(b)(3) and Parts H through M of the Treasury Department's International Boycott Guidelines.

(3) *Operations in or related to a boycotting country.* For the definitions of the terms "operations", "operations in a boycotting country", "operations related to a boycotting country", and "operations with the government, a company, or a national of a boycotting country", see Part B of the Treasury

Department's International Boycott Guidelines.

(4) *Clearly demonstrating clearly separate and identifiable operations.* For the rules for "clearly demonstrating clearly separate and identifiable operations", see Part D of the Treasury Department's International Boycott Guidelines.

(5) *Purchase made from a country.* The terms "purchase made from a boycotting country" and "purchases made from any country other than the United States" mean, in respect of any particular country, the gross amount paid in connection with the purchase of, the use of, or the right to use:

(i) Tangible personal property (including money) from a stock of goods located in that country,

(ii) Intangible property (other than securities) in that country,

(iii) Securities by a dealer to a beneficial owner that is a resident of that country (but only if the dealer knows or has reason to know the country of residence of the beneficial owner),

(iv) Real property located in that country, or

(v) Services performed in, and the end product of services performed in, that country (other than payroll paid to a person that is an officer or employee of the payor).

(6) *Sales made to a country.* The terms "sales made to a boycotting country" and "sales made to any country other than the United States" mean, in respect of any particular country, the gross receipts from the sale, exchange, other disposition, or use of:

(i) Tangible personal property (including money) for direct use, consumption, or disposition in that country,

(ii) Services performed in that country,

(iii) The end product of services (wherever performed) for direct use, consumption, or disposition in that country,

(iv) Intangible property (other than securities) in that country,

(v) Securities by a dealer to a beneficial owner that is a resident of that country (but only if the dealer knows or has reason to know the country of residence of the beneficial owner), or

(vi) Real property located in that country.

To determine the country of direct use, consumption, or disposition of tangible personal property and the end product of services, see paragraph (b)(10) of this section.

(7) *Sales made from a country.* The terms "sales made from a boycotting country" and "sales made from any country other than the United States" mean, in respect of a particular country, the gross receipts from the sale, exchange, other disposition, or use of:

(i) Tangible personal property (including money) from a stock of goods located in that country,

(ii) Intangible property (other than securities) in that country, or

(iii) Services performed in, and the end product of services performed in, that country.

However, gross receipts from any such sale, exchange, other disposition, or use by a person that are included in the numerator of that person's international boycott factor by reason of paragraph (b)(6) of this section shall not again be included in the numerator by reason of this subparagraph.

(8) *Payroll paid or accrued for services performed in a country.* The terms "payroll paid or accrued for services performed in a boycotting country" and "payroll paid or accrued for services performed in any country other than the United States" mean, in respect of a particular country, the total amount paid or accrued as compensation to officers and employees, including wages, salaries, commissions, and bonuses, for services performed in that country.

(9) *Services performed partly within and partly without a country—(i) In general.* Except as provided in paragraph (b)(9)(ii) of this section, for purposes of allocating to a particular country:

(A) The gross amount paid in connection with the purchase or use of,

(B) The gross receipts from the sale, exchange, other disposition or use of, and

(C) The payroll paid or accrued for services performed, or the end product of services performed, partly within and partly without that country, the amount paid, received, or accrued to be allocated to that country, unless the facts and circumstances of a particular

case warrant a different amount, will be that amount that bears the same relation to the total amount paid, received, or accrued as the number of days of performance of the services within that country bears to the total number of days of performance of services for which the total amount is paid, received, or accrued.

(ii) *Transportation, telegraph, and cable services.* Transportation, telegraph, and cable services performed partly within one country and partly within another country are allocated between the two countries as follows:

(A) In the case of a purchase of such services performed from Country A to Country B, fifty percent of the gross amount paid is deemed to be a purchase made from Country A and the remaining fifty percent is deemed to be a purchase made from Country B.

(B) In the case of a sale of such services performed from Country A to Country B, fifty percent of the gross receipts is deemed to be a sale made from Country R and the remaining fifty percent is deemed to be a sale made to Country B.

(10) *Country of use, consumption, or disposition.* As a general rule, the country of use, consumption, or disposition of tangible personal property (including money) and the end product of services (wherever performed) is deemed to be the country of destination of the tangible personal property or the end product of the services. (Thus, if legal services are performed in one country and an opinion is given for use by a client in a second country, the end product of the legal services is used, consumed, or disposed of in the second country.) The occurrence in a country of a temporary interruption in the shipment of the tangible personal property or the delivery of the end product of services shall not constitute such country the country of destination. However, if at the time of the transaction the person providing the tangible personal property or the end product of services knew, or should have known from the facts and circumstances surrounding the transaction, that the tangible personal property or the end product of services probably would not be used, consumed, or disposed of in the country of des-

tinuation, that person must determine the country of ultimate use, consumption or disposition of the tangible personal property or the end product of services. Notwithstanding the preceding provisions of this subparagraph, a person that sells, exchanges, otherwise disposes of, or makes available for use, tangible personal property to any person all of whose business except for an insubstantial part consists of selling from inventory to retail customers at retail outlets all within one country may assume at the time of such sale to such person that the tangible personal property will be used, consumed, or disposed of within such country.

(11) *Controlled group taxable year.* The term "controlled group taxable year" means the taxable year of the controlled group's common parent corporation. In the event that no common parent corporation exists, the members of the group shall elect the taxable year of one of the members of the controlled group to serve as the controlled group taxable year. The taxable year election is a binding election to be changed only with the approval of the Secretary of his delegate. The election is to be made in accordance with the procedures set forth in the instructions to Form 5713, the International Boycott Report.

(c) *Computation of international boycott factor*—(1) *In general.* The method of computing the international boycott factor of a person that is not a member of a controlled group is set forth in paragraph (c)(2) of this section. The method of computing the international boycott factor of a person that is a member of a controlled group is set forth in paragraph (c)(3) of this section. For purposes of paragraphs (c) (2) and (3), purchases and sales made by, and payroll paid or accrued by, a partnership are deemed to be made or paid or accrued by a partner in that proportion that the partner's distributive share bears to the purchases and sales made by, and the payroll paid or accrued by, the partnership. Also for purposes of paragraphs (c) (2) and (3), purchases and sales made by, and payroll paid or accrued by, a trust referred to in section 671 are deemed to be made both by the trust (for purposes of determining

the trust's international boycott factor), and by a person treated under section 671 as the owner of the trust (but only in that proportion that the portion of the trust that such person is considered as owning under sections 671 through 679 bears to the purchases and sales made by, and the payroll paid and accrued by, the trust).

(2) *International boycott factor of a person that is not a member of a controlled group.* The international boycott factor to be applied by a person that is not a member of a controlled group (within the meaning of section 993(a)(3)) is a fraction.

(i) The numerator of the fraction is the sum of the—

(A) Purchases made from all boycotting countries associated in carrying out a particular international boycott.

(B) Sales made to or from all boycotting countries associated in carrying out a particular international boycott, and

(C) Payroll paid or accrued for services performed in all boycotting countries associated in carrying out a particular international boycott by that person during that person's taxable year, minus the amount of such purchases, sales, and payroll that is clearly demonstrated to be attributable to clearly separate and identifiable operations in connection with which there was no participation in or cooperation with that international boycott.

(ii) The denominator of the fraction is the sum of the—

(A) Purchases made from any country other than the United States,

(B) Sales made to or from any country other than the United States, and

(C) Payroll paid or accrued for services performed in any country other than the United States by that person during that person's taxable year.

(3) *International boycott factor of a person that is a member of a controlled group.* The international boycott factor to be applied by a person that is a member of a controlled group (within the meaning of section 993(a)(3)) shall be computed in the manner described in paragraph (c)(2) of this section, except that there shall be taken into account the purchases and sales made by, and the payroll paid or accrued by,

each member of the controlled group during each member's own taxable year that ends with or within the controlled group taxable year that ends with or within that person's taxable year.

(d) *Computation of the international boycott factor of a person that is a member of two or more controlled groups.* The international boycott factor to be applied under sections 908(a), 952(a)(3), and 995(b)(1)(F) by a person that is a member of two or more controlled groups shall be determined in the manner described in paragraph (c)(3), except that the purchases, sales, and payroll included in the number and denominator shall include the purchases, sales, and payroll of that person and of all other members of the two or more controlled groups of which that person is a member.

(e) *Transitional rules—(1) Pre-November 3, 1976 boycotting operations.* The international boycott factor to be applied under sections 908(a), 952(a)(3), and 995(b)(1)(F) by a person that is not a member of a controlled group, for that person's taxable year that includes November 3, 1976, or a person that is a member of a controlled group, for the controlled group taxable year that includes November 3, 1976, shall be computed in the manner described in paragraphs (c)(2) and (c)(3), respectively, of this section. However, that the following adjustments shall be made:

(i) There shall be excluded from the numerators described in paragraphs (c)(2)(i) and (c)(3)(i) of this section purchases, sales, and payroll clearly demonstrated to be attributable to clearly separate and identifiable operations—

(A) That were completed on or before November 3, 1976, or

(B) In respect of which it is demonstrated that the agreements constituting participation in or cooperation with the international boycott were renounced, the renunciations were communicated on or before November 3, 1976, to the governments or persons with which the agreements were made and the agreements have not been reaffirmed after November 3, 1976, and

(ii) The international boycott factor resulting after the numerator has been modified in accordance with paragraph (e)(1)(i) of this section shall be further

modified by multiplying it by a fraction. The numerator of that fraction shall be the number of days in that person's taxable year (or, if applicable, in that person's controlled group taxable year) remaining after November 3, 1976, and the denominator shall be 366.

The principles of this subparagraph are illustrated in the following example:

Example. Corporation A, a calendar year taxpayer, is not a member of a controlled group. During the 1976 calendar year, Corporation DA had three operations in a boycotting country under three separate contracts, each of which contained agreements constituting participation in or cooperation with an international boycott. Each contract was entered into on or after September 2, 1976. Operation (1) was completed on November 1, 1976. The sales made to a boycotting country in connection with Operation (1) amounted to \$10. Operation (2) was not completed during the taxable year, but on November 1, 1976, Corporation A communicated a renunciation of the boycott agreement covering that operation to the government of the boycotting country. The sales made to a boycotting country in connection with Operation (2) amounted to \$40. Operation (3) was not completed during the taxable year, nor was any renunciation of the boycott agreement made. The sales made to a boycotting country in connection with Operation (3) amounted to \$25. Corporation A had no purchases made from, sales made from, or payroll paid or accrued for services performed in, a boycotting country. Corporation A had \$500 of purchases made from, sales made from, sales made to, and payroll paid or accrued for services performed in, countries other than the United States. Company A's boycott factor for 1976, computed under paragraph (c)(2) of this section (before the application of this subparagraph) would be:

$$(\$10 + \$40 + \$25) / \$500 = (\$75 / \$500)$$

However, the \$10 is eliminated from the numerator by reason of paragraph (e)(1)(i)(A) of this section, and the \$40 is eliminated from the numerator by reason of paragraph (e)(1)(i)(B) of this section. Thus, before the application of paragraph (e)(1)(ii) of this section, Corporation A's international boycott factor is \$25/\$500. After the application of paragraph (e)(1)(ii), Corporation A's international boycott factor is:

$$(\$25 / \$500) \times (58 / 366)$$

(2) *Pre-December 31, 1977 boycotting operations.* The international boycott factor to be applied under sections 908(a), 952(a)(3), and 995(b)(1)(F) by a person

that is not a member of a controlled group, for that person's taxable year that includes December 31, 1977, or by a person that is a member of a controlled group, for the controlled group taxable year that includes December 31, 1977, shall be computed in the manner described in paragraphs (c)(2) and (c)(3), respectively, of this section. However, the following adjustments shall be made:

(i) There shall be excluded from the numerators described in paragraphs (c)(2)(i) and (c)(3)(i) of this section purchases, sales, and payroll clearly demonstrated to be attributable to clearly separate and identifiable operations that were carried out in accordance with the terms of binding contracts entered into before September 2, 1976, and—

(A) That were completed on or before December 31, 1977, or

(B) In respect of which it is demonstrated that the agreements constituting participation in or cooperation with the international boycott were renounced, the renunciations were communicated on or before December 31, 1977, to the governments or persons with which the agreements were made, and the agreements were not reaffirmed after December 31, 1977, and

(ii) In the case of clearly separate and identifiable operations that are carried out in accordance with the terms of binding contracts entered into before September 2, 1976, but that do not meet the requirements of paragraph (e)(2)(i) of this section, the numerators described in paragraphs (c)(2)(i) and (c)(3)(i) of this section shall be adjusted by multiplying the purchases, sales, and payroll clearly demonstrated to be attributable to those operations by a fraction, the numerator of which is the number of days in such person's taxable year (or, if applicable, in such person's controlled group taxable year) remaining after December 31, 1977, and the denominator of which is 365.

The principles of this subparagraph are illustrated in the following example:

Example. Corporation A is not a member of a controlled group and reports on the basis of a July 1–June 30 fiscal year. During the 1977–1978 fiscal year, Corporation A had 2 operations carried out pursuant to the terms of

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separate contracts, each of which had a clause that constituted participation in or cooperation with an international boycott. Neither operation was completed during the fiscal year, nor were either of the boycotting clauses renounced. Operation (1) was carried out in accordance with the terms of a contract entered into on November 15, 1976. Operation (2) was carried out in accordance with the terms of a binding contract entered into before September 2, 1976. Corporation A had sales made to a boycotting country in connection with Operation (1) in the amount of \$50, and in connection with Operation (2) in the amount of \$100. Corporation A had sales made to countries other than the United States in the amount of \$500. Corporation A had no purchases made from, sales made from, or payroll paid or accrued for services performed in, any country other than the United States. In the absence of this subparagraph, Corporation A's international boycott factor would be

$$(\$50 + \$100) / \$500.$$

However, by reason of the application of this subparagraph, Corporation A's international boycott factor is reduced to

$$\left[(\$50 + \$100)(181 / 365) \right] / \$500$$

(3) *Incomplete controlled group taxable year.* If, at the end of the taxable year of a person that is a member of a controlled group, the controlled group taxable year that includes November 3, 1976 has not ended, or the taxable year of one or more members of the controlled group that includes November 3, 1976 has not ended, then the international boycott factor to be applied under sections 908(a), 952(a)(3) and 995(b)(1)(F) by such person for the taxable year shall be computed in the manner described in paragraph (c)(3) of this section. However, the numerator and the denominator in that paragraph shall include only the purchases, sales, and payroll of those members of the controlled group whose taxable years ending after November 3, 1976 have ended as the end of the taxable year of such person.

(f) *Effective date.* This section applies to participation in or cooperation with an international boycott after November 3, 1976. In the case of operations which constitute participation in or cooperation with an international boycott and which are carried out in accordance with the terms of a binding

contract entered into before September 2, 1976, this section applies to such participation or cooperation after December 31, 1977.

[T.D. 7467, 42 FR 11833, Mar. 1, 1977]

§ 7.6039A-1 Information regarding carryover basis property acquired from a decedent.

(a) *Information for Internal Revenue Service.* In the case of a decedent who dies after December 31, 1976, the executor (as defined in section 2203) shall furnish to the Internal Revenue Service the following information, as applicable—

(1) If an estate tax return is required to be filed under section 6018 of the Internal Revenue Code of 1954, as amended, and if the return form contains questions relating to carryover basis property, the executor must answer those questions.

(2) If no estate tax return is required to be filed under section 6018 of the Internal Revenue Code of 1954, as amended, or if a return is required to be filed but the return form used does not contain questions relating to carryover basis property, the executor must file the form prescribed by the Commissioner. This form may be attached to the estate tax return or the decedent's final individual income tax return. If this form is not attached to the estate tax return or the decedent's final individual income tax return, it must be filed with the Internal Revenue Service office where the decedent's final income tax return would be filed if one were required within 9 months after the date of the decedent's death or by December 31, 1978, whichever is later.

(b) *Information to be furnished to beneficiaries.* Any executor required under paragraph (a) of this section to furnish information to the Internal Revenue Service relating to carryover basis property must furnish in writing to the distributee of each piece of carryover basis property—

- (1) A description of the property,
- (2) The adjusted basis of the property as computed under section 1023 (a), (c), and (d),
- (3) The amount of the increase in the basis of the property determined under section 1023(h),