

(e) *Cross references.* See §1.861-9T(b) for the allocation of expense to certain notional principal contracts. For rules relating to the source of income from nonfunctional currency notional principal contracts, see §1.9 88-4T. For rules relating to the taxable amount of notional principal contract income allocable under this section to sources inside or outside the United States, see §1.863-1(c).

[T.D. 8330, 56 FR 1362, Jan. 14, 1991]

§ 1.864-1 Meaning of sale, etc.

For purposes of §§1.861 through 1.864-7, the word “sale” includes “exchange”; the word “sold” includes “exchanged”; the word “produced” includes “created”, “fabricated”, “manufactured”, “extracted”, “processed”, “cured”, and “aged”.

[T.D. 6948, 33 FR 5090, Mar. 28, 1968]

§ 1.864-2 Trade or business within the United States.

(a) *In general.* As used in part I (section 861 and following) and part II (section 871 and following), subchapter N, chapter 1 of the Code, and chapter 3 (section 1441 and following) of the Code, and the regulations thereunder, the term “engaged in trade or business within the United States” does not include the activities described in paragraphs (c) and (d) of this section, but includes the performance of personal services within the United States at any time within the taxable year except to the extent otherwise provided in this section.

(b) *Performance of personal services for foreign employer—(1) Excepted services.* For purposes of paragraph (a) of this section, the term “engaged in trade or business within the United States” does not include the performance of personal services—

(i) For a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States at any time during the taxable year, or

(ii) For an office or place of business maintained in a foreign country or in a possession of the United States by an individual who is a citizen or resident of the United States or by a domestic partnership or a domestic corporation,

by a nonresident alien individual who is temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year and whose compensation for such services does not exceed in the aggregate gross amount of \$3,000.

(2) *Rules of application.* (i) As a general rule, the term “day”, as used in subparagraph (1) of this paragraph, means a calendar day during any portion of which the nonresident alien individual is physically present in the United States.

(ii) Solely for purposes of applying this paragraph, the nonresident alien individual, foreign partnership, or foreign corporation for which the nonresident alien individual is performing personal services in the United States shall not be considered to be engaged in trade or business in the United States by reason of the performance of such services by such individual.

(iii) In applying subparagraph (1) of this paragraph it is immaterial whether the services performed by the nonresident alien individual are performed as an employee for his employer or under any form of contract with the person for whom the services are performed.

(iv) In determining for purposes of subparagraph (1) of this paragraph whether compensation received by the nonresident alien individual exceeds in the aggregate a gross amount of \$3,000, any amounts received by the individual from an employer as advances or reimbursements for travel expenses incurred on behalf of the employer shall be omitted from the compensation received by the individual, to the extent of expenses incurred, where he was required to account and did account to his employer for such expenses and has met the tests for such accounting provided in §1.162-17 and paragraph (e)(4) of §1.274-5. If advances or reimbursements exceed such expenses, the amount of the excess shall be included as compensation for personal services for purposes of such subparagraph. Pensions and retirement pay attributable to personal services performed in the United States are not to be taken into account for purposes of subparagraph (1) of this paragraph.