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Subtitle A Income Taxes §§1-1563

Chapter 1 NORMAL TAXES AND SURTAXES §§1-1400U-3

Subchapter N Tax Based on Income From Sources Within or Without the United States

§§861-999

Part I DETERMINATION OF SOURCES OF INCOME §§861-865

§863 Special rules for determining source.

Internal Revenue Code**§ 863 Special rules for determining source.****(a) Allocation under regulations.**

Items of gross income, expenses, losses, and deductions, other than those specified in sections 861(a) and 862(a), shall be allocated or apportioned to sources within or without the United States, under regulations prescribed by the Secretary. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the taxable income therefrom) the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as taxable income from sources within the United States.

(b) Income partly from within and partly from without the United States.

In the case of gross income derived from sources partly within and partly without the United States, the taxable income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income; and the portion of such taxable income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Secretary. Gains, profits, and income-

(1)

from services rendered partly within and partly without the United States,

(2)

from the sale or exchange of inventory property (within the meaning of section 865(i)(1)) produced (in whole or in part) by the taxpayer within and sold or exchanged without the United States, or produced (in whole or in part) by the taxpayer without and sold or exchanged within the United States, or

(3)

derived from the purchase of inventory property (within the meaning of section 865(i)(1)) within a possession of the United States and its sale or exchange within the United States,

shall be treated as derived partly from sources within and partly from sources without the United States.

(c) Source rule for certain transportation income.

(1) Transportation beginning and ending in the United States.

All transportation income attributable to transportation which begins and ends in the United States shall be treated as derived from sources within the United States.

(2) Other transportation having United States connection.

(A) In general. 50 percent of all transportation income attributable to transportation which-

(i) is not described in paragraph (1), and

(ii) begins or ends in the United States,

shall be treated as from sources in the United States.

(B) Special rule for personal service income. Subparagraph (A) shall not apply to any transportation income which is income derived from personal services performed by the taxpayer, unless such income is attributable to transportation which-

(i) begins in the United States and ends in a possession of the United States, or

(ii) begins in a possession of the United States and ends in the United States.

In the case of transportation income derived from, or in connection with, a vessel, this subparagraph shall only apply if the taxpayer is a citizen or resident alien.

(3) Transportation income.

For purposes of this subsection, the term "transportation income" means any income derived from, or in connection with-

- (A) the use (or hiring or leasing for use) of a vessel or aircraft, or
- (B) the performance of services directly related to the use of a vessel or aircraft.

For purposes of the preceding sentence, the term "vessel or aircraft" includes any container used in connection with a vessel or aircraft.

(d) Source rules for space and certain ocean activities.

(1) In general.

Except as provided in regulations, any income derived from a space or ocean activity-

- (A) if derived by a United States person, shall be sourced in the United States, and
- (B) if derived by a person other than a United States person, shall be sourced outside the United States.

(2) Space or ocean activity.

For purposes of paragraph (1)-

- (A) In general. The term "space or ocean activity" means-
 - (i) any activity conducted in space, and
 - (ii) any activity conducted on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States.

Such term includes any activity conducted in Antarctica.

(B) Exception for certain activities. The term "space or ocean activity" shall not include-

- (i) any activity giving rise to transportation income (as defined in section 863(c)),
- (ii) any activity giving rise to international communications income (as defined in subsection (e)(2)),
and
- (iii) any activity with respect to mines, oil and gas wells, or other natural deposits to the extent within the United States or any foreign country or possession of the United States (as defined in section 638).

For purposes of applying section 638, the jurisdiction of any foreign country shall not include any jurisdiction not recognized by the United States.

(e) International communications income.

(1) Source rules.

(A) United States persons. In the case of any United States person, 50 percent of any international communications income shall be sourced in the United States and 50 percent of such income shall be sourced outside the United States.

(B) Foreign persons.

(i) In general. Except as provided in regulations or clause (ii) , in the case of any person other than a United States person, any international communications income shall be sourced outside the United States.

(ii) Special rule for income attributable to office or fixed place of business in the United States. In the case of any person (other than a United States person) who maintains an office or other fixed place of business in the United States, any international communications income attributable to such office or other fixed place of business shall be sourced in the United States.

(2) Definition.

For purposes of this section, the term "international communications income" includes all income derived from the transmission of communications or data from the United States to any foreign country (or possession of the United States) or from any foreign country (or possession of the United States)

to the United States.

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