

In the Senate of the United States,

November 1 (legislative day, September 22), 2000.

Resolved, That the bill from the House of Representatives (H.R. 4986) entitled “An Act to amend the Internal Revenue Code of 1986 to repeal the provisions relating to foreign sales corporations (FSCs) and to exclude extraterritorial income from gross income.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 **SECTION 1. SHORT TITLE.**

2 (a) *SHORT TITLE.—This Act may be cited as the*
3 *“FSC Repeal and Extraterritorial Income Exclusion Act*
4 *of 2000”.*

1 (b) *AMENDMENT OF 1986 CODE.*—Except as otherwise
2 expressly provided, whenever in this Act an amendment or
3 repeal is expressed in terms of an amendment to, or repeal
4 of, a section or other provision, the reference shall be consid-
5 ered to be made to a section or other provision of the Inter-
6 nal Revenue Code of 1986.

7 **SEC. 2. REPEAL OF FOREIGN SALES CORPORATION RULES.**

8 Subpart C of part III of subchapter N of chapter 1
9 (relating to taxation of foreign sales corporations) is hereby
10 repealed.

11 **SEC. 3. TREATMENT OF EXTRATERRITORIAL INCOME.**

12 (a) *IN GENERAL.*—Part III of subchapter B of chapter
13 1 (relating to items specifically excluded from gross income)
14 is amended by inserting before section 115 the following new
15 section:

16 **“SEC. 114. EXTRATERRITORIAL INCOME.**

17 “(a) *EXCLUSION.*—Gross income does not include
18 extraterritorial income.

19 “(b) *EXCEPTION.*—Subsection (a) shall not apply to
20 extraterritorial income which is not qualifying foreign
21 trade income as determined under subpart E of part III
22 of subchapter N.

23 “(c) *DISALLOWANCE OF DEDUCTIONS.*—

24 “(1) *IN GENERAL.*—Any deduction of a taxpayer
25 allocated under paragraph (2) to extraterritorial in-

1 *come of the taxpayer excluded from gross income*
2 *under subsection (a) shall not be allowed.*

3 “(2) *ALLOCATION*.—Any deduction of the tax-
4 *payer properly apportioned and allocated to the*
5 *extraterritorial income derived by the taxpayer from*
6 *any transaction shall be allocated on a proportionate*
7 *basis between—*

8 “(A) *the extraterritorial income derived*
9 *from such transaction which is excluded from*
10 *gross income under subsection (a), and*

11 “(B) *the extraterritorial income derived*
12 *from such transaction which is not so excluded.*

13 “(d) *DENIAL OF CREDITS FOR CERTAIN FOREIGN*
14 *TAXES*.—Notwithstanding any other provision of this chap-
15 *ter, no credit shall be allowed under this chapter for any*
16 *income, war profits, and excess profits taxes paid or ac-*
17 *crued to any foreign country or possession of the United*
18 *States with respect to extraterritorial income which is ex-*
19 *cluded from gross income under subsection (a).*

20 “(e) *EXTRATERRITORIAL INCOME*.—For purposes of
21 *this section, the term ‘extraterritorial income’ means the*
22 *gross income of the taxpayer attributable to foreign trading*
23 *gross receipts (as defined in section 942) of the taxpayer.”.*

1 (b) *QUALIFYING FOREIGN TRADE INCOME.—Part III*
2 *of subchapter N of chapter 1 is amended by inserting after*
3 *subpart D the following new subpart:*

4 **“Subpart E—Qualifying Foreign Trade Income**

“Sec. 941. Qualifying foreign trade income.

“Sec. 942. Foreign trading gross receipts.

“Sec. 943. Other definitions and special rules.

5 **“SEC. 941. QUALIFYING FOREIGN TRADE INCOME.**

6 “(a) *QUALIFYING FOREIGN TRADE INCOME.—For pur-*
7 *poses of this subpart and section 114—*

8 “(1) *IN GENERAL.—The term ‘qualifying foreign*
9 *trade income’ means, with respect to any transaction,*
10 *the amount of gross income which, if excluded, will*
11 *result in a reduction of the taxable income of the tax-*
12 *payer from such transaction equal to the greatest of—*

13 “(A) *30 percent of the foreign sale and leas-*
14 *ing income derived by the taxpayer from such*
15 *transaction,*

16 “(B) *1.2 percent of the foreign trading gross*
17 *receipts derived by the taxpayer from the trans-*
18 *action, or*

19 “(C) *15 percent of the foreign trade income*
20 *derived by the taxpayer from the transaction.*

21 *In no event shall the amount determined under sub-*
22 *paragraph (B) exceed 200 percent of the amount de-*
23 *termined under subparagraph (C).*

1 “(2) *ALTERNATIVE COMPUTATION*.—A taxpayer
2 may compute its qualifying foreign trade income
3 under a subparagraph of paragraph (1) other than
4 the subparagraph which results in the greatest
5 amount of such income.

6 “(3) *LIMITATION ON USE OF FOREIGN TRADING*
7 *GROSS RECEIPTS METHOD*.—If any person computes
8 its qualifying foreign trade income from any trans-
9 action with respect to any property under paragraph
10 (1)(B), the qualifying foreign trade income of such
11 person (or any related person) with respect to any
12 other transaction involving such property shall be
13 zero.

14 “(4) *RULES FOR MARGINAL COSTING*.—The Sec-
15 retary shall prescribe regulations setting forth rules
16 for the allocation of expenditures in computing for-
17 eign trade income under paragraph (1)(C) in those
18 cases where a taxpayer is seeking to establish or
19 maintain a market for qualifying foreign trade prop-
20 erty.

21 “(5) *PARTICIPATION IN INTERNATIONAL BOY-*
22 *COTTS, ETC*.—Under regulations prescribed by the
23 Secretary, the qualifying foreign trade income of a
24 taxpayer for any taxable year shall be reduced (but
25 not below zero) by the sum of—

1 “(A) an amount equal to such income mul-
2 *tiplied by the international boycott factor deter-*
3 *mined under section 999, and*

4 “(B) any illegal bribe, kickback, or other
5 *payment (within the meaning of section 162(c))*
6 *paid by or on behalf of the taxpayer directly or*
7 *indirectly to an official, employee, or agent in*
8 *fact of a government.*

9 “(b) FOREIGN TRADE INCOME.—For purposes of this
10 *subpart—*

11 “(1) IN GENERAL.—The term ‘foreign trade in-
12 *come’ means the taxable income of the taxpayer at-*
13 *tributable to foreign trading gross receipts of the tax-*
14 *payer.*

15 “(2) SPECIAL RULE FOR COOPERATIVES.—In
16 *any case in which an organization to which part I*
17 *of subchapter T applies which is engaged in the mar-*
18 *eting of agricultural or horticultural products sells*
19 *qualifying foreign trade property, in computing the*
20 *taxable income of such cooperative, there shall not be*
21 *taken into account any deduction allowable under*
22 *subsection (b) or (c) of section 1382 (relating to pa-*
23 *tronage dividends, per-unit retain allocations, and*
24 *nonpatronage distributions).*

1 “(c) FOREIGN SALE AND LEASING INCOME.—For pur-
2 poses of this section—

3 “(1) IN GENERAL.—The term ‘foreign sale and
4 leasing income’ means, with respect to any
5 transaction—

6 “(A) foreign trade income properly allocable
7 to activities which—

8 “(i) are described in paragraph
9 (2)(A)(i) or (3) of section 942(b), and

10 “(ii) are performed by the taxpayer (or
11 any person acting under a contract with
12 such taxpayer) outside the United States, or

13 “(B) foreign trade income derived by the
14 taxpayer in connection with the lease or rental
15 of qualifying foreign trade property for use by
16 the lessee outside the United States.

17 “(2) SPECIAL RULES FOR LEASED PROPERTY.—

18 “(A) SALES INCOME.—The term ‘foreign
19 sale and leasing income’ includes any foreign
20 trade income derived by the taxpayer from the
21 sale of property described in paragraph (1)(B).

22 “(B) LIMITATION IN CERTAIN CASES.—Ex-
23 cept as provided in regulations, in the case of
24 property which—

1 “(i) was manufactured, produced,
2 grown, or extracted by the taxpayer, or
3 “(ii) was acquired by the taxpayer
4 from a related person for a price which was
5 not determined in accordance with the rules
6 of section 482,

7 *the amount of foreign trade income which may
8 be treated as foreign sale and leasing income
9 under paragraph (1)(B) or subparagraph (A) of
10 this paragraph with respect to any transaction
11 involving such property shall not exceed the
12 amount which would have been determined if the
13 taxpayer had acquired such property for the
14 price determined in accordance with the rules of
15 section 482.*

16 “(3) SPECIAL RULES.—

17 “(A) EXCLUDED PROPERTY.—*Foreign sale
18 and leasing income shall not include any income
19 properly allocable to excluded property described
20 in subparagraph (B) of section 943(a)(3) (relat-
21 ing to intangibles).*

22 “(B) ONLY DIRECT EXPENSES TAKEN INTO
23 ACCOUNT.—*For purposes of this subsection, any
24 expense other than a directly allocable expense*

1 *shall not be taken into account in computing for-*
2 *eign trade income.*

3 **“SEC. 942. FOREIGN TRADING GROSS RECEIPTS.**

4 “(a) *FOREIGN TRADING GROSS RECEIPTS.—*

5 “(1) *IN GENERAL.—Except as otherwise provided*
6 *in this section, for purposes of this subpart, the term*
7 *‘foreign trading gross receipts’ means the gross re-*
8 *ceipts of the taxpayer which are—*

9 “(A) *from the sale, exchange, or other dis-*
10 *position of qualifying foreign trade property,*

11 “(B) *from the lease or rental of qualifying*
12 *foreign trade property for use by the lessee out-*
13 *side the United States,*

14 “(C) *for services which are related and sub-*
15 *sidiary to—*

16 “(i) *any sale, exchange, or other dis-*
17 *position of qualifying foreign trade prop-*
18 *erty by such taxpayer, or*

19 “(ii) *any lease or rental of qualifying*
20 *foreign trade property described in subpara-*
21 *graph (B) by such taxpayer,*

22 “(D) *for engineering or architectural serv-*
23 *ices for construction projects located (or proposed*
24 *for location) outside the United States, or*

1 “(E) for the performance of managerial
2 services for a person other than a related person
3 in furtherance of the production of foreign trad-
4 ing gross receipts described in subparagraph (A),
5 (B), or (C).

6 Subparagraph (E) shall not apply to a taxpayer for
7 any taxable year unless at least 50 percent of its for-
8 eign trading gross receipts (determined without re-
9 gard to this sentence) for such taxable year is derived
10 from activities described in subparagraph (A), (B), or
11 (C).

12 “(2) *CERTAIN RECEIPTS EXCLUDED ON BASIS OF*
13 *USE; SUBSIDIZED RECEIPTS EXCLUDED.*—The term
14 ‘foreign trading gross receipts’ shall not include re-
15 ceipts of a taxpayer from a transaction if—

16 “(A) the qualifying foreign trade property
17 or services—

18 “(i) are for ultimate use in the United
19 States, or

20 “(ii) are for use by the United States
21 or any instrumentality thereof and such use
22 of qualifying foreign trade property or serv-
23 ices is required by law or regulation, or

24 “(B) such transaction is accomplished by a
25 subsidy granted by the government (or any in-

1 *strumentality thereof) of the country or posses-*
2 *sion in which the property is manufactured, pro-*
3 *duced, grown, or extracted.*

4 “(3) ELECTION TO EXCLUDE CERTAIN RE-
5 CEIPTS.—*The term ‘foreign trading gross receipts’*
6 *shall not include gross receipts of a taxpayer from a*
7 *transaction if the taxpayer elects not to have such re-*
8 *ceipts taken into account for purposes of this subpart.*

9 "(b) FOREIGN ECONOMIC PROCESS REQUIREMENTS.—

10 “(1) *IN GENERAL.*—Except as provided in sub-
11 section (c), a taxpayer shall be treated as having for-
12 eign trading gross receipts from any transaction only
13 if economic processes with respect to such transaction
14 take place outside the United States as required by
15 paragraph (2).

16 “(2) REQUIREMENT.—

17 “(A) *IN GENERAL.*—The requirements of
18 this paragraph are met with respect to the gross
19 receipts of a taxpayer derived from any trans-
20 action if—

1 *the negotiation, or the making of the con-*
2 *tract relating to such transaction, and*

3 “*(ii) the foreign direct costs incurred*
4 *by the taxpayer attributable to the trans-*
5 *action equal or exceed 50 percent of the*
6 *total direct costs attributable to the trans-*
7 *action.*

8 “*(B) ALTERNATIVE 85-PERCENT TEST.—A*
9 *taxpayer shall be treated as satisfying the re-*
10 *quirements of subparagraph (A)(ii) with respect*
11 *to any transaction if, with respect to each of at*
12 *least 2 subparagraphs of paragraph (3), the for-*
13 *ign direct costs incurred by such taxpayer at-*
14 *tributable to activities described in such sub-*
15 *paragraph equal or exceed 85 percent of the total*
16 *direct costs attributable to activities described in*
17 *such subparagraph.*

18 “*(C) DEFINITIONS.—For purposes of this*
19 *paragraph—*

20 “*(i) TOTAL DIRECT COSTS.—The term*
21 *‘total direct costs’ means, with respect to*
22 *any transaction, the total direct costs in-*
23 *curred by the taxpayer attributable to ac-*
24 *tivities described in paragraph (3) per-*
25 *formed at any location by the taxpayer or*

1 *any person acting under a contract with*
2 *such taxpayer.*

3 “(ii) *FOREIGN DIRECT COSTS.*—The
4 *term ‘foreign direct costs’ means, with re-*
5 *spect to any transaction, the portion of the*
6 *total direct costs which are attributable to*
7 *activities performed outside the United*
8 *States.*

9 “(3) *ACTIVITIES RELATING TO QUALIFYING FOR-*
10 *EIGN TRADE PROPERTY.*—The activities described in
11 *this paragraph are any of the following with respect*
12 *to qualifying foreign trade property—*

13 “(A) *advertising and sales promotion,*
14 “(B) *the processing of customer orders and*
15 *the arranging for delivery,*
16 “(C) *transportation outside the United*
17 *States in connection with delivery to the cus-*
18 *tomer,*

19 “(D) *the determination and transmittal of*
20 *a final invoice or statement of account or the re-*
21 *ceipt of payment, and*

22 “(E) *the assumption of credit risk.*

23 “(4) *ECONOMIC PROCESSES PERFORMED BY RE-*
24 *LATED PERSONS.*—A taxpayer shall be treated as
25 *meeting the requirements of this subsection with re-*

1 spect to any sales transaction involving any property
2 if any related person has met such requirements in
3 such transaction or any other sales transaction in-
4 volving such property.

5 “(c) **EXCEPTION FROM FOREIGN ECONOMIC PROCESS**
6 **REQUIREMENT.**—

7 “(1) **IN GENERAL.**—The requirements of sub-
8 section (b) shall be treated as met for any taxable
9 year if the foreign trading gross receipts of the tax-
10 payer for such year do not exceed \$5,000,000.

11 “(2) **RECEIPTS OF RELATED PERSONS AGGREGATED.**—All related persons shall be treated as one
12 person for purposes of paragraph (1), and the limita-
13 tion under paragraph (1) shall be allocated among
14 such persons in a manner provided in regulations
15 prescribed by the Secretary.

16 “(3) **SPECIAL RULE FOR PASS-THRU ENTITIES.**—
17 In the case of a partnership, S corporation, or other
18 pass-thru entity, the limitation under paragraph (1)
19 shall apply with respect to the partnership, S cor-
20 poration, or entity and with respect to each partner,
21 shareholder, or other owner.

22 **“SEC. 943. OTHER DEFINITIONS AND SPECIAL RULES.**

23 “(a) **QUALIFYING FOREIGN TRADE PROPERTY.**—For
24 purposes of this subpart—

1 “(1) *IN GENERAL.*—The term ‘qualifying foreign
2 *trade property*’ means property—

3 “(A) manufactured, produced, grown, or ex-
4 tracted within or outside the United States,

5 “(B) held primarily for sale, lease, or rent-
6 al, in the ordinary course of trade or business for
7 direct use, consumption, or disposition outside
8 the United States, and

9 “(C) not more than 50 percent of the fair
10 market value of which is attributable to—

11 “(i) articles manufactured, produced,
12 grown, or extracted outside the United
13 States, and

14 “(ii) direct costs for labor (determined
15 under the principles of section 263A) per-
16 formed outside the United States.

17 For purposes of subparagraph (C), the fair market
18 value of any article imported into the United States
19 shall be its appraised value, as determined by the Sec-
20 retary under section 402 of the Tariff Act of 1930 (19
21 U.S.C. 1401a) in connection with its importation,
22 and the direct costs for labor under clause (ii) do not
23 include costs that would be treated under the prin-
24 ciples of section 263A as direct labor costs attrib-
25 utable to articles described in clause (i).

1 “(2) U.S. TAXATION TO ENSURE CONSISTENT
2 TREATMENT.—*Property which (without regard to this*
3 *paragraph) is qualifying foreign trade property and*
4 *which is manufactured, produced, grown, or extracted*
5 *outside the United States shall be treated as quali-*
6 *fying foreign trade property only if it is manufac-*
7 *tured, produced, grown, or extracted by—*

8 “(A) a domestic corporation,

9 “(B) an individual who is a citizen or resi-
10 dent of the United States,

11 “(C) a foreign corporation with respect to
12 which an election under subsection (e) (relating
13 to foreign corporations electing to be subject to
14 United States taxation) is in effect, or

15 “(D) a partnership or other pass-thru enti-
16 ty all of the partners or owners of which are de-
17 scribed in subparagraph (A), (B), or (C).

18 *Except as otherwise provided by the Secretary, tiered*
19 *partnerships or pass-thru entities shall be treated as*
20 *described in subparagraph (D) if each of the partner-*
21 *ships or entities is directly or indirectly wholly owned*
22 *by persons described in subparagraph (A), (B), or*
23 *(C).*

24 “(3) EXCLUDED PROPERTY.—*The term ‘quali-*
25 *fying foreign trade property’ shall not include—*

1 “(A) property leased or rented by the tax-
2 payer for use by any related person,

3 “(B) patents, inventions, models, designs,
4 formulas, or processes whether or not patented,
5 copyrights (other than films, tapes, records, or
6 similar reproductions, and other than computer
7 software (whether or not patented), for commer-
8 cial or home use), goodwill, trademarks, trade
9 brands, franchises, or other like property,

10 “(C) oil or gas (or any primary product
11 thereof),

12 “(D) products the transfer of which is pro-
13 hibited or curtailed to effectuate the policy set
14 forth in paragraph (2)(C) of section 3 of Public
15 Law 96-72, or

16 “(E) any unprocessed timber which is a
17 softwood.

18 For purposes of subparagraph (E), the term ‘unproc-
19 essed timber’ means any log, cant, or similar form of
20 timber.

21 “(4) PROPERTY IN SHORT SUPPLY.—If the Presi-
22 dent determines that the supply of any property de-
23 scribed in paragraph (1) is insufficient to meet the
24 requirements of the domestic economy, the President
25 may by Executive order designate the property as in

1 *short supply. Any property so designated shall not be*
2 *treated as qualifying foreign trade property during*
3 *the period beginning with the date specified in the*
4 *Executive order and ending with the date specified in*
5 *an Executive order setting forth the President's deter-*
6 *mination that the property is no longer in short sup-*
7 *ply.*

8 “(b) OTHER DEFINITIONS AND RULES.—For purposes
9 of this subpart—

10 “(1) TRANSACTION.—

11 “(A) IN GENERAL.—The term ‘transaction’
12 means—

13 “(i) any sale, exchange, or other dis-
14 position,

15 “(ii) any lease or rental, and
16 “(iii) any furnishing of services.

17 “(B) GROUPING OF TRANSACTIONS.—To the
18 extent provided in regulations, any provision of
19 this subpart which, but for this subparagraph,
20 would be applied on a transaction-by-trans-
21 action basis may be applied by the taxpayer on
22 the basis of groups of transactions based on
23 product lines or recognized industry or trade
24 usage. Such regulations may permit different
25 groupings for different purposes.

1 “(2) UNITED STATES DEFINED.—The term
2 ‘United States’ includes the Commonwealth of Puerto
3 Rico. The preceding sentence shall not apply for pur-
4 poses of determining whether a corporation is a do-
5 mestic corporation.

6 “(3) RELATED PERSON.—A person shall be re-
7 lated to another person if such persons are treated as
8 a single employer under subsection (a) or (b) of sec-
9 tion 52 or subsection (m) or (o) of section 414, except
10 that determinations under subsections (a) and (b) of
11 section 52 shall be made without regard to section
12 1563(b).

13 “(4) GROSS AND TAXABLE INCOME.—Section 114
14 shall not be taken into account in determining the
15 amount of gross income or foreign trade income from
16 any transaction.

17 “(c) SOURCE RULE.—Under regulations, in the case
18 of qualifying foreign trade property manufactured, pro-
19 duced, grown, or extracted within the United States, the
20 amount of income of a taxpayer from any sales transaction
21 with respect to such property which is treated as from
22 sources without the United States shall not exceed—

23 “(1) in the case of a taxpayer computing its
24 qualifying foreign trade income under section
25 941(a)(1)(B), the amount of the taxpayer’s foreign

1 *trade income which would (but for this subsection) be
2 treated as from sources without the United States if
3 the foreign trade income were reduced by an amount
4 equal to 4 percent of the foreign trading gross receipts
5 with respect to the transaction, and*

6 *“(2) in the case of a taxpayer computing its
7 qualifying foreign trade income under section
8 941(a)(1)(C), 50 percent of the amount of the tax-
9 payer’s foreign trade income which would (but for
10 this subsection) be treated as from sources without the
11 United States.*

12 *“(d) TREATMENT OF WITHHOLDING TAXES.—*

13 *“(1) IN GENERAL.—For purposes of section
14 114(d), any withholding tax shall not be treated as
15 paid or accrued with respect to extraterritorial in-
16 come which is excluded from gross income under sec-
17 tion 114(a). For purposes of this paragraph, the term
18 ‘withholding tax’ means any tax which is imposed on
19 a basis other than residence and for which credit is
20 allowable under section 901 or 903.*

21 *“(2) EXCEPTION.—Paragraph (1) shall not
22 apply to any taxpayer with respect to extraterritorial
23 income from any transaction if the taxpayer com-
24 putes its qualifying foreign trade income with respect
25 to the transaction under section 941(a)(1)(A).*

1 “(e) *ELECTION TO BE TREATED AS DOMESTIC COR-*
2 *PORATION.*—

3 “(1) *IN GENERAL.*—An applicable foreign cor-
4 poration may elect to be treated as a domestic cor-
5 poration for all purposes of this title if such corpora-
6 tion waives all benefits to such corporation granted
7 by the United States under any treaty. No election
8 under section 1362(a) may be made with respect to
9 such corporation.

10 “(2) *APPLICABLE FOREIGN CORPORATION.*—For
11 purposes of paragraph (1), the term ‘applicable for-
12 eign corporation’ means any foreign corporation if—

13 “(A) such corporation manufactures, pro-
14 duces, grows, or extracts property in the ordi-
15 nary course of such corporation’s trade or busi-
16 ness, or

17 “(B) substantially all of the gross receipts of
18 such corporation are foreign trading gross re-
19 ceipts.

20 “(3) *PERIOD OF ELECTION.*—

21 “(A) *IN GENERAL.*—Except as otherwise
22 provided in this paragraph, an election under
23 paragraph (1) shall apply to the taxable year for
24 which made and all subsequent taxable years un-
25 less revoked by the taxpayer. Any revocation of

1 such election shall apply to taxable years begin-
2 ning after such revocation.

3 “(B) TERMINATION.—If a corporation
4 which made an election under paragraph (1) for
5 any taxable year fails to meet the requirements
6 of subparagraph (A) or (B) of paragraph (2) for
7 any subsequent taxable year, such election shall
8 not apply to any taxable year beginning after
9 such subsequent taxable year.

10 “(C) EFFECT OF REVOCATION OR TERMINA-
11 TION.—If a corporation which made an elec-
12 tion under paragraph (1) revokes such election
13 or such election is terminated under subpara-
14 graph (B), such corporation (and any successor
15 corporation) may not make such election for any
16 of the 5 taxable years beginning with the first
17 taxable year for which such election is not in ef-
18 fect as a result of such revocation or termination.

19 “(4) SPECIAL RULES.—

20 “(A) REQUIREMENTS.—This subsection
21 shall not apply to an applicable foreign corpora-
22 tion if such corporation fails to meet the require-
23 ments (if any) which the Secretary may pre-
24 scribe to ensure that the taxes imposed by this
25 chapter on such corporation are paid.

1 “(B) *EFFECT OF ELECTION, REVOCATION,*
2 *AND TERMINATION.*—

3 “(i) *ELECTION.*—*For purposes of sec-*
4 *tion 367, a foreign corporation making an*
5 *election under this subsection shall be treat-*
6 *ed as transferring (as of the first day of the*
7 *first taxable year to which the election ap-*
8 *plies) all of its assets to a domestic corpora-*
9 *tion in connection with an exchange to*
10 *which section 354 applies.*

11 “(ii) *REVOCATION AND TERMINA-*
12 *NATION.*—*For purposes of section 367, if—*

13 “(I) *an election is made by a cor-*
14 *poration under paragraph (1) for any*
15 *taxable year, and*

16 “(II) *such election ceases to apply*
17 *for any subsequent taxable year,*

18 *such corporation shall be treated as a domestic*
19 *corporation transferring (as of the 1st day of the*
20 *first such subsequent taxable year to which such*
21 *election ceases to apply) all of its property to a*
22 *foreign corporation in connection with an ex-*
23 *change to which section 354 applies.*

24 “(C) *ELIGIBILITY FOR ELECTION.*—*The Sec-*
25 *retary may by regulation designate one or more*

1 *classes of corporations which may not make the*
2 *election under this subsection.*

3 “(f) *RULES RELATING TO ALLOCATIONS OF QUALI-*
4 *FYING FOREIGN TRADE INCOME FROM SHARED PARTNER-*
5 *SHIPS.*—

6 “(1) *IN GENERAL.*—*If*—

7 “(A) *a partnership maintains a separate*
8 *account for transactions (to which this subpart*
9 *applies) with each partner,*

10 “(B) *distributions to each partner with re-*
11 *spect to such transactions are based on the*
12 *amounts in the separate account maintained*
13 *with respect to such partner, and*

14 “(C) *such partnership meets such other re-*
15 *quirements as the Secretary may by regulations*
16 *prescribe,*

17 *then such partnership shall allocate to each partner*
18 *items of income, gain, loss, and deduction (including*
19 *qualifying foreign trade income) from any trans-*
20 *action to which this subpart applies on the basis of*
21 *such separate account.*

22 “(2) *SPECIAL RULES.*—*For purposes of this sub-*
23 *part, in the case of a partnership to which paragraph*
24 *(1) applies—*

1 “(A) any partner’s interest in the partner-
2 ship shall not be taken into account in deter-
3 mining whether such partner is a related person
4 with respect to any other partner, and

5 “(B) the election under section 942(a)(3)
6 shall be made separately by each partner with
7 respect to any transaction for which the partner-
8 ship maintains separate accounts for each part-
9 ner.

10 “(g) EXCLUSION FOR PATRONS OF AGRICULTURAL
11 AND HORTICULTURAL COOPERATIVES.—Any amount de-
12 scribed in paragraph (1) or (3) of section 1385(a)—

13 “(1) which is received by a person from an orga-
14 nization to which part I of subchapter T applies
15 which is engaged in the marketing of agricultural or
16 horticultural products, and

17 “(2) which is allocable to qualifying foreign
18 trade income and designated as such by the organiza-
19 tion in a written notice mailed to its patrons during
20 the payment period described in section 1382(d),

21 shall be treated as qualifying foreign trade income of such
22 person for purposes of section 114. The taxable income of
23 the organization shall not be reduced under section 1382
24 by reason of any amount to which the preceding sentence
25 applies.

1 “(h) *SPECIAL RULE FOR DISCS*.—Section 114 shall
2 *not apply to any taxpayer for any taxable year if, at any*
3 *time during the taxable year, the taxpayer is a member of*
4 *any controlled group of corporations (as defined in section*
5 *927(d)(4), as in effect before the date of the enactment of*
6 *this subsection) of which a DISC is a member.”*

7 **SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.**

8 (1) *The second sentence of section 56(g)(4)(B)(i)*
9 *is amended by inserting before the period “or under*
10 *section 114”.*

11 (2) *Section 275(a) is amended—*

12 (A) *by striking “or” at the end of para-*
13 *graph (4)(A), by striking the period at the end*
14 *of paragraph (4)(B) and inserting “, or”, and by*
15 *adding at the end of paragraph (4) the following*
16 *new subparagraph:*

17 “(C) *such taxes are paid or accrued with re-*
18 *spect to qualifying foreign trade income (as de-*
19 *fined in section 941).”; and*

20 (B) *by adding at the end the following the*
21 *following new sentence: “A rule similar to the*
22 *rule of section 943(d) shall apply for purposes of*
23 *paragraph (4)(C).”.*

24 (3) *Paragraph (3) of section 864(e) is*
25 *amended—*

3 “(A) *IN GENERAL*.—For purposes of”; and
4 (B) by adding at the end the following new
5 subparagraph:

“Sec. 114. Extraterritorial income.”

23 (7) The table of subparts for part III of sub-
24 chapter N of chapter 1 is amended by striking the

1 item relating to subpart E and inserting the following
2 new item:

“Subpart E. Qualifying foreign trade income.”.

3 (8) The table of subparts for part III of sub-
4 chapter N of chapter 1 is amended by striking the
5 item relating to subpart C.

6 **SEC. 5. EFFECTIVE DATE.**

7 (a) *IN GENERAL.*—The amendments made by this Act
8 shall apply to transactions after September 30, 2000.

9 (b) *NO NEW FSCS; TERMINATION OF INACTIVE*
10 *FSCS.*—

11 (1) *NO NEW FSCS.*—No corporation may elect
12 after September 30, 2000, to be a FSC (as defined in
13 section 922 of the Internal Revenue Code of 1986, as
14 in effect before the amendments made by this Act).

15 (2) *TERMINATION OF INACTIVE FSCS.*—If a FSC
16 has no foreign trade income (as defined in section
17 923(b) of such Code, as so in effect) for any period
18 of 5 consecutive taxable years beginning after Decem-
19 ber 31, 2001, such FSC shall cease to be treated as
20 a FSC for purposes of such Code for any taxable year
21 beginning after such period.

22 (c) *TRANSITION PERIOD FOR EXISTING FOREIGN*
23 *SALES CORPORATIONS.*—

24 (1) *IN GENERAL.*—In the case of a FSC (as so
25 defined) in existence on September 30, 2000, and at

1 *all times thereafter, the amendments made by this Act*
2 *shall not apply to any transaction in the ordinary*
3 *course of trade or business involving a FSC which*
4 *occurs—*

5 *(A) before January 1, 2002; or*
6 *(B) after December 31, 2001, pursuant to a*

7 *binding contract—*

8 *(i) which is between the FSC (or any*
9 *related person) and any person which is not*
10 *a related person; and*

11 *(ii) which is in effect on September 30,*
12 *2000, and at all times thereafter.*

13 *For purposes of this paragraph, a binding contract*
14 *shall include a purchase option, renewal option, or*
15 *replacement option which is included in such contract*
16 *and which is enforceable against the seller or lessor.*

17 *(2) ELECTION TO HAVE AMENDMENTS APPLY*
18 *EARLIER.—A taxpayer may elect to have the amend-*
19 *ments made by this Act apply to any transaction by*
20 *a FSC or any related person to which such amend-*
21 *ments would apply but for the application of para-*
22 *graph (1). Such election shall be effective for the tax-*
23 *able year for which made and all subsequent taxable*
24 *years, and, once made, may be revoked only with the*
25 *consent of the Secretary of the Treasury.*

(A) *IN GENERAL.*—*In the case of a foreign corporation to which this paragraph applies—*

15 *The preceding sentence shall not apply to earn-
16 ings and profits acquired in a transaction after
17 September 30, 2000, to which section 381 applies
18 unless the distributor or transferor corporation
19 was immediately before the transaction a foreign
20 corporation to which this paragraph applies.*

(B) EXISTING FSCS.—This paragraph shall apply to any controlled foreign corporation (as defined in section 957) if—

24 (i) such corporation is a FSC (as so
25 defined) in existence on September 30, 2000,

19 *The preceding sentence shall cease to apply as of*
20 *the date that the domestic corporation referred to*
21 *in clause (ii) ceases to wholly own (directly or*
22 *indirectly) such controlled foreign corporation.*

6 (d) *SPECIAL RULES RELATING TO LEASING TRANSACTIONS*

7 ACTIONS.—

20 (2) LIMITATION ON USE OF GROSS RECEIPTS

METHOD.—If any person computed its foreign trade income from any transaction with respect to any property on the basis of a transfer price determined under the method described in section 925(a)(1) of such Code (as in effect before the amendments made

1 *by this Act), then the qualifying foreign trade income*
2 *(as defined in section 941(a) of such Code, as in effect*
3 *after such amendment) of such person (or any related*
4 *person) with respect to any other transaction involv-*
5 *ing such property (and to which the amendments*
6 *made by this Act apply) shall be zero.*

Attest:

Secretary.

106TH CONGRESS
2D SESSION

H. R. 4986

AMENDMENT

HR 4986 EAS——2

HR 4986 EAS——3

HR 4986 EAS——4

HR 4986 EAS——5