



TaxNewsFlash

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Final regulations: Source of income for certain sales of personal property, inventory (text of regulations)

The IRS today posted on its website a version of final regulations (T.D. 9921) as rules concerning the source of income for certain sales of personal property under section 863.

The [final regulations](#) [PDF 335 KB] (63 pages) finalize regulations that were proposed in December 2019, and according to the preamble “retain the overall approach of the proposed regulations, with certain revisions.”

This version of the final regulations contains the following statement:

This document is in the process of being submitted to the Office of the Federal Register (OFR) for publication and will be pending placement on public display at the OFR and publication in the Federal Register. The version of the final regulations released today may vary slightly from the published document if minor editorial changes are made during the OFR review process. The document published in the Federal Register will be the official document.

Background

The 2017 U.S. tax law (Pub. L. No. 115-97)—the law that is often referred to as the “Tax Cuts and Jobs Act”—amended section 863 regarding special rules for determining the source of income, including income partly from within and partly from without (outside) the United States. Specifically, section 863(b) provides for allocation or apportionment of income from the sale or exchange of inventory property produced (in whole or in part) by a taxpayer within and sold or exchanged outside the United States or produced (in whole or in part) by the taxpayer outside and sold or exchanged within the United States solely on the basis of production activities with respect to that inventory.

Before the 2017 tax law changes, section 863(b) provided that income from section 863(b)(2) sales would be treated as derived partly from sources within and partly from sources outside the United States but without providing the basis for such allocation or apportionment.

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