



TaxNewsFlash

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Final regulations released to Federal Register: Source of income for certain sales of personal property, inventory

The U.S. Treasury Department and IRS today released for publication in the Federal Register final regulations (T.D. 9921) as rules concerning the source of income for certain sales of personal property under section 863.

Read the [final regulations](#) [PDF 324 KB] (17 pages as published in the Federal Register on December 11, 2020)

The IRS on September 29, 2020, posted a version of these final regulations on its website. Read a report of initial impressions based on the September 2020 version of the final regulations: [TaxNewsFlash](#)

The earlier version of the final regulations includes 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.

Read a [computer-generated document](#) [PDF 1.1 MB] that provides a comparison of the version of the final regulations submitted today for publication in the Federal Register against the version posted by the IRS on September 29, 2020. This unofficial document was produced by KPMG for the purpose of showing what changes, if any, were made to the regulations prior to being released to the Federal Register for publication. It has not been reviewed for accuracy.

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” (TCJA)—amended section 863 regarding special rules for determining the source of income, including income partly from within and partly from without 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.

In addition, section 865(e)(2) provides rules for sourcing income from sales of personal property (including inventory) by a nonresident attributable to an office or fixed place of business in the United States. While the TCJA did not amend section 865(e)(2), because both provisions provide rules for determining the source of income from sales of inventory, these rules overlap in certain circumstances, necessitating guidance to address the interaction of these provisions.

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