

# Instructions for Form 1120-FSC

## U.S. Income Tax Return of a Foreign Sales Corporation

Section references are to the Internal Revenue Code unless otherwise noted.

**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form and related schedule will vary depending on individual circumstances. The estimated average times are:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
1120-FSC	92 hr., 33 min.	17 hr., 54 min.	35 hr., 47 min.
Sch. P (1120-FSC)	9 hr., 34 min.	1 hr., 29 min.	1 hr., 43 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form and related schedule simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send the tax form to this office. Instead, see **Where To File** on page 4.

## Changes To Note

- The new principal business activity (PBA) codes on page 15 are based on the North American Industry Classification System (NAICS), which was developed by the statistical agencies of Canada, Mexico, and the United States in cooperation with the Office of Management and Budget. The NAICS-based codes replace the PBA codes previously based on the Standard Industrial Classification (SIC) system.

Page 16 now has the list of PBA codes that should be used for **Schedule P (Form 1120-FSC)**, Transfer Price or Commission. The codes for Schedule P are similar in format and structure to the SIC codes. Use Schedule P for transactions to which the administrative pricing rules are applied.

- For tax years beginning after December 31, 1997, see Temporary Regulations section 1.925-1T(c)(8) and Schedule P (Form 1120-FSC) regarding the election to group transactions on Schedule P and the transition rule applicable to tax years beginning before January 1, 1998.

The Taxpayer Relief Act of 1997 (The Act) made changes to the tax law for FSCs. Some of the changes are discussed below.

- For tax years beginning after December 31, 1997, FSCs may be entitled to an increased charitable contribution deduction for gifts of computer technology and equipment to schools. For details, see section 170(e)(6).

- For tax years beginning after December 31, 1997, the alternative minimum tax has been repealed for FSCs that qualify as "small corporations." For more information, see the instructions on page 14 and **Form 4626**, Alternative Minimum Tax-Corporations.

## Unresolved Tax Problems

Most problems can be solved with one contact by calling, writing, or visiting an IRS office. But if you have tried unsuccessfully to resolve a problem with the IRS, you should contact the Taxpayer Advocate's Problem Resolution Program (PRP). Someone at PRP will assign you a personal advocate who is in the best position to try to resolve your problem. The Taxpayer Advocate can also offer

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you special help if you have a significant hardship as a result of a tax problem.

You should contact the Taxpayer Advocate if:

- You have tried unsuccessfully to resolve your problem with the IRS and have not been contacted by the date promised, or
- You are on your second attempt to resolve a problem.

You may contact a Taxpayer Advocate by calling a new toll-free assistance number, 1-877-777-4778. Persons who have access to TTY/TDD equipment may call 1-800-829-4059 and ask for the Taxpayer Advocate. If you prefer, you can write to the Taxpayer Advocate at the IRS office that last contacted you.

While Taxpayer Advocates cannot change the tax law or make a technical tax decision, they can clear up problems that resulted from previous contacts and ensure that your case is given a complete and impartial review. Taxpayer Advocates are working to put service first. For more information about PRP, see **Pub. 1546**, The Problem Resolution Program of the Internal Revenue Service.

## How To Get Forms and Publications

**Personal computer.** Access the IRS's Internet web site at [www.irs.ustreas.gov](http://www.irs.ustreas.gov) to do the following:

- Download forms, instructions, and publications.
- See answers to frequently asked tax questions.
- Search publications on-line by topic or keyword.
- Send us comments or request help via e-mail.
- Sign up to receive hot tax issues and news by e-mail from the IRS Digital Dispatch.

You can also reach us using:

- Telnet at [iris.irs.ustreas.gov](http://iris.irs.ustreas.gov)
- File transfer protocol at [ftp.irs.ustreas.gov](http://ftp.irs.ustreas.gov)
- Direct dial (by modem) at **703-321-8020**.

**CD-ROM.** Order **Pub. 1796**, Federal Tax Products on CD-ROM, and get:

- Current year forms, instructions, and publications.
  - Prior year forms and instructions.
  - Popular forms that may be filled in electronically, printed out for submission, and saved for recordkeeping.
- Buy the CD-ROM on the Internet at [www.irs.ustreas.gov/cdorders](http://www.irs.ustreas.gov/cdorders) from the National Technical Information Service (NTIS) for \$13 (plus a \$5 handling fee) and save 35%, or call **1-877-CDFORMS** (1-877-233-6767) toll free to buy the CD-ROM for \$20 (plus a \$5 handling fee).

**By phone and in person.** You can order forms and publications 24 hours a day, 7 days a week, by calling **1-800-TAX-FORM** (1-800-829-3676). If the FSC maintains an office or place of

business in the United States, it can also get most forms and publications at its local IRS office.

## General Instructions

### Purpose of Form

Use Form 1120-FSC to report income, gains, losses, deductions, and credits of a FSC. It is also used to figure the FSC's income tax liability or to claim a refund.

### Definition of a Foreign Sales Corporation (FSC)

Under section 922(a), a FSC is defined as a corporation that has met **all** of the following tests.

**1. Foreign corporation.** It must be a corporation created or organized under the laws of a qualifying foreign country or any U.S. possession other than Puerto Rico. Qualifying U.S. possessions include Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

A **qualifying foreign country** is a foreign country that meets the exchange of information rules of section 927(e)(3)(A) or (B). All **U.S. possessions** other than Puerto Rico are also certified to have met these rules.

The countries listed below are the qualifying foreign countries that have met the exchange of information rules of section 927(e)(3)(A) or 927(e)(3)(B).

- Australia, Austria, Barbados, Belgium, Bermuda, Canada, Costa Rica, Cyprus,
- Denmark, Dominica, the Dominican Republic, Egypt, Finland, France, Germany,
- Grenada, Guyana, Honduras, Iceland, Ireland, Jamaica, Korea, Malta,
- The Marshall Islands, Mexico, Morocco, the Netherlands, New Zealand, Norway, and
- Pakistan, Peru, the Philippines, St. Lucia, Sweden, and Trinidad and Tobago.

**2. Shareholder limit.** It had no more than 25 shareholders at any time during the tax year.

**3. No preferred stock.** It had no preferred stock outstanding at any time during the tax year.

**4. Foreign office, books, and records.** During the tax year, the FSC must maintain:

- An **office** in one of the qualifying foreign countries or U.S. possessions listed above,
- A set of permanent **books of account** (including invoices) at that office, and
- The **books and records** required under section 6001 at a U.S. location to sufficiently establish the amount of gross income, deductions, credits, or other matters required to be shown on its tax return.

**5. Nonresident director.** It must have at least one director, at all times during the tax year, who is not a resident of the United States.

**6. No controlled group membership with DISC.** It must not be a member, at any time during the tax year, of a controlled group of which a DISC is a member.

**7. FSC or small FSC election.** It must have elected to be a FSC or small FSC (defined below), and the election must have been in effect for the tax year. File **Form 8279**, Election To Be Treated as a FSC or as a Small FSC.

**Small FSC.** Section 922(b) defines a small FSC as a corporation that **(1)** has elected small FSC status (by filing Form 8279 as provided in section 927(f)(1) and has kept it in effect for the tax year; and **(2)** is not a member, at any time during the tax year, of a controlled group that includes a FSC (unless that other FSC is also a small FSC).

A small FSC is exempt from the foreign management and foreign economic process requirements (see the instructions for **Foreign Management Rules**, and the **Foreign Economic Process Rules** on page 3) regarding its eligibility to treat a portion of its income as foreign trading gross receipts.

Generally, any foreign trading gross receipts of a small FSC for the tax year that exceed \$5 million are not to be considered in determining its exempt foreign trade income. The \$5 million limit is reduced if the small FSC has a short tax year. It may also be reduced if the small FSC is a member of a controlled group that contains other small FSCs. See Regulations section 1.921-2(b) for more information.

### Tax Treatment of a FSC

A FSC is not taxed on its **exempt foreign trade income**. Section 923 defines exempt foreign trade income as the gross income of a FSC from foreign trading gross receipts (defined below).

The percentage of foreign trade income exempt from tax is figured differently for income determined under the administrative pricing rules (for details, see the instructions for Schedule P (Form 1120-FSC)) and income determined without regard to the administrative pricing rules. (These percentages are computed on Schedule E, page 4, Form 1120-FSC, and carried over to lines 9a and 9b of Schedule B, page 3, Form 1120-FSC to figure taxable income or (loss).)

See section 923(a)(4) for a special rule for foreign trade income allocable to a cooperative. See section 923(a)(5) for a special rule for military property.

### Foreign Trading Gross Receipts

A FSC is treated as having foreign trading gross receipts (defined in section 924) only if it has met certain foreign management and foreign economic process requirements.

Foreign trading gross receipts **do not** include:

- Certain excluded receipts (defined in section 924(f)).
- Receipts attributable to property excluded from export property under section 927(a)(2).
- Investment income (defined in section 927(c)).
- Carrying charges (defined in section 927(d)(1)).

**Note:** For periods after December 31, 1997, computer software licensed for reproduction abroad is no longer excluded from export property under section 927(a)(2). Therefore, receipts attributable to the sale, lease, or rental of computer software and services related and subsidiary to such transactions now qualify as foreign trading gross receipts.

## Foreign Management Rules

A FSC (other than a small FSC) is treated as having foreign trading gross receipts for the tax year only if the management of the FSC during the year takes place outside the United States. These management activities include:

- Meetings of the board of directors and meetings of the shareholders.
- Disbursing cash, dividends, legal and accounting fees, salaries of officers, and salaries or fees of directors from the principal bank account.
- Maintaining the principal bank account at all times during the tax year.

**Meetings of directors and meetings of the shareholders.** All meetings of the board of directors of the FSC and all meetings of the shareholders of the FSC that take place during the tax year must take place outside the United States. Only meetings that are formally convened as meetings of the board of directors or as shareholder meetings are considered. If the participants in a meeting are not all physically present in the same location, the location of the meeting is determined by the location of the persons exercising a majority of the voting power (including proxies) participating in the meeting.

In addition, all such meetings must comply with the local laws of the foreign country or U.S. possession in which the FSC was created or organized. The local laws determine whether a meeting must be held, when and where it must be held (if it is held at all), who must be present, quorum requirements, use of proxies, etc.

**Principal bank accounts.** See **Definition of a Foreign Sales Corporation (FSC)** on page 2 for definitions of a qualifying foreign country and a U.S. possession. See Regulations section 1.924(c)-1(c) for more information regarding principal bank accounts.

## Foreign Economic Process Rules

A FSC (other than a small FSC) has foreign trading gross receipts from any transaction only if certain economic processes for the transaction take place outside the United States. Section 924(d) and Regulations section 1.924(d)-1 set

forth the rules for determining whether a sufficient amount of the economic processes of a transaction takes place outside the United States.

Generally, a transaction will qualify if the FSC satisfies two requirements:

- Participation outside the United States in the sales portion of the transaction, and
- Satisfaction of either the 50% or the 85% foreign direct cost test.

The activities comprising these economic processes may be performed by the FSC or by any other person acting under contract with the FSC.

### Participation outside the United States in the sales portion of the transaction.

Generally, the requirement of section 924(d)(1)(A) is met for the gross receipts of a FSC derived from any transaction if the FSC has participated outside the United States in the following sales activities relating to the transaction: (1) solicitation (other than advertising), (2) negotiation, and (3) making a contract.

**1. Solicitation (other than advertising)** is any communication (including, but not limited to, telephone, telegraph, mail, or in person) by the FSC, to a specific, targeted customer or potential customer. The solicitation must specifically address the customer's attention to the product or service that is the subject of the transaction and it must take place during the 12-month period immediately before execution of a contract relating to the transaction. Activities that would otherwise constitute advertising (such as sending sales literature to a customer or potential customer) will be considered solicitation if the activities are not considered advertising under the foreign direct cost tests. An exception to this rule is provided for second mailings in Regulations section 1.924(e)-1(a)(1).

**2. Negotiation** is any communication by the FSC to a customer or potential customer aimed at an agreement on one or more of the terms of a transaction, including, but not limited to, price, credit terms, quantity, or time or manner of delivery. Negotiation does not include the mere receipt of a communication from a customer (such as an order) that includes terms of a sale.

**3. Making a contract** refers to performance by the FSC of any of the elements necessary to complete a sale, such as making or accepting an offer. Acceptance of an unsolicited bid or order is considered the making of a contract even if no solicitation or negotiation occurred with respect to the transaction. The written confirmation by the FSC to the customer of an oral or written agreement that confirms variable contract terms, such as price, credit terms, quantity, or time or manner of delivery, or specifies (directly or by reference) additional contract terms, will be considered the making of a contract. A written confirmation is any confirmation in writing, including a telegram, telex, or other similar written communication.

**Grouping transactions.** Generally, the sales activities described above are to be applied on a transaction-by-transaction basis. However, a FSC may make an annual election to apply any of the sales activities on the basis of a group. To make the election, check the box on line 9a, **Additional FSC Information**, on page 2 of Form 1120-FSC. See Regulations section 1.924(d)-1(c)(5) for details.

**Satisfaction of either the 50% or 85% foreign direct cost test.** To qualify as foreign trading gross receipts, the foreign direct costs incurred by the FSC attributable to the transaction must equal or exceed 50% of the total direct costs incurred by the FSC attributable to the transaction.

Direct costs are those costs attributable to the activities described in the five categories of section 924(e). Instead of satisfying the 50% foreign direct cost test, the FSC may incur foreign direct costs attributable to activities described in each of two of the section 924(e) categories. The costs must equal or exceed 85% of the total direct costs incurred by the FSC attributable to the activity described in each of the two categories. If no direct costs are incurred by the FSC in a particular category, that category is not taken into account for purposes of determining whether the FSC has met either the 50% or 85% foreign direct cost test.

Direct costs are costs that are incident to and necessary for the performance of any activity described in section 924(e). Direct costs include the cost of materials consumed in the performance of the activity, and the cost of labor that can be identified or associated directly with the performance of the activity (but only to the extent of wages, salaries, fees for professional services, and other amounts paid for personal services actually rendered, such as bonuses or compensation paid for services on the basis of a percentage of profits). Direct costs also include the allowable depreciation deduction for equipment or facilities (or the rental cost for its use) that can be specifically identified or associated with the activity, as well as the contract price of an activity performed on behalf of the FSC by a contractor.

Total direct costs means all of the direct costs of any transaction attributable to activities described in any paragraph of section 924(e). For the 50% foreign direct cost test of section 924(d)(1)(B), total direct costs are based on the direct costs of all activities described in all paragraphs of section 924(e). For the 85% foreign direct cost test of section 924(d)(2), however, the total direct costs are determined separately for each paragraph of section 924(e).

Foreign direct costs means the portion of the total direct costs of any transaction attributable to activities performed outside the United States. For purposes of the 50% foreign direct cost test, foreign direct costs are based on the direct costs of all activities described in all paragraphs of

section 924(e). For purposes of the 85% foreign direct cost test, however, foreign direct costs are determined separately for each paragraph of section 924(e).

For more details, see Regulations section 1.924(d)-1(d).

Check the applicable box(es) (on line 9b, **Additional FSC Information**) to indicate how the FSC met the foreign direct costs requirement.

**Grouping transactions.** Generally, the foreign direct cost tests under Regulations section 1.924(d)-1(d) are applied on a transaction-by-transaction basis.

However, the FSC may make an annual election (on line 9d, **Additional FSC Information**) to apply the foreign direct cost tests on a customer, contract, or product or product line grouping basis. Any grouping used must be supported by adequate documentation of performance of activities and costs of activities relating to the grouping used. See Regulations section 1.924(d)-1(e) for details.

**Exception for foreign military property.** The economic process rules do not apply to any activities performed in connection with foreign military sales except those activities described in section 924(e). See Regulations section 1.924(d)-1(f) for details.

## Section 925(c) Rule

To use the administrative pricing rules to determine the FSC's (or small FSC's) profit on a transaction or group of transactions, the FSC must perform (or contract with another person to perform) all of the economic process activities relating to the transaction or group of transactions. All of the direct and indirect expenses relating to the performance of those activities must be reflected on the books of the FSC and on Form 1120-FSC.

Under Temporary Regulations section 1.925(a)-1T(b)(2)(ii), an election may be made to include on the FSC's books all expenses, other than cost of goods sold, that are necessary to figure combined taxable income for the transaction or group of transactions. The expenses must be identified on Schedule G on the applicable line.

## Who Must File

File Form 1120-FSC if the corporation elected to be treated as a FSC or small FSC by filing Form 8279, and the election is still in effect.

## When To File

Generally, a corporation must file Form 1120-FSC by the 15th day of the 3rd month after the end of the tax year. A new FSC filing a short-period return must generally file by the 15th day of the 3rd month after the short period ends. A FSC

that has dissolved must generally file by the 15th day of the 3rd month after the date it dissolved.

If the due date falls on a Saturday, Sunday, or legal holiday, the FSC may file by the next business day.

**Private delivery services.** FSCs can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. The IRS publishes a list of the designated private delivery services in September of each year. The list published in September 1998 includes only the following:

- Airborne Express (Airborne): Overnight Air Express Service, Next Afternoon Service, Second Day Service.
- DHL Worldwide Express (DHL): DHL "Same Day" Service, DHL USA Overnight.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2 Day.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M.

The private delivery service can tell you how to get written proof of the mailing date.

**Extension of time to file.** File **Form 7004**, Application for Automatic Extension of Time To File Corporation Income Tax Return, to request a 6-month extension of time to file.

## Where To File

File Form 1120-FSC with the Internal Revenue Service Center, Philadelphia, PA 19255.

## Who Must Sign

The return must be signed and dated by:

- The president, vice president, treasurer, assistant treasurer, chief accounting officer, or
- Any other corporate officer (such as tax officer) authorized to sign.

Receivers, trustees, or assignees must also sign and date any return filed on behalf of a corporation.

If a corporate officer completes Form 1120-FSC, the Paid Preparer's space should remain blank. Anyone who prepares Form 1120-FSC but does not charge the corporation should not sign the return. Generally, anyone who is paid to prepare the return must sign it and fill in the Paid Preparer's Use Only area.

The paid preparer must complete the required preparer information and—

- Sign the return, by hand, in the space provided for the preparer's signature (signature stamps and labels are not acceptable).
- Give a copy of the return to the taxpayer.

## Other Forms, Returns, Schedules, and Statements That May Be Required

The FSC may have to file some of the following forms. See the form for more information.

### Employment Tax Returns

**Form 940** or **Form 940-EZ**, Employer's Annual Federal Unemployment (FUTA) Tax Return. The FSC may be liable for FUTA tax and may have to file Form 940 or 940-EZ if either of the following apply.

1. It paid wages of \$1,500 or more in any calendar quarter in 1997 or 1998, or
2. It had at least one employee who worked for the FSC for some part of a day in any 20 or more different weeks in 1997 or 20 or more different weeks in 1998.

**Form 941**, Employer's Quarterly Federal Tax Return. Employers must file this form to report income tax withheld and employer and employee social security and Medicare taxes. Also, see **Trust fund recovery penalty** on page 7.

**Form 945**, Annual Return of Withheld Federal Income Tax. File Form 945 to report income tax withholding from nonpayroll distributions or payments, such as the following income:

- Pensions, annuities, IRAs, military retirement, gambling winnings,
- Indian gaming profits, and backup withholding.

See **Trust fund recovery penalty** on page 7.

### Information Returns

**Note:** To transmit Forms 1099, 1098, and 5498, get **Form 1096**, Annual Summary and Transmittal of U.S. Information Returns.

**Form W-2**, Wage and Tax Statement; and **Form W-3**, Transmittal of Wage and Tax Statements. Use these forms to report withheld income, social security, and Medicare taxes for an employee.

**Form 1098**, Mortgage Interest Statement. This form is used to report the receipt from any individual of \$600 or more of mortgage interest and points in the course of the recipient's trade or business for any calendar year.

**Forms 1099.** Use these information returns to report the following:

- **Form 1099-A.** Abandonments and acquisitions of secured property through foreclosure,
- **Form 1099-B.** Proceeds from broker and barter exchange transactions,
- **Form 1099-C.** Cancellation of a debt,
- **Form 1099-DIV.** Certain dividends and distributions,
- **Form 1099-INT.** Interest income,
- **Form 1099-LTC.** Certain payments made on a per diem basis under a long-term care insurance contract, and certain accelerated death benefits,
- **Form 1099-MISC.** Miscellaneous income (e.g., payments to certain fishing

boat crew members; payments to providers of health and medical services; miscellaneous income payments and nonemployee compensation),

• **Form 1099-MSA.** Distributions from a medical savings account (MSA or Medicare+Choice MSA),

• **Form 1099-OID.** Original issue discount,

• **Form 1099-PATR.** Distributions from cooperatives to their patrons,

• **Form 1099-R.** Distributions from retirement or profit-sharing plans, IRAs, SEPs, or SIMPLEs, and insurance contracts, and

• **Form 1099-S.** Proceeds from real estate transactions.

Also use these returns to report amounts received as a nominee for another person. For more information, see the Instructions for Forms 1099, 1098, and 5498.

**Form 5498,** IRA, SEP, or SIMPLE Retirement Plan Information. Use this form to report contributions (including rollover contributions) to an IRA, SEP, or SIMPLE, and the value of an IRA, SEP, or SIMPLE account.

**Form 5498-MSA,** MSA or Medicare+Choice Information. Use this form to report contributions (including rollover contributions) to an MSA.

**Form 8300,** Report of Cash Payments Over \$10,000 Received in a Trade or Business. File this form to report the receipt of more than \$10,000 in cash or foreign currency in one transaction or a series of related transactions.

### International Forms

**Form 1042,** Annual Withholding Tax Return for U.S. Source Income of Foreign Persons; or

**Form 1042-S,** Foreign Person's U.S. Source Income Subject to Withholding. Use these forms to report and send withheld tax on payments or distributions made to nonresident alien individuals, foreign partnerships, or foreign corporations.

Also see **Pub. 515,** Withholding of Tax on Nonresident Aliens and Foreign Corporations, and sections 1441 and 1442.

**Form 5471,** Information Return of U.S. Persons With Respect to Certain Foreign Corporations. This form may have to be filed by certain officers, directors, or U.S. shareholders of a FSC.

Form 5471 does not have to be filed when the FSC is organized. However, this form may be required for subsequent changes in ownership (see section 6046 and the related regulations). If a Form 1120-FSC is filed, Form 5471 is not required to be filed to satisfy the requirements of section 6038 (see Temporary Regulations section 1.921-1T(b)(3)). However, if the FSC is involved in other than FSC activities, Form 5471 and the applicable schedules may have to be filed.

**Form 5472,** Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Generally, a FSC that is engaged in a trade or business in the United States that had a reportable transaction with a foreign-or domestic-related party during the tax year must file Form 5472.

For purposes of who must file Form 5472, a FSC is considered to be **controlled** by a foreign person if it is owned, directly or indirectly, by a foreign person who owns at least:

1. 25% of the total voting power of all classes of stock entitled to vote, or
2. 25% of the total value of all classes of stock.

**Form 5713,** International Boycott Report. Funds that have operations in, or related to, a "boycotting" country, company, or national of a country must file Form 5713 to report those operations and figure the loss of certain tax benefits.

**Form 8279,** Election to Be Treated as a FSC or as a Small FSC, is used by a corporation to make the election to be treated as a FSC or as a small FSC.

**Schedule P (Form 1120-FSC),** Transfer Price or Commission. Complete and attach a separate schedule for each transaction or group of transactions to which the administrative pricing rules of section 925 are applied.

### Other Corporate Forms

**Form 8264,** Application for Registration of a Tax Shelter. Tax shelter organizers are required to file Form 8264 for the purpose of receiving a tax shelter registration number from the IRS.

**Form 8271,** Investor Reporting of Tax Shelter Registration Number. Taxpayers who have acquired an interest in a tax shelter that is required to be registered use this form to report the tax shelter's registration number. Form 8271 must be attached to any tax return (including an application for tentative refund (Form 1139) and an amended Form 1120-FSC) on which a deduction, credit, loss, or other tax benefit attributable to a tax shelter is taken or any income attributable to a tax shelter is reported.

**Form 8275,** Disclosure Statement, and **Form 8275-R,** Regulation Disclosure Statement. Disclose items or positions taken on a tax return that are not otherwise adequately disclosed on a tax return or that are contrary to Treasury regulations (to avoid parts of the accuracy-related penalty or certain preparer penalties.)

**Form 8810,** Corporate Passive Activity Loss and Credit Limitations. Closely held FSCs (and FSCs that are personal service corporations) that are subject to the passive activity limitations of section 469 must use this form to compute their allowable passive activity loss.

**Note:** *The credits allowed on Form 1120-FSC are not subject to the limits of section 469.*

**Form 8842,** Election To Use Different Annualization Periods for Corporate Estimated Tax. FSCs use Form 8842 for each year they want to elect one of the annualization periods in section 6655(e)(2) for figuring estimated tax payments under the annualized income installment method.

**Form 8866,** Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method. Figure the interest due or to be refunded under the look-back method of section 167(g)(2) for property placed in service after September 13, 1995, that is depreciated under the income forecast method.

### Attachments

Attach **Form 4136,** Credit for Federal Tax Paid on Fuels, after page 6, Form 1120-FSC. Attach schedules in alphabetical order and other forms in numerical order after Form 4136.

Complete every applicable entry space on Form 1120-FSC. Do not write "See attached" instead of completing the entry spaces. If you need more space on the forms or schedules, attach separate sheets, using the same size and format as on the printed forms. Show the totals on the printed forms. Attach these separate sheets after all the schedules and forms. Be sure to put the FSC's name and EIN on each sheet.

### Accounting Methods

An accounting method is a set of rules used to determine when and how income and expenses are reported.

Figure taxable income using the method of accounting regularly used in keeping the FSC's books and records. Generally, permissible methods include:

- Cash,
- Accrual, or
- Any other method authorized by the Internal Revenue Code.

In all cases, the method used must clearly show taxable income.

A member of a controlled group cannot use an accounting method that would distort any group member's income, including its own. For example, a FSC acts as a commission agent for property sales by a related corporation that uses the accrual method and pays the FSC its commission more than 2 months after the sale. In this case, the FSC should not use the cash method because that method would materially distort its income.

Generally, a FSC (other than a qualified personal service corporation) must use the accrual method of accounting if its average annual gross receipts exceed \$5 million. See section 448(c).

Under the accrual method, an amount is includible in income when:

- All the events have occurred that fix the right to receive the income, and
- The amount can be determined with reasonable accuracy.

See Regulations section 1.451-1(a) for details.

Generally, an accrual basis taxpayer can deduct accrued expenses in the tax year when:

- All events that determine the liability have occurred,
- The amount of the liability can be figured with reasonable accuracy, and
- Economic performance takes place with respect to the expense.

There are exceptions to the economic performance rule for certain items, including recurring expenses. See section 461(h) and the related regulations for the rules for determining when economic performance takes place.

Long-term contracts (except for certain real property construction contracts) must generally be accounted for using the percentage of completion method described in section 460. See section 460 for general rules on long-term contracts.

**Mark-to-market accounting method for dealers in securities.** Generally, dealers in securities must use the mark-to-market accounting method described in section 475. Under this method, any security that is inventory to the dealer must be included in inventory at its fair market value. Any security held by a dealer that is not inventory and that is held at the close of the tax year is treated as sold at its fair market value on the last business day of the tax year. Any gain or loss must be taken into account in determining gross income. The gain or loss taken into account is generally treated as ordinary gain or loss. For details, including exceptions, see section 475, the related regulations, and Rev. Rul. 94-7, 1994-1 C.B. 151.

**Note:** *Dealers in commodities and traders in securities and commodities may make the election to use the mark-to-market accounting method. For details, see section 475(e) and section 475(f).*

**Change in accounting method.** Generally, the FSC may change the method of accounting used to report taxable income (for income as a whole or for any material item) only by getting consent on **Form 3115**, Application for Change in Accounting Method. For more information, get **Pub. 538**, Accounting Periods and Methods.

## Accounting Periods

A FSC must figure its taxable income on the basis of a tax year. The tax year is the annual accounting period the FSC uses to keep its records and report its income and expenses. Generally, FSCs can use a calendar year or a fiscal year. Personal service corporations, however, must generally use a calendar year.

For more information about accounting periods, see Temporary Regulations sections 1.441-1T, 1.441-2T, and Pub. 538.

**Note:** *The tax year of a FSC must be the same as the tax year of the principal shareholder which, at the beginning of*

*the FSC tax year, has the highest percentage of voting power. If two or more shareholders have the highest percentage of voting power, the FSC must have a tax year that conforms to any 1 tax year of the principal shareholders. See section 441(h)(1).*

**Calendar year.** If the calendar year is adopted as the annual accounting period, the FSC must maintain its books and records and report its income and expenses for the period from January 1 through December 31 of each year.

**Fiscal year.** A fiscal year is 12 consecutive months ending on the last day of any month except December. A 52-53 week year is a fiscal year that varies from 52 to 53 weeks.

**Adoption of tax year.** A FSC adopts a tax year when it files its first income tax return. It must adopt a tax year by the due date (not including extensions) of its first income tax return.

**Change of tax year.** Generally, a FSC must get the consent of the IRS before changing its tax year by filing **Form 1128**, Application To Adopt, Change, or Retain a Tax Year. However, under certain conditions, a FSC (other than a personal service corporation) may change its tax year without getting the consent. See Regulations section 1.442-1 and Pub. 538.

## Rounding Off to Whole Dollars

A FSC may show amounts on the return and accompanying schedules as whole dollars. To do so, drop amounts less than 50 cents and increase amounts from 50 cents through 99 cents to the next higher dollar.

## Recordkeeping

Keep the FSC's records for as long as they may be needed for administration of any provision of the Internal Revenue Code. Usually, records that support an item of income, deduction, or credit on the return must be kept for 3 years from the date the return is due or filed, whichever is later. Keep records that verify the FSC's basis in property for as long as they are needed to figure the basis of the original or replacement property.

The FSC should keep copies of all filed returns. They help in preparing future returns and amended returns.

## Depository Method of Tax Payment

The FSC must pay the tax due in full no later than the 15th day of the 3rd month after the end of the tax year. The method for payment of the tax due depends upon whether the FSC has an office or place of business in the United States. Some FSCs that maintain an office or place of business in the United States (described in 2 below) are required to electronically deposit all depository taxes, including FSC income tax payments.

1. FSCs that **do not** maintain an office or place of business in the United States must pay the tax due directly to an IRS office (i.e., do not use the depository method of tax payment described in 2 below). The tax may be paid by check or money order, payable to the United States Treasury. To help ensure proper crediting, write the FSC's employer identification number (EIN), "Form 1120-FSC," and the tax period to which the payment applies on the check or money order. Enclose the payment when Form 1120-FSC is filed with the Internal Revenue Service Center, Philadelphia, PA 19255.

2. FSCs that **do** maintain an office or place of business in the United States must pay the tax due using a qualified depository.

## Electronic Deposit Requirement

The FSC must make electronic deposits of all depository tax liabilities that occur after 1998 if:

- It was required to electronically deposit taxes in prior years,
- It deposited more than \$50,000 in social security, Medicare, railroad retirement, and withheld income taxes in 1997, or
- It **did not** deposit social security, Medicare, railroad retirement, or withheld income taxes in 1997, but it deposited more than \$50,000 in other taxes under section 6302 (such as the corporate income tax) in 1997.

For details, see Regulations section 31.6302-1(h).

The Electronic Federal Tax Payment System (EFTPS) must be used to make electronic deposits. If the FSC is required to make deposits electronically and fails to do so, it may be subject to a 10% penalty.

**Note:** *A penalty will not be imposed for tax liabilities that occur prior to July 1, 1999, if the FSC was first required to use EFTPS on or after July 1, 1997.*

FSCs that are not required to make electronic deposits may voluntarily participate in EFTPS. To enroll in EFTPS, call 1-800-945-8400 or 1-800-555-4477. For general information about EFTPS, call 1-800-829-1040.

## Deposits With Form 8109

If the FSC does not use EFTPS, deposit FSC income tax payments (and estimated tax payments) with Form 8109. Do not send deposits directly to an IRS office. Mail or deliver the completed Form 8109 with the payment to a qualified depository for Federal taxes or to the Federal Reserve bank (FRB) servicing the FSC's geographic area. Make checks or money orders payable to that depository or FRB. To help ensure proper crediting, write the FSC's EIN, the tax period to which the deposit applies, and "Form 1120-FSC" on the check or money order. Be sure to darken the "1120" box on the coupon. Records of these deposits will be sent to the IRS.

A penalty may be imposed if the deposits are mailed or delivered to an IRS office rather than to an authorized depository or FRB. For more information on deposits, see the instructions in the coupon booklet (Form 8109) and **Pub. 583**, Starting a Business and Keeping Records.

**Caution:** *If the FSC owes tax and maintains an office or place of business in the United States when it files Form 1120-FSC, do not include the payment with the tax return. Instead, mail or deliver the payment with Form 8109 to a qualified depository or FRB, or use EFTPS, if applicable.*

## Estimated Tax Payments

Generally, the following rules apply to the FSC's payments of estimated tax.

- The FSC must make installment payments of estimated tax if it expects its estimated tax (income tax minus credits) to be \$500 or more.
- The installments are due by the 15th day of the 4th, 6th, 9th, and 12th months of the tax year. If any date falls on a Saturday, Sunday, or legal holiday, the installment is due on the next regular business day.
- Use **Form 1120-W**, Estimated Tax for Corporations, as a worksheet to compute estimated tax.
- If the FSC does not have to use EFTPS, use the deposit coupons (Forms 8109) to make deposits of estimated tax.
- A FSC that maintains an office or place of business in the United States must use the deposit coupons (Forms 8109) to make deposits of estimated tax.
- A FSC that does not maintain an office or place of business in the United States must pay the estimated tax due directly to an IRS office.

For information on estimated tax payments, including penalties that apply if the FSC fails to make required payments, see the instructions for **Line 3. Estimated tax penalty** on page 8.

**Overpaid estimated tax.** If the FSC overpaid estimated tax, it may be able to get a quick refund by filing **Form 4466**, Corporation Application for Quick Refund of Overpayment of Estimated Tax. The overpayment must be at least 10% of the FSC's expected income tax liability and at least \$500. File Form 4466 before the 16th day of the 3rd month after the end of the tax year, but before Form 1120-FSC is filed. Do not file Form 4466 before the end of the FSC's tax year.

## Interest and Penalties

**Interest.** Interest is charged on taxes paid late even if an extension of time to file is granted. Interest is also charged on penalties imposed for failure to file, negligence, fraud, gross valuation overstatements, and substantial understatements of tax from the due date (including extensions) to the date of

payment. The interest charge is figured at a rate determined under section 6621.

**Penalty for late filing of return.** A FSC that does not file its tax return by the due date, including extensions, may be penalized 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax. The minimum penalty for a return that is over 60 days late is the smaller of the tax due or \$100. The penalty will not be imposed if the FSC can show that the failure to file on time was due to reasonable cause. FSCs that file late must attach a statement explaining the reasonable cause.

**Penalty for late payment of tax.** A FSC that does not pay the tax when due may be penalized  $\frac{1}{2}$  of 1% of the unpaid tax for each month or part of a month the tax is not paid, up to a maximum of 25% of the unpaid tax. The penalty will not be imposed if the FSC can show that the failure to pay on time was due to reasonable cause.

**Trust fund recovery penalty.** This penalty may apply if certain income, social security, and Medicare taxes that must be collected or withheld are not collected or withheld, or these taxes are not paid to the IRS. These taxes are generally reported on Forms 941, 943, or 945 (see **Other Forms, Returns, Schedules, and Statements That May Be Required**, on page 4). The trust fund recovery penalty may be imposed on all persons who are determined by the IRS to have been responsible for collecting, accounting for, and paying over these taxes, and who acted willfully in not doing so. The penalty is equal to the unpaid trust fund tax. See **Pub. 15** (Circular E), Employer's Tax Guide, or **Pub. 51** (Circular A), Agricultural Employer's Tax Guide, for details, including the definition of responsible person.

**Other penalties.** Other penalties can be imposed for negligence, substantial understatement of tax, and fraud. See sections 6662 and 6663.

A FSC may also be subject to a penalty (under section 6686) of \$100 for each instance it fails to furnish the information required under section 6011(c), up to a maximum of \$25,000. This penalty will not apply if the FSC can show that the failure to furnish the required information was due to reasonable cause.

## Foreign Personal Holding Companies and Personal Holding Companies

**Foreign personal holding company.** Regulations section 1.551-4 requires certain shareholders of the FSC that is a foreign personal holding company as defined in section 552 to attach a statement to their personal returns containing the information required by section 551(c).

**Form 5471.** Section 6035 and the related regulations require certain officers, directors, and shareholders of a foreign

personal holding company to file **Schedule N (Form 5471)**, Return of Officers, Directors, and 10% Or More Shareholders of a Foreign Personal Holding Company, and the appropriate schedules of Form 5471. See the Instructions for Form 5471 for additional information.

**Personal holding company.** A FSC that is a personal holding company as defined in section 542 but not a foreign personal holding company must file **Schedule PH (Form 1120)**, U.S. Personal Holding Company (PHC) Tax, with Form 1120-FSC. On line 6, Schedule J, Form 1120-FSC, the FSC reports the personal holding company tax. See section 542 and Schedule PH (Form 1120) for details.

## Tax Treaty Benefits

A FSC may not claim any benefits under any income tax treaty between the United States and any foreign country.

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## Specific Instructions

**Period covered.** File the 1998 return for calendar year 1998 and fiscal years that begin in 1998 and end in 1999. For a fiscal year, fill in the tax year space at the top of the form.

**Note:** *The 1998 Form 1120-FSC may also be used if:*

- *The FSC has a tax year of less than 12 months that begins and ends in 1999, and*
- *The 1999 Form 1120-FSC is not yet available at the time the FSC is required to file its return. The FSC must show its 1999 tax year on the 1998 Form 1120-FSC and incorporate any tax law changes that are effective for tax years beginning after December 31, 1998.*

**Name.** Print or type the FSC's true name (as set forth in the charter or other legal document creating it).

**Address.** Enter the U.S. address where the FSC maintains, at a location in the United States, the records required under section 6001. Include the suite, room, or other unit number after the street address.

If the Post Office does not deliver mail to the street address and the FSC has a P.O. box, show the box number instead of the street address.

**Note:** *If a change of address occurs after the return is filed, use **Form 8822**, Change of Address, to notify the IRS of the new address.*

**Employer identification number (EIN).** Show the correct EIN in Item C on page 1 of Form 1120-FSC. If the FSC does not have an EIN, it should apply for one on **Form SS-4**, Application for Employer Identification Number. Form SS-4 can be obtained at Social Security Administration (SSA) offices, or by calling 1-800-TAX-FORM. If the FSC has not received its EIN by the time the return is due, write "Applied for" in the space for the EIN. See Pub. 583 for details.

**Item A. Foreign Country or U.S. Possession of Incorporation.** See **Definition of a Foreign Sales Corporation (FSC)** on page 2 of the instructions.

**Item E. Total assets.** Enter the FSC's total assets (as determined by the accounting method regularly used in keeping the FSC's books and records) at the end of the tax year of the FSC from page 6, Schedule L, column (d), line 15. If there are no assets at the end of the tax year, enter the assets as of the beginning of the tax year.

**Item F. Initial return, final return, change of address, or amended return.** If this is the FSC's first return, check the "Initial return" box. If the corporation ceases to exist, file Form 1120-FSC and check the "Final return" box. If the FSC has changed its address since it last filed a return, check the box for "Change of address." If the FSC is amending its return, check the box for "Amended return."

## FSC Information

### Line 1. Principal shareholder.

Complete lines **1a** through **1h** for the shareholder (individual, corporation, partnership, trust, or estate) that was the principal shareholder at the beginning of the FSC's tax year. See the information on principal shareholder on page 6 under the discussion of **Accounting Periods**.

**Foreign address.** Enter the information in the following order: city, province or state, and country. Follow the country's practice for entering the postal code. **Do not** abbreviate the country name.

### Line 2. Parent-subsidiary controlled group.

If the FSC is a subsidiary in a parent-subsidiary controlled group and the principal shareholder is not the common parent of the group, complete lines 2a through 2g for the common parent. Enter the consolidated total assets on line 2d for a group that files a consolidated return; otherwise, enter only the common parent's total assets.

**Note:** Check the "Yes" box on line 2 if the FSC is a subsidiary in a parent-subsidiary controlled group. This applies even if the FSC is a subsidiary member of one group and the parent corporation of another.

The term "parent-subsidiary controlled group" means one or more chains of corporations connected through stock ownership (sections 927(d)(4) and section 1563(a)(1)). Both of the following requirements must be met:

1. More than 50% of the total combined voting power of all classes of stock entitled to vote or more than 50% of the total value of all classes of stock of each corporation in the group (except the parent) must be owned by one or more of the other corporations in the group.

2. The common parent must own more than 50% of the total combined voting power of all classes of stock entitled to vote or more than 50% of the total value of all classes of stock of at

least one of the other corporations in the group.

Stock owned directly by other members of the group is not counted when computing the voting power or value.

See sections 927(d)(4) and 1563(d)(1) for the definition of "stock" for purposes of determining stock ownership above.

## Tax and Payments

**Line 2h. Backup withholding.** If the FSC had income tax withheld from any payments it received, because, for example, it failed to give the payer its correct EIN, include the amount withheld in the total for line 2h. This type of withholding is called backup withholding. Show the amount withheld in the blank space in the right-hand column between lines 1 and 2h, and write "backup withholding."

**Note:** Backup withholding does not include amounts reportable on line 2g for taxes paid or withheld at source.

**Line 3. Estimated tax penalty.** A FSC that does not make estimated tax payments when due may be subject to an underpayment penalty for the period of underpayment. Generally, a FSC is subject to the penalty if its tax liability is \$500 or more, and it did not timely pay the smaller of:

- 100% of its tax liability for 1998, or
- 100% of its prior year's tax.

See section 6655 for details and exceptions, including special rules for large corporations.

Use **Form 2220**, Underpayment of Estimated Tax by Corporations, to see if the FSC owes the penalty and to figure the amount of the penalty. Generally, a FSC does not have to file this form since the IRS can figure the amount of any penalty and bill the FSC for it. However, even if the FSC does not owe the penalty, complete and attach Form 2220 if:

- The annualized income or adjusted seasonal installment method is used, or
- The FSC is a large corporation computing its first required installment based on the prior year's tax. (See the Form 2220 instructions for the definition of a large corporation.)

If Form 2220 is attached, check the box on line 3, page 1, Form 1120-FSC, and enter the amount of any penalty on this line.

## Schedule A Cost of Goods Sold Related to Foreign Trading Gross Receipts

Complete Schedule A only for the cost of goods sold deduction related to foreign trading gross receipts reported on lines 1 through 5 of Schedule B.

Complete column (a) to show the cost of goods sold for inventory acquired in transactions using the administrative pricing rules. Complete column (b) to show the cost of goods sold for inventory acquired in transactions that did not use

the administrative pricing rules. For details on administrative or nonadministrative pricing rules, see Schedule P (Form 1120-FSC).

If the FSC acts as another person's commission agent on a sale, do not enter any amount on Schedule A for the sale.

Small FSCs will have to make two separate computations for cost of goods sold if their foreign trading gross receipts exceed the limitation amount on line 6e of Schedule B. In this case, a deduction for cost of goods sold will be figured separately for the income on line 6h of Schedule B, and separately for the income on line 7 of Schedule F. Attach the computation for the cost of goods sold deduction entered on line 18 of Schedule F to Form 1120-FSC.

All FSCs must attach a separate computation for cost of goods sold and other costs attributable to income included on line 4 of Schedule F.

Inventories are required at the beginning and end of each tax year if the production, purchase, or sale of merchandise is an income-producing factor. See Regulations section 1.471-1. If inventories are not used, enter zero on lines 1 and 7 of Schedule A, Form 1120-FSC.

All FSCs should see the uniform capitalization rules of section 263A discussed in the instructions for Schedule G. See those instructions before completing Schedules A and F.

### Line 4. Additional section 263A costs.

An entry is required on this line only for FSCs that have elected a simplified method of accounting.

For FSCs that have elected the **simplified production method**, additional section 263A costs are generally those costs, other than interest, that were not capitalized under the FSC's method of accounting immediately prior to the effective date of section 263A that are now required to be capitalized under section 263A. For details, see Regulations section 1.263A-2(b).

For FSCs that have elected the **simplified resale method**, additional section 263A costs are generally those costs incurred with respect to the following categories:

- Off-site storage or warehousing;
- Purchasing; handling, processing, assembly, and repackaging; and
- General administrative costs (mixed service costs).

For details, see Regulations section 1.263A-3(d).

Enter on line 4 the balance of section 263A costs paid or incurred during the tax year that were not included on lines 2, 3, and 5.

**Line 5. Other costs.** Enter on line 5 any costs paid or incurred during the tax year not entered on lines 2 through 4.

**Line 7. Inventory at end of year.** See Regulations section 1.263A-1 through 1.263A-3 for details on figuring the amount of additional section 263A costs to be included in ending inventory.



**Lines 9a through 9f. Inventory valuation methods.** Inventories can be valued at:

- Cost;
- Cost or market value (whichever is lower); or
- Any other method approved by the IRS that conforms to the requirements of the applicable regulations cited below.

The average cost (rolling average) method of valuing inventories generally does not conform to the requirements of the regulations. See Rev. Rul. 71-234, 1971-1 C.B. 148.

FSCs that use erroneous valuation methods must change to a method permitted for Federal income tax purposes. To make this change, use Form 3115.

On line 9a, check the method(s) used for valuing inventories. Under lower of cost or market, the term "market" (for normal goods) means the current bid price prevailing on the inventory valuation date for the particular merchandise in the volume usually purchased by the taxpayer. For a manufacturer, market applies to the basic elements of cost—raw materials, labor, and burden. If section 263A applies to the taxpayer, the basic elements of cost must reflect the current bid price of all direct costs and all indirect costs properly allocable to goods on hand at the inventory date.

Inventory may be valued below cost when the merchandise is unsalable at normal prices or unusable in the normal way because the goods are subnormal because of damage, imperfections, shopwear, etc., within the meaning of Regulations section 1.471-2(c). The goods may be valued at the current bona fide selling price, minus direct cost of disposition (but not less than scrap value) if such a price can be established.

If this is the first year the last-in, first-out (LIFO) inventory method was either adopted or extended to inventory goods not previously valued under the LIFO method provided in section 472, attach **Form 970, Application To Use LIFO Inventory Method**, or a statement with the information required by Form 970. Also check the LIFO box on line 9c. On line 9d, enter the amount or the percent of total closing inventories covered under section 472. Estimates are acceptable.

If the FSC changed or extended its inventory method to LIFO and had to write up the opening inventory to cost in the year of election, report the effect of the write up as other income (as appropriate on Schedule F, line 16), proportionately over a 3-year period that begins with the year of the LIFO election (section 472(d)).

For more information on inventory valuation methods, see **Pub. 538, Accounting Periods and Methods**.

### Additional FSC Information

**Line 2.** Show any tax-exempt interest received or accrued. Include any exempt-interest dividends received as a

shareholder in a mutual fund or other regulated investment company.

**Line 4.** See section 542 for the definition of personal holding company and section 552 for the definition of foreign personal holding company. Also, see **Foreign Personal Holding Companies and Personal Holding Companies** on page 7 for information and other details if the FSC meets the definition of either.

**Line 5.** Check the box on line 5 if the FSC elects under section 172(b)(3) to forego the carryback period for a net operating loss (NOL). If the box is checked, do not attach the statement described in Temporary Regulations section 301.9100-12T(d).

**Line 6.** Enter the amount of the NOL carryover to the tax year from prior years, even if some of the loss is used to offset income on this return. The amount to enter is the total of all NOLs generated in prior years but not used to offset income (either as a carryback or carryover) to a tax year prior to 1998. Do not reduce the amount by any NOL deduction reported on line 19a, Part II of Schedule B.

**Pub. 536, Net Operating Losses**, has a worksheet for figuring a FSC's NOL carryover.

**Lines 7c and 8b(2).** See **Definition of a Foreign Sales Corporation (FSC)** on page 2 of the instructions for definitions of qualifying foreign country and U.S. possession.

**Line 8.** All FSCs (except small FSCs) must answer these questions. For more information, see **Foreign Management Rules** on page 3 of the instructions.

**Line 9.** All FSCs (except small FSCs) must answer line 9b. Indicate how they met the foreign direct costs requirement of section 924(d) for all transactions that generated foreign trading gross receipts reported on lines 1 through 5 of Schedule B. Also, answer line 9a and/or line 9d to make an election to use either of the annual grouping election(s) indicated.

See the instructions for **Foreign Economic Process Rules** on page 3 for details.

## Schedule B Taxable Income or (Loss)

Use Schedule B to compute taxable income from all sources.

### Part I

Use Part I to compute net income attributable to nonexempt foreign trade income. Income and expenses on lines 1 through 15 are reported in column (a) if the administrative pricing rules were used in the transaction that produced the income.

Report in column (b) all foreign trade income from all transactions in which the administrative pricing rules were not used. Attach a schedule showing the computation of the taxable and nontaxable income included on line 15,

column (b). Only the taxable amount of line 15, column (b) is included on line 16.

**Lines 1 through 5.** Enter foreign trading gross receipts identified on lines 1 through 5. See section 924(a) and **Foreign Trading Gross Receipts** on page 2 of these instructions for receipts that are excluded and other details. Report commission income on line 1 or line 2 based on the sale, lease, or rental of property on which that commission arose.

**Line 5.** If the 50% gross receipts test of section 924(a)(5) is **not** met, report the FSC's gross receipts that would have otherwise qualified under that section on line 16, Schedule F, instead of line 5, Schedule B.

**Lines 6b through 6h.** See section 924(b)(2)(B) for the rules regarding the limitation on the amount of foreign trading gross receipts that a small FSC may take into account in determining its exempt foreign trade income.

**Line 6d.** Temporary Regulations section 1.921-1T(b)(5) indicates that, in the case of a small FSC having a short tax year, the dollar limitation reported on line 6b or 6c is to be prorated on a daily basis. A small FSC having a short tax year must divide the number of days in its short tax year by the number of days that would have made up a full tax year and enter the resulting fraction on line 6d as a decimal less than 1.00000.

**Example.** For its 1998 calendar year tax year, a small FSC has a short tax year of 73 days. The FSC enters 0.20 (73/365) on line 6d.

**Line 6f.** If commission income is reported in the total for line 6a of Schedule B, total receipts for purposes of line 6f are figured as follows:

- |   |          |
|---|----------|
| 1. Enter total of columns (a) and (b), line 6a, Schedule B.....   | 1. _____ |
| 2. Enter total commission income reported on line 1 or line 2, Schedule B.....  | 2. _____ |
| 3. Subtract line 2 from line 1 .....  | 3. _____ |
| 4. For the commissions reported on line 2 above, enter total gross receipts for the sale, lease, or rental of property on which the commissions arose (section 927(b)(2)) ..... | 4. _____ |
| 5. Add lines 3 and 4. Enter here and on line 6f, Schedule B .....   | 5. _____ |

**Line 6h. General rule.** If the small FSC's foreign trading gross receipts for the tax year (line 6f, Schedule B) exceed its allowable limitation (line 6e, Schedule B), the small FSC may select the gross receipts to which the limitation is allocated. In such a case, allocate the amount on line 6g between columns (a) and (b) on line 6h based on whether the administrative pricing rules were used for the gross receipts selected. See Regulations section 1.921-2(b) Q&A-4.

If you have **commission income** and you completed the line 6f worksheet above, allocate only the commission income attributable to the gross receipts on line 4 above.

## Part II

### Line 19a. Net operating loss deduction.

A FSC may use the net operating loss (NOL) incurred in 1 tax year to reduce its taxable income in another year.

Generally, a FSC may carry an NOL back to each of the 2 years (3 years for NOLs incurred in tax years beginning before August 6, 1997) preceding the year of the loss and then carry any remaining amount over to each of the 20 years (15 years for NOLs incurred in tax years beginning before August 6, 1997) following the year of the loss (but see **Exceptions to carryback rules** below). Enter on line 19a the total NOL carryovers from prior tax years, but do not enter more than the FSC's taxable income (after special deductions). An NOL deduction cannot be taken in a year in which the FSC has a negative taxable income. Attach a schedule showing the computation of the NOL deduction. Also complete line 6 in **Additional FSC Information**.

For more information about NOLs and the NOL deduction, see Pub. 536.

### Carryback and carryover rules.

Generally, an NOL first must be carried back to the second tax year (third tax year for NOLs incurred in tax years beginning before August 6, 1997) preceding the year of the loss. To carry back the loss and obtain a quick refund of taxes, use **Form 1139**, Corporation Application for Tentative Refund. Form 1139 must be filed within 12 months after the close of the tax year of the loss. See section 6411 for details. Do not attach Form 1139 to the FSC's income tax return. Mail it in a separate envelope to the Internal Revenue Service Center, Philadelphia, PA 19255.

For carryback claims filed later than 12 months after the close of the tax year of the loss, file an amended Form 1120-FSC instead of Form 1139.

After the FSC applies the NOL to the first tax year to which it may be carried, the taxable income of that year is modified (as described in section 172(b)) to determine how much of the remaining loss may be carried to other years. See section 172(b) and the related regulations for details.

Special rules apply when an ownership change occurs (i.e., the amount of the taxable income of a loss corporation that can be offset by pre-change NOL carryovers is limited). See section 382 and the related regulations. Also see Temporary Regulations section 1.382-2T(a)(2)(ii), which requires that a loss corporation file an information statement with its income tax return for each tax year that it is a loss corporation and certain shifts in ownership occurred. Also see Regulations section 1.382-6(b) for details on how to make the closing-of-the-books election.

See section 384 for the limitation on the use of preacquisition losses of one corporation to offset recognized built-in gains of another corporation.

**Note:** See section 383 and the related regulations for limits that apply to net capital losses and credits when an ownership change occurs.

**Exceptions to carryback rules.** A FSC may make an irrevocable election to forego the carryback period and instead carry the NOL forward to years following the year of the loss. To make this election, check the box on line 5 in **Additional FSC Information**. The return must be timely filed (including extensions).

Different carryback periods apply for certain losses. The part of an NOL that is attributed to a specified liability loss, including a product liability loss, may be carried back 10 years (section 172(b)(1)(C)). See Regulations section 1.172-13(c) for the statement that must be attached to Form 1120-FSC if the FSC is claiming the 10-year carryback period for a product liability loss.

### Line 19b. Dividends-received deduction.

A FSC may be entitled to a deduction for dividends it receives from other corporations. See the instructions below for the dividend worksheet (on page 11) to figure the allowable dividends-received deduction. Attach the dividend worksheet to Form 1120-FSC.

## Schedule E Exemption Percentages Used in Figuring Exempt Foreign Trade Income

For purposes of the **Note** at the top of Schedule E, a C corporation is a corporation other than an S corporation. Shareholders other than C corporations are individuals, partnerships, S corporations, trusts, and estates.

Use lines 2a through 2d to figure the exemption percentage for foreign trade income determined by not using the administrative pricing rules (see section 923(a)(2)).

Use lines 3a through 3d to figure the exemption percentage for foreign trade income that was determined by using the administrative pricing rules (see section 923(a)(3)). See section 923(a)(4) for a special rule for foreign trade income allocable to a cooperative.

## Schedule F Net Income From Nonexempt Foreign Trade Income and Taxable Nonforeign Trade Income

**Note:** Before completing Schedule F, see the instructions for Schedule G on page 12.

### Part I

Enter net income from nonexempt foreign trade income and related expenses in Part I.

**Line 2.** Enter FSC income that resulted from the FSC's cooperation with an international boycott. See Form 5713 for reporting requirements for any FSC with

operations in or related to a boycotting country. See section 927(e)(2).

**Line 3.** Enter the amount, if any, paid for illegal payments, bribes, or kickbacks that the FSC paid directly or indirectly to government officials, employees, or agents. See section 927(e)(2).

**Line 5.** See the instructions for Schedule A of Form 1120-FSC before completing this line.

### Part II

Enter the taxable portion of gross income of the FSC that was **not** derived from foreign trading gross receipts. This type of income includes:

- Amounts specifically excluded from foreign trade income because of the small FSC limitation (the amount by which line 6f of Schedule B exceeds line 6e of Schedule B). (Enter the excess, if any, on line 7 of Schedule F.)

- Investment type income. (Enter on lines 8 through 12 of Schedule F.)

- Income from property that is subsidized, deemed in short supply, or destined for use in the United States. (Enter on lines 13 and 14 of Schedule F.)

- Amounts from transactions that did not meet the foreign economic process requirements. (Enter on line 15 of Schedule F.)

- Other income. (Enter on line 16 of Schedule F.) For more details, see sections 924(f) and 927(a)(2) and (3).

**Line 9.** Complete the dividend worksheet on page 11 to figure the total dividends to report on line 9. Attach a schedule similar to the worksheet on page 11 to Form 1120-FSC.

**Line 18.** Enter the deductions allocated or apportioned to income on line 17. Attach to Form 1120-FSC a schedule listing each type of deduction. Show deductions related to cost of goods sold separately. See the instructions for Schedule A on page 8 before completing this line.

**Passive activity limitations.** Section 469 generally limits the deduction of passive activity losses for closely held FSCs and FSCs that are personal service corporations. See section 469 and the instructions for Form 8810 for details.

## Instructions for Dividends and Dividends-Received Deduction Worksheet

For purposes of the 20% ownership test on lines 1 through 7, the percentage of stock owned by the FSC is based on voting power and the value of the stock. Preferred stock described in section 1504(a)(4) is not taken into account.

### Line 1, Column (a)

Enter dividends (except those received on debt-financed stock acquired after July 18, 1984—see section 246A) that:

- Are received from less-than-20%-owned domestic corporations subject to income tax and
- Qualify for the 70% deduction under section 243(a)(1).

Also include on line 1 dividends (except those received on debt-financed stock acquired after July 18, 1984) from a regulated investment company (RIC). The amount of dividends eligible for the dividends-received deduction under section 243 is limited by section 854(b). The FSC should receive a notice from the RIC specifying the amount of dividends that qualify for the deduction.

Report so-called dividends or earnings received from mutual savings banks, etc., as interest. Do not treat them as dividends.

**Line 2, Column (a)**

Enter dividends (except those received on debt-financed stock acquired after July 18, 1984) that are received from 20%-or-more-owned domestic corporations subject to income tax and that are subject to the 80% deduction under section 243(c).

**Line 3, Column (a)**

Enter dividends received on debt-financed stock acquired after July 18, 1984, from domestic and foreign corporations subject to income tax that would otherwise be subject to the dividends-received deduction under section 243(a)(1), 243(c), or 245(a). Generally, debt-financed stock is stock that the FSC acquired by incurring a debt (e.g., it borrowed money to buy the stock).

Include on line 3 dividends received from a RIC on debt-financed stock. The amount of dividends eligible for the dividends-received deduction is limited by section 854(b). The FSC should receive a notice from the RIC specifying the amount of dividends that qualify for the deduction.

**Line 3, Columns (b) and (c)**

Dividends received on debt-financed stock acquired after July 18, 1984, are not entitled to the full 70% or 80% dividends-received deduction. The 70%

or 80% deduction is reduced by a percentage that is related to the amount of debt incurred to acquire the stock. See section 246A. Also see section 245(a) before making this computation for an additional limitation that applies to dividends received from foreign corporations. Attach a schedule to Form 1120-FSC showing how the amount on line 3, column (c), was figured.

**Line 4, Column (a)**

Enter dividends received on the preferred stock of a less-than-20%-owned public utility that is subject to income tax and is allowed the deduction provided in section 247 for dividends paid.

**Line 5, Column (a)**

Enter dividends received on preferred stock of a 20%-or-more-owned public utility that is subject to income tax and is allowed the deduction provided in section 247 for dividends paid.

**Line 6, Column (a)**

Enter the U.S.-source portion of dividends that:

- Are received from less-than-20%-owned foreign corporations, and
- Qualify for the 70% deduction under section 245(a). To qualify for the 70% deduction, the FSC must own at least 10% of the stock of the foreign corporation by vote and value.

**Line 7, Column (a)**

Enter the U.S.-source portion of dividends that are received from 20%-or-more-owned foreign corporations and that qualify for the 80% deduction under section 245(a).

**Line 8, Column (c)**

**Limitation on dividends-received deduction.** Generally, line 8 of column (c) may not exceed the amount on line 10 from the worksheet below. However, in a

year in which an NOL occurs, this limitation does not apply even if the loss is created by the dividends-received deduction. See sections 172(d) and 246(b).

1. Refigure line 18, Part II, Schedule B (page 3 of Form 1120-FSC) without any adjustment under section 1059 and without any capital loss carryback to the tax year under section 1212(a)(1) ..... 1. \_\_\_\_\_
2. Multiply line 1 by 80%..... 2. \_\_\_\_\_
3. Add lines 2, 5, and 7, column (c), and the part of the deduction on line 3, column (c), that is attributable to dividends from 20%-or-more-owned corporations . 3. \_\_\_\_\_
4. Enter the smaller of line 2 or 3. If line 3 is greater than line 2, stop here; enter the amount from line 4 on line 8, column (c), and do not complete lines 5-10 below ..... 4. \_\_\_\_\_
5. Enter the total amount of dividends from 20%-or-more-owned corporations that are included on lines 2, 3, 5, and 7, column (a) .... 5. \_\_\_\_\_
6. Subtract line 5 from line 1 ..... 6. \_\_\_\_\_
7. Multiply line 6 by 70%..... 7. \_\_\_\_\_
8. Subtract line 3 above from line 8 of column (c) ..... 8. \_\_\_\_\_
9. Enter the smaller of line 7 or line 8 ..... 9. \_\_\_\_\_
10. **Dividends-received deduction after limitation (sec. 246(b)).** Add lines 4 and 9. Enter the result here and on line 8, column (c)..... 10. \_\_\_\_\_

**Line 9, Column (a)**

Enter foreign dividends not reportable on lines 3, 6, and 7 that do not qualify for a dividends-received deduction.

**Line 10, Column (a)**

If the FSC claims the foreign tax credit, the tax that is deemed paid under sections 902 and 960 is treated as a dividend received from the foreign corporation. See sections 78 and 906(b)(4).

**Dividends and Dividends-Received Deduction Worksheet**  
(See instructions above and on page 10.)

	(a) Dividends received	(b) %	(c) Dividends-received deduction: (a) × (b)
1 Dividends from less-than-20%-owned domestic corporations that are subject to the 70% deduction (other than debt-financed stock) . . . . .		70	
2 Dividends from 20%-or-more-owned domestic corporations that are subject to the 80% deduction (other than debt-financed stock) . . . . .		80	
3 Dividends on debt-financed stock of domestic and foreign corporations (section 246A) .		See Inst.	
4 Dividends on certain preferred stock of less-than-20%-owned public utilities .		42	
5 Dividends on certain preferred stock of 20%-or-more-owned public utilities .		48	
6 Dividends from less-than-20%-owned foreign corporations that are subject to the 70% deduction . . . . .		70	
7 Dividends from 20%-or-more-owned foreign corporations that are subject to the 80% deduction . . . . .		80	
8 <b>Total dividends-received deduction.</b> Add lines 1 through 7. See instructions for limitation. Enter here and on line 19b, Schedule B . . . . . ▶			
9 Other dividends from foreign corporations not included on lines 3, 6, and 7 .			
10 Foreign dividend gross up (section 78) . . . . .			
11 Other dividends . . . . .			
12 <b>Total dividends.</b> Add lines 1 through 11. Enter here and on line 9, Schedule F ▶			

## Line 11, Column (a)

Include the following:

1. Dividends (other than capital gain dividends and exempt-interest dividends) that are received from regulated investment companies and that are not subject to the 70% deduction.

2. Dividends from tax-exempt organizations.

3. Dividends (other than capital gain dividends) received from a real estate investment trust that, for the tax year of the trust in which the dividends are paid, qualifies under sections 856 through 860.

4. Dividends not eligible for a dividends-received deduction because of the holding period of the stock or an obligation to make corresponding payments with respect to similar stock.

Two situations in which the dividends-received deduction will not be allowed on any share of stock are:

- If the FSC held the stock less than 46 days during the 90-day period beginning 45 days before the stock became ex-dividend with respect to the dividend (see section 246(c)(1)(A)), or

- To the extent the FSC is under an obligation to make related payments for substantially similar or related property.

5. Any other taxable dividend income not properly reported above (including distributions under section 936(h)(4)).

If patronage dividends or per-unit retain allocations are included on line 11, column (a), identify the total of these amounts in a schedule attached to Form 1120-FSC.

## Schedule G Deductions Allocated or Apportioned to Foreign Trade Income Other Than Foreign Trade Income Reported on Schedule F

### Limitations on deductions

**Section 263A uniform capitalization rules.** The uniform capitalization rules of section 263A require FSCs to capitalize or include in inventory certain costs incurred in connection with:

- The production of real and tangible personal property held in inventory or held for sale in the ordinary course of business.

- Personal property (tangible and intangible) acquired for resale.

- The production of property constructed or improved by a FSC for use in its trade or business or in an activity engaged in for profit.

**Tangible personal property** produced by a FSC include a film, sound recording, videotape, book, or similar property.

FSCs subject to the rules are required to capitalize not only direct costs but an allocable part of most indirect costs

(including taxes) that benefit the assets produced or acquired for resale.

For inventory, some of the **indirect expenses** that must be capitalized are:

- Administrative expenses.
- Taxes.
- Depreciation.
- Insurance.
- Compensation paid to officers attributable to services.
- Rework labor.
- Contributions to pension, stock bonus, and certain profit-sharing, annuity, or deferred compensation plans.

Regulations section 1.263A-1(e)(3) specifies other indirect costs that relate to production or resale activities that must be capitalized and those that may be currently deductible.

**Interest expense** paid or incurred during the production period of certain property must be capitalized and is governed by special rules. For more details, see Regulations section 1.263A-8 through 1.263A-15.

The costs required to be capitalized under section 263A are not deductible until the property to which the costs relate is sold, used, or otherwise disposed of by the FSC.

**Exceptions.** Section 263A does not apply to:

- Personal property acquired for resale if the FSC's average annual gross receipts for the 3 prior tax years were \$10 million or less.

- Timber.

- Most property produced under a long-term contract.

- Certain property produced in a farming business.

- Research and experimental costs under section 174.

- Intangible drilling costs for oil, gas, and geothermal property.

- Mining exploration and development costs.

For more details on the uniform capitalization rules, see Regulations sections 1.263A-1 through 1.263A-3.

**Transactions between related taxpayers.** Generally, an accrual basis taxpayer may only deduct business expenses and interest owed to a related party in the year the payment is included in the income of the related party. See sections 163(e)(3), 163(j), and 267 for limitations on deductions for unpaid interest and expenses.

**Golden parachute payments.** A portion of the payments made by a FSC to key personnel that exceeds their usual compensation may not be deductible. This occurs when the FSC has an agreement (golden parachute) with these key employees to pay them these excessive amounts if control of the FSC changes. See section 280G.

**Business startup expenses.** Business startup expenses must be capitalized unless an election is made to amortize

them over a period of 60 months. See section 195.

**Line 1.** Enter only foreign direct costs on lines 1a through 1e. See section 924(e) and Regulations sections 1.924(e)-1(a) through (e) for definitions and rules on direct activity costs related to foreign trade income.

**Line 4. Depreciation.** Besides depreciation, include on line 4 the part of the cost that the FSC elected to expense under section 179 for certain tangible property placed in service during tax year 1998 or carried over from 1997. See **Form 4562**, Depreciation and Amortization, and its instructions.

**Line 5. Salaries and wages.** Enter the amount of salaries and wages paid for the tax year. Do not include salaries and wages deductible elsewhere on the return, such as amounts included in cost of goods sold, elective contributions to a section 401(k) cash or deferred arrangement, or amounts contributed under a salary reduction SEP agreement or a SIMPLE retirement plan (savings incentive match plan).

**Line 10. Compensation of officers.** Enter any officers' deductible compensation on line 10. Do not include compensation deductible elsewhere on the return, such as amounts included in cost of goods sold, elective contributions to a section 401(k) cash or deferred arrangement, or amounts contributed under a salary reduction SEP agreement or a SIMPLE retirement plan (savings incentive match plan).

**Disallowance of deduction for employee compensation in excess of \$1 million.** Publicly held FSCs may not deduct compensation of a "covered employee" to the extent that the compensation exceeds \$1 million. Generally, a covered employee is:

- The chief executive officer of the FSC (or an individual acting in that capacity) as of the end of the tax year, or
- An employee whose total compensation must be reported to shareholders under the Securities Exchange Act of 1934 because the employee is among the four highest compensated officers for that tax year (other than the chief executive officer).

For this purpose, compensation does not include the following:

- Income from certain employee trusts, annuity plans, or pensions;
- Any benefit paid to an employee that is excluded from the employee's income.

The deduction limit does not apply to:

- Commissions based on individual performance;
- Qualified performance-based compensation; and
- Income payable under a written binding contract in effect on February 17, 1993.

The \$1 million limit is reduced by amounts disallowed as excess parachute payments under section 280G.

For details, see section 162(m) and Regulations section 1.162-27.

**Line 11. Bad debts.** Enter the total debts that became worthless in whole or in part during the tax year.

**Caution:** A cash basis taxpayer may not claim a bad debt deduction unless the amount was previously included in income.

**Line 14. Other deductions.—Note:** Do not deduct fines or penalties paid to a government for violating any law.

Attach a schedule, listing by type and amount, all allowable deductions that are not deductible elsewhere on Form 1120-FSC. Enter the total of other deductions on this line.

Generally, a deduction may not be taken for any amount that is allocable to a class of exempt income. See section 265(b) for exceptions.

**Travel, meals, and entertainment.**

Subject to limitations and restrictions discussed below, the FSC can deduct ordinary and necessary travel, meals, and entertainment expenses paid or incurred in its trade or business. Also, special rules apply to deductions for gifts, skybox rentals, luxury water travel, convention expenses, and entertainment tickets. For details, see section 274 and **Pub. 463**, Travel, Entertainment, Gift, and Car Expenses.

**Travel.** The FSC cannot deduct travel expenses of any individual accompanying a corporate officer or employee, including a spouse or dependent of the officer or employee, unless:

- That individual is an employee of the corporation, and
- His or her travel is for a bona fide business purpose and would otherwise be deductible by that individual.

**Meals and entertainment.** Generally, the FSC can deduct only 50% of the amount otherwise allowable for meals and entertainment expenses paid or incurred in its trade or business. In addition (subject to exceptions under section 274(k)(2)):

- Meals must not be lavish or extravagant,
- A bona fide business discussion must occur during, immediately before, or immediately after the meal; and
- An employee of the FSC must be present at the meal.

**Membership dues.** The FSC may deduct amounts paid or incurred for membership dues in civic or public service organizations, professional organizations (such as bar and medical associations), business leagues, trade associations, chambers of commerce, boards of trade, and real estate boards. However, no deduction is allowed if a principal purpose of the organization is to entertain, or provide entertainment facilities for, members or their guests. In addition, FSCs may not deduct membership dues in any club organized for business, pleasure, recreation, or other social purpose. This includes country clubs, golf and athletic clubs, airline and hotel clubs,

and clubs operated to provide meals under conditions favorable to business discussion.

**Entertainment facilities.** The FSC cannot deduct an expense paid or incurred for a facility (such as a yacht or hunting lodge) used for an activity usually considered entertainment, amusement, or recreation.

**Note:** The FSC may be able to deduct otherwise nondeductible meals, travel, and entertainment expenses if the amounts are treated as compensation and reported on Form W-2 for an employee or on Form 1099-MISC for an independent contractor.

**Schedule J  
Tax Computation**

**Note:** Members of a controlled group must attach a statement showing the computation of the tax entered on line 3.

**Lines 1 and 2**

**Members of a controlled group.** A member of a controlled group, as defined in section 927(d)(4), must check the box on line 1 and complete lines 2a and 2b of Schedule J, Form 1120-FSC.

**Line 2a.** Members of a controlled group are entitled to one \$50,000, one \$25,000, and one \$9,925,000 taxable income bracket amount (in that order) on line 2a.

When a controlled group adopts or later amends an apportionment plan, each member must attach to its tax return a copy of its consent to this plan. The copy (or an attached statement) must show the part of the amount in each taxable income bracket apportioned to that member. See Regulations section 1.1561-3(b) for other requirements and for the time and manner of making the consent.

**Unequal apportionment plan.** Members of a controlled group may elect an unequal apportionment plan and divide the amount in each taxable income

bracket as they want. There is no need for consistency among taxable income brackets. Any member may be entitled to all, some, or none of the amount in a taxable income bracket. However, the total amount for all members cannot be more than the total amount in each taxable income bracket.

**Equal apportionment plan.** If no apportionment plan is adopted, members of a controlled group must divide the amount in each taxable income bracket equally among themselves. For example, controlled group AB consists of Corporation A and Corporation B. They do not elect an unequal apportionment plan. Therefore, each corporation is entitled to:

- \$25,000 (one-half of \$50,000) on line 2a(1),
- \$12,500 (one-half of \$25,000) on line 2a(2), and
- \$4,962,500 (one-half of \$9,925,000) on line 2a(3).

**Line 2b.** Members of a controlled group are treated as one group to figure the applicability of the additional 5% tax and the additional 3% tax. If an additional tax applies, each member will pay that tax based on the part of the amount used in each taxable income bracket to reduce that member's tax. See section 1561(a). If an additional tax applies, attach a schedule showing the taxable income of the entire group and how it figured its share of the additional tax.

**Line 2b(1).** Enter the corporation's share of the additional 5% tax on line 2b(1).

**Line 2b(2).** Enter the corporation's share of the additional 3% tax on line 2b(2).

**Line 3**

A FSC that is not a member of a controlled group (see worksheet below) or a qualified personal service corporation

**Tax Computation Worksheet for Members of a Controlled Group**  
(Keep for your records.)

**Note:** Each member of a controlled group (except a qualified personal service corporation) must compute the tax using this worksheet.

1. Enter taxable income (Schedule B, line 20) . . . . .	1. _____
2. Enter line 1 or the FSC's share of the \$50,000 taxable income bracket, whichever is less . . . . .	2. _____
3. Subtract line 2 from line 1 . . . . .	3. _____
4. Enter line 3 or the FSC's share of the \$25,000 taxable income bracket, whichever is less . . . . .	4. _____
5. Subtract line 4 from line 3 . . . . .	5. _____
6. Enter line 5 or the FSC's share of the \$9,925,000 taxable income bracket, whichever is less . . . . .	6. _____
7. Subtract line 6 from line 5 . . . . .	7. _____
8. Multiply line 2 by 15% . . . . .	8. _____
9. Multiply line 4 by 25% . . . . .	9. _____
10. Multiply line 6 by 34% . . . . .	10. _____
11. Multiply line 7 by 35% . . . . .	11. _____
12. If the taxable income of the controlled group exceeds \$100,000, enter this member's share of the smaller of 5% of the taxable income in excess of \$100,000, or \$11,750 (See the instructions for line 2b above.) . . . . .	12. _____
13. If the taxable income of the controlled group exceeds \$15 million, enter this member's share of the smaller of 3% of the taxable income in excess of \$15 million, or \$100,000 (See the instructions for line 2b above.) . . . . .	13. _____
14. Add lines 8 through 13. Enter here and on Schedule J, line 3 . . . . .	14. _____

must compute its tax on its taxable income as follows:

### Tax Rate Schedule

If taxable income (Schedule B, line 20) is:

Over—	But not over—	Tax is:	Of the amount over—
\$0	\$50,000	15%	\$0
50,000	75,000	\$ 7,500 + 25%	50,000
75,000	100,000	13,750 + 34%	75,000
100,000	335,000	22,250 + 39%	100,000
335,000	10,000,000	113,900 + 34%	335,000
10,000,000	15,000,000	3,400,000 + 35%	10,000,000
15,000,000	18,333,333	5,150,000 + 38%	15,000,000
18,333,333	-----	35%	0

#### Qualified personal service corporations.

A qualified personal service corporation is taxed at a flat rate of 35% on its taxable income. A FSC is a qualified personal service corporation if it meets **BOTH** of the following tests:

- Substantially all of the FSC's activities involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, and
- At least 95% of the corporation's stock, by value, is owned, directly or indirectly, by (1) employees performing the services, (2) retired employees who had performed the services listed above, (3) any estate of the employee or retiree described above, or (4) any person who acquired the stock of the FSC as a result of the death of an employee or retiree (but only for the 2-year period beginning on the date of the employee's or retiree's death). See Temporary Regulations section 1.448-1T(e) for details.

**Note:** If the FSC meets these tests, check the box on line 3, Schedule J, Form 1120-FSC.

**Additional tax under section 197(f).** A FSC that elects to pay tax on the gain from the sale of an intangible under the related-person exception to the anti-churning rules should include any additional tax due under section 197(f)(9)(B) in the amount entered on line 3. On the dotted line next to line 3, write "Section 197" and the amount. For more information, see **Pub. 535**, Business Expenses.

#### Line 4

**Foreign tax credit.** Generally, a FSC may not claim a foreign tax credit. It may, however, claim a foreign tax credit for any foreign taxes imposed on foreign source taxable nonforeign trade income (Schedule F, Part II) that is treated as effectively connected with a U.S. trade or

business under section 921(d). See Temporary Regulations section 1.921-3T(d)(2) for more details.

#### Line 6

**Personal holding company tax.** See the instructions on page 7, **Foreign Personal Holding Companies and Personal Holding Companies.**

#### Line 7

**Alternative minimum tax (AMT).** The FSC may owe the alternative minimum tax if it has any of the adjustments and tax preference items listed on **Form 4626**, Alternative Minimum Tax—Corporations. The FSC must file Form 4626 if its taxable income (loss) combined with these adjustments and tax preference items is more than the smaller of \$40,000, or the FSC's allowable exemption amount (from Form 4626).

For this purpose, taxable income does not include the NOL deduction. See Form 4626 for details.

#### Exception for small corporations.

For tax years beginning after December 31, 1997, the alternative minimum tax does not apply to FSCs that qualify as "small corporations." Generally, a FSC initially qualifies as a small corporation if:

- Its average annual gross receipts for its 1994, 1995, and 1996 tax years did not exceed \$5 million, and
- Its average annual gross receipts for its 1995, 1996, and 1997 tax years did not exceed \$7.5 million.

If 1998 is the first tax year of a FSC's existence, it is treated as a small corporation regardless of its gross receipts for the year. For more information, see Form 4626.

#### Line 8

**Total tax. Interest on tax deferred under the installment method for certain nondealer installment obligations.** If an obligation arising from the disposition of property to which section 453A applies is outstanding at the close of the year, the FSC must include the interest due under section 453A(c) in the amount on line 8, Schedule J. Write on the dotted line to the left of line 8, Schedule J, "Section 453A(c) interest" and the amount. Attach a schedule showing the computation.

### Schedule L

#### Balance Sheets per Books

The balance sheet should agree with the FSC's books and records. Include certificates of deposit as cash on line 1, Schedule L.

**Line 5. Tax-exempt securities.** Include on this line:

1. State and local government obligations, the interest on which is excludible from gross income under section 103(a), and
2. Stock in a mutual fund or other regulated investment company that distributed exempt-interest dividends during the tax year of the corporation.

**Line 27. Adjustments to shareholders' equity.** Some examples of adjustments to report on this line include:

- Unrealized gains and losses on securities held "available for sale."
- Foreign currency translation adjustments.
- The excess of additional pension liability over unrecognized prior service cost.
- Guarantees of employee stock (ESOP) debt.
- Compensation related to employee stock award plans.

If the total adjustment to be entered on line 27 is a negative amount, enter the amount in parentheses.

### Schedule M-1

#### Reconciliation of Income (Loss) per Books With Income per Return

##### Line 5c. Travel and entertainment.

Include on line 5c any of the following:

- 50% of the meals and entertainment not allowed under section 274(n).
- Expenses for the use of an entertainment facility.
- The part of business gifts over \$25.
- Expenses of an individual over \$2,000, which are allocable to conventions on cruise ships.
- Employee achievement awards over \$400.
- The cost of entertainment tickets over face value (also subject to 50% disallowance under section 274(n)).
- The cost of skyboxes over the face value of nonluxury box seat tickets.
- The part of luxury water travel not allowed under section 274(m).
- Expenses for travel as a form of education.
- Other travel and entertainment expenses not allowed as a deduction.

For more information, see **Pub. 542**, Corporations.

**Line 7a. Tax-exempt interest.** Include as interest on line 7a any exempt-interest dividends received as a shareholder in a mutual fund or other regulated investment company.

# Form 1120-FSC Codes for Principal Business Activity

This list of principal business activities and their associated codes is designed to classify an enterprise by the type of activity in which it is engaged to facilitate the administration of the Internal Revenue Code. For tax years beginning after 1997, these principal business activity codes are based on the North American Industry Classification System.

Using the list of activities and codes below, determine from which activity the FSC derives the largest percentage of its "total receipts." Total receipts is defined as the sum of the foreign trading gross receipts on Form 1120-FSC, page 3, Schedule B, line 6a, and the total income on

page 4, Schedule F, lines 4 and 17. If the FSC's largest percentage of its total receipts is derived from the wholesale trading of durable machinery, the FSC is considered a wholesaler and must use one of the codes appropriate for the wholesale trade of durable goods (421100-421990).

Once the principal business activity is determined, entries must be made on Form 1120-FSC, Additional Information, lines 1a, 1b, and 1c. For the business activity code number, enter the six-digit code from the list below. On the line 1b, enter a brief description of the FSC's business activity. Finally, enter a description of the principal product or service of the FSC on line 1c.

<b>Wholesale Trade</b> <i>Code</i>	<i>Code</i>	<b>Information</b> <i>Code</i>	<b>Rental and Leasing</b> <i>Code</i>
<b>Wholesale Trade, Durable Goods</b>	<b>Wholesale Trade, Nondurable Goods</b>	<b>Publishing Industries</b>	<b>Rental and Leasing Services</b>
421100 Motor Vehicle & Motor Vehicle Part, & Supplies Wholesalers	422100 Paper & Paper Product Wholesalers	511110 Newspaper Publishers	532100 Automotive Equipment Rental & Leasing
421200 Furniture & Home Furnishing Wholesalers	422210 Drugs & Druggists' Sundries Wholesalers	511120 Periodical Publishers	532400 Commercial & Industrial Machinery & Equipment Rental & Leasing
421300 Lumber & Other Construction Materials Wholesalers	422300 Apparel, Piece Goods, & Notions Wholesalers	511130 Book Publishers	<b>Lessors of Other Nonfinancial Assets</b>
421400 Professional & Commercial Equipment & Supplies Wholesalers	422400 Grocery & Related Product Wholesalers	511140 Database & Directory Publishers	533110 Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)
421500 Metal & Mineral (except Petroleum) Wholesalers	422500 Farm Product Raw Material Wholesalers	511190 Other Publishers	
421600 Electrical Goods Wholesalers	422600 Chemical & Allied Products Wholesalers	511210 Software Publishers	
421700 Hardware, & Plumbing & Heating Equipment & Supplies Wholesalers	422700 Petroleum & Petroleum Products Wholesalers	<b>Motion Picture and Sound Recording Industries</b>	
421800 Machinery, Equipment, & Supplies Wholesalers	422800 Beer, Wine, & Distilled Alcoholic Beverage Wholesalers	512100 Motion Picture & Video Industries (except video rental)	<b>Professional, Scientific and Technical Services</b>
421910 Sporting & Recreational Goods & Supplies Wholesalers	422910 Farm Supplies Wholesalers	512200 Sound Recording Industries	<b>Architectural and Engineering Services</b>
421920 Toy & Hobby Goods & Supplies Wholesalers	422920 Book, Periodical, & Newspaper Wholesalers	<b>Broadcasting and Telecommunications</b>	541310 Architectural Services
421930 Recyclable Material Wholesalers	422930 Flower, Nursery Stock, & Florists' Supplies Wholesalers	513100 Radio & Television Broadcasting	541330 Engineering Services
421940 Jewelry, Watch, Precious Stone, & Precious Metal Wholesalers	422940 Tobacco & Tobacco Product Wholesalers	513200 Cable Networks & Program Distribution	
421990 Other Miscellaneous Durable Goods Wholesalers	422950 Paint, Varnish, & Supplies Wholesalers	513300 Telecommunications (including paging, cellular, satellite, & other telecommunications)	
	422990 Other Miscellaneous Nondurable Goods Wholesalers	<b>Information Services and Data Processing Services</b>	
		514100 Information Services (including news syndicates, libraries, & on-line information services)	
		514210 Data Processing Services	

# Schedule P (Form 1120-FSC) Codes for Principal Business Activity

(These codes are to be used only for Schedule P (Form 1120-FSC)).

This list of Principal Business Activity codes and activities is designed to classify enterprises by the type of activity in which they are engaged. Though the principal business activity codes are similar in format and structure to the Standard Industrial Classification (SIC) Codes, they should not be used as SIC codes.

Using the list below, enter on Schedule P (Form 1120-FSC), if applicable, lines A and C, the code for the product or product line and the specific industry group for which Schedule P is completed.

<p><b>Agriculture, Forestry, and Fishing</b> <i>Code</i> 0400 Agricultural production. 0600 Agricultural services (except veterinarians), forestry, fishing, hunting, and trapping.</p>	<p><i>Code</i> <b>Chemicals and allied products:</b> 2815 Industrial chemicals, plastics materials and synthetics. 2830 Drugs. 2840 Soap, cleaners, and toilet goods. 2850 Paints and allied products. 2898 Agricultural and other chemical products.</p>	<p><b>Transportation and Public Utilities</b> <i>Code</i> <b>Transportation:</b> 4000 Railroad transportation. 4100 Local and interurban passenger transit. 4200 Trucking and warehousing. 4400 Water transportation. 4500 Transportation by air. 4600 Pipe lines, except natural gas. 4700 Miscellaneous transportation services.</p>	<p><b>Finance, Insurance, and Real Estate</b> <i>Code</i> <b>Banking:</b> 6030 Mutual savings banks. 6060 Bank holding companies. 6090 Banks, except mutual savings banks and bank holding companies.</p>
<p><b>Mining</b> <b>Metal mining:</b> 1010 Iron ores. 1070 Copper, lead and zinc, gold and silver ores. 1098 Other metal mining. 1150 Coal mining. <b>Oil and gas extraction:</b> 1330 Crude petroleum, natural gas, and natural gas liquids. 1380 Oil and gas field services. <b>Nonmetallic minerals, except fuels:</b> 1430 Dimension, crushed and broken stone: sand and gravel. 1498 Other nonmetallic minerals, except fuels.</p>	<p><b>Petroleum refining and related industries (including those integrated with extraction):</b> 2910 Petroleum refining (including integrated). 2998 Other petroleum and coal products. <b>Rubber and misc. plastics products:</b> 3050 Rubber products: plastics footwear, hose and belting. 3070 Miscellaneous plastics products. <b>Leather and leather products:</b> 3140 Footwear, except rubber. 3198 Other leather and leather products. <b>Stone, clay, and glass products:</b> 3225 Glass products. 3240 Cement, hydraulic. 3270 Concrete, gypsum, and plaster products. 3298 Other nonmetallic mineral products.</p>	<p><b>Communication:</b> 4825 Telephone, telegraph, and other communication services. 4830 Radio and television broadcasting. <b>Electric, gas, and sanitary services:</b> 4910 Electric services. 4920 Gas production and distribution. 4930 Combination utility services. 4990 Water supply and other sanitary services.</p>	<p><b>Credit agencies other than banks:</b> 6120 Savings and loan associations. 6140 Personal credit institutions. 6150 Business credit institutions. 6199 Other credit agencies. <b>Security, commodity brokers and services:</b> 6210 Security brokers, dealers, and flotation companies. 6299 Commodity contracts brokers and dealers; security and commodity exchanges; and allied services. <b>Insurance:</b> 6355 Life Insurance. 6356 Mutual insurance, except life or marine and certain fire or flood insurance companies. 6359 Other insurance companies. 6411 Insurance agents, brokers, and service.</p>
<p><b>Construction</b> <b>General building contractors and operative builders:</b> 1510 General building contractors. 1531 Operative builders. 1600 <b>Heavy construction contractors.</b> <b>Special trade contractors:</b> 1711 Plumbing, heating, and air conditioning. 1731 Electrical work. 1798 Other special trade contractors.</p>	<p><b>Primary metal industries:</b> 3370 Ferrous metal industries: misc. primary metal products. 3380 Nonferrous metal industries. <b>Fabricated metal products:</b> 3410 Metal cans and shipping containers. 3428 Cutlery, hand tools, and hardware; screw machine products, bolts, and similar products. 3430 Plumbing and heating, except electric and warm air. 3440 Fabricated structural metal products. 3460 Metal forgings and stampings. 3470 Coating, engraving, and allied services. 3480 Ordnance and accessories, except vehicles and guided missiles. 3490 Misc. fabricated metal products. <b>Machinery, except electrical:</b> 3520 Farm machinery. 3530 Construction and related machinery. 3540 Metalworking machinery. 3550 Special industry machinery. 3560 General industrial machinery. 3570 Office, computing, and accounting machines. 3598 Other machinery except electrical.</p>	<p><b>Wholesale Trade</b> <b>Durable:</b> 5008 Machinery, equipment, and supplies. 5010 Motor vehicles and automotive equipment. 5020 Furniture and home furnishings. 5030 Lumber and construction materials. 5040 Sporting, recreational, photographic, and hobby goods, toys and supplies. 5050 Metals and minerals, except petroleum and scrap. 5060 Electrical goods. 5070 Hardware, plumbing and heating equipment and supplies. 5098 Other durable goods. <b>Nondurable:</b> 5110 Paper and paper products. 5129 Drugs, drug proprietaries, and druggists' sundries. 5130 Apparel, piece goods, and notions. 5140 Groceries and related products. 5150 Farm-product raw materials. 5160 Chemicals and allied products. 5170 Petroleum and petroleum products. 5180 Alcoholic beverages. 5190 Miscellaneous nondurable goods.</p>	<p><b>Real estate:</b> 6511 Real estate operators and lessors of buildings. 6516 Lessors of mining, oil, and similar property. 6518 Lessors of railroad property and other real property. 6530 Condominium management and cooperative housing associations. 6550 Subdividers and developers. 6599 Other real estate. 6749 <b>Holding and investment companies except bank holding companies.</b></p>
<p><b>Manufacturing</b> <b>Food and kindred products:</b> 2010 Meat products. 2020 Dairy products. 2030 Preserved fruits and vegetables. 2040 Grain mill products. 2050 Bakery products. 2060 Sugar and confectionary products. 2081 Malt liquors and malt. 2088 Alcoholic beverages, except malt liquors and malt. 2089 Bottled soft drinks, and flavorings. 2096 Other food and kindred products. 2100 <b>Tobacco manufacturers.</b> <b>Textile mill products:</b> 2228 Weaving mills and textile finishing. 2250 Knitting mills. 2298 Other textile mill products. <b>Apparel and other textile products:</b> 2315 Men's and boys' clothing. 2345 Women's and children's clothing. 2388 Other apparel and accessories. 2390 Miscellaneous fabricated textile products. <b>Lumber and wood products:</b> 2415 Logging, sawmills, and planing mills. 2430 Millwork, plywood, and related products. 2498 Other wood products, including wood buildings and mobile homes. 2500 <b>Furniture and fixtures.</b> <b>Paper and allied products:</b> 2625 Pulp, paper, and board mills. 2699 Other paper products. <b>Printing and publishing:</b> 2710 Newspapers. 2720 Periodicals. 2735 Books, greeting cards, and miscellaneous publishing. 2799 Commercial and other printing, and printing trade services.</p>	<p><b>Electrical and electronic equipment:</b> 3630 Household appliances. 3665 Radio, television, and communication equipment. 3670 Electronic components and accessories. 3698 Other electrical equipment. <b>3710 Motor vehicles and equipment</b> <b>Transportation equipment, except motor vehicles:</b> 3725 Aircraft, guided missiles and parts. 3730 Ship and boat building and repairing. 3798 Other transportation equipment, except motor vehicles. <b>Instruments and related products:</b> 3815 Scientific instruments and measuring devices; watches and clocks. 3845 Optical, medical, and ophthalmic goods. 3860 Photographic equipment and supplies. 3998 <b>Other manufacturing products.</b></p>	<p><b>Retail Trade</b> <b>Building materials, garden supplies, and mobile home dealers:</b> 5220 Building materials dealers. 5251 Hardware stores. 5265 Garden supplies and mobile home dealers. <b>5300 General merchandise stores.</b> <b>Food stores:</b> 5410 Grocery stores. 5490 Other food stores. <b>Automotive dealers and service stations:</b> 5515 Motor vehicle dealers. 5541 Gasoline service stations. 5598 Other automotive dealers. <b>5600 Apparel and accessory stores.</b> <b>5700 Furniture and home furnishings stores.</b> <b>5800 Eating and drinking places.</b> <b>Miscellaneous retail stores:</b> 5912 Drug stores and proprietary stores. 5921 Liquor stores. 5995 Other retail stores.</p>	<p><b>Services</b> <b>7000 Hotels and other lodging places.</b> <b>7200 Personal services.</b> <b>Business services:</b> 7310 Advertising. 7389 Business services, except advertising. <b>Auto repair; miscellaneous repair services:</b> 7500 Auto repair and services. 7600 Miscellaneous repair services. <b>Amusement and recreation services:</b> 7812 Motion picture production, distribution, and services. 7830 Motion picture theaters. 7900 Amusement and recreation services, except motion pictures. <b>Other services:</b> 8015 Offices of physicians, including osteopathic physicians. 8021 Offices of dentists. 8040 Offices of other health practitioners. 8050 Nursing and personal care facilities. 8060 Hospitals. 8071 Medical laboratories. 8099 Other medical services. 8111 Legal services. 8200 Educational services. 8300 Social services. 8600 Membership organizations. 8911 Architectural and engineering services. 8930 Accounting, auditing, and bookkeeping. 8980 Miscellaneous services (including veterinarians).</p>