

1963-1 C.B. 129; T.D. 6629;
1963 IRB LEXIS 315, *

Treasury Decision 6629ⁿ¹

TITLE 26-INTERNAL REVENUE.-CHAPTER I, SUBCHAPTER A. PART 1.-INCOME TAX; TAXABLE YEARS
BEGINNING AFTER DECEMBER 31, 1953

1963-1 C.B. 129; T.D. 6629; 1963 IRB LEXIS 315

January 1963

[*1]

SUBJECT MATTER: SECTION 934.-LIMITATION ON REDUCTION IN INCOME TAX LIABILITY
INCURRED TO THE VIRGIN ISLANDS

APPLICABLE SECTIONS:

26 CFR 1.934: Statutory provisions; limitation on reduction in income tax liability incurred to the
Virgin Islands.

TEXT:

Regulations under section 934 of the Internal Revenue Code of 1954.

DEPARTMENT OF THE TREASURY, OFFICE OF COMMISSIONER OF INTERNAL REVENUE, *Washington*
25, D.C.

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On November 9, 1962, notice of proposed rulemaking prescribing regulations under
section 934 of the Internal Revenue Code of 1954, relating to limitation on reduction in
income tax liability incurred to the Virgin Islands, as added by section 4(a), Act of
September 14, 1960 (Public Law 86-779, 74 Stat. 998) [C.B. 1960-2, 709], was
published in the Federal Register (27 F.R. 10951). No objection to the rules proposed
having been received during the 30-day period prescribed in the notice, the regulations
are hereby adopted as proposed. These regulations shall be applicable with respect to
taxable years beginning after December 31, 1959.

**§ 1.934 STATUTORY PROVISIONS; LIMITATION ON REDUCTION IN INCOME
TAX LIABILITY INCURRED TO THE VIRGIN ISLANDS.**

**SEC. 934. LIMITATION ON REDUCTION IN INCOME TAX LIABILITY
INCURRED TO THE VIRGIN ISLANDS.**

(a) [*2] GENERAL RULE.-Tax liability incurred to the Virgin Islands
pursuant to this subtitle, as made applicable in the Virgin Islands by the Act
entitled "An Act making appropriations for the naval service for the fiscal year
ending June 30, 1922, and for other purposes", approved July 12, 1921 (48
U.S.C. 1397), or pursuant to section 28(a) of the Revised Organic Act of the

Virgin Islands, approved July 22, 1954 (48 U.S.C. 1642), shall not be reduced or remitted in any way, directly or indirectly, whether by grant, subsidy, or other similar payment, by any law enacted in the Virgin Islands, except to the extent provided in subsection (b) or (c).

(b) EXCEPTION FOR CERTAIN DOMESTIC AND VIRGIN ISLANDS CORPORATIONS.-In the case of a domestic corporation or a Virgin Islands corporation, subsection (a) shall not apply (if the information required by subsection (d) is supplied) to the extent such corporation derived its income from sources without the United States if the conditions of both paragraph (1) and paragraph (2) are satisfied:

- (1) THREE-YEAR PERIOD.-If 80 percent or more of the gross income of such corporation for the 3-year period immediately preceding the close of the taxable year (or for **[*3]** such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within the Virgin Islands; and
- (2) TRADE OR BUSINESS.-If 50 percent or more of the gross income of such corporation for such period or such part thereof was derived from the active conduct of a trade or business within the Virgin Islands.

For purposes of the preceding sentence, the gross income of a Virgin Islands corporation, and the sources from which the income of such corporation is derived, shall be determined as if such corporation were a domestic corporation. For the purposes of this subsection, all amounts received by such corporation within the United States, whether derived from sources within or without the United States, shall be considered as being derived from sources within the United States.

(c) EXCEPTION FOR CERTAIN RESIDENTS OF THE VIRGIN ISLANDS.- Subsection (a) shall not apply in the case of an individual citizen of the United States who is a bona fide resident of the Virgin Islands during the entire taxable year (if the information required by subsection (d) is supplied), to the extent his income is derived from sources within the Virgin Islands **[*4]** (except that subsection (a) shall apply in the case of amounts received for services performed as an employee of the United States or any agency thereof). For purposes of the preceding sentence, gain or loss from the sale or exchange of any security (as defined in section 165(g) (2)) shall not be treated as derived from sources within the Virgin Islands.

(d) REQUIREMENT To SUPPLY INFORMATION.-Subsections (b) and (c) shall apply only in the case of persons who supply (at such time and in such manner as the Secretary or his delegate may by regulations prescribe) such information as the Secretary or his delegate may by regulations prescribe for purposes of determining the applicability of such subsections.

[Sec. 934 as added by sec. 4(a), Act of Sept. 14, 1960 (Pub. Law 86-770. 74 Stat. 998)]

§ 1.934-1 .LIMITATION ON REDUCTION IN INCOME TAX LIABILITY INCURRED TO THE VIRGIN ISLANDS-(a) *General rule.*-Section 934(a) provides that tax liability incurred to the Virgin Islands shall not be reduced or remitted in any way, directly or indirectly, whether by grant, subsidy, or other similar payment, by any law enacted in the Virgin Islands, except to the extent provided in section 934(b) or (c). For [*5] purposes of the preceding sentence, the term "tax liability" means the liability incurred to the Virgin Islands pursuant to subtitle A of the Code, as made applicable in the Virgin Islands by the Act of July 12, 1921 (48 U.S.C. 1397), or pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1642).

(b) *Exception for certain domestic and Virgin Islands corporations.*- (1) *General rule.*- Section 934(b) provides an exception to the application of section 934(a). Under this exception, section 934 (a) does not apply with respect to tax liability incurred to the Virgin Islands by a domestic or Virgin Islands corporation for any taxable year (or for such part of such year as may be applicable) to the extent that such tax liability is attributable to income derived from sources without the United States, if such corporation satisfies the conditions provided in section 934(b) (1) and (2), and if the information required by section 934(d) is supplied. These conditions are enumerated in the remainder of this paragraph, and the information requirement is set forth in paragraph (d) of this section.

(2) *Conditions to be satisfied for exception.*-A domestic or Virgin Islands [*6] corporation satisfies the conditions of section 934(b) (1) and (2) if-

- (i) Eighty percent or more of the gross income of such corporation for the 3-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within the Virgin Islands; and
- (ii) Fifty percent or more of the gross income of such corporation for such period (or such part thereof) was derived from the active conduct of a trade or business within the Virgin Islands.

(3) *Computation rule.*-Except as provided in subparagraph (5) of this paragraph, tax liability incurred to the Virgin Islands by a domestic or Virgin Islands corporation for the taxable year (or such part of such year as may be applicable) attributable to income derived from sources without the United States shall be computed as follows:

- (i) Add to the income tax liability incurred to the Virgin Islands any credit against the tax allowed under section 901 (a);
- (ii) Multiply by taxable income from sources without the United States for the applicable period;
- (iii) Divide by total taxable income for the period;
- (iv) Subtract any credit against [*7] the tax allowed under section 901(a).

Tax liability incurred to the Virgin Islands attributable to income derived from sources without the United States, as computed in this subparagraph, however, shall not exceed the total amount of income tax liability actually incurred.

(4) *Examples.*-The rule of the preceding subparagraph may be illustrated by the following examples:

Example (1). Corporation X, which satisfies the requirements of section 934 (b), incurs an income tax liability to the Virgin Islands for taxable year 1963 of \$290 as follows:

Taxable income from sources within the U.S.	\$200	
Taxable income from sources without the U.S.	800	
Total taxable income		\$1, 0
Credit allowed under section 901(a)		
Tax liability incurred to the Virgin Islands		2

The income tax liability incurred to the Virgin Islands attributable to income derived from sources without the United States is \$230, computed as follows:

(i) Tax liability incurred to the Virgin Islands	\$290	
plus credit allowed under section 901(a)	10	
		\$3
(ii) Multiply by taxable income from sources without the U.S.	\$800	
		\$240,0
(iii) Divide by total taxable income	1,000	
	240	
(iv) Subtract credit allowed under section 901(a)	10	
	\$230	

*Example [*8] (2).* Corporation Y, which satisfies the requirements of section 934 (b), incurs an income tax liability to the Virgin Islands for taxable year 1963 of \$140, as follows:

Taxable income from sources within the U.S.	(\$300 net loss)	
Taxable income from sources without the U.S.	800	
Total taxable income		\$5
Credit allowed under section 901(a)		
Tax liability incurred to the Virgin Islands		1

The income tax liability incurred to the Virgin Islands attributable to income derived from sources without the United States is \$140, computed as follows:

(i) Tax liability incurred to the Virgin Islands	\$140	
plus credit allowed under section 901(a)	10	

		\$1
(ii) Multiply by taxable income from sources without the U.S.	800	
		120,0
(iii) Divide by total taxable income	500	
		2
(iv) Subtract credit allowed under section 901 (a)	10	
		\$2

Since the \$230 derived from the computation is in excess of the actual tax liability incurred, the income tax liability incurred to the Virgin Islands attributable to income derived from sources without the United States is limited to \$140, the actual liability incurred.

(5) *Special computation rule for certain domestic corporations.*- For purposes of section 934(b) and this paragraph, tax liability **[*9]** incurred to the Virgin Islands by a domestic corporation which is required to file an income tax return with the United States for the taxable year (or such part of such year as may be applicable) attributable to income derived from sources without the United States shall be the actual income tax liability incurred to the Virgin Islands for such year.

(6) *Source of income.*-For purposes of section 934(b) and this paragraph, the income of a Virgin Islands corporation, and the sources from which the income of such corporation is derived, shall be determined as if such corporation were a domestic corporation. However, all amounts received by a corporation within the United States, whether derived from sources within or without the United States, shall be considered as being derived from sources within the United States. In determining the sources from which the income of a domestic or Virgin Islands corporation is derived, the principles of part 1 (section 861 and following), subchapter N, chapter 1 of the Code, and the regulations thereunder shall apply.

(c) *Exception for certain residents of the Virgin Islands.*-(1) *General rule.*- Section 934(c) provides another exception to the application **[*10]** of section 934(a). Under this exception, section 934(a) does not apply with respect to the tax liability incurred by an individual citizen of the United States to the Virgin Islands for any taxable year to the extent that such tax liability is attributable to income derived from sources within the Virgin Islands, if such individual is a bona fide resident of the Virgin Islands during the entire taxable year and if he supplies the information required under section 934 (d).

(2) *Definition-bona fide resident and United States citizen.*- In determining whether a United States citizen is a bona fide resident of the Virgin Islands, the principles of §§ 1.871-2, 1.871-3, 1.871-4, and 1.871-5, relating to the determination of residence and nonresidence in the United States, shall apply. Once a bona fide residence in the Virgin Islands is established by an individual, temporary absence therefrom will not necessarily deprive such individual of his status as a bona fide resident of the Virgin Islands. For purposes of section 934(c), a citizen of the United States includes any individual who is a citizen of the United States by reason of being a citizen of any possession of the United States.

(3) *Computation **[*11]** rule.*-For purposes of section 934(c) and this paragraph, tax liability incurred to the Virgin Islands for the taxable year

attributable to income derived from sources within the Virgin Islands shall be computed as follows:

- (i) Add to the income tax liability incurred to the Virgin Islands any credit against the tax allowed under section 901(a);
- (ii) Multiply by taxable income from sources within the Virgin Islands;
- (iii) Divide by total taxable income.

Tax liability incurred to the Virgin Islands attributable to income derived from sources within the Virgin Islands, as computed in this subparagraph, however, shall not exceed the total amount of income tax liability actually incurred.

(4) *Examples.*-The rule of the preceding subparagraph may be illustrated by the following examples:

Example (1). A, an individual who satisfies the requirements of section 934 (c), incurs an income tax liability to the Virgin Islands for taxable year 1963 of \$380 as follows:

Taxable income from sources within the Virgin Islands	\$1, 200	
Taxable income from sources without the Virgin Islands	800	
Total taxable income		\$2, 0
Credit allowed under section 901(a)		
Tax liability incurred to the Virgin Islands		3

The [***12**] income tax liability incurred to the Virgin Islands attributable to income derived from sources within the Virgin Islands is \$240, computed as follows:

(i) Tax liability incurred to the Virgin Islands	\$380	
plus credit allowed under section 901(a)	20	
		\$4
(ii) Multiply by taxable income from sources within the Virgin		
	\$1,200	
		\$480,0
(iii) Divide by total taxable income	2,000	
		2

Example (2). B, an individual who satisfies the requirements of section 934

(c), incurs an income tax liability to the Virgin Islands for taxable year 1963 of \$100 as follows:

Taxable income from sources within the Virgin Islands	\$800	
Taxable income from sources within the Virgin Islands	(\$200 net loss)	
Total taxable income		\$6
Credit allowed under section 901(a)		
Tax liability incurred to the Virgin Islands		1

The income tax liability incurred to the Virgin Islands attributable to income derived from sources within the Virgin Islands is \$100, computed as follows:

(i) Tax liability incurred to the Virgin Islands	\$100	
plus credit allowed under section 901(a)	20	
		\$1
(ii) Multiply by taxable income from sources within the Virgin Islands	800	
		96,0
(iii) Divide by total taxable income	600	
		\$1

Since the \$160 derived from **[*13]** the computation is in excess of the actual tax liability incurred, the income tax liability incurred to the Virgin Islands attributable to income derived from sources within the Virgin Islands is limited to \$100, the actual liability incurred.

(5) *Source of income.*- For purposes of section 934(c) and this paragraph, in determining taxable income from sources within and without the Virgin Islands the principles of part 1 (section 861 and following), subchapter N, chapter 1 of the Code, and the regulations thereunder shall apply, except that-

- (i) Any deduction for personal exemptions allowable under section 151 shall be deducted in computing taxable income from sources within the Virgin Islands but shall not be deducted in computing taxable income from sources without the Virgin Islands;
- (ii) Amounts received for services performed as an employee of the United States or any agency thereof shall not be considered as income derived from sources within the Virgin Islands; and
- (iii) Gain or loss from the sale or exchange of any security (as defined in section 165(g) (2)) shall not be treated as derived from sources within the Virgin Islands.

(6) *Definition-"taxable income" on a joint return.*-In **[*14]** the case of a husband and wife making a joint return, the term "taxable income", as used in this paragraph, means the combined taxable income of both spouses.

(d) *Information required.*-Section 934(d) provides that the exceptions in section 934(b) and (c) shall apply only in the case of persons who supply such information as the Secretary or his delegate may by regulations prescribe for purposes of determining the applicability of such exceptions. The following portions of this paragraph, together with paragraphs (e) and (f) of this section, prescribe the information which must be filed. Any person seeking to come within an exception must provide the following information:

- (1) The name and address of such person;
- (2) If such person is one of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests within the meaning of section 482 and the regulations thereunder-
 - (i) The name and address of each such organization, trade, or business;
 - (ii) The relationship which each such organization, trade, or business bears to the other organizations, **[*15]** trades, or businesses in such group; and
 - (iii) The nature of the activity or activities conducted by each such organization, trade or business.
- (3) Any person seeking to come within an exception must make available for inspection by the Director of International Operations such records, and underlying contracts and documents, as are necessary to determine the applicability of section 934(b) or (c).

(e) *Information required-corporations.*-Corporations seeking to come within the exception provided in section 934(b) shall, in addition to the information required by paragraph (d) of this section, submit the following information with respect to each taxable year:

- (1) The date and place of incorporation;
- (2) The name and address of any shareholder of record owning at any time during the taxable year 5 percent or more of the voting stock of any class or 5 percent or more of the value of any class of outstanding stock, and the nature and amount of the stock owned; and

(3) For the 3-year period immediately preceding the close of the corporation's taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable)-

- (i) The **[*16]** total amount of its gross income;
- (ii) The amount of such gross income derived from the active conduct of a trade or business within the Virgin Islands;
- (iii) The amount of such gross income from sources within (a) the Virgin Islands, (b) the United States (including therein and specifically itemizing all amounts received within the United States), and (c) all other countries as a group;
- (iv) The ratio which gross income derived from sources within the Virgin Islands bears to total gross income; and
- (v) The ratio which gross income derived from the active conduct of a trade or business within the Virgin Islands bears to total gross income.

(f) *Information required-individuals.*-Individuals seeking to come within the exception provided in section 934 (c) shall, in addition to the information required by paragraph (d) of this section, submit the following information with respect to each taxable year:

- (1) The date on which such individual became a bona fide resident of the Virgin Islands;
- (2) If such individual maintains a place of abode for himself or his family in the United States or elsewhere outside the Virgin Islands, the location of such place of abode and the purpose for which such place is **[*17]** maintained;
- (3) The beginning and the ending dates of each period of absence from the Virgin Islands during such taxable year; and
- (4) The amount of gross income for such taxable year from sources within the Virgin Islands, excluding-
 - (i) The amount of gain or loss from the sale or exchange of any security, as defined in section 165(g) (2); and

(ii) The amount of gross income received for services performed as an employee of the United States or any agency thereof.

(5) Any amounts excluded from gross income from sources within the Virgin Islands under subparagraphs (4) (i) and (4) (ii) of this paragraph.

(g) *Time and place for filing statement.*-The statement, in duplicate, providing the information required under section 934(d) and paragraphs (d), (e), and (f) of this section shall be attached to the income tax return filed with the Government of the Virgin Islands for the taxable year with respect to which an exception is claimed under section 934(b) or (c). If an exception is claimed with respect to any taxable year for which the time prescribed by law for filing the return expires prior to 30 days from the publication of these regulations, the required statement must be filed in duplicate **[*18]** on or before 90 days from the publication of these regulations. The return and statement must be available for examination by the Director of International Operations.

(h) *Effective date.*-The provisions of this section shall apply to taxable years beginning after December 31, 1959.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

MORTIMER M. CAPLIN,

Commissioner of Internal Revenue.

Approved December 20, 1962.

STANLEY S. SURREY,

Assistant Secretary of the Treasury.







(Filed by the Division of the Federal Register on December 27, 1962, 8:51 a.m., and published in the issue of the Federal Register for December 28, 1962, 27 F.R. 12791)

FOOTNOTES:

[n1](#) 27 F.R. 12791.

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