

**Internal Revenue Service**

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Person To Contact:  
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LEGEND:

- Taxpayer =
- Domestic =
- Sub
- Foreign Sub =
  
- DE =
  
- Barge =
- Country A =
- Country B =
- State A =
- State B =
- State C =
- E =
- F =
- G =
- H =

Dear :

This letter ruling responds to a letter dated April 13, 2011, submitted by your authorized representative, requesting rulings under section 956 of the Internal Revenue Code with respect to a combination barge. The information provided in that request and subsequent correspondence is summarized below.

SUMMARY OF FACTS

The facts as represented are as follows:

Taxpayer and its subsidiaries are marine contractors that provide manned diving, pipe lay and pipe burial, platform installation and platform and pipeline salvage services to a diverse customer base in the offshore oil and natural gas industry. Taxpayer's common stock is traded on the New York Stock Exchange.

Taxpayer is the common parent of a group of affiliated corporations that includes Domestic Sub, a State A corporation. For U.S. federal income tax purposes, Domestic Sub owns all of the equity interests of Foreign Sub, a Country A company that is a controlled foreign corporation within the meaning of section 957. Foreign Sub owns all of the equity interests of DE, a Country A company that is treated as a disregarded entity for U.S. federal income tax purposes. DE owns the Barge, a combination barge that has two cranes affixed to its deck: (1) a main crane with an E-foot boom and a load capacity of F standard tons, and (2) a utility crane with a G-foot boom and a load capacity of H standard tons. The Barge is a flat-bottom, surface-floating barge that is not self-propelled. The Barge can be used in the construction of offshore platforms and other production facilities, as well as for laying large diameter pipelines on the ocean floor.

The Barge is a foreign-flagged vessel that is documented under the laws of Country B. As currently documented, the Barge will be allowed to perform pipeline work and certain sub-sea construction work in the U.S. Gulf of Mexico. The Barge will be prohibited from engaging in coastwise trade (*i.e.*, the transportation of personnel and cargo between two points within the United States) because the Barge does not qualify for a coastwise endorsement. The Marine Safety Office of the U.S. Coast Guard may require that the Barge undergo an annual inspection. The Barge will also be subject to the U.S. Coast Guard's Notice of Arrival requirements before entering a U.S. port and will have to satisfy certain customs obligations. Taxpayer represents that there is no requirement that the Barge register or file any other documentation with the U.S. Coast Guard or any other agency in order to work in the U.S. Gulf of Mexico (except for any filings that may be necessary for permits, etc., for the work itself).

The Barge will be used in connection with one or more of the following activities (the Proposed Uses): (a) laying and installing oil and gas pipelines on the seabed; (b) installing and repairing offshore platforms and other production facilities; (c) decommissioning operations (including pipeline abandonment; well plug and abandonment; and platform and production facilities removal); and (d) salvage operations.

The Barge will perform the Proposed Uses for third parties unrelated to Taxpayer. These third parties are engaged in the exploration for and production of oil and gas, and include national and independent producers.

The Proposed Uses of the Barge will occur in waters off the coast of the United States having a depth of not more than 1,000 feet (the Proposed Location).

After the Barge completes the Proposed Uses, the Barge will be stored at a harbor located in State B or State C to be repaired or actively marketed for use on the Continental Shelf of the United States (Continental Shelf). However, the Barge may also be simultaneously marketed for use elsewhere. Given the volatile nature of the oil and gas industry, it is not clear at this time whether there will be sufficient job opportunities to use or market the Barge for use exclusively on the Continental Shelf. Upon obtaining a suitable bid for work on the Continental Shelf or elsewhere, the Barge will be transported to the new worksite.

## LAW AND ANALYSIS

Section 956 of the Code was enacted to require an income inclusion by U.S. shareholders of a controlled foreign corporation (CFC) that invests certain earnings and profits in United States property “on the grounds that [the investment] is substantially the equivalent of a dividend being paid to them.” S. Rep. No. 87-1881, 1962-3 C.B. 703, 794 (1962).

Under section 951(a)(1)(B), each U.S. shareholder (as defined in section 951(b)) of a CFC (as defined in section 957(a)) must include in its gross income for its taxable year in which or with which the taxable year of the CFC ends, the amount determined under section 956 with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(2)).

The amount determined under section 956 with respect to a U.S. shareholder of a CFC for any taxable year is the lesser of: (1) the excess, if any, of the shareholder's pro rata share of the average amounts of U.S. property held (directly or indirectly) by the CFC as of the close of each quarter of such taxable year, over the amount of earnings and profits of the CFC described in section 959(c)(1)(A) with respect to such shareholder; or (2) the shareholder's pro rata share of the applicable earnings of the CFC. In general, the amount taken into account with respect to any U.S. property for this purpose is the adjusted basis of such property as determined for purposes of computing earnings and profits, reduced by any liability to which the property is subject. See § 956(a).

Section 956(c)(1)(A) defines U.S. property to generally include tangible property located in the United States. However, section 956(c)(2)(G) excludes from the definition of U.S. property any movable property (other than a vessel or aircraft) that is used for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or under such waters when used on the Continental Shelf.

The legislative history to section 956(c)(2)(G) describes the exclusion as applying to certain oil and gas exploration equipment, including barges that are used for oil exploration and exploitation activities on the Continental Shelf. S. Rep. No. 94-938 at 227 (1976).

For purposes of section 956(a), Treas. Reg. § 1.956-2(b)(1)(ix) excludes from the definition of U.S. property movable drilling rigs or barges and other movable exploration and exploitation equipment (other than a vessel or an aircraft) when used on the Continental Shelf (as defined in section 638) in the exploration for, development, removal, or transportation of natural resources from or under ocean waters. The regulation states that property used on the Continental Shelf includes property located in the United States that is being constructed or is in storage or in transit within the United States for use on the Continental Shelf. The regulation also states that, in general, the type of property that qualifies for the exception includes any movable property that would be entitled to the (now former) investment credit under (former) section 48(a)(2)(B)(x) (without reference to (former) section 49 and section 50) if used outside the United States in certain geographical areas of the Western Hemisphere.

Therefore, the Barge will qualify for the exclusion from the definition of U.S. property found in section 956(c)(2)(G) if it (a) constitutes movable property (other than a vessel) that would have been entitled to the investment credit under former section 48(a)(2)(B)(x), and (b) is used on the Continental Shelf in the exploration for, development, removal or transportation of natural resources.

A. Movable Property (Other than a Vessel)

Former section 48(a)(2)(B)(x) was added by § 104(d) of the Revenue Act of 1971, Pub. L. No. 92-178, 85 Stat. 502, 1972-1 C.B. 443, 446, to provide that any property (other than a vessel or an aircraft) of a U.S. person used in international or territorial waters for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or deposits under such waters was eligible for the investment credit. This provision was added to allow equipment, such as drilling equipment, rigs, and barges, used by U.S. persons in foreign drilling operations off the Outer Continental Shelf (OCS), to be eligible for the investment credit. S. Rep. No. 92-437, 1972-1 C.B. 559, 576. Former section 48(a)(2)(B)(x) was amended by § 604(a) of the Tax Reduction Act of 1975, Pub. L. No. 94-12, 89 Stat. 62, 1975-1 C.B. 545, 568, to replace “territorial waters” with “territorial waters within the northern portion of the Western Hemisphere.”

In Rev. Rul. 73-145, 1973-1 C.B. 35, the Service concluded that certain types of offshore drilling rigs were eligible for the investment credit under former section 48(a)(2)(B)(x). The rigs were to be used for the drilling of oil and gas wells predominantly in waters outside the territorial waters of the United States and also were not documented under the laws of the United States. One of the classes of rigs in Rev. Rul. 73-145 was a combination derrick pipe-logging construction barge, of which there were two types, described as follows:

These are constructed in two types. The semi-submersible type is constructed in the same general manner as a semi-submersible

drilling barge on which is mounted, instead of a drilling rig, a heavy lift crane used in constructing offshore platforms and other production facilities. The barge also contains equipment necessary for the laying of large diameter pipelines on the ocean floor. The second type is the surface floating barge which performs the same functions as a semi-submersible barge but is constructed with a flat bottom and works in a floating rather than submerged position. This unit is likewise not self-propelled.

Rev. Rul. 73-145.

The Barge is similar to the second type of combination derrick pipe-logging construction barge described in Rev. Rul. 73-145 that the Service concluded was eligible for the investment credit under former section 48(a)(2)(B)(x). Both barges are flat-bottom, surface-floating barges that are not self-propelled. Consequently, both barges must be towed to the drilling location. Affixed to the decks of both barges are cranes to be used in constructing offshore platforms and other production facilities. In addition, both barges may be used to install large diameter pipelines on the ocean floor.

Further, both barges are not documented under the laws of the United States. Taxpayer represents that the Barge is not required to register with the U.S. Coast Guard in order to work in the U.S. Gulf of Mexico. If the Barge is or becomes registered, enrolled, or licensed under the laws of the United States by the U.S. Coast Guard, then the Barge is or becomes a vessel documented under the laws of the United States and, therefore, is or becomes eligible for the investment credit under former section 48(a)(2)(B)(iii) instead of former section 48(a)(2)(B)(x). See Treas. Reg. § 1.48-1(g)(2)(iii).

B. Used on the Continental Shelf in the Exploration for, Development, Removal or Transportation of Natural Resources

*Continental Shelf*

Section 638(1), addressing continental shelf areas, provides that, for purposes of applying chapter 1 of the Code (which includes section 956) with respect to mines, oil and gas wells, and other natural deposits, the term "United States" when used in a geographical sense includes the seabed and subsoil of those submarine areas that are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration for and exploitation of natural resources.

Treas. Reg. § 1.638-1(c) clarifies that, for purposes of applying section 638, persons, property, or activities that are engaged in or related to the exploration for, or exploitation of, mines, oil and gas wells, or other natural deposits need not be physically upon,

connected, or attached to the seabed or subsoil to be deemed to be within the United States.

Section 7701(a)(9) provides that the term “United States” when used in a geographical sense includes only the states and the District of Columbia. However, the Service has ruled that section 638 expands this definition to include the Continental Shelf (including the OCS) with respect to activities involving the exploration for and exploitation of natural resources.

The House Report to the Submerged Lands Act of 1953, codified at 43 U.S.C. § 1301-1315, describes continental shelves generally, and the Continental Shelf of the United States in particular, as follows:

Continental shelves have been defined as those slightly submerged portions of the continents that surround all the continental areas of the earth. They are a part of the same continental mass that forms the lands above water. They are that part of the continent temporarily (measured in geological time) overlapped by the oceans. The outer boundary of each shelf is marked by a sharp increase in the slope of the sea floor. It is the point where the continental mass drops off steeply toward the ocean deeps. Generally, this abrupt drop occurs where the water reaches a depth of 100 fathoms or 600 feet, and, for convenience, this depth is used as a rule of thumb in defining the outer limits of the shelf.

Along the Atlantic coast, the maximum distance from the shore to the outer edge of the shelf is 250 miles and the average distance is about 70 miles. In the Gulf of Mexico, the maximum distance is 200 miles and the average is about 93 miles. The total area of the shelf off the United States is estimated to contain about 290,000 square miles, or an area larger than New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, and Kentucky combined. The area of the shelf off Alaska is estimated to contain 600,000 square miles, an area almost as large as Alaska itself.

That part of the shelf which lies within historic State boundaries, or 3 miles in most cases, is estimated to contain about 27,000 square miles or less than 10 percent of the total area of the shelf .... H.R. Rep. No. 83-215, at 1400 (1953).

Rev. Rul. 77-197, 1977-1 C.B. 344, considers the applicability of an excise tax to transportation between the United States mainland and a fixed offshore drilling site located in international waters approximately 100 miles beyond the 3-nautical-mile boundary of Alaska. The revenue ruling notes that under sections 3(a) and 4(a)(1) of

the Outer Continental Shelf Lands Act (prior to amendment), codified at 43 U.S.C. §§ 1332(a) and 1333(a)(1), the jurisdiction and laws of the United States extend to the Outer Continental Shelf and to all artificial islands and fixed structures erected thereon for natural resources exploitation, to the same extent as if the OCS were an area of exclusive Federal jurisdiction located within a State. Rev. Rul. 77-197 concludes that the Continental Shelf and fixed structures erected thereon are, therefore, a part of the United States within the scope of section 7701(a)(9) of the Code, and that the offshore drilling site is a part of the United States for purposes of that section even though the site is located in international waters.

Rev. Rul. 81-257, 1981-2 C.B. 214, considers the same situation as in Rev. Rul. 77-197, except that the offshore sites are semi-submersible drilling rigs and other floating drilling rigs not erected upon or bottomed upon the seabed, instead of a fixed drilling site. Importantly, the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 *et seq.*, was amended in September 1978 by replacing the phrase “and fixed structures” with “and all installations and other devices permanently or temporarily attached to the seabed.” Outer Continental Shelf Lands Act Amendments of 1978, Pub. L. No. 95-372, Section 203(a). Rev. Rul. 81-257 states that the amendment was not intended to change existing law, but to clarify that “Federal law is to be applicable to all activities on all devices in contact with the seabed for exploration, development, and production” (citing to H.R. Conf. Rep. No. 95-1474 at 80 (1978)). The ruling states that such activities include activities on drilling ships and semi-submersible drilling rigs when they are connected to the seabed by drillstring pipes or other appurtenances on the OCS (citing to H.R. Conf. Rep. No. 95-590, at 128 (1978)). The ruling thus concludes that when semi-submersible and other floating drilling rigs are engaged in oil and gas activities on the OCS, and are therefore temporarily attached to the seabed, they are considered a part of the United States within the scope of section 7701(a)(9) of the Code. *See also* GCM 38644, 1981 WL 169503 (Feb. 27, 1981).

### *Proposed Uses*

As mentioned above, the Proposed Uses of the Barge include (a) installing oil and gas pipelines on the seabed; (b) installing and repairing offshore platforms and other production facilities; (c) decommissioning operations (including pipeline abandonment; well plug and abandonment; and platform and production facilities removal); and (d) salvage operations.

As described above, section 956(c)(2)(G) excludes from the definition of U.S. property any movable property (other than a vessel or aircraft) that is used for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or under such waters when used on the Continental Shelf.

Taxpayer requests a ruling that decommissioning and salvage operations constitute “exploring for, developing, removing, or transporting resources” for purposes of section 956(c)(2)(G).

Activities such as the repair and removal of underwater oil and natural gas pipelines; inspection, maintenance, repair and removal of production platforms; plugging of wellheads; and the salvage of pipeline and production related equipment are necessary for the accomplishment of natural resources exploration and development. Although these activities do not constitute the actual drilling of oil and gas wells, such repair and remediation of oil and gas infrastructure are an essential component of the exploration for and exploitation of natural resources.

Furthermore, such decommissioning and salvage operations are required by law. Pursuant to Subpart Q of Part 250, Title 30 of the Code of Federal Regulations, at the end of the useful life of an oil or gas well, the lessor and owner of operating rights with respect to the well are jointly obligated to plug the well and remove platforms and other facilities constructed in connection with the well. See 30 C.F.R. § 250.1700 *et seq.* When drilling facilities are no longer useful for operations, the lessor or owner must undertake the following activities: (i) permanently plug all wells; (ii) remove all platforms and other facilities; (iii) decommission all pipelines; (iv) clear the seafloor of all obstructions created by the lease and pipeline right-of-way operations; and (v) conduct all decommissioning activities in a manner that is safe, does not unreasonably interfere with other uses of the OCS, and does not cause undue or serious harm or damage to the human, marine, or coastal environment. 30 C.F.R. § 250.1703.

Because Taxpayer’s Proposed Uses are an essential component of the safe exploration for and development of natural resources, we conclude that they constitute exploring for, developing, removing, or transporting resources for purposes of section 956(c)(2)(G). Furthermore, the Barge will not be treated as U.S. property when the Proposed Uses are conducted in the Proposed Location.

#### *Storage and Transit*

As described above, Treas. Reg. § 1.956-2(b)(1)(ix) states that property used on the Continental Shelf includes property located in the United States that is being constructed or is in storage or in transit within the United States for use on the Continental Shelf.

Therefore, while the Barge is stored at a harbor located on the coast of State B or State C and is being repaired for use on the Continental Shelf, the Barge will qualify for the exclusion from the definition of U.S. property under section 956(c)(2)(G). Similarly, while the Barge is stored at a harbor located on the coast of State B or State C and is being actively marketed for use on the Continental Shelf (whether or not the Barge is



also being marketed for use elsewhere), the Barge will qualify for the exclusion from the definition of U.S. property under section 956(c)(2)(G).

In addition, the Barge will not constitute U.S. property within the meaning of section 956(c) while the Barge is located in the United States and is in transit – after either completing a job on the Continental Shelf or being stored at a harbor located on the coast of State B or State C – for use on the Continental Shelf or in a foreign country. If the Barge is in transit for use on the Continental Shelf, then the Barge will fall within the exception under Treas. Reg. § 1.956-2(b)(1)(ix). If, instead, the Barge is in transit to a job in a foreign country after completing a job on the Continental Shelf, then the moment it leaves the territorial waters of the United States, it will not be tangible property located in the United States within the meaning of section 956(c)(1)(A) and, therefore, will not constitute U.S. property.

## RULINGS

Based solely on the information submitted and representations made, we rule as follows:

- (1) The Barge constitutes any movable property (other than a vessel or aircraft) for purposes of section 956(c)(2)(G).
- (2) The Proposed Uses of the Barge in the Proposed Location constitute exploring for, developing, removing, or transporting natural resources from ocean waters or under such waters on the Continental Shelf of the United States for purposes of section 956(c)(2)(G).
- (3) The Barge will not constitute U.S. property within the meaning of section 956(c) for the period during which the Barge is stored at a harbor located on the coast of State B or State C and is being: (a) repaired for use in the Proposed Location, or (b) actively marketed for use in the Proposed Location (even if it is simultaneously marketed for use outside the United States).
- (4) The Barge will not constitute U.S. property within the meaning of section 956(c) for the period during which the Barge is located in the United States and is in transit to or from the Proposed Location, or to a foreign country, either (a) after completing a job in the Proposed Location or (b) after completing a job in the Proposed Location and then being actively marketed for use in the Proposed Location (even if it is simultaneously marketed for use outside the United States) while stored at a harbor located on the coast of State B or State C.

## CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter, including the tax consequences of the Proposed Uses under other provisions of the Code or the regulations.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

## PROCEDURAL MATTERS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Jeffery G. Mitchell  
Chief, Branch 2  
Office of Associate Chief Counsel  
(International)