

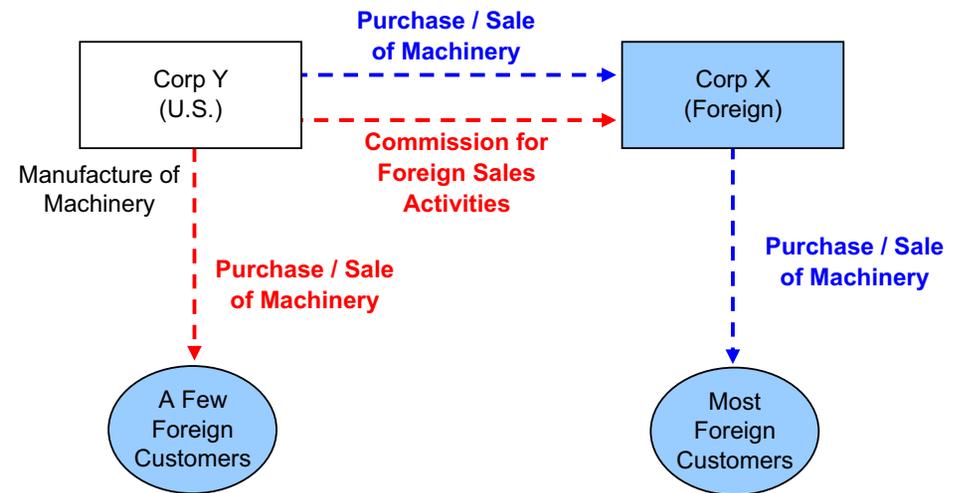
## Revenue Ruling 60-55

### Sales Commissions Sourced to Location of Sales Activities

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Corp X, a corporation organized under the laws of a foreign country, is engaged in the purchase in the United States and sale in foreign countries of various types of machinery manufactured by Corp Y, a domestic company. Corp X maintains its sales and servicing personnel permanently outside the United States. Such sales personnel travel throughout other foreign countries taking orders for and promoting the sale of the items manufactured by the domestic corporation.

In some instances, for various reasons, foreign customers order merchandise directly from Corp Y and require shipment directly to themselves, thus depriving Corp X of the sale. In such instances, Corp Y has obligated itself, by contract, to pay a commission to Corp X in recognition of the fact that the sale would not have been made except for the promotional work done by the latter in foreign countries.



Section 862 provides, in part, as follows: "(a) The following items of gross income shall be treated as income from sources without the United States: \* \* \* (3) compensation for labor or personal services performed without the United States \* \* \* ."

In *British Timken Limited v. Commissioner*, 12 T.C. 880, a foreign corporation entered into an agreement with an American associate for the latter to supply the foreign customers of the former with a product previously sold through the foreign corporation. Under such agreement, the American firm paid the foreign corporation a commission on such sales. The court, in determining that such commissions constituted income from sources without the United States, stated as follows:

\* \* \* we do not regard the fact that the situs of the sales was within the United States as determinative of the source of petitioner's income.  
\* \* \* It is the situs of the activity or property which constitutes the source of the compensation paid and not the situs of the sales by which it is measured that is of critical importance. \* \* \*

It has been repeatedly held that the place where the services are performed, and not where the compensation is paid, controls in determining the source of income derived from the performance of labor or personal services. See *Appeal of George H. Salmon*, 3 B.T.A. 838.

The facts of the ruling are within the rationale of the *British Timken Limited* and *Salmon* cases, inasmuch as the commissions were paid to Corp X by Corp Y in recognition of the fact that the sales would not have been made except through the services of Corp X. Such services consisted of promotion of the products of Corp Y by Corp X exclusively in foreign countries. Accordingly, the commissions constitute income from sources without the United States within the meaning of section 862 to the extent that they constitute a reasonable allowance for services actually rendered.

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