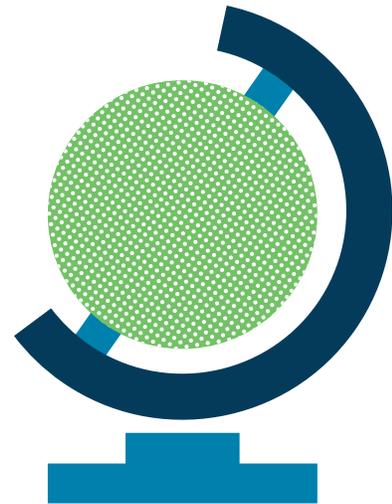


## INTERNATIONAL TIDBIT:

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# The International Boycott Report Form is Still Around



Recently, a question arose about rendering services in the Middle East and if the “Boycott Report” still had to be filled out to report operations in certain countries? The answer is “yes.”

### ORIGINS OF IRC SECTION 999

Dating back to the 1970s, when the U.S. Congress passed legislation including the addition of §999 to the Internal Revenue Code, the International Boycott Report (Form 5713) is included with a U.S. federal income tax return. These laws remain in place and include oversight by the Office of Antiboycott Compliance within the Department of Commerce for reporting requests made of U.S. persons or their controlled affiliates outside the U.S. to participate in the Arab League Boycott of Israel. This Tidbit focuses solely on IRS Form 5713 and IRC section 999 and does not cover possible obligations to report to any other agency of the federal government.

### IRS FORM 5713

Form 5713 consists of four main reporting obligations: operations in or related to a boycotting country; requests to participate in the Boycott; actual participation in the Boycott; loss of U.S. tax benefits resulting from participation in the Boycott.

### OPERATIONS

IRC section 999 requires persons to report annually on their operations in, or related to, a country, company or national of a country which is on a List maintained by the Secretary of the Treasury of countries participating in the Arab Boycott of Israel. While IRC §999 is drafted broadly enough to apply to any international boycott, it currently applies only to the Arab League Boycott of Israel. The following countries are on the Secretary’s List as of today’s date (last updated in November of 2010): Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates, and the Republic of Yemen. Countries that used to be on the List include: Bahrain, Iraq, Jordan, and Oman.

The concept of “operations” is broad and encompasses all forms of business or commercial activities and transactions, whether or not they produce income. For example, the manufacture of goods in a non-boycotting country but under contract for a company resident in a boycotting country, and the performance of services in any location for the government of a boycotting country or for a company resident in such a country, can constitute reportable operations.

## REQUESTS AND PARTICIPATION

Form 5713 also covers two other reporting obligations – requests to participate in the Boycott and agreements to participate in or cooperate with the Boycott. A request may come in many forms, such as a contract, purchase order, or an oral request as part of negotiating a sale. Participation in or cooperation with the Boycott occurs, for example, when a condition of doing business with a customer in a boycotting country requires a U.S. company to refrain from doing business with companies or citizens in Israel or with U.S. companies owned by Israeli shareholders. Another example is when a condition of sale of a product requires a U.S. company to refrain from shipping the product on a vessel operated by a company that does not participate in the Boycott.

## EXCEPTION

There is an important exception to the application of IRC section 999 contained in subsection (b)(4)(B) related to import documentation. For example, providing a certificate of origin with respect to goods a U.S. company is supplying, and for purposes of complying with a country’s prohibition on importation of goods produced in whole or in part in Israel, is not considered an agreement to participate in or cooperate with the Boycott.

## IRS GUIDELINES

Over the years, the IRS has issued Guidelines\* in the form of Questions and Answers relating to the Boycott. They discuss situations such as unintentional participation in the Boycott by an employee of a foreign subsidiary who signs a shipping document containing a boycott clause in fine print and in a foreign language. The Guidelines also go into detail about certificates of origin and letters of credit containing requirements about the origin of goods, making a distinction between providing a certificate at the time of importation and an “agreement” to provide such a certificate.

## DETERMINATION OF LOST TAX BENEFITS

If there has been participation in or cooperation with the Boycott, then there is an obligation to determine the amount of U.S. tax benefits to be reduced. Such benefits include foreign tax credits and the deferral of taxation on a controlled foreign corporation’s earnings. The amount of reduced tax benefits is reported on Schedule A and either Schedule B or C. Participation with the Boycott on one transaction carries a presumption that all the operations of a group of companies in the boycotting country are connected with the Boycott, possibly leading to a greater reduction in tax benefits unless it can be shown that the other operations are unconnected with the boycott-related transaction.

## DOCUMENTATION

Form 5713 requires not only that requests to participate or cooperate with a boycott be reported but that copies of the requests be attached to Form 5713.

## PENALTIES

Willful failure to file Form 5713 could result in penalties of \$25,000 or imprisonment for not more than one year, or both.

*Over the years, there have been very few cases or rulings interpreting IRC §999, but the statute remains in effect along with the requirement to report operations in boycotting countries, even if no request is received to participate in the Boycott.*

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\*See, for example, Notices 78-1 and 84-7 and this page on the IRS website.