

the taxpayer outside the United States materially participated in the sale, or

“(ii) any amount included in gross income under section 951(a)(1)(A).”

Subsec. (f). Pub. L. 100-647, §1012(d)(4), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “If—

“(1) a United States resident sells stock in an affiliate which is a foreign corporation,

“(2) such affiliate is engaged in the active conduct of a trade or business, and

“(3) such sale occurs in the foreign country in which the affiliate derived more than 50 percent of its gross income for the 3-year period ending with the close of the affiliate's taxable year immediately preceding the year during which such sale occurred, any gain from such sale shall be sourced outside the United States.”

Subsec. (g)(1)(A)(i). Pub. L. 100-647, §1012(d)(11), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “any individual who has a tax home (as defined in section 911(d)(3)) in the United States, and”.

Subsec. (g)(1)(A)(ii). Pub. L. 100-647, §1012(d)(3)(A), struck out “partnership,” after “corporation.”

Subsec. (g)(3). Pub. L. 100-647, §1012(d)(6)(A), added par. (3).

Subsec. (h). Pub. L. 100-647, §1012(d)(8), added subsec. (h) and redesignated former subsec. (h) as (i).

Pub. L. 100-647, §1012(d)(3)(B), added par. (5) to subsec. (h) prior to redesignation as subsec. (i).

Subsec. (i). Pub. L. 100-647, §1012(d)(8), redesignated former subsec. (h) as (i). Former subsec. (i) redesignated (j).

Pub. L. 100-647, §1012(d)(6)(B), added par. (3) to subsec. (i) prior to redesignation as subsec. (j).

Subsec. (i)(5). Pub. L. 100-647, §1012(d)(3)(B), added par. (5) to subsec. (h) prior to redesignation as subsec. (i).

Subsec. (j). Pub. L. 100-647, §1012(d)(8), redesignated former subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (j)(3). Pub. L. 100-647, §1012(d)(6)(B), added par. (3) to subsec. (i) prior to redesignation as subsec. (j).

Subsec. (k). Pub. L. 100-647, §1012(d)(8), redesignated former subsec. (j) as (k).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, §1704(f)(4)(B), Aug. 20, 1996, 110 Stat. 1880, provided that: “The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the amendments made by section 1211 of the Tax Reform Act of 1986 [Pub. L. 99-514].”

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title XIII, §13239(e), Aug. 10, 1993, 107 Stat. 509, provided that: “The amendments made by this section [amending this section and sections 927, 954, and 993 of this title] shall apply to sales, exchanges, or other dispositions after the date of the enactment of this Act [Aug. 10, 1993].”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1012(d)(5), Nov. 10, 1988, 102 Stat. 3497, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1987.

Amendment by section 1012(d)(1)-(4), (6), (8), (9), (11), (12) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 99-514, title XII, §1211(c), Oct. 22, 1986, 100 Stat. 2536, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section, amending sections 861 to 864, 871, 881, and 904 of this title, and enacting provisions set out below] shall apply to taxable years beginning after December 31, 1986.

“(2) SPECIAL RULE FOR FOREIGN PERSONS.—In the case of any foreign person other than any controlled foreign corporations (within the meaning of section 957(a) of the Internal Revenue Code of 1954 [now 1986]), the amendments made by this section shall apply to transactions entered into after March 18, 1986.”

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1211(a) of Pub. L. 99-514 (enacting this section) to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

STUDY OF SOURCE RULES FOR SALES OF INVENTORY PROPERTY

Pub. L. 99-514, title XII, §1211(d), Oct. 22, 1986, 100 Stat. 2536, directed Secretary of the Treasury or his delegate to conduct a study of source rules for sales of inventory property and, not later than Sept. 30, 1987 (due date extended to Jan. 1, 1992, by Pub. L. 101-508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388-559), to submit to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate a report of such study (together with recommendations he deemed advisable).

PART II—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Subpart

- A. Nonresident alien individuals.
- B. Foreign corporations.
- C. Tax on gross transportation income.
- D. Miscellaneous provisions.

AMENDMENTS

1986—Pub. L. 99-514, title XII, §1212(b)(2), Oct. 22, 1986, 100 Stat. 2538, added item for subpart C and redesignated item for former subpart C as D.

SUBPART A—NONRESIDENT ALIEN INDIVIDUALS

Sec.	
871.	Tax on nonresident alien individuals.
872.	Gross income.
873.	Deductions.
874.	Allowance of deductions and credits.
875.	Partnerships; beneficiaries of estates and trusts.
876.	Alien residents of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands.
877.	Expatriation to avoid tax.
877A.	Tax responsibilities of expatriation.
878.	Foreign educational, charitable, and certain other exempt organizations.
879.	Tax treatment of certain community income in the case of nonresident alien individuals.

AMENDMENTS

2008—Pub. L. 110-245, title III, §301(f), June 17, 2008, 122 Stat. 1647, added item 877A.

1986—Pub. L. 99-514, title XII, §1272(d)(13), Oct. 22, 1986, 100 Stat. 2595, inserted “, Guam, American Samoa, or the Northern Mariana Islands” in item 876.

1984—Pub. L. 98-369, div. A, title I, §139(b)(2), July 18, 1984, 98 Stat. 677, substituted “nonresident alien individuals” for “a resident or citizen of the United States who is married to a nonresident alien individual” in item 879.

1976—Pub. L. 94-455, title X, §1012(b)(3)(A), Oct. 4, 1976, 90 Stat. 1614, added item 879.

1966—Pub. L. 89-809, title I, §103(e)(2), (f)(2), Nov. 13, 1966, 80 Stat. 1551, 1552, inserted “; beneficiaries of estates and trusts” in item 875, added item 877, and redesignated former item 877 as 878.

§ 871. Tax on nonresident alien individuals**(a) Income not connected with United States business—30 percent tax****(1) Income other than capital gains**

Except as provided in subsection (h), there is hereby imposed for each taxable year a tax of 30 percent of the amount received from sources within the United States by a nonresident alien individual as—

(A) interest (other than original issue discount as defined in section 1273), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income,

(B) gains described in subsection (b) or (c) of section 631,

(C) in the case of—

(i) a sale or exchange of an original issue discount obligation, the amount of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and

(ii) a payment on an original issue discount obligation, an amount equal to the original issue discount accruing while such obligation was held by the nonresident alien individual (except that such original issue discount shall be taken into account under this clause only to the extent such discount was not theretofore taken into account under this clause and only to the extent that the tax thereon does not exceed the payment less the tax imposed by subparagraph (A) thereon), and

(D) gains from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property, or of any interest in any such property, to the extent such gains are from payments which are contingent on the productivity, use, or disposition of the property or interest sold or exchanged,

but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

(2) Capital gains of aliens present in the United States 183 days or more

In the case of a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year, there is hereby imposed for such year a tax of 30 percent of the amount by which his gains, derived from sources within the United States, from the sale or exchange at any time during such year of capital assets exceed his losses, allocable to sources within the United States, from the sale or exchange at any time during such year of capital assets. For purposes of this paragraph, gains and losses shall be taken into account only if, and to the extent that, they would be recognized and taken into account if such gains and losses were effectively connected with the conduct of a trade or business within the United States, except that such gains and losses shall be determined without regard to section 1202 and such losses shall be determined without the benefits of the capital loss carryover provided in section 1212. Any gain or loss which is taken into account in determining the tax under paragraph (1) or subsection (b) shall not be taken into account in determining the tax under this paragraph. For purposes of the 183-day requirement of this paragraph, a nonresident alien individual not engaged in trade or business within the United States who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(3) Taxation of social security benefits

For purposes of this section and section 1441—

(A) 85 percent of any social security benefit (as defined in section 86(d)) shall be included in gross income (notwithstanding section 207 of the Social Security Act), and

(B) section 86 shall not apply.

For treatment of certain citizens of possessions of the United States, see section 932(c).¹

(b) Income connected with United States business—graduated rate of tax**(1) Imposition of tax**

A nonresident alien individual engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 1 or 55 on his taxable income which is effectively connected with the conduct of a trade or business within the United States.

¹ See References in Text note below.