

made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 872. Gross income

(a) General rule

In the case of a nonresident alien individual, except where the context clearly indicates otherwise, gross income includes only—

- (1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and
- (2) gross income which is effectively connected with the conduct of a trade or business within the United States.

(b) Exclusions

The following items shall not be included in gross income of a nonresident alien individual, and shall be exempt from taxation under this subtitle:

(1) Ships operated by certain nonresidents

Gross income derived by an individual resident of a foreign country from the international operation of a ship or ships if such foreign country grants an equivalent exemption to individual residents of the United States.

(2) Aircraft operated by certain nonresidents

Gross income derived by an individual resident of a foreign country from the international operation of aircraft if such foreign country grants an equivalent exemption to individual residents of the United States.

(3) Compensation of participants in certain exchange or training programs

Compensation paid by a foreign employer to a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended. For purposes of this paragraph, the term “foreign employer” means—

- (A) a nonresident alien individual, foreign partnership, or foreign corporation, or
- (B) an office or place of business maintained in a foreign country or in a possession

of the United States by a domestic corporation, a domestic partnership, or an individual who is a citizen or resident of the United States.

(4) Certain bond income of residents of the Ryukyu Islands or the Trust Territory of the Pacific Islands

Income derived by a nonresident alien individual from a series E or series H United States savings bond, if such individual acquired such bond while a resident of the Ryukyu Islands or the Trust Territory of the Pacific Islands.

(5) Income derived from wagering transactions in certain parimutuel pools

Gross income derived by a nonresident alien individual from a legal wagering transaction initiated outside the United States in a parimutuel pool with respect to a live horse race or dog race in the United States.

(6) Certain rental income

Income to which paragraphs (1) and (2) apply shall include income which is derived from the rental on a full or bareboat basis of a ship or ships or aircraft, as the case may be.

(7) Application to different types of transportation

The Secretary may provide that this subsection be applied separately with respect to income from different types of transportation.

(8) Treatment of possessions

To the extent provided in regulations, a possession of the United States shall be treated as a foreign country for purposes of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 280; Pub. L. 87-256, §110(c), Sept. 21, 1961, 75 Stat. 536; Pub. L. 89-809, title I, §103(b), Nov. 13, 1966, 80 Stat. 1550; Pub. L. 99-514, title XII, §1212(c)(1), (2), Oct. 22, 1986, 100 Stat. 2538; Pub. L. 100-647, title I, §1012(e)(2)(B), (5), (s)(2)(A), Nov. 10, 1988, 102 Stat. 3500, 3527; Pub. L. 101-239, title VII, §7811(j)(8)(C), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 103-296, title III, §320(a)(2), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 108-357, title IV, §419(a), Oct. 22, 2004, 118 Stat. 1513.)

REFERENCES IN TEXT

Section 101 of the Immigration and Nationality Act, referred to in subsec. (b)(3), is classified to section 1101 of Title 8, Aliens and Nationality.

AMENDMENTS

2004—Subsec. (b)(5) to (8). Pub. L. 108-357 added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

1994—Subsec. (b)(3). Pub. L. 103-296 substituted “(F), (J), or (Q)” for “(F) or (J)”.

1989—Subsec. (b)(7). Pub. L. 101-239 added par. (7).

1988—Subsec. (a). Pub. L. 100-647, §1012(s)(2)(A), inserted “, except where the context clearly indicates otherwise” after “individual”.

Subsec. (b)(1), (2). Pub. L. 100-647, §1012(e)(2)(B), (5), substituted “to individual residents of the United States” for “to citizens of the United States and to corporations organized in the United States” and “international operation” for “operation”.

1986—Subsec. (b)(1). Pub. L. 99-514, §1212(c)(1), added par. (1) and struck out former par. (1), ships under for-

eign flag, which read as follows: “Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.”

Subsec. (b)(2). Pub. L. 99-514, §1212(c)(1), added par. (2) and struck out former par. (2), aircraft of foreign registry, which read as follows: “Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.”

Subsec. (b)(5), (6). Pub. L. 99-514, §1212(c)(2), added pars. (5) and (6).

1966—Subsec. (a). Pub. L. 89-809, §103(b)(1), limited the inclusion of gross income which is derived from sources within the United States to such income which is not effectively connected with the conduct of a trade or business within the United States and inserted provision including gross income without the limitation as to source which is effectively connected with the conduct of a trade or business within the United States.

Subsec. (b)(3)(B). Pub. L. 89-809, §103(b)(2), substituted “by a domestic corporation, a domestic partnership, or an individual who is a citizen or resident of the United States” for “by a domestic corporation”.

Subsec. (b)(4). Pub. L. 89-809, §102(b)(3), added par. (4). 1961—Subsec. (b)(3). Pub. L. 87-256 added par. (3).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title IV, §419(c), Oct. 22, 2004, 118 Stat. 1513, provided that: “The amendments made by this section [amending this section and section 883 of this title] shall apply to wagers made after the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103-296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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 OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1212(f) of Pub. L. 99-514, set out as a note under section 863 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89-809, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-256 applicable to taxable years beginning after Dec. 31, 1961, see section 110(h)(1) of Pub. L. 87-256, set out as a note under section 117 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

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

For nonapplication of amendment by section 1212(c)(1), (2) of Pub. L. 99-514 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.

§ 873. Deductions

(a) General rule

In the case of a nonresident alien individual, the deductions shall be allowed only for purposes of section 871(b) and (except as provided by subsection (b)) only if and to the extent that they are connected with income which is effectively connected with the conduct of a trade or business within the United States; and the proper apportionment and allocation of the deductions for this purpose shall be determined as provided in regulations prescribed by the Secretary.

(b) Exceptions

The following deductions shall be allowed whether or not they are connected with income which is effectively connected with the conduct of a trade or business within the United States:

(1) Losses

The deduction allowed by section 165 for casualty or theft losses described in paragraph (2) or (3) of section 165(c), but only if the loss is of property located within the United States.

(2) Charitable contributions

The deduction for charitable contributions and gifts allowed by section 170.

(3) Personal exemption

The deduction for personal exemptions allowed by section 151, except that only one exemption shall be allowed under section 151 unless the taxpayer is a resident of a contiguous country or is a national of the United States.

(c) Cross reference

For rule that certain foreign taxes are not to be taken into account in determining deduction or credit, see section 906(b)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 280; Pub. L. 89-809, title I, §103(c)(1), Nov. 13, 1966, 80 Stat. 1550; Pub. L. 92-580, §1(b), Oct. 27, 1972, 86 Stat. 1276; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-30, title I, §101(d)(11), May 23, 1977, 91 Stat. 134; Pub. L. 98-369, div. A, title VII, §711(c)(2)(A)(iv), July 18, 1984, 98 Stat. 945; Pub. L. 105-277, div. J, title IV, §4004(b)(3), Oct. 21, 1998, 112 Stat. 2681-911.)

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105-277 amended heading and text of par. (1) generally. Prior to amendment, text