

corporation for any period before the first taxable year beginning after December 31, 1966, which is from sources within the United States (determined as provided by sections 861 through 863, and the regulations thereunder, as in effect immediately before amendment by section 102 of the Foreign Investors Tax Act of 1966 (Pub. L. 89-809, 80 Stat. 1541)) shall be treated as gross income for such period which is effectively connected with the conduct of a trade or business within the United States by such foreign corporation.

(3) *Gross income determinations.* In making determinations under subparagraph (2) or (3) of paragraph (a) of this section, or subparagraph (2) of this paragraph—

(i) The gross income of a domestic corporation is to be determined by excluding any items specifically excluded from gross income under chapter 1 of the Code.

(ii) The gross income of a foreign corporation which is effectively connected with the conduct of a trade or business in the United States is to be determined under section 882(b)(2) and by excluding any items specifically excluded from gross income under chapter 1 of the Code, and

(iii) The gross income from all sources of a foreign corporation is to be determined without regard to section 882(b) and without excluding any items otherwise specifically excluded from gross income under chapter 1 of the Code.

(c) *Statement with return.* Any taxpayer who is required to file a return and applies any provision of this section to exclude any dividend from his gross income must file with his return a statement setting forth the amount so excluded, the date of its receipt, the name and address of the corporation paying the dividend, and, if known, the location of the records which substantiate the amount of the exclusion. A statement from the paying corporation setting forth such information and indicating the amount of the dividend to be treated as income from sources within the United States may be used for this purpose. See §§ 1.6012-1(b)(1)(i) and 1.6012-2 (g)(1)(i).

(d) *Effective date.* Except as otherwise provided in this paragraph this section applies with respect to dividends received or accrued after December 31, 1966. Paragraph (a)(5) of this section applies to certain dividends from a DISC or former DISC in taxable years ending after December 31, 1971. Paragraph (a)(6) of this section is applicable to payments made after November 13, 1997. For purposes of paragraph (a)(5) of this section, any reference to a distribution taxable as a dividend under section 995(b)(1)(F) (ii) and (iii) for taxable years beginning after December 31, 1975, shall also constitute a reference to any distribution taxable as a dividend under section 995(b)(1)(F) (ii) and (iii) for taxable years beginning after November 30, 1975, but before January 1, 1976. For corresponding rules applicable with respect to dividends received or accrued before January 1, 1967, see 26 CFR 1.861-3 (Revised as of January 1, 1972).

[T.D. 6500, 25 FR 11910, Nov. 26, 1960, as amended by T.D. 6830, 30 FR 8046, June 23, 1965; T.D. 7378, 40 FR 45432, Oct. 2, 1975; 40 FR 48508, Oct. 16, 1975; T.D. 7472, 42 FR 12179, Mar. 3, 1977; T.D. 7591, 44 FR 5116, Jan. 25, 1979; T.D. 7854, 47 FR 51738, Nov. 17, 1982; T.D. 8735, 62 FR 53501, Oct. 14, 1997]

#### § 1.861-4 Compensation for labor or personal services.

(a) *In general.* (1) Gross income from sources within the United States includes compensation for labor or personal services performed in the United States irrespective of the residence of the payer, the place in which the contract for service was made, or the place or time of payment; except that such compensation shall be deemed not to be income from sources within the United States, if—

(i) The labor or services are performed by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during his taxable year,

(ii) The compensation for such labor or services does not exceed in the aggregate a gross amount of \$3,000, and

(iii) The compensation is for labor or services performed as an employee of, or under any form of contract with—

(a) A nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(b) An individual who is a citizen or resident of the United States, a domestic partnership, or a domestic corporation, if such labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by such individual, partnership, or corporation.

(2) As a general rule, the term "day", as used in subparagraph (1)(i) of this paragraph, means a calendar day during any portion of which the nonresident alien individual is physically present in the United States.

(3) Solely for purposes of applying this paragraph, the nonresident alien individual, foreign partnership, or foreign corporation for which the nonresident alien individual is performing personal services in the United States shall not be considered to be engaged in trade or business in the United States by reason of the performance of such services by such individual.

(4) In determining for purposes of subparagraph (1)(ii) of this paragraph whether compensation received by the nonresident alien individual exceeds in the aggregate a gross amount of \$3,000, any amounts received by the individual from an employer as advances or reimbursements for travel expenses incurred on behalf of the employer shall be omitted from the compensation received by the individual, to the extent of expenses incurred, where he was required to account and did account to his employer for such expenses and has met the tests for such accounting provided in § 1.162-17 and paragraph (e)(4) of § 1.274-5. If advances or reimbursements exceed such expenses, the amount of the excess shall be included as compensation for personal services for purposes of such subparagraph. Pensions and retirement pay attributable to labor or personal services performed in the United States are not to be taken into account for purposes of subparagraph (1)(ii) of this paragraph. (5) For definition of the term "United States", when used in a geographical sense, see sections 638 and 7701(a)(9).

(b) *Amount includible in gross income—*

(1) *Taxable years beginning after December 31, 1975.* (i) If a specific amount is paid for labor or personal services performed in the United States, that amount (if income from sources within the United States) shall be included in the gross income. If no accurate allocation or segregation of compensation for labor or personal services performed in the United States can be made, or when such labor or service is performed partly within and partly without the United States, the amount to be included in the gross income shall be determined on the basis that most correctly reflects the proper source of income under the facts and circumstances of the particular case. In many cases the facts and circumstances will be such that an apportionment on the time basis will be acceptable, that is, the amount to be included in gross income will be that amount which bears the same relation to the total compensation as the number of days of performance of the labor or services within the United States bears to the total number of days of performance of labor or services for which the payment is made. In other cases, the facts and circumstances will be such that another method of apportionment will be acceptable.

(ii) The application of this subparagraph may be illustrated by the following examples:

*Example 1.* B, a nonresident alien individual, was employed by M from March 1, 1976, to June 12, 1976, a total of 104 days, for which he received compensation in the amount of \$12,240. During that period B was present in the United States 59 days. Under his contract B was subject to call at all times by his employer and was in a payment status on a 7-day week basis. There was no specific agreement as to the amount of pay for services performed within the United States; moreover, he received his stipulated salary payments regardless of the number of days per week he actually performed services. Under these circumstances the amount of compensation to be included in gross income as income from sources within the United States will be \$6,943.85 ( $\$12,240 \times 59/104$ ).

*Example 2.* C, a citizen of the United States, was a resident of a foreign country during his entire taxable year. He is employed by N, a domestic corporation, and paid a salary of \$17,600 per annum. Under his contract C is required to work only on a 5-day week basis,

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Monday through Friday. During 1976 he was in the United States for 6 weeks, performing services therein for N for 30 work days. During the year he worked 240 days for N for which payment was made, determined by eliminating his vacation period for which no payment was made. Under these circumstances the amount of compensation for personal services performed in the United States is \$2,200 (\$17,600×30/240).

(2) *Taxable years beginning before January 1, 1976.* If a specific amount is paid for labor or personal services performed in the United States, that amount (if income from sources within the United States) shall be included in the gross income. If no accurate allocation or segregation of compensation for labor or personal services performed in the United States can be made, or when such labor or service is performed partly within and partly without the United States, the amount to be included in the gross income shall be determined by an apportionment on the time basis; that is, there shall be included in the gross income an amount which bears the same relation to the total compensation as the number of days of performance of the labor or services within the United States bears to the total number of days of performance of labor or services for which the payment is made.

(c) *Coastwise travel.* Except as to income excluded by paragraph (a) of this section, wages received for services rendered inside the territorial limits of the United States and wages of an alien seaman earned on a coastwise vessel are to be regarded as from sources within the United States.

(d) *Effective date.* This section applies with respect to taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.861-4 (Revised as of January 1, 1972).

[T.D. 6500, 25 FR 11910, Nov. 26, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7378, 40 FR 45433, Oct. 2, 1975; 40 FR 48508, Oct. 16, 1975]

### § 1.861-5 Rentals and royalties.

Gross income from sources within the United States includes rentals or royalties from property located in the United States or from any interest in such property, including rentals or roy-

alties for the use of, or for the privilege of using, in the United States, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property. The income arising from the rental of property, whether tangible or intangible, located within the United States, or from the use of property, whether tangible or intangible, within the United States, is from sources within the United States. For taxable years beginning after December 31, 1966, gains described in section 871(a)(1)(D) and section 881(a)(4) from the sale or exchange after October 4, 1966, of patents, copyrights, and other like property shall be treated, as provided in section 871(e)(2), as rentals or royalties for the use of, or privilege of using, property or an interest in property. See paragraph (e) of § 1.871-11.

[T.D. 7378, 40 FR 45434, Oct. 2, 1975]

### § 1.861-6 Sale of real property.

Gross income from sources within the United States includes gain, computed under the provisions of section 1001 and the regulations thereunder, derived from the sale or other disposition of real property located in the United States. For the treatment of capital gains and losses, see subchapter P (section 1201 and following), chapter 1 of the Code, and the regulations thereunder.

### § 1.861-7 Sale of personal property.

(a) *General.* Gains, profits, and income derived from the purchase and sale of personal property shall be treated as derived entirely from the country in which the property is sold. Thus, gross income from sources within the United States includes gains, profits, and income derived from the purchase of personal property without the United States and its sale within the United States.

(b) *Purchase within a possession.* Notwithstanding paragraph (a) of this section, income derived from the purchase of personal property within a possession of the United States and its sale within the United States shall be treated as derived partly from sources within and partly from sources without the United States. See section 863(b)(3) and § 1.863-2.