Example 2. (a) The facts are the same as in example 1, except that H is the sole proprietor of a retail merchandising company, which has a $10,000 profit during 1977. W exercises no management and control over the business. In addition, H is a partner in a wholesale distributing company, and his distributive share of the partnership profit is $5,000. Both of these amounts of income are treated as community income under the community property laws of country Z, and under these laws both H and W are treated as realizing $7,500 of the income. Under the rule of paragraph (a) (3) and (4) of this section all $15,000 of the income is treated as the income of H for U.S. income tax purposes. 

(b) If W exercises substantially all of the management and control over the retail merchandising company, then for U.S. income tax purposes the $10,000 profit is treated as the income of W.

Example 3. The facts are the same as in example 1, except that H also received $1,000 in dividends on stock held separately in his name. Under the community property laws of country Z the stock is considered to be community property, the dividends to be community income, and one-half of the income to be the income of each spouse. Under the rule of paragraph (a) (6) of this section, $500 of the dividend income is treated, for U.S. income tax purposes, as the income of each spouse.

(b) Definitions and other special rules—
(1) Spouses with different taxable years. A special rule applies if the nonresident alien and the United States citizen or resident spouse of the alien do not have the same taxable years, as defined in section 441(b) and the regulations thereunder. The special rule is as follows. With respect to the U.S. citizen or resident spouse, section 879 and this section shall apply to each taxable year of the U.S. citizen or resident spouse for which no election under section 6013 (g) or (h) is in effect. With respect to the nonresident alien spouse, section 879 and this section shall apply to each taxable year of the nonresident alien spouse which coincides with a taxable year of the U.S. citizen or resident spouse to which section 879 and this section apply.

(2) Determination of marital status. For purposes of this section, marital status shall be determined under section 143(a).

[T.D. 7670, 45 FR 6928, Jan. 31, 1980]
§ 1.881–1 Manner of taxing foreign corporations.

(a) Classes of foreign corporations. For purposes of the income tax, foreign corporations are divided into two classes, namely, foreign corporations which at no time during the taxable year are engaged in trade or business in the United States and foreign corporations which, at any time during the taxable year, are engaged in trade or business in the United States.

(b) Manner of taxing—(1) Foreign corporations not engaged in U.S. business. A foreign corporation which at no time during the taxable year is engaged in trade or business in the United States is taxable, as provided in §1.881–2, on all income received from sources within the United States which is fixed or determinable annual or periodical income and on other items of income enumerated under section 881(a). Such a foreign corporation is also taxable on certain income from sources within the United States which, pursuant to §1.882–2, is treated as effectively connected for the taxable year with the conduct of a trade or business in the United States.

(2) Foreign corporations engaged in U.S. business. A foreign corporation which at any time during the taxable year is engaged in trade or business in the United States is taxable, as provided in §1.881–2, on all income from whatever source derived, whether or not fixed or determinable annual or periodical income, which is effectively connected for the taxable year with the conduct of a trade or business in the United States. Such a foreign corporation is also taxable, as provided in §1.882–1, on income received from sources within the United States which is not effectively connected for the taxable year with the conduct of a trade or business in the United States and consists of (i) fixed or determinable annual or periodical income, or (ii) other items of income enumerated in section 881(a). A foreign corporation which at

§ 1.881–4 Recordkeeping Requirements Concerning Conduit Financing Arrangements

(a) Scope.

(b) Recordkeeping requirements.

(1) In general.

(2) Application of sections 6038 and 6038A.

(c) Records to be maintained.

(1) In general.