AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

of corporations A and B for a subsequent taxable year, such consolidated decrease for 1965 is allocated as follows: to M Corporation's interest in A Corporation, $60 ($80 times $135/$180); and to its interest in B Corporation, $20 ($80 times $45/$180).

(d) The following amounts are applicable to corporations A and B for 1966:

	A(1)	B(2)	Consolidated (3)
(i) Consolidated decrease in investments in export trade assets (determined before application of § 1.970–1(c)(2))	.....	.....	$200
(ii) M Corporation's pro rata share of consolidated decrease (60%)	.....	.....	120
(iii) M Corporation's pro rata share of earnings and profits (and deficits in earnings and profits) for 1963, 1964, 1965, and 1966 (§ 1.970–1(c)(2)(i)(*a*))	$120	$50	170
(iv) M Corporation's pro rata share of the net amount determined under § 1.970–1(c)(2)(i)(b) for 1963, 1964, and 1965.			
($180 minus [$45 + $60])	75		
($60 − [$15 + $20])		25	
Total			100
(v) Amount includible in M Corporation's gross income for 1966 (smallest of items (ii), (iii), and (iv) in column (3))	.....	.....	100

Corporation M must include $100 in its gross income for 1966 under section 951(a)(1)(A)(ii) by reason of the application of section 970(b) as its pro rata share of the consolidated decrease in investments in export trade assets; and, for purposes of determining the amount under paragraph (c)(2)(i)(b)(3) of § 1.970–1 with respect to M Corporation's interest in each of corporations A and B for a subsequent taxable year, such consolidated decrease for 1966 is allocated as follows: to M Corporation's interest in A Corporation, $75 ($100 times $75/$100); and to its interest in B Corporation, $25 ($100 times $25/$100).

[T.D. 6754, 29 FR 12714, Sept. 9, 1964, as amended by T.D. 7893, 48 FR 22512, May 19, 1983]

§ 1.981–0 Repeal of section 981; effective dates.

The provisions of section 981 are not effective for taxable years beginning after December 31, 1976. For the treatment of the community income of aliens and their spouses for taxable years beginning after December 31, 1976, see section 879 and the regulations thereunder.

[T.D. 7670, 45 FR 6929, Jan. 31, 1980]

§ 1.981–1 Foreign law community income for taxable years beginning after December 31, 1966, and before January 1, 1977.

(a) *Election for special treatment*—(1) *In general.* An individual citizen of the United States who meets the requirements of section 981(a)(1) and subparagraph (2) of this paragraph for any open taxable year beginning after December 31, 1966, and before January 1, 1977, may make a binding election with his nonresident alien spouse to have section 981(b) and paragraph (b) of this section apply to their income for such year which is treated as community income under the applicable community property laws of a foreign country or countries. Generally, the community property laws of a foreign country operate upon land situated within its jurisdiction and upon personal property owned by spouses domiciled therein. If the election is made for any taxable year, it shall also apply for all subsequent open taxable years of such citizen and his nonresident alien spouse for which all the requirements of section 981(a)(1) and subparagraph (2) of this paragraph are met, unless the Director of International Operations consents, in accordance with paragraph (c)(2) of this section, to a termination of the election. An election under section 981(a) and this section has no effect for any taxable year beginning before January 1, 1967, for which a separate election, if made, must be made under section 981(c)(1) and § 1.981–2. For the definition of ''open taxable year'' see section 981(e)(2) and paragraph (a) of § 1.981–3. If the citizen and his nonresident alien spouse have different taxable years, see paragraph (c) of § 1.981–3. If one of the spouses is deceased, see paragraph (d) of § 1.981–3.

(2) *Requirements to be met.* In order for a U.S. citizen and his nonresident alien spouse to make an election under section 981(a) and this section for any taxable year and in order for the election to apply for any subsequent taxable year it is required under section 981(a)(1) that, for each such taxable year, such citizen be (i) a citizen of the United States, (ii) a bona fide resident of a foreign country or countries during the entire taxable year, and (iii) married at the close of the taxable year

to an individual who is (*a*) a nonresident alien during the entire taxable year and (*b*), in the case of any such subsequent taxable year, the same nonresident alien individual to whom the citizen was married at the close of the earliest of such taxable years. If either spouse dies during a taxable year, the taxable year of the surviving spouse shall be treated, solely for purposes of making the determination under subdivision (iii) of this subparagraph, as ending on the date of such death. A citizen of the United States shall be considered as not married at the close of his taxable year if he is legally separated from his spouse under a decree of divorce or of separate maintenance. However, the mere fact that spouses have not lived together during the course of the taxable year shall not cause them to be considered as not married at the close of the taxable year. A husband and wife who are separated under an interlocutory decree of divorce retain the relationship of husband and wife until the decree becomes final.

(3) *Determination of residence.* The principles of paragraphs (a)(2) and (b)(7) of §1.911–1 (26 CFR 1.911–1 (1978)) shall apply in order to determine for purposes of this paragraph whether a U.S. citizen is a *bona fide* resident of a foreign country or countries during the entire taxable year. The principles of §§1.871.2 through 1.871–5 shall apply in order to determine whether the alien spouse of a U.S. citizen is a nonresident during the entire taxable year.

(4) *Manner of electing.* The election under section 981(a) and this section shall be made in accordance with the applicable rules set forth in paragraph (c) of this section.

(b) *Treatment of community income*—(1) *In general.* Community income for any taxable year to which an election under section 981(a) and this section applies, and the deductions properly allocable to such income, shall be divided between the electing U.S. citizen and nonresident alien spouses in accordance with the rules set forth in section 981(b) and subparagraphs (2) through (6) of this paragraph. Community income for this purpose means all gross income, whether derived from sources within or without the United States, which is treated as community income of the spouses under the community property laws of the foreign country having jurisdiction to determine the legal ownership of the income. A spouse has ownership of the income for this purpose if under the applicable foreign law he has a proprietary vested interest in the income.

(2) *Earned income.* Wages, salaries, or professional fees, and other amounts received as compensation for personal services actually performed, which are community income for the taxable year, shall be treated as the income of the spouse who actually performed the personal services. This subparagraph does not apply, however, to community income (i) derived from any trade or business carried on by the husband or the wife, (ii) attributable to a spouse's distributive share of the income of a partnership to which subparagraph (4) of this paragraph applies, (iii) consisting of compensation for personal services rendered to a corporation which represents a distribution of the earnings and profits of the corporation rather than a reasonable allowance as compensation for the personal services actually performed, or (iv) derived from property which is acquired as consideration for personal services performed.

(3) *Trade or business income.* If any income derived from a trade or business carried on by the husband or wife is community income for the taxable year, all of the gross income, and the deductions attributable to such income, shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of the trade or business, in which case all of the gross income and deductions shall be treated as the gross income and deductions of the wife. This subparagraph does not apply to any income derived from a trade or business carried on by a partnership of which both or one of the spouses is a member. For purposes of this subparagraph, income derived from a trade or business includes any income derived from a trade or business in which both personal services and capital are material income producing factors. The term ''management and control'' means

management and control in fact, not the management and control imputed to the husband under the community property laws of a foreign country. For example, a wife who operates a beauty parlor without any appreciable collaboration on the part of a husband is considered as having substantially all of the management and control of the business despite the provisions of any community property laws of a foreign country vesting in the husband the right of management and control of community property; and the income and deductions attributable to the operation of the beauty parlor are considered the income and deductions of the wife.

(4) *Partnership income.* If any portion of a spouse's distributive share of the income of a partnership of which such spouse is a member is community income for the taxable year, all of that distributive share shall be treated as the income of that spouse and shall not be taken into account in determining the income of the other spouse. If both spouses are members of the same partnership, the distributive share of the income of each spouse which is community income shall be treated as the income of that spouse. A spouse's distributive share of such income of a partnership shall be determined as provided in section 704, and the regulations thereunder.

(5) *Income from separate property.* Any community income for the taxable year, other than income described in section 981(b)(1) or (2) and subparagraph (2), (3), or (4) of this paragraph, which is derived from the separate property of one of the spouses shall be treated as the income of that spouse. The determination of what property is separate property for this purpose shall be made in accordance with the laws of the foreign country which, in accordance with subparagraph (1) of this paragraph, has jurisdiction to determine that the income from such property is community income.

(6) *Other community income.* Any community income for the taxable year, other than income described in section 981(b)(1), (2), or (3), and subparagraph (2), (3), (4), or (5) of this paragraph, shall be treated as the income of that spouse who has a proprietary vested interest in that income under the laws of the foreign country which, in accordance with subparagraph (1) of this paragraph, has jurisdiction to determine that such income is community income. Thus, for example, this subparagraph applies to community income not described in subparagraph (2), (3), (4), or (5) of this paragraph which consists of dividends, interest, rents, royalties, or gains, from community property or of the earnings of unemancipated minor children.

(7) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example 1. H, a nonresident alien individual and W, a U.S. citizen, each of whose taxable years is the calendar year, were married throughout 1967. H and W were residents of, and domiciled in, foreign country Z during the entire taxable year. During 1967, H earned $10,000 from the performance of personal services as an employee. H also received $500 in dividend income from stock which under the community property laws of country Z is considered to be the separate property of H. W had no separate income for 1967. Under the community property laws of country Z all income earned by either spouse is considered to be community income, and one-half of such income is considered to belong to the other spouse. In addition, such laws of country Z provide that all income derived from property held separately by either spouse is to be treated as community income and treated as belonging one-half to each spouse. Thus, under the community property laws of country Z, H and W are both considered to have realized income of $5,250 during 1967, even though such laws recognize the stock as the separate property of H. If the election under this section is in effect for 1967, under the rules of subparagraphs (2) and (5) of this paragraph all of the income of $10,500 derived during 1967 shall be treated, for U.S. income tax purposes, as the income of H.

Example 2. The facts are the same as in example 1 except that H is the sole proprietor of a retail merchandising company and such company has a $10,000 profit during 1967. 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 such laws both H and W are treated as realizing $7,500 of such income. If the election under this section is in effect for 1967, under the rule of subparagraphs (3) and (4) of this paragraph all $15,000 of such income

shall be treated as the income of H for U.S. income tax purposes.

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; and the dividends, to be community income, one-half of such income being treated as the income of each spouse. If the election under this section is in effect for 1967, under the rule of subparagraph (6) of this paragraph, $500 of the dividend income shall be treated, for U.S. income tax purposes, as the income of each spouse.

(c) *Time and manner of making or terminating an election*—(1) *In general.* A citizen of the United States and his nonresident alien spouse shall, for the first taxable year beginning after December 31, 1966, for which an election under section 981(a) and this section is to apply, make the election by filing a return, an amended return, or a claim for refund, whichever is proper, for such taxable year and attaching thereto a statement that the election is being made and that the requirements of paragraph (a)(2) of this section are met for such taxable year. The statement must show the name, address, and account number, if any, of each spouse, the name and address of the executor, administrator, or other person making the election for a deceased spouse, the taxable year to which the election applies, and the name of the foreign country or countries having jurisdiction to determine the ownership of any income being treated in accordance with section 981(b) and paragraph (b) of this section. The statement must be signed by both persons making the election. An election under this section may be made only for a taxable year which, on the date of the election, as defined in paragraph (b) of §1.981–3, is open within the meaning of section 981(e)(2) and paragraph (a) of §1.981–3.

(2) *Termination only with consent of Director of International Operations*—(i) *In general.* An election under this section for any taxable year is binding and may not be revoked. The election shall also remain in effect for all subsequent taxable years of the spouses for which the requirements of paragraph (a)(2) of this section are met and which on the date of the election are open, within the meaning of paragraph (a) of §1.981–3, unless the election is terminated for any such subsequent taxable year or years in accordance with subdivision (ii) of this subparagraph. Any return, amended return, or claim for refund in respect of any such subsequent taxable year for which the election is in effect shall have attached thereto a copy of the statement filed in accordance with subparagraph (1) of this paragraph and an additional signed statement that for such subsequent taxable year the requirements of paragraph (a)(2) of this section are met.

(ii) *Written request to terminate required.* A request to terminate an election under this section for a subsequent taxable year or years shall be made in writing by the persons who made the election and shall be addressed to the Director of International Operations, Internal Revenue Service, Washington, DC 20225. The request must include the name, address, and account number, if any, of each spouse and must be signed by the persons making the request. It must specify the taxable year or years for which the termination is to be effective and the grounds which justify the termination. The request shall be filed not later than 90 days before the close of the period for assessing a deficiency against the U.S. citizen for the earliest taxable year of such citizen for which the termination is to be effective. The Director of International Operations may require such other information as may be necessary in order to determine whether the termination will be permitted. A copy of the consent by the Director of International Operations to terminate must be attached to an amended income tax return for each taxable year for which the termination is effective and for which a return has previously been filed.

(Secs. 913(m) (92 Stat. 3106; 26 U.S.C. 913(m)), and 7805 (68A Stat. 917; 26 U.S.C. 7805), Internal Revenue Code of 1954)

[T.D. 7330, 39 FR 38372, Oct. 31, 1974, as amended by T.D. 7670, 45 FR 6929, Jan. 31, 1980; T.D. 7736, 45 FR 76143, Nov. 18, 1980]