

Internal Revenue Service, Treasury

§ 1.1411-1

(i) Effective/applicability date.

[T.D. 9644, 78 FR 72422, Dec. 2, 2013, as amended at 79 FR 18160, Apr. 1, 2014]

§ 1.1411-1 General rules.

(a) *General rule.* Except as otherwise provided, all Internal Revenue Code (Code) provisions that apply for chapter 1 purposes in determining taxable income (as defined in section 63(a)) of a taxpayer also apply in determining the tax imposed by section 1411.

(b) *Adjusted gross income.* All references to an individual's adjusted gross income are treated as references to adjusted gross income as defined in section 62, and all references to an estate's or trust's adjusted gross income are treated as references to adjusted gross income as defined in section 67(e). However, there may be additional adjustments to adjusted gross income because of investments in controlled foreign corporations (CFCs) or passive foreign investment companies (PFICs). See § 1.1411-10(e).

(c) *Effect of section 1411 and the regulations thereunder for other purposes.* The inclusion or exclusion of items of income, gain, loss, or deduction in determining net investment income for purposes of section 1411, and the assignment of items of income, gain, loss, or deduction to a particular category of net investment income under section 1411(c)(1)(A), does not affect the treatment of any item of income, gain, loss, or deduction under any provision of the Code other than section 1411.

(d) *Definitions.* The following definitions apply for purposes of calculating net investment income under section 1411 and the regulations thereunder—

(1) The term *gross income from annuities* under section 1411(c)(1)(A) includes the amount received as an annuity under an annuity, endowment, or life insurance contract that is includible in gross income as a result of the application of section 72(a) and section 72(b), and an amount not received as an annuity under an annuity contract that is includible in gross income under section 72(e). In the case of a sale of an annuity, to the extent the sales price of the annuity does not exceed its surrender value, the gain recognized would be treated as gross income from an annuity within the meaning of section

1411(c)(1)(A)(i) and § 1.1411-4(a)(1)(i). However, if the sales price of the annuity exceeds its surrender value, the seller would treat the gain equal to the difference between the basis in the annuity and the surrender value as gross income from an annuity described in section 1411(c)(1)(A)(i) and § 1.1411-4(a)(1)(i) and the excess of the sales price over the surrender value as gain from the disposition of property included in section 1411(c)(1)(A)(iii) and § 1.1411-4(a)(1)(iii). The term *gross income from annuities* does not include amounts paid in consideration for services rendered. For example, distributions from a foreign retirement plan that are paid in the form of an annuity and include investment income that was earned by the retirement plan does not constitute income from an annuity within the meaning of section 1411(c)(1)(A)(i).

(2) The term *controlled foreign corporation (CFC)* is as defined in section 953(c)(1)(B) or 957(a).

(3) The term *gross income from dividends* includes any item treated as a dividend for purposes of chapter 1. See also § 1.1411-10 for additional amounts that constitute gross income from dividends. The term *gross income from dividends* includes, but is not limited to, amounts treated as dividends—

(i) Pursuant to subchapter C that are included in gross income (including constructive dividends);

(ii) Pursuant to section 1248(a), other than as provided in § 1.1411-10;

(iii) Pursuant to § 1.367(b)-2(e)(2);

(iv) Pursuant to section 1368(c)(2); and

(v) Substitute dividends that represent payments made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction.

(4) The term *excluded income* means:

(i) Items of income excluded from gross income in chapter 1. For example, interest on state and local bonds excluded from gross income under section 103 and gain from the sale of a principal residence excluded from gross income under section 121.

(ii) Items of income not included in net investment income, as determined

under §§1.1411-4 and 1.1411-10. For example, wages, unemployment compensation, Alaska Permanent Fund Dividends, alimony, and Social Security Benefits.

(iii) Items of gross income and net gain specifically excluded by section 1411, the regulations thereunder, or other guidance published in the Internal Revenue Bulletin. For example, gains from the disposition of property used in a trade of business not described in section 1411(c)(2) under §1.1411-4(d)(4)(i), distributions from certain Qualified Plans described in section 1411(c)(5) and §1.1411-8, income taken into account in determining self-employment income that is subject to tax under section 1401(b) described in section 1411(c)(6) and §1.1411-9, and section 951(a) inclusions from a CFC for which a §1.1411-10(g) election is not in effect.

(5) The term *individual* means any natural person.

(6) The term *gross income from interest* includes any item treated as interest income for purposes of chapter 1 and substitute interest that represents payments made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction.

(7) The term *married* and *married taxpayer* has the same meaning as in section 7703.

(8) The term *net investment income (NII)* means net investment income as defined in section 1411(c) and §1.1411-4, as adjusted pursuant to the rules described in §1.1411-10(c).

(9) The term *passive foreign investment company (PFIC)* is as defined in section 1297(a).

(10) The term *gross income from rents* includes amounts paid or to be paid principally for the use of (or the right to use) tangible property.

(11) The term *gross income from royalties* includes amounts received from mineral, oil, and gas royalties, and amounts received for the privilege of using patents, copyrights, secret processes and formulas, goodwill, trademarks, tradebrands, franchises, and other like property.

(12) The term *trade or business* refers to a trade or business within the meaning of section 162.

(13) The term *United States person* is as defined in section 7701(a)(30).

(14) The term *United States shareholder* is as defined in section 951(b).

(e) *Disallowance of certain credits against the section 1411 tax.* Amounts that may be credited against only the tax imposed by chapter 1 of the Code may not be credited against the section 1411 tax imposed by chapter 2A of the Code unless specifically provided in the Code. For example, the foreign income, war profits, and excess profits taxes that are allowed as a foreign tax credit by section 27(a), section 642(a), and section 901, respectively, are not allowed as a credit against the section 1411 tax.

(f) *Application to taxable years beginning before January 1, 2014—(1) Retroactive application of regulations.* Taxpayers that are subject to section 1411, and any other taxpayer to which these regulations may apply (such as partnerships and S corporations), may apply §§1.1411-1 through 1.1411-10 (including the ability to make any election(s) contained therein) in any taxable year that begins after December 31, 2012, but before January 1, 2014, for which the period of limitation under section 6501 has not expired.

(2) *Reliance and transitional rules.* For taxable years beginning before January 1, 2014, the Internal Revenue Service will not challenge a taxpayer's computation of tax under section 1411 if the taxpayer has made a reasonable, good faith effort to comply with the requirements of section 1411. For example, a taxpayer's compliance with the provisions of the proposed and final regulations under section 1411 (REG-130507-11 or REG-130843-13), generally, will be considered a reasonable, good faith effort to comply with the requirements of section 1411 if reliance on such regulation projects under section 1411 are applied in their entirety, and the taxpayer makes reasonable adjustments to ensure that their section 1411 tax liability in the taxable years beginning after December 31, 2013, is not inappropriately distorted by the positions taken in taxable years beginning after December 31, 2012, but before January 1, 2014. A similar rule applies to any other taxpayer to which these regulations may apply (such as partnerships and S corporations).

(g) *Effective/applicability date.* This section applies to taxable years beginning after December 31, 2013. However, taxpayers may apply this section to taxable years beginning after December 31, 2012, in accordance with paragraph (f) of this section.

[T.D. 9644, 78 FR 72424, Dec. 2, 2013]

§ 1.1411-2 Application to individuals.

(a) *Individual to whom tax applies—(1) In general.* Section 1411 applies to an individual who is a citizen or resident of the United States (within the meaning of section 7701(a)(30)(A)). Section 1411 does not apply to nonresident alien individuals (within the meaning of section 7701(b)(1)(B)). See paragraph (a)(2)(vi) of this section for special rules regarding bona fide residents of United States territories.

(2) *Special rules—(i) Dual resident individuals treated as residents of a foreign country under an income tax treaty.* A dual resident taxpayer (as defined in § 301.7701(b)-7(a)(1)) who determines that he or she is a resident of a foreign country for treaty purposes pursuant to an income tax treaty between the United States and the foreign country and who claims benefits of the treaty as a nonresident of the United States will be treated as a nonresident alien of the United States for purposes of paragraph (a)(1) of this section.

(ii) *Dual-status resident aliens.* A dual-status individual who is a resident of the United States for a portion of a taxable year and a nonresident alien for the other portion of the taxable year will not be subject to section 1411 with respect to the portion of the year for which that individual is treated as a nonresident alien. The only income the individual must take into account for purposes of section 1411 is the income he or she receives during the portion of the year for which he or she is treated as a resident of the United States. The threshold amount under paragraph (d)(1) of this section applies.

(iii) *Joint returns in the case of a nonresident alien individual married to a United States citizen or resident—(A) Default treatment.* In the case of a United States citizen or resident who is married to a nonresident alien individual, the spouses will be treated as married filing separately for purposes of section

1411. For purposes of calculating the tax imposed under section 1411(a)(1), the United States citizen or resident spouse will be subject to the threshold amount for a married taxpayer filing a separate return in paragraph (d)(1)(ii) of this section, and the nonresident alien spouse will not be subject to tax under section 1411. In accordance with the rules for married individuals filing separate returns, the spouse that is a United States citizen or resident must determine his or her own net investment income and modified adjusted gross income.

(B) *Taxpayer election.* Married taxpayers who file a joint Federal income tax return pursuant to a section 6013(g) election for purposes of chapter 1 and chapter 24 also may elect to be treated as making a section 6013(g) election for purposes of chapter 2A (relating to the tax imposed by section 1411).

(1) *Effect of election.* For purposes of calculating the tax imposed under section 1411(a)(1), the effect of an election under section 6013(g) is to include the combined income of the United States citizen or resident spouse and the nonresident spouse in the section 1411(a)(1) calculation and to apply the threshold amount for a taxpayer making a joint return as set out in paragraph (d)(1)(i) of this section.

(2) *Procedural requirements for making election.* Taxpayers with a section 6013(g) election in effect for chapter 1 and chapter 24 purposes for any taxable year beginning after December 31, 2012, or taxpayers making a section 6013(g) election for chapter 1 and chapter 24 purposes in any taxable year beginning after December 31, 2012, who want to apply their section 6013(g) election for purposes of chapter 2A must make the election for the first taxable year beginning after December 31, 2013, in which the United States taxpayer is subject to tax under section 1411. The determination of whether the United States taxpayer is subject to tax under section 1411 is made without regard to the effect of the section 6013(g) election described in paragraph (a)(2)(iii)(B) of this section. The election, if made, must be made in the manner prescribed by forms, instructions, or in other guidance on an original or amended return for the taxable year for which the