

nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year and whose compensation for such services does not exceed in the aggregate \$3,000, or

“(2) TRADING IN SECURITIES OR COMMODITIES.—

“(A) SECURITIES.—Trading in stocks or securities for one’s own account, whether transactions are effected directly, or by way of an agent, through a resident broker, commission agent, custodian, or other independent agent, and, except where the person so trading is a dealer in securities, whether or not any such agent has discretionary authority to make decisions in effecting such transactions, or

“(B) COMMODITIES.—Trading in commodities for one’s own account, whether transactions are effected directly, or by way of agent, through a resident broker, commission agent, custodian, or other independent agent, and, except where the person so trading is a dealer in commodities, whether or not any such agent has discretionary authority to make decisions in effecting such transactions, if such commodities are of a kind customarily dealt in on an organized commodity exchange and if the transaction is of a kind customarily consummated at such place.

“(d) CAPITAL GAINS OF ALIENS PRESENT IN THE UNITED STATES 183 DAYS OR MORE.—In the case of a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year there is hereby imposed for such year, in lieu of the tax imposed by section 1, a tax of 30 percent of the amount by which his gains, derived from sources within the United States, from the sale or exchange at any time during such year of capital assets exceeds his losses, allocable to sources within the United States, from the sale or exchange at any time during such year of capital assets. For purposes of this subsection, gains and losses shall be taken into account only if, and to the extent that, they would be recognized and taken into account if such individual’s total income were business income on which the tax were being determined under subsection (b)(1), except that such gains and losses shall be determined without regard to section 1202 (relating to deduction for capital gains) and such losses shall be determined without the benefits of the capital loss carry-over provided in section 1212. Any gain or loss which is taken into account in determining the tax under subsection (a) or (b) shall not be taken into account in determining the tax under this subsection.

“(e) PARTICIPANTS IN CERTAIN EXCHANGE OR TRAINING PROGRAMS.—For purposes of this section, a nonresident alien individual who (without regard to this subsection) is not engaged in trade or business within the United States and who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15) (F) or (J)), shall be treated as a nonresident alien individual engaged in trade or business within the United States, and any income described in section 1441(b) (1) or (2) which is received by such individual shall be treated as business income.

“(f) ELECTION TO TREAT REAL PROPERTY INCOME AS BUSINESS INCOME.—

“(1) IN GENERAL.—Notwithstanding subsections (a) and (b)(2), a nonresident alien individual who during the taxable year derives from sources within the United States any income from real property, or from any interest in real property, including gains from the sale or exchange of real property, rents or royalties from the operation of mines, wells, or other natural deposits, and dividends (to the extent constituting income from real property) received from a real estate investment trust described in section 857, may, under regulations prescribed by the Secretary or his delegate, elect for such taxable year to treat all such income as business income which is taxable in the manner provided by subsection (b)(1). An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary or his delegate with respect to any taxable year.

“(2) ELECTION AFTER REVOCATION.—If an election has been made under paragraph (1) and such election has been revoked, a new election may not be made under such paragraph for any taxable year prior to the fifth taxable year which begins after the first taxable year for which such revocation is effective, unless the Secretary or his delegate consents to such new election.

“(3) FORM AND TIME OF ELECTION AND REVOCATION.—An election under paragraph (1), and any revocation of such an election, may be made only in such manner and at such time as the Secretary or his delegate may by regulations prescribe.