

SECTION 3 OF BILL. NONRESIDENT ALIEN INDIVIDUALS

(a) *Tax on nonresident alien individuals.*—Subsection (a) of section 3 of the bill amends section 871 of the code (relating to the taxation of nonresident alien individuals). The amendment is effective for taxable years beginning after December 31, 1966.

Under existing section 871 nonresident alien individuals who are not engaged in trade or business in the United States at any time during the taxable year are subject under subsection (a)(1) to a flat tax of 30 percent on all fixed or determinable annual or periodical income from sources within the United States as well as on certain amounts treated as gains from the sale or exchange of a capital asset. Capital gains from sources within the United States are taxed at a flat rate of 30 percent under subsection (a)(2): If such individual is present in the United States for less than 90 days during the taxable year, only the gains realized during his presence in the United States are taxed; if he is present in the United States 90 days or more during the taxable year, all the gains realized during the taxable year are taxed. If the nonresident alien individual who is not engaged in trade or business within the United States at any time during the taxable year derives more than \$21,200 in income described in section 871(a) from sources within the United States, section 871(b) of existing law provides that he is subject to tax on that income at the graduated rates provided in section 1 or 1201(b) if the tax so computed is 30 percent or more of such income.

Section 871(c) of existing law provides that nonresident alien individuals engaged in trade or business within the United States at any time during the taxable year are taxable on all income from U.S. sources at the graduated rates prescribed by section 1 or 1201(b); such section also prescribes rules for determining whether a nonresident alien individual or a foreign corporation is, or is not, engaged in trade or business within the United States. Existing section 871(d) contains special rules for treating participants in certain exchange or training programs as though they were engaged in trade or business within the United States, and section 871(e) contains cross references.

A number of substantive changes in the manner of taxing nonresident alien individuals are accomplished by the amendment of existing section 871. Under amended section 871 a flat tax of 30 percent is imposed on certain income from sources within the United States which is not effectively connected with the conduct of a trade or business within the United States, including capital gains realized during the taxable year if the nonresident alien individual is present in the United States 183 days or more during the taxable year; the graduated tax under section 1 or 1201(b) is imposed upon all income, regardless of its source, which is effectively connected with the conduct of a trade or business within the United States; and an election is provided to treat certain real property income as income which is effectively connected with the conduct of a trade or business within the United States. The graduated tax imposed by existing section 871(b) is eliminated, and the definition of engaged in trade or business within the United States is revised and transferred to new section 864(b) by section 2(d)(1) of the bill.