

CODE SECTION 871. TAX ON NONRESIDENT ALIEN INDIVIDUALS

(a) *Income not connected with U.S. business—30-percent tax.*—Subsection (a) of amended section 871 imposes a tax on certain gross income received by a nonresident alien individual from sources within the United States which is not effectively connected with the conduct of a trade or business within the United States. The tax applies whether or not the individual is engaged in trade or business within the United States during the taxable year.

Income other than capital gains

Paragraph (1) of amended section 871(a) provides that three categories of income are taxable at a flat rate of 30 percent if such income is from sources within the United States and is not effectively connected with the conduct of a trade or business within the United States by the individual receiving such income. The types of income subject to tax at the 30-percent rate are:

(1) Interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income;

(2) Gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), and gains on transfers described in section 1235, of the code; and

(3) Amounts which under section 341 of the code, or amounts which under section 1232 of the code (in the case of bonds or other evidences of indebtedness issued after September 28, 1965), are treated as gains from the sale or exchange of property which is not a capital asset.

The tax of 30 percent is imposed on the aggregate amount of the specified items of such gains, profits, or income, but only to the extent such items constitute gross income from sources within the United States. It is intended that, in the case of gains derived from the disposition of timber, coal, or iron ore, which under section 631(b) or (c) are treated as gains on the sale of such property, the full amount of the gain is subject to the tax of 30 percent without taking into account the application of section 1231 of the code for purposes of determining whether such gains are considered as gains from sales or exchanges of capital assets. Thus, the 30-percent tax applies to the section 631(b) or (c) gains, whether or not they are considered to be gains from the sale or exchange of capital assets.

This is a change from existing law, which provides that the section 631(b) or (c) amounts are taxable only if they are considered to be gains from the sale or exchange of capital assets, and from the regulations under section 871, which provide that the 30-percent tax applies to the gain which is considered in accordance with section 1231 to be gain from the sale or exchange of a capital asset. However, if the nonresident alien individual is otherwise required, in determining his tax for the taxable year, to apply the provisions of section 1231, the gains described in section 631(b) or (c) which are taken into account in determining the tax under amended section 871(a)(1) will not again be taken into account for purposes of applying section 1231. Since the gains described in sections 402(a)(2) and 403(a)(2), and the gains