on transfers described in section 1235, are always considered to be gains from the sale or exchange of a capital asset, it is not necessary to make the distinction which is made in the case of gains described in section 631 (b) or (c).

The 30-percent tax imposed by paragraph (1) of section 871(a) applies to all nonresident alien individuals who are not engaged in in trade of business within the United States at any time during the taxable year. In addition, it applies to all nonresident alien individuals who are engaged in trade or business within the United States at any time during the taxable year, but only with respect to the items of income described in that paragraph which are not effectively connected with the conduct of a trade or business within the United States, whether or not the same trade or business engaged in during the taxable year. Items of income taxable under paragraph (1) are not to be taken into account in determining the tax under section 871(b) on income which is effectively connected with the conduct of a trade or business within the United States. The determination of what income is effectively connected with the conduct of a trade or business within the United States is to be made in accordance with the provisions of section 864(c), as added by section 2(d)(2) of the bill.

Capital gains of aliens present in the United States 183 days or more

Paragraph (2) of section 871 (a) provides the rules for taxation of capital gains derived from sources within the United States by nonresident alien individuals, whether or not they are engaged in trade or business within the United States. It does not apply to gains which are considered to be capital gains and are taxed under section 871 (a)(1)(B) or to capital gains which are taxed under section 871(b) as being effectively connected with the conduct of a trade or business within the United States. Capital gains from U.S. sources to which section 871(a)(2) applies are taxable under such section only if the nonresident alien individual is present within the United States for a period or periods aggregating 183 days or more during the taxable year during which such gain is realized. In such a case a flat rate tax of 30 percent is imposed on the amount by which the capital gains derived by such individual from sources within the United States and arising from sales or exchanges occurring during the year exceed the capital losses which are allocable to sources within the United States and result from sales or exchanges occurring during the year.

In determining those gains which are subject to the 30-percent tax imposed by paragraph (2) there shall be taken into account all gains and losses treated under subtitle A of the code as gain or loss from the sale or exchange of property which is a capital asset, except those gains which are considered to be capital gains and are specified in section 871(a)(1)(B) and those capital gains and losses which are effectively connected with the conduct of a trade or business within the United States. The amount of gains subject to the tax of 30 percent imposed by paragraph (2) may not be reduced by the application of the deduction for capital gains provided in section 1202 of the code, or by the application of the capital loss carryover provided in section 1212 of the code.

For purposes of applying the 183-day rule contained in paragraph (2), a nonresident alien individual who is not engaged in trade or