

871(a) (1) or (2) had no election been made. If there are no gains, profits, and income which are derived from real property located in the United States, or from any interest in such real property, during the taxable year and which are taxable under section 871(a) (1) or (2), an election under paragraph (1) may not be made. But if an election has been properly made in respect of a taxable year, the election remains in effect, unless properly revoked, for subsequent taxable years with respect to all such real property located in the United States, or from any interest therein, even though during any such subsequent taxable year there are no gains, profits, or income derived from such real property.

The election under paragraph (1) is not to apply with respect to real property, *e.g.* a personal residence, which was not held for the production of income or with respect to gains, profits, and income from any transaction which was not entered into for profit. Any real property located in the United States in respect of which an election under paragraph (1) is properly in effect is to be treated as a capital asset which, if depreciable, will be subject to the allowance for depreciation provided in section 167 of the code, but is not to be treated as property used in the trade or business for purposes of section 172(d)(4)(A)(i), 1221(2), or 1231(b) of the code. Thus, for example, if a taxpayer makes the election under paragraph (1) and while such election is in effect sells nonincome-producing real property held for investment purposes, any gain realized on such sale is to be gain realized on the sale of a capital asset and is to be gain which is effectively connected with the conduct of a trade or business within the United States for purposes of section 871(b). If such sale results in a loss, the loss is not to be treated as a capital loss to which section 871(a) (2) applies.

If property with respect to which the election applies is transferred to a domestic corporation in a transaction to which section 351 of the code applies, and if at the time of the transfer such property is section 1250 property, all or part of the gain realized on the transfer may be recognized and treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. See the amendment to section 1250(d) of the code made by subsection (j) of this section of the bill.

Once made, the election under paragraph (1) applies to all income from real property held for the production of income, which is not otherwise effectively connected with the conduct of a trade or business within the United States, derived by the electing individual in any subsequent taxable years. The election may be revoked only with the consent of the Secretary of the Treasury or his delegate.

The provisions of paragraph (1) may be illustrated by the following example:

*Example.*—A, a nonresident alien individual, owns two parcels of real estate located in the United States. One parcel is improved with an office building which A has leased on a long-term, net-lease basis. The other parcel is unimproved and is held for investment purposes. During the taxable year 1967, A is at no time present in the United States or engaged in trade or business within the United States. In 1967, A elects to have the income from the improved real estate treated as income which is effectively connected with the conduct of