ples of section 1402(a)(5) of the code (relating to the definition of "net earnings from self-employment". For this purpose income derived from a trade or business includes the full amount of any community income realized from the conduct of a trade or business in which both personal services and capital are material income-producing factors, but does not include income realized from a trade or business carried on by a partnership. In accordance with the principles of section 1402(a)(5)(A), any of the community income realized from the conduct of a trade or business will generally be treated, for purposes of section 981(a), as the income of the husband. However, if it is shown that the wife exercises substantially all of the management and control over the trade or business, all of the community income realized from the trade or business is to be treated as the income of the wife.

In accordance with the principles of section 1402(a)(5)(B), any portion of a partner's distributive share of the income of a partnership which is community income is to be treated, for purposes of section 981(a), as the income of the spouse who is the partner entitled to receive such share.

Income from separate property

Paragraph (3) of subsection (b) provides that any community income which is not described in either paragraph (1) or (2) of such subsection and which is derived from separate property of one of the spouses (as determined under the community property laws of the foreign jurisdiction) is to be treated as income of the spouse whose separate property gave rise to such community income.

Other community income

Paragraph (4) of subsection (b) provides that all income which is community income under the community property laws of the foreign jurisdiction and which is not described in either paragraph (1), (2), or (3) of such subsection (e.g., community income derived from community property) is to be treated as the income of the spouse who is the owner of such income under the community property laws of such foreign jurisdiction.

(*c*) *Election for pre-1967 years.*—Subsection (c) of new section 981 contains provisions for the application of an elective procedure to taxable years beginning before January 1, 1967.

Election

Paragraph (1) of subsection (c) provides that an individual who meets the requirements of subsection (a)(1) (A) and (C) for any taxable year beginning before January 1, 1967, may, together with his spouse, elect, for all open taxable years beginning before January 1, 1967 (as defined in subsection (e)(2)), for which the requirements of subsection (a)(1) (A) and (C) are met, to have the provisions of paragraph (2) of subsection (c) apply for purposes of determining their U.S. income tax liability. The election is to be made jointly and is applied to each open taxable year beginning before January 1, 1967.

Except as provided in subsection (d)(3), an election to have subsection (c) apply for open taxable years beginning before January 1, 1967, must be made by both spouses described in subsection (a)(1)