

foreigners as a U.S. tax on the income from the labor and property of the foreigner's spouse. In practice it appears that the revenue received from the application of this rule is limited because of the likelihood that persons subject to it are unaware of its existence. However, when a case is discovered, the tax liabilities are likely to be large because returns have not been filed.

An additional factor to be considered is that community property laws of foreign countries frequently make no difference in the source of taxable income since they often require joint returns by husbands and wives. Moreover, in many such countries it appears doubtful whether a U.S. wife under the law of that country could legally compel her foreigner husband to pay over to her amounts necessary to remit her U.S. tax liability on her community property income.

For the reasons given above, the bill provides a U.S. spouse with an election which would substantially negate the operation of the community property laws of the foreign country of residence.

*Explanation of provisions.*—The bill provides elections to U.S. citizens who are, during the periods involved, married to nonresident aliens. If an election is made for post-1966 years, the community income of husband and wife are to be treated as follows:

(1) Earned income (sec. 911(b)) is to be treated as income of the spouse who rendered the personal services.

(2) Trade or business income is to be treated as income of the husband unless the wife exercises substantially all the management and control over the business. Also, a partner's distributive share of income is to be wholly attributed to him (same as self-employment rules under section 1402(a)(5)).

(3) Other community income which is derived from separate property of one spouse is to be treated as income of that spouse. What is "separate property" for this purpose is to be determined under the applicable foreign community property law.

(4) All other community income is to be treated as provided in applicable foreign community property law.

Due to the uncertainty in the tax treatment of this type of community property income in prior years, the election provided for pre-1967 years, to an even greater extent, ignores community property laws of the foreign countries. For pre-1967 years the treatment of income of the types set forth in categories (1), (2), and (3) above is to be the same as described above, but the income described in category (4) above is to be treated as income of the spouse who, for the year involved, had the greater amount of income described in (1), (2), and (3) plus separate income. Thus, category (4) income is attributed to the marital partner whose earnings or property were most likely to have given rise to this income.

For purposes of this provision, the treatment of deductions is to be compatible with that accorded the income to which the deductions are attributable. In other words deductions are to follow the income they generate.

This provision provides qualified taxpayers with two elections, one for pre-1967 years and one for future years. Either election can be made for any year, at any time, so long as the year is still open. However, these elections are binding—if the election is exercised for any post-1967 year the treatment provided by this provision applies not