

Generally, the election must be made by both spouses. However, with respect to the pre-1967 election, the foreign spouse need not join if the Secretary of the Treasury determines that (1) an election would not affect the U.S. tax liability of the foreign spouse for any taxable year, or (2) that the foreign spouse's U.S. tax liability for pre-1967 years cannot be ascertained and that to deny the election to the U.S. citizen would be inequitable and cause undue hardship. If either election is made, a period of 1 year is provided with respect to all open years for the making of assessments and the claiming of refunds. However, this 1-year period applies only if the deficiency or refund is attributable to the election. Also, no interest is due on a deficiency or refund resulting from the election for any period up to 1 year after the filing of the election.

*d. Foreign tax credit—foreign corporations and nonresident aliens (sec. 106(a) of the act and secs. 874, 901, and new sec. 906 of the code)*

*Prior law.*—Prior law did not grant a foreign tax credit to foreign corporations or nonresident aliens since such persons were subject to U.S. tax only on their U.S. source income. However, the code did provide a tax credit to U.S. persons with respect to foreign taxes on foreign income subject to U.S. tax.

*Explanation of provision.*—The act adds a new section to the code (sec. 906) to allow a foreign tax credit to nonresident aliens and foreign corporations with respect to foreign source income which is subject to tax in the United States because it is effectively connected with the conduct of a trade or business in the United States.

The credit is allowed under the existing foreign tax credit provision and is subject to the existing "per country" or "overall" limitation. The "per country" limitation restricts the credit to the proportion of the U.S. tax which the taxpayer's taxable income from sources within the particular country bears to his entire taxable income for the year. Similarly the "overall" limitation restricts the credit to the proportion of the U.S. tax which the taxpayer's taxable income, from sources without the United States, bears to his entire taxable income for the year. In determining the credit allowable to a nonresident alien individual or a foreign corporation under these limitations, the individual's or corporation's taxable income is to include only the taxable income effectively connected with the taxpayer's conduct of a trade or business within the United States. The credit is not allowable against U.S. taxes imposed at the flat 30-percent rate on income not effectively connected with the conduct of a trade or business in the United States.

Under some circumstances, existing law treats a portion of the foreign taxes paid by certain foreign subsidiaries of a domestic corporation as having been paid by the domestic corporation for purposes of computing its foreign tax credit. The act accords this same treatment to foreign corporations, but its application is limited to income effectively connected with the conduct of a trade or business within the United States.

*Effective date.*—These amendments apply for taxable years beginning after December 31, 1966. In applying the foreign tax credit carryback and carryover provisions of present law to nonresident aliens and foreign corporations no amount may be carried to or from a taxable year beginning before January 1, 1967.