

CHAPTER XXVI

NONRESIDENT ALIENS

SUPPLEMENT H—NONRESIDENT ALIEN INDIVIDUALS

SEC. 211. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

(a) **No United States business or office.**—

(1) **GENERAL RULE.**—There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 11 and 12, upon the amount received, by every nonresident alien individual not engaged in trade or business within the United States and not having an office or place of business therein, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 10 per centum of such amount, except that such rate shall be reduced, in the case of a resident of a contiguous country, to such rate (not less than 5 per centum) as may be provided by treaty with such country. For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

(2) **AGGREGATE MORE THAN \$21,600.**—The tax imposed by paragraph (1) shall not apply to any individual if the aggregate amount received during the taxable year from the sources therein specified is more than \$21,600.

(3) **RESIDENTS OF CONTIGUOUS COUNTRIES.**—Despite the provisions of paragraph (2), the provisions of paragraph (1) shall apply to a resident of a contiguous country so long as there is in effect a treaty with such country (ratified prior to August 26, 1937) under which the rate of tax under section 211(a) of the Revenue Act of 1936, prior to its amendment by section 501(a) of the Revenue Act of 1937, was reduced.

(b) **United States business or office.**—A nonresident alien individual engaged in trade or business in the United States or having an office or place of business therein shall be taxable without regard to the provisions of subsection (a). As used in this section, section 119, section 143, section 144, and section 231, the phrase "engaged in trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year, but does not include the performance of personal services for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable

year and whose compensation for such services does not exceed in the aggregate \$3,000. Such phrase does not include the effecting of transactions in the United States in stocks, securities, or commodities through a resident broker, commission agent, or custodian.

(c) **No United States business or office and gross income of more than \$21,600.**—A nonresident alien individual not engaged in trade or business within the United States and not having an office or place of business therein who has a gross income for any taxable year of more than \$21,600 from the sources specified in subsection (a)(1), shall be taxable without regard to the provisions of subsection (a)(1), except that—

(1) The gross income shall include only income from the sources specified in subsection (a)(1);

(2) The deductions (other than the so-called "charitable deduction" provided in section 213(c)) shall be allowed only if and to the extent that they are properly allocable to the gross income from the sources specified in subsection (a)(1);

(3) The aggregate of the normal tax and surtax under sections 11 and 12 shall, in no case, be less than 10 per centum of the gross income from the sources specified in subsection (a)(1); and

(4) This subsection shall not apply to a resident of a contiguous country so long as there is in effect a treaty with such country (ratified prior to August 26, 1937) under which the rate of tax under section 211(a) of the Revenue Act of 1936, prior to its amendment by section 501(a) of the Revenue Act of 1937, was reduced.

ART. 211-1. Taxation of aliens in general.—For the purposes of the Act alien individuals are divided generally into two classes, namely, resident aliens and nonresident aliens. Resident aliens are in general taxable the same as citizens of the United States, that is, a resident alien is taxable on income derived from all sources including sources without the United States. Nonresident aliens are taxable only on income from sources within the United States. For classification of nonresident aliens, see article 211-7.

ART. 211-2. Definition.—A "nonresident alien individual" means an individual—

(a) Whose residence is not within the United States; and

(b) Who is not a citizen of the United States.

The term includes a nonresident alien fiduciary.

An alien actually present in the United States who is not a mere transient or sojourner is a resident of the United States for purposes of the income tax. Whether he is a transient is determined by his intentions with regard to the length and nature of his stay. A mere floating intention, indefinite as to time, to return to another country is not sufficient to constitute him a transient. If he lives in the United States and has no definite intention as to his stay, he is a resident. One who comes to the United States for a definite pur-