

that his country does not impose an income tax or that in imposing an income tax it grants the similar credit required by the statute.

NONRESIDENT ALIENS—ALLOWANCE OF DEDUCTIONS AND CREDITS.

SEC. 217. That a nonresident alien individual shall receive the benefit of the deductions and credits allowed in this title only by filing or causing to be filed with the collector a true and accurate return of his total income received from all sources corporate or otherwise in the United States, in the manner prescribed by this title, including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits: *Provided*, That the benefit of the credits allowed in subdivisions (c) and (d) of section 216 may, in the discretion of the Commissioner, and except as otherwise provided in subdivision (e) of that section, be received by filing a claim therefor with the withholding agent. In case of failure to file a return, the collector shall collect the tax on such income, and all property belonging to such nonresident alien individual shall be liable to distraint for the tax.

ART. 311. Allowance of deductions and credits to nonresident alien individual.—Unless a nonresident alien individual shall render a return of income as required in article 404, the tax shall be collected on the basis of his gross income (not his net income) from sources within the United States. Where a nonresident alien has various sources of income within the United States, so that from any one source or from all sources combined the amount of income shall call for the assessment of a surtax, and a return of income shall not be filed by him or on his behalf, the Commissioner will cause a return of income to be made and include therein the income of such nonresident alien from all sources concerning which he has information, and he will assess the tax and collect it from one or more of the sources of income within the United States of such nonresident alien, without allowance for deductions or credits. The benefit of the credits allowed against net income for the purpose of the normal tax may not be received by a nonresident alien by filing a claim with the withholding agent, but only by claiming them upon filing a return of income, except as permitted in article 316. See section 216 of the statute and articles 306 and 307.

ART. 312. Who is a nonresident alien individual.—“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. Any alien living in the United States who is not a mere transient is a resident of the United States for purposes of the income tax. Whether he is a transient or not is determined by his intentions with regard to his stay. If he lives in the United States and has no definite intention as to his stay, he is a resident. The best evidence

of his intention is afforded by the conduct, acts and declarations of the alien. The typical transient is one who stops for a short time in the course of a journey through the United States, sometimes performing labor, sometimes not, or one who enters the United States intending only to stop long enough to carry out some purpose, object or plan not involving an extended stay. A mere floating intention, indefinite as to time, to return to another country is not sufficient to constitute him a transient.

ART. 313. Proof of residence of alien.—An alien's statements as to his intention with regard to residence are not conclusive, but when unequivocal will determine the question of his intention, unless his conduct, acts or other surrounding circumstances contradict the statements. It sometimes occurs that an alien who genuinely intends his stay to be transient may put off his departure from time to time by reason of changed conditions, remaining a transient though living in the United States for a considerable time. The fact that an alien's family is abroad does not necessarily indicate that he is a transient rather than a resident. An alien who enters this country intending to make his home in a foreign country as soon as he has accumulated a sum of money sufficient to provide for his journey abroad is to be considered a transient, provided his expectation in this regard may reasonably, considering the rate of his saving, be fulfilled within a comparatively short time.

ART. 314. Loss of residence by alien.—It will be presumed that an alien who has established a residence in the United States, as outlined above, continues to be a resident until he or his family evidence an intention to change their residence to another country by starting to remove. Thus, alien residents who, following the armistice agreement of November 11, 1918, take steps toward returning to their native countries, as by applying for passports, may for the purpose of withholding be regarded as residents for that portion of the taxable year which elapsed up to the time such step was taken. But the status of the alien on the last day of his taxable year or period determines his liability to tax for such year or period as a resident or nonresident. See articles 305 and 306.

ART. 315. Duty of employer to determine status of alien employee.—Aliens employed in the United States are prima facie regarded as nonresidents. If wages are paid without withholding the tax, except as permitted in the following article, the employer should be provided with written proof of facts which overcome the presumption that such alien is a nonresident. Such facts include the following: (a) If an alien has been living in the United States for as much as one year immediately prior to the time he entered the employment of the withholding agent, or if he has been regularly employed by a