

United States. A nonresident alien individual who is a member of a partnership which at any time within the taxable year is engaged in trade or business within the United States is considered as being engaged in trade or business within the United States and is therefore taxable under section 871(c). For definition of what the term "partnership" includes, see section 7701(a)(2) and the regulations in part 301 of this chapter (Regulations on Procedure and Administration). The test of whether a partnership is engaged in trade or business within the United States is the same as in the case of a nonresident alien individual. See § 1.871-8.

**§ 1.875-2 Beneficiaries of estates or trusts.**

(a) [Reserved]

(b) *Exception for certain taxable years.* Notwithstanding paragraph (a) of this section, for any taxable year beginning before January 1, 1975, the grantor of a trust, whether revocable or irrevocable, is not deemed to be engaged in trade or business within the United States merely because the trustee is engaged in trade or business within the United States.

(c) [Reserved]

[T.D. 7332, 39 FR 44233, Dec. 23, 1974]

**§ 1.876-1 Alien residents of Puerto Rico.**

(a) *General.* A nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year is, in accordance with the provisions of section 876, subject to tax under section 1 or, in the alternative, under section 1201(b) in generally the same manner as in the case of an alien resident of the United States. See paragraph (b) of § 1.1-1 and § 1.871-1. The tax is imposed upon the taxable income of such a resident of Puerto Rico, determined in accordance with section 63(a) and the regulations thereunder, from sources both within and without the United States, except that under the provisions of section 933 income derived from sources within Puerto Rico (other than amounts received for services performed as an employee of the United States or any agency thereof) is excluded from gross income. For deter-

mining the form of return to be used by such an individual, see section 6012 and the regulations thereunder.

(b) *Exceptions.* Though subject to the tax imposed by section 1, a nonresident alien individual who is a bona fide resident of Puerto Rico during his entire taxable year shall nevertheless be treated as a nonresident alien individual for the purpose of many provisions of the Code relating to nonresident alien individuals. Thus, for example, such a resident of Puerto Rico is not allowed to determine his tax in accordance with the optional tax table (section 4(d)(1)); is not allowed the standard deduction (section 142(b)(1)); is not allowed a deduction for a "dependent" who is a resident of Puerto Rico unless the dependent is a citizen of the United States (section 152 (b)(3)); is subject to withholding of tax at source under chapter 3 of the Code (sections 1441(e) and 1451(e)); is generally excepted from the collection of income tax at source on wages (paragraph (d)(1) of § 31.3401(a)(6)-1 of this chapter (Employment Tax Regulations)); is not allowed to make a joint return or a joint declaration of estimated tax (sections 6013(a)(1) and 6015(b)); must pay his estimated income tax on or before the 15th day of the 4th month of the taxable year (sections 6015(i)(3), 6073(a), and 6153(a)(1)); and generally must pay his income tax on or before the 15th day of the 6th month following the close of the taxable year (sections 6072(c) and 6151(a)).

(c) *Credits against tax.* The credits allowed by section 31 (relating to tax withheld on wages), section 32 (relating to tax withheld at source on nonresident aliens), section 33 (relating to taxes of foreign countries), section 35 (relating to partially tax-exempt interest), section 38 (relating to investment in certain depreciable property), section 39 (relating to certain uses of gasoline and lubricating oil), and section 40 (relating to expenses of work incentive programs) shall be allowed against the tax determined in accordance with this section. No credit shall be allowed under section 37 in respect of retirement income.

(d) *Effective date.* This section shall apply for taxable years beginning after December 31, 1966. For corresponding

## Internal Revenue Service, Treasury

## § 1.879-1

rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.876-1 (Revised as of January 1, 1971).

[T.D. 6500, 25 FR 11910, Nov. 26, 1960, as amended by T.D. 6777, 29 FR 17819, Dec. 16, 1964; T.D. 7332, 39 FR 44229, Dec. 23, 1974]

### § 1.879-1 Treatment of community income.

(a) *Treatment of community income*—(1) *In general.* For taxable years beginning after December 31, 1976, community income of a citizen or resident of the United States who is married to a non-resident alien individual, and the deductions properly allocable to that income, shall be divided between the U.S. citizen or resident spouse in accordance with the rules in section 879 and paragraph (a)(2) through (a)(6) of this section. This section does not apply for any taxable year with respect to which an election under section 6013 (g) or (h) is in effect. Community income for this purpose includes all gross income, whether derived from sources within or without the United States, which is treated as community income of the spouses under the community property laws of the State, foreign country, or possession of the United States in which the recipient of the income is domiciled. Income from real property also may be community income if so treated under the laws of the jurisdiction in which the real property is located.

(2) *Earned income.* Wages, salaries, or professional fees, and other amounts received as compensation for personal services actually performed, which are community income for the taxable year, shall be treated as the income of the spouse who actually performed the personal services. This paragraph (a)(2) does not apply, however, to the following items of community income:

(i) Community income derived from any trade or business carried on by the husband or the wife.

(ii) Community income attributable to a spouse's distributive share of the income of a partnership to which paragraph (a)(4) of this section applies.

(iii) Community income consisting of compensation for personal services rendered to a corporation which represents a distribution of the earnings and profits of the corporation rather

than a reasonable allowance as compensation for the personal services actually performed, but not including any income that would be treated as earned income under the second sentence of section 911(b).

(iv) Community income derived from property which is acquired as consideration for personal services performed.

These items of community income are divided in accordance with the rules in paragraph (a)(3) through (a)(6) of this section.

(3) *Trade or business income.* If any income derived from a trade or business carried on by the husband or wife is community income for the taxable year, all of the gross income, and the deductions attributable to that income, shall be treated as the gross income and deductions of the husband. However, if the wife exercises substantially all of the management and control of the trade or business, all of the gross income and deductions shall be treated as the gross income and deductions of the wife. This paragraph (a)(3) does not apply to any income derived from a trade or business carried on by a partnership of which both or one of the spouses is a member (see paragraph (a)(4) of this section). For purposes of this paragraph (a)(3), income derived from a trade or business includes any income derived from a trade or business in which both personal services and capital are material income producing factors. The term "management and control" means management and control in fact, not the management and control imputed to the husband under the community property laws of a State, foreign country or possession of the United States. For example, a wife who operates a pharmacy without any appreciable collaboration on the part of a husband is considered as having substantially all of the management and control of the business despite the provisions of any community property laws of a State, foreign country, or possession of the United States, vesting in the husband the right of management and control of community property. The income and deductions attributable to the operation of the pharmacy are considered the income and deductions of the wife.