sons the opportunity to submit written data, views and arguments concerning such application. Before granting an applicant's registration, the Commission is required under section 11A(b)(3) of the Act to find that the applicant:

is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a securities information processor, comply with the provisions of this title and the rules and regulations thereunder, carry out its functions in a manner consistent with the purposes of this section, and, insofar as it is acting as an exclusive processor, operate fairly and efficiently * * *.

The information to be provided by Form SIP is required to enable the Commission to make such findings, or if it appears such findings cannot be made, to institute proceedings to determine whether registration should be denied. If an applicant or registrant, for good cause, believes it should be exempt from responding to any item or exhibit of Form SIP, the applicant or registrant may apply to the Commission for such exemption and the Commission will consider such application under Rule 11Ab2-1(c). Each application shall include a statement of the reasons supporting each such request.

In the application for registration as a securities information processor, the applicant may request that confidential treatment be accorded, under any of the applicable exemptions provided in the Freedom of Information Act (5 U.S.C. 552(b)), to any of the information required to be submitted on Form SIP. Such information should be provided separately, along with a statement of the reasons supporting the request, with specific reference to the Freedom of Information Act exemption relied upon.

The Commission requests each securities information processor required to be registered pursuant to section 11A(b)(1) to file Form SIP by October 20, 1975, in order that the Commission may solicit comments on such applications and thereafter complete its review of those applications and comments before December 1, 1975.

Request for comments. While the Commission has been unable to provide notice and public procedure with regard to the adoption of Rule 11Ab2-1 and Form SIP, the Commission invites public comment on the Rule and Form as adopted and will review such rule and form in light of all comments received. Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 not later than November 1, 1975. All Communications should refer to File No. S7-585 and will be available for public inspection in the Commission's Public Reference Room located at 1100 L Street, NW., Room 6101, Washington, D.C.

(Secs. 2, 3, 23, 48 Stat. 881, 882, 901, as amended by secs. 2, 3, 18, 89 Stat. 97, 97-104, 155-156; sec. 7, 89 Stat. 111 (15 U.S.C. 78b, 78c, and 78w, as amended by Pub. L. No. 94-29; 15 U.S.C. 78k-1, as added by Pub. L. No. 94-29))

See footnotes at end of document.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

SEPTEMBER 23, 1975.

TEXT OF THE RULE

Rule 11Ab2-1 (17 CFR 240.11Ab2-1), as hereby adopted, reads as follows:

§ 240.11Ab2-1 Registration of securities information processors: Form of application and amendments.

(a) An application for the registration of a securities information processor shall be filed on Form SIP in accordance with the instructions contained therein.

(b) If any information reported in items 1-13 or item 21 of Form SIP or in any amendment thereto is or becomes inaccurate for any reason, whether before or after the registration has been granted, the securities information processor shall promptly file an amendment on Form SIP correcting such information.

(c) The Commission, upon its own motion or upon application by any securities information processor, may conditionally or unconditionally exempt any securities information processor from any provision of the rules or regulations adopted under section 11A(b).

(d) Every amendment filed pursuant to this section shall constitute a "report" within the meaning of sections 17(a), 18(a) and 32(a) of the Act.

ADOPTION OF FORM

Part 249—Forms, Securities Exchange Act of 1934, is hereby amended by adding Subpart K—Forms for Registration of, and Reporting by, Securities Information Processors, and § 249.1001 to Subpart K as follows:

Subpart K—Forms for Registration of, and Reporting by Securities Information Processors

§ 249.1001 Form SIP,[10] for application for registration as a securities information processor or to amend such an application or registration.

This form shall be used for application for registration as a securities information processor, pursuant to section 11A(b) of the Securities Exchange Act of 1934 and Rule 11Ab2-1 (§ 240.11Ab2-1 of this chapter) thereunder, or to amend such an application or registration.

[FR Doc.75-26372 Filed 10-1-75;8:45 am]

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[1] Pub. L. No. 94-29 (June 4, 1975).

[2] Section 31(a) of the 1975 Amendments states that section 11A(b) of the Act becomes effective 180 days after the date of enactment of the 1975 Amendments, which was June 4, 1975.

[3] Self-regulatory organizations are excluded from the section 3(a)(22) definition of a securities information processor. Section 3(a)(26) includes any national securities exchange within the definition of a self-regulatory organization and section 3(a)(1) includes within the definition of an "exchange" the market place and the facilities maintained by such exchange. The term "facility" when used with respect to an exchange is defined in section 3(a)(2). The legislative history precludes, however, for the purpose of the registration of securities information processors, any interpretation which identifies an affiliate or subsidiary of an exchange as a market place or facility maintained by such exchange. See text, infra.

[4] Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S.249, S. Rep. No. 75, 94th Cong., 1st Sess. 10 (1975).

[5] Securities Acts Amendments of 1975, Conference Report to Accompany S.249, Joint Explanatory Statement of the Comm. of Conference, H.R. Rep. No. 229, 94th Cong., 1st Sess. 93 (1975).

[6] In comments filed by the New York Stock Exchange during the hearings on S.249, the NYSE requested that the definition of securities information processor in S.249 be amended to "exclude any subsidiary controlled by a national securities exchange." The NYSE stated that registration of its subsidiary, SIAC, should not be necessary. Hearings on S. 249 before the Subcomm. on Securities of the Comm. on Banking, Housing and Urban Affairs, 94th Cong., 1st Sess., 402 (1975). As indicated above, that suggestion was not adopted by the Congress.

[7] Section 3(a)(9) of the Act defines a person as "a natural person, company, government, or political subdivision, agency, or instrumentality of government." Section 3(a)(19) of the Act provides that "company" shall have the same meaning as in the Investment Company Act of 1940. That Act, in section 2(a)(8) defines "company" as "a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his capacity as such."

[8] The list of exclusive processors is not intended to be exhaustive, but rather to provide examples of the type of person which must initially register under the Act. The Commission wishes to make clear that omission of a person from the list is not in any way indicative of any view by the Commission that such person is not an exclusive processor within the meaning of the Act.

[9] Former Rule 9b-1 was rescinded upon the adoption of Rule 19b-4. Securities Exchange Act Release No. 11604 (August 19, 1975), 40 FR 40509 (1975). The Commission stated in that Release that rules of exchanges constituting part of their plans for the regulating of options which were in effect on June 4, 1975, would continue in effect.

[10] Text of Form SIP filed as part of the original document.

[Release No. IC-8959]

PART 271—INTERPRETIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Guidelines for Filing of Application for Order Permitting Registration of Foreign Investment Companies

BACKGROUND

On December 2, 1974, the Commission issued a request for public comments (Investment Company Act Release No. 8596, 39 FR 44516) concerning the standards for permitting registration of foreign investment companies under the Investment Company Act of 1940 (the "Act") [15 U.S.C. 80a-1 et seq]. A number of helpful comments were received from a wide range of interested persons including United States investors, investment companies and investment advisers, representatives of the securities industry and accounting and legal professions and other United States organizations, foreign investment companies, and representatives of foreign governments and other foreign organizations. The views expressed varied widely, reflecting the disparity of interests of the commentators.

Some commentators urged relaxation of the requirements for registration so that, for example, a company organized in a country in which United States investment companies are permitted to sell their shares would be permitted to sell its shares here on a generally reciprocal basis. On the other hand, some commentators urged no relaxation of the requirements for registration and suggested that if foreign investment companies were not subject to all provisions of the Act, then domestic investment companies should not be either. Several commentators suggested that decisions should be made on a case-by-case basis and should be based on more than compliance with the Standard Rules of the Organization for Economic Cooperation and Development ("OECD Rules").

THE COMMISSION'S POSITION

After review of this matter and consideration of all the comments received, the Commission has determined that certain factual and legal questions which are crucial to the determinations which must be made pursuant to the Act can best be resolved on a case-by-case basis and in the context of formal applications filed by individual companies for exemptions from specific provisions of the Act and for orders permitting such companies to register under the Act, and to sell their shares in the United States. Under this procedure, interested persons would have an opportunity to make their views known at such time as the Commission publishes notice of its intention to grant such relief.

The Commission believes that it is premature to establish rules, comparable to Rule 7d-1 under the Act [17 CFR 270.7d-1], on a general, or even a country-by-country, basis. Rule 7d-1 provides, in general, that a Canadian management investment company may obtain an order pursuant to section 7(d) of the Act [15 U.S.C. 80a-7(d)] if it complies with certain specified conditions and arrangements. In this connection, it is important to note that Rule 7d-1 was adopted only after the Commission and its staff developed case-by-case experience with Canadian investment companies. Moreover, the issues involved in registration of foreign investment companies are far more complex than those previously encountered with the Canadian and other foreign companies which were permitted to register under Rule 7d-1, since, in addition to satisfying the standards of Rule 7d-1, such companies generally were organized and managed by United States citizens, were selling their shares predominantly in the United States and were organized in countries with a strong common law tradition.

The Commission recognizes that there are differences in foreign law applicable to a foreign investment company and that compliance with such laws might prevent compliance with all of the requirements of the Act. Similarly, it appears that the capital markets, securities industry and accounting standards in such countries differ from those in the United States. The protections accorded to investors by the legal and regulatory system to which a foreign investment company is subject, however, should be substantially equivalent to those provisions of the Act which the Commission determines should be applicable to the foreign investment company. In this context, the Commission has supported the recommendations of the OECD that member countries

> when considering applications for admission to public sale in their own territory of the securities of foreign institutions for collective investment which comply with the Standard Rules, give substantial weight, within the framework of their legislation, to the fact of such compliance.

Accordingly, because of the difficulty in satisfying the standards of section 7(d) of the Act[2] and the other exemptive standards in the Act, and because of the substantial changes which have taken place in the international capital markets since 1940, the Commission continues to support any legislative effort to consider whether section 7(d) continues to be consistent with the public interest and with the protection of investors.[3] Nevertheless, the Commission recognizes that administrative action in this area may be constructive.

APPLICATIONS

The Commission recognizes that the conditions and arrangements required by Rule 7d-1 under the Act may effectively bar the registration of interested foreign investment companies. While the Commission remains bound by the standards of section 7(d) of the Act in determining whether an order permitting registration should be issued, compliance with the conditions and arrangements in Rule 7d-1 need not necessarily be the only means of satisfying the statutory standards. For example, in lieu of the requirements that a company's assets be kept in the United States and that a majority of its directors and officers be citizens of the United States, it may be possible for the company and its management to obtain a bond which would assure collection on any judgment rendered by a United States court against them for violation of the federal securities laws.

The Commission also has authority under sections 6(c) and 6(e) of the Act [15 U.S.C. 80a-6(c), 80-6(e)][4] to exempt conditionally an applicant from any provision of the Act. Section 6(c) contains no qualifications as to the provisions of the Act from which an exemption may be granted. The Commission has determined that in establishing an appropriate regulatory framework for

See footnotes at end of document.

foreign investment companies which cannot satisfy the requirements of Rule 7d-1, relief, pursuant to the terms of section 7(d), section 6(c), or pursuant to the terms of other applicable sections of the Act, may be appropriate. In reviewing all requests for permission to register under the Act, it may also be appropriate to take into account the differing laws, regulations, customs and business conditions of particular countries in which such companies are organized and the adequacy of existing regulation in such countries. Moreover, it may be appropriate to take into account the unique nature of the investment portfolio and management of the foreign investment company. The Commission, as stated above, can best make the necessary determinations in the context of a specific application.

The Commission will entertain requests for orders which would permit applicants to register under the Act pursuant to section 7(d), which may incorporate other requests for exemption from certain provisions of the Act pursuant to section 6(c) or other applicable sections of the Act. However, as a minimum prerequisite to filing, in order to help assure that an applicant (1) is a bona fide and established company, (2) is subject to actual regulation by an appropriate foreign governmental authority, (3) would not be dependent solely on sales in the United States, (4) would be a vehicle for investment primarily in foreign securities, (5) would subject itself and its management to service of process, and (6) would provide adequate disclosure to investors in the United States, the Commission generally would expect that an applicant would meet the following standards:

1. An applicant should have been in operation for at least three years and should have, at the time of registration, a minimum of $50 million in net assets and should have no less than $25 million in net assets while it offers its shares for sale in the United States.

2. An applicant should have, at the time of registration, a minimum of 500 shareholders who are residents of the country in which the applicant is organized and the value of whose aggregate investment is at least $25 million. In addition, an applicant should limit the number of shares to be sold to United States investors to 50 percent of its total outstanding shares at the time of sale. An applicant also should have more than 60 percent of the value of its portfolio invested in securities of issuers in the country under the laws of which such applicant is organized or at least 75 percent in securities of non-United States issuers.

3. An applicant should undertake to provide a prospectus to all United States investors, which shall state clearly (a) the name of the applicant including, if not already part of such name, the name of the country under whose laws applicant is organized; (b) all conditions and arrangements to which applicant is subject pursuant to any order obtained under the Act; (c) all material regulatory

provisions of the Act to which applicant is not subject by the terms of any such order; (d) a copy, in English, of the applicable foreign law to which applicant is subject; and (e) any other information which is necessary or appropriate to meet the disclosure requirements of the Act and the Securities Act of 1933 [15 U.S.C. 77a et seq.].

4. An application prepared pursuant to these guidelines should be filed in accordance with the procedures set forth in Rule 0-5 [17 CFR 270.0-5] and other rules under the Act; and should indicate a willingness to file consents to service of process by applicant and its non-resident officers, directors and investment advisers and managers.

The Commission wishes to emphasize that the standards set forth above are intended to serve as guidelines for what will be generally required as minimum criteria for favorable consideration of applications which do not conform to the standards of Rule 7d-1 or which request exemption from provisions of the Act. In any event, each application will be considered on its own merits in the context of the standards of section 7(d).

In order to facilitate preparation of any such applications, and in order to assist the Commission in considering such application, each application should contain the following:

(1) *Identification*. This should include the name of the applicant, its form of organization, the country in which it is organized and country (countries) to whose regulation it is subject, the country (countries) in which its shares are offered or proposed to be offered for sale, the length of time such company has operated in the above country (countries); its fundamental investment policies including any limitations or requirements regarding investments in issuers domiciled or doing business in particular countries and how such policies may be changed; identification of its investment adviser, principal underwriter, custodian, controlling persons, directors, and officers and how such persons are selected and may be changed; a description of its organization and operations including its capital structure, sales load, net asset value calculation and decision-making mechanisms; and its current net assets and number of shareholders.

(2) *Operating restrictions*. A description of any restrictions on transactions between the applicant and any affiliated persons.

(3) *Applicable foreign law and regulatory system*. This should include a summary of the foreign law to which the company is subject, a statement of such company's compliance with such law, including an indication and explanation of any noncompliance;[4] a description of the inspection and enforcement systems in the country to which such company is subject including any requirements regarding standards for maintaining and making available the books and records of such company, for example, by the appropriate governmental authority; a description of the applicable accounting and auditing standards to which such company is subject, particularly noting differences with United States standards; and a certification by the appropriate governmental authority or authorities of the country to which such company is subject that the statement regarding the applicable foreign law, including the inspection and enforcement systems, is accurate.

(4) *Comparison with the act*. This should include a statement of each provision of the Act with which applicant is unable or unwilling to comply, together with a statement of the facts by reason of which, in applicant's opinion, an exemption from such provision is appropriate including, if applicable, a description of equivalent protections which would be provided to United States investors.

(5) *Enforceability of the act*. This should include a description of conditions to assure that "it is both legally and practically feasible effectively to enforce the provisions of [the Act] against such company" and should describe the extent to which applicant is unable or unwilling to comply with each undertaking and arrangement in subparagraph (b) of Rule 7d-1 under the Act, including a description of equivalent conditions.

(6) *Comparison with OECD rules*. This should include a statement as to whether the country to which the applicant is subject has adopted the OECD Rules, and whether, in any event, applicant is in compliance with the provisions of the OECD Rules, including a statement of the facts by reason of which, in applicant's opinion, noncompliance with such provisions is appropriate and a description of equivalent protections accorded to investors.

(7) *Supporting documents*. This should include English language versions of (a) applicant's prospectuses or equivalent materials for the last three years, (b) applicant's annual report for the last three years, (c) applicant's reports to foreign regulatory authorities for the past three years,[5] (d) a proposed Form N-8B-1, which need not be executed, and which will be construed solely as an exhibit to the application and not as the filing of a registration statement under Section 8(b) of the Act [15 U.S.C. 80a-8(b)], and (e) any additional information and documentation which the applicant desires to submit.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

SEPTEMBER 26, 1975.

[FR Doc.75-26371 Filed 10-1-75;8:45 am]

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[1] Section 7(d) of the Act prohibits a foreign investment company from registering under the Act; however, it also provides that a foreign investment company may receive an order permitting its registration under the Act if the Commission finds, "by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of [the Act] against such company and that the issuance of such order is otherwise consistent with the public interest and the protection of investors."

[2] In 1973, the Commission proposed the "Foreign Portfolio Sales Corporation Act of 1973" which included such an amendment. This proposal was introduced in the 93rd Congress as H.R. 8256.

[3] Section 6(c) of the Act provides that, the Commission * * * may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Act] or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act].

Section 6(e) of the Act provides that, if, in connection with any rule, regulation, or order under this section exempting any investment company from any provision of section 7, the Commission deems it necessary or appropriate in the public interest or for the protection of investors that certain specified provisions of [the Act] pertaining to registered investment companies shall be applicable in respect of such company, the provisions so specified shall apply to such company, and to other persons in their company as though such company were a registered investment company.

[4] Besides admitted noncompliance, there should be included a summary, and the opinion of applicant's legal counsel on the merits, of any litigation brought by either private litigants or governmental authorities against applicant or its affiliates with regard to their actions as affiliates of the applicant.

[5] To the extent such reports are not matters of public record, and applicant does not desire them to be, it should be noted that Section 45(a) of the Act [15 U.S.C. 80a-44(a)] provides a procedure for obtaining an order making specified documents not available to the public. The decision on any such request would take into account the requirements of the Freedom of Information Act (5 U.S.C. 552).

Title 21—Foods and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER D—DRUGS FOR HUMAN USE

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

Griseofulvin (Ultramicrosize) Tablets

Correction

In FR Doc. 75-23716 appearing at page 41522 in the issue of Monday, September 8, 1975, the following changes should be made in § 436.317:

1. In the sixth line from the bottom of paragraph (a)(4), the last word "chock-", should read "clock-".

2. The formula in paragraph (d)(3) should read as follows:

$$\text{Percent griseofulvin dissolved} = \frac{A_u \times W_s \times V \times 10}{A_s \times P}$$

Where:

A_u = Absorbance of the sample solution minus the absorbance of the sample-blank solution;

W_s = Weight of the working standard in milligrams;

V = Volume of the dissolution medium in liters;

A_s = Absorbance of the standard solution minus the absorbance of the standard-blank solution;

P = Labeled potency of the sample in milligrams of griseofulvin per tablet.

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

PART 221—OPERATION AND MAINTENANCE CHARGES

Tribal and Trust Patent Indian Lands on San Carlos Irrigation Project, Arizona

On page 36376 of the FEDERAL REGISTER of August 20, 1975, there was published a notice of proposal to modify §§ 221.110, 221.111, 221.112, and 221.114 of Title 25, Code of Federal Regulations, dealing with operation and maintenance assessments and excess water charges on the San Carlos Irrigation Project, Arizona.

Interested persons were given 30 days within which to submit written comments, suggestions or objections with respect to the proposed amendments. No comments, suggestions, nor objections were received, and the proposed revisions are hereby adopted without change, as set forth below. The revised sections read as follows:

§ 221.110 Basic charge.

Pursuant to section 5 of the Act of June 7, 1924 (43 Stat. 476) and in accordance with the public notice issued on December 1, 1932, operation and maintenance charges are assessable against 50,000 acres of tribal lands and trust patent Indian lands of the San Carlos Indian Irrigation Project within the boundaries of the Gila River Indian Reservation, Arizona. For the calendar year 1976 and subsequent years, unless changed by further order, the basic rate assessed Indian owned land leased and operated by non-Indians is hereby fixed at $18.00 per acre. The basic charge shall entitle each acre of such leased land to have delivered for use thereon two (2) acre-feet of water per acre or its proportionate share of the available water supply. The assessment for those lands leased will be payable as provided in §§ 221.111 and 221.112. Charges for project operation and maintenance costs on account of Indian owned land used by Indians shall not be imposed on the Indian owners of such land. (See Interlocutory Order of the Indian Claims Commission dated January 10, 1974, Gila River Pima-Maricopa Indian Community et al v. The United States of America, Docket No. 236-E.)

§ 221.111 Excess water charge.

For water delivered in excess of two (2) acre-feet per acre of Indian land leased to a non-Indian, there shall be charged $0.50 per acre-foot per acre for the first acre-foot of excess water or fraction thereof delivered, and $1.50 per acre foot or fraction thereof per acre of water delivered in excess of three (3) acre-feet per acre: *Provided*, There shall be no charge for free water delivered in accordance with existing regulations.

§ 221.112 Time and place of payment.

Basic charges shall become due on January 1 of each year and shall be payable on or before March 1st: *Provided*, No water shall be delivered to lands leased to non-Indians prior to payment of said basic charge. Payment for excess water as provided in § 221.111 shall be made at the time of request or prior to the delivery thereof. Payment of these assessments and charges shall be made at the office of the Pima Agency Superintendent, Sacaton, Arizona.

§ 221.114 Application for water service.

An application for water service shall be made to and approved by the Superintendent prior to the first delivery of water. For all subsequent deliveries of water, the water user will notify the watermaster or ditchrider when delivery is desired.

JOHN ANTICHOKER, Jr.,
Area Director.

[FR Doc.75-26377 Filed 10-1-75;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7378]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Determination of Sources of Income; Income Derived by a Foreign Central Bank of Issue From Obligations of the United States or From Bank Deposits

By a notice of proposed rulemaking appearing in the FEDERAL REGISTER for July 23, 1974 (39 FR 26738), amendments to the Income Tax Regulations (26 CFR Part 1) were proposed in order to conform such regulations to the amendments of the Internal Revenue Code of 1954 made by section 102 (a), (b), and (c) of the Foreign Investors Tax Act of 1966 (Pub. L. 89-809, 80 Stat. 1541, 1543), relating to sources of income, and by section 435(a) of the Tax Reform Act of 1969 (Pub. L. 91-172, 83 Stat. 625), relating to foreign deposits in United States banks, and to make certain other changes. After consideration of all such relevant matter as was presented by interested persons regarding the proposed rules, the amendment of the regulations as proposed are adopted by this document, subject to the changes indicated below.

Section 102(a)(1) of the Foreign Investors Tax Act of 1966 amended section 861(a)(1)(A) of the Code, and added section 861(c), to provide that certain interest paid or credited before January 1, 1973, and received by a nonresident alien individual or foreign corporation in a taxable year beginning after December 31, 1966, was not to be treated as income from sources within the United States if the interest was not effectively connected with the conduct of a trade or business in the United States. This rule applies to interest paid on deposits with persons carrying on the banking business in the United States or with certain savings and loan institutions and to interest earned on amounts held by insurance companies under an agreement to pay interest thereon. Interest paid or credited on such deposits or amounts after December 31, 1972, was to be treated as income from sources within the United States even though not effectively connected with the conduct of a trade or business in the United States. However, this terminal date of December 31, 1972, was postponed to December 31, 1975, by section 435(a)(2) of the Tax Reform Act of 1969 (Pub. L. 91-172, 83 Stat. 625); and to December 31, 1976, by section 8 of the Act of January 3, 1975 (Pub. L. 93-625, 88 Stat. 2116).

Section 102(a)(2) of the Foreign Investors Tax Act of 1966 eliminated the rule in section 861(a)(1)(B) of the Code that interest paid by a resident foreign corporation having less than 20 percent of its gross income from sources within the United States was not to be treated as income from sources within the United States. Instead, it added a new rule in section 861(a)(1)(C) that interest paid by a resident foreign corporation having less than 50 percent of its gross income as effectively connected with a U.S. trade or business was not to be treated as income from sources within the United States. In addition, it provided a new rule in section 861(a)(1)(D) of the Code that a proportionate part of the interest paid by a resident foreign corporation was to be treated as income from sources within the United States if 50 percent or more of its gross income for a specified period was effectively connected with the conduct by such corporation of a trade or business in the United States. An exception to these new rules in section 861(a)(1)(C) and (D): *Provided, however*, That interest paid or credited after December 31, 1972, by the U.S. banking branch of a resident foreign corporation was to be treated as income from sources within the United States, but section 435(a)(1) of the Tax Reform Act of 1969 (Pub. L. 91-172, 83 Stat. 625) accelerated this exception so as to apply to amounts paid or credited after December 31, 1969. Section 102(a)(2) of the 1966 Act also added a new section 861(a)(1)(F) to the Code to provide that, for taxable years beginning after December 31, 1966, interest paid by a foreign banking branch of a U.S. corporation or U.S. partnership is not to be treated as income from sources within the United States.

Section 102(a)(4) of the Foreign Investors Tax Act of 1966 expanded the exemption previously accorded under section 895 of the Code to foreign central banks of issue. First, the section was made applicable also to the Bank for International Settlements. Secondly, the exemption applicable to income from obligations of the United States was extended to income from obligations of any agency or instrumentality of the United States. Thirdly, the exemption was extended to interest on deposits with persons carrying on the banking business, including any such interest paid or credited after December 31, 1976 (the date section 861(a)(1) (A) and (c) cease to apply).

Section 102(b) of the Foreign Investors Tax Act of 1966 amended section 861(a)(2)(B) of the Code to change the 50-percent rule therein for determining the source of dividends paid by a foreign corporation to depend on whether the paying corporation has derived gross income effectively connected with the conduct of a trade or business in the United States rather than having gross income from sources within the United Statets. In addition, the 100/85ths rule for treating part of the dividend from foreign sources for purposes of the foreign tax credit was made inapplicable to dividends for which a 100-percent dividends deduction is allowable under section 245 (b) of the Code, as added by section 104 (e)(1) of the 1966 Act (80 Stat. 1558).

Section 102(c) of the Foreign Investors Tax Act of 1966 amended section 861(a)(3)(C)(ii) of the Code, relating to the 90-day and $3,000 test for determining the source of income derived from personal services performed in the United States, to broaden the rule therein so as to have it apply to services performed by the nonresident alien individual for an office or place of business maintained in a foreign country or possession of the United States by an individual who is a citizen or resident of the United States or by a domestic partnership.

The amendments by section 102 of the Foreign Investors Tax Act of 1966 apply to taxable years beginning after December 31, 1966, or, in the case of the revised rules on dividends, to amounts received after December 31, 1966. The amendment by section 435(a)(1) of the Tax Reform Act of 1969 is effective with respect to amounts paid or credited after December 31, 1969.

In order to avoid confusion in making such amendments to the Income Tax Regulations as were necessary to conform to the changes made by the Foreign Investors Tax Act of 1966, the decision was reached to replace the pertinent regulations with completely new regulations applicable only to taxable years beginning after December 31, 1966, and to refer to those sections in the Code of Federal Regulations (revised as of January 1, 1972) where the corresponding rules for taxable years beginning before January 1, 1967, may be found.

Proposed § 1.861-2(a) has been revised by the broadening of the rule on interest on refunds of Federal income tax. The revised rule on refunds conforms to S. Rep. No. 558, 73d Con. 38 (1934), 1939-1 (Part 2) C.B. 615.

New § 1.861-2(b)(6), relating to section 4912(c) debt obligations, contains the substance of the rules adopted by T.D. 7314, as published in the FEDERAL REGISTER for May 23, 1974, 39 FR 18073, 1974-1 C.B. 172.

The rules in proposed § 1.861-2(d) respecting the filing of a statement in regard to excluded interest have been modified so as to be less restrictive than those that were proposed. Similar changes have been made in proposed § 1.861-3(c) respecting the statement on excluded dividends.

A new rule, and two examples, on the inclusion of amounts in gross income in the case of personal services performed in the United States have been added to § 1.861-4(b)(1) for taxable years beginning after December 31, 1975. The purpose of the change is to alleviate the rigidity of the rule now contained in § 1.861-4(b). Example (1) is taken from Rev. Rul. 67-153, 1967-1 C.B. 221, and example (2) is taken from Publication 54 (Tax Guide for U.S. Citizens Abroad), 1975 edition.

Proposed § 1.862-1(a) has been revised to include a rule that interest paid on an obligation of a nonresident of the United States by a resident of the United States acting in his capacity as a guarantor of the obligation of the nonresident will be treated as income from sources without the United States. It is based in principle on Rev. Rul. 70-377, 1970-2 C.B. 175, and § 1.861-2(a)(5).

In view of the foregoing considerations, the amendments of the regulations as proposed are hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. Section 1.861, as set forth in paragraph 1 of the notice of proposed rulemaking, is revised as follows:

(1) The word "and" at the end of paragraph (a)(1)(F) is deleted.

(2) A comma followed by the word "and" is added in lieu of the period at the end of paragraph (a)(1)(G).

(3) New paragraph (a)(1)(H) is added.

(4) The last sentence of paragraph (c) is changed, and

(5) The historical note at the end of § 1.861 is changed.

These revised and added provisions read as set forth below.

PAR. 2. Section 1.861-2, as set forth in paragraph 2 of the notice of proposed rulemaking, is revised as follows:

(1) Paragraph (a) is changed.

(2) The term "(A) Through (F)" appearing in the first sentence of paragraph (b) is revised to read "(A) through (H)".

(3) The term "January 1, 1976" appearing in the first sentence of paragraph (b)(1)(i) is revised to read "January 1, 1977".

(4) Paragraph (b)(1)(i)(*a*) is changed.

(5) The last sentence of paragraph (b)(1)(iii) is changed.

(6) The first sentence of paragraph (b)(2) is changed.

(7) Paragraph (b)(3) is changed.

(8) New subparagraph (6) is added to paragraph (b).

(9) Paragraph (c)(4)(ii) is changed.

(10) New paragraph (c)(4)(iii) is added, and

(11) Paragraph (d) is changed.

These revised and added provisions read as set forth below.

PAR. 3. Section 1.861-3, as set forth in paragraph 3 of the notice of proposed rulemaking, is revised as follows:

(1) Paragraph (a)(3)(i) is changed.

(2) Paragraph (b)(3) is changed, and

(3) Paragraph (c) is changed.

These revised provisions read as set forth below.

PAR. 4. The amendment of § 1.861-4, as set forth in paragraph 4 of the notice of proposed rulemaking, is changed by revising paragraph (a) and by adding a revision of paragraph (b). The revised and added provisions read as set forth below.

PAR. 5. The amendment of § 1.862-1, as set forth in paragraph 7 of the notice of proposed rulemaking, is changed to read as set forth below.

PAR. 6. The amendment of § 1.895-1, as set forth in paragraph 11 of the notice of proposed rulemaking, is changed by revising paragraphs (b) and (e) to read as set forth below.

PAR. 7. The amendment of § 1.1441-4, as set forth in paragraph 15 of the notice of proposed rulemaking, is changed to read as set forth below.

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

DONALD C. ALEXANDER,
Commissioner.

Approved: September 25, 1975.

CHARLES M. WALKER,
Assistant Secretary of the Treasury.

PARAGRAPH 1. Section 1.861 is amended by revising all of section 861(a)(1) except the part preceding paragraph (A) thereof, by revising subsection (a)(2)(B) and (C) and (3)(C)(ii) of section 861, by adding new subparagraph (D) to section 861(a)(2), by adding new subsections (c), (d), and (e) to section 861, and by revising the historical note, as follows:

§ 1.861 Statutory provisions; income from sources within the United States.

SEC. 861. *Income from sources within the United States*—(a) *Gross income from sources within United States.* * * *

(1) *Interest.* * * *

(A) Interest on amounts described in subsection (c) received by a nonresident alien individual or a foreign corporation, if such interest is not effectively connected with the conduct of a trade or business within the United States,

(B) Interest received from a resident alien individual or a domestic corporation, when it is shown to the satisfaction of the Secretary or his delegate that less than 20 percent of the gross income from all sources of such individual or such corporation has been derived from sources within the United States, as determined under the provisions of this part, for the 3-year period ending with the close of the taxable year of such individual or such corporation preceding the payment of such interest, or for such part of such period as may be applicable,

(C) Interest received from a foreign corporation (other than interest paid or credited by a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business), when it is shown to the satisfaction of the Secretary or his delegate that less than 50 percent of the gross income from all sources of such foreign corporation for the 3-year period ending with the close of its taxable year preceding the payment of such interest (or for such part of such period as the corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States,

(D) In the case of interest received from a foreign corporation (other than interest paid or credited by a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business), 50 percent or more of the gross income of which from all sources for the 3-year period ending with the close of its taxable year preceding the payment of such interest (or for such part of such period as the corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States, an amount of such interest which bears the same ratio to such interest as the gross income of such foreign corporation for such period which was not effectively connected with the conduct of a trade or business within the United States bears to its gross income from all sources,

(E) Income derived by a foreign central bank of issue from bankers' acceptances,

(F) Interest on deposits with a foreign branch of a domestic corporation or a domestic partnership, if such branch is engaged in the commercial banking business,

(G) Interest on a debt obligation which was part of an issue with respect to which an election has been made under section 4912(c) and which, when issued (or treated as issued under section 4912(c)(2)), had a maturity not exceeding 15 years and, when issued, was purchased by one or more underwriters with a view to distribution through resale, but only with respect to interest attributable to periods after the date of such election, and

(H) Interest on a debt obligation which was part of an issue which—

(i) Was part of an issue outstanding on April 1, 1971,

(ii) Was guaranteed by a United States person,

(iii) Was treated under chapter 41 as a debt obligation of a foreign obligor,

(iv) As of June 30, 1974, had a maturity of not more than 15 years, and

(v) When issued, was purchased by one or more underwriters for the purpose of distribution through resale.

(2) *Dividends.* * * *

(B) From a foreign corporation unless less than 50 percent of the gross income from all sources of such foreign corporation for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States; but only in an amount which bears the same ratio to such dividends as the gross income of the corporation for such period which was effectively connected with the conduct of a trade or business within the United States bears to its gross income from all sources; but dividends (other than dividends for which a deduction is allowable under section 245(b)) from a foreign corporation shall, for purposes of subpart A of part III (relating to foreign tax credit), be treated as income from sources without the United States to the extent (and only to the extent) exceeding the amount which is 100/85ths of the amount of the deduction allowable under section 245 in respect of such dividends, or

(C) From a foreign corporation to the extent that such amount is required by section 243(d) (relating to certain dividends from foreign corporations) to be treated as dividends from a domestic corporation which is subject to taxation under this chapter, and to such extent subparagraph (B) shall not apply to such amount, or

(D) From a DISC or former DISC (as defined in section 992(a)) except to the extent attributable (as determined under regulations prescribed by the Secretary or his delegate) to qualified export receipts described in section 993(a)(1) (other than interest and gains described in section 995(b)(1)).

(3) *Personal services.* * * *

(C) * * *

(ii) An individual who is a citizen or resident of the United States, a domestic partnership, or a domestic corporation, if such labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by such individual partnership, or corporation.

* * * * *

(c) *Interest on deposits, etc.* For purposes of subsection (a)(1)(A), the amounts described in this subsection are—

(1) Deposits with persons carrying on the banking business,

(2) Deposits or withdrawable accounts with savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, but only to the extent that amounts paid or credited on such deposits or accounts are deductible under section 591 (determined without regard to section 265) in computing the taxable income of such institutions, and

(3) Amounts held by an insurance company under an agreement to pay interest thereon.

Effective with respect to amounts paid or credited afted December 31, 1976, subsection (a)(1)(A) and this subsection shall cease to apply.

(d) *Special rules for application of paragraphs (1)(B), (1)(C), (1)(D), and (2)(B) of subsection (a)—(1) New entities.* For purposes of paragraphs (1)(B), (1)(C), (1)(D), and (2)(B) of subsection (a), if the resident alien individual, domestic corporation, or foreign corporation, as the case may be, has no gross income from any source for the 3-year period (or part thereof) specified, the 20 percent test or the 50 percent test, as the case may be, shall be applied with respect to the taxable year of the payor in which payment of the interest or dividends, as the case may be, is made.

(2) *Transition rule.* For purposes of paragraphs (1)(C), (1)(D), and (2)(B) of subsection (a), the gross income of the foreign corporation for any period before the first taxable year beginning after December 31, 1966, which is effectively connected with the conduct of a trade or business within the United States is an amount equal to the gross income for such period from sources within the United States.

(e) *Election to treat income from certain aircraft and vessels as income from sources within the United States—(1) In general.* For purposes of subsection (a) and section 862(a), if a taxpayer owning an aircraft or vessel which is section 38 property (or would be section 38 property) but for section 48(a)(5) leases such aircraft or vessel to a United States person, other than a member of the same controlled group of corporations (as defined in section 1563) as the taxpayer, and if such aircraft or vessel is manufactured or constructed in the United States, the taxpayer may elect, for any taxable year ending after the commencement of such lease, to treat all amounts includible in gross income with respect to such aircraft or vessel (whether during or after the period of any such lease), including gain from sale or other disposition of such aircraft or vessel, as income from sources within the United States.

[Sec. 861 as amended by sec. 3(b), Act of Sept. 14, 1960 (Pub. L. 86-779, 74 Stat. 998); sec. 9(c), Rev. Act 1962 (76 Stat. 1001); sec. 102 (a), (b), and (c), Foreign Investors Tax Act 1966 (80 Stat. 1541, 1543); sec. 435 (a), Tax Reform Act 1969 (83 Stat. 625); sec. 3(a)(2), Interest Equalization Tax Extension Act 1971 (85 Stat. 15); secs. 314(a) and 503, Rev. Act 1971 (85 Stat. 528, 550); secs. 8 and 9 (a), Act of Jan. 3, 1975 (Pub. L. 93-625, 88 Stat. 2116)]

Par. 2. Section 1.861-2 is amended to read as follows:

§ 1.861-2 Interest.

(a) *In general.* (1) Gross income consisting of interest from the United States or any agency of instrumentality thereof (other than a possession of the United States or an agency or instrumentality of a possession), a State or any political subdivision thereof, or the District of Columbia, and interest from a resident of the United States on a bond, note, or other interest-bearing obligation issued or assumed by such person shall be treated as income from sources within the United States. Thus, for example, income from sources within the United States includes interest received on any refund of income tax imposed by the United States, a State of any political subdivision thereof, or the District of Columbia. Interest other than that described in this paragraph is not to be treated as income from sources within the United States.

(2) The term "resident of the United States", as used in this paragraph, includes (i) an individual who at the time of payment of the interest is a resident of the United States, (ii) a domestic corporation, (iii) a domestic partnership which at any time during its taxable year is engaged in trade or business in the United States, or (iv) a foreign corporation or a foreign partnership, which at any time during its taxable year is engaged in trade or business in the United States.

(3) The method by which, or the place where, payment of the interest is made is immaterial in determining whether interest is derived from sources within the United States.

(4) For purposes of this section, the term "interest" includes all amounts treated as interest under section 483, and the regulations thereunder. It also includes original issue discount, as defined in section 1232(b)(1), whether or not the underlying bond, debenture, note, certificate, or other evidence of indebtedness is a capital asset in the hands of the taxpayer within the meaning of section 1221.

(5) If interest is paid on an obligation of a resident of the United States by a nonresident of the United States acting in the nonresident's capacity as a guarantor of the obligation of the resident, the interest will be treated as income from sources within the United States.

(6) In the case of interest received by a nonresident alien individual or foreign corporation this paragraph (a) applies whether or not the interest is effectively connected for the taxable year with the conduct of a trade or business in the United States by such individual or corporation.

(b) *Interest not derived from U.S. sources.* Notwithstanding paragraph (a) of this section, interest shall be treated as income from sources without the United States to the extent provided by subparagraphs (A) through (H), of section 861(a)(1) and by the following subparagraphs of this paragraph.

(1) *Interest on bank deposits and on similar amounts.* (i) Interest paid or credited before January 1, 1977, to a nonresident alien individual or foreign corporation on—

(*a*) Deposits with persons, including citizens of the United States or alien individuals and foreign or domestic partnerships or corporations, carrying on the banking business in the United States,

(*b*) Deposits or withdrawable accounts with savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, or

(*c*) Amounts held by an insurance company under an agreement to pay interest thereon,

shall be treated as income from sources without the United States if such interest is not effectively connected for the taxable year with the conduct of a trade or business in the United States by such nonresident alien individual or foreign corporation. If such interest is effectively connected for the taxable year with the conduct of a trade or business in the United States by such nonresident alien individual or foreign corporation, it shall be treated as income from sources within the United States under paragraph (a) of this section unless it is treated as income from sources without the United States under another subparagraph of this paragraph. For a special rule for determining whether such interest is effectively connected for the taxable year with the conduct of a trade or business in the United States, see paragraph (c)(1)(ii) or § 1.864-4.

(ii) Subdivision (i)(*b*) of this subparagraph applies to interest on deposits or withdrawable accounts described therein only to the extent that the interest paid or credited by the savings institution described therein is deductible under section 591 in determining the taxable income of such institution; and, for this purpose, whether an amount is deductible under section 591 shall be determined without regard to section 265, relating to deductions allocable to tax-exempt income. Thus, for example, such subdivision does not apply to amounts paid by a savings and loan or similar association on or with respect to its nonwithdrawable capital stock or on or with respect to funds held in restricted accounts which represent a proprietary interest in such association. Subdivision (i)(*b*) of this subparagraph also applies to so-called dividends paid or credited on deposits or withdrawable accounts if such dividends are deductible under section 591 without reference to section 265.

(iii) For purposes of subdivision (i)(*c*) of this subparagraph, amounts held by an insurance company under an agreement to pay interest thereon include policyholder dividends left with the company to accumulate, prepaid insurance premiums, proceeds of policies left on deposit with the company, and overcharges of premiums. Such subdivision does not apply to (*a*) the so-called "interest element" in the case of annuity or installment payments under life insurance or endowment contracts or (*b*) interest paid by an insurance company to its creditors on notes, bonds, or similar evidences of indebtedness, if the debtor-creditor relationship does not arise by virtue of a contract of insurance with the insurance company.

(iv) For purposes of subdivision (i) of this subparagraph, interest received by a partnership shall be treated as received by each partner of such partnership to the extent of his distributive share of such item.

(2) *Interest from a resident alien individual or domestic corporation deriving substantial income from sources without the United States.* Interest received from a resident alien individual or a domestic corporation shall be treated as income from sources without the United States when it is shown to the satisfaction of the district director (or, if applicable, the Director of International Operations) that less than 20 percent of the gross income from all sources of such individual or corporation has been derived from sources within the United States, as determined under the provisions of sections 861 to 863, inclusive, and the regulations thereunder, for the 3-year period ending with the close of the taxable year of such individual or corporation preceding its taxable year in which such interest is paid or credited, or for such part of such period as may be applicable. If 20 percent or more of the gross income from all sources of such individual or corporation has been derived from sources within the United States, as so determined, for such 3-year period (or part thereof), the entire amount of the interest from such individual or corporation shall be treated as income from sources within the United States.

(3) *Interest from a foreign corporation not deriving major portion of its income from a U.S. business.* (i) Interest from a foreign corporation which, at any time during the taxable year, is engaged in trade or business in the United States shall be treated as income from sources without the United States when it is shown to the satisfaction of the district director (or, if applicable, the Director of International Operations) that (*a*) less than 50 percent of the gross income from all sources of such foreign corporation for the 3-year period ending with the close of its taxable year preceding its taxable year in which such interest is paid or credited (or for such part of such period as the corporation has been in existence) was effectively connected with the conduct by such corporation of a trade or business in the United States, as determined under section 864(c) and § 1.864-3, or (*b*) such foreign corporation had gross income for such 3-year period (or part thereof) but none was effectively connected with the conduct of a trade or business in the United States.

(ii) If 50 percent or more of the gross income from all sources of such foreign corporation for such 3-year period (or part thereof) was effectively connected with the conduct by such corporation of a trade or business in the United States, see section 861(a)(1)(D) and paragraph (c)(1) of this section for determining the portion of interest from such corporation which is treated as income from sources within the United States.

(iii) For purposes of this subparagraph the gross income which is effectively connected with the conduct of a trade or business in the United States includes the gross income which, pursuant to section 882(d) or (e) and the regulations thereunder, is treated as income which is effectively connected with the conduct of a trade or business in the United States.

(iv) This subparagraph does not apply to interest paid or credited after December 31, 1969, by a branch in the United States of a foreign corporation if, at the time of payment or crediting, such branch is engaged in the commercial banking business in the United States; furthermore, such interest is treated under paragraph (a) of this section as income from sources within the United States unless it is treated as income from sources without the United States under subparagraph (1) or (4) of this paragraph.

(4) *Bankers' acceptances.* Interest derived by a foreign central bank of issue from bankers' acceptances shall be treated as income from souces without the United States. For this purpose, a foreign central bank of issue is a bank which is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. Such a bank is generally the custodian of the banking reserves of the country under whose laws it is organized.

(5) *Foreign banking branch of a domestic corporation or partnership.* Interest paid or credited on deposits with a branch outside the United States (as defined in section 7701(a)(9)) of a domestic corporation or of a domestic partnership shall be treated as income from sources without the United States if, at the time of payment or crediting, such branch is engaged in the commercial banking business. For purposes of applying this subparagraph, it is immaterial (i) whether the domestic corporation or domestic partnership is carrying on a banking business in the United States, (ii) whether the recipient of the interest is a citizen or resident of the United States, a foreign corporation, or a foreign partnership, (iii) whether the interest is effectively connected with the conduct of a trade or business in the United States by the recipient, or (iv) whether the deposits with the branch located outside the United States are payable in the currency of a foreign country. Notwithstanding the provisions of § 1.863-6, interest to which this subparagraph applies shall be treated as income from sources within the foreign country, possession of the United States, or other territory in which the branch is located.

(6) *Section 4912(c) debt obligations*—(i) *In general.* Under section 861(a)(1)(G), interest on a debt obligation shall not be treated as income from sources within the United States if—

(*a*) The debt obligation was part of an issue of debt obligations with respect to which an election has been made under section 4912(c) (relating to the treatment of such debt obligations as debt obligations of a foreign obligor for purposes of the interest equalization tax),

(*b*) The debt obligation had a maturity not exceeding 15 years (within the meaning of subdivision (ii) of this subparagraph) on the date it is originally issued or on the date it is treated under section 4912(c)(2) as issued by reason of being assumed by a certain domestic corporation,

(*c*) The debt obligation, when originally issued, was purchased by one or more underwriters (within the meaning of subdivision (iii) of this subparagraph) with a view to distribution through resale (within the meaning of subdivision (iv) of this subparagraph), and

(*d*) The interest on the debt obligation is attributable to periods after the effective date of an election under section 4912(c) to treat such debt obligations as debt obligations of a foreign obligor for purposes of the interest equalization tax.

(ii) *Maturity not exceeding 15 years.* The date the debt obligation is issued or treated as issued is not included in the 15 year computation, but the date of maturity of the debt obligation is included in such computation.

(iii) *Purchased by one or more underwriters.* For purposes of this subparagraph, the debt obligation when originally issued will not be treated as purchased by one or more underwriters unless the underwriter purchases the debt obligation for his own account and bears the risk of gain or loss on resale. Thus, for example, a debt obligation, when originally issued, will not be treated as purchased by one or more underwriters if the underwriter acts only in the capacity of an agent of the issuer. Neither will a debt obligation, when originally issued, be treated as purchased by one or more underwriters if the agreement between the underwriter and issuer is merely for a "best efforts" underwriting, for the purchase by the underwriter of all or a portion of the debt obligations remaining unsold at the expiration of a fixed period of time, or for any other arrangement under the terms of which the debt obligations are not purchased by the underwriter with a view to distirbution through resale. The fact that an underwriter is related to the issuer will not prevent the underwriter from meeting the requirements of this subparagraph. In determining whether a related underwriter meets the requirements of this subparagraph consideration shall be given to whether the purchase by the underwriter of the debt obligation from the issuer for resale was effected by a transaction subject to conditions similar to those which would have been imposed between independent persons.

(iv) *With a view to distribution through resale.* (*a*) An underwriter who purchased a debt obligation shall be deemed to have purchased it with a view to distribution through resale if the requirements of (*b*) or (*c*) of this subdivision (iv) are met.

(*b*) The requirement of this subdivision (*b*) is that—

(*1*) The debt obligation is registered, approved, or listed for trading on one or more foreign securities exchanges or foreign established securities markets within 4 months after the date on which the underwriter purchases the debt obligation, or by the date of the first interest payment on the debt obligation, whichever is later, or

(*2*) The debt obligation, or any substantial portion of the issue of which the debt obligation is a part, is actually traded on one or more foreign securities markets on or within 15 calendar days after the date on which the underwriter purchases the debt obligation.

For purposes of this subdivision (iv), a foreign established securities market includes any foreign over-the-counter market as reflected by the existence of an inter-dealer quotation system for regularly disseminating to brokers and dealers quotations of obligations by identified brokers or dealers, other than quotations prepared and distributed by a broker or dealer in the regular course of his business and containing only quotations of such broker or dealer.

(*c*) The requirements of this subdivision (*c*) are that, except as provided in (*d*) of this subdivision, the underwriter is under no written or implied restriction imposed by the issuer with respect to whom he may resell the debt obligation and either—

(*1*) Within 30 calendar days after he purchased the debt obligation the underwriter or underwriters either (*i*) sold it or (*ii*) sold at least 95 percent of the face amount of the issue of which the debt obligation is a part, or

(*2*) (*i*) The debt obligation is evidenced by an instrument which, under the laws of the jurisdiction in which it is issued, is either negotiable or transferable by assignment (whether or not it is registered for trading), and (*ii*) it appears from all the relevant facts and circumstances, including any written statements or assurances made by the purchasing underwriter or underwriters, that such debt obligation was purchased with a view to distribution through resale.

(*d*) The requirements of (*c*) of this subdivision may be met whether or not the underwriter is restricted from reselling the debt obligations—

(*1*) To a United States person (as defined in section 7701(a)(30)) or

(*2*) To any particular person or persons pursuant to a restriction imposed by, or required to be met in order to comply with, United States or foreign securities or other law.

(v) *Statement with return.* Any taxpayer who is required to file a tax return and who excludes from gross income interest of the type specified in this subparagraph must comply with the requirements of paragraph (d) of this section.

(vi) *Effect of termination of IET.* If the interest equalization tax expires, the provisions of section 861(a)(1)(G) and this subparagraph shall apply to interest paid on debt obligations only with respect to which a section 4912(c) election was made.

(vii) *Definition of term underwriter.* For purposes of section 861(a)(1)(G) and this subparagraph, the term "underwriter" shall mean any underwriter as defined in section 4919(c)(1).

(c) *Special rules*—(1) *Proration of interest from a foreign corporation deriving major portion of its income from U.S. business.* If, after applying the first sentence of paragraph (b)(3) of this section to interest to which that paragraph applies, it is determined that the interest may not be treated as income from sources without the United States, the amount of the interest from the foreign corporation which at some time during the taxable year is engaged in trade or business in the United States which is to be treated as income from sources within the United States shall be the amount that bears the same ratio to such interest as the gross income of such foreign corporation for the 3-year period ending with the close of its taxable year preceding its taxable year in which such interest is paid or credited (or for such part of such period as the corporation has been in existence) which was effectively connected with the conduct by such corporation of a trade or business in the United States bears to its gross income from all sources for such period.

(2) *Payors having no gross income for period preceding taxable year of payment.* If the resident alien individual, domestic corporation, or foreign corporation, as the case may be, paying interest has no gross income from any source for the 3-year period (or part thereof) specified in subparagraph (2) or (3) of paragraph (b) of this section, or subparagraph (1) of this paragraph, the 20-percent test or the 50-percent test, or the apportionment formula, as the case may be, described in such subparagraph shall be applied solely with respect to the taxable year of the payor in which the interest is paid or credited. This subparagraph applies whether the lack of gross income for the 3-year period (or part thereof) stems from the business inactivity of the payor, from the fact that the payor is a corporation which is newly created or organized, or from any other cause.

(3) *Transitional rule.* For purposes of applying paragraph (b)(3) of this section, and subparagraph (1) of this paragraph, the gross income of the foreign corporation for any period before the first taxable year beginning after December 31, 1966, which is from sources within the United States (determined as provided by sections 861 through 863, and the regulations thereunder, as in effect immediately before amendment by section 102 of the Foreign Investors Tax Act of 1966 (Pub. L. 89-809, 80 Stat. 1541)) shall be treated as gross income for such

period which is effectively connected with the conduct of a trade or business in the United States by such foreign corporation.

(4) *Gross income determinations.* In making determinations under subparagraph (2) or (3) of paragraph (b) of this section, or subparagraph (1) or (3) of this paragraph—

(i) The gross income of a domestic corporation or a resident alien individual is to be determined by excluding any items specifically excluded from gross income under chapter 1 of the Code, and

(ii) The gross income of a foreign corporation which is effectively connected with the conduct of a trade or business in the United States is to be determined under section 882(b) (2) and by excluding any items specifically excluded from gross income under chapter 1 of the Code, and

(iii) The gross income from all sources of a foreign corporation is to be determined without regard to section 882(b) and without excluding any items otherwise specifically excluded from gross income under chapter 1 of the Code.

(d) *Statement with return.* Any taxpayer who is required to file a return and applies any provision of this section to exclude an amount of interest from his gross income must file with his return a statement setting forth the amount so excluded, the date of its receipt, the name and address of the obligor of the interest, and, if known, the location of the records which substantiate the amount of the exclusion. A statement from the obligor setting forth such information and indicating the amount of interest to be treated as income from sources within the United States may be used for this purpose. See §§ 1.6012–1(b) (1) (i) and 1.6012–2(g) (1) (i).

(e) *Effective date.* This section applies with respect to taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.861–2 (Rev. as of Jan. 1, 1972).

PAR. 3. Section 1.861–3 is amended by revising paragraph (a) (3), by redesignating paragraph (b) as paragraph (c), by adding a new paragraph (b), by revising paragraph (c) as so redesignated, and by adding a new paragraph (d). These revised and added provisions read as follows:

§ 1.861–3 Dividends.

(a) *General.* * * *

(3) *Dividend from a foreign corporation*—(i) *In general.* (*a*) A dividend described in this subparagraph is a dividend from a foreign corporation (other than a dividend to which subparagraph (4) of this paragraph applies) unless less than 50 percent of the gross income from all sources of such foreign corporation for the 3-year period ending with the close of its taxable year preceding the taxable year in which occurs the declaration of such dividend (or for such part of such period as the corporation has been in existence) was effectively connected with the conduct by such corporation of a trade or business in the United States, as determined under section 864(c) and § 1.864–3. Thus, no portion of a dividend from a foreign corporation shall be treated as income from sources within the United States under section 861 (a) (2) (B) if less than 50 percent of the groups income of such foreign corporation from all sources for such 3-year period (or part thereof) was effectively connected with the conduct of a trade or business in the United States or if such foreign corporation had gross income for such 3-year period (or part thereof) but none was effectively connected with the conduct by such corporation of a trade or business in the United States.

(*b*) If 50 percent or more of the gross income from all sources of such foreign corporation for such 3-year period (or part thereof) was effectively connected with the conduct by such corporation of a trade or business in the United States, the amount of the dividend which is to be treated as income from sources within the United States under section 861(a) (2) (B) shall be the amount that bears the same ratio to such dividend as the gross income of such foreign corporation for such 3-year period (or part thereof) which was effectively connected with the conduct by such corporation of a trade or business in the United States bears to its gross income from all sources for such period.

(*c*) For purposes of this subdivision (i), the gross income which is effectively connected with the conduct of a trade or business in the United States includes the gross income which, pursuant to section 882 (d) or (e), is treated as income which is effectively connected with the conduct of a trade or business in the United States.

(ii) *Rule applicable in applying limitation on amount of foreign tax credit.* For purposes of determining under section 904 the limitation upon the amount of the foreign tax credit—

(*a*) So much of a dividend from a foreign corporation as exceeds (and only to the extent it so exceeds) the amount which is 100/85ths of the amount of the deduction allowable under section 245 (a) in respect of such dividend, plus

(*b*) An amount which bears the same proportion to any section 78 dividend to which the dividend from the foreign corporation gives rise as the amount of the excess determined under (*a*) of this subdivision bears to the total amount of the dividend from the foreign corporation,

shall, notwithstanding subdivision (i) of this subparagraph, be treated as income from sources without the United States. This subdivision applies to a dividend for which no dividends-received deduction is allowed under section 245 or for which the 85 percent dividends-received deduction is allowed under section 245(a) but does not apply to a dividend for which a deduction is allowable under section 245 (b). All of a dividend for which the 100 percent dividends-received deduction is allowed under section 245(b) shall be treated as income from sources within the United States for purposes of determining under section 904 the limitation upon the amount of the foreign tax credit. If the amount of a distribution of property other than money (constituting a dividend under section 316) is determined by applying section 301(b) (1) (C), such amount must be used as the dividend for purposes of applying (*a*) of this subdivision even though the amount used for purposes of section 245(a) is determined by applying section 301(b) (1) (D). In making determinations under this subdivision, a dividend (other than a section 78 dividend referred to in (*b*) of this subdivision) shall be determined without regard to section 78.

(iii) *Illustrations.* The application of this subparagraph may be illustrated by the following examples:

Example (1). D, a domestic corporation, owns 80 percent of the outstanding stock of M, a foreign manufacturing corporation. M, which makes its returns on the basis of the calendar year, has earnings and profits of $200,000 for 1971 and 60 percent of its gross income for that year is effectively connected for 1971 with the conduct of a trade or business in the United States. For an uninterrupted period of 36 months ending on December 31, 1970, M has been engaged in trade or business in the United States and has received gross income effectively connected with the conduct of a trade or business in the United States amounting to 60 percent of its gross income from all sources for such period. The only distribution by M to D for 1971 is a cash dividend of $100,000; of this amount, $60,000 ($100,000×60%) is treated under subdivision (i) of this subparagraph as income from sources within the United States, and $40,000 ($100,000−$60,000) is treated under § 1.862–1(a) (2) as income from sources without the United States. Accordingly, under section 245(a), D is entitled to a dividends-received deduction of $51,000 ($60,000×85%), and under subdivision (ii) of this subparagraph $40,000 ($100,000−[$51,000×100/85]) is treated as income from sources without the United States for purposes of determining under section 904(a) (1) or (2) the limitation upon the amount of the foreign tax credit.

Example (2). (a) The facts are the same as in example (1) except that the distribution for 1971 consists of property which has a fair market value of $100,000 and an adjusted basis of $30,000 in M's hands immediately before the distribution. The amount of the dividend under section 316 is $58,000, determined by applying section 301(b) (1) (C) as follows:

Portion of adjusted basis of property attributable to gross income of M effectively connected for 1971 with conduct of trade or business in United States ($30,000×60%)	$18,000
Portion of fair market value of property attributable to gross income of M not effectively connected for 1971 with conduct of trade or business in United States ($100,000×40%)	40,000
Total dividend	58,000

(b) Of the total dividend, $34,800 ($58,000×60% (percentage applicable to 3-year period)) is treated under subdivision (i) of this subparagraph as income from sources within the United States, and $23,200 ($58,000×40%) is treated under § 1.862–1(a) (2) as income from sources without the United States. However, by reason of section 245(c) the adjusted basis of the property ($30,000) is used under section 245(a) in determining the dividends-received deduction. Thus, under section 245(a), D is entitled to a dividends-received deduction of $15,300 ($30,000×60%×85%).

(c) Under subdivision (ii) of this subparagraph, the amount of the dividend for purposes of applying (*a*) of that subdivision is the amount ($58,000) determined by applying section 301(b)(1)(C) rather than the amount ($30,000) determined by applying section 301(b)(1)(B). Accordingly, under subdivision (ii) of this subparagraph $40,000 ($58,000−[$15,300×100/85]) is treated as income from sources without the United States for purposes of determining under section 904(a) (1) or (2) the limitation upon the amount of the foreign tax credit.

Example (*3*). (a) D, a domestic corporation which makes its returns on the basis of the calendar year, owns 100 percent of the outstanding stock of N, a foreign corporation which is not a less developed country corporation under section 902(d). N, which makes its returns on the basis of the calendar year, has total gross income for 1971 of $100,000, of which $80,000 (including $60,000 from sources within foreign country X) is effectively connected for that year with the conduct of a trade or business in the United States. For 1971 N is assumed to have paid $27,000 of income taxes to country X and to have accumulated profits of $81,000 for purposes of section 902(c)(1)(A). N's accumulated profits in excess of foreign income taxes amount to $54,000. For 1971 D receives a cash dividend of $42,000 from N, which is D's only income for that year.

(b) For 1971 D chooses the benefits of the foreign tax credit under section 901, and as a result is required under section 78 to include in gross income an amount equal to the foreign income taxes of $21,000 ($27,000×$42,000/$54,000) it is deemed to have paid under section 902(a)(1). Thus, assuming no other deductions for the taxable year, D has gross income of $63,000 ($42,000+$21,000) for 1971 less a dividends-received deduction under section 245(a) of $28,560 ([$42,000×$80,000/$100,000]×85%), or taxable income for 1971 of $34,440.

(c) Under subdivision (ii) of this subparagraph, for purposes of determining under section 904(a) (1) or (2) the limitation upon the amount of the foreign tax credit, $12,600 is treated as income from sources without the United States, determined as follows:

Excess of dividend from N over amount which is 100/85ths of amount of sec. 245(a) deduction ($42,000−[$28,560×100/85]) -----	$8,400
Proportionate part of sec. 78 dividend ($21,000×$8,400/$42,000) ---------	4,200
Taxable income from sources without the United States..	12,600

Example (*4*). A, an individual citizen of the United States who makes his return on the basis of the calendar year, receives in 1971 a cash dividend of $10,000 from M, a foreign corporation, which makes its return on the basis of the calendar year. For the 3-year period ending with 1970 M has been engaged in trade or business in the United States and has received gross income effectively connected with the conduct of a trade or business in the United States amounting to 80 percent of its gross income from all sources for such period. Of the total dividend, $8,000 ($10,000×80%) is treated under subdivision (i) of this subparagraph as income from sources within the United States and $2,000 ($10,000−$8,000) is treated under § 1.862-1(a)(2) as income from sources without the United States. Since under section 245 no dividends received-deduction is allowable to an individual, A is entitled under subdivision (ii) of this subparagraph to treat the entire dividend of $10,000 ($10,000−[$0×100/85]) as income from sources without the United States for purposes of determining under section 904(a) (1) or (2) the limitation upon the amount of the foreign tax credit.

(b) *Special rules*—(1) *Foreign corporation having no gross income for period preceding declaration of dividend.* If the foreign corporation has no gross income from any source for the 3-year period (or part thereof) specified in paragraph (a)(3)(i) of this section, the 50-percent test, or the apportionment formula, as the case may be, described in such paragraph shall be applied solely with respect to the taxable year of such corporation in which the declaration of the dividend occurs. This subparagraph applies whether the lack of gross income for the 3-year period (or part thereof) stems from the business inactivity of the foreign corporation, from the fact that such corporation is newly created or organized, or from any other cause.

(2) *Transitional rule.* For purposes of applying paragraph (a)(3)(i) of this section, the gross income of the foreign corporation for any period before the first taxable year beginning after December 31, 1966, which is from sources within the United States (determined as provided by sections 861 through 863, and the regulations thereunder, as in effect immediately before amendment by section 102 of the Foreign Investors Tax Act of 1966 (Pub. L. 89-809, 80 Stat. 1541)) shall be treated as gross income for such period which is effectively connected with the conduct of a trade or business within the United States by such foreign corporation.

(3) *Gross income determinations.* In making determinations under subparagraph (2) or (3) of paragraph (a) of this section, or subparagraph (2) of this paragraph—

(i) The gross income of a domestic corporation is to be determined by excluding any items specifically excluded from gross income under chapter 1 of the Code.

(ii) The gross income of a foreign corporation which is effectively connected with the conduct of a trade or business in the United States is to be determined under section 882(b)(2) and by excluding any items specifically excluded from gross income under chapter 1 of the Code, and

(iii) The gross income from all sources of a foreign corporation is to be determined without regard to section 882(b) and without excluding any items otherwise specifically excluded from gross income under chapter 1 of the Code.

(c) *Statement with return.* Any taxpayer who is required to file a return and applies any provision of this section to exclude any dividend from his gross income must file with his return a statement setting forth the amount so excluded, the date of its receipt, the name and address of the corporation paying the dividend, and, if known, the location of the records which substantiate the amount of the exclusion. A statement from the paying corporation setting forth such information and indicating the amount of the dividend to be treated as income from sources within the United States may be used for this purpose. See §§ 1.6012-1(b)(1)(i) and 1.6012-2(g)(1)(i).

(d) *Effective date.* This section applies with respect to dividends received or accrued after December 31, 1966. For corresponding rules applicable with respect to dividends received or accrued before January 1, 1967, see 26 CFR 1.861-3 (Rev. as of Jan. 1, 1972).

PAR. 4. Section 1.861-4 is amended by revising paragraph (a) and by adding a new paragraph (d), as follows:

§ 1.861-4 Compensation for labor or personal services.

(a) *In general.* (1) Gross income from sources within the United States includes compensation for labor or personal services performed in the United States irrespective of the residence of the payer, the place in which the contract for service was made, or the place or time of payment; except that such compensation shall be deemed not to be income from sources within the United States, if—

(i) The labor or services are performed by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during his taxable year,

(ii) The compensation for such labor or services does not exceed in the aggregate a gross amount of $3,000, and

(iii) The compensation is for labor or services performed as an employee of, or under any form of contract with—

(*a*) A nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(*b*) An individual who is a citizen or resident of the United States, a domestic partnership, or a domestic corporation, if such labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by such individual, partnership, or corporation.

(2) As a general rule, the term "day", as used in subparagraph (1)(i) of this paragraph, means a calendar day during any portion of which the nonresident alien individual is physically present in the United States.

(3) Solely for purposes of applying this paragraph, the nonresident alien individual, foreign partnership, or foreign corporation for which the nonresident alien individual is performing personal services in the United States shall not be considered to be engaged in trade or business in the United States by reason of the performance of such services by such individual.

(4) In determining for purposes of subparagraph (1)(ii) of this paragraph whether compensation received by the nonresident alien individual exceeds in the aggregate a gross amount of $3,000, any amounts received by the individual

from an employer as advances or reimbursements for travel expenses incurred on behalf of the employer shall be omitted from the compensation received by the individual, to the extent of expenses incurred, where he was required to account and did account to his employer for such expenses and has met the tests for such accounting provided in § 1.162-17 and paragraph (e)(4) of § 274-5. If advances or reimbursements exceed such expenses, the amount of the excess shall be included as compensation for personal services for purposes of such subparagraph. Pensions and retirement pay attributable to labor or personal services performed in the United States are not to be taken into account for purposes of subparagraph (1)(ii) of this paragraph. (5) For definition of the term "United States", when used in a geographical sense, see sections 638 and 7701(a)(9).

(b) *Amount includible in gross income*—(1) *Taxable years beginning after December 31, 1975.* (i) If a specific amount is paid for labor or personal services performed in the United States, that amount (if income from sources within the United States) shall be included in the gross income. If no accurate allocation or segregation of compensation for labor or personal services performed in the United States can be made, or when such labor or service is performed partly within and partly without the United States, the amount to be included in the gross income shall be determined on the basis that most correctly reflects the proper source of income under the facts and circumstances of the particular case. In many cases the facts and circumstances will be such that an apportionment on the time basis will be acceptable, that is, the amount to be included in gross income will be that amount which bears the same relation to the total compensation as the number of days of performance of the labor or services within the United States bears to the total number of days of performance of labor or services for which the payment is made. In other cases, the facts and circumstances will be such that another method of apportionment will be acceptable.

(ii) The application of this subparagraph may be illustrated by the following examples:

Example (1). B, a nonresident alien individual, was employed by M from March 1, 1976, to June 12, 1976, a total of 104 days, for which he received compensation in the amount of $12,240. During that period B was present in the United States 59 days. Under his contract B was subject to call at all times by his employer and was in a payment status on a 7-day week basis. There was no specific agreement as to the amount of pay for services performed within the United States; moreover, he received his stipulated salary payments regardless of the number of days per week he actually performed services. Under these circumstances the amount of compensation to be included in gross income as income from sources within the United States will be $6,943.85 ($12,240 x 59/104).

Example (2). C, a citizen of the United States, was a resident of a foreign country during his entire taxable year. He is employed by N, a domestic corporation, and paid a salary of $17,600 per annum. Under his contract C is required to work only on a 5-day week basis, Monday through Friday. During 1976 he was in the United States for 6 weeks, performing services therein for N for 30 work days. During the year he worked 240 days for N for which payment was made, determined by eliminating his vacation period for which no payment was made. Under these circumstances the amount of compensation for personal services performed in the United States is $2,200 ($17,600 x 30/240).

(2) *Taxable years beginning before January 1, 1976.* If a specific amount is paid for labor or personal services performed in the United States, that amount (if income from sources within the United States) shall be included in the gross income. If no accurate allocation or segregation of compensation for labor or personal services performed in the United States can be made, or when such labor or service is performed partly within and partly without the United States, the amount to be included in the gross income shall be determined by an apportionment on the time basis; that is, there shall be included in the gross income an amount which bears the same relation to the total compensation as the number of days of performance of the labor or services within the United States bears to the total number of days of performance of labor or services for which the payment is made.

* * * * *

(d) *Effective date.* This section applies with respect to taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.861-4 (Rev. as of Jan. 1, 1972).

PAR. 5. Section 1.861-5 is revised to read as follows:

§ 1.861-5 Rentals and royalties.

Gross income from sources within the United States includes rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of, or for the privilege of using, in the United States, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property. The income arising from the rental of property, whether tangible or intangible, located within the United States, or from the use of property, whether tangible or intangible, within the United States, is from sources within the United States. For taxable years beginning after December 31, 1966, gains described in section 871(a)(1)(D) and section 881(a)(4) from the sale or exchange after October 4, 1966, of patents, copyrights, and other like property shall be treated, as provided in section 871(e)(2), as rentals or royalties for the use of, or privilege of using, property or an interest in property. See paragraph (e) of § 1.871-11.

PAR. 6. Section 1.861-8 is amended by revising paragraph (b) to read as follows:

§ 1.861-8 Computation of taxable income from sources within the United States.

* * * * *

(b) *Personal exemptions.* The deductions for the personal exemptions allowed by section 151 or 642(b) shall not be taken into account for purposes of paragraph (a) of this section but shall be allowed as deductions from the taxable income computed thereunder, if and to the extent that such deductions are allowable for purposes of computing the taxable income of the taxpayer. See sections 641(b), 873, 904(c), and 931(e), and the regulations thereunder.

* * * * *

PAR. 7. Section 1.862-1 is amended by revising paragraph (a) to read as follows:

§ 1.862-1 Income specifically from sources without the United States.

(a) *Gross income.* (1) The following items of gross income shall be treated as income from sources without the United States:

(i) Interest other than that specified in section 861(a)(1) and § 1.861-2 as being derived from sources within the United States;

(ii) Dividends other than those derived from sources within the United States as provided in section 861(a)(2) and § 1.861-3;

(iii) Compensation for labor or personal services performed without the United States;

(iv) Rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of, or for the privilege of using, without the United States, patents, copyrights, secret processes and formulas, good-will, trademarks, trade brands, franchises, and other like property;

(v) Gains, profits, and income from the sale of real property located without the United States; and

(vi) Gains, profits, and income derived from the purchase of personal property within the United States and its sale without the United States.

For rules treating certain interest as income from sources without the United States, see paragraph (b) of § 1.861-2. For the treatment of compensation for labor or personal services performed partly within the United States and partly without the United States, see paragraph (b) of § 1.861-4.

(2) In applying subparagraph (1)(iv) of this paragraph for taxable years beginning after December 31, 1966, gains described in section 871(a)(1)(D) and section 881(a)(4) from the sale or exchange after October 4, 1966, of patents, copyrights, and other like property shall be treated, as provided in section 871(e)(2), as rentals or royalties for the use of, or privilege of using, property or an interest in property. See paragraph (e) of § 1.871-11.

(3) For determining the time and place of sale of personal property for purposes

of subparagraph (1)(vi) of this paragraph, see paragraph (c) of § 1.861-7.

(4) Income derived from the purchase of personal property within the United States and its sale within a possession of the United States shall be treated as derived entirely from within that possession.

(5) If interest is paid on an obligation of a nonresident of the United States by a resident of the United States acting in the resident's capacity as a guarantor of the obligation of the nonresident, the interest will be treated as income from sources without the United States.

(6) For rules treating certain interest as income from sources without the United States, see paragraph (b) of § 1.861-2.

(7) For the treatment of compensation for labor or personal services performed partly within the United States and partly without the United States, see paragraph (b) of § 1.861-4.

* * * * *

PAR. 8. Section 1.863-6 is revised to read as follows:

§ 1.863-6 Income from sources within a foreign country or possession of the United States.

The principles applied in §§ 1.861-1 to 1.863-5, inclusive, for determining the gross and the taxable income from sources within and without the United States shall generally be applied, for purposes of the income tax, in determining the gross and the taxable income from sources within and without a foreign country, or within and without a possession of the United States. This section shall not apply, however, to the extent it is determined by applying § 1.863-3 that a portion of the taxable income is from sources within the United States and the balance of the taxable income is from sources within a foreign country or possession of the United States. In the application of this section the name of the particular foreign country or possession of the United States shall be substituted for the term "United States", and the term "domestic" shall be construed to mean created or organized in such foreign country or possession. In applying section 861 and the regulations thereunder for purposes of this section, references to sections 243, 245, and 931 shall be excluded, and the exception in section 861(a)(3) shall not apply. In the case of any item of income, the income from sources within a foreign country or possession of the United States shall not exceed the amount which, by applying any provision of §§ 1.861-1 to 1.863-5, inclusive, without reference to this section, is treated as income from sources without the United States.

PAR. 9. Section 1.864-2 is amended by revising paragraph (b)(2) (ii) and (iv) to read as follows:

§ 1.864-2 Trade or business within the United States.

* * * * *

(b) *Performance of personal services for foreign employer.* * * *

(2) *Rules of application.* * * *

(ii) Solely for purposes of applying this paragraph, the nonresident alien individual, foreign partnership, or foreign corporation for which the nonresident alien individual is performing personal services in the United States shall not be considered to be engaged in trade or business in the United States by reason of the performance of such services by such individual.

* * * * *

(iv) In determining for purposes of subparagraph (1) of this paragraph whether compensation received by the nonresident alien individual exceeds in the aggregate a gross amount of $3,000, any amounts received by the individual from an employer as advances or reimbursements for travel expenses incurred on behalf of the employer shall be omitted from the compensation received by the individual, to the extent of expenses incurred, where he was required to account and did account to his employer for such expenses and has met the tests for such accounting provided in § 1.162-17 and paragraph (e)(4) of § 1.274-5. If advances or reimbursements exceed such expenses, the amount of the excess shall be included as compensation for personal services for purposes of such subparagraph. Pensions and retirement pay attributable to personal services performed in the United States are not to be taken into account for purposes of subparagraph (1) of this paragraph.

* * * * *

PAR. 10. Section 1.895 is amended by revising section 895 and the historical note to read as follows:

§ 1.895 Statutory provisions; income derived by a foreign central bank of issue from obligations of the United States or from bank deposits.

SEC. 895. *Income derived by a foreign central bank of issue from obligations of the United States or from bank deposits.* Income derived by a foreign central bank of issue from obligations of the United States or of any agency or instrumentality thereof (including beneficial interests, participations, and other instruments issued under section 302(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717)) which are owned by such foreign central bank of issue, or derived from interest on deposits with persons carrying on the banking business, shall not be included in gross income and shall be exempt from taxation under this subtitle unless such obligations or deposits are held for, or used in connection with, the conduct of commercial banking functions or other commercial activities. For purposes of the preceding sentence the Bank for International Settlements shall be treated as a foreign central bank of issue.

[Sec. 895 as added by sec. 1, Act of May 4, 1961 (Pub. L. 87-29, 75 Stat. 64); as amended by sec. 102(a)(4), Foreign Investors Tax Act 1966 (80 Stat. 1543)]

PAR. 11. Section 1.895-1 is amended to read as follows:

§ 1.895-1 Income derived by a foreign central bank of issue, or by Bank for International Settlements, from obligations of the United States or from bank deposits.

(a) *In general.* Income derived by a foreign central bank of issue from obligations of the United States or of any agency or instrumentality thereof, or from interest on deposits with persons carrying on the banking business, is excluded from the gross income of such bank and is exempt from income tax if the bank is the owner of the obligations or deposits and does not hold the obligations or deposits for, or use them in connection with, the conduct of a commercial banking function or other commercial activity by such bank. For purposes of this section and paragraph (i) of § 1.1441-4, obligations of the United States or of any agency or instrumentality thereof include beneficial interests, participations, and other instruments issued under section 302(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717). See 24 CFR Part 1600 et seq.

(b) *Foreign central bank of issue.* (1) A foreign central bank of issue is a bank which is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. Such a bank is generally the custodian of the banking reserves of the country under whose law it is organized. See also paragraph (b)(5) of § 1.861-2. (2) The exclusion granted by section 895 applies to an instrumentality that is separate from a foreign government, whether or not owned in whole or in part by a foreign government. For example, foreign banks organized along the lines of, and performing functions similar to, the Federal Reserve System qualify as foreign central banks of issue for purposes of this section. (3) The Bank of International Settlements shall be treated as though it were a foreign central bank of issue for purposes of obtaining the exclusion granted by section 895.

(c) *Ownership of United States obligations or bank deposits.* The exclusion does not apply if the obligations or bank deposits from which the income is derived are not owned by the foreign central bank of issue. Obligations held, or deposits made, by a foreign central bank of issue as agent, custodian, trustee, or in any other fiduciary capacity, shall be considered as not owned by such bank for purposes of this section.

(d) *Commercial banking function or other commercial activity.* The exclusion applies only to obligations of the United States or of any agency or instrumentality thereof, or to bank deposits, held for, or used in connection with, the conduct of a central banking function and not to obligations or deposits held for, or used in connection with, the conduct of commercial banking functions or other commercial activities by the foreign central bank.

(e) *Other exclusions.* See section 861 (a)(1)(A) and § 1.861-2(b) (1) and (4).

for special rules relating to interest paid or credited before January 1, 1977, on deposits and on similar amounts and for rules on interest derived from bankers' acceptances. For exemption from withholding under § 1.1441-1 on income derived by a foreign central bank of issue, or by the Bank for International Settlements, from obligations of the United States or of any agency or instrumentality thereof, or from bank deposits, see § 1.1441-4(i).

(f) *Effective date.* This section shall apply with respect to taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.85-1 (Rev. as of Jan. 1, 1972).

PAR. 12. Section 1.902-1 is amended by revising pragraph (c) to read as follows:

§ 1.902-1 Credit for domestic corporate shareholder of a foreign corporation (before amendment by Revenue Act of 1962).

* * * * *

(c) *Source of income of foreign subsidiaries and country to which tax is deemed to be paid.* For the purpose of section 904(a)(1) (relating to the per-country limitation), a dividend from a foreign corporation (at least 10 percent of whose voting stock is owned by a domestic corporation) shall be deemed to be derived from sources within the foreign country or possession of the United States under the laws of which such foreign corporation is created or organized, to the extent that under section 861(a)(2)(B) (before amendment by section 9(c), Revenue Act of 1962, 76 Stat. 1001) such dividend is treated as income from sources without the United States. In addition, for purposes of section 904 all income, war profits, and excess profits taxes paid, or deemed to be paid under section 902, by such foreign corporation to any foreign country or possession of the United States shall be deemed to be paid to the foreign country or possession under the laws of which such foreign corporation is created or organized.

* * * * *

PAR. 13. Section 1.902-3 is amended by adding a new paragraph (d)(1) to read as follows:

§ 1.902-3 Credit for domestic corporate shareholder of a foreign corporation (after amendment by Revenue Act of 1962).

* * * * *

(d) *Source of income from first-tier corporation and country to which tax is deemed paid*—(1) *Source of income.* For purposes of section 904(a)(1) (relating to the per-country limitation), in the case of a dividend received by a domestic shareholder from a first-tier corporation there shall be deemed to be derived from sources within the foreign country or possession of the United States under the laws of which the first-tier corporation is created or organized the sum of the amounts which under paragraph (a)(3)(ii) of § 1.861-3 are treated, with respect to such dividend, as income from sources without the United States.

* * * * *

PAR. 14. Section 1.1441-3 is amended by revising paragraph (c)(1) to read as follows:

§ 1.1441-3 Exceptions and rules of special application.

* * * * *

(c) *Interest*—(1) *Government obligations.* Withholding is required under § 1.1441-1 in the case of interest paid on obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof. See section 103 and the regulations thereunder, relating to the taxation of such interest, and § 1.1461-1, relating to ownership certificates.

* * * * *

PAR. 15. Section 1.1441-4 is amended by adding a new paragraph (i) to read as follows:

§ 1.1441-4 Exemptions from withholding.

* * * * *

(i) *Income of foreign central bank of issue or Bank for International Settlements.* (1) Section 895 provides for the exclusion from gross income of certain income derived by a foreign central bank of issue, or by the Bank of International Settlements, from obligations of the United States or of any agency or instrumentality thereof or from bank deposits. In the absence of knowledge that a foreign central bank of issue, or the Bank for International Settlements, is operating without the scope of the exclusion granted by section 895, the withholding agent is not required to withhold under § 1.1441-1 upon income derived by such bank from obligations of the United States or of any agency or instrumentality thereof, or upon interest derived from deposits with persons carrying on the banking business, if the withholding agent receives from the bank a statement certifying that the bank—

(i) Is a foreign central bank of issue, or the Bank for International Settlements, as the case may be,

(ii) Is the owner of the obligations of the United States or of any agency or instrumentality thereof, or the owner of such bank deposits, as the case may be, and

(iii) Does not, and will not, hold such obligations or such bank deposits for, or use them in connection with, the conduct of a commercial banking function or other commercial activity.

(2) A copy of the statement filed pursuant to subparagraph (1) of this paragraph shall be forwarded by the withholding agent with, and attached to, the Form 1042S required by paragraph (c) of § 1.1461-2 with respect to payments of income made on such obligations or bank deposits during the calendar year.

[FR Doc.75-26298 Filed 9-29-75;10:02 am]

Title 32—National Defense

CHAPTER XVI—SELECTIVE SERVICE SYSTEM

PART 1622—CLASSIFICATION RULES AND PRINCIPLES

CFR Correction

Section 1622.2 appearing on page 23 of the volume 32 CFR Part 1600 to End, Revised as of July 1, 1975 is corrected to read in its entirety as follows:

§ 1622.2 Classes.

Each registrant shall be classified in one of the classes established in this Part.

[39 FR 44015, Dec. 20, 1974]

BASIS

The amendatory language reading, "In § 1622.2, the introductory text is amended to read as follows", as it appeared in FR Doc. 74-29640, (39 FR 44015, Dec. 20, 1974) was incorrectly stated. The amendatory language should have read, "Section 1622.2 is revised to read as follows".

Title 45—Public Welfare

CHAPTER X—COMMUNITY SERVICES ADMINISTRATION

PART 1076—ECONOMIC DEVELOPMENT PROGRAMS

Subpart—Special Impact Program Policies and Priorities

The Special Impact Program administered by the Community Services Administration is a national program established by statute which focuses on a limited number of organizations and on the community economic development approach to the elimination of poverty. This subpart establishes the policy of CSA's Office of Economic Development (OED) with respect to the objectives, priorities, and structure of the Special Impact Program and its CDC grantees. This policy statement was developed in cooperation with grantees and represents a landmark effort in the establishment of policy representing both the responsibilities of the administering office and the recipients of financial assistance.

CSA welcomes comments and recommended changes. Please address all correspondence to Louis Ramirez, Associate Director, Office of Economic Development, Community Services Administration, 1200-19th Street, NW., Washington, D.C. 20506. Comments must be received on or before November 3, 1975.

Effective date. This subpart is effective on or before November 3, 1975.

BERT A. GALLEGOS,
Director.

Subpart—Special Impact Program Policies and Priorities