

Single woman whose mother lived with her part of year held not head of family. 11 B. T. A. 296.

Taxpayer held head of family. 11 B. T. A. 409.

Petitioner held entitled to credit for minor children who lived with his wife but whose entire support was furnished by him. 11 B. T. A. 441.

5. Credit for dividends.—Gain realized in liquidation of corporation, which is distribution of earnings or profits, constitutes "dividend," within meaning of provisions exempting it from normal tax. *Hellmich v. Hellman* (C. C. A. Mo. 1927) 18 F.(2d) 239, affirmed (1928) 48 S. Ct. 244, 276 U. S. 233, 72 L. Ed. —.

Petition in suit to recover additional income tax, alleging surplus at liquidation was accumulated earnings and profits, held to sufficiently describe nature of surplus. *Id.*

A stockholder in a corporation, which pays a tax on its net income, is entitled to have the amount of his dividends

credited on his normal tax, but not on the surtax, under Act Sept. 8, 1916, § 5 (repealed). *Park v. Gilligan* (D. C. Ohio, 1921) 293 F. 129.

Surplus distributed to stockholders on dissolution of corporation held not "dividends" deductible in computing normal tax. *Langstaff v. Lucas* (D. C. Ky. 1925) 9 F.(2d) 691, affirmed (C. C. A. 1926) 13 F.(2d) 1022, certiorari denied (1926) 47 S. Ct. 111, 273 U. S. 721, 71 L. Ed. 838.

Amount of liquidating dividend in excess of cost of stock constitutes income subject to normal and surtax rates. 6 B. T. A. 298.

Distributions in liquidation of a corporation to the extent of the earnings or profits accumulated since February 28, 1913, are subject to the surtax and exempt from the normal tax under Act 1921. 8 B. T. A. 276.

Evidence held not to show error in not treating part of an amount received as a dividend exempt from normal tax. 8 B. T. A. 1276.

§ 958. Nonresident aliens; gross income from sources within and without United States; deductions; allocation of items; definitions; returns; claims for credits. (a) In the case of a nonresident alien individual or of a citizen entitled to the benefits of section 1030 of this title, the following items of gross income shall be treated as income from sources within the United States:

(1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including (A) interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States and not having an office or place of business therein, or (B) interest received from a resident alien individual, a resident foreign corporation, or a domestic corporation, when it is shown to the satisfaction of the Commissioner that less than 20 per centum of the gross income of such resident payor or domestic corporation has been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such payor preceding the payment of such interest, or for such part of such period as may be applicable;

(2) The amount received as dividends (A) from a domestic corporation other than a corporation entitled to the benefits of section 1030, and other than a corporation less than 20 per centum of whose gross income is shown to the satisfaction of the commissioner to have been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or (B) from a foreign corporation unless less than 50 per centum of the gross income of such foreign corporation for the three-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 de-

rived from sources within the United States as determined under the provisions of this section;

(3) Compensation for labor or personal services performed in the United States;

(4) 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; and

(5) Gains, profits, and income from the sale of real property located in the United States.

(b) From the items of gross income specified in subdivision (a) there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States.

(c) The following items of gross income shall be treated as income from sources without the United States:

(1) Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a);

(2) Dividends other than those derived from sources within the United States as provided in paragraph (2) of subdivision (a);

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

(4) 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, trade-marks, trade brands, franchises, and other like property; and

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

(d) From the items of gross income specified in subdivision (c) there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as net income from sources without the United States.

(e) Items of gross income, expenses, losses and deductions, other than those specified in subdivisions (a) and (c), shall be allocated or apportioned to sources within or without the United States under rules and regulations prescribed by the commissioner with the approval of the Secretary. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the net income therefrom) the expenses, losses and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as

net income from sources within the United States. In the case of gross income derived from sources partly within and partly without the United States, the net income may first be computed by deducting the expenses, losses or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses or other deductions which can not definitely be allocated to some items or class of gross income; and the portion of such net income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the commissioner with the approval of the Secretary. Gains, profits and income from (1) transportation or other services rendered partly within and partly without the United States, or (2) from the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the United States, or produced (in whole or in part) by the taxpayer without and sold within the United States, shall be treated as derived partly from sources within and partly from sources without the United States. Gains, profits and income derived from the purchase of personal property within and its sale without the United States or from the purchase of personal property without and its sale within the United States, shall be treated as derived entirely from sources within the country in which sold, except that gains, profits and income derived from the purchase of personal property within the United States and its sale within a possession of the United States or from the purchase of personal property within a possession of the United States and its sale within the United States shall be treated as derived partly from sources within and partly from sources without the United States.

(f) As used in this section the words "sale" or "sold" include "exchange" or "exchanged"; and the word "produced" includes "created," "fabricated," "manufactured," "extracted," "processed," "cured," or "aged."

(g) (1) Except as provided in paragraph (2) a nonresident alien individual or a citizen entitled to the benefits of section 1030 shall receive the benefit of the deductions and credits allowed in this chapter only by filing or causing to be filed with the collector a true and accurate return of his total income received from all sources in the United States, in the manner prescribed in this title; including therein all the information which the commissioner may deem necessary for the calculation of such deductions and credits.

(2) The benefit of the credits allowed in subdivisions (d) and (e) of section 957, and of the reduced rate of tax provided for in subdivision (b) of section 951, may, in the discretion of the commissioner and under regulations prescribed by him with the approval of the Secretary, be received by a nonresident alien individual entitled thereto, by filing a claim therefor with the withholding agent. (June 2, 1924, 4.01 p. m., c. 234, § 217, 43 Stat. 273; Feb. 26, 1926, c. 27, § 217, 44 Stat. 30.)

Historical Note

This is from section 217 of the Revenue Act of 1926, cited to the text, which reenacted with changes in par. (4) of subd. (c) and subd. (e), the provisions of section 217 of the Revenue Act of 1924, cited to the text, which had been carried into the Code, and which was repealed by § 1200 of the Act of 1926, 44 Stat. 125, to take effect Jan. 1, 1925.

By § 286 of said Act of 1926 (44 Stat.

60), § 217 was made to take effect as of Jan. 1, 1925.

See note to § 1a.

The change in par. (4) of subd. (c) consisted of the substitution of the word "properties" for "property" near the end of the paragraph. The change in subd. (e) consisted of the addition of the exception at the end of the section beginning with the words "except that gains, profits, and income derived from the purchase of personal property."

Provisions largely similar to those of the Act of 1924 were contained in section 217 of the Revenue Act of 1921, and provisions on the subject-matter of subd. (g), in section 217 of the Revenue Act of 1918 (Act Feb. 24, 1919). Provisions concerning the computation of the net income of nonresident aliens were also contained in section 6 of the Revenue Act of 1916, as amended by section 1202 of the Revenue Act of 1917. All of these provisions have been repealed.

Cross-References

For corresponding provisions of the Revenue Act of 1928, see sections 2119 and 2215 of this title.

Notes of Decisions

1. Treasury regulations.—As to the existing and the proposed Articles 312 to 315, inclusive, of Regulations 45 of the Treasury Department, which relate to the taxation of nonresident aliens and which are herein set forth: Held, "That Article 314 as existing and Articles 312, 314 as proposed are invalid, and that Articles 312 as existing and 313 and 315, both as existing and as proposed, are valid. (1921) 32 Op. Atty. Gen. 497.

2. Income and nonresident aliens in general.—Within Act Oct. 3, 1913, § 2a, subd. 1 (repealed), providing for tax on income from all property, bonds, mortgages, and certificates of stock are "property," and not mere evidences of ownership of interests which are property. *De Ganay v. Lederer* (1919) 39 S. Ct. 524, 250 U. S. 376, 66 L. Ed. 1042. "Property within the United States," income from which, though it is owned by a nonresident alien, as subjected to tax by Act Oct. 3, 1913, § 2a, subd. 1, includes stocks and bonds of corporations organized under its laws, and bonds and mortgages secured on property in the state: the certificates of stock and the bonds and mortgages being in the state, with a company holding them under power of attorney not only to collect interest and dividends, but to sell and reinvest. *Id.*

To the same effect, see *De Ganay v. Lederer* (D. C. Pa. 1917) 239 F. 568, *Contra*, (1915) 30 Op. Atty. Gen. 230, 273, 435.

See, also, (1920) 32 Op. Atty. Gen. 336.

Nonresident alien individual is taxable only on such portion of salary as was paid to him for services rendered within United States. 3 B. T. A. 838.

Capital or labor from which income is derived in United States need not be within territorial jurisdiction of United States in order that income may be taxed. 5 B. T. A. 402.

Where goods are manufactured abroad by nonresident alien individuals and sold in the United States, entire profit constitutes "gross income from sources within the United States," within sec. 213 (c),

Act 1918 (repealed). 5 B. T. A. 402; 11 B. T. A. 841.

The statute does not provide for the apportionment or exclusion of any part of the profit in determining the source of the income from such sales. 5 B. T. A. 402.

Nonresident alien selling in foreign countries goods purchased in the United States and maintaining in New York City an office for the purchase of such goods did not derive income from a source within the United States under the Revenue Acts of 1916, 1917, 1918, and 1921. 12 B. T. A. 1102.

Where such alien entered into a partnership with the manager of his New York office manager was liable to income tax under Revenue Act of 1921 in respect of his pro rata share of the profits of the partnership, but the nonresident alien was exempt in respect of his share of the profits of the partnership. *Id.*

3. Dividends.—Dividends received by nonresident alien individual through agent in United States, on stock of foreign corporation practically all of whose property is located in foreign country but which has an office and a small portion of its property in United States, and derives part of its income from sources within United States, does not constitute gross income from sources within United States, within sec. 213 (c), Act 1918 (repealed). 6 B. T. A. 415.

4. Interest.—Interest on foreign bonds paid to nonresident alien individual while bonds are held within United States as security for a loan, do not constitute gross income from sources within United States, within sec. 213 (c), Act 1918 (repealed). 6 B. T. A. 412.

That bonds had a temporary situs within United States and that interest thereon was received through agent of obligor located within United States, does not change source of income. *Id.*

Interest credited and paid held none other than modification of distributive shares and to be included in gains and profits from sales of merchandise within the United States. 11 B. T. A. 841.

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