

Treasury Department : : Bureau of Internal Revenue

# Cumulative Bulletin

No. 1

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INCOME TAX RULINGS

Nos. 1-655, Inclusive

THE INCOME TAX RULINGS constitute a service of information from which taxpayers and their counsel may obtain the best available indication of the trend and tendency of official opinion in the administration of the income and profits tax provisions of the Revenue Acts. The rulings have none of the force or effect of Treasury Decisions and do not commit the Department to any interpretation of law which has not been formally approved and promulgated by the Secretary of the Treasury. Each ruling embodies the administrative application of the law and Treasury Decisions to the entire state of facts upon which a particular case arises. It is especially to be noted that the same result will not necessarily be reached in another case unless all the material facts are identical with those of the reported case. As it is not always feasible to publish a complete statement of the facts underlying each ruling, there can be no assurance that any new case is identical with the reported case. As bearing out this distinction, it may be observed that the rulings published from time to time may appear to reverse rulings previously published.

Officers of the Bureau of Internal Revenue are especially cautioned against reaching a conclusion in any case merely on the basis of similarity to a published Income Tax Ruling, and should base their judgment on the application of all pertinent provisions of the law and Treasury Decisions to all of the facts in each case. The Income Tax Rulings should be used merely as aids in studying the law and the Treasury Decisions.



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**The Income Tax Bulletin Service for 1920 consisting of Weekly Bulletins of income-tax rulings, Bimonthly Digests of rulings published in the Weekly Bulletins, and semiannual Cumulative Bulletins with the full rulings published in the previous six months Weekly Bulletins assembled under the various section and article numbers, can be obtained by the public by subscription, price \$2 a year. Subscriptions should be sent to the Superintendent of Public Documents, Government Printing Office, Washington, D. C.**

## INTRODUCTION.

Special attention is directed to the statement on the front cover. The Cumulative Bulletin, December, 1919, contains Treasury Decisions and rulings of general interest relating to income and profits taxes issued between April 1, 1919, and December 31, 1919. These include Treasury Decisions, Solicitor's Law Opinions, Solicitor's Memoranda, Advisory Tax Board Recommendations and Memoranda, Recommendations and Memoranda of the Committee on Appeals and Review, and office decisions.

The following abbreviations are used:

- T. D.=Treasury Decision.
- O.=Solicitor's Law Opinion.
- S.=Solicitor's Memorandum.
- T. B. R.=Advisory Tax Board Recommendation.
- T. B. M.=Advisory Tax Board Memorandum.
- A. R. R.=Committee on Appeals and Review Recommendation.
- A. R. M.=Committee on Appeals and Review Memorandum.
- O. D.=Office Decision.
- A, B, C, etc.=Represent the names of individuals.
- M, N, X, Y, Z, etc.=Represent the names of corporations, places, or businesses, according to context.
- x is used to represent a certain number.
- x dollars or \$x is used to represent a sum of money. x preceded by a number (15x) represents an amount equal to the amount represented by x multiplied by the number preceding x.

The Cumulative Bulletin is to be used supplementary to Regulations 45. Thus, if a question arose in regard to depreciation of intangible property, the first step would be to look in the index of Regulations 45, which gives article 163. Under this article the subject "depreciation of intangible property" is treated, but if further research is desired, the investigator finds the number of the section of the 1918 law (ordinarily at the top of the page of the regulations; in this case §214) covering this subject. In the Cumulative Bulletin he will find the ruling under the same section number.

References to section and article numbers are to sections of the Revenue Act of 1918, and to Articles of Regulations 45 (final edition), unless otherwise stated.

Rulings are arranged in the numerical order of the sections of the Revenue Act of 1918 to which they relate. To assist taxpayers in locating rulings on the subjects covered by the various sections the following brief outline of the arrangement of the Revenue Act of 1918 is given:

- Section 1.....General definitions.
- Sections 200 to 261.....Income tax.
- Sections 300 to 337.....Excess profits and war profits tax.
- Sections 1300 to 1408.....General administrative and miscellaneous.

The sections relating to income tax are as follows:

*General provisions—*

- Section 200. Income tax definitions.  
 201. Dividends.  
 202. Basis for determining gain or loss.  
 203. Inventories.  
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*Individuals and corporations.*

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*Administrative provisions—*

- Section 250. Payment of taxes.  
 251. Receipts for taxes.  
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 257. Returns to be public records.  
 258. Publication of statistics.  
 259. Collection of foreign items.  
 260. Citizens of United States possessions.  
 261. Porto Rico and Philippine Islands.

**Section 215, Article 294: Premiums on business insurance.** 1-19-65.  
O. D. 48.

Where an insurance policy is taken out by a wife on the life of her husband and she pays the premiums thereon and becomes the beneficiary in the event of the husband's death, the amount of such premiums may not be deducted.

**Section 215, Article 294: Premiums on business insurance.** 13-19-422.  
O. D. 243.

Premiums paid by a partnership for accident and health insurance policies covering the lives of the individual partners are not deductible from gross income of the partnership.

**Section 216.—CREDITS ALLOWED.**

**Section 216, Article 301: Credits against net income.** 5-19-252.  
(Also Section 234, Article 561.) T. B. M. 21.

Taxability of dividends received from foreign corporations deriving income from sources within the United States.

Any amount however large received as dividends from a corporation taxable upon income derived from sources within the United States, however small such income may be, is exempt from the normal tax under section 216 (a) or, in case the recipient is a corporation, under section 234(a) (6).

**Section 216, Article 301: Credits against net income.**

(See 23-19-612; sec. 213(b), art. 84.) Dividends from corporations having income exempt under section 213(b)7.

**Section 216, Article 302: Personal exemption of head of family.**

(See 3-19-184; sec. 213(b), art. 86.) The personal exemption allowed a married man and the exemption for dependents are not included in the \$3,500 exemption for men in military service.

**Section 216, Article 304: Credit for dependents.** 4-19-220.  
O. D. 139.

An American citizen may claim the credit for dependents irrespective of the nationality or place of residence of the dependents.

**Section 216, Article 306: Credits to nonresident alien individual.** 1-19-66.  
O-785.

Rule for taxing income of person who becomes a citizen during the taxable year.

Where a nonresident alien taxpayer becomes a citizen or resident of the United States during the taxable year he is taxable for the entire year upon income derived from all sources.

**Section 216, Article 307: When nonresident alien individual entitled to personal exemption.** 20-19-508.  
T. D. 2922.

Amending article 307, final edition of Regulations 45, dealing with nonresident alien individual entitled to personal exemption and credit for dependents.

The final edition of Regulations 45 is amended by changing article 307 to read as follows:

**ART. 307. When nonresident alien individual entitled to personal exemption:**  
 (a) The following is an incomplete list of countries which either impose no income tax or in imposing an income tax allow both a personal exemption and a credit for dependents which satisfy the similar credit requirement of the statute: Argentina, Belgium, Bohemia, Bolivia, Bosnia, Brazil, Bukowina, Canada, Carinthia, Carniola, China, Chile, Cuba, Dalmatia, Denmark, Ecuador, Egypt, France, Galicia, Goritz, Gradisca, Herzegovina, Istria, Lower Austria, Mexico, Montenegro, Moravia, Morocco, Newfoundland, Nicaragua, Norway, Panama, Paraguay, Persia, Peru, Portugal, Roumania, Russia (including Poles owing allegiance to Russia), Salzburg, Santo Domingo, Serbia, Siam, Silesia, Styria, Spain, Trieste, Tyrol, Upper Austria, Union of South Africa, Venezuela. (b) The following is an incomplete list of countries which in imposing an income tax allow a personal exemption which satisfy the similar credit requirement of the statute, but do not allow a credit for dependents: Bachka, Banat of Temesvar, Croatia, Salvador, India, Italy, Slavonia, Slovakia, Transylvania. (c) The following is an incomplete list of countries which in imposing an income tax do not allow to citizens of the United States not residing in such country either a personal exemption or a credit for dependents and, therefore, fail entirely to satisfy the similar credit requirement of the statute: Australia, Costa Rica, Great Britain and Ireland, Japan, The Netherlands, New Zealand, Sweden. The former names of certain of these territories are here used for convenience, in spite of an actual or possible change in name or sovereignty. A nonresident alien individual who is a citizen or subject of any country in the first list is entitled for the purpose of the normal tax to such credit for a personal exemption and for dependents as his family status may warrant. If he is a citizen or subject of any country in the second list he is entitled to a credit for personal exemption, but to none for dependents. If he is a citizen or subject of any country in the third list he is not entitled to credit for either a personal exemption or for dependents. If he is a citizen or subject of a country which is in none of the lists, then to secure credit for either a personal exemption or for dependents he must prove to the satisfaction of the Commissioner that his country does not impose an income tax or that in imposing an income tax it grants the similar credit required by the statute.

**Section 216, Article 307: When nonresident alien individual entitled to personal exemption.** 2-19-153.  
S-969.

Where a country imposes an income tax but does not levy a tax on income derived from sources therein by citizens of the United States, a citizen of such country who is a nonresident of the United States is entitled to claim the credits provided for in paragraphs (c) and (d) of section 216 of the Revenue Act of 1918 in preparing a return of income derived from sources within the United States.

The question has been asked as to whether a nonresident alien is entitled to the credits provided for in paragraphs (c) and (d) of section 216 of the Revenue Act of 1918, in filing a return of income derived from sources within the United States, if the country of which the nonresident alien is a citizen imposes an income tax, but such tax does not apply to citizens of the United States.

Section 216, paragraphs (c), (d), and (e), of the Revenue Act of 1918, provides:

(c) In the case of a single person, a personal exemption of \$1,000, or in the case of the head of a family or a married person living with husband or wife, a personal exemption of \$2,000. A husband and wife living together shall receive but one personal exemption of \$2,000 against their aggregate net income; and in case they make separate returns, the personal exemption of \$2,000 may be taken by either or divided between them.

(d) \$200 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer, if such dependent person is under 18 years of age or is incapable of self-support because mentally or physically defective.

(e) In the case of a nonresident alien individual who is a citizen or subject of a country which imposes an income tax, the credits allowed in subdivisions (c) and (d) shall be allowed only if such country allows a similar credit to citizens of the United States not residing in such country.

If a country does not impose an income tax, the credits provided in paragraphs (c) and (d), supra, may be claimed by a citizen of such country in filing a return of his income from sources within the United States. (Art. 307, Regulations 45.)

If a foreign country does levy an income tax, but such tax does not apply to income of nonresident aliens from sources therein, citizens of such country would be entitled to the credits allowed in these paragraphs in returning income from sources within the United States. The failure of a foreign country to tax nonresident aliens (which would include citizens of the United States) would have the same effect as to the nonresidents as though such foreign country did not impose an income tax.

It is therefore held that where a country imposes an income tax but does not levy a tax on income derived from sources therein by citizens of the United States, a citizen of such country who is a nonresident of the United States is entitled to claim the credits provided for in paragraphs (c) and (d) of section 216 of the Revenue Act of 1918 in preparing a return of income derived from sources within the United States.

Section 216, Article 307: When nonresident alien individual entitled to personal exemption. 2-19-154.  
O. D. 105.

An alien leaving the United States prior to end of a taxable year, if entitled to any personal exemption, may claim the full amount of such exemption for the entire taxable year.

Section 216, Article 307: When nonresident alien individual entitled to personal exemption. 15-19-446.  
O. D. 253.

In order that a nonresident alien may prove that his country satisfies the similar credit requirement of the income tax law, he should submit to the Commissioner a copy of the income tax laws of his native country, or an official communication from an accredited diplomatic representative of such country, showing that the country imposes no income tax, or in doing so grants similar credits required by statute.

Section 216, Article 307: When nonresident alien individual entitled to personal exemption. 20-19-510.  
O. D. 277.

Under royal decree promulgated by the Greek Government January 21, 1919, no discrimination is made against American citizens, resident or nonresident, consequently subjects of that country who are nonresident aliens as to the United States will be allowed the benefit of personal exemption and credits for dependents in computing their income tax liabilities to the United States.

**Section 216, Article 307:** When nonresident alien individual entitled to personal exemption. 24-19-567.  
O. D. 300.

Since the royal decree of the Greek Government allowing similar exemption to American citizens was not promulgated until January 21, 1919, the benefit of personal exemption and credits is, therefore, only extended to subjects of Greece, who are nonresident aliens as to the United States, for the taxable year 1919 and subsequent years.

**Section 216, Article 307:** When nonresident alien individual entitled to personal exemption. 24-19-568.  
O. D. 301.

Article 307 applies only to 1918 and subsequent years and has no application to the income tax of nonresident aliens for the year 1917.

**Section 216, Article 307:** When nonresident alien individual entitled to personal exemption. 27-19-603.  
O. D. 322.

Subjects of Luxemburg who are nonresident aliens as to the United States may claim the benefit of personal exemption and credit for dependents in computing income tax liability to the United States, since Luxemburg imposes an income tax but allows similar credits to nonresident aliens.

**Section 216, Article 307:** When nonresident alien individual entitled to personal exemption. 30-19-642.  
O. D. 346.

The right of a nonresident alien as to the United States to personal exemption and credit for dependents is contingent primarily on his citizenship. For example, a native-born Russian, especially one who has been living in the United States for a number of years, would still be regarded by this country as a citizen of Russia. This is rebuttable, however, by evidence of citizenship in Poland; and if an individual has in fact become a citizen of the new State, inasmuch as Poland is not included in the countries enumerated in Treasury Decision 2922, it will be necessary for him to comply with the requirements of the last sentence of that decision, in order to secure the benefit of the exemptions provided.

**Section 216, Article 307:** When nonresident alien individual entitled to personal exemption. 31-19-648.  
O. D. 350.

Switzerland imposed no income tax for the years 1918 and 1919. Citizens of Switzerland who are nonresident aliens as to the United States will be permitted to claim the personal exemption and credit for dependents provided in section 216, Revenue Act of 1918, in computing their income tax liability to the United States for those years.

**Section 217.—NONRESIDENT ALIENS—ALLOWANCE OF DEDUCTIONS AND CREDITS.**

**Section 217, Article 312:** Who is a nonresident alien individual. 3-19-175.  
O. D. 117.

A nonresident alien who has served in the United States Army for a period of one year is considered a resident of the United



States for income-tax purposes and is entitled to the same credits as to exemption as a citizen of the United States.

Section 217, Article 312: Who is a nonresident alien individual. 9-19-342.  
O. D. 197.

If an alien has been residing in the United States for as much as one year there is a presumption that such alien is a resident of the United States and this presumption will be indulged for purposes of income taxes in the absence of known facts showing that the alien is, in fact, a transient. A year's presence in the United States by an alien does not, however, establish residence beyond a doubt. It merely raises a presumption of residence which may be rebutted by any proper evidence showing that the alien is, in fact, a transient; that is, a nonresident.

Section 217, Article 312: Who is a nonresident alien individual. 9-19-343.  
O. D. 198.

The members of families of foreign ambassadors and ministers occupy the status of nonresident aliens for income-tax purposes.

Section 217, Article 312 (a): Alien seamen, when to be regarded as residents. 8-19-324.  
T. D. 2869(2).

Alien seamen—Amendment to article 312 of Regulations 45.

The final edition of Regulations 45 is amended by inserting immediately after article 312 a paragraph to be known as article 312a, as follows:

ART. 312a. *Alien seamen, when to be regarded as residents.*—In order to determine whether an alien seaman is a resident within the meaning of the income tax law it is necessary to decide whether the presumption of non-residence is overcome by facts showing that he has established a residence in the territorial United States, which consists of the States, the District of Columbia, and the Territories of Hawaii and Alaska, and excludes other places. Residence may be established on a vessel regularly engaged in coastwise trade, but the mere fact that a sailor makes his home on a vessel flying the United States flag and engaged in foreign trade is not sufficient to establish residence in the United States, even though the vessel, while carrying on foreign trade, touches at American ports. An alien seaman may acquire an actual residence in the territorial United States within the rules laid down in article 312, although the nature of his calling requires him to be absent from the place where his residence is established for a long period. An alien seaman may acquire such a residence at a sailor's boarding house or hotel, but such a claim should be carefully scrutinized in order to make sure that such residence is bona fide. The filing of Form 1078, revised, or taking out first citizenship papers, is proof of residence in the United States from the time the form is filed or the papers taken out, unless rebutted by other evidence showing an intention to be a transient. The fact that a head tax has been paid on behalf of an alien seaman entering the United States is no evidence that he has acquired residence, because the head tax is payable unless the alien who is entering the country is merely in transit through the country. An alien may remain a nonresident although he is not in transit through the country. As to when the wages of alien seamen are subject to tax see article 92a.

Section 217, Article 312 (a): Alien seamen, when to be regarded as residents. 26-19-591.  
O. D. 315.

The term "foreign trade," as used in Treasury Decision 2869, includes the transportation upon the high seas of passengers and freight between the United States and foreign countries.

**Section 217, Article 315:** Duty of employer to determine status of alien employee. 1-19-68.  
O. D. 50.

If an officer qualified to administer oaths is not reasonably accessible, Form 1078 will be accepted if signed in the presence of an official of the employer company under whose supervision the employee's duties are performed and one other credible witness.

**Section 217, Article 315:** Duty of employer to determine status of alien employee. 3-19-195.  
O. D. 127.

The pay rolls of an employer may be accepted as written evidence of an employee's continuous residence in the United States, thereby establishing his status as a resident alien, unless the employer knows that the employee does not intend to remain here permanently. When an employer determines that his employee is a resident alien such employee is not required to file a personal return unless his net income amounts to or exceeds \$1,000 or \$2,000, as in the case of citizens of the United States.

**Section 217, Article 315:** Duty of employer to determine status of alien employee. 3-19-196.  
O. D. 128.

(Sec. 221, art. 372.) If a bona fide declaration on Form 1078 or its equivalent is filed by an alien with his employer on or before the last day of the taxable year of the alien, the employer may refund the entire amount of tax withheld during the year prior to the filing of such declaration and the employee will then be liable for the entire tax due upon his net income for such period.

**Section 217, Article 315:** Duty of employer to determine status of alien employee. 15-19-447.  
O. D. 254.

The fact that an alien has been employed by a resident corporation for at least three months is not ipso facto sufficient to permit the employer to refund the amount of any tax withheld. Forms 1115 and 1078 should be filed by resident or nonresident aliens in order to secure refund.

**Section 217, Article 315:** Duty of employer to determine status of alien employee. 24-19-569.  
O. D. 302.

Any income tax withheld during the calendar year from the wages paid to an alien employee, which has not been paid over to the Government, should be refunded to such alien employee upon the establishment of residence by the execution and filing of Form 1078 with his employer. As a condition precedent the employer should require the employee to return the receipts showing the amount of tax previously withheld before making the refund.

**Section 217, Article 315:** Duty of employer to determine status of alien employee.

(See 7-19-298; sec. 221, art. 361.) The duty of withholding as to nonresident aliens employed in a mine is that of the contractor rather than the operator or owner.

**Section 221, Article 361: Withholding tax at source.**

(See 18-19-478, sec. 213(c), art. 92.) Withholding requirements in the case of interest on bonds of a corporation organized in the United States but doing no business nor owning property therein.

**Section 221, Article 362: Fixed or determinable annual or periodical income.** 2-19-157.  
S. 975.

Winnings of horses at a race track credited by the racing association to a nonresident alien owner and trainer of the horses winning such amounts are not fixed nor determinable annual or periodical gains, profits, and income within the meaning of section 221 (a), Revenue Act of 1918, and no withholding by the racing association is necessary.

**Section 221, Article 363: Exemption from withholding.** 2-19-158.  
(Also Section 223, Article 404.) O. D. 107.

In cases where tax was withheld from wages of employees who refused to sign the old Form 1078, but who have now signed the new Form 1078, the amount of tax should not be refunded by the employer upon execution of the new Form 1078. The amount of tax withheld should be reported on Form 1042 and paid to the collector of internal revenue for the district in which the withholding agent is located, subject to claim for personal exemption provided in section 216 of the Revenue Act of 1918.

If the personal exemption is not available to the nonresident alien, the amount of tax can be refunded only upon execution of Form 46, accompanied by a complete return of the individual's income from sources within the United States, and evidence establishing the fact that tax has been withheld in excess of the actual liability.

**Section 221, Article 363: Exemption from withholding.** 4-19-224.  
O. D. 143.

In cases where Form 1078 is filed by aliens a record thereof should be made by the employer and certificates forwarded to the Commissioner of Internal Revenue, Sorting Division, Washington, D. C., not later than the 20th day of the month succeeding that during which the certificates were received.

**Section 221, Article 363 (a): Personal exemption of nonresident aliens.** 19-19-498.  
T. D. 2920.

Providing for relief of domestic corporations which have assumed payment of income tax with respect to tax-free covenant bonds owned by nonresident aliens who are entitled to credits for personal exemption and dependents, but whose incomes from sources in the United States do not exceed such credits.

The final edition of Regulations 45 is amended by inserting immediately after article 363 a paragraph which will be known as article 363a, as follows:

**ART. 363a. Personal exemption of nonresident aliens.**—In case a nonresident alien is entitled to personal exemption and credits for dependents in accordance with paragraphs (c), (d), and (e), section 216 of the Revenue Act of 1918, and his gross income from sources in the United States, including bond interest, does not exceed his personal exemption and credits for de-

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