

this section shall be attached to the income tax return filed with the Government of the Virgin Islands for the taxable year with respect to which an exception is claimed under section 934 (b) or (c). If an exception is claimed with respect to any taxable year for which the time prescribed by law for filing the return expires prior to 30 days from the publication of these regulations, the required statement must be filed in duplicate on or before 90 days from the publication of these regulations. The return and statement must be available for examination by the Director of International Operations.

(h) *Effective date.* The provisions of this section shall apply to taxable years beginning after December 31, 1959.

[T.D. 6629, 27 FR 12791, Dec. 28, 1962]

**§ 1.935-1 Coordination of U.S. and Guam individual income taxes.**

(a) *Application of section—(1) Scope.* Section 935 and this section set forth the special rules relating to the filing of income tax returns, income tax liabilities, and estimated income tax of individuals described in subparagraph (2) of this paragraph. For additional rules relating to the collection of income tax at source on the wages of certain individuals, the furnishing of certain information with the returns of certain individuals, and the covering over to the treasury of Guam of net collections of income taxes imposed on certain individuals, see section 7654 and § 301.7654-1 of this chapter (Regulations on Procedure and Administration).

(2) *Individuals covered.* This section shall apply for a taxable year to any individual who—

- (i) Is a resident of Guam, whether or not he is a citizen of the United States,
- (ii) Is a citizen of Guam but not otherwise a citizen of the United States,
- (iii) Has income derived from Guam for the taxable year and is a citizen or resident of the United States, or
- (iv) Files a joint return for the taxable year with any individual described in subdivision (i), (ii), or (iii) of this subparagraph.

(3) *Determination of residence and citizenship.* For purposes of this section, determinations of residence and citizenship for a taxable year shall be

made (except as provided to the contrary in paragraphs (d)(1) and (2) of this section) as of the close of the taxable year. A citizen of the United States is any individual who is a citizen within the meaning of paragraph (c) of § 1.1-1, except that the term does not include an individual who is a citizen of Guam but not otherwise a citizen of the United States. An individual who is a citizen of Guam but not otherwise a citizen of the United States is any individual who has become a citizen of the United States by birth or naturalization in Guam. Whether an individual is a resident of Guam or a resident of the United States shall generally be determined by applying to the facts and circumstances in each case the principles of §§ 1.871-2 through 1.871-5 relating to what constitutes residence or nonresidence, as the case may be, in the United States in the case of an alien individual. However, for special rules for determining the residence for tax purposes of individuals under military or naval orders, see section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 App. U.S.C. 574. The residence of an individual, and, therefore, the jurisdiction with which he is required to file an income tax return under paragraph (b) of this section, may change from year to year.

(b) *Filing requirement—(1) Tax jurisdiction.* An individual described in paragraph (a)(2) of this section shall file his return of income tax for the taxable year—

(i) With the United States if he is a resident of the United States, whether or not he is a citizen of the United States,

(ii) With Guam if he is a resident of Guam, whether or not he is a citizen of Guam, or

(iii) If neither subdivision (i) nor (ii) of this subparagraph applies,

(A) With Guam if he is a citizen of Guam but not otherwise a citizen of the United States, as defined in paragraph (a)(3) of this section, or

(B) With the United States if he is a citizen of the United States, as defined in paragraph (a)(3) of this section. Thus, for example, if a U.S. citizen employed by the United States in Guam becomes a resident of Guam for the taxable year, he must file his return of

income tax for such year with Guam. The tax shown on the return shall be paid to the jurisdiction with which such return is required to be filed and shall be determined by taking into account any credit under section 31 for tax withheld by Guam or the United States on wages, any credit under section 6402(b) for an overpayment of income tax to Guam or the United States, and any payments under section 6315 of estimated income tax paid to Guam or the United States. See paragraph (a)(3) of this section for the rule that determinations of residence and citizenship are to be made as of the close of the taxable year.

(2) *Joint returns.* In the case of married persons, if one or both spouses is an individual described in paragraph (a)(2) of this section and they file a joint return of income tax, the spouses shall file their joint return with, and pay the tax due on such return to, the jurisdiction where the spouse who has the greater adjusted gross income for the taxable year would be required under subparagraph (1) of this paragraph to file his return if separate returns were filed. For this purpose, adjusted gross income of each spouse is determined under section 62 and the regulations thereunder but without regard to community property laws; and, if one of the spouses dies, the taxable year of the surviving spouse shall be treated as ending on the date of such death.

(3) *Place for filing returns—(i) U.S. returns.* A return required under this paragraph to be filed with the United States shall be filed in accordance with § 1.6091-2, except that such return of a citizen or resident of the United States who is described in § 301.7654-1(a)(2) of this chapter (Regulations on Procedure and Administration) shall be filed with the Internal Revenue Service Center, 11601 Roosevelt Boulevard, Philadelphia, Pennsylvania 19155.

(ii) *Guam returns.* A return required under this paragraph to be filed with Guam shall be filed with the Commissioner of Revenue and Taxation, Agana, Guam 96910.

(4) *Tax accounting standards.* A taxpayer who has filed his return with one of the jurisdictions named in subparagraph (1) of this paragraph for a prior

taxable year and is required to file his return for a later taxable year with the other such jurisdiction may not, for such later taxable year, change his accounting period, method of accounting, or any election to which he is bound with respect to his reporting of taxable income to the first jurisdiction unless he obtains the consent of the second jurisdiction to make such change. However, such change will not be effective for returns filed thereafter with the first jurisdiction unless before such later date of filing he also obtains the consent of the first jurisdiction to make such change. Any request for consent to make a change pursuant to this subparagraph must be made to the office where the return is required to be filed under subparagraph (3) of this paragraph and in sufficient time to permit a copy of the consent to be attached to the return for the taxable year.

(c) *Extent of liability for income tax—(1) Extension of territory—(i) General rule.* With respect to an individual who, for a taxable year, is described in paragraph (a)(2) of this section—

(A) For purposes of so much of the Internal Revenue Code of 1954 as relates to the normal taxes and the surtaxes imposed by chapter 1 thereof, the United States shall be treated, in a geographical and governmental sense, as including Guam, and

(B) For purposes of the Guam Territorial income tax (48 U.S.C. 1421i), Guam shall be treated, in a geographical and governmental sense, as including the United States except that this subdivision shall not apply for purposes of this section, section 7651, and section 7654.

(ii) *Application of general rule.* (A) The significance of the application of the rule of subdivision (i) of this subparagraph will depend upon the facts and circumstances of the particular case. The rule will not be applied where its application would be manifestly inapplicable or incompatible with the intent thereof. Thus, the rule will not be applied for purposes of section 3401, relating to definition of wages. Also, the rule will not be applied in determining the sources of dividends and interest

from a domestic corporation. For example, if less than 20 percent of a domestic corporation's gross income is from U.S. sources for the period described in section 861(a)(1)(B) and (2)(A), but more than 20 percent of its gross income is from U.S. and Guam sources taken together for such period, the dividends and interest derived from it will be treated as derived from sources without the United States. In addition, for purposes of section 1372(e)(4), relating to whether an election of a small business corporation has been terminated because it derived more than 80 percent of its gross receipts from sources outside the United States, gross receipts from sources within Guam will be treated as gross receipts from sources outside the United States. On the other hand, some of the conclusions which may be reached as a result of the application of subdivision (i) of this subparagraph to a U.S. taxpayer (that is, an individual described in paragraph (b)(1)(i) or (iii)(B) of this section) are as follows. A U.S. taxpayer may not claim a foreign tax credit based upon his income from sources within Guam. Income tax paid to Guam may be taken into account under sections 31, 6315, and 6402(b) as payments to the United States. For purposes of section 116(a), relating to the partial exclusion of dividends received by individuals, dividends paid to a U.S. taxpayer by a corporation created or organized in Guam or under the law of Guam will be treated as dividends paid by a domestic corporation. Taxes paid to Guam and otherwise satisfying the requirements of section 164(a) will be allowed as a deduction under that section, but income taxes paid to Guam will be disallowed as a deduction under section 275(a).

(B) If a U.S. taxpayer has a net operating loss carryback or carryover under section 172, a foreign tax credit carryback or carryover under section 904, an investment credit carryback or carryover under section 46, a capital loss carryover under section 1212, or a charitable contributions carryover under section 170, the United States will take such carryback or carryover into account for a taxable year for which the taxpayer's return is required to be filed with the United States, and

make a refund to the extent required under section 6402, even though the return of the taxpayer for the taxable year (whether beginning on, before, or after December 31, 1972) giving rise to the carryback or carryover was required to be filed with Guam.

(C) For purposes of income averaging of a U.S. taxpayer under sections 1301 through 1305, the taxpayer will not be denied status as an "eligible individual" merely because he was during the base period defined in section 1302(c)(2) treated under section 932 as a nonresident alien individual because he was a citizen of Guam but not otherwise a citizen of the United States. See section 1303(b). Furthermore, in determining the base period of such a U.S. taxpayer under section 1302(c)(2), taxable years for which a return was required to be filed with Guam shall be taken into account.

(D) In applying the Guam Territorial income tax the converse of the preceding rules under this subdivision will apply. Thus, for example, income tax paid to the United States may be taken into account under sections 31, 6315, and 6402(b) as payments to Guam. Moreover, a citizen of the United States (as defined in paragraph (a)(3) of this section) not a resident of Guam will not be treated as a nonresident alien individual for purposes of the Guam Territorial income tax. Thus, for example, a citizen of the United States (as so defined), or a resident of the United States, will not be treated as a nonresident alien individual for purposes of section 1371(a)(3) of the Guamanian Territorial income tax.

(2) *Liability to other jurisdiction—(i) Filing with Guam.* If for a taxable year an individual is required under paragraph (b)(1) of this section to file a return with Guam, he is relieved of liability to file an income tax return with, and to pay an income tax to, the United States for the taxable year.

(ii) *Filing with the United States.* If for a taxable year an individual is required under paragraph (b)(1) of this section to file a return with the United States, he is relieved of liability to file an income tax return with, and to pay an income tax to, Guam for the taxable year.

(d) *Special rules for estimated income tax*—(1) *Declaration of estimated income tax.* If, under all the facts and circumstances existing at the date an individual is required to file a declaration of estimated income tax, there is reason to believe that he will, for the taxable year, be an individual described in paragraph (a)(2) of this section, he must file his declaration of estimated income tax (and all amendments thereof) with the jurisdiction with which he would be required to file a return under paragraph (b)(1) of this section if his taxable year had closed on the date he is first required to file a declaration of estimated income tax for the taxable year. Except as provided in paragraph (6) of this section (relating to underpayments of estimated income tax), payments of estimated income tax shall be made to the jurisdiction with which he is required to file the declaration even though for the taxable year he is required under paragraph (b)(1) of this section to file his return with the other jurisdiction. In determining the amount of such estimated income tax, income tax paid to Guam may be taken into account under sections 31 and 6402(b) as payments to the United States, and vice versa. For rules relating to the determination of, and time for filing, declarations of estimated tax, see sections 6015 and 6073; for rules relating to the time for paying installments of the tax, see section 6153.

(2) *Joint declaration of estimated income tax.* In the case of married persons, if, under all the facts and circumstances existing at the date a spouse is required to file a declaration of estimated income tax, there is reason to believe that he will, for the taxable year, be an individual described in paragraph (a)(2) of this section and the spouses file a joint declaration of estimated income tax, the spouses must file their joint declaration of estimated income tax (and all amendments thereof) with the jurisdiction where the spouse who has the greater estimated adjusted gross income for the taxable year would be required under subparagraph (1) of this paragraph to file his declaration of estimated income tax if separate declarations were filed. For this purpose, estimated adjusted gross

income of each spouse for the taxable year is determined without regard to community property laws. Except as provided in paragraph (6) of this section, payments of estimated income tax shall be made to the jurisdiction with which the spouses are required to file the joint declaration.

(3) *Early filing of declarations.* If the individual or spouses have in fact filed a declaration or joint declaration of estimated income tax earlier than the time he or they are first required to file the declaration and such declaration was not filed where it is required to be filed under paragraph (d)(1) or (2) of this section, as the case may be, of this paragraph, only subsequent amendments of the declaration are required to be filed pursuant to such paragraph (d)(1) or (2) of this section with the other jurisdiction and only subsequent installments of the estimated income tax are required to be paid to the other jurisdiction.

(4) *Place for filing declarations.* A declaration of estimated income tax required under subparagraph (1) of this paragraph to be filed with Guam, shall be filed as prescribed in paragraph (b)(3)(ii) of this section. A declaration of estimated income tax required under subparagraph (1) of this paragraph to be filed with the United States shall be filed at the place prescribed by § 1.6073-1(c).

(5) *Liability to other jurisdiction*—(i) *Filing with Guam.* If, for a taxable year, an individual is required under this paragraph to file a declaration of estimated income tax with Guam, he is relieved of liability to file a declaration of estimated income tax (and any amendments thereof) with, and to make payments of estimated income tax to, the United States for the taxable year.

(ii) *Filing with the United States.* If, for a taxable year, an individual is required under this paragraph to file a declaration of estimated income tax with the United States, he is relieved of liability to file a declaration of estimated income tax (and any amendments thereof) with, and to make payments of estimated income tax to, Guam for the taxable year.

(6) *Underpayments.* The liability of an individual described in paragraph (a)(2)

of this section for underpayments of estimated income tax for a taxable year, as determined under section 6654 and the regulations thereunder, shall be to the jurisdiction with which he is required under paragraph (b) of this section to file his return for the taxable year.

(e) *Illustration.* The application of this section may be illustrated by the following examples:

*Example 1.* B, an individual, files returns on a calendar year basis. B is a resident of the United States at the time he is required to file his declaration of estimated income tax for 1974. If, under the facts and circumstances, B does not reasonably expect at the time he files his declaration of estimated income tax that he will be a resident of Guam at the close of 1974, he will not be subject to this section at the time of such filing. However, B subsequently receives Guam source income which necessitates an amendment of his declaration, and some time later in 1974 he becomes a resident of Guam for the remainder of the year. B is required under paragraph (d)(1) of this section to file his amended declaration with the United States and to make payments of the estimated tax to the United States. However, B is required to file his income tax return for 1974 with Guam and to make any underpayments of estimated tax to Guam, pursuant to paragraphs (b)(1) and (d)(6) of this section.

*Example 2.* C, an individual, files returns on a calendar year basis. On March 1, 1974, C is a resident of the United States, files his declaration of estimated income tax for 1974 with the United States, and pays his first installment of estimated tax to the United States. Prior to the date C would otherwise be required to file his declaration of estimated income tax for 1974 (April 15, 1974), C becomes a resident of Guam for the remainder of the year. C is required under paragraph (d)(1) of this section to make only his remaining payments of installments of estimated tax to Guam. C is also required to file his income tax return for 1974 with Guam and to make any underpayments of estimated tax to Guam, pursuant to paragraphs (b)(1) and (d)(6) of this section.

*Example 3.* D, an individual, files returns on a calendar year basis. On August 1, 1974, D ceases to be a resident of the United States for the year and becomes a resident of Guam for the remainder of the year. D is first required to file a declaration of estimated income tax for 1974 on September 15, 1974, because of his receipt of an extraordinary item of income after June 15, 1974. D is required under paragraph (d)(1) of this section to file his declaration with Guam and to make payments of the estimated tax to Guam. D is also required to file his income tax return

for 1974 with Guam and to make any underpayments of estimated tax to Guam, pursuant to paragraphs (b)(1) and (d)(6) of this section.

(f) *Effective date.* This section shall apply for taxable years beginning after December 31, 1972.

(Secs. 7805 (68A Stat. 917; 26 U.S.C. 7805) and 7654(e) (86 Stat. 1496; 26 U.S.C. 7654 (e)) of the Internal Revenue Code of 1954)

[T.D. 7385, 40 FR 50261, Oct. 29, 1975]

#### § 1.936-1 Elections.

(a) *Making an election.* A domestic corporation shall make an election under section 936(e), for any taxable year beginning after December 31, 1975, by filing Form 5712 on or before the later of—

(1) The date on which such corporation is required, pursuant to sections 6072(b) and 6081, to file its Federal income tax return for the first taxable year for which the election is made; or

(2) April 8, 1980.

Form 5712 shall be filed with the Internal Revenue Service Center, 11601 Roosevelt Boulevard, Philadelphia, Pennsylvania 19155 (Philadelphia Center).

(b) *Revoking an election.* Any corporation to which an election under section 936 (e) applies on February 8, 1980 is hereby granted the consent of the Secretary to revoke that election for the first taxable year to which the election applied. (The corporation may make a new election under § 1.936-1 (a) for any subsequent taxable year.) The corporation shall make this revocation by sending to the Philadelphia Center a written statement of revocation on or before April 8, 1980.

(Secs. 7805 and 936(e) of the Internal Revenue Code of 1954 (68A Stat. 917 and 90 Stat. 1644; 26 U.S.C. 7805 and 936(e)))

[T.D. 7673, 45 FR 8588, Feb. 8, 1980; T.D. 7673, 45 FR 16174, Mar. 13, 1980]

#### § 1.936-4 Intangible property income in the absence of an election out.

The rules in this section apply for purposes of section 936(h) and also for purposes of section 934(e), where applicable.

*Q. 1:* If a possessions corporation and its affiliates do not make an election under either the cost sharing or 50/50