amounts received for the privilege of using patents, copyrights, secret processes and formulas, goodwill, trademarks, tradebrands, franchises, and other like property.

(12) The term *trade or business* refers to a trade or business within the meaning of section 162.

(13) The term *United States person* is as defined in section 7701(a)(30).

(14) The term *United States shareholder* is as defined in section 951(b).

(e) *Disallowance of certain credits against the section 1411 tax.* Amounts that may be credited against only the tax imposed by chapter 1 of the Code may not be credited against the section 1411 tax imposed by chapter 2A of the Code unless specifically provided in the Code. For example, the foreign income, war profits, and excess profits taxes that are allowed as a foreign tax credit by section 27(a), section 642(a), and section 901, respectively, are not allowed as a credit against the section 1411 tax.

(f) *Application to taxable years beginning before January 1, 2014*—(1) *Retroactive application of regulations.* Taxpayers that are subject to section 1411, and any other taxpayer to which these regulations may apply (such as partnerships and S corporations), may apply §§1.1411–1 through 1.1411–10 (including the ability to make any election(s) contained therein) in any taxable year that begins after December 31, 2012, but before January 1, 2014, for which the period of limitation under section 6501 has not expired.

(2) *Reliance and transitional rules.* For taxable years beginning before January 1, 2014, the Internal Revenue Service will not challenge a taxpayer's computation of tax under section 1411 if the taxpayer has made a reasonable, good faith effort to comply with the requirements of section 1411. For example, a taxpayer's compliance with the provisions of the proposed and final regulations under section 1411 (REG–130507–11 or REG–130843–13), generally, will be considered a reasonable, good faith effort to comply with the requirements of section 1411 if reliance on such regulation projects under section 1411 are applied in their entirety, and the taxpayer makes reasonable adjustments to ensure that their section 1411 tax liability in the taxable years beginning after December 31, 2013, is not inappropriately distorted by the positions taken in taxable years beginning after December 31, 2012, but before January 1, 2014. A similar rule applies to any other taxpayer to which these regulations may apply (such as partnerships and S corporations).

(g) *Effective/applicability date.* This section applies to taxable years beginning after December 31, 2013. However, taxpayers may apply this section to taxable years beginning after December 31, 2012, in accordance with paragraph (f) of this section.

[T.D. 9644, 78 FR 72424, Dec. 2, 2013]

§ 1.1411–2 Application to individuals.

(a) *Individual to whom tax applies*—(1) *In general.* Section 1411 applies to an individual who is a citizen or resident of the United States (within the meaning of section 7701(a)(30)(A)). Section 1411 does not apply to nonresident alien individuals (within the meaning of section 7701(b)(1)(B)). See paragraph (a)(2)(vi) of this section for special rules regarding bona fide residents of United States territories.

(2) *Special rules*—(i) *Dual resident individuals treated as residents of a foreign country under an income tax treaty.* A dual resident taxpayer (as defined in §301.7701(b)–7(a)(1)) who determines that he or she is a resident of a foreign country for treaty purposes pursuant to an income tax treaty between the United States and the foreign country and who claims benefits of the treaty as a nonresident of the United States will be treated as a nonresident alien of the United States for purposes of paragraph (a)(1) of this section.

(ii) *Dual-status resident aliens.* A dual-status individual who is a resident of the United States for a portion of a taxable year and a nonresident alien for the other portion of the taxable year will not be subject to section 1411 with respect to the portion of the year for which that individual is treated as a nonresident alien. The only income the individual must take into account for purposes of section 1411 is the income he or she receives during the portion of the year for which he or she is treated as a resident of the United States. The threshold amount under paragraph (d)(1) of this section applies.

(iii) *Joint returns in the case of a nonresident alien individual married to a United States citizen or resident*—(A) *Default treatment.* In the case of a United States citizen or resident who is married to a nonresident alien individual, the spouses will be treated as married filing separately for purposes of section 1411. For purposes of calculating the tax imposed under section 1411(a)(1), the United States citizen or resident spouse will be subject to the threshold amount for a married taxpayer filing a separate return in paragraph (d)(1)(ii) of this section, and the nonresident alien spouse will not be subject to tax under section 1411. In accordance with the rules for married individuals filing separate returns, the spouse that is a United States citizen or resident must determine his or her own net investment income and modified adjusted gross income.

(B) *Taxpayer election.* Married taxpayers who file a joint Federal income tax return pursuant to a section 6013(g) election for purposes of chapter 1 and chapter 24 also may elect to be treated as making a section 6013(g) election for purposes of chapter 2A (relating to the tax imposed by section 1411).

(*1*) *Effect of election.* For purposes of calculating the tax imposed under section 1411(a)(1), the effect of an election under section 6013(g) is to include the combined income of the United States citizen or resident spouse and the nonresident spouse in the section 1411(a)(1) calculation and to apply the threshold amount for a taxpayer making a joint return as set out in paragraph (d)(1)(i) of this section.

(*2*) *Procedural requirements for making election.* Taxpayers with a section 6013(g) election in effect for chapter 1 and chapter 24 purposes for any taxable year beginning after December 31, 2012, or taxpayers making a section 6013(g) election for chapter 1 and chapter 24 purposes in any taxable year beginning after December 31, 2012, who want to apply their section 6013(g) election for purposes of chapter 2A must make the election for the first taxable year beginning after December 31, 2013, in which the United States taxpayer is subject to tax under section 1411. The determination of whether the United States taxpayer is subject to tax under section 1411 is made without regard to the effect of the section 6013(g) election described in paragraph (a)(2)(iii)(B) of this section. The election, if made, must be made in the manner prescribed by forms, instructions, or in other guidance on an original or amended return for the taxable year for which the election is made. An election can be made on an amended return only if the taxable year for which the election is made, and all taxable years that are affected by the election, are not closed by the period of limitations on assessments under section 6501. Further, once made, the duration and termination of the section 6013(g) election for chapter 2A is governed by the rules of section 6013(g)(2) through (g)(6) and the regulations thereunder.

(*3*) *Ineffective elections.* In the event a taxpayer makes an election described in paragraph (a)(2)(iii)(B) of this section and subsequently determines that such taxpayer does not meet the criteria for making such election in such tax year described in paragraph (a)(2)(iii)(B)(*2*) of this section, then such original election will have no effect for that year and all future years. In such a case, the taxpayer should make appropriate adjustments to properly reflect the ineffective election. However, notwithstanding the previous sentence, if a taxpayer meets the criteria for the same election in a subsequent year, such taxpayer is deemed to treat such original election as being made in that subsequent year unless the taxpayer files (or amends) the return for such subsequent year to report the taxpayer's net investment income tax without the original election. Furthermore, this paragraph (a)(2)(iii)(B)(*3*) shall not apply if a taxpayer does not meet the criteria described in paragraph (a)(2)(iii)(B)(*2*) of this section for making such election in such tax year solely as a result of the carryback of a net operating loss pursuant to section 172.

(iv) *Joint returns for a year in which nonresident alien married to a United States citizen or resident becomes a United States resident*—(A) *Default treatment.* In the case of a United States citizen or resident who is married to an individual who is a nonresident alien individual at the beginning of any taxable

year, but is a United States resident at the close of such taxable year, each spouse will be treated as married filing separately for the entire year for purposes of section 1411. For purposes of calculating the tax imposed under section 1411(a)(1), each spouse will be subject to the threshold amount for a married taxpayer filing a separate return in paragraph (d)(1)(ii) of this section. The spouse who becomes a United States resident during the tax year will be subject to section 1411 only with respect to income received for the portion of the year for which he or she is treated as a United States resident. Each spouse must determine his or her own net investment income and modified adjusted gross income.

(B) *Taxpayer election.* Married taxpayers who file a joint Federal income tax return pursuant to a section 6013(h) election for purposes of chapter 1 and chapter 24 also may elect to be treated as making a section 6013(h) election for purposes of chapter 2A for such tax year.

(*1*) *Effect of election.* For purposes of calculating the tax imposed under section 1411(a)(1), the effect of an election under section 6013(h) is to include the combined income of the United States citizen or resident spouse and the dual-status resident spouse in the section 1411(a)(1) calculation and to apply the threshold amount for a taxpayer making a joint return as set out in paragraph (d)(1)(i) of this section.

(*2*) *Procedural requirements for making election.* Taxpayers who make a section 6013(h) election for purposes of chapter 1 and chapter 24 for any taxable year beginning after December 31, 2012, may elect to have their section 6013(h) election apply for purposes of chapter 2A. The election, if made, must be made in the manner prescribed by forms, instructions, or in other guidance on an original or amended return for the taxable year for which the election is made. An election can be made on an amended return only if the taxable year for which the election is made, and all taxable years that are affected by the election, are not closed by the period of limitations on assessments under section 6501. Further, in all cases, once made, the section 6013(h) election is governed by the rules of section 6013(h)(2) and the regulations thereunder.

(iv) *Grantor trusts.* For rules regarding the treatment of owners of grantor trusts, see §1.1411–3(b)(1)(v).

(v) *Bankruptcy estates.* A bankruptcy estate administered under chapter 7 (relating to liquidations) or chapter 11 (relating to reorganizations) of the Bankruptcy Code (Title 11 of the United States Code) of a debtor who is an individual is treated as a married taxpayer filing a separate return for purposes of section 1411. See §1.1411–2(d)(1)(ii).

(vi) *Bona fide residents of United States territories*—(A) *Applicability.* An individual who is a bona fide resident of a United States territory is subject to the tax imposed by section 1411(a)(1) only if the individual is required to file an income tax return with the United States upon application of section 931, 932, 933, or 935 and the regulations thereunder. With respect to an individual described in this paragraph (a)(2)(vi)(A), the amount excluded from gross income under section 931 or 933 and any deduction properly allocable or chargeable against amounts excluded from gross income under section 931 or 933, respectively, is not taken into account in computing modified adjusted gross income under paragraph (c) of this section or net investment income (within the meaning of §1.1411–1(d)).

(B) *Coordination with exception for nonresident aliens.* An individual who is both a bona fide resident of a United States territory and a nonresident alien individual with respect to the United States is not subject to taxation under section 1411(a)(1).

(C) *Definitions.* For purposes of this section—

(*1*) *Bona fide resident.* The term *bona fide resident* has the meaning provided under section 937(a).

(*2*) *United States territory.* The term *United States territory* means American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the United States Virgin Islands.

(b) *Calculation of tax*—(1) *In general.* In the case of an individual described in paragraph (a)(1) of this section, the tax imposed by section 1411(a)(1) for

each taxable year is equal to 3.8 percent of the lesser of—

(i) Net investment income for such taxable year; or

(ii) The excess (if any) of—

(A) The modified adjusted gross income (as defined in paragraph (c) of this section) for such taxable year; over

(B) The threshold amount (as defined in paragraph (d) of this section).

(2) *Example.* During Year 1 (a year in which section 1411 is in effect), A, an unmarried United States citizen, has modified adjusted gross income (as defined in paragraph (c) of this section) of $190,000, which includes $50,000 of net investment income. A has a zero tax imposed under section 1411 because the threshold amount for a single individual is $200,000 (as provided in paragraph (d)(1)(iii) of this section). If during Year 2, A has modified adjusted gross income of $220,000, which includes $50,000 of net investment income, then the individual has a section 1411 tax of $760 (3.8% multiplied by $20,000, the lesser of $50,000 net investment income or $20,000 excess of modified adjusted gross income over the threshold amount).

(c) *Modified adjusted gross income*—(1) *General rule.* For purposes of section 1411, the term *modified adjusted gross income* means adjusted gross income increased by the excess of—

(i) The amount excluded from gross income under section 911(a)(1); over

(ii) The amount of any deductions (taken into account in computing adjusted gross income) or exclusions disallowed under section 911(d)(6) with respect to the amounts described in paragraph (c)(1)(i) of this section.

(2) *Rules with respect to CFCs and PFICs.* Additional rules in §1.1411–10(e)(1) apply to an individual that is a United States shareholder of a controlled foreign corporation (CFC) or that is a United States person that directly or indirectly owns an interest in a passive foreign investment company (PFIC).

(d) *Threshold amount*—(1) *In general.* The term *threshold amount* means—

(i) In the case of a taxpayer making a joint return under section 6013 or a surviving spouse (as defined in section 2(a)), $250,000;

(ii) In the case of a married taxpayer filing a separate return, $125,000; and

(iii) In the case of any other individual, $200,000.

(2) *Taxable year of less than twelve months*—(i) *General rule.* In the case of an individual who has a taxable year consisting of less than twelve months (short taxable year), the threshold amount under paragraph (d)(1) of this section is not reduced or prorated. For example, in the case of an unmarried decedent who dies on June 1, the threshold amount is $200,000 for the decedent's short taxable year that begins on January 1 and ends on June 1.

(ii) *Change of annual accounting period.* Notwithstanding paragraph (d)(2)(i) of this section, an individual who has a short taxable year resulting from a change of annual accounting period reduces the threshold amount to an amount that bears the same ratio to the full threshold amount provided under paragraph (d)(1) of this section as the number of months in the short taxable year bears to twelve.

(e) *Effective/applicability date.* This section applies to taxable years beginning after December 31, 2013. However, taxpayers may apply this section to taxable years beginning after December 31, 2012, in accordance with §1.1411–1(f).

[T.D. 9644, 78 FR 72424, Dec. 2, 2013, as amended at 79 FR 18160, Apr. 1, 2014]

§ 1.1411–3 Application to estates and trusts.

(a) *Estates and trusts to which tax applies*—(1) *In general*—(i) *General application.* Section 1411 and the regulations thereunder apply to all estates and trusts that are subject to the provisions of part I of subchapter J of chapter 1 of subtitle A of the Internal Revenue Code, unless specifically exempted under paragraph (b) of this section.

(ii) *Calculation of tax.* The tax imposed by section 1411(a)(2) for each taxable year is equal to 3.8 percent of the lesser of—

(A) The estate's or trust's undistributed net investment income for such taxable year; or

(B) The excess (if any) of—

(*1*) The estate's or trust's adjusted gross income (as defined in section 67(e) and as adjusted under §1.1411–