

Rev. Rul. 70-506 (IRS RRU), 1970-2 C.B. 1, 1970 WL 21170

Internal Revenue Service (I.R.S.)  
Revenue Ruling

Published: 1970

**Section 1.**—Tax Imposed, [26 CFR 1.1-1](#): Income tax on individuals.

(Also [Sections 871](#), [877](#), [7805](#); 1.871-1, 301.7805-1.)

**\*1** Tax treatment of naturalized citizens mistakenly deemed to have lost their citizenship under section 352(a) of the Immigration and Nationality Act of 1952, declared unconstitutional by the Supreme Court.

Advice has been requested whether under the circumstances described below, an individual is taxable as a United States citizen or as a nonresident alien.

*A*, a national of a foreign country, became a naturalized citizen under the immigration and nationality laws of the United States. *A* resided, except for visits to the United States, continuously in a foreign country for a period in excess of 5 years. By operation of section 352(a) of the Immigration and Nationality Act of 1952 ([8 U.S.C. 1484\(a\)](#)), *A* lost his United States citizenship.

[Section 1 of the Internal Revenue Code of 1954](#) imposes an income tax on the taxable income of every individual, except that in the case of a nonresident alien individual the tax imposed by [section 1](#) of the Code shall apply only as provided by [section 871](#) or [section 877](#) of the Code.

[Section 1.1-1\(b\) of the Income Tax Regulations](#) provides, in pertinent part, that all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Internal Revenue Code of 1954 whether the income is received from sources within or without the United States. See, however, [section 911](#) of the Code. [Section 1.1-1\(c\) of the regulations](#) provides, in part, that every person born or naturalized in the United States and subject to its jurisdiction is a citizen. For rules governing the loss of citizenship, the regulations refer to sections 349 to 357, inclusive, of the Immigration and Nationality Act ([8 U.S.C. 1481-1489](#)).

[Section 871](#) of the Code imposes a tax on certain income received from sources within and without the United States by a nonresident alien, but the types of income subject to tax and the rates of tax differ depending on whether the amount so received is or is not effectively connected with the conduct of a trade or business within the United States.

[Section 877](#) of the Code, effective for taxable years beginning after December 31, 1966, provides, with certain exceptions not material here, that a nonresident alien individual who after March 8, 1965, and within the 10 year period immediately preceding the close of the taxable year lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of Federal income, estate or gift taxes, shall be taxable on all his United States source income as provided in [section 1](#) or [section 1201\(b\)](#) of the Code if the tax imposed pursuant to these sections exceeds the tax which, without regard to [section 877](#) of the Code, is imposed pursuant to [section 871](#) of the Code.

Section 352(a)(1) of the Immigration and Nationality Act of 1952 ([8 U.S.C. 1484\(a\)\(1\)](#)) provides, with exceptions not material herein, that a naturalized citizen of the United States loses his United States citizenship if he resides continuously for three years in the foreign state of which he was formerly a national or in which he was born. Section 352(a)(2) of the Act provides that a naturalized citizen loses his citizenship if he resides continuously for five years in any foreign state other than the state of which he was formerly a national or in which he was born.

**\*2** In *Schneider v. Rusk*, [377 U.S. 163 \(1964\)](#), the Supreme Court ruled on the constitutionality of section 352(a)(1) of the Immigration and Nationality Act of 1952. Mrs. Schneider, born in Germany, acquired derivative United States citizenship at age 16 through her mother, but later returned to Germany, married a German national and resided in Germany for more than three years after her marriage. The United States denied her a passport, the State Department certifying that she had lost her United States citizenship under section 352(a)(1) of the Act. The Supreme Court held that the statute was so unjustifiably discriminatory against naturalized citizens, as opposed to native born citizens, that it was violative of due process under the Fifth Amendment of the Constitution.

The decision in *Schneider v. Rusk* has been interpreted to apply as well to action taken by the State Department pursuant to section 352(a)(2) of the Immigration and Nationality Act to certify loss of citizenship in the case of a naturalized citizen continuously residing for at least five years in a foreign state other than the state of which he was formerly a national or in which he was born. Such action is considered void ab initio and thus any such individual continues to be a naturalized citizen of the United States in the absence of facts establishing that he is not a United States citizen by virtue of other provisions of law.

As a result of the decision in *Schneider v. Rusk*, any Certificate of Loss of Nationality of the United States issued by reason of section 352(a) of the Immigration and Nationality Act of 1952 is considered null and void and the individual affected thereby is a citizen of the United States and taxable under [section 1](#) or [section 1201\(b\)](#) of the Code on income received from sources within and without the United States.

Accordingly, *A* is, and always has been since naturalization, a citizen of the United States and is taxable under [section 1](#) or [section 1201\(b\)](#) of the Code on income from sources both within and without the United States.

Pursuant to the authority granted by [section 7805\(b\)](#) of the Code, this Revenue Ruling shall not be applicable for taxable years beginning prior to January 1, 1971. Therefore, individuals who lost their citizenship by operation of section 352(a) of the Immigration and Nationality Act of 1952 shall not be deemed liable for income tax as citizens of the United States for taxable years beginning prior to January 1, 1971. This exception, however, shall not apply to an individual who, prior to January 1, 1971, but after the time of specific conduct which was mistakenly deemed to have resulted in loss of citizenship, affirmatively exercised a specific right of citizenship. Such individuals shall be liable for income tax as United States citizens beginning with the taxable year in which such specific right of citizenship was exercised.

Income from sources within the United States of a person who is considered a nonresident alien individual pursuant to the nonretroactive application of this Revenue Ruling will be subject to tax under [section 871\(a\)](#) of the Code if it is not effectively connected with the conduct of a trade or business within the United States and certain income from sources within and without the United States will be subject to tax under [section 871\(b\)](#) of the Code if it is effectively connected with the conduct of a trade or business within the United States.

**\*3** Furthermore, the mere fact that an individual affected by the *Schneider* decision and this Revenue Ruling takes affirmative steps before January 1, 1971, to establish non-citizen status, will not be considered evidence of a tax avoidance motive for purposes of [section 877](#) of the Code.

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