Pursuant to section 875(1), a nonresident alien individual or foreign corporation that is a partner in a partnership engaged in a trade or business ("ETB") in the U.S. is itself considered to be so engaged. Because PS1 is ETB in the U.S., FP1 is also so engaged since he is a partner in PS1. Section 865(e)(2) provides that income from the sale of personal property by a nonresident will be sourced in the U.S. if the nonresident has a fixed place of business ("FPB") in the U.S. and if the income is attributable to such FPB. A foreign partner of a partnership that is ETB through a FPB in the U.S. itself has a FPB in the U.S., since the foreign partner is considered to be engaged in such trade or business. Income from the disposition of a partnership interest by the foreign partner will be attributable to the foreign partner's FPB in the U.S. See section 865(e)(3); cf. Unger v. Commissioner, T. C. Memo. 1990-15, 58 TCM 1157, 1159.

Subchapter K is a blend of aggregate and entity treatment for partners and partnerships. In applying sections 864(c) and 865(e), it is appropriate to treat a foreign partner's disposition of its interest in a partnership that is ETB through a FPB in the U.S. as a disposition of an aggregate interest in the partnership's underlying property for purposes of determining the source and ECI character of the gain or loss realized by the foreign partner. Accordingly, a foreign partner's gain or loss from the disposition of an interest in a partnership that is ETB through a FPB in the U.S. will be ECI (U.S. source) gain or loss to the extent such gain or loss is attributable to ECI (U.S. source) property of the partnership.

Note that the Tax Court declined to follow this ruling in Grecian Magnesite Mining v. Commr., 149 T.C. No. 3.