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89TH CONGRESS } 2d Session } SENATE { REPORT No. 1707

FOREIGN INVESTORS TAX ACT OF 1966; PRESIDENTIAL ELECTION CAMPAIGN FUND ACT; AND OTHER AMENDMENTS

REPORT

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

TO ACCOMPANY

H.R. 13103

A BILL TO PROVIDE EQUITABLE TAX TREATMENT FOR FOREIGN INVESTMENT IN THE UNITED STATES

OCTOBER 11, 1966.—Ordered to be printed

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CONTENTS

Page

I. Summary ... 1
II. Purpose and background of Foreign Investors Tax Act ... 9
III. Revenue estimates ... 9
IV. General explanation ... 10
A. Foreign Investors Tax Act ... 10
1. Income tax source rules ... 10
a. Rules for determining source of certain interest payments (sec. 102(a)(1) of the bill and secs. 861 (a) and (c) of the code) ... 10
b. Interest on deposits in foreign branch banks of domestic corporations (sec. 102(a)(2) of the bill, sec. 861(a)(1)(D) of the code) ... 12
c. Foreign central banks and the Bank for International Settlements (sec. 102(a)(3)(A) of the bill and sec. 895 of the code) ... 12
d. Rules for determining the sources of dividends and interest from foreign corporations (sec. 102(a)(2), (a)(3), and (b) of the bill and secs. 861(a) (1) (B), (C), and (D) and (2)(B) and (C) of the code) ... 13
e. Compensation for personal services (secs. 102 (c) and (d) of the bill and secs. 861(a)(3)(C)(ii) and 864(b)(1) of the code) ... 15
2. Definitions used in determining taxable status of income ... 16
a. Trading in stocks or securities or in commodities (sec. 102(d) of the bill and sec. 864(b)(2) of the code) ... 16
b. Income effectively connected with the conduct of a trade or business in the United States (sec. 102(d) of the bill and sec. 864(c) of the code) ... 17
3. Taxation of nonresident aliens ... 22
a. Income tax on nonresident alien individuals (sec. 103(a) of the bill and sec. 871 of the code) ... 22
b. Deductions (sec. 103(c) of the bill and sec. 873 of the code) ... 27
c. Expatriation to avoid tax (sec. 103(f) of the bill and new sec. 877 of the code) ... 28
d. Partial exclusion of dividends from gross income (sec. 103(g) of the bill and sec. 116(d) of the code) ... 29
e. Withholding of tax on nonresident alien individuals (secs. 103 (h) and (k) of the bill and secs. 1441 and 3401 of the code) ... 29
f. Withheld taxes and declarations of estimated income tax (secs. 103 (i) and (j) of the bill and secs. 1461 and 6015 of the code) ... 31
g. Foreign estates or trusts (secs. 103 (e) and (l) of the bill and secs. 875 and 7701(a)(31) of the code) ... 31
h. Citizens of possessions of the United States (sec. 103(m) of the bill and sec. 932(a) of the code) ... 32
i. Gain from disposition of certain depreciable realty (sec. 3(j) of the House bill and sec. 1250(d) of the code) ... 32

IV. General explanation—Continued.
A. Foreign Investors Tax Act—Continued Page
4. Taxation of foreign corporations ... 32
a. Income tax on foreign corporations (secs. 104 (a) and (b) of the bill and secs. 881 and 882 of the code) ... 32
b. Withholding of tax on foreign corporations (sec. 104(c) of the bill and sec. 1442 of the code) ... 35
c. Deduction for dividends received from foreign corporations (secs. 104 (d) and (e) of the bill and secs. 245 (a) and (b) of the code) ... 35
d. Unrelated business taxable income of certain foreign charitable organizations (sec. 104(g) of the bill and sec. 512(a) of the code) ... 36
e. Corporations subject to personal holding company tax (sec. 104(h) of the bill and secs. 542(c), 543(b), and 545 (a) and (d) of the code) ... 36
f. Foreign corporations carrying on insurance business in the United States (sec. 104(i) of the bill and secs. 819, 821, 822, 831, 832, 841, and 842 of the code) ... 37
g. Subpart F income (sec. 104(j) of the bill and sec. 952(b) of the code) ... 39
h. Gain from certain sales or exchanges of stock in certain foreign corporations (sec. 104(k) of the bill and sec. 1248(d) of the code) ... 40
5. Miscellaneous income tax provisions, etc ... 40
a. Income affected by treaty (sec. 105(a) of the bill and sec. 894 of the code) ... 40
b. Adjustment of tax on nationals, residents, and corporations of certain foreign countries (sec. 105(b) of the bill and new sec. 896 of the code) ... 41
c. Foreign community property income (sec. 105(e) of the bill and new sec. 981 of the code) ... 42
d. Foreign tax credit—foreign corporations and nonresident aliens (sec. 106(a) of the bill and secs. 874, 901, and new sec. 906 of the code) ... 44
e. Similar credit requirement (secs. 106(b) (2) and (3) of the bill and secs. 901(c) and 2014(b) of the code) ... 45
f. Separate foreign tax credit limitation (sec. 106(c) of the bill and sec. 904(f) of the code) ... 46
g. Amendment to preserve existing law on deductions under section 931 (sec. 107 of the bill and sec. 931(d) of the code) ... 48
6. Estate tax provisions ... 49
a. Estate tax rates (sec. 108(a) of the bill and sec. 2101(a) of the code) ... 49
b. Limitation on credit for State death taxes (sec. 108(b) of the bill and sec. 2102 of the code) ... 50
c. Bond situs rule (sec. 108(c) of the bill and sec. 2104 of the code) ... 51
d. Deposits in U.S. banks or foreign branch banks of U.S. corporations (sec. 108(d) of the bill and sec. 2105 of the code) ... 52
e. Definition of taxable estate (sec. 108(e) of the bill and sec. 2106(a)(3) of the code) ... 53
f. Expatriation to avoid tax (sec. 108(f) of the bill and new sec. 2107 of the code) ... 54
g. Application of pre-1967 estate tax provisions (sec. 108(f) of the bill and new sec. 2108 of the code) ... 56
h. Estate tax returns (sec. 108(g) of the bill and sec. 6018 of the code) ... 56

IV. General explanation—Continued
A. Foreign Investors Tax Act—Continued — Page
7. Gift tax provisions — 57
a. Tax on gifts of nonresidents not citizens (sec. 109(a) of the bill and sec. 2501 of the code) — 57
b. Situs of bonds given by expatriates (sec. 109(b) of the bill and sec. 2511 of the code) — 57
8. Treaty obligation — 58
B. Other amendments to the Internal Revenue Code — 58
1. Application of investment credit to property used in U.S. possessions (sec. 201 of the bill and secs. 48(a)(2), 48(a)(5), and 48(d) of the code) — 58
2. Medical expenses deductions of individuals age 65 or over (sec. 202 of the bill and sec. 213 of the code) — 58
3. Basis of property received in the liquidation of subsidiary (sec. 203 of the bill and sec. 334(b) (2) and (3) and sec. 453(d) of the code) — 60
4. "Swap funds" (sec. 204 of the bill and sec. 351 of the code) — 61
5. Minimum amount treated as earned income for retirement plans of self-employed persons (sec. 205 of the bill and sec. 401(c)(2)(B) of the code) — 61
6. Treatment of certain income of authors, inventors, etc., as earned income for retirement plan purposes (sec. 206 of the bill and sec. 401(c)(2) of the code) — 62
7. Exclusion of certain rents from personal holding company income (sec. 207 of the bill and sec. 543 of the code) — 63
8. Percentage depletion rate for certain clay bearing alumina (sec. 208 of the bill and sec. 613 of the code) — 64
9. Percentage depletion rate for clam and oyster shells (sec. 209 of the bill and sec. 613 of the code) — 64
10. Sintering and burning of shale, clay, and slate used as lightweight aggregates (sec. 210 of the bill and sec. 613 of the code) — 65
11. Income from lapsing of straddle options (sec. 211 of the bill and sec. 1234(c) of the code) — 65
12. Tax treatment of per-unit retain allocations (sec. 212 of the bill and secs. 1382, 1383, 1385, 1388, and 6044 of the code) — 69
13. Excise tax rate on hearses (sec. 213 of the bill and sec. 4062 of the code) — 71
14. Interest equalization tax; loans to insure raw material sources (sec. 214 of the bill and sec. 4914 of the code) — 72
15. Interest equalization tax; insurance company reserve funds (sec. 215 of the bill and sec. 4914(e) of the code) — 73
16. Interest equalization tax; dollar loans of foreign branches of U.S. banks (sec. 216 of the bill and sec. 4931(a) of the code) — 73
C. Presidential Election Campaign Fund Act — 73
1. Background — 73
2. Designation of income tax payments to Presidential Election Campaign Fund (sec. 302 of the bill and sec. 6096 of the code) — 75
3. The Presidential Election Campaign Fund and payments therefrom (sec. 303 of the bill) — 75
4. The Advisory Board (sec. 304 of the bill) — 76

IV. General explanation—Continued Page
D. Miscellaneous provisions 76
1. Treasury notes payable in foreign currency (sec. 401 of the bill) 76
2. Reports on Government contingent liabilities and assets (sec. 402 of the bill) 77
3. Coverage of drug expenses under supplementary medical insurance benefits (sec. 403 of the bill and secs. 1832, 1833, 1845, 1846, and 1847 of the Social Security Act) 78
V. Technical explanation of Foreign Investors Tax Act 80
VI. Changes in existing law 80

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Mr. LONG of Louisiana, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 13103]

The Committee on Finance, to which was referred the bill (H.R. 13103) to amend the Internal Revenue Code of 1954 to provide equitable tax treatment for foreign investment in the United States, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. SUMMARY

Your committee has accepted the House bill, the Foreign Investors Tax Act of 1966, with certain changes indicated below. In the bill as amended by your committee the Foreign Investors Tax Act provisions are referred to as title I. In addition, your committee has added to the bill certain other amendments which appear as titles II, III, and IV. These titles relate to other Internal Revenue Code amendments, the Presidential Election Campaign Fund Act, and other amendments, respectively.

A summary of the principal changes made by this bill—with your committee's amendments indicated—for the most part presented in the order in which they appear in the bill follows:

A. The Foreign Investors Tax Act

1. Interest on deposits in foreign branch banks of domestic corporations.—Interest on deposits with foreign branch banks of U.S. corporations or partnerships is to be treated as foreign source income, and

thus free of U.S. income tax when paid to nonresident aliens and foreign corporations..

2. Source rules for bank deposit interest and similar income.—After December 31, 1971, all interest on U.S. bank deposits (other than those described in No. 1 above), whether or not effectively connected with a U.S. business, is to be treated as U.S. source income (and subject to U.S. income tax) in the case of nonresident aliens and foreign corporations. Until then, this interest on bank deposits, interest paid on accounts with mutual savings banks, domestic building and loan associations, etc., and interest on amounts held by insurance companies on deposit also are to be treated as foreign source income (unless effectively connected with a U.S. business) and thereby free of U.S. income tax.

3. Rules for determining the source of dividends from foreign corporations.—The source rule with respect to dividends paid by foreign corporations is amended to provide that dividends received from a foreign corporation are to be considered as having a U.S. source only if 50 percent (House bill provided an 80-percent rule) of the corporation's gross income for the prior 3 years was effectively connected with the conduct of a trade or business in the United States.

4. Compensation for personal services.—The special source rule, providing that certain payments of compensation for services performed in the United States by a nonresident alien are treated as foreign source income (and therefore free of U.S. tax) if the services are performed for certain foreign persons or a foreign office of a U.S. corporation, is extended to services performed for a foreign office of a proprietor who is a citizen or resident of the United States or for the foreign office of a domestic partnership.

5. Trading in stocks or securities or in commodities.—Except in the case of dealers and certain investment companies, trading in stocks or securities in the United States for one's own account, whether by a foreign investor physically present in the United States, through an employee located here, or through a resident agent (whether or not the agent has discretionary authority) is not to constitute a trade or business in the United States for income tax purposes. A parallel rule is provided for those trading in commodities.

6. Income effectively connected with the conduct of a trade or business in the United States.—The benchmark to be used in determining whether income is to be subject to a flat 30-percent rate or taxed substantially the same as income earned here by a U.S. citizen or domestic corporation is whether or not the income is effectively connected with a U.S. business. In the case of investment and other fixed or determinable income and capital gains from U.S. sources the income is to be treated as effectively connected with a U.S. business if the income is derived from assets used or held for use in the conduct of a U.S. business or if the activities of the U.S. business are a material factor in the realization of the income. All other types of U.S. source income are to be considered to be effectively connected if there is a U.S. business. Income from sources without the United States will not be treated as effectively connected with a U.S. business unless the nonresident alien or foreign corporation has a fixed place of business in the United States and the income is attributable to that place of business. Moreover, in general only rents and royalties from licensing,

certain income from banking and so forth; and sales income are to be taken into account for this purpose and only to the extent the income is not "subpart F" income or income derived from a foreign corporation 50 percent owned by the nonresident alien or foreign corporation receiving the income. Your committee modified the provision of the House bill dealing with "effectively connected" foreign source income to exclude (*a*) income derived from a transaction in which the U.S. office was not a material factor, (*b*) income not derived from the usual business activities of the U.S. office, and (*c*) income not properly allocable to the U.S. office. Additionally, the definition of a U.S. office was redefined to exclude the office of certain agents. In another modification, the foreign tax credit provision was expanded to include domiciliary taxes attributable to the foreign source effectively connected income.

7. Income tax on nonresident alien individuals.—The income of nonresident aliens which is effectively connected with a U.S. business is to be taxed at the regular graduated rates applicable to individuals and all income not so connected is to be taxed at a flat 30-percent rate (or lower applicable treaty rate). U.S. source capital gains of a nonresident alien not engaged in business in the United States are to be taxed only if the alien was in the United States for 183 days or more during the year. Deductions are allowable only to the extent allocable to income which is effectively connected to a U.S. business. Also, an election is provided which allows an alien to treat income from real property as U.S. business income in order to take deductions allocable to it.

8. Expatriation to avoid income tax.—U.S. source income and the effectively connected income of a citizen received for 10 years after expatriation is, in most cases, to be taxed at the regular U.S. tax rates if a principal purpose of the expatriation was the avoidance of U.S. income, estate, or gift taxes. The House bill would have provided a 5-year rule for income taxes.

9. Withheld taxes and declarations of estimated income tax.—The Treasury Department is authorized to require payment of amounts withheld from nonresident aliens and foreign corporations on a more current basis, rather than the annual basis presently provided. Nonresident aliens who receive income which is effectively connected with the conduct of a U.S. business are to be required to file declarations of estimated tax.

10. Income tax on foreign corporations.—The regular corporate income tax is to apply to income of foreign corporations which is effectively connected with a U.S. business. U.S. source income which is not so connected is taxable at a flat 30-percent rate (or at a lower treaty rate). Foreign corporations are given an election to treat real property income as business income similar to that afforded nonresident aliens.

11. Foreign corporations carrying on insurance business in the United States.—A foreign corporation carrying on a life insurance business within the United States is to be taxed under the present special insurance company provisions on its income effectively connected with a U.S. business. The remainder of the income of this type of corporation from sources within the United States is to be taxed in the same manner as income of other corporations which is not

69-835 O—66——2

effectively connected; that is, at a flat 30-percent rate. An adjustment also is made to avoid double taxation which might result from the interaction of the minimum surplus provision for life insurance companies under present law and the new method of taxing foreign life insurance companies.

12. Discrimination and more burdensome taxes by foreign countries.—The House bill authorizes the President to reinstate the income, estate, or gift tax provisions in effect prior to the enactment of this bill in the case of foreigners upon a determination that the foreign country in which they are residents or were incorporated is imposing more burdensome taxes on U.S. citizens or domestic corporations on income from sources within the foreign country than the U.S. tax on similar U.S. source income of foreigners. Your committee added an amendment which provides the President with authority in the case of discrimination by a foreign government against U.S. persons, to take such action as is necessary to raise the effective rate of U.S. tax on income received by nationals or corporations of that other country to substantially the same effective rates as are applied in the other country on income of U.S. citizens or corporations.

13. Foreign community property income.—A U.S. citizen who is married to a nonresident alien and resident in foreign country with community property laws, is to have an election for post-1966 years to treat the community income of the husband and wife as income of the person who earns it or, in the case of trade or business income, as income of the husband unless the wife manages the business. Income from separate property is to be treated as income of the person owning the property. All other community income is to be governed by the applicable foreign community property law. For open pre-1967 years, an election may also be made and the rules set forth above govern except that the other community income is to be treated as the income of the person who had the greater income from the other community income categories plus separate income.

14. Foreign tax credit.—A foreign tax credit is to be allowed nonresident aliens and foreign corporations with respect to foreign taxes on foreign source income which is effectively connected to the conduct of a U.S. business. Your committee extended this provision to include income taxes paid to the foreigner's home country on grounds other than that the income was derived from sources within that country.

15. Similar income tax credit requirement.—Under present law a foreign tax credit is denied to citizens of a foreign country who are resident in the United States if the foreign country does not allow a similar credit to U.S. citizens who are resident in the foreign country. In the future the credit is to be denied only where the President finds that this is in the public interest and the foreign country refuses to grant U.S. citizens such a credit when requested to do so.

16. Separate foreign tax credit limitation.—The 10-percent exception to the separate application of the limitation on the foreign tax credit for interest income was amended by your committee so as to apply to a U.S. corporation which directly or indirectly owns 10 percent of the foreign corporation from which the interest is derived, or is a member of an affiliated group of corporations which has such ownership. The House bill contained a more limited exception which

would have provided that the separate limitation is not to apply to a domestic funding subsidiary which is formed and availed of for the principal purpose of (1) raising funds outside the United States through foreign public offerings, and (2) using these funds to finance the foreign operations of related foreign corporations.

17. Estate tax rates, exemptions, and returns.—A separate schedule of estate tax rates is made applicable to estates of nonresident aliens. The rates are graduated from 5 percent on the first $100,000 of a taxable estate to 25 percent on the portion which exceeds $2 million. The exemption also is raised from $2,000 to $30,000. These two measures are designed to accord approximately the same tax treatment in the case of the estate of a nonresident alien as is accorded a similar-sized estate of a citizen eligible for a marital deduction. The filing requirement for returns for the estates of these nonresident aliens also is raised from $2,000 to $30,000.

18. Situs rule for bonds.—For purposes of the tax imposed on the estates of nonresident aliens, bonds of a U.S. person, the United States, a State, or political subdivision owned by a nonresident not a citizen of the United States, are to be considered property within the United States and therefore subject to U.S. estate tax. This rule already applies in the case of other forms of debt obligations.

19. Situs rule for bank deposits.—U.S. bank deposits of nonresident aliens are to be treated as property within the United States and therefore subject to U.S. estate tax after 1971. The provisions of the House bill would have been effective immediately.

20. Situs rule for deposits in foreign branch banks.—Deposits in a foreign branch bank of a U.S. corporation or partnership are to be treated as property without the United States and therefore not includible in a foreigner's U.S. estate tax base.

24. Expatriation to avoid estate tax.—The estate of a nonresident alien is to be taxed at the regular U.S. estate tax rates if, within 10 years of his death, the alien had expatriated from the United States with a principal purpose of avoiding U.S. taxes.

22. Tax on gifts of nonresident aliens.—Transfers of intangible property by nonresident aliens are not to be subject to gift tax whether or not they are engaged in business in the United States. However, gifts of intangibles made by citizens who become expatriates within 10 years of making the gift are to be subject to gift tax if the avoidance of income, estate or gift taxes was a principal purpose for their becoming an expatriate. In the case of a person who expatriated for tax avoidance reasons, debt obligations of a U.S. person, or of the United States or a State or political subdivision, are to be treated as having a situs in the United States.

23. Treaty obligations.—No amendment made by this bill is to apply in any case where its application would be contrary to any treaty obligation of the United States. However, the granting of a benefit provided by an amendment made by this bill is not to be considered to be contrary to a treaty obligation. Thus, even though a nonresident alien or foreign corporation has a permanent establishment in the United States, income which is not effectively connected with this business is to be taxed at the applicable treaty rate rather than at the regular individual or corporate rate.

B. Other amendments to the Internal Revenue Code (added by your committee)

1. Application of the investment credit to certain property in U.S. possessions.—The investment credit is extended to property located in U.S. possessions provided the property is owned by a U.S. company or citizen, subject to U.S. tax on its income from possessions, would otherwise have qualified for the investment credit, and is not owned or used by U.S. persons who are presently exempt from U.S. tax. This amendment is effective with respect to property placed in service after December 31, 1965.

2. Medical expense deductions of persons 65 and over.—The amendment repeals the provisions with respect to a taxpayer age 65 or over, his spouse age 65 or over, and dependent mothers or fathers who are age 65 or over, which, beginning in 1967, would limit their medical deductions to medical care expenses in excess of 3 percent of adjusted gross income and define their medical care expenses to include only those medicine and drug expenses in excess of 1 percent of adjusted gross income.

3. Corporate acquisition of assets of another corporation.—(*a*) *Purchase of stock.*—Under present law, the purchase from an unrelated party by one corporation of at least 80 percent of the stock of another corporation followed by the liquidation of the acquired corporation within 2 years is treated as a purchase of the assets of the acquired corporation. These amendments expand the definition of "purchase" to include the purchase of stock from a 50-percent owned subsidiary if stock in the 50-percent owned subsidiary was also acquired by purchase. The change is to be effective with respect to acquisitions of stock made after December 31, 1965.

(*b*) *Installment notes.*—This amendment provides that when installment notes are transferred in the type of purchase and liquidation described above, gain is to be recognized to the distributing corporation in the same manner as if it had sold the notes. This amendment is to be effective with respect to distributions made after the date of enactment of this act.

4. Swap funds.—The amendment sets aside certain Treasury regulations proposing to tax the exchange of appreciated securities for shares in a mutual investment fund.

5. Self-employed persons retirement plans: minimum amount treated as earned income.—This amendment raises from $2,500 to $6,600 the minimum amount of earnings from a trade or business, in which both personal services and capital are material income-producing factors, which a self-employed person may treat as earned income regardless of the general rule that only 30 percent of the net profits of the trade or business may be treated as a self-employed person's earned income. This amendment applies to taxable years beginning after December 31, 1965.

6. Self-employed persons retirement plans: certain income of authors, inventors, and so forth.—The bill amends present law relating to self-employed individuals' retirement plans to permit authors, inventors, and so forth, to include gains (other than capital gains) from sales and other transfers of their works in their earned income base for

the purpose of computing deductions for contributions to such plans. This change will be effective for taxable years ending after the date of enactment of this act.

7. *Exclusion of certain rents from personal holding company income.*—This amendment provides, for taxable years beginning after the date of enactment of the act (and certain earlier years at the election of the taxpayer), that rent received from the lease of tangible personal property manufactured by a taxpayer is not to be treated as personal holding company income.

8. *Percentage depletion in the case of certain clay-bearing alumina.*—This amendment provides, with respect to taxable years beginning after the date of enactment, a percentage depletion rate of 23 percent for alumina and aluminum compounds extracted from domestic deposits of clay, laterite, and nephelite syenite. It further provides that in computing gross income from mining all processes applied to derive alumina or aluminum compounds from such clay, laterite, and nephelite syenite are to be treated as mining processes.

9. *Percentage depletion rate for clam and oyster shells.*—This amendment provides that mollusk shells (including clam and oyster shells) are to be allowed percentage depletion at the same rate (15 percent) as is applicable in the case of limestone and other calcium carbonates. This change is applicable to taxable years beginning after the date of enactment.

10. *Sintering and burning of shale, clay, and slate.*—This amendment provides that for purposes of percentage depletion, the sintering or burning of shale, clay, and slate used or sold for use as lightweight aggregates is to be treated as a mining process. This amendment is applicable to taxable years beginning after the date of enactment.

11. *Straddles.*—This amendment provides that, with respect to straddle transactions entered into after January 25, 1965, the income from the lapse of an option which originated as part of a straddle is to be treated as a short-term capital gain (instead of ordinary income). This permits it to be netted against any capital loss which may result from the exercise of the other option in the straddle while retaining what in most respects is ordinary income treatment for any excess of net short-term capital gain over net long-term capital loss.

12. *The taxation of per-unit retain allocations of cooperatives.*—The bill clarifies present law dealing with the taxation of cooperatives and patrons to insure that a current single tax is paid, at either the cooperative or patron level, with respect to per-unit retain certificates. In so doing, the amendment makes the treatment of these certificates generally comparable to the treatment of patronage dividends under present law.

13. *The excise tax on hearses.*—This bill provides that the sale of an ambulance, hearse, or combination ambulance-hearse vehicle is to be considered to be the sale of an automobile chassis or automobile body (rather than a truck chassis or body) for purposes of determining the manufacturers' excise tax on motor vehicles. This change applies with respect to articles sold after the date of enactment of this bill.

14. *Interest equalization tax: raw material source loans.*—Subsequent transfers of debt obligations to assure raw material sources are

to be exempt from the interest equalization tax where the indebtedness is acquired without an intent on the part of the purchaser to sell it to other U.S. persons. This change is to be effective with respect to acquisitions of debt obligations made after the date of enactment.

15. Interest equalization tax: certain acquisitions by insurance companies in developed countries.—The present exemption for reserve asset pools of U.S. insurance companies is extended to allow the establishment of reserve asset pools where a U.S. insurance company commences activities in a developed country or where a less-developed country is designated as a developed country. This amendment is to take effect on the day after the date of enactment.

16. Interest equalization tax: Euro-dollars.—The President is given the authority to exempt from the interest equalization tax U.S. dollar loans of more than 1 year made by the foreign branches of U.S. banks. This change is to apply to acquisitions of debt obligations made after the date of enactment.

C. Presidential Election Campaign Fund Act

This title provides for public support of presidential election campaign financing. Individual taxpayers are to be able to designate on their annual tax returns that $1 of their income tax liability is to be placed in a presidential election campaign fund. The amounts in the fund are to be made available to defray the expenses incurred by political parties in presenting candidates for President and Vice President. Amounts will only be paid to those political parties whose candidates received at least 1,500,000 votes in the preceding presidential election.

A major political party (one whose candidate polled 10 million votes or more in the preceding presidential election) is to be eligible to receive a payment from the fund equal to $1 times the number of votes cast for the presidential candidates of the major political parties in the preceding presidential election divided by the number of such major political parties. A minor party (one whose candidate polled more than 1,500,000 but less than 10 million votes) is to be eligible to receive a payment from the fund equal to $1 for each vote in excess of 1,500,000 votes that its candidate received in the preceding presidential election. The payment received by any political party is to be limited, however, to reimbursement of presidential campaign expenses actually incurred by the party in connection with the current presidential election.

The Comptroller General is authorized to determine the campaign expenses of the political parties and to determine the amounts which may be paid to such parties. An advisory board is established to advise and assist the Comptroller General with his duties under this act.

D. Miscellaneous provisions

1. Treasury bonds or certificates payable in foreign currency.—This amendment expands the debt management authority of the Secretary of the Treasury to permit the issuance of U.S. notes denominated in foreign currencies. This authority already exists in the case of bonds and certificates of indebtedness.

2. Reports on Federal contingent liabilities and assets.—This amendment requires the Secretary of the Treasury to submit a report to the Congress each year indicating the full contingent liabilities of the Federal Government and the assets of the Federal Government which might be made available to liquidate such liabilities. The first such report is to be submitted on or before March 31, 1967.

3. Medicare: Coverage of expenses for prescribed drugs.—This amendment authorizes payments for prescribed drugs under the Medicare Act. The estimated monthly cost of $1 per beneficiary will be shared equally by the Government and the beneficiary. Reimbursements will be made under a schedule of allowances based upon generic drug prices.

II. PURPOSE AND BACKGROUND OF FOREIGN INVESTORS TAX ACT

On October 2, 1963, the President appointed a task force on "Promoting Increased Foreign Investment in U.S. Corporate Securities and Increased Foreign Financing for U.S. Corporations Operating Abroad." On April 27, 1964, a report of this task force was released. Among the recommendations of the task force were a series of proposals designed to modify the U.S. taxation of foreign investors. The Treasury Department studied the recommendations of the task force and on March 8, 1965, submitted to the Congress proposed tax legislation designed to increase foreign investment in the United States. At the request of the administration a bill was introduced at that time designed to carry out the recommendations of the Treasury Department. Subsequently, after holding hearings on this topic, the House passed a somewhat different version of this earlier bill; namely, H.R. 13103. Your committee has held hearings on this bill and modified it somewhat. Basically, however, the objectives remain the same as in the bill as passed by the House; that is, the two objectives of improving equity in the tax treatment of nonresident aliens and foreign corporations and providing, to the extent consistent with the first objective, increased incentives for investments by these persons and corporations in the United States.

This bill represents a substantial revision of the tax treatment of foreign corporations and nonresident aliens, an area which has not been substantially revised for some 30 years.

III. REVENUE ESTIMATES

It is expected that the Foreign Investors Tax Act, as presented here, will result in a revenue gain at current income and investment levels of slightly over $1 million a year. In addition, the provision calling for quarterly payments of withheld taxes, instead of annual payments, is expected to increase collections in the fiscal year 1967 alone by $22.5 million. Table 1 shows the revenue gain or loss attributable to the various Foreign Investors Tax Act provisions in the bill to the extent this can be quantified.

TABLE 1.—*Estimated revenue changes resulting from the foreign investors tax bill*

Tax proposals	Revenue gain or loss (−)		
	Gain	Loss	Net
A. Elimination of progressive taxation of U.S. source income of nonresident alien individuals not engaged in trade or business in the United States		−$748,000	−$748,000
B. Estate tax at top rate of 25 percent on intangibles and tangibles with $30,000 exemption		−3,000,000	−3,000,000
1. Tax on excluded bank deposits	$300,000		300,000
C. Taxation of foreign life insurance company income from nontrusteed investments in the United States	3,000,000		3,000,000
D. Saving in interest cost to U.S. Government resulting from quarterly payment of withheld taxes	1,593,000		1,593,000
E. Tax on capital gains		−50,000	−50,000
Total	4,893,000	−3,798,000	1,095,000

NOTE.—Based on the most recently available withholding tax information, quarterly payment of withheld taxes will result in a revenue gain of $22,500,000 in the fiscal year 1967. Taxes will be collected for 5 quarters in the fiscal year 1967. All 1966 withholding, estimated at $90,000,000, will be collected on March 15, 1967, plus tax of $22,500,000 for the 1st quarter of 1967 on April 15, 1967.

The amendments added to the bill by your committee, other than those relating to the Foreign Investors Tax Act, are expected to result in an annual revenue loss (or expenditure increase) of slightly over $400 million. Two hundred million dollars of this is attributable to the medicare amendment making provision for drugs under the supplementary benefit program. The provision making medical expenses deductible in full with respect to most persons over age 65 is expected to result in an annual revenue loss of $180 million. An expenditure of approximately $70 million every 4 years also is expected from the Presidential Election Campaign Fund Act. The remaining provisions added by your committee are expected to result in a further revenue loss of approximately $10 million a year.

IV. GENERAL EXPLANATION

A. FOREIGN INVESTORS TAX ACT

I. INCOME TAX SOURCE RULES

a. Rules for determining source of certain interest payments (sec. 102(a)(1) of the bill and secs. 861 (a) and (c) of the code)

Present law.—Present law provides that nonresident alien individuals and foreign corporations are subject to U.S. tax only on the income they derive from sources within the United States. For purposes of determining whether the income is from within or without the United States, the code specifically enumerates types of income treated as income from sources within and as income from sources without the United States.

One of the rules under present law provides that interest on deposits paid to foreign persons not engaged in trade or business in the United States is to be treated as income from sources without the United States if the interest is paid by a bank. The Internal Revenue Service in interpreting this rule has held that, in addition to banks, the provision applies to certain deposits with some types of State-chartered savings and loan associations. However, the Service has not interpreted this provision as extending to interest paid on deposits with all savings

and loan associations or all types of deposits. Additionally, interest on similar deposits with insurance companies has not been accorded the benefits of this special rule.

Reasons for provision.—Your committee agrees with the House that it is questionable whether interest income of this type which is so clearly derived from U.S. sources, should be treated as though derived from sources without the United States and thereby escape U.S. taxation. At the same time, however, your committee realizes that an immediate alteration of the present source rule might have a substantial adverse effect on our balance of payments. To meet these two quite different problems your committee has adopted the provisions of the House bill which repeal this special foreign-source rule (exclusion from taxable U.S. income) but also postpone the effective date of the repeal until after 1971. At that time the Congress will have an opportunity to reconsider the balance-of-payments situation. In the interval your committee will have an opportunity to study the desirability of continuing the present exemption as well as considering the impact that the removal of this exemption would have on the balance-of-payments.

Your committee also agrees with the House that, as long as bank deposit interest is to be treated as foreign source income, there is no justification for denying similar treatment for interest paid by savings and loan institutions generally as well as interest earned on the proceeds of an insurance policy which are left on deposit with an insurance company. These all represent interest income received on deposits and, therefore, it is believed that the competing businesses should be treated in the same manner for tax purposes.

Explanation of provision.—For the above reasons the bill amends present law to provide that after December 31, 1971, interest on deposits with U.S. banks paid to nonresident alien individuals or foreign corporations is to be treated as income from sources within the United States. Your committee added a provision which subjects interest on deposits with U.S. branch banks of foreign corporations to these provisions. Therefore, until 1972 only bank interest received by nonresident aliens or foreign corporations which is effectively connected with the conduct of a trade or business in the United States will be subject to U.S. tax.[1] In addition, during the intervening 5-year period the bill extends the application of the foreign source rule of present law to interest (or so-called dividends) paid on deposits (or withdrawable accounts) with all chartered and supervised savings and loan associations or similar institutions, to the extent these amounts are deductible (determined without regard to section 265) in computing the taxable income of these institutions. Similar institutions for this purpose include mutual savings banks, cooperative banks, and domestic building and loan associations. Also, during this 5-year period, this special foreign source rule is to be applicable to interest on amounts held by insurance companies under an agreement to pay interest. The amounts paid by insurance companies to which this rule is extended include: (1) interest paid on policyholder dividends left with the company to accumulate; (2) interest paid on prepaid insurance premiums; (3) interest paid on proceeds

[1] The term "effectively connected" is explained subsequently in No. 2(b) below under sec. 102(d) of the bill.

of policies left on deposit; and (4) interest paid on overcharges of premiums.

Effective date.—Except for the provision repealing the special foreign source rule for certain interest as of December 31, 1971, these amendments are effective with respect to taxable years beginning after December 31, 1966.

b. Interest on deposits in foreign branch banks of domestic corporations (sec. 102)(a)(2) of the bill, sec. 861(a)(1)(F) of the code)

Present law.—Present law provides that interest paid to nonresident alien individuals or foreign corporations on deposits with foreign branch banks of U.S. corporations, although paid by the foreign branch situated abroad, is treated as from sources within the United States if the recipient of the interest is engaged in a trade or business in the United States. This is true whether the deposits are payable in dollars or in the currency of the foreign country where the branch is located.

Reasons for provision.—As a result of the rule described above nonresident aliens and foreign corporations often are reluctant to deposit funds with foreign branch banks of U.S. corporations since, if (for other reasons) they are considered to be engaged in a trade or business in the United States, the interest paid on their deposits in these foreign branches is subject to U.S. tax. Their reluctance is increased by the fact that foreign persons engaged in business in the United States can avoid U.S. tax on the interest their bank deposits earn by keeping their funds in a bank chartered in their own country or any other country other than the United States, rather than in the foreign branch bank of a U.S. corporation. As a result, foreign branch banks of U.S. corporations are at a serious competitive disadvantage with the banks chartered in the country where they are doing business.

Explanation of provision.—To place foreign branch banks of U.S. corporations in a competitive position with the other banks in the foreign countries where they are doing business, the bill provides that the interest on deposits paid by these branches is to be treated as foreign source income. Thus, nonresident aliens and foreign corporations will not be subject to U.S. tax on this type of interest income. Your committee has added an amendment to the House bill which would extend this provision to foreign branch banks of U.S. partnerships.

Effective date.—This amendment is effective with respect to taxable years beginning after December 31, 1966.

c. Foreign central banks and the Bank for International Settlements (sec. 102(a) (4) (A) of the bill and sec. 895 of the code)

Present law.—Under present law interest received by a foreign central bank of issue from obligations of the U.S. Government is exempt from U.S. tax unless the obligations are used by the central bank in commercial transactions. In addition foreign central banks of issue and the Bank for International Settlements are not subject to tax on interest income from their U.S. bank deposits since bank-deposit interest received by nonresident aliens and foreign corporations not engaged in a trade or business within the United States is deemed to be from sources without the United States.

The central banks of issue are generally the custodians of the banking reserves of their countries and usually carry on most of the monetary functions of their countries in much the same way as our Federal Reserve Board. The Bank for International Settlements is an international organization, in practice used primarily to aid European central banks of issue in their international financial operations, to promote cooperation among these central banks and to act as trustee in regard to certain international financial settlements. At present, all the central banks of Europe, except that of the Soviet Union, belong to the Bank for International Settlements and over 90 percent of the Bank's deposits are owned by these central banks.

Reasons for provision.—By reason of the present exemption of bank-deposit interest paid to certain foreigners and the exemption of interest income on their holdings of U.S. Government bonds, foreign central banks of issue have been effectively exempt from practically all U.S. tax. Presumably this was done on the grounds that these foreign central banks of issue, through their monetary activities, were for the most part carrying on essential governmental activities for their foreign governments. However, with the termination in 1971 (as provided elsewhere in this bill) of the foreign source rule for bank-deposit interest, the United States would begin taxing bank-deposit interest income of these foreign central banks and the Bank for International Settlements. Your committee agrees with the House that in the case of these foreign governmental institutions this income should continue to be exempt from U.S. tax because of the nature of the activities these banks perform for foreign governments.

Explanation of provision.—In view of the considerations set forth above, the bill amends the code to exempt from U.S. tax interest received by foreign central banks of issue and the Bank for International Settlements from U.S. bank deposits unless the deposits are held in connection with commercial transactions of these banks. After 1971, this will distinguish their tax treatment for interest on bank deposits from that accorded other foreign persons. Your committee added amendments which would exempt interest received by the Bank for International Settlements from U.S. Government obligations. In addition, your committee adopted an amendment extending the governmental obligation rule to include obligations of agencies or instrumentalities of the United States (including beneficial interests, participations, and other instruments issued under sec. 302(c) of the Federal National Mortgage Association Charter Act).

Effective date.—These amendments are effective with respect to taxable years beginning after December 31, 1966.

d. Rules for determining the sources of dividends and interest from foreign corporations (secs. 102(a)(2), (a)(3), and (b) of the bill and secs. 861(a)(1) (B), (C), and (D), and (2) (B) of the code)

Present law.—Present law provides that all, or a portion, of dividends paid by a foreign corporation to nonresident aliens or foreign corporations is considered to be from U.S. sources and therefore subject to U.S. tax, but only if 50 percent or more of the income of the foreign corporation making the distribution is derived from sources within the United States during the preceding 3-year period. A similar rule provides that all the interest paid by a foreign corporation engaged in trade or business in the United States is considered to be

U.S. source income and therefore subject to U.S. tax if 20 percent or more of the income of the foreign corporation paying the interest is from U.S. sources during the preceding 3-year period.

The portion of the dividend treated as being from U.S. sources, where the 50-percent test referred to above is met, is the same proportion of the dividend which the gross income of the foreign corporation during the immediately prior 3-year period, from U.S. sources, is of its gross income from all sources for that period. However, in the case of this type of interest income there is no apportionment provision and therefore all of the interest paid by a foreign corporation meeting the 20 percent rule is treated as being from U.S. sources notwithstanding the proportion of the corporation's income which is from U.S. sources.

Reasons for the provision.—Your committee agrees with the House that the application of the dividend rule described above should be restricted. In addition, your committee believes that a corresponding restriction should also be applied in the case of interest income since the investment nature of both interest and dividend income is similar. Moreover, your committee was of the opinion that the amount of interest subjected to U.S. tax (as U.S. source income) should be in proportion to the amount of the corporation's income which is effectively connected to its conduct of a trade or business in the United States. In the past, these provisions have given rise to little revenue. On the other hand, the elimination of these provisions would give an unfair advantage to foreign corporations substantially all of whose business is conducted in the United States. Consequently, your committee's bill restricts the scope of these provisions by modifying the applicable rules.

The House bill, in the case of dividends, raised the 50-percent requirement to 80 percent. Your committee has set both the dividend and interest percentage requirement at 50 percent. It is believed that this percentage when combined with the effectively connected limitation gives assurance that this second tax on investment income of foreign corporations will only be imposed where U.S. operations account for the major portion of the income being paid out. The limitation to income which is effectively connected with the conduct of a U.S. trade or business is in accord with the general concept, explained subsequently, of treating U.S. source investment income essentially the same with respect to foreign corporations whether or not they have a trade or business in the United States. As is explained further subsequently, different treatment with respect to this investment income does not appear appropriate merely on the grounds of the presence or absence in the United States of an unassociated trade or business of the foreign corporation.

Explanation of provision.—To achieve the objective set forth above your committee's bill amends the source rule with respect to dividends and interest paid by corporations to provide that no portion of the dividend or interest received from a foreign corporation is to be considered to be from U.S. sources unless 50 percent or more of the corporation's gross income for the 3-year period preceding the year in which the dividends or interest is paid, was effectively connected with the conduct of a trade or business in the United States. Also, the portion of the dividend or interest treated as being from U.S. sources

is to be the same proportion of the dividend or interest which the effectively connected income of the foreign corporation during the immediately prior 3-year period is of its gross income from all sources for that period. Thus, when compared to present law, the effect of these amendments is to decrease the amount of dividends and interest likely to remain subject to U.S. tax.

The bill also contains a transitional rule providing that, in applying the new 50-percent test, any gross income of the foreign corporation from U.S. sources, for any period before the first taxable year beginning after December 31, 1966, is treated as effectively connected income. Your committee also amended the House bill to provide a special rule for determining the source of interest or dividends paid by newly incorporated corporations.

Effective date.—These amendments are effective with respect to dividends received after December 31, 1966.

e. Compensation for personal services (secs. 102(c) and (d) of the bill and secs. 861(a)(3)(C)(ii) and 864(b)(1) of the code)

Present law.—Present law provides that payments of compensation for services performed in the United States generally are treated as U.S. source income. An exception to this rule is provided for compensation received by a nonresident alien where certain conditions are met. Thus, payments for personal services received by a nonresident alien are treated as foreign source income if (1) he was temporarily present in the United States for not over 90 days during the year; (2) the compensation does not exceed $3,000; and (3) the services are performed for a foreign employer not engaged in a trade or business in the United States or for a domestic corporation if the services are performed for an office or place of business it maintains in a foreign country or U.S. possession. Also, present law provides that the rendering of personal services in the cases described above is not to constitute engaging in a trade or business in the United States.

Reasons for provision.—Temporary personal services of the type described above on occasion may be rendered not only for a domestic corporation having an office or place of business abroad but also for a U.S. citizen, resident or for a domestic partnership where the citizen, resident or partnership has an office abroad. Your committee agrees with the House that the performance of temporary services in the United States subject to the same conditions as described above should be exempt from tax where the business abroad is that of a U.S. citizen, resident or partnership, just as it is in the case of a domestic corporation.

Explanation of provision.—For the reasons given above, the bill amends the source rule of present law relating to personal service income to provide that income from services performed by a nonresident alien temporarily present in the United States for not over 90 days in a year, if not in excess of $3,000, is to be treated as foreign source income (and not subject to U.S. tax) not only in cases where the employer is a foreign person or a domestic corporation but also where the employer is a U.S. citizen or resident or a domestic partnership. Similar changes are also made in the definition of a "trade or business within the United States" to provide that this term does not include personal services performed for employers who are U.S. citizens or

residents or for domestic partnerships where the conditions set forth above are met.

Effective date.—These amendments are applicable with respect to taxable years beginning after December 31, 1966.

2. DEFINITIONS USED IN DETERMINING TAXABLE STATUS OF INCOME

a. Trading in stocks or securities or in commodities (sec. 102(d) of the bill and sec. 864(b)(2) of the code)

Present law.—Present law specifically excludes from the activities which constitute engaging in a trade or business within the United States the trading activities conducted by a nonresident alien in stocks, securities, or commodities in the United States through a resident broker, commission agent, or custodian.

This rule also applies with respect to foreign corporations. However, a question has arisen as to whether a nonresident alien or foreign corporation is to be treated as carrying on a trade or business within the United States if the foreign person grants discretionary authority to a U.S. broker or other agent to carry out transactions in the United States with respect to his stocks, securities, or commodities. Under present law, the granting of this discretionary authority may prevent a nonresident alien or foreign corporation from qualifying for this exclusion, with the result that income arising from these transactions and all other U.S. source income is subject to U.S. tax at the regular individual or corporate rates (based on a determination that such activities constitute carrying on a trade or business in the United States).

Reasons for provision.—The granting of discretionary authority to a U.S. broker or agent is thought by many foreign investors to be a desirable protective device in the event they are not in a position to give buy or sell orders at any time and, in any event, such an arrangement is frequently the most convenient method of effecting stock, security, or commodity transactions. The mere grant of this discretionary authority to a U.S. broker or agent would not appear to be significant enough to warrant treating the foreign person acting for his own account as engaging in a trade or business here. Moreover, individuals who trade in U.S. stocks and commodities are not treated as thereby being engaged in the business of buying and selling stocks and commodities, whether or not the volume of their activity is large. Also, the confusion regarding the status of a foreign investor who has granted discretionary authority to a U.S. agent may have acted to deter some foreign investment in the United States.

Explanation of provision.—For the above reasons your committee agrees with the House and has amended present law to specifically provide that the trading in stocks, securities, or commodities in the United States, for one's own account, whether by a foreign person physically present in the United States, through an employee located here, or through a resident broker, commission agent, custodian, or other agent—whether or not that agent has discretionary authority—does not constitute a trade or business in the United States. This treatment, however, does not apply to dealers in stocks, securities, or commodities or to a foreign investment corporation if it has its principal office here.

It is not intended that as a result of this provision a foreign investment company (other than a corporation which is, or but for section 542(c)(7) or 543(b)(1)(C) would be, a personal holding company) is to be permitted to locate its general business activities in the United States and avoid taxation at the regular corporate rates on its income and gains effectively connected with its business in this country. However, a foreign investment company conducting its general business activities in a foreign country (i.e., having its principal office there) can conduct trading activities in the United States through an agent with discretionary authority, without this giving rise to its being considered as conducting a trade or business in the United States.

Whether a corporation's principal office is in the United States is to be determined by comparing the activities (other than trading in securities) which the corporation conducts from an office located in the United States with the activities it conducts from offices located outside the United States. For example, a corporation which carries on most or all of its stock and securities transactions through an agent with discretionary authority in the United States but maintains a general business office outside the United States in which its management is located and from which it communicates with its shareholders and the general public, solicits sales of its own stock, and maintains its corporate records and books of account, would not be considered as having its principal office in the United States.

Although, under this provision, a dealer is specifically excluded from those who may grant discretionary authority and not be deemed to be conducting a business in the United States, he may trade in securities or commodities, for his own account, through an independent U.S. agent without being considered to be conducting a business in the United States. However, this rule does not apply if at any time during the year he has an office or place of business in the United States through which, or by the direction of which, transactions in stocks, securities, or commodities are effected.

Even though this provision does not free some dealers in stocks, securities, or commodities, and investment companies from the possibility that they may be considered as engaged in a trade or business in the United States, this does not mean that all such dealers or investment companies are so engaged. In such a situation, the question of whether a dealer or investment company is conducting a trade or business in the United States remains a question of fact to be determined under the rules of present law. Your committee has redrafted the House provision but no substantive change was intended.

Effective date.—These amendments apply with respect to taxable years beginning after December 31, 1966.

b. Income effectively connected with the conduct of a trade or business in the United States (sec. 102(d) of the bill and sec. 864(c) of the code)

Present law.—Under present law nonresident aliens and foreign corporations are generally taxable at the regular individual or corporate rates on all their U.S. source income if they are engaged in trade or business in the United States and are taxable at a flat 30-percent rate (or lower treaty rate) on all fixed or determinable income if not so engaged. This difference in treatment applies whether or not there

is any relationship between the different types of incomes (business and investment) from the United States.

Reasons for provision.—Under the rule described above, one foreigner may be taxed on investment income at the regular individual or corporate rates while another, with an identical portfolio investment, is taxed on his investment income at the flat 30-percent (or lower treaty) rate. The difference in treatment arises from the fact that one is engaged in business in the United States and the other is not, even though the investment portfolio of the former is wholly unrelated to his U.S. business. Your committee agrees with the House that it is neither equitable nor logical for this substantial difference in tax treatment of investment income to depend on the presence or absence of an unrelated business. In addition, the Presidential Task Force on Promoting Increased Foreign Investment in U.S. Corporate Securities has pointed out that the present scheme deters foreign businessmen operating in the United States from investing in the United States, and also deters foreigners already investing in the United States from commencing a trade or business here.

The present scheme for taxing foreigners engaged in business in the United States also is defective in another respect. The interplay between the tax rules of certain foreign countries and the United States has in some cases permitted the use of the United States as a tax haven. The tax avoidance in such a case can be illustrated by a foreign corporation which is organized in a country which does not tax its domestic corporations on income derived from the conduct of a business outside the country. If such a corporation desires to sell products into countries, other than the United States or the country of its incorporation, it can, in many instances, avoid all or most taxation on the income from these sales by establishing a sales office in the United States. The income from the sales in such cases is not taxed by the United States because (under the title passage rule) it is not derived from sources within the United States. The income may not be taxed by countries where the products are sold because the corporation does not have a permanent establishment there, and the income is not taxed by the country of incorporation because the business is not conducted there. Moreover, a similar tax avoidance scheme can be utilized with respect to sales arranged in the United States concerning goods destined for use in this country. In addition, U.S. tax may be avoided in the case of rents and royalties from a licensing business and income from banking, financing or investment company businesses carried on in the United States. Your committee agrees with the House that foreign corporations carrying on substantial activities in the United States, in such cases, should not be able to cast their transactions in such a form as to avoid both all U.S. tax and most foreign taxes. Also, it is believed that foreign corporations should pay a U.S. tax on the income generated from U.S. business activities. There appears to be no national policy to be served by allowing foreign persons to operate in this country without paying their share of our governmental expenses.

To meet both types of problems described above the bill provides for the taxation of nonresident aliens and foreign corporations at the regular U.S. graduated individual rates or corporate rates on their income which is effectively connected with the conduct of a

trade or business within the United States. This effectively connected rule applies to all their income from sources within the United States and to three limited categories of foreign source income in certain situations where definite U.S. economic connections are present. The U.S. source income of nonresident aliens and foreign corporations which is not effectively connected with the conduct of a trade or business in the United States is taxed at a flat 30-percent rate (or lower treaty rate).

Explanation of provision.—As a general rule, the bill provides that income of a nonresident alien or foreign corporation will be subject to the flat 30-percent (or lower treaty) rate if it is not effectively connected with the conduct of a trade or business within the United States. The regular individual or corporate rates apply to income which is effectively connected to the conduct of a U.S. trade or business. However, the foreigner may elect to treat real property income as if it were income effectively connected with a U.S. business. This is to permit the deductions attributable to this real property income to be deducted from it. The application of the effectively connected concept to different types of income is set forth below.

(*i*) *Income from U.S. sources treated as "effectively connected."*—In determining whether periodical income such as interest, dividends, rents, wages, and capital gains is effectively connected with the conduct of a trade or business within the United States two principal factors are to be taken into account. First, is the income derived from assets used or held for use in the conduct of the trade or business in the United States? Thus, for example, are the assets being held for future, or remittant, use in the business? In this regard, particular attention will be given to the relationship between the asset and the needs of the business. Second, were the activities of the trade or business a material factor in the realization of the income? Thus, in the case of this second factor, is there an immediate relationship between the income in question and the U.S. business activities of the foreign corporation? Also to be taken into account in weighing the relationship of the investment income to the trade or business, but not to be a controlling factor by itself, is whether or not the assets or income are accounted for through the U.S. trade or business.

All other income from sources within the United States (that is, other than the periodical income and capital gains described above) is to be treated as "effectively connected" with the conduct of any trade or business within the United States.

(*ii*) *Income from sources without the United States.*—(*A*) *General Rules.*—Income from sources without the United States is not to be treated as "effectively connected" with the conduct of a trade or business within the United States unless the nonresident alien or foreign corporation has a fixed place of business in the United States and the income, gain or loss is attributable to that place of business. Also, this provision applies to only three types of income from sources without the United States. A foreign corporation which to a minimal extent, or occasionally, uses the U.S. office of a related corporation will not thereby be treated as having a fixed place of business here. Moreover, the fact that top management decisions are made in the United States will not of itself mean that the foreign corporation has an office or fixed place of business here. For example, a foreign sales

corporation which is a wholly owned subsidiary of a domestic corporation will not be considered to have a U.S. office because of the presence here of the officers of its domestic parent who are generally responsible only for its policy decisions, provided the foreign sales corporation has a managing director that conducts its day-to-day business from a foreign office. This person may or may not be an officer of the U.S. corporation. Also, in such a case, the managing director could regularly confer with the officers of the domestic parent and if necessary occasionally visit the U.S. offices of the domestic parent and, during such visits, temporarily conduct the business of the foreign subsidiary out of the domestic parent's office without thereby establishing a U.S. office.

As indicated above, this provision applies only to three specific types of income from without the United States and in no event applies with respect to income which is "subpart F" income or to dividend, interest or royalty income derived from a foreign corporation more than 50 percent owned by a nonresident alien or foreign corporation receiving the income. Of course, the subpart F income exception extends to income which is subpart F income but is excepted from its taxing provisions by the minimum distribution and export trade exceptions. The three types of income with respect to which this provision applies are:

(i) Rents and royalties derived from the active conduct of a licensing business;

(ii) Dividends, interest, or gain from stock or bond or debt obligations derived in the active conduct of a banking, financing or similar business; and

(iii) Certain sales income attributable to a U.S. sales office.

The sales income referred to above is not to be considered as "effectively connected" to a U.S. trade or business if the property is sold for use outside the United States and an office of the foreign person outside the United States contributes materially to the sale. In the case of foreign source income where the products are destined for the United States, the income will be treated as effectively connected with a U.S. business to the extent the sales activity is carried on by the U.S. office.

(*B*) *Determining Factors.*—Although your committee agrees with the general rules of the House bill, it has added certain clarifying amendments regarding what is to be considered a sufficient nexus for assertion of U.S. tax jurisdiction as well as the foreign source income to be subject to U.S. tax. In general, for purposes of determining whether a foreign corporation or nonresident alien has an office, the office or other fixed place of business of an agent is to be disregarded unless the agent is other than an independent agent operating in the ordinary course of his trade or business and either has authority (regularly exercised) to negotiate binding contracts or has a stock of merchandise from which he regularly fills orders. This agency concept regarding the degree of economic activities which will subject a foreign corporation or nonresident alien to U.S. taxation on foreign source income is substantially similar to the permanent establishment concept present in many of our existing income tax treaties. However, the interpretation of this provision is, of course, not to be limited by the judicial decisions of foreign governments regarding treaty provisions. With respect to the determination of the income to be sub-

ject to U.S. tax, the rules added by your committee provide that foreign source income will not be considered to be effectively connected with a U.S. business of a foreign corporation or nonresident alien if (*a*) a U.S. office of that business was not a material factor in the production of the income, (*b*) the income was not derived from the usual business activities of the U.S. business or (*c*) the income was not properly allocable to the activities of the U.S. business.

It is the opinion of your committee that these added rules will delimit the application of the general rules of this provision, thereby subjecting to U.S. tax only income which has its economic genesis in the United States. For purposes of this provision, the activities of the U.S. office will not be considered to constitute a "material factor" unless it provides a significant contribution to the production of the income. Thus, the activities of the U.S. office must be an essential economic element in the production of the income. Therefore, the fact that the board of directors of the foreign corporation meets in the U.S. office will not subject the worldwide sales income of that foreign corporation to U.S. taxation. Contrarily, the activities of the U.S. office need not necessarily be a major factor in the production of the income.

The requirement that the income must be derived from the usual business activities of the U.S. office, in effect, provides a de minimus exception. It is intended that this rule will exclude from U.S. tax jurisdiction all foreign income derived from casual sales. Thus, if the foreign corporation is engaged solely in a manufacturing business in the United States, the income derived by the U.S. plant as a result of an occasional foreign sale will not come within the ambit of the foreign source effectively connected rule where the sales operations for the products of the U.S. plant are located outside the United States. On the other hand, if a foreign corporation establishes a U.S. sales office to sell goods produced in Africa into the Western Hemisphere, occasional sales income derived from parts of the world other than the Western Hemisphere would not be excluded under this casual sales rule. In other words, the nature of the U.S. business would be the primary determinative factor for purposes of this exception.

The committee received considerable testimony requesting that the general foreign source effectively connected rules be modified so as to insure in all cases that only income generated in the United States would be subject to U.S. tax. It is your committee's understanding that this was the intention of the House bill and, therefore, the addition of the "properly allocable" test is considered to constitute a clarifying amendment.

(*C*) *Country of Residence Taxes.*—Your committee's bill extends the foreign tax credit provision of the House bill which applies with respect to foreign source effectively connected income (sec. 906). The House bill would not have extended the foreign tax credit provision to taxes imposed by a foreign country solely on the basis that it has jurisdiction to tax because the taxpayer is a citizen or resident of that country or a corporation created, incorporated, or domiciled in that country. Your committee's amendment extends this foreign tax credit provision to the resident country taxes on foreign source income specifically excepted by the House bill. A further discussion of this

amendment is provided in the foreign tax credit portion of this report (A-5(d)).

(*D*) *Foreign Insurance Companies.*— In the case of a foreign corporation having a life insurance business in the United States, the bill provides that income from sources without the United States will be treated as effectively connected with the conduct of the business within the United States if the income is attributable to its U.S. life insurance business. This rule merely continues the treatment which applies under existitng law which provides that income of a foreign corporation from its U.S. life insurance business is subject to tax whether the income is from sources within or without the United States.

Effective date.—This amendment applies with respect to taxable years beginning after December 31, 1966. For purposes of determining whether foreign source sales income from a binding contract, entered into on or before February 24, 1966, is attributable to a U.S. office, all the activities in the United States on or before that date, which were related to the negotiation or effectuation of the binding contract are not to be taken into account. As a result in many cases the sales income from foreign sources under binding contracts entered into before February 25, 1966, will not come within the ambit of this provision.

3. TAXATION OF NONRESIDENT ALIENS

a. Income tax on nonresident alien individuals (sec. 103(a) of the bill and sec. 871 of the code)

Present law.—Present law provides different tax treatment for nonresident alien individuals according to whether they are, or are not, engaged in a trade or business in the United States. Also, those not engaged in a trade or business in the United States are provided different treatment according to whether their income is under or over $21,200.

Nonresident alien individuals not engaged in trade or business in the United States whose annual U.S. source income of the types specified below is $21,200 or less are taxed at a flat rate of 30 percent (or lower applicable treaty rate), on certain specified items of U.S. source income. This tax is in lieu of the regular U.S. graduated rates applicable to individuals. The items of income included are interest, dividends, rents, salaries, wages, and other fixed or determinable annual or periodical gains, profits, and income. Also specifically included in the income taxable at the flat 30-percent rate are certain amounts otherwise treated in the same manner as capital gains; namely, lump-sum distributions from exempt employees' trusts (sec. 402(a)(2)); amounts paid to beneficiaries under qualified annuity plans (sec. 403(a)(2)); timber, coal, and iron ore royalties (sec. 631 (b) and (c)); and amounts received on transfers of patent rights (sec. 1235).

Nonresident alien individuals not engaged in trade or business in the United States but with an annual U.S. source income of the types indicated above, of more than $21,200, are taxed under present law (in the absence of an applicable treaty provision) at whichever of the following produces the higher total tax: the regular U.S. rates applicable to individuals, or the flat 30-percent rate. In computing the

tax at the regular graduated rates, such a nonresident alien is allowed deductions to the extent they are properly allocable to the income on which he is taxable.

Nonresident aliens not engaged in a trade or business in the United States—whether their income is over or under $21,200—are subject to tax on regular capital gains only if one of two conditions exist: (1) if they are physically present in the United States at the time the capital gain is realized or (2) if they are present in the United States for a period or periods totaling 90 days or more during the year. These capital gains are taxed at the flat 30-percent rate, if the individual's income from U.S. sources is $21,200 or less. If his income from U.S. sources exceeds this amount, the regular capital gains tax rate will apply if the regular individual income tax rates (including the capital gains tax) on all the taxpayer's U.S. source income results in a higher tax than the flat 30-percent tax.

Nonresident alien individuals engaged in trade or business in the United States are taxable at the regular U.S. graduated (and capital gains) rates on their income derived from sources within the United States. In computing the tax, an alien in this category is allowed deductions to the extent attributable to his U.S. source income.

Reasons for provision.—Your committee agrees with the House that the present tax treatment of nonresident aliens is unnecessarily complicated and also makes arbitrary distinctions based upon the size of the individual's income and whether or not the individual has a trade or business in the United States which may be wholly unrelated to the specific income in question. The bill has retained the rule of present law which provides that U.S. trade or business income of nonresident aliens is subject to the regular individual income tax rates. However, other income is to be subject to the regular rates only if it is effectively connected with the U.S. trade or business. U.S.-source fixed or determinable income of nonresident aliens which is not so connected is to be subject to a flat 30-percent rate (or lower treaty rate). This removes the arbitrary rule of present law which would vary the treatment of investment income depending upon whether the individual has an unrelated trade or business in the United States.

The flat 30-percent rate of tax in the case of certain nonresident aliens has been applied under present law, and is continued under the bill, because the United States does not have jurisdiction over all of such an individual's income. These taxpayers are not allowed the deductions that are available to U.S. citizens and the 30-percent rate is considered an appropriate effective rate in such cases. In addition, it has been found in practice that only a small amount of tax has been collected as a result of imposing the graduated rates. It is also thought that applying the uniform flat rate with respect to income not effectively connected with a trade or business in the United States would tend to encourage investment here by foreigners. To the extent this occurs, there will, of course, be an improvement in our balance of payments.

In the case of capital gain, it was the opinion of your committee and the House that the present rule that taxes a nonresident alien if present in the United States when the gain is realized is an arbitrary rule which constitutes only a trap for the unwary. Also, your committee agrees with the House view that the exclusion for nonresident aliens

not present in the United States for 90 days during a year should be extended to a period of 183 days. The 183-day period more closely parallels the general rule applied by most of the industrialized countries of the world.

Explanation of provision.—For the reasons indicated above the bill substantially revises the income tax treatment of nonresident alien individuals, dividing their income, for tax purposes, into two basic groups according to whether or not the income is effectively connected with a U.S. trade or business.

(*A*) *Income not effectively connected with the conduct of a U.S. business.*—Income of a nonresident alien individual which is fixed or determinable (substantially the same categories referred to under present law) and which is not effectively connected with the conduct of a trade or business in the United States is to be taxed at a flat 30-percent rate (or lower treaty rate).

Generally, the fixed or determinable income referred to here, as under present law, includes such income as interest, dividends, rents, salaries, annuities, and certain income accorded capital gain treatment. The House bill added two items not included in the list contained in present law and has slightly modified the language of present law so as to clarify this provision as it relates to certain amounts received from pensions or annuity plans, certain timber, iron ore, and coal royalties, and gains on certain transfers of patent rights. The two new items added to the list by the House bill are (1) gains with respect to the sale of stock of a collapsible corporation and (2) amounts received on retirement or exchange of bonds and other evidences of indebtedness issued after September 28, 1965, which are treated as gains from the sale of property which is not a capital asset. Your committee has retained this latter House provision regarding the income received on the retirement or exchange of bonds. However, your committee has deleted the collapsible corporation provision. Additionally, there was some question as to the scope of the provision in the House bill dealing with original issue discount. The reference in the bill to section 1232 refers only to original issue discount on evidences of indebtedness held by a taxpayer for more than 6 months. Also, income constituting original issue discount received on the retirement or sale or exchange of bonds is to be considered as having the same source as interest paid by the corporation issuing the bonds. As a result, if the corporation with respect to whose bonds the original issue discount arises is a domestic corporation which in the prior 3 years derives more than 80 percent of its income from foreign sources, then the original issue discount (interest) at the time of the retirement or sale or exchange of the bonds also will be considered as foreign source income.

Your committee has amended the provision of the House bill regarding gains realized on the sale of a patent or other intangible property. As amended it provides that gains realized on the sale of a patent or other intangible property, where the income from the sale is derived as a result of the use of such property in the United States, is not to be subject to U.S. tax as "fixed and determinable income" (taxed at 30 percent or lower treaty rate) unless a part of the income derived from the sale is contingent. If part of the profits from such sale are contingent, the amount subject to U.S. tax in any year would be the

contingent amount, or if this contingent amount exceeds 50 percent of the total amount paid in any 1 year, the total amount will be taxed to the extent this amount represented gain realized on the sale of the property. For or other intangible property is used. This provision is to apply to gains derived from sales made after October 4, 1966. The provisions of existing law will continue to apply to transfers of patents made prior to that date.

In the case of a nonresident alien's net U.S. source capital gains (other than those specifically included in the list as taxable at the 30-percent rate) which are not effectively connected with the conduct of a trade or business within the United States, the bill provides that no U.S. tax is to be imposed unless the nonresident alien has been present in the United States for at least 183 days during the taxable year. Present law provides a 90-day test. For purposes of applying the 183-day test an alien will be treated as being on a calendar year basis unless he has previously established a different taxable year. The requirement of present law which taxes capital gains when the alien is physically present in the United States at the time of realization is dropped entirely.

(*B*) *Income effectively connected with the conduct of U.S. business.*—Income of a nonresident alien individual that is effectively connected with the conduct of a trade or business in the United States, under your committee's bill is taxable at the regular U.S. graduated rates applicable to individuals. Thus, this income will be taxed the same as under existing law although the category itself is more limited since it only applies to income which is effectively connected to a U.S. trade or business instead of including all U.S. source income of an alien with such a trade or business. For purposes of determining whether or not income is effectively connected with the conduct of a trade or business in the United States, the rules discussed above in connection with the definition of effectively connected income (No. A-2 pt. b, above) apply.

(*C*) *Miscellaneous types of income receiving special treatment.*—Under present law certain types of income are provided special treatment. The bill as approved by your committee and the House revises and extends these categories as indicated below.

(i) *Participants in exchange programs.*—The bill retains the rule in present law which treats nonresident aliens temporarily in the United States as part of a cultural exchange or training program as engaged in a trade or business in the United States even though they are actually not so engaged. The provision is modified to provide in such cases that this type of income is effectively connected to a U.S. trade or business. The effect of treating these categories of income as effectively connected to a U.S. trade or business (or under present law as derived from a U.S. trade or business) is to impose the regular U.S. income tax on these aliens on the taxable portion of their scholarship or fellowship grants and certain other amounts incident to these grants. In this computation one exemption (except in the case of residents of contiguous countries) and the deductions allocable to this income are allowed. In the absence of this special provision, these aliens would be taxed on these grants (and amounts incident thereto) at the flat 30 percent rate. In most

cases the 30 percent tax would substantially exceed the regular tax on this income.

The types of income referred to under present law as scholarship or fellowship grants received by a nonresident alien individual temporarily present in the United States as a nonimmigrant (under subpar. (F) or (J) of sec. 101(a)(15) of the Immigration and Nationality Act) or received by a citizen or resident, are, subject to a dollar limitation, exempt from U.S. tax.

Present law (sec. 872(b)(3)) also excludes from gross income compensation paid by a foreign employer to a nonresident alien for the period he is temporarily present in the United States as a nonimmigrant for the purposes of participating in a cultural or training program. Under present law this is available where the "foreign employer" is a foreign person or a domestic corporation having an office in a foreign country or U.S. possession. The bill extends this to also cover a domestic partnership or a U.S. citizen or resident with such a foreign office.

(ii) *Income from real property.*—Under present law, it is not clear as to what situations or arrangements for the ownership by a nonresident alien of real property located in the United States will cause the nonresident alien to be considered as engaging in a trade or business within this country. This, of course, is important since the question of whether or not the alien is engaging in a trade or business in the United States determines whether his U.S. source capital gains are subject to U.S. tax and whether his other U.S. source income is taxable at the regular individual income rates, with allocable deductions, or at the flat 30-percent rate on the gross amount. Taxing income on real property at a flat 30-percent rate without the allowance of allocable deductions—which in the case of this type of income may be relatively large—may result in quite heavy tax burdens on this type of income. Your committee agrees with the House that the law in this area should be clarified and doubts whether the disallowance of deductions in such cases is appropriate. Moreover, the disallowance of deductions in such cases would tend to discourage foreign investment in U.S. realty.

The bill deals with the problem described above by providing that nonresident aliens deriving income from real property held for the production of income and located in this country, or from an interest in this type of real property located in this country, may elect to treat all the income as effectively connected to the conduct of a U.S. trade or business. This permits the nonresident alien to utilize the deductions attributable to this real estate income with the result that he is taxed on only his net income from these sources.

The election is applicable with respect to gains from the sale or exchange of real property held for the production of income (or an interest therein) and rents or royalties from mines, wells, or other natural deposits, as well as certain timber, iron ore, and coal royalties. The election is not applicable to income not specifically covered by these provisions, such as distributions by real estate investment trusts. If the election is made, it applies to all of the alien's income from U.S. real property for the taxable year which is not otherwise "effectively connected" with the conduct of a trade or business in this country. The election applies for all subsequent taxable years until

revoked and can be revoked only with the consent of the Secretary of the Treasury or his delegate.

If the election is revoked, a new election may not be made for 5 years unless the Secretary of the Treasury or his delegate consents to an earlier reelection.

(iii) *Certain pension income.*—Under present law a nonresident alien receiving pension or annuity income from a plan located in the United States is subject to U.S. tax (flat 30 percent or lower treaty rate) on the interest portion of the pension income not withstanding the fact that the services qualifying the nonresident alien for the pension were entirely rendered outside the United States. Your committee has added an amendment to this provision of the bill which would exempt from U.S. tax the type of pension income described above if 90 percent of the persons under the plan were U.S. citizens. It is the understanding of your committee that in general the regulations will provide that the plan paying the pension will be entitled to rely upon information presented by the annuitant or employer regarding the information as to whether or not the annuitant qualifies under this provision.

(iv) *Bond income of residents of the Ryukyu Islands, etc.*—At the present time the Ryukyu Islands (including Okinawa) are governed by the United States and large numbers of the individuals of these islands are in the employ of the U.S. Military Establishment. As such, their savings have frequently been invested in series E or H U.S. savings bonds. Interest income on U.S. savings bonds is, of course, U.S. source income. As a result, under present law the residents of the Ryukyu Islands, as well as the Trust Territory of the Pacific Islands, are subject to a flat 30-percent tax on the income from these bonds. Since investment in U.S. savings bonds in their case is merely a convenient way for these individuals to save a portion of their income, it is difficult for them to see why a tax should be imposed any more than would be true if they were to invest their income, in the islands, in some other type of investment. Because of this, the bill excludes from gross income subject to U.S. tax, income derived by nonresident aliens from U.S. savings bonds (series E or H) if the alien at the time of acquiring the bonds was a resident of the Ryukyu Islands or the Trust Territory of the Pacific Islands.

Effective date.—These amendments apply with respect to taxable years beginning after December 31, 1966.

b. Deductions (sec. 103(c) of the bill and sec. 873 of the code)

Present law.—In the case of a nonresident alien individual, present law generally allows deductions to the extent they are properly allocable to income from sources within the United States but only if the alien's U.S. income is subject to the regular income tax. However, where the regular income tax applies, the deduction of losses is allowed even though they are not connected with a U.S. trade or business if they are incurred in transactions entered into for profit provided that the transaction, had it resulted in a profit, would have been subject to U.S. tax. Also allowed are property losses not connected with a trade or business arising from certain casualties or thefts if the loss is of property located within the United States.

Explanation of provision.—The bill amends present law generally to limit the allowance of deductions in case of a nonresident alien in-

dividual to deductions allocable to income which is effectively connected with the conduct of a trade or business in the United States. The allowance of deductions is limited in this manner, since it is only effectively connected income which under the bill is subject to the regular income tax.

In addition, the bill deletes the provision relating to the deduction of losses not connected with a trade or business but incurred in transactions entered into for profit since the criteria for the allowance of deductions under the bill is whether or not they are effectively connected with the conduct of a trade or business in the United States. However, the casualty loss deduction is to be available even if the property which gives rise to the loss is not effectively connected with the conduct of a trade or business in the United States if the property is located in this country. Also, the charitable contribution deduction is available even though not related to the trade or business.

Effective date.—These amendments apply with respect to taxable years beginning after December 31, 1966.

c. Expatriation to avoid tax (sec 103(f) of the bill and new sec. 877 of the code)

Present law.—The U.S. individual income tax applies to U.S. citizens, U.S. residents, and to nonresident aliens, but in this latter case, generally only with respect to income derived from sources within the United States. Under present law, if an individual who has been a U.S. citizen gives up this citizenship and becomes a nonresident, no tax is then imposed with respect to income he derives from sources without the United States. Moreover, under present law the regular graduated rates applicable to a citizen apply in the case of an expatriate, only if he is engaged in a trade or business in the United States or his income exceeds $21,200.

Reasons for the provision.—The bill, by the elimination of progressive taxation with respect to the income of nonresident aliens which is not effectively connected with the conduct of a trade or business within the United States (as well as the reduction of the estate tax rates—described subsequently—applicable to the estates of nonresident aliens), may encourage some individuals to surrender their U.S. citizenship and move abroad. As indicated above, by doing so an expatriate would avoid the graduated tax rates on his U.S. investment income (and in certain cases, avoid some estate taxes).

Explanation of provision.—For the reasons stated above, the House bill adds a new section to the code which, in general, taxes both effectively connected income and any other U.S. source income of an expatriate at regular income tax rates, if he lost his citizenship within 5 years of the taxable year in question (and after March 8, 1965) and if one of the principal purposes of the expatriation was the avoidance of U.S. income, estate, or gift taxes. This treatment is not to apply if it results in a smaller U.S. income tax than would otherwise be imposed. Your committee's bill adopts the general rules provided in the House bill but extends the effective period during which the provisions can apply from 5 years, as provided by the House bill, to 10 years.

In addition to imposing this tax on both the expatriate's U.S. source income not effectively connected with the conduct of a U.S. trade or business and his income that is "effectively connected", regardless of its source, the new section contains special source rules to be used in de-

termining his U.S. source income. These rules provide that gains from the sale or exchange of property (other than stock or debt obligations) located in the United States, and gains on the sale or exchange of stock of a domestic corporation or debt obligations of U.S. persons or of the United States, a State or political subdivision, or the District of Columbia are to be treated as income from sources within the United States regardless of where the sale or exchange occurs or title is transferred. Deductions are to be allowed only to the extent they are properly allocable to the gross income of the expatriate, determined under the above described provisions (except that the capital loss carryover provision is not to apply).

The new section contains a special rule with respect to the burden of proving the existence or nonexistence of U.S. tax avoidance as one of the principal purposes of the expatriation. Under this provision, the Secretary of the Treasury or his delegate must first establish that it is reasonable to believe that the expatriate's loss of U.S. citizenship would (but for the application of these special provisions) result in a substantial reduction in his taxes based on the expatriate's probable income for the taxable year.

If this is established, then the expatriate must carry the burden of proving that the loss of citizenship did not have, for one of its principal purposes, the avoidance of U.S. income, estate, or gift taxes. However, the new section excepts persons whose loss of citizenship occurs under circumstances where it is unlikely that tax avoidance was a principal purpose. For example, this provision does not apply where the person acquired dual citizenship at birth and loses his U.S. citizenship by residing, for a certain period, in the foreign country of which he is also a citizen by birth.

Effective date.—This amendment applies for taxable years beginning after December 31, 1966.

d. Partial exclusion of dividends from gross income (sec. 103(g) of the bill and sec. 116(d) of the code)

Present law allows nonresident aliens the $100 dividends received exclusion only if the individual is taxable on U.S. source dividends at the regular graduated rates applicable to individuals. The bill amends this provision, effective for taxable years beginning after December 31, 1966, to conform to the effectively connected income concept by limiting the availability of the exclusion to dividends which are effectively connected with the conduct of a trade or business in the United States. The exclusion is also allowed in the case of an expatriate subject to tax under new section 877.

e. Withholding of tax on nonresident alien individuals (secs. 103(h) and (k) of the bill and secs. 1441 and 3401 of the code)

Present law.—Present law generally requires the withholding of tax in the case of a nonresident alien on U.S. source fixed or determinable income from U.S. sources (of the types previously described). The withholding is at a 30-percent rate (except in the case of certain treaty rates) and applies whether or not the flat 30-percent tax applies to the individual.[2] Thus it applies not only in the case of a nonresident alien with a gross income of $21,200 or less who is not engaged

[2] For a limited category of scholarship and fellowship income and related income the withholding rate is 14 percent.

in a trade or business in the United States but also in the case of a nonresident alien with a larger gross income and also to one who is engaged in a trade or business in the United States.

Reason for provision.—Your committee agrees with the House that withholding at the 30-percent rate should only be required in the case of income which is taxed at that rate. Therefore, income which is effectively connected with the conduct of a U.S. trade or business should not be subject to withholding tax at a 30-percent rate. This is particularly important in the case of compensation paid a nonresident alien. Unlike domestic wage withholding, this 30-percent withholding does not, in most cases, take into account the personal exemptions to which the worker would be entitled if he were a U.S. citizen. Also, since the regular graduated rates on small incomes are less than 30 percent, this rate may result in substantial overwithholding in many cases where regular income tax rates apply. Although an alien may obtain a refund of the excess withholding when he files his return at the end of the year, overwithholding in these circumstances can create a substantial hardship for the alien.

Explanation of provisions.—To meet the problem outlined above, the bill adds a new provision to the existing nonresident alien withholding provisions. Under the new provision, withholding is not required on payments to nonresident alien individuals with respect to any item of income (other than compensation for services) which is effectively connected with the conduct of a trade or business within the United States. It is the understanding of your committee that the person required to withhold will be relieved of any liability for failure to withhold if the failure was in reliance upon information as to whether or not the income was effectively connected, furnished (in accordance with regulations to be issued) by the person entitled to the receipt of the income. Your committee amended the House bill so as to specifically provide for withholding on the following types of income: (1) the contingent income derived from the sale of patents and other intangibles (see A-3(a)(A)); (2) a foreign partner's share of the U.S. income of a domestic partnership which is not effectively connected with the partnership's business; and (3) amounts received on retirement or exchange of bonds issued after September 28, 1965, which are treated as gains from the sale of property which is not a capital asset (sec. 1232).

In the case of salary and wage income, the bill also correlates the 30-percent-withholding rate applicable to nonresident aliens with the domestic graduated withholding rates. Thus, the bill amends present law to provide that the Secretary of the Treasury or his delegate may, by regulations, exempt compensation for services performed by nonresident aliens from the 30-percent withholding. Also, to permit withholding at the domestic graduated withholding rates where an exemption is granted from the 30-percent-withholding provision, the bill amends the domestic wage withholding provisions to, in effect, permit the Secretary of the Treasury or his delegate to require withholding under those provisions.

The bill also makes amendments of a technical nature to conform the language of the withholding provisions to the language used in the other taxing provisions.

Effective date.—The amendment relating to the 30-percent withholding rule applies with respect to payments made in taxable years beginning after December 31, 1966. The amendment relating to domestic wage withholding applies with respect to remuneration paid after December 31, 1966.

f. Withheld taxes and declarations of estimated income tax (secs. 103 (i) and (j) of the bill and secs. 1461 and 6015 of the code)

Under present law, persons who are required to withold on amounts paid to nonresident aliens and foreign corporations are required to file a return and remit the taxes withheld during any calendar year by March 15 of the following year. This procedure is unusual since all other withheld taxes, such as the employees' social security taxes and domestic wage withholding, are required to be remitted (together with the return) at least quarterly. As a result of the delay in the remittance of these 30-percent-withholding taxes, the witholding agents are given the use of these revenues for periods of time which are, in some cases, more than 1 year.

Your committee agrees with the House that there is no reason for not requiring the remittance of these tax revenues at a time period approximating that applicable in the case of domestic withholding. Therefore, your committee's bill amends present law to provide the Treasury Department with the authority to require more current remittance of the taxes withheld on nonresident aliens and foreign corporations. This amendment is effective with respect to payments made after December 31, 1966.

The bill also amends the provisions of present law which require individuals to file declarations of estimated tax. The amendment continues present law which includes nonresident aliens within the category of individuals required to file these declarations. However, the application of this provision to nonresident aliens is limited to those who receive income which is effectively connected with the conduct of a trade or business within the United States.

These amendments are effective with respect to taxable years beginning after December 31, 1966.

g. Foreign estates or trusts (sec. 103 (e) and (l) of the bill and secs. 875 and 7701a(a)(31) of the code)

Present law defines the terms "foreign trust" and "foreign estate" to mean a trust or estate, whose income from sources without the United States is not included in gross income for U.S. income tax purposes. Your committee's and the House bill amends this definition to conform it to the effectively connected concept. As amended, the terms mean an estate or trust the income from which from sources without the United States, which is not effectively connected with the conduct of a trade or business within the United States, is not included in gross income for U.S. income tax purposes. This amendment applies for taxable years beginning after December 31, 1966.

Your committee added an amendment which imputes the business activities of a trust or estates to its beneficiaries. In other words, if a trust, whether a foreign or a domestic trust, is engaged in a trade or business in the United States, its beneficiaries are deemed to also be engaged in that trade or business.

h. Citizens of possessions of the United States (sec. 103(m) of the bill and sec. 932(a) of the code)

Under present law, individuals who are citizens of possessions of the United States but not otherwise citizens of the United States, are taxed as nonresident aliens on their U.S. source income. This provision is amended by your committee's and the House bill, effective for taxable years beginning after December 31, 1966, to conform to the changes made to the taxation of nonresident aliens generally.

i. Gain from disposition of certain depreciable realty (sec. 3(j) of the House bill and sec. 1250(d) of the code)

Your committee's bill strikes the House provision which provides that the recapture rule applicable to depreciable realty is to apply to the transfer of depreciable real estate by a foreigner to a domestic corporation in a tax-free exchange for stock or securities of a domestic corporation. Your committee took this action after being advised that the relationship between the House provision and the corresponding provisions of present law affecting U.S. persons make the provision discriminatory.

4. TAXATION OF FOREIGN CORPORATIONS

a. Income tax on foreign corporations (secs. 104 (a) and (b) of the bill and secs. 881 and 882 of the code)

Present law.—Present law taxes foreign corporations not engaged in a trade or business in the United States at a flat rate of 30 percent on fixed or determinable income from sources within the United States. These items are (with a few exceptions) the same as those presently taxed at the 30-percent rate to nonresident alien individuals not engaged in a trade or business in the United States. They are interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits, and income (including certain timber, coal, and iron ore royalties).

The U.S. source income of a foreign corporation engaged in business in the United States is taxed, under present law, at the regular corporate rates. In computing the tax, deductions generally are allowed to the extent that they are properly allocable to the U.S. source income if a true and accurate return is filed by the corporation.

Reasons for provision.—Your committee's and the House bill, both in the case of nonresident aliens and in the case of foreign corporations, provides a consistent pattern of taxation. Nonresident aliens and foreign corporations will be taxed at the regular income tax rates in the case of income which is effectively connected with a U.S. trade or business. In the case of nonresident alien individuals and foreign corporations with U.S. source fixed or determinable income which is not effectively connected with a U.S. trade or business a flat 30-percent rate is applied. The reasons for differentiating the tax treatment on this basis have already been explained to a substantial extent in connection with the definition of effectively connected (No. 2(b), above) and in connection with the explanation of the taxation of nonresident aliens (No. 3(a), above).

One of the principal changes resulting from this new classification in the case of foreign corporations is that investment income which is not related to a trade or business carried on in the United States will be taxed at the flat 30-percent rate (or lower treaty rate) rather than at the regular corporate rate. This does away with the arbitrary distinction which exists under present law which makes the rate of tax, a flat 30 percent or regular rate, turn on the presence or absence of a trade or business in the United States which may be wholly unrelated to the investment income.

Under the bill all U.S. source investment income (fixed or determinable income) of foreign corporations which is not effectively connected with a trade or business in the United States will be taxed at a flat rate. However, all investment income effectively connected with a U.S. trade or business will be taxed in the same manner as other income of that trade or business, and in the same manner as similar income of a domestic corporation.

As indicated in connection with the definition of effectively connected the new rule for the taxation for foreign corporations will also prevent the use of the United States as a "tax haven" in the case of limited categories of foreign source income. However, these limited types of income do not, in any event, include "subpart F income" or, generally, income received from a foreign subsidiary.

This new rule for the taxation for foreign corporations should also tend to encourage foreign investment in the United States and thus is likely to have a favorable effect on the U.S. balance of payments.

Explanation of provision.—The bill substantially revises the income tax treatment of foreign corporations. Under the bill the income of a foreign corporation is divided into two classifications.

(A) *Income not effectively connected.*—Fixed or determinable income of a foreign corporation from sources within the United States which is not effectively connected with the conduct of a trade or business within the United States, under your committee's and the House bill, is taxable at a flat 30-percent rate (or lower treaty rate). Under your committee's bill, the types of fixed or determinable income specified are the same as under present law with the same two additions provided in the case of nonresident aliens: (1) contingent income received from the sale of patents and other intangibles, and (2) amounts of original issue discount which are treated as ordinary income received on retirement or sale or exchange of bonds or other evidences of indebtedness issued after September 28, 1965. A corresponding amendment to the House bill deleting the tax on income realized with respect to stock of a collapsible corporation was made in this provision. As indicated in the case of the taxation of nonresident aliens, the source of this original issue discount is to be determined by the same rules as those applicable to interest income. As a result, if the corporation with respect to whose bonds the original issue discount arises is a domestic corporation which for the 3-year period preceding the year of redemption derives 80 percent or more of its income from foreign sources, then the original issue discount (interest), at the time of the retirement or sale or exchange of the bonds also, will be considered as foreign source income. Moreover, the language in the nonresident alien section of this report clarifying the scope of the references in the bill to section 1232 is equally applicable with respect to this provision.

The bill has also clarified the language of present law which includes certain timber, coal, and iron ore royalties in the 30-percent list.

(B) *Income effectively connected.*—Income of a foreign corporation which is effectively connected with the conduct of a trade or business within the United States is taxable, under the bill, at the regular corporate income tax rates. In determining "taxable income" for this purpose, gross income includes only gross income which is "effectively connected" with the conduct of the trade or business within the United States.

(C) *Income from real property.*—Under present law (as explained with respect to nonresident alien individuals) it is not clear as to what situations or arrangements for the ownership by a foreign corporation of real property located in the United States will cause the foreign corporation to be considered as engaging in a trade or business within the United States. This is important to know because if a foreign corporation not engaged in a trade or business in the United States receives rents from U.S. real property, this rental income is taxable at the flat 30-percent rate (or applicable treaty rate) on the gross amount of such rents, without the allowance of any deductions attributable to the rental income. Consequently, the tax liability generated by this rental income may exceed the net rental income the corporation receives. Your committee agrees with the House that the law in this area should be clarified and doubts whether it is appropriate to tax the gross amount of this type of income.

Since the provisions of this amendment parallell the amendment provided in the case of real estate income of nonresident alien individuals, the explanation is not repeated here (see No. 3(a)(C)(ii)).

(D) *Certain interest received by banks in U.S. possessions.*—The application of the flat 30-percent rate to U.S. source income which is not effectively connected with a U.S. trade or business results in a high effective rate of tax on interest received by banks located in U.S. possessions with respect to U.S. Government obligations which they must necessarily hold to meet reserve requirements. This result is due to the fact that these banks must pay interest on the amounts invested in the U.S. Government obligations. Therefore, the net profit margin on the interest received from these U.S. Government obligations is small relative to the gross amount of interest received. It was also brought to the attention of your committee that the usual method of effecting a mitigation of the flat 30-percent rate in the case of interest—an income tax treaty providing a lower rate (0, 5, or 15)—is, of course, not possible in the case of a possession.

In view of the facts set forth above your committee has added an amendment to the House bill which provides that interest received by banks located in a U.S. possession from U.S. government obligations will be treated as effectively connected with a U.S. trade or business whether or not the bank has such a business. Consequently, the interest received by a bank in a possession from U.S. Government obligations will be taxed on a net basis—gross interest income less allocable expenses.

(E) *Deductions.*—Under the bill, deductions are allowed in computing the tax imposed at the regular corporate rates only to the extent that they are properly attributable to income which is effectively connected with the conduct of a trade or business within the United

States. The deduction for charitable contributions, however, is allowed whether or not attributable to income which is effectively connected. Generally, as under present law, deductions are permitted only if a true and accurate income tax return is filed.

Effective date.—These amendments apply with respect to taxable years beginning after December 31, 1966.

b. Withholding of tax on foreign corporations (sec. 104(c) of the bill and sec. 1442 of the code)

Under present law, the fixed or determinable U.S. source income of a foreign corporation not engaged in trade or business in the United States, like that of a nonresident alien not engaged in a trade or business in the United States, is subject to a withholding tax of 30 percent. However, foreign corporations engaged in trade or business in the United States are not subject to the withholding tax.

The bill amends the withholding provisions of present law to conform to the effectively connected concept in the bill. Thus, under the bill a withholding tax at the 30-percent rate will apply in the case of a foreign corporation to items of fixed or determinable U.S. source income which are not effectively connected with the conduct of a trade or business in the United States. It is the understanding of your committee that the person required to withhold will be relieved of any liability for failure to withhold if the failure was in reliance upon information (as to whether or not the income was effectively connected) furnished (in accordance with regulations to be issued) by the foreign corporation entitled to the receipt of the income. The House bill provides that this 30-percent withholding provision is not applied if the Secretary of the Treasury determines that the withholding requirements impose an undue administrative burden and that the collection of the tax will not be jeopardized by an exemption. In cases like this, if the Treasury concludes that revenue will not be jeopardized (or delayed) by foregoing withholding, your committee concluded it would be desirable to do so. This amendment is applicable to taxable years beginning after December 31, 1966.

c. Deduction for dividends received from foreign corporations (sec. 104 (d) and (e) of the bill and sec. 245 (a) and (b) of the code)

Present law.—In general, present law allows corporations an 85-percent dividend-received deduction for dividends received from domestic corporations. In order for this deduction to be available in the case of dividends from a foreign corporation, it must be engaged in a trade or business in the United States for an uninterrupted period of at least 3 years and 50 percent of its gross income must be from U.S. sources during that period. Where these conditions exist, an 85-percent dividend-received deduction is available for the same proportion of the dividend as the corporation's gross income, which is from U.S. sources, is of its total gross income.

Explanation of the provision.—The House bill substantially conforms the dividends-received deduction to the effectively connected concept appearing elsewhere in the bill. Under the House bill 50 percent or more of the foreign corporation's gross income for the uninterrupted period must be from income effectively connected with the conduct of a trade or business within the United States for the deduc-

tion to be available. Also, the deduction is limited to 85 percent of the same proportion of the dividend as the foreign corporation's gross income, which is effectively connected with a U.S. trade or business, is of that corporation's total gross income from all sources.

Your committee added an amendment to the House bill which in certain situations provides a 100 percent dividends-received deduction to a domestic corporation for dividends received from a wholly owned foreign subsidiary which has a 100 percent effectively connected income. In such a situation a foreign corporation is subject to U.S. tax on all of its income, just as is a domestic corporation.

The bill also contains a transitional rule which makes it unnecessary to apply the effectively connected income concept when any of the years which is taken into account for the 50-percent test is a pre-1967 year. This rule provides that, for purposes of computing this deduction, all of a foreign corporation's U.S. source income, for any period before its first taxable year beginning after December 31, 1966, is to be considered to be effectively connected income.

Effective date.—These amendments apply for taxable years beginning after December 31, 1966.

d. Unrelated business taxable income of certain foreign charitable organizations (sec. 104(g) of the bill and sec. 512(a) of the code)

Under present law the unrelated business taxable income of foreign charities is subject to tax if it is derived from sources within the United States.

The bill conforms this provision to the effectively connected concept by providing that the unrelated business taxable income of a foreign charity is to be subject to tax only if it is effectively connected with the conduct of a trade or business in the United States.

This amendment applies for taxable years beginning after December 31, 1966.

e. Foreign corporations subject to personal holding company tax (sec. 104(h) of the bill and sec. 542(c), 543(b), and 545 (a) and (d) of the code)

Present law.—Under present law any foreign corporation with U.S. investment income, whether or not doing business here, may be taxed as a personal holding company unless all its outstanding stock is owned (directly and indirectly) by nonresident alien individuals and its U.S. source gross income is less than 50 percent of its total gross income for that year. If taxable as a personal holding company the foreign corporation is subject to a special 70-percent tax on its undistributed U.S. source personal holding company income in addition to the flat rate 30-percent tax (or possibly the regular corporate tax). Also, if a foreign corporation is determined to constitute a personal holding company and the foreign corporation has not filed a return or that which was filed was not a true and accurate return, the 70-percent personal holding company tax is assessed without allowance of the dividend paid deduction. In such cases, the combination of the regular 30-percent tax and the 70-percent personal holding company tax can constitute a tax of about 80 percent of the income of the foreign corporation.

Reason for provision.—The primary reason for applying the U.S. personal holding company tax to foreign corporations owned by non-

resident aliens has been to prevent the avoidance of the graduated rates of U.S. tax applicable to certain nonresident alien individuals by utilizing foreign holding companies as the recipients of their U.S. source investment income. Generally the graduated rates presently apply when a nonresident alien's U.S. gross income exceeds $21,200 or when he is engaged in a trade or business in the United States. However, under your committee's and the House bill nonresident aliens are not to be subject to the graduated rates of tax unless their income is effectively connected with a trade or business in the United States. In view of this the retention of the personal holding company tax would appear to serve no purpose where all of the shareholders are nonresident aliens.

Explanation of provision.—The House bill modifies the provision in present law excluding from the personal holding company definition only those foreign corporations which meet two tests; namely, where their U.S. source gross income is less than 50 percent of their total gross income and all of their stock is held directly or indirectly by nonresident aliens. In place of this the House bill substitutes a broader exemption which applies to any foreign corporation all of whose outstanding stock during the last half of its taxable year is owned by nonresident alien individuals (directly or indirectly through foreign estates, trusts, partnerships, or other foreign corporations).

Your committee has adopted three amendments in this area. The first amendment provides that the general exclusion from the personal holding company provision provided in the House bill is not to be available to a foreign corporation which is a personal holding company if it has income from personal services which is personal holding company income described in section 543(a)(7). In such a case the personal holding company tax is to be assessed on that personal service income. The second amendment provides a deminimus rule, in addition to the general exception provision provided in the House bill. Under the amendment, in the case of foreign corporations with only 10 percent or less U.S. ownership the personal holding company tax is to be assessed only on the corporation's undistributed personal holding company income attributable to the U.S. shareholders' interest. The final amendment adopted by your committee provides that a foreign corporation can claim all appropriate deductions in computing its personal holding company tax notwithstanding the general rule disallowing deductions where no return is filed. However, a 10-percent addition to taxes otherwise due is to be assessed.

Effective date.—This amendment applies with respect to taxable years beginning after December 31, 1966.

f. Foreign corporations carrying on insurance business in the United States (sec. 104(i) of the bill and secs. 819, 821, 822, 831, 832, 841 and 842 of the code)

Present law.—Present law taxes a foreign life insurance company carrying on a life insurance business in the United States on all its income attributable to that business in substantially the same manner as a domestic life insurance company.[3] Foreign insurance companies carrying on life insurance businesses in the United States gen-

[3] A foreign life insurance company that is not carrying on a life insurance business in the United States is taxable under the provisions applicable to foreign corporations generally.

erally have interpreted this as providing they were not taxable on U.S. source income which is not income of the U.S. life insurance business of the company.

As is indicated above, with respect to their life insurance company business, foreign life insurance companies are taxed, under present law, in substantially the same manner as domestic life insurance companies. However, a special rule is provided where the surplus of a foreign life insurance company held in the United States is less than a specified minimum figure. This figure is expressed as the same percent of the foreign life insurance company's liabilities on U.S. business as the average surplus of domestic corporations is of their total liabilities. The Secretary of the Treasury determines this ratio each year. If the foreign insurance company's surplus held in the United States is less than this proportion of the taxpayer's total insurance liabilities on U.S. business, then the policy and other contract liability requirements, and the required interest for computing gain from operations, are reduced by this deficiency multiplied by the rate of earnings on investments. This provision is designed to prevent foreign insurance companies doing business in the United States from avoiding tax that they would otherwise have to pay to the United States merely by not holding a sufficient amount of surplus attributable to the U.S. business.

Reason for, and explanation of provisions.—Your committee agrees with the House that foreign insurance companies—life insurance companies and other insurance companies, including both mutual and stock companies—should, in general, be taxed on their investment income in the same manner as other foreign corporations. For this reason, the bill provides that a foreign corporation carrying on an insurance business within the United States is to be taxable in the same manner as domestic companies carrying on a similar business with respect to its income which is effectively connected with the conduct of a trade or business within the United States. The remainder of the U.S. source income of this type of a corporation is to be taxed in the same manner as income of other foreign corporations which is not effectively connected with a U.S. trade or business; that is, at a flat 30 percent (or lower treaty) rate. The determination of whether a foreign insurance company qualifies for the special domestic insurance treatment is to be made by considering only the income of the corporation which is effectively connected with the conduct of its insurance business carried on in the United States. In making this change your committee intends no inferences as to the requirements of existing law with respect to investment income of foreign insurance companies.

For purposes of determining whether or not income of a foreign life insurance company is effectively connected with the conduct of its U.S. life insurance business, the annual statement of its U.S. business on the form approved by the National Association of Insurance Commissioners will usually be followed. It has been brought to the attention of your committee that certain foreign casualty insurance companies also use this form to indicate their U.S. business connected investment income. The committee does not intend to imply by negative inference that these companies will be precluded from using this form in the future. It is noted that all the income effectively connected with the foreign life insurance company's U.S. life insurance business, from whatever source derived, comes within the ambit of this provision. This a continuation of present law which subjects to U.S.

tax all the income attributable to the U.S. life insurance business from whatever source derived.

In the case of insurance companies other than life—both mutual and stock—present law provides that if these companies have income from U.S. sources but are not engaged in an insurance business here, they are taxed in the same manner as other foreign corporations. Where mutual insurance companies (other than life or marine) are carrying on an insurance company business in the United States, they are taxable on their income derived from sources within the United States in the same manner as similar domestic mutual companies. Stock casualty, fire, flood, and so forth, insurance companies carrying on an insurance business in the United States, also are taxed in the same manner as domestic stock insurance companies with respect to the portion of their taxable income from sources within the United States.

It has been pointed out that the special rule in present law referred to above with respect to foreign life insurance companies—where these companies hold a lower ratio of surplus for their U.S. business than that held by the average domestic companies—may lead to what in effect is a double tax. This results from the interaction of this provision with the effectively connected rule. Thus for example, a company may find its deductions reduced (because of the minimum surplus requirement) while, at the same time, it is taxed at a flat 30 percent (or lower treaty rate) on investment income in this country not effectively connected with the U.S. business which, in effect, also includes the income subject to the minimum surplus adjustment.

To meet the problem referred to above, your committee's and the House bill adds a paragraph to the provision described above which has the effect of reducing the income subject to the flat 30-percent tax (or lower treaty rate) by the amount by which the deductions under this special provision are reduced as the result of the application of the Secretary's ratio. This is accomplished by allowing a credit against the 30-percent tax (or lower treaty rate) for the tax levied on the hypothetical income attributed to the U.S. life insurance company business.

Effective date.—These amendments apply with respect to taxable years beginning after December 31, 1966.

g. Subpart F income (sec. 104(j) of the bill and sec. 952(b) of the code)

Present law.—Under present law certain portions of the undistributed income of a controlled foreign corporation are taxed currently to its U.S. shareholders having a 10 percent or greater voting interest. This undistributed income so taxed is termed "subpart F income." In determining "subpart F income," there is excluded income of a foreign corporation from U.S. sources which already is taxed by the United States because the corporation is engaged in trade or business in the United States. Present law is interpreted in the income tax regulations as not excluding from "subpart F" income, income exempt from U.S. tax, or subject to a reduced rate of tax, in accordance with a treaty.

The bill modifies existing law to conform this provision with the effectively connected concept and to clarify the language of existing law with respect to income affected by treaties.

Explanation of provision.—The bill amends present law to provide that in determining "subpart F income" there is to be excluded only

those items of income effectively connected with the conduct by the foreign corporation of a trade or business within the United States. It also makes it clear that "subpart F" income includes items exempt from U.S. tax or subject to a reduced rate of tax pursuant to a treaty.

Effective date.—This amendment applies with respect to taxable years beginning after December 31, 1966.

h. Gain from certain sales or exchanges of stock in certain foreign corporations (sec. 104(k) of the bill and sec. 1248(d) of the code)

Present law.—Present law treats the gain realized by a 10-percent U.S. shareholder from the sale or exchange of stock of certain foreign corporations as a dividend, to the extent the post-1962 earnings and profits of the corporation are attributable to the shares being sold or exchanged. In determining the earnings and profits to be taken into account in determining this gain, present law excludes U.S. source income of a foreign corporation engaged in a U.S. trade or business. Consistent with the interpretation of similar language applicable to the determination of "subpart F income" explained above, these earnings and profits have been construed by the regulations as including income exempt from U.S. tax or subject to a reduced rate by treaty.

Explanation of provision.—The amendment provides that for taxable years beginning on or after January 1, 1967, the earnings and profits of the foreign corporation (for purposes of sec. 1248) is not to include income effectively connected with the conduct of a trade or business within the United States. In addition, the amendment makes it clear that the exclusion does not apply to income which is exempt from tax, or subject to a reduced rate of tax, pursuant to a treaty.

Effective date.—This amendment applies to sales or exchanges occurring after December 31, 1966.

5. MISCELLANEOUS INCOME TAX PROVISIONS, ETC.

a. Income affected by treaty (sec. 105(a) of the bill and sec. 894 of the code)

Present law.—Existing income tax treaties generally provide that the exemptions from tax, or the reduction in rates of tax, provided for in its provisions apply only to persons who do not have a permanent establishment in the United States. The "permanent establishment" concept of the treaties serves a purpose similar to the "engaged in a trade or business in the United States" concept of U.S. tax law. The effect of such a provision in a treaty, therefore, is to deny the benefits of a treaty exemption or reduced rate to a nonresident alien individual, or a foreign corporation, engaged in a trade or business in the United States through a permanent establishment.

Explanation of provision.—Under the tax treatment provided for such persons by the bill, the "engaged in trade or business in the United States" criterion is no longer the sole determinant of the method of taxing particular items of a nonresident alien individual's, or a foreign corporation's, U.S. source income. The bill seeks to tax all such persons alike on their noneffectively connected U.S. source income whether or not they also are engaged in a trade or business in the United States. This result would not be achieved under treaty provisions if some aliens or foreign corporations because of having a

permanent establishment in the United States, are denied the benefits of treaty rates or exemptions.

The bill adds to the code a new subsection providing that for purposes of applying any exemption from, or any reduced rate of, tax granted by a treaty to which the United States is a party, with respect to income which is not effectively connected with the conduct of a trade or business within the United States, a nonresident alien individual or foreign corporation shall be deemed not to have a permanent establishment in the United States at any time during the taxable year. In other words, with respect to investment income not effectively connected with a trade or business, a nonresident alien or foreign corporation will be taxed at the lower treaty rate if one is provided. This provision does not apply in computing the special tax applicable to U.S. citizens who become expatriates with a primary purpose of avoiding tax.

Effective date.—This new provision is effective for taxable years beginning after December 31, 1966.

b. Adjustment of tax on nationals, residents, and corporations of certain foreign countries (sec. 105(b) of the bill and new sec. 896 of the code)

Imposition of more burdensome taxes.—Unilaterally revising the statutory pattern of taxation of nonresident aliens and foreign corporations and granting favorable tax treatment to such persons may have the effect of making it more difficult to negotiate satisfactory tax treaties. At the same time, your committee agrees with the House that a systematic modernization of the U.S. income tax treatment of nonresident aliens and foreign corporations requires a modernization of the basic statutory provisions.

To prevent a deterioration in our position in negotiating treaties while at the same time modernizing these statutory provisions, the bill has added a provision to the tax laws which generally grants to the President the authority to apply the income tax law without regard to the amendments which this or later acts make to the provisions relating to the taxation of foreigners (including corporations) in the case of any country which imposes more burdensome taxes on U.S. citizens and corporations than the United States does on nonresident aliens and foreign corporations.

The new section gives special authority to the President where he finds that—

(1) under the laws of any foreign country, citizens of the United States (not residents of the foreign country) or U.S. corporations are being subject to more burdensome taxes on any item of income from sources within the foreign country, than those imposed by the United States on similar U.S. source income of residents or corporations of the foreign country;

(2) when asked so to do the foreign country has not acted to revise or reduce its taxes to eliminate this condition; and

(3) it is in the public interest to reimpose the pre-1967 income tax provisions.

Where these conditions exist, the President may proclaim that the tax on similar income derived from U.S. sources by residents or corporations of the foreign country for taxable years beginning after the proc-

lamation is to be determined by disregarding the amendments to the income tax law, as it relates to nonresident aliens and foreign corporations, made by this bill or by subsequent acts.

If after such a proclamation, the foreign country modifies the offending provisions of its tax law so that the President finds they are no longer more burdensome, he may proclaim that the U.S. tax on similar items of income derived from U.S. sources by residents or corporations of the foreign country, for taxable years beginning after such proclamation, is to be determined by taking into account the amendments made to the income tax provisions of the code relating to nonresident aliens and foreign corporations by this bill and later acts. Before the President makes a proclamation under this new provision, he is to give the Congress 30 days notice of his intention so to do.

Imposition of discriminatory taxes by foreign country.—It was brought to the attention of your committee that there are some foreign countries which discriminate against U.S. persons either generally or with regard to specific classes of U.S. persons. Since the present provisions of the code do not provide the President with authority to counteract discrimination by effecting substantially the same tax on the persons of the discriminating country (the present provision provides only for a doubling of the tax) it was the opinion of your committee that the ability to counteract all degrees of discrimination should be provided the President. Your committee is aware that at the present time the United Kingdom taxes dividends received by a United Kingdom permanent establishment of U.S. corporations at a higher rate than that at which it taxes its own corporations on intercorporate dividends. It is the understanding of your committee that it is situations such as this which may require action under this section.

In view of the foregoing facts your committee added a provision to the House bill granting the President the authority to take such action as is necessary to raise the effective rate of U.S. tax on income received by nationals, residents, or corporations of a discriminating country to substantially the same rates as are applied in the other country.

Effective date.—These provisions are effective for taxable years beginning after December 31, 1966.

c. Foreign community property income (sec. 105(e) of the bill and new sec. 981 of the code)

Present law.—The general income tax provisions provide, in effect, that the worldwide income of a U.S. citizen is subject to tax from whatever source derived. In a recent case,[4] it was held that an American citizen who acquired residence in a foreign country with community property laws, and who married a nonresident alien, had a sufficient interest in one-half of the marital partnership income—even though earned by the husband foreigner—to render her subject to U.S. taxation on that income.

Reasons for provision.—Your committee agrees with the House that it is undesirable to require a U.S. citizen to pay U.S. tax on income earned by a spouse who is a foreigner merely because of the attribution of one-half of the income to the U.S. citizen through the community property laws of the foreign country of residence. Although the tax is levied on the spouse who is a U.S. citizen, it is regarded by most

[4] *Katrushka J. Parsons v. Commissioner*, 43 T.C. 331 (1964).

foreigners as a U.S. tax on the income from the labor and property of the foreigner's spouse. In practice it appears that the revenue received from the application of this rule is limited because of the likelihood that persons subject to it are unaware of its existence. However, when a case is discovered, the tax liabilities are likely to be large because returns have not been filed.

An additional factor to be considered is that community property laws of foreign countries frequently make no difference in the source of taxable income since they often require joint returns by husbands and wives. Moreover, in many such countries it appears doubtful whether a U.S. wife under the law of that country could legally compel her foreigner husband to pay over to her amounts necessary to remit her U.S. tax liability on her community property income.

For the reasons given above, the bill provides a U.S. spouse with an election which would substantially negate the operation of the community property laws of the foreign country of residence.

Explanation of provisions.—The bill provides elections to U.S. citizens who are, during the periods involved, married to nonresident aliens. If an election is made for post-1966 years, the community income of husband and wife are to be treated as follows:

(1) Earned income (sec. 911(b)) is to be treated as income of the spouse who rendered the personal services.

(2) Trade or business income is to be treated as income of the husband unless the wife exercises substantially all the management and control over the business. Also, a partner's distributive share of income is to be wholly attributed to him (same as self-employment rules under section 1402(a) (5)).

(3) Other community income which is derived from separate property of one spouse is to be treated as income of that spouse. What is "separate property" for this purpose is to be determined under the applicable foreign community property law.

(4) All other community income is to be treated as provided in applicable foreign community property law.

Due to the uncertainty in the tax treatment of this type of community property income in prior years, the election provided for pre-1967 years, to an even greater extent, ignores community property laws of the foreign countries. For pre-1967 years the treatment of income of the types set forth in categories (1), (2), and (3) above is to be the same as described above, but the income described in category (4) above is to be treated as income of the spouse who, for the year involved, had the greater amount of income described in (1), (2), and (3) plus separate income. Thus, category (4) income is attributed to the marital partner whose earnings or property were most likely to have given rise to this income.

For purposes of this provision, the treatment of deductions is to be compatible with that accorded the income to which the deductions are attributable. In other words deductions are to follow the income they generate.

This provision provides qualified taxpayers with two elections, one for pre-1967 years and one for future years. Either election can be made for any year, at any time, so long as the year is still open. However, these elections are binding—if the election is exercised for any post-1967 year the treatment provided by this provision applies not

only to the year of election but also to all years subsequent which are open and, if made for pre-1967 years, this provision applies for all open years prior to that date. It should be noted that either election can be made separately.

Generally, the election must be made by both spouses. However, with respect to the pre-1967 election, the foreigner spouse need not join if the Secretary of the Treasury determines that (1) an election would not affect the U.S. tax liability of the foreigner spouse for any taxable year, or (2) that the foreigner spouse's U.S. tax liability for pre-1967 years cannot be ascertained and that to deny the election to the U.S. citizen would be inequitable and cause undue hardship. If either election is made, a period of 1 year is provided with respect to all open years for the making of assessments and the claiming of refunds. However, this 1-year period applies only if the deficiency or refund is attributable to the election. Also, no interest is due on a deficiency or refund resulting from the election for any period up to 1 year after the filing of the election.

d. Foreign tax credit—foreign corporations and nonresident aliens (sec. 106(a) of the bill and secs. 874, 901, and new sec. 906 of the code)

Present law.—Present law does not grant a foreign tax credit to foreign corporations or nonresident aliens since presently such persons are subject to U.S. tax only on their U.S. source income. However, the code does provide a tax credit to U.S. persons with respect to foreign taxes on foreign income subject to U.S. tax.

Reasons for provision.—As a result of the rule provided elsewhere in this bill nonresident aliens and foreign corporations, in certain types of cases, are taxable on foreign source income which is effectively connected with the conduct of a trade or business within the United States (see item 2(6)(ii) above). The country which is the source of the income may also impose a tax on this same income. Moreover, the country in which the alien is a citizen or where the foreign corporation is domiciled for tax purposes may also assert tax jurisdiction with respect to this income. In view of the fact that one of the primary reasons the foreign source income effectively connected concept is being adopted is to prevent the United States from being availed of as a "tax haven" it is the opinion of your committee that the United States should not assert tax jurisdiction in a manner which might lead to double taxation to the extent that the countries of source or residence subject the income to their tax. Therefore, your committee concluded that the policy preventing the United States from being availed as a "tax haven" would not be frustrated by providing a foreign tax credit for all foreign income taxes assessed with respect to effectively connected foreign source income.

Explanation of provision.—For the reasons indicated above the bill adds a new section to the code (sec. 906) to allow a foreign tax credit to nonresident aliens and foreign corporations with respect to foreign source income which is subject to tax in the United States because it is effectively connected with the conduct of a trade or business in the United States. However, this provision of your committee's bill differs from that provided in the House bill. Under the House bill this foreign tax credit for nonresident aliens and foreign corporations is

not to be available for taxes imposed by a country solely on the basis that it has jurisdiction to tax the individual on his worldwide income because he is a citizen or resident of that country or a corporation on its worldwide income because it is created, incorporated, or domiciled there. As indicated above it is the opinion of your committee that it is not necessary to the effectuation of the purposes of the bill that the foreign tax credit provision be limited in the manner provided in the House bill.

The credit is allowed under the existing foreign tax credit provision and is subject to the existing "per country" or "overall" limitation. The "per country" limitation restricts the credit to the proportion of the U.S. tax which the taxpayer's taxable income from sources within the particular country bears to his entire taxable income for the year. Similarly the "overall" limitation restricts the credit to the proportion of the U.S. tax which the taxpayer's taxable income, from sources without the United States, bears to his entire taxable income for the year. In determining the credit allowable to a nonresident alien individual or a foreign corporation under these limitations, the individual's or corporation's taxable income is to include only the taxable income effectively connected with the taxpayer's conduct of a trade or business within the United States. Moreover, the credit is not allowable against U.S. taxes imposed at the flat 30-percent rate on income not effectively connected with the conduct of a trade or business in the United States.

Under some circumstances, present law treats a portion of the foreign taxes paid by certain foreign subsidiaries of a domestic corporation as having been paid by the domestic corporation for purposes of computing its foreign tax credit. The bill accords this same treatment to foreign corporations, but its application is limited to income effectively connected with the conduct of a trade or business within the United States.

Effective date.—These amendments apply for taxable years beginning after December 31, 1966. In applying the foreign tax credit carryback and carryover provisions of present law to nonresident aliens and foreign corporations no amount may be carried to or from a taxable year beginning before January 1, 1967.

c. Similar credit requirement (sec. 106(b) (2) and (3) of the bill and secs. 901(c) and 2104(a) and new (h) of the code)

Present law.—Under present law, the foreign tax credit for income, etc., or death taxes are allowable to an alien who is a resident of the United States (or Puerto Rico) only if the foreign country in which the alien is a citizen or subject, in imposing its income, etc., or death taxes, allows a similar credit to citizens of the United States residing in such country.

Reason for provision.—The present law acts to deny the credit to alien residents of the United States who are citizens of countries which may be following foreign policies which are adverse to the United States. Such countries may be unconcerned as to our tax treatment of refugees from their country who become residents of the United States. The fact that the United States may deny a credit to refugees from their country, in fact, might encourage them not to provide a foreign tax credit or exemption in their laws for any residents of their country who may be U.S. citizens. Your committee agrees with the House that

the denial of the credit to such persons under these circumstances is unjustified and, therefore, has amended present law so as to allow these persons the foreign tax credit unless the President finds that so doing is not in the public interest.

Explanation of provision.—The bill modifies the provision of present law which in all cases denies a credit for citizens of a foreign country if it does not provide reciprocity for U.S. citizens residing there. Under the bill the President is given some discretion as to the disallowance of the credits in such cases. The bill provides that the President is to deny a foreign tax credit to residents who are subjects of a foreign country if he finds: (1) That a foreign country, in imposing income, war profits, and excess profits taxes or death taxes does not allow U.S. citizens residing in that country a credit for any taxes paid or accrued to the United States or any foreign country, similar to the foreign tax credit allowed by the United States to subjects of that foreign country residing in the United States; (2) that the foreign country, when requested to do so, has not acted to provide a similar credit to U.S. citizens residing in that foreign country; and (3) that it is in the public interest to allow the U.S. foreign tax credit to citizens or subjects of the foreign country who reside in the United States only if the foreign country allows such a similar credit to citizens of the United States residing in the foreign country.

The disallowance of the credit in any such case is to apply for taxable years beginning while a Presidential proclamation denying the credit is in effect.

f. Separate foreign tax credit limitation (sec. 106(c) of the bill and sec. 904(f) of the code)

Present law.—Generally, under present law the limitation on the allowable foreign tax credit, must be computed separately for all interest income and on a "per country" basis. The exceptions to this general rule are for:

(1) Interest derived from any transactions directly related to the active conduct of a trade or business in a foreign country or U.S. possession;

(2) Interest derived in the conduct of a banking, financing, or similar business (such as an insurance company business);

(3) Interest received from a corporation in which the taxpayer owns at least 10 percent of the voting stock; and

(4) Interest received on obligations acquired as the result of the disposition of a trade or business actively conducted by a taxpayer in a foreign country or as a result of a disposition of stock or obligations of a corporation in which the taxpayer owned at least 10 percent of the voting stock.

This provision was added to the code by the Revenue Act of 1962 so as to foreclose the transfer outside the United States (primarily to Canada) of short-term funds, such as bank deposits, in order to make it possible to use foreign tax credits, which otherwise could not be used, to reduce the U.S. tax on a domestic corporation's worldwide income. Interest income previously could be used in this manner because typically the foreign tax on such income was below the regular corporate tax which would apply to interest income received by a domestic corporation. Thus, if the overall limitation were used there

was foreign income which was available against which could be applied excess foreign tax credits.

In general, the excepted categories, described above, present situations in which the receipt of the foreign-source interest is likely to reflect legitimate business transactions. The 10-percent exception, ((3) above) was added by the Congress in the belief that if a lender owned at least 10 percent of the voting stock of a borrowing corporation an interest-bearing loan to that corporation is not likely to be a mere tax-savings device. The Congress thereby recognized that, in practice, business reasons may often require a shareholder to provide funds to a foreign corporation in the form of loans rather than in the form of additional equity capital. However, since the Congress was at that time closing a tax avoidance device the 10-percent exception was limited to situations where the U.S. corporation directly owned at least 10 percent of the foreign debtor corporation.

Reasons for provision.—U.S. corporations, in cooperating with the President's voluntary program to aid our balance of payments by limiting the outflow of capital investment funds, have been requested to obtain a portion of their funds necessary to finance their foreign operations from the foreign capital markets rather than from sources within the United States. In this manner, the flow of dollars abroad has been curtailed and our balance-of-payments position aided. Some corporations have established subsidiaries in this country for the specific purpose of handling these foreign funding transactions. However, the use of such a subsidiary to finance these foreign operations may result in the special separate interest income limitation (described above) being applied, for purposes of computing the foreign tax credit, with respect to interest income the subsidiary derives from loaning funds to the related companies.

As indicated previously an exception is provided in those cases where the U.S. taxpayer receiving the interest directly owns 10 percent of the foreign subsidiary paying the interest. However, where the U.S. parent establishes a wholly owned domestic subsidiary to borrow the foreign funds to finance the operation of its foreign subsidiary this exception of present law may not apply. This is because the funding subsidiary does not directly own a 10-percent interest in the foreign operating subsidiary. This is true even where the domestic funding subsidiary is a wholly owned subsidiary of a corporation which, in turn, owns more than 10 percent of the foreign operating subsidiary to whom the funds are loaned. In these circumstances your committee does not see why the limitation on the foreign tax credit should not apply in the same manner whether the foreign financing is done through the parent or a domestic subsidiary of the parent.

A precedent for liberalization of this provision is found in the interest equalization tax (a provision enacted to improve our balance of payments) which provides an exemption for acquisition of stock and debt obligations of a foreign corporation in which the taxpayer owns at least 10-percent interest regardless of whether the 10-percent stock ownership belongs to the lender or another related corporation belonging to the same affiliated group. Since the interest equalization tax and this special foreign tax credit provision will have mutual application in many situations it is the opinion of your committee that, to the extent possible, these provisions should have

parallel application. Moreover, the application of the regular limitations, rather than the separate limitation on interest, in the case of these funding subsidiaries is particularly important now in view of their favorable impact on the balance of payments and the fact that they represent compliance with the administration's voluntary program for restraint on foreign investments.

The House bill proposes to liberalize the 10-percent ownership exception but its amendment has only limited application. Specifically, it would leave unchanged the present 10-percent rule and add a new section to make the separate limitation on interest income inapplicable to interest "received by an overseas operating funding subsidiary on obligations of a related foreign corporation." For purposes of this provision the domestic funding subsidiary is defined so as to, in effect, require that the domestic lender or its affiliated group own at least 50 percent of the voting stock of the borrowing foreign corporation. Your committee does not believe that it is necessary to the foreclosure of the tax avoidance practices at which the special limitation provision is aimed that the liberalization be limited to that provided by the House bill. Moreover, the restrictiveness of the present law and the House provision handicap the domestic corporation wishing to comply with the President's voluntary program. Therefore, your committee has amended the House bill by revising the 10-percent exception adopted in 1962. Your committee's amendment provides that the special limitation on interest from foreign corporations is not to apply with respect to interest income received by a U.S. lending corporation which directly or indirectly owns at least 10 percent of the foreign corporation from which the interest is derived. For purposes of this provision stock owned directly or indirectly by or for a foreign corporation is to be considered as owned proportionately by its shareholders.

Effective date.—The amendments made by this provision apply to interest received after December 31, 1965, in taxable years ending after that date.

g. Amendment to preserve existing law on deductions under section 931 (sec. 107 of the bill and sec. 931(d) of the code)

Under present law, U.S. citizens or domestic corporations earning income in possessions of the United States generally are taxable only on their U.S. source income (plus amounts received in the United States) if they meet certain requirements.[5] In general, these requirements are that the citizen or corporation derive 80 percent of its gross income from sources within such a possession and 50 percent of its gross income from the active conduct of a trade or business within such a possession (both of these tests being applied with respect to income received in the prior 3 years).

A U.S. citizen or domestic corporation which qualifies for this treatment may exclude from its U.S. tax base gross income from sources without the United States (in the same way as nonresident aliens and foreign corporations not engaged in trade or business within the United States). The deductions allowed a U.S. person who qualifies for this exclusion are those which are allowable under present law to nonresident aliens and foreign corporations engaged in trade or business in

[5] Possession for purposes of this provision does not include the Virgin Islands or, in the case of U.S. citizens does not include Puerto Rico.

the United States. In general, these deductions are: (1) Those connected with U.S. source income, (2) those allocated or apportioned under regulations with respect to deductions related to income which is partially from within and without the United States, (3) losses not connected with the trade or business but incurred in transactions entered into for profit (if the profit, had the transaction resulted in a profit, would have been taxable by the United States), (4) casualty losses (if the loss is of property within the United States), and (5) the charitable contribution deduction.

The bill does not change the tax treatment of income qualifying for the exclusion relating to income from U.S. possessions but because it allows deductions to nonresident aliens and foreign corporations engaged in a trade or business in the United States only where the deductions are allocable to income effectively connected with this trade or business, it is now necessary in this provision to specify the deductions which may be taken. The bill therefore makes applicable to U.S. citizens and domestic corporations engaged in trade or business in possessions, who qualify for the special tax treatment under existing law, the provisions of present law which allow deductions to nonresident aliens or foreign corporations engaged in trade or business in the United States.

This amendment is effective for taxable years beginning after December 31, 1966.

6. ESTATE TAX PROVISIONS

a. Estate tax rates (sec. 108(a) of the bill and sec. 2101(a) of the code)

Present law.—The estate of a nonresident alien is taxed only on the transfer of property situated or deemed to be situated in the United States at the time of his death. While the tax rates are the same as for citizens and residents of the United States, the deductions, credits, and exemptions are different: No marital deduction is allowed with respect to the estate of a nonresident alien; the specific exemption in determining the taxable estate is $2,000 instead of the $60,000 applicable in the case of U.S. citizens; no credit is allowed for foreign death taxes paid; and the expenses, losses, etc., are generally limited to the same proportion of these expenses which the alien's gross estate situated within the United States is of his entire gross estate.

Reason for provision.—The fact that a marital deduction of up to 50 percent of the adjusted gross estate is not allowed in the case of the estate tax liability of a nonresident alien, in effect nearly doubles the size of the taxable estate of many aliens over that of similarly situated citizens. The $2,000 exemption, instead of the $60,000 exemption applying to citizens, also leads to a higher estate tax base. This, of course, means that the estate of a nonresident alien is likely to pay heavier taxes on its U.S. assets than would be true in the case of the estate of a U.S. citizen of similar size. Your committee agrees with the House that this is not appropriate. In addition it has been suggested that the high U.S. estate tax on the U.S. assets of a nonresident alien tends to discourage foreign persons from investing in the United States. Any increase in foreign investment in this country which may be brought about by this change will, of course, have a favorable effect on this country's balance of payments.

In view of the considerations set forth above, your committee believes that the taxation of the U.S. estates of nonresident aliens should be reduced to more closely equate with the taxation of the estates of U.S. citizens. The bill therefore establishes a new schedule of graduated estate tax rates applicable to estate of nonresident aliens which will impose a tax on the U.S. estates of these persons in an amount which is generally equivalent to the tax imposed on an estate of similar value of a U.S. citizen with the maximum marital deduction. (As is explained subsequently the bill also increases the specific exemption available with respect to estates of nonresident aliens.)

Explanation of provision.—The new schedule of rates applicable to estates of nonresidents not citizens is as follows:

If the taxable estate is:	The tax shall be:
Not over $100,000	5 percent of the taxable estate.
Over $100,000 but not over $500,000	$5,000 plus 10 percent of excess over $100,000.
Over $500,000 but not over $1,000,000	$45,000, plus 15 percent of excess over $500,000.
Over $1,000,000 but not over $2,000,000	$120,000, plus 20 percent of excess over $1,000,000.
Over $2,000,000	$320,000, plus 25 percent of excess over $2,000,000.

Table 2 shows a comparison of the effective rates for estates of nonresident aliens provided by this new schedule with the effective rates under present law for nonresident aliens and U.S. citizens with and without a marital deduction. It will be noted that the effective rates resulting from the new schedule closely approximate those applicable in the case of the estate of a U.S. citizen with a marital deduction.

TABLE 2.—*Effective rates of U.S. tax on U.S. estates of nonresident aliens under present law and under the bill and on U.S. citizens under present law*

U.S. gross estate [1]	Effective rate of tax			
	Present treatment of nonresident alien	Tax treatment of nonresident alien provided by bill [2]	U.S. citizen	
			With marital deduction	Without marital deduction
$2,000				
$10,000	2.9			
$30,000	7.7			
$60,000	12.5	2.0		
$100,000	17.3	3.0		3.0
$500,000	25.8	7.4	8.0	22.1
$1,000,000	28.8	10.1	11.1	26.7
$5,000,000	43.0	17.8	16.9	42.3
$10,000,000	53.3	20.6	21.2	52.8

[1] For purposes of these computations it is assumed 10 percent of gross estate is deducted for funeral and other expenses both in the case of U.S. citizens and nonresident aliens.
[2] Takes into account the increase in the exemption from $2,000 to $30,000.

b. Limitation on credit for State death taxes (sec. 108(b) of the bill and sec. 2102 of the code)

Present law.—Under present law, the estate of a nonresident alien is allowed a credit against its U.S. estate tax for death taxes it pays to any of the States of the United States. The only death tax some of the States impose is a so-called pickup tax, that is, a tax equal to the maximum credit for State death taxes allowable against the Federal

estate tax. Other States impose a pickup tax in addition to their regular death taxes.

Reasons for provision.—The credit for State death taxes in the Federal statute is based on the taxes actually paid to any State. At the same time the so-called pickup taxes [6] are designed to impose a sufficiently heavy tax on property within their jurisdiction to absorb any Federal tax with respect to which credit may be obtained. A problem arises from the interrelationship of these Federal and State rules where property, such as stocks, has a situs in the United States but for State death tax purposes is not considered to have a situs in any particular State—since the nonresident alien has no residence in any State. In such cases the effect of a State pickup tax may be to impose a disproportionately heavy State death tax on what may be the minor portion of the nonresident alien decedent's gross estate located there, in order to absorb the full Federal credit which may be available with respect to property, such as stocks, which have a U.S. situs but no situs in any particular State. Since the credit for death taxes was intended to be available with respect to death taxes, imposed at a level up to the Federal credit level, by States on property within their jurisdiction, it seems inappropriate to allow a credit for a State death tax at a rate above the Federal rate on the property merely on the grounds that there is other property subject to the Federal tax outside the jurisdiction of the State.

Explanation of provisions.—The bill amends present law to provide that the maximum credit for State death taxes allowable against the Federal estate tax imposed on estates of nonresidents not citizens is to be an amount which bears the same ratio to the credit (computed without regard to this limitation) as the value of the property upon which the State death taxes are paid (and which is includible in the gross estate) bears to the total gross estate for Federal tax purposes.

Effective date.—This amendment applies with respect to estates of decedents dying after the date of the enactment of this bill.

c. Bond situs rule (sec. 108(c) of the bill and sec. 2104 of the code)

Present law.—Under present law, a nonresident alien is subject to the U.S. estate tax only with respect to property which is situated in the United States at the time of his death. The code provides so-called situs rules for determining under what conditions various types of property are to be considered as having a U.S. situs and therefore includible in the estate tax base of a decedent. Under these rules stock of a domestic corporation owned by a nonresident alien is considered to be property within the United States regardless of the location of the share certificates. In the case of bonds issued by U.S. corporations, no such statutory situs rule exists. Instead, for Federal estate tax purposes, the debt represented by a bond of a domestic corporation is considered to be situated at the location where the certificate is held. Other intangible debt obligations of U.S. obligors are treated as being situated within the United States.

Reasons for provision.—The difference in treatment for bonds is based upon the view that bonds constitute the debt itself and hence the debt is situated with the bonds, but with respect to other obliga-

[6] In addition to State pickup taxes, the problem here described may also arise where the State death tax with respect to the property located within its jurisdiction is heavier than the Federal estate tax with respect to such property.

tions the written statement of the obligation is only evidence of the existence of the debt and hence the debt is situated with the debtor. Your committee agrees with the House that this distinction is an unsatisfactory basis for exempting these bonds from the U.S. estate tax. Moreover, it sees no reason for treating bonds and stock differently in this respect.

Explanation of provision.—For the reasons given above the bill adds a new provision to the law providing that for purposes of the tax imposed on the estates of nonresidents not citizens, all debt obligations (including bonds) of a U.S. person, the United States, a State or political subdivision of a State, or of the District of Columbia owned and held by a nonresident not a citizen of the United States are to be deemed to be property situated within the United States. An exception to this rule is provided for debt obligations of U.S. corporations which have derived less than 20 percent of their gross income from U.S. sources for the 3 years prior to the nonresident's death. In such cases these debt obligations are to be considered as having a foreign situs. For purposes of this provision U.S. currency is not to be considered a debt obligation of the United States.

Additionally, a conforming change was also made by your committee with respect to the U.S. estate tax on foreigners' deposits in U.S. branch banks of foreign corporations.

Effective date.—This amendment applies with respect to estates of decedents dying after the date of enactment of this bill.

d. Deposits in U.S. banks or foreign branch banks of U.S. corporations (sec. 108(d) of the bill and sec. 2105 of the code)

Present law.—Present law provides that, for purposes of estate tax, the deposits of nonresident aliens with U.S. persons carrying on the banking business will not be considered to have a situs within the United States if the decedent was not engaged in a trade or business in the United States at the time of his death and a situs within the United States if the decedent was so engaged. This rules applies to deposits in foreign branch banks of U.S. corporations as well as to deposits in domestic branches.

Reasons for provision.—As explained above with respect to the rules for determining the source of interest payments on bank deposits with U.S. banks (see No. 1(a), above), your committee agrees with the House that it is questionable whether deposits of this type which are clearly situated in the United States should be treated as though situated without the United States and thereby allowed to escape U.S. estate taxation. On the other hand, deposits in foreign branch banks of U.S. corporations are, in fact, situated in a foreign country. Additionally, with respect to deposits in foreign branch banks of U.S. corporations, it is understood that foreign persons often have been uncertain as to whether they would be held to be "engaged in business in the United States" and that as a result they have been reluctant to deposit their funds in foreign branch banks of U.S. corporations for fear this might subject their estate to U.S. tax. As a result they are likely to place their deposits in competing foreign banks. Thus the present treatment clearly discriminates against the U.S. branches and adversely affects their ability to compete in foreign countries.

Explanation of provision.—The House bill would have immediately deleted the provision of present law which treats U.S. bank deposits

of a nonresident alien as situated without the United States. In order to conform this estate tax provision to the effective date of the income tax provision which taxes the interest derived from these deposits, your committee has amended the House bill to postpone the effective date of this provision until 1972. Your committee did not alter the provisions in the bill which also adds to the code a new provision which deems the situs of deposits by foreigners in foreign branch banks of U.S. corporations to be without the United States except to extend the same rule to foreign branch banks of U.S. partnerships. The new situs rule provides that for purposes of the U.S. estate tax on estates of nonresident aliens, deposits in a foreign branch bank of a U.S. corporation or partnership, if the branch is engaged in the commercial banking business, are not to be deemed to be property within the United States. Therefore these deposits will not be included in the foreigner's taxable U.S. estate.

Effective date.—This amendment is applicable to the estates of decedents dying after the effective date of this act.

e. Definition of taxable estate (sec. 108(e) of the bill and sec. 2106 (a)(3) of the code)

Present law.—Under present estate tax law, the estate of a citizen of the United States is entitled to a $60,000 exemption. In the case of the estate of a nonresident alien, however, present law allows only a $2,000 exemption. In the case of decedents who were residents of U.S. possessions at the time of death and are citizens of the United States solely by reason of being a citizen of the possession, or by reason of birth or residence in the possession, the exemption is the greater of $2,000, or the proportion of the $60,000 exemption granted to U.S. citizens which the value of that part of the decedent's gross estate which is situated in the United States bears to the value of his entire gross estate.

Reason for provision.—Presumably the basis for having a lower exemption for nonresident aliens than citizens and residents is that they typically have only a portion of their estate in the United States and therefore should have only a portion of the exemption allowed citizens and residents. Your committee agrees with the House that this justifies a lesser exemption for nonresident aliens but the minimal estate tax exemption presently allowed is so low as to place an unreasonable and inequitable tax burden on the estates of nonresident aliens. The exemption level your committee concluded was reasonable for nonresident aliens was $30,000, or half that allowed in the case of citizens. This is high enough to make filing of returns unnecessary in the case of relatively small investments here. This level of exemption was also selected in conjunction with the rates made applicable to nonresident aliens (see No. (a) above) to assure approximately the same level of tax burdens for a nonresident alien as in the case of citizens of the United States eligible for the marital deduction.

Explanation of provision.—The bill amends the code to provide that the estate of a nonresident not a citizen is allowed to deduct a $30,000 exemption in computing the taxable estate. The exemption which the estate of a resident of a U.S. possession to which the special rule applies is allowed, under the bill, is to be the greater of $30,000 or the proportion of the $60,000 exemption allowable under present law.

Effective date.—These amendments apply to estates of decedents dying after the effective date of this act.

f. Expatriation to avoid tax (sec. 108(f) of the bill and new sec. 2107 of the code)

Present law.—The U.S. estate tax applies to U.S. citizens and U.S. residents with respect to their estate no matter where situated. However, a foreign estate tax credit is allowable with respect to foreign death taxes paid in the case of property having a situs outside of the United States. In the case of nonresident aliens, a U.S. estate tax also applies but only with respect to property having a U.S. situs. Under present law, if an individual who has been a U.S. citizen gives up this citizenship and becomes a nonresident alien, no tax is imposed with respect to his estate to the extent the property is situated outside of the United States.

Reason for provision.—As discussed above with respect to the income tax provision of this bill, your committee and the House are concerned that the elimination of the progressive income tax rates on income of nonresident aliens which is not effectively connected with a U.S. trade or business may encourage some U.S. citizens to surrender their U.S. citizenship and move abroad. Accordingly, the bill contains a provision which generally has the effect of retaining the progressive income tax rates for a period of 10 years in case of persons who become expatriates where it appears likely that they did so for tax avoidance purposes. The same problem exists as a result of the reduction of the estate tax rates applicable to nonresident aliens. Although it is doubtful that many citizens would expatriate for this reason, your committee agrees with the House that the removal of any such incentive is desirable. In these cases the wealth of the expatriate generally would have been accumulated in the United States and therefore is properly subject to the regular U.S. estate tax rates.

Explanation of provision.—For this reason, the bill adds a new section to the code which imposes the regular U.S. estate tax rates on the U.S. estate of a nonresident alien dying within 10 years after losing U.S. citizenship if one of the principal purposes of the loss of citizenship was the avoidance of U.S. income, estate, or gift taxes. This provision is not to apply to those who lost their citizenship on or before March 8, 1965 (the date of introduction of a predecessor bill, H.R. 5916, on this topic). It also does not apply in the case of decedents dying on or before the date of enactment of this bill.

In determining the value of the gross estate of such an expatriate (as in the case of nonresident aliens generally) only property situated in the United States that was owned by him at the time of his death is included. However, the U.S. estate tax base of these expatriate decedents is expanded in certain respects to prevent him from avoiding U.S. tax on his estate by transferring assets with a U.S. situs to a foreign corporation in exchange for its stock. Such a transfer by a nonresident alien would reduce the portion of his gross estate having a U.S. situs, since the stock of a foreign corporation has a foreign situs even though the assets of the foreign corporation are situated in the United States. The new provision specifies, if certain stock ownership tests are met, that the value of the expatriate's gross U.S. estate is to include the same proportion of the value of the stock-

holdings of the expatriate in the foreign corporation as its property having a U.S. situs bears to all property.

The ownership tests that must be met for this special provision to apply are:

(i) The decedent must have owned at the time of his death 10 percent or more of the voting power of all classes of stock of the foreign corporation. Ownership for this test includes direct ownership and indirect ownership through another foreign corporation or through a foreign partnership, trust, or estate.

(ii) The decedent must have owned, at the time of his death, more than 50 percent of the total voting power of all classes of stock of the foreign corporation. Ownership for purposes of this test is ownership as described in (i) above plus ownership attributed to the expatriate under certain attribution rules of existing law (sec. 318 of the code) In general, these rules attribute to an individual ownership of stock held by members of his family, as well as by partnerships, trusts, estates, or corporations in which the individual has certain interests.

In addition, in determining whether the ownership tests are met, and in determining the portion of the U.S. situs property owned by the foreign corporation that must be included in computing the value of his gross estate, the expatriate is treated as owning the stock of a foreign corporation (at the time of his death) which he transferred during his life but which under U.S. estate tax law generally is not effective in excluding property from a gross estate. There transfers are:

(i) Transfers in contemplation of death (sec. 2035).
(ii) Transfers with retained life estate (sec. 2036).
(iii) Transfers taking effect at death (sec. 2037).
(iv) Revocable transfers (see 2038).

In computing the estate tax under this new provision the expatriate's estate is allowed the credit for State death taxes, the credit for gift tax, and the credit for tax on prior transfers.

The new section excepts from its application certain expatriates whose loss of U.S. citizenship occurs under circumstances which would make the application of the special taxing provisions inappropriate. These are the same exceptions provided with respect to the income tax expatriation provision (see No. 3(c) above).

The new provision, like the comparable income tax provision, contains a special rule dealing with the burden of proving the existence or nonexistence of U.S. tax avoidance as one of the principal purposes of the expatriation. Under this provision, the Secretary of the Treasury or his delegate must establish that it is reasonable to believe that the expatriate's loss of U.S. citizenship would (but for the application of this new provision) result in a substantial reduction in the estate, inheritance, legacy, and succession taxes.

If this is established, then the administrator of the expatriate's estate must carry the burden of proving that the loss of citizenship did not have as one of its principal purposes the avoidance of U.S. income, estate, or gift taxes.

Effective date.—This new provision is effective with respect to estates of decedents dying after the date of enactment of this bill.

It does not, in any event, apply, however, to expatriates who lost their citizenship on or before March 8, 1965.

g. Application of pre-1967 estate tax provisions (sec. 108(f) of the bill and new sec. 2108 of the code)

The unilateral reduction of estate tax rates applicable to nonresident aliens by statute may have the effect of making it more difficult to negotiate estate tax treaties. This is comparable to the similar problem arising from the revision of the income tax provisions applicable to nonresident aliens. As in the case of the income tax provisions therefore, the bill has added a new provision which gives authority to the President to apply certain provisions of the estate tax law relating to estates of nonresidents not citizens, without regard to the amendments made to these provisions by this, or any subsequent, act in the case of estates of residents of any country which imposes more burdensome death taxes with respect to estates of U.S. citizen decedents, not residents of that country, than does the United States on estates of residents of such a country, not citizens of the United States.

The new provision gives special authority to the President where he finds that:

(1) Under the laws of a foreign country a more burdensome tax is imposed on the estates of U.S. citizens, not residents of the country, than is imposed on the estates of residents of that country by the United States;

(2) The foreign country, when requested so to do, has not revised its taxes to eliminate this extra burden; and

(3) It is in the public interest to reimpose the pre-1967 estate tax provisions.

Where these conditions exist the President may proclaim that the U.S. tax on estates of residents of the foreign country is to be determined under certain provisions of U.S. estate tax laws (secs. 2101, 2102, 2106, and 6018) as in effect prior to amendment by this or any subsequent act. Such a proclamation is to apply to the estates of decedents dying after the date of the proclamation.

If after making such a proclamation the President finds that the laws of the foreign country have been revised to alleviate the excess burden on the estates of U.S. citizens he may proclaim that the tax on the estates of residents of the country is to be determined by taking into account the amendments made by this bill, and any subsequent act. Such a proclamation is to be effective with respect to estates of decedents dying after its date.

Before issuing a proclamation under the new provision the President is required to give 30 days notice of his intent so to do to the Senate and the House of Representatives.

This new section is applicable with respect to estates of decedents dying after the date of the enactment of this bill.

h. Estates tax returns (sec. 108(g) of the bill and sec. 6018 of the code)

Under present law the executor of the estate of a nonresident alien is required to file a U.S. estate tax return if the U.S. estate exceeds $2,000. The filing of returns with respect to these estates of over $2,000 is required because only a $2,000 exemption is granted to the estates of nonresident aliens under present law. Since the bill has in-

creased the $2,000 exemption to $30,000, the return filing requirement is likewise increased by the bill from $2,000 to $30,000. This amendment applies with respect to estates of decedents dying after the enactment of this bill.

7. GIFT TAX PROVISIONS

a. Tax on gifts of nonresidents not citizens (sec. 109(a) of the bill and sec. 2501 of the code)

Under present law a gift of intangible property having a U.S. situs by a nonresident alien who is engaged in trade or business in the United States is subject to U.S. gift tax.

In practice this rule has proved to be impossible to enforce, since there is no practical way for the Internal Revenue Service to find out when these gifts are made. Moreover, it does not occur to many nonresident aliens that these transfers are subject to U.S. gift tax. Thus the revenue significance of this provision is minimal.

For the above reasons the bill amends present law to provide that gifts of intangible property by nonresident aliens are not to be subject to the U.S. gift tax.

To prevent this new rule from becoming a means of tax avoidance by U.S. citizens, the bill also provides that the rule is not to apply to gifts by donors who within the 10 years immediately before the gift became expatriates of the United States with a principal purpose of avoiding U.S. income, estate, or gift taxes.

As in the case of similar amendments made by your committee with respect to the income and estate taxes, the new provision provides a special rule relating to the burden of proof. Under this rule if the Secretary of the Treasury or his delegate establishes that it is reasonable to believe that the individual's loss of U.S. citizenship will result in a substantial reduction in the gift tax payable by the donor, the burden of proving that tax avoidance was not one of the principal purposes rests with the donor. Certain types of losses of citizenship, as in the case of similar income and estate tax provisions, are not to result in the application of this provision (see No. 3(c) above).

This amendment applies with respect to the calendar year 1967 and all calendar years thereafter.

b. Situs of bonds given by expatriates (sec. 109(b) of the bill and sec. 2511 of the code)

Under present law bonds issued by U.S. persons, unlike other debt obligations, are considered to be situated where the instrument is located for purposes of the gift tax applicable to nonresident aliens. Under this rule (and in the absence of the provision added here) a citizen who becomes an expatriate with a principal purpose of avoiding U.S. taxes would continue to escape U.S. gift taxation (even under the special gift tax rules this bill makes applicable to them) on the transfer of a debt obligation of a U.S. person. To prevent this result, the bill amends the present gift tax laws to provide that debt obligations of a U.S. person, or of the United States, a State or political subdivision thereof, or the District of Columbia which are owned by such expatriates are deemed to be situated in the United States. This amendment applies with respect to the calendar year 1967 and all calendar years thereafter.

8. TREATY OBLIGATIONS

The bill provides that no amendment made by this bill is to apply in any case where its application would be contrary to any treaty obligation of the United States. However, for purposes of this provision, the granting of a benefit provided by any amendment made by this bill will not be considered to be contrary to a treaty obligation.

B. OTHER AMENDMENTS TO THE INTERNAL REVENUE CODE

1. Application of investment credit to property used in U.S. possessions (sec. 201 of the bill and sec. 48(a)(2) of the code)

In general, present law provides the investment credit provisions are not available for property located outside the United States. Therefore, with limited exceptions property used in a possession is not eligible for the investment credit.

Although the investment credit provision as enacted in 1962 was intended to encourage increased investment in new plant and equipment located in the United States, there appears to be no reason to deny the benefits of this provision to U.S. possessions. It is the opinion of your committee that in view of the unique and close relationships that exist between the United States and its possessions, the economic development of these possessions should be stimulated by the same incentives that are offered to U.S. investment. However, your committee does not believe that the benefits of the investment credit should be extended to U.S. persons who already enjoy a special tax treatment sometimes accorded investment in the possessions; namely, the exemption from U.S. tax which applies to U.S. persons who derive substantially all their income from a U.S. possession.

Your committee's amendment extends the application of the investment credit provision to property used in a possession by a U.S. person or by a corporation organized in a possession provided the property would otherwise have qualified for the investment credit. This rule is not extended if the property is owned or used in the possession by U.S. persons who are presently exempt from U.S. tax due to the application of the special provisions of the code which exempt U.S. persons who derive substantially all their income from a U.S. possession (secs. 931; 932, 933, or 934(b)).

This amendment is effective with respect to taxable years ending after December 31, 1965, but only with respect to property placed in service after that date. Additionally, for purposes of computing a carryback of investment credit, the amount of any investment credit generated by this provision is to be disregarded.

2. Medical expense deductions of individuals age 65 or over (sec. 202 of the bill and sec. 213 of the code)

For taxable years beginning before January 1, 1967, existing law provides that a taxpayer age 65 or over can deduct—without regard to the 3-percent floor applicable to taxpayers under 65 years of age—all medical expenses he incurs for himself and his spouse. In addition, all amounts spent for medicines and drugs for himself and his spouse are deductible—without regard to the rule applicable to taxpayers under age 65 that amounts paid for medicines and drugs are taken into account only to the extent they exceed 1 percent of adjusted gross income.

For taxable years which begin after 1966, present law provides that a taxpayer over age 65 is subject to the same rules applicable to a taxpayer under age 65, so far as the 3-percent and 1-percent floors are concerned. That is, medical expenses will be deductible only to the extent they exceed 3 percent of adjusted gross income, and medicines and drugs will be taken into account only to the extent they exceed 1 percent of adjusted gross income.

Your committee's amendment provides that the rules applicable for 1966 to taxpayers 65 years or older shall continue to apply, and not the rules added last year by the Social Security Amendments of 1965 (Public Law 89-97) which were to take effect in 1967. The amendment also restores for future years the existing right of any taxpayer to deduct medical expenses and medicines and drugs for his dependent mother or father if age 65 or over without regard to the 3 percent and 1 percent floors otherwise applicable. The new rules for 1967 were added last year at the insistence of the House which maintained that unlimited deductions were no longer necessary after enactment of the medicare program. The Senate disagreed, and deleted the limitations on deductions for those over age 65 in its version of the medicare bill. The House insisted upon its provision in the conference, and the Senate conferees receded.

In acting to remove the limitation, the committee reaffirms its unwillingness to increase the income taxes on the aged taxpayer by placing a limitation upon the deductibility of his medical expenses or those of his spouse. It believes that the limitation is unfair to the aged taxpayer who provides for his own medical protection and to the taxpayer, even though covered under medicare, who must meet the expenses not covered under the program. For example, the medicare beneficiary has to pay a $40 deductible toward his hospital expenses, a $50 deductible toward his medical expenses, and the uncovered 20 percent of medical expenses in excess of $50. Furthermore, if he is hospitalized for more than 60 days, medicare requires that he pay $10 daily from the 61st through 90th days. If he goes to an extended care facility under medicare, he must pay $5 daily from the 21st through 100th day. And many elderly persons who are hospitalized will not receive medicare payments for their care because of a situation over which they have no control whatsoever; namely, the fact that their local hospital or hospitals may not be participating institutions under the program. In this case, these people have to come up with the cash themselves or call upon some other third-party resources.

Apart from the above reductions, limitations, and exclusions in medicare there are a number of other types of significant health expenses incurred by older citizens which must, in large part, be met out-of-pocket. Such expenses include necessary dental care, drugs, and long-term hospital or nursing home stays.

It has been estimated that medicare will cover 40 to 45 percent of the health care costs of those eligible for and who can secure its benefits. The remaining 55 to 60 percent of health costs has a serious negative impact upon those elderly struggling to maintain their independence on limited incomes. As we have in the past, it is appropriate that through sympathetic and proper tax treatment we continue to recognize the unusual and heavy health expenses incurred by our older population.

The amendment also will simplify the tax returns of the aged, because the amendment will reduce one additional calculation that they would have to make and which the Internal Revenue Service would be required to verify.

The repeal and amendments made by this section shall apply to taxable years beginning after December 31, 1966.

3. Basis of property received in the liquidation of subsidiary (sec. 203 of the bill and sec. 334 (b) (2) and (3) and sec. 453(d) of the code)

(*a*) *Purchase of stock.*—Under present law, if one corporation purchases 80 percent or more of the stock of another within a 12-month period and then causes the corporation acquired to be liquidated within 2 years of the last purchase, the basis of all the assets received is the amount paid for the stock. However, in order to prevent manipulation, stock purchased from a person related to the buyer by the attribution rules (under section 318) is not treated as stock "purchased."

Cases have been called to your committee's attention where it is necessary to acquire control of one corporation in order to obtain an 80 percent or greater stock interest in another corporation. For example, assume that one corporation desires to purchase the stock of a second corporation and does in fact purchase 45 percent of its stock directly. However, 40 percent of the stock of the second corporation is owned by a third corporation, and the third corporation does not wish to sell the stock of the second corporation. In order to acquire the stock of the second corporation, therefore, the first corporation purchases over 50 percent of the third corporation's stock and then causes this corporation to sell to it the 40 percent of the stock of second corporation owned by the third. However, since at the time of the sale, the first corporation owns more than 50 percent of the stock of the third corporation, the two corporations are classified as related under the attribution rules (sec. 318). Accordingly, under present law, the first corporation is not treated as the purchaser of more than 80 percent of the stock of the second although it acquired directly or indirectly all of this stock for cash within a 12-month period.

The amendment made by your committee eliminates the result described. It amends present law to provide that stock purchased from a related corporation (after it acquires control of it) is to be treated as purchased, if the stock of the related corporation (representing a controlling interest) was purchased within the specified period. The amendment provides that the 12-month period within which the desired stock must be acquired begins with the date of the first direct acquisition by purchase of such stock, or the date on which 50 percent of the stock of the corporation holding such stock was acquired, whichever is earlier. The new definition of purchase applies with respect to acquisitions of stock after December 31, 1965. The provision for measuring the time period of stock acquisition applies with respect to distributions made after the date of enactment of the bill.

(*b*) *Installment notes.*—When one corporation buys more than 80 percent of the stock of another within 12 months and causes the corporation acquired to be liquidated within 2 years of the last acquisition of stock, the basis of the assets acquired is the amount paid for the stock (properly allocated). In such a case, generally no gain is recognized to the distributing corporation (unless it is a corporation which

elected 341(f) treatment to avoid danger of being treated as a collapsible corporation, or unless the sections dealing with the recapture of depreciation apply).

If the property received on a liquidation of the type described above (to which sec. 334(b)(2) applies) consists of installment notes, then the gain which would normally be taxed on the sale or collection of such notes may, in part or in whole, permanently escape income taxation. This would result if the basis of such notes were raised to the amount paid for them by the acquiring corporation even though no gain were recognized to the distributing corporation.

Although existing law may be adequate to deal with certain types of situations, your committee believes that gain should generally be recognized by the distributing corporation in all cases in which the acquiring corporation receives a new basis in the installment notes. The amendment provides that installment notes transferred in a liquidation of the type described above are to be treated as "disposed of" for purposes of the installment sale provision (sec. 453(d)). As a result, gain is to be recognized to the distributing corporation, in the same manner as if it had sold the notes.

This amendment is effective with respect to distributions made after the date of enactment.

4. "Swap funds" (sec. 204 of the bill and sec. 351 of the code)

Under section 351 of the Internal Revenue Code, the transfer of property to a corporation by one or more persons in exchange for stock in the corporation is not to result in gain or loss if immediately after the exchange, the person or persons in question are in control of the corporation.

In 1960 the Internal Revenue Service issued a limited number of rulings to the effect that no tax resulted from the exchange of appreciated stock for shares in an investment fund where immediately after the exchange, the persons who transferred the stock to the corporation are in control of the corporation. Investments funds organized in this way have become known as "swap funds." It stopped issuing these rulings in 1961, however, and subsequently (in Rev. Proc. 62-32) the Service announced that this was an area in which it would not rule. Notwithstanding this change in position, new swap funds continued to be formed, relying on the advice of private tax counsel that the exchange of stock for stock in these cases was nontaxable.

On July 14, 1966, the Treasury issued a proposed regulation to the effect that this type of exchange would be taxable. At the same time it offered to enter into closing agreements with existing swap funds which would provide that section 351 would be applied to past transfers for all purposes under the code, including the determination of basis.

The effect of the amendment added to the bill by the committee is to provide that section 351 applies to corporate investment funds. This amendment is effective to transfers whenever made.

5. Minimum amount treated as earned income for retirement plans of self-employed persons (sec. 205 of the bill and sec. 401(c)(2)(B) of the code)

At present, a self-employed individual may contribute to a qualified pension or profit-sharing plan up to 10 percent of his "earned income" but not more than $2,500 in a given year. He receives an income tax

deduction for one-half of his contribution up to this amount. In the case of a person in a trade or business where both personal services and capital are material income-producing factors, not more than 30 percent of that person's share of the net profits of his trade or business may be treated as "earned income" for this purpose. However, if the person renders personal services on a full-time, or substantially full-time basis, a minimum of $2,500 of net profits from such trade or business will qualify as earned income, notwithstanding the 30-percent limitation.

This amendment permits a minimum $6,600 of earnings from a trade or business in which both personal services and capital are material income-producing factors and the taxpayer renders personal services on a full-time (or substantially full-time) basis, to be treated as "earned income." The 30-percent limitation will continue to apply as under present law, where the 30-percent rule gives rise to a greater amount of earned income than the minimum of $6,600.

This amendment permits self-employed individuals in small businesses to make more significant contributions to pension plans. This is the same amount presently treated as the maximum tax base for social security purposes.

The greatest increases in deductible pension contributions resulting from this change will be available to those persons whose net profits range between $6,600 and $8,333. Lesser additional deductions will be available to those with net profits between $2,500 and $6,600 and between $8,333 and $22,000.

It is estimated that the revenue loss from this amendment in a full fiscal year would amount to less than $1 million. This change applies to taxable years beginning after December 31, 1965.

6. Treatment of certain income of authors, inventors, and so forth, as earned income for retirement plan purposes (sec. 206 of the bill and sec. 401 (c) (2) of the code)

Present law contains provisions designed to encourage self-employed persons to establish voluntary retirement plans. Under these provisions, self employed persons are permitted to deduct contributions (within specified limits) made to pension or profit-sharing plans for the benefit of themselves and other employees covered by the plan.

Coverage under these provisions depends on "earned income," and such income is the basis for computing deductible contributions. This term includes professional fees and other compensation for personal services from a trade or business (but does not include amounts which constitute a return on capital invested in the trade or business).

With respect to authors, the Internal Revenue Service takes the position that if an author contracts to write articles for a given period or a book for a publisher who copyrights the literary material and pays the author a stipulated amount of cash, plus a percentage of the income derived from the material, the consideration is for the author's personal services and constitutes earned income. However, where the consideration received by an author is derived either from the sale, leasing, or renting of the author's writing, the consideration is paid for the use or sale of property and is held not to constitute earned income. A similar position is taken by the Service with respect to inventors and others who create property through the application of their personal efforts.

The effect of these positions of the Internal Revenue Service is to curtail, or possibly deny entirely, the tax adantages of the self-employed individuals retirement plan provisions if the taxpayer is an author, inventor, and so forth. The intent of the Congress in adopting the "earned income" concept was to limit the applicability of these provisions to the portion of a self-employed person's income which was a result of his individual efforts as distinguished from a return on capital. Your committee does not believe that for this purpose the classification of income from an author's writing (or an inventor's invention), which is so clearly a result of his individual efforts, as "earned" or not "earned" should depend upon the terms of the contract under which the author (or inventor) is to be compensated.

For the above reasons, the bill amends the self-employed individuals retirement plan provisions to provide that "earned income" includes gains (other than capital gains) and net earnings derived from the sale or other disposition of, the transfer of any interest in, or the licensing of the use of property (other than good will) by an individual whose personal efforts created the property.

This amendment applies to taxable years ending after the date of enactment of the act.

7. Exclusion of certain rents from personal holding company income (sec. 207 of the bill and sec. 543 of the code)

Under existing law, if a company manufactures property and leases it to customers, the rents are treated as personal holding company income (unless the adjusted income from rents from all sources constitutes 50 percent or more of the adjusted ordinary gross income and unless the sum of the dividends paid during the year has reduced the other personal holding company income below 10 percent of the ordinary gross income). However, where the property manufactured by the taxpayer is sold instead of leased, the income from the sale is not treated as personal holding company income.

Your committee believes that ordinarily rental income arising from property manufactured by the taxpayers should be treated as ordinary business income rather than passive personal holding company income. It takes this position because it believes that rental income arising from property manufactured by the taxpayer, in reality, is no more passive than sales income derived from property manufactured by the taxpayer.

Accordingly, the amendment provides that compensation for the use of any tangible personal property manufactured or produced by the taxpayer is not to be treated as rental income under the personal holding company provisions if the taxpayer during the taxable year is engaged in manufacturing the same type of property from which he is receiving the rents. The effect of this is to treat this income (after it is reduced by applicable depreciation, taxes, rent, and interest paid) as ordinary business income in determining whether or not the corporation is a personal holding company. It is intended, in order for the provision to be applicable, that the manufacturing or production activity be substantial and more than minor assembly processes. (Tangible personal property here has the same meaning as in the case of the investment credit provision.)

The amendments apply to taxable years beginning after date of enactment, but taxpayers may elect to have the amendments apply to

years beginning on or before that date if ending after December 31, 1965.

8. Percentage depletion rate for certain clay bearing alumina (sec. 208 of the bill and sec. 613 of the code)

At the present time, practically all alumina—the raw material used for the production of aluminum—is obtained from bauxite. Most of the bauxite is obtained from foreign deposits, since less than 1 percent of the known world bauxite reserves are in the United States.

There are, however, large deposits of clay containing alumina in the United States from which alumina can be extracted under newly developed processes, but at a greater cost than producing alumina from bauxite. In order to spur the development of these domestic deposits and build the facilities needed to extract the alumina from them, your committee has made two changes in the existing percentage depletion provisions applicable to clay, laterite, and nephelite syenite to the extent alumina and aluminum compounds are extracted from them. (These provisions do not apply to bauxite having an aluminum oxide content of 40 percent or more.)

First, the percentage depletion rate is raised from 15 to 23 percent in the case of domestic deposits of clay, laterite, and nephelite syenite (to the extent alumina or aluminum compounds are extracted therefrom). This is the same rate of percentage depletion which is now allowed to domestic deposits of bauxite.

Second, your committee provides that in the case of domestic deposits of clay, laterite, and nephelite syenite, all processes applied to derive alumina or aluminum compounds from them are to be treated as mining processes in computing gross income from mining for depletion purposes. It is not intended to treat as mining any of the processes in the electrolytic refining of the alumina or aluminum compounds.

The amendments are applicable only to taxable years beginning after the date of the enactment of this act.

9. Percentage depletion rate for clam and oyster shells (sec. 209 of the bill and sec. 613 of the code)

Under present law, clam shells and oyster shells are allowed a percentage depletion rate of 5 percent. This rate applies even though the shells are used because of their chemical content—calcium carbonate—in the production of cement or lime. On the other hand, when other minerals, such as limestone, are used as a source of calcium carbonate, percentage depletion at the rate of 15 percent is allowed under existing law.

Clam and oyster shells are composed almost entirely of calcium carbonate and in fact, contain a much higher percentage of calcium carbonate than do limestone and marble. Your committee believes that when clam and oyster shells are used for their calcium carbonate content—such as in the making of cement or lime—they should have the same percentage depletion rate as limestone and other calcium carbonates.

Accordingly, the committee amendment provides that in the case of clam shells and oyster shells (as well as other mollusk shells), a percentage depletion rate of 15 percent generally is to apply. However, as is true under existing law in the case of limestone and other calcium

carbonates, a 5-percent rate is applicable if the shells are used, or sold for use, as riprap, ballast, road material, rubble, concrete aggregates, or for similar purposes.

The amendment is applicable to taxable years beginning after the date of enactment of the act.

10. Sintering and burning of shale, clay and slate used as lightweight aggregates (sec. 210 of the bill and sec. 613 of the code)

The courts have recently held that in computing gross income from mining for percentage depletion purposes the sintering or burning of shale, clay, or slate is not a mining process. The heat is applied for the purpose of causing the mineral to expand, or bloat, so that it can be used as a lightweight aggregate in concrete or in making building units such as cinder blocks.

Your committee believes that it is appropriate to allow the application of heat to shale, clay and slate to produce lightweight aggregates as a mining process for percentage depletion purposes. The committee amendment so provides. The amendment is applicable to taxable years beginning after the date of enactment of the act.

11. Income from lapsing of straddle options (sec. 211 of the bill and sec. 1234(c) of the code)

a. Nature of straddles.[1]—Straddles are one form of an option; namely, an offer both to purchase and to sell a specified amount of property at a stated price for a limited period of time. Options to sell securities are known as "puts"—i.e., the purchaser of the option can "put" his shares to the writer or issuer of the option at the stated price. Options to purchase are known as "calls"—i.e., the purchaser of the option can "call" the shares from the writer at the stated price. A "straddle" is a combination of a put and call, with respect to the same security, for the same quantity, at the same purchase or sale price and available for the same period of time.

Straddles are likely to be written by persons with holdings of a security who believe that in the long run, the price of the stock will not vary greatly from its present price. Their inducement for writing the straddle is the receipt of a premium. Straddles generally are granted to brokers or dealers who, in turn, customarily sell the put and call components to different purchasers. The majority of puts and calls originate in straddles. While the use of puts and calls is not a new development in the securities markets, their significance in the securities markets is relatively limited; for example, the total number of shares covered by options sold in recent years on the New York Stock Exchange has rarely exceeded 1 percent of the total shares sold.

Normally either (not both) the put or the call component of the straddle is exercised by the purchaser shortly before the end of the term for which the straddle is written. Frequently this is 6 months and 10 days after the straddle is issued. Which component of the straddle is exercised depends upon the market conditions at the time of exercise vis-a-vis market conditions at the time the straddle was written. If the market in that security has risen, the securities are likely to be "called" from the writer; if the market has fallen, the stock

[1] Much of the material presented in this part was derived from the "Report on Put and Call Options," a report published in August 1961 by the Securities and Exchange Commission, on the basis of an extensive study by the SEC's Division of Trading and Exchanges.

is likely to be "put" to the writer. While in the great majority of the cases, one component of the straddle is exercised and the other is allowed to lapse, occasionally (perhaps 10 to 15 percent of the time) neither option is exercised and in a few other cases (less than 1 percent of the cases) both components of the straddle are exercised.

Although options are purchased for hedging and other similar purposes by some investors, their primary use probably is as a method of investing by individuals with small amounts of money.

b. Present law.—Under the 1939 code, premium income received from the writing of an option which had lapsed was treated as a short-term capital gain (sec. 117(g)(2) of the 1939 code). However, until the issuance of a revenue ruling in 1965 (Revenue Ruling 65–31) straddle writers generally allocated the entire straddle premium to the component option which was exercised, and this practice apparently was not challenged by the Internal Revenue Service prior to the issuance of the ruling. Since one component or the other of a straddle is exercised in the bulk of the cases, the fact that the premium in the case of the lapse of an option was treated as short-term capital gain was of relatively little significance. The important aspect was the treatment of the premium in connection with the portion of the straddle which was exercised.

If all of the premium is allocated to the component which is exercised and this is the "put," the premium decreases the cost or basis of the stock put to the writer of the straddle. As a result, it would increase his capital gain only when he disposed of the stock put to him. Generally, this would result in a long-term capital gain (unless he held the stock for less than 6 months). Where the call component is exercised and all of the straddle premium is allocated to it, the premium would increase the income received by the writer at the time the stock is called from (i.e., sold by) him. As a result in this case also, the total premium increases the writer's capital gain (or decreases his capital loss) and if the writer had held the stock for more than 6 months, the gain (or loss) would be long term.

The 1939 code provision treating income from the lapse of an option as a short-term capital gain was not included in the 1954 code. As a result, where both options are permitted to lapse, the total straddle premium is now reported as ordinary income. However, in the usual case where one option lapsed and the other was exercised, the treatment of allocating the straddle premium income to the side exercised in practice remained unchanged.

In the ruling (Revenue Ruling 65–31) issued on January 22, 1965, the Internal Revenue Service held that the premium for a straddle must be allocated between its put and call components on the basis of the relative market values of each. In a later technical information release, the Service announced that it would accept allocations of 55 percent of each straddle premium to the call component and 45 percent to the put component.[2]

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[2] Rev. Proc. 65–29, issued on Nov. 15, 1965. This 55–45 ratio was selected because it represented a rounded approximation of relative market prices of separately written "puts" and "calls" of the same length for securities of approximately equal price. The revenue procedure concluded with the statement that "If a taxpayers does not use this method for a taxable year, then the allocation based on relative market values required by Revenue Ruling 65–31 must be used."

Under the ruling, part of the premium arising from the writing of a single straddle can result in ordinary income (the portion of the premium allocated to the lapsed component) while the remaining portion of the premium may result in either a capital gain or a capital loss, which in the usual case will be a long-term gain or loss.

c. Reasons for the changes.—The difficulty with the present tax treatment of premium income from the writing of straddles lies in the fact that by dividing the premium income into two parts, one part may be reported as ordinary income (the portion allocated to the lapsed option) while the other portion may merely decrease a capital loss. Your committee believes that it is hard to justify treating part of the transaction as resulting in ordinary income, while the other portion may give rise to a capital loss which cannot be offset (apart from the $1,000 per year deduction of net capital losses against ordinary income) against ordinary income.

The problem can be illustrated by the following example. Assume that a straddle writer issues a straddle for a stock when its price is $100 a share and this is the option price. Assume that the straddle premium is $8 per share. Assume further that the put component of the straddle is exercised by the purchaser when the price of the stock is $80 per share. As a result, the writer of the straddle must buy stock at a price of $100 per share when its market value is $80 per share. If the straddle premium allocable to the put component is $3.60 per share, the short-term capital loss for the writer of the straddle will be $16.40 per share if he disposes of the stock shortly after receipt, when the market price is still $80 per share. At the same time, the remainder of the straddle premium, $4.40 a share, is allocated to the call component, which in such a case presumably was allowed to lapse. The $4.40 per share would be ordinary income while the capital loss of $16.40 a share attributable to the put side of the option would result in a short-term capital loss, which, except to the extent of the $1,000 a year, could not be netted with the ordinary income attributable to the premium income of the other side of the straddle.

The writer of the straddle in these cases is, of course, entering the transaction in the hope of obtaining a profit; he naturally views the transaction as a single one and cannot see why he must pay ordinary income tax on a portion of the transaction while being denied full use of his capital loss attributable to the other component of the transaction (in those cases where he does not have capital gains sufficient to offset his capital losses and his losses exceed the $1,000 which may be offset against ordinary income). Moreover, the marketplace treats the straddle as a single transaction in that a smaller premium is paid for a straddle than for a separate put and call on the same stock, since the combined risk involved is less. Additionally, the writer of the straddle knows that in almost all cases, only one of the two options in the straddle will be exercised. He views this as the side for which he is being paid the premium.

Your committee agrees that it is desirable to provide for this netting of a gain or loss arising from the two components of a straddle option. Nevertheless, it appears appropriate where the transaction on a net basis results in a gain, that the premium income result in ordinary income. The netting of the two components in a straddle can be

achieved and still have any net premium gain result in what is essentially ordinary income, by treating the premium income allocated to the lapsed option as a short-term capital gain. Where this is done, any capital loss from the straddle transaction attributable to the side exercised (where the stock is disposed of in the same year in which the lapse of the option occurs) can be offset against the short-term capital gain attributable to the premium income from the side of the option which lapsed. Should the short-term capital gain in such a case exceed the capital loss, it will still be treated in essentially the same manner as ordinary income.

As a result, your committee's amendment provides that any gain on the lapse of an option granted by a taxpayer as a part of the straddle is to be treated as a short-term capital gain. This treatment is not to be available, however, in the case of persons who hold securities for sale to customers in the ordinary course of their trades or businesses. This treatment is made inapplicable in the case of such persons because their security transactions in any event are generally required to be treated as resulting in ordinary income. This treatment is applied to securities and not to commodity futures since there is no evidence that a problem has been created in this latter area.

The change made by your committee's amendment applies to all straddle transactions entered into after January 25, 1965, the effective date of the ruling which first required the allocation of the straddle premium between the put and the call components.

d. Changes made by the bill.—The amendment inserts a new subsection (c) to section 1234 of the code. The first paragraph of this new subsection provides that gain derived from the lapse of an option written as a part of a straddle (as defined in new section 1234(c)(3)) is, in effect, to be short-term capital gain, as defined in section 1222(1) of existing law. Thus, such gains will be added to any other short-term capital gains, to be netted against short-term capital losses, with the excess to be netted against any net long-term capital losses. Any remaining short-term capital gains will generally be taxed as ordinary income.

Paragraph (2) of the new section 1234(c) provides that this provision does not apply to a person who holds securities (including options to acquire or sell securities) for sale to customers in the ordinary course of his trade or business.

Paragraph (3) of the new subsection defines a "straddle" as a simultaneously granted combination of an option to buy (a "call") and an option to sell (a "put") the same quantity of a security at the same price during the same period of time.

If a person grants a multiple option (a put plus a call plus one or more additional puts or calls) it is intended that the grantor of the multiple option must identify in his records which two of the component options constitute the straddle, if it is not clear from the options themselves. It is contemplated that the method of identification will be specified in regulations issued by the Secretary of the Treasury or his delegate. If there is no identification by the writer, this provision relating to straddles is not to apply. As a result, in such a case the gain on the lapsed option (or options) would result in ordinary income.

A corporate security for purposes of the definition of a straddle is the same as defined in section 1236(c) of the code—i.e., stocks, bonds,

notes, etc. Accordingly, the term securities does not include commodity futures.

The amendments described above are to apply to straddles written after January 25, 1965, in taxable years ending after such date.

This bill is substantially identical to H.R. 11765, which was approved unanimously by the Committee on Ways and Means of the House of Representatives.

12. Tax treatment of per-unit retain allocations (sec. 212 of the bill and secs. 1382, 1383, 1385, 1388, and 6044 of the code)

Although the practices of cooperatives are not uniform in this regard, generally a per-unit retain certificate is issued by a cooperative to a patron to reflect the retention by the cooperative of a portion of the proceeds from the marketing of products for the patron. These amounts are retained pursuant to an authorization (usually in the bylaws of the cooperative) and are computed on the basis of units of products marketed.

Prior to the amendment in 1962, the Internal Revenue Code permitted cooperatives to deduct amounts paid to patrons as patronage dividends. Patronage dividends are limited by definition to amounts which are "determined with reference to the net earnings" of the cooperative. The treatment of per-unit retains, however, was not specifically dealt with in the code. The Revenue Act of 1962 substantially revised the income tax treatment of cooperatives and their patrons but the new provisions by their terms were applicable only to "patronage dividends." Because per-unit retain allocations are determined on the basis of units of products marketed for the patrons rather than with reference to net earnings, the new provisions are generally considered as not being applicable to them. By regulations issued on October 14, 1965, the Treasury Department provided for the income tax treatment of per-unit retain certificates in a manner that is substantially parallel to the treatment prescribed in the Revenue Act of 1962 with respect to patronage dividends.

The per-unit retains may be considered as contributions to capital by patrons. For this to be true they first must have been considered as paid out by the cooperative. However, because the per-unit retain certificates issued by cooperatives may have a fair market value considerably less than their face amount, and in some cases have only a negligible fair market value, some have raised questions as to whether they may be considered as paid out by the cooperatives and whether the patrons can be required to include them in their gross income. This situation bears certain similarities to the situation that caused the enactment of the provisions of the Revenue Act of 1962 dealing with patronage dividends, in that some believe that a tax may not necessarily be imposed at either level.

The patronage dividend provisions of the Revenue Act of 1962 were designed to assure that the amounts received by cooperatives in the course of their business activities with their patrons are included in computing the income tax of either the cooperative or the patron, thus subjecting these amounts to a single current tax. To accomplish this, the 1962 act provided detailed rules which specified the treatment which patronage dividends are to receive from the standpoint of both cooperatives and their patrons. It was hoped that these provisions would bring to an end the uncertainty that existed in the area

of cooperative-patron income taxation and consequently bring to a halt the litigation that the uncertainty engendered. In this regard, the Revenue Act of 1962 has not been completely successful because of the uncertainty which continues to exist with respect to per-unit retain certificates. To remove this remaining uncertainty, the bill amends the provisions of present law dealing with patronage dividends to make them applicable, generally, with respect to per-unit retain certificates. By adopting this amendment, your committee does not intend to reflect on the validity of the regulations recently issued by the Treasury Department with respect to per-unit retain certificates, nor does your committee intend to reflect on the deductibility in the past of per-unit retain certificates to cooperatives or the includability in the past of such certificates in the income of patrons.

The bill amends present law to provide tax treatment with respect to per-unit retain certificates which parallels, in general, the tax treatment applicable with respect to patronage dividends. Providing essentially the same treatment for per-unit retain certificates means, generally, that they are to be treated as income to the patron in the year in which the certificates are issued, if the patrons give their consent in writing to the inclusion of the face amount of these certificates in their income or if there is a provision in the bylaws or charter of the cooperative indicating that membership in the cooperative represents consent to such treatment. Under the amendment, the cooperative is permitted to take a deduction in arriving at gross income for a per-unit retain certificate when issued, only when the certificate qualifies for the treatment specified above at that time in the hands of the patron. Otherwise, the amount involved is deductible by the cooperative only at the time the certificate is redeemed.

Treatment of per-unit retains by cooperatives.—The amendment provides that no decrease is to be made in the gross income of a cooperative because of per-unit retain allocations to patrons except for amounts paid in "qualified per-unit retain certificates" or in redemption of "nonqualified per-unit retain certificates." (Both of these terms are explained subsequently.)[1] If a cooperative has no taxable income for the year in which it redeems nonqualifed per-unit retain certificates, the cooperative would, in effect, be permitted to carry back the deduction or exclusion to the year in which the certificate was issued.

Treatment of per-unit retains by patrons.—Under the amendment, a patron is required to include in his gross income the amount paid to him in qualified per-unit retain certificates and the amount received by him on the redemption, sale, or other disposition of nonqualified per-unit retain certificates.

Definitions and special provisions.—The amendment provides definitions of the terms used in providing for the treatment of per-unit retains. Under the first of these, the amount considered paid by a cooperative and received by a patron as a result of the issuance of a qualified per-unit retain certificate is to be the certificate's stated dollar amount. The term "per-unit retain allocation" is defined, in general, as an amount paid (except amounts paid in money or other prop-

[1] A special rule permits cooperatives to continue their existing practices with respect to the timing of the issuance of per-unit retain certificates for products marketed under a pooling arrangement and to take the tax deduction at the time the certificates are issued.

erty) to patrons with respect to products marketed for them which is fixed without regard to the net earnings of the cooperative. The term "per-unit retain certificate" is defined to mean any written notice which discloses to the recipient the stated dollar amount of a per-unit retain allocation. The term "qualified per-unit retain certificate" is defined to mean a per-unit retain certificate which the patron has agreed to include in his income at the stated dollar amount. For this purpose, a cooperative may enter into individual agreements with each of its patrons, or the agreement may be contained in a bylaw, a written notice and copy of which is given to each of the members. In general, agreements once made are effective for all subsequent years until revoked. A "nonqualified per-unit retain certificate" is defined to be any per-unit retain certificate other than one which is "qualified."

The amendment also requires the reporting by the cooperative of information with respect to per-unit retain allocations comparable to the reporting requirements with respect to patronage dividends under present law.

Effective dates and transition rule.—The amendments which relate to the substantive tax treatment of per-unit retains are to apply, generally, for taxable years of cooperatives beginning after April 30, 1966, and the information reporting provisions are to apply for calendar years after 1966.

If a cooperative has entered into individual agreements with its patrons with respect to per-unit retain allocations in compliance with the existing income tax regulations, new agreements would not be required under the amendment. Existing bylaw agreements with respect to per-unit retain allocations adopted under the Treasury regulations are to be effective for taxable years beginning before May 1, 1967. After that date a bylaw agreement which conforms to the new statutory provisions is required.

13. Excise tax rate on hearses (sec. 213 of the bill and sec. 4062 of the code)

Present law imposes a 10 percent excise tax on the sale by the manufacturer, importer, or producer of bodies and chassis of trucks, while a rate of 7 percent is imposed on automobiles.[1]

There is no statutory classification of hearses, ambulances, or combination ambulance-hearse vehicles for purposes of this excise tax. However, since 1921 the Internal Revenue Service, by administrative interpretation has classified hearses as trucks while treating ambulances and combination ambulance-hearse vehicles as automobiles for the purpose of determining the appropriate excise tax rate.

Your committee sees no reason why hearses should not be accorded the same tax treatment as ambulances—especially since the vehicles are often combined into the same unit. Moreover, ambulance and hearse manufacturers use the same basic chassis for hearses, ambulances, and combination vehicles and, further, the tax on the chassis, which is paid by the chassis manufacturer, is computed at the rate provided for automobile chassis. In addition, it is understood that the same basic body is added to the chassis by the ambulance and

[1] This 7-percent rate is scheduled for reduction to 2 percent effective Apr. 1, 1968, and to 1 percent effective Jan. 1, 1969. The 10-percent tax on trucks and hearses is a permanent rate.

hearse manufacturer without regard to whether it ultimately becomes an ambulance, hearse, or combination ambulance-hearse vehicle. Further, your committee has been informed that a rear-loading hearse can be easily converted into an ambulance or an ambulance-hearse combination vehicle by the addition of certain accessories at a cost of about half of the excise tax saving which is realized by the manufacturers as a result of the conversion. Still further evidence that it is unrealistic to classify hearses as trucks is the fact that most of the States presently license hearses as automobiles while very few States license them as trucks.

It is estimated that this bill will result in a revenue loss of approximately $100,000 a year during the period while the excise tax on trucks is 10 percent and that on automobiles is 7 percent. After April 1, 1968, when the rate on automobiles is reduced to 2 percent (and then to 1 percent on January 1, 1969) the revenue loss might actually decrease because the increased differential in rates between hearses and ambulances actually might result in fewer hearses, and more combination ambulance-hearses, being sold.

For the reasons indicated above, your committee has amended the bill to specifically classify hearses, ambulances, and combination ambulance-hearses as automobiles (and not as trucks) for purposes of the excise tax on the sale of these vehicles by the manufacturer, producer, or importer. This amendment is made effective with respect to vehicles sold after the date of enactment of this act.

14. Interest equalization tax; loans to insure raw material sources (sec. 214 of the bill and sec. 4914 of the code)

The interest equalization tax, in general, is a tax imposed on Americans with respect to the purchase of foreign securities. In the case of debt the tax rate varies with the period of time to maturity; in the case of stock the tax rate is 15 percent. The tax is designed to increase capital costs in the United States for foreigners by about 1 percent a year.

Presently there is an exemption from the interest equalization tax—as the equivalent to a direct investment—for loans made by U.S. lenders to foreign subsidiaries of U.S. corporations producing foreign ores and minerals in short supply in the United States where the financing is secured by a so-called "take or pay" contract entered into between the foreign subsidiaries and the U.S. parent. However, these loans become subject to the interest equalization tax when and if they are subsequently transferred by the lender to another U.S. person, regardless of the intent of the investor at the time of acquisition.

The amendment made by your committee provides that transfers by the original lender, subsequent to the original acquisition of the indebtedness which is exempted under this provision, would not be subject to tax where the indebtedness was originally acquired by the lender without an intent to sell the indebtedness to other U.S. persons. However, where in fact more than one sale of the indebtedness occurs after the debt is held by the initial lender, for each such sale to be exempt the indebtedness must be purchased without any intent to resell. This amendment is to be effective with respect to debt obligations acquired after the date of enactment of this act.

15. Interest equalization tax; insurance company reserve funds (sec. 215 of the bill and sec. 4914(e) of the code).

The interest equalization tax provisions presently provide a limited exception for acquisitions of otherwise taxable securities made to maintain the reserve assets of a U.S. insurance company doing an insurance business in foreign currencies abroad in developed countries. In addition, an exception for investments generally is provided with respect to those in "less developed countries." However, in order to claim the exemption with respect to developed countries, a life insurance company must "establish" a fund of assets for each developed country for which it does business. However, the establishment of such a fund can only be made during the "initial" designation period which was the 30-day period between the enactment of the act, September 2, 1964, to October 2, 1964. Therefore, no American insurance company can commence doing business in a developed country after October 2, 1964, without being subject to the interest equalization tax on its reserve assets acquisitions. The same type of problem arises when a less developed country loses its status as a less developed country by an Executive order issued after October 2, 1964. In other words, there is no opportunity to establish a fund of assets in such a situation.

Your committee adopted an amendment which would mitigate the foregoing anomalous situations. The amendment would permit a U.S. insurance company commencing activities in a developed country to establish a fund with respect to that country provided it was ineligible to make an initial designation prior to October 2, 1964. The amendment would also permit the establishment of a fund for a country if the status of that country was changed from a less developed country by an Executive order.

16. Interest equalization tax; dollar loans of foreign branches of U.S. banks (sec. 216 of the bill and sec. 4931(a) of the code)

Presently, foreign currency loans of foreign branches of U.S. banks are exempt from the application of the interest equalization tax. Additionally, loans for a term of less than 1 year are exempt not only in the case of foreign branches of U.S. banks but generally without regard to who makes the loan.

Your committee adopted an amendment which would authorize the President to exempt from the interest equalization tax U.S. dollar loans made by the foreign branches of U.S. banks (regardless of the maturities involved). To the extent that this authority is exercised, the President subsequently may withdraw or modify the exemption in the event he determines such withdrawal or modification is necessary to preserve the effectiveness of the interest equalization tax.

This amendment is to be effective with respect to acquisitions of debt obligations after the date of enactment of this act.

C. Presidential Election Campaign Fund Act

1. Background

Concern has been expressed by both the President and the Congress on the possible ramifications of the manner in which national political campaigns are presently financed. Dependence on wealthy contributors for the bulk of needed funds will tend to leave candidates

of modest means encumbered with stronger debts of loyalty to a wealthy few than to the voting public.

Soaring campaign costs have intensified this concern and made it impractical merely to restrict the size of contributions. An alternative source of financing political campaigns must be developed.

It was with an eye on developing such an alternative source of financing political campaigns that your committee in August of this year held hearings on a number of bills which would facilitate the financing of political campaigns.

As an outgrowth of these hearings and of further committee deliberations, your committee recommends the financing of presidential election campaigns based on the concept of one-man, one-vote, with each taxpayer able to share equally in the costs of such campaigns. This is brought about by the creation of a presidential election campaign fund. Each taxpayer will be permitted to designate on his annual income tax return that $1 of his tax liability is to be placed in the presidential election campaign fund. The amounts in the fund will then be made available to defray the presidential campaign expenses of those political parties whose candidates received a significant number of votes in the preceding presidential election.

Enactment of this recommendation into law will remove the cause of much of the improper influence in Government. Political parties and their presidential candidates will be assured that they need not rely on the large contributions of relatively few wealthy contributors to meet the heavy financial demands of political campaigns. Your committee's recommendation, by providing an alternative source of campaign financing, will be the most significant improvement in this regard in over a century. Under this system of campaign financing, the man elected President will be obligated equally to every taxpayer and to every voter, instead of to individual, large contributors or to corporation or union executives whose raise great sums of money. The man elected President will be in debt to all Americans, the ideal way to have it under the American system.

Your committee's recommendation, of course, relates only to the executive branch of the Government. It is most important to prevent the possibility of improper influence on the Chief Executive because of the central position which the Office of the Presidency occupies in the Federal Government. Through the manner in which the President executes the laws passed by Congress, exercises his veto power, frames the legislation which he submits, and selects his appointees to the Federal bench, the President exerts an influence over all branches of Government. Moreover, bills the President has vetoed rarely are enacted over his objection. Indeed, the present President has never had a veto overridden by Congress.

The measure recommended by your committee concerns only presidential elections, not only because of the central position of the Office of the Presidency but also because the feasibility of extending the program to cover other Federal elections should be studied in the light of the experience under this measure and because the Federal Government should not attempt to tell the States how to finance purely local elections. This measure will, nevertheless, have a favorable influence on other elections since the provision of funds for the most expensive of all campaigns will make it easier for political parties and candi-

dates in lesser elections to raise funds and will thereby make it easier for them to refuse contributions from those who might demand favors in return.

2. Designation of income tax payments to presidential election campaign fund (sec. 302 of the bill and sec. 6096 of the code)

Under your committee's bill, space is to be provided on the income tax return forms to permit each individual taxpayer (other than a nonresident alien or an estate or trust) to designate, if he so desires, that $1 be appropriated from general revenues and paid into the presidential election campaign fund. The size of the fund will thus be determined by the voluntary acts of individual taxpayers, each of whom will have the opportunity to make a financial contribution of similar size. The designation is to be permitted with respect to income tax liability for each taxable year beginning after December 31, 1966.

All taxpayers who show an income tax liability of at least $1 for the year are to be permitted to make a designation. On joint returns, both husband and wife are to be permitted to make a designation provided the tax liability shown on the return is at least $2. The designation is to be made at the time of filing the return or at such later time as may be provided in regulations (such as at the time of making a claim for refund of an overpayment of tax).

3. The presidential election campaign fund and payments therefrom (sec. 303 of the bill)

Amounts are only to be paid out of the presidential election campaign fund to reimburse certain political parties for expenses incurred in presenting candidates for President and Vice President in presidential elections. In the view of your committee, payments should be limited to expenses in presidential campaigns unless experience under the proposal proves the feasibility of extending the system to other Federal elections. To preclude any of the presidential election campaign fund from being used for other than the campaign expenses of candidates for President and Vice President, no reimbursement will be made for any item related to a candidate for any office other than President or Vice President. For example, if a Presidential or Vice Presidential candidate should make a joint political appearance with a candidate for another public office and a substantial purpose of the Presidential or Vice Presidential appearance is to further the candidacy of the other candidate, no reimbursement for such joint appearance will be allowed.

Only those political parties whose candidates for President received at least 1,500,000 votes in the preceding presidential election will be eligible to receive payments from the fund. This rule is necessary to prevent the proliferation of minor parties as a result of this bill. It insures, however, that minor parties which receive significant public backing need not become dependent on large contributors.

A political party whose candidate received more than 1,500,000 votes in the preceding presidential election but less than 10 million votes will be authorized to receive from the fund an amount equal to the lesser of its actual campaign expenses or an amount equal to $1 times the number of votes in excess of 1,500,000 that its candidate received.

A political party whose candidate for President received 10 million votes or more in the preceding presidential election is to be reimbursed

on a different basis. An amount equal to $1 for each vote received by all major parties in the last election is to be divided equally between (or among) them, with the limitation that payments to any one party cannot exceed the expenses incurred by the party in the current campaign.

The payments will be made at times to be determined by Treasury regulations, but no payment for a given presidential election campaign can be made before September 1 of the year the election is held.

The Comptroller General is charged with the responsibility for certifying to the Secretary of the Treasury the amounts payable to eligible political parties. In this certification he will take into account information supplied him by the treasurers of each political party regarding campaign expenses incurred and on the basis of the votes cast in the preceding presidential election. The Comptroller General's decisions as to the total vote received by each party are to be final.

If at the time payments are made, there are insufficient moneys in the fund to meet the amounts specified under the rules set forth, payments to all entitled parties will be reduced pro rata, and the additional amounts paid out of later additions to the fund.

If any moneys remain in the fund after all the payments authorized have been made with respect to a given presidential election, or if the fund exceeds the maximum payments which may be authorized, the amount remaining is to be returned to the general fund of the Treasury.

4. The Advisory Board (sec. 304 of the bill)

The bill establishes the Presidential Election Campaign Fund Advisory Board to advise and assist the Comptroller General in connection with his duties under this act. The board is to consist of two members from each political party whose candidate received 10 million or more votes in the last presidential election plus three additional members selected by a majority of the political party members. The first members of the board are to be appointed by the Comptroller General after the date of enactment of this bill and their term will expire 60 days after the date of the first presidential election held after the date of enactment of this bill. The next and succeeding boards will then serve 4-year terms ending 60 days after the date of each succeeding presidential election. Board members will be compensated at the rate of $75 a day for each day they serve and will receive travel expenses and a per diem in lieu of subsistence (at rates authorized for persons in intermittent Government service) when engaged in work away from their homes or regular places of business.

D. Miscellaneous Provisions

1. Treasury notes payable in foreign currency (sec. 401 of the bill)

Under present law, bonds or certificates of indebtedness may be issued by the Secretary of the Treasury payable both as to principal and interest in any foreign currency. However, presently there is no authorization for the Secretary of the Treasury to issue notes in foreign currency (31 U.S.C. 766).

Your committee's bill adds an amendment to the Second Liberty Bond Act authorizing the Secretary of the Treasury to issue notes as

well as bonds and certificates of indebtedness in foreign currencies. Notes are evidences of indebtedness issued by the Treasury Department with a maturity of from 1 to 5 years from date of issue.

Authorizing the Secretary of the Treasury to issue notes in foreign currency is designed to broaden the market for Federal securities. This is important under current market conditions when it is difficult to float long-term securities. This will enable the Secretary of the Treasury to issue notes in foreign currencies where no market exists for bonds and certificates of indebtedness in foreign currencies. To the extent a market is found in foreign currency issues of U.S. notes which would not be available for other U.S. securities, the balance of payments will be improved.

2. Reports on Government contingent liabilities and assets (sec. 402 of the bill)

In the past, it has been the practice of the Federal Government to determine its financial requirements primarily on an annual basis. This amendment does not depart from this practice. However, an annual system of budgeting does not present a complete picture of the financial condition of the United States because it fails to depict numerous categories of contingent Federal obligations and commitments. Similarly, it fails to reveal fully those situations where Congress has enacted spending authorizations, but has not specifically appropriated the moneys needed to fulfill the statutory commitment.

Moreover, under present methods, U.S. liability under many of its insurance and guarantee programs is difficult to measure and analyze. This is because sufficient information regarding these programs either is not available at all, or if it is available, is inadequately presented.

In many cases, information with respect to contingent liabilities of specific governmental programs now is available in reports of specific agencies or corporations. However, these data frequently lose much of their usefulness because they are not combined with similar data with respect to other programs. Thus, although part of this information may now be available it is not published in one place or on a uniform basis, and therefore does not aid in the overall understanding of the current financial condition of the United States.

Your committee believes that it is desirable to make available in a single, concise report, pertinent information with respect to the current status of the contingent liabilities of the Federal Government, including its long-range obligations and commitments. Indeed, the committee recognizes a responsibility to make available in such a report—as clear and complete as possible—the overall financial condition of our Government. Such a report, consolidating information now available only in part (in many diverse reports) with information which is not now available at all, will enable Congress and the public to have a better understanding of the current fiscal needs of the Federal Government.

For this reason, your committee has approved and recommends enactment of this amendment requiring the Secretary of the Treasury to submit to the Congress, by March 31 of each year a report showing the amount (both on an aggregate and on an individual basis) of the contingent liabilities and the unfunded liabilities of the Federal Gov-

ernment, determined as of December 31 of each year commencing with 1966.

The contingent liabilities referred to by the amendment include (1) liability of the Government under its various trust funds (such as the old age and survivors insurance trust fund and the highway trust fund); (2) liabilities of Government-sponsored corporations (for exemple, the Commodity Credit Corporation); (3) indirect liabilities of the Federal Government not included as part of the public debt, such as Federal Housing Administration debentures; and (4) liabilities of Federal insurance and annuity programs.

Under the amendment, data with respect to these insurance and annuity programs (which include the civil service retirement system, veterans' pension, and war risk insurance programs) are to include information regarding their actuarial status on both a balance-sheet basis and a projected source-and-application-of-funds basis.

The report is also to indicate the collateral pledged, or the assets available (or to be realized) as security for the specified liabilities, and present an analysis of their significance in terms of past experience and probable risks. Thus, for example, in the case of federally insured home mortgages the assets available on foreclosures may, under favorable circumstances, offset the potential Federal liability. But the reporting of assets is not to stop with a recording of assets related to the liabilities. Under the amendment the Secretary of the Treasury is to set forth all other assets which would be available to liquidate liabilities of the Federal Government.

In order to provide flexibility and to prevent data included in the report from being misconstrued or misleading, the amendment provides that the Secretary of the Treasury may set forth such explanatory material as he determines to be necessary or desirable. Under this provision, if he believes particular data are likely to lead to improper conclusions he may qualify that data sufficiently to negate such conclusions.

A bill identical to this section (S. 1013) was reported favorably by the committee on September 14, 1965, and passed the Senate. However, the House has not acted on that bill. A substantially identical bill was also approved by the committee in the 88th Congress. It too passed the Senate but the House did not act on it prior to the adjournment of the 88th Congress.

3. *Coverage of drug expenses under supplementary medical insurance benefits (sec. 403 of the bill and secs. 1832, 1833, 1845, 1846, and 1847 of the Social Security Act)*

1. BACKGROUND OF AMENDMENT

Part A of medicare is essentially designed to cover the costs of short-term institutional care provided in connection with acute illness. Part B, the supplemental medical insurance plan, while providing benefits during periods of acute illness, is also a mechanism for coping with certain of the expenses associated with chronic illness such as physician visits and home health services.

Part A of medicare pays the cost of prescribed drugs provided to a beneficiary while he is receiving covered care in a hospital or extended

care facility. No coverage, however, is available under either part A or part B toward the cost of prescribed drugs purchased by the older person who is not hospitalized or in an extended care institution.

During the debate in the Congress preceding the enactment of medicare, as well as subsequent to passage of Public Law 89-97, recognition has been given to the fact that the cost of prescribed drugs represents a significant item of medical expense to older Americans. During 1965, persons age 65 and over spent an estimated $600 million at the retail level for prescribed drugs. They spent several hundred million dollars more for nonprescribed drugs and drug sundries. Apart from the medications required as a result of acute illness, there are the recurrent and repeated costs of prescribed drugs necessary to the treatment of chronic illnesses. Some 3 million older people each spend more than $100 a year for medicine, including 600,000 persons whose drug expenses exceed $250 annually.

It appeared to your committee that part B of medicare would, therefore, be an appropriate vehicle for the provision of a benefit toward the expense of prescribed drugs which are not otherwise coverable or encompassed by the provisions of part A.

Your committee believes that this amendment represents a reasoned and economical approach toward meeting a genuine need of our older citizens. The caliber of the Formulary Committee and Advisory Group should assure responsible listing of covered drugs. The mechanism for determining allowances for each covered drug will aid in economy of operation as will the fact that coverage will be limited only to drugs requiring prescription. (Many items are prescribed by physicians which do not, by law, require prescription. Antacids and certain vitamins are prime examples. Prescriptions of this nature will not be covered. The formulary committee has authority, however, to provide coverage for a drug of a lifesaving nature such as insulin which may not require a prescription.)

The physician is enabled to prescribe by brand name if he desires and an allowance will be payable for such prescription provided that the drug is included by its generic or established name in the formulary.

2. EXPLANATION OF AMENDMENT

The committee amendment adds as a covered item of service under part B of medicare (supplemental medical insurance plan) the expense of drugs requiring a prescription. The additional benefit would become available effective July 1, 1968, or earlier if the part B premium rate is recalculated prior to that time. A formulary committee would be established consisting of the Surgeon General, the Commissioner of the Food and Drug Administration, and the Director of the National Institutes of Health. The Formulary Committee would, with the assistance of an advisory group broadly representative of those groups concerned with pharmacy, determine which drugs would be covered under the plan. The formulary committee would promulgate a schedule of allowances payable for given quantities of covered drugs. Such allowances would be based upon the lowest wholesale price of any such drug, however named, plus an increment covering the reasonable cost of distribution, handling, and compounding.

For example, the formulary committee might include tetracycline as a covered drug. They would determine the wholesale price of a given quantity of tetracycline and then add an appropriate factor covering the cost of handling, etc. That would constitute the allowance for tetracycline. The allowance thus determined would be payable on a generic basis for Achromycin, a brand name for one company's tetracycline, or for any other brands of this drug.

A drug included in the formulary under its generic or established name would also be deemed an eligible drug if prescribed under any of its proprietary or brand names and the scheduled allowance for the drug named in the formulary would also be the allowance for the proprietary or brand name version even though the wholesale costs of such proprietary or brand name items may be greater in price.

Allowances are payable to the beneficiary in the same manner as other part B benefits or he may direct payment to a third party—such as a welfare department by assignment.

The monthly cost of providing this benefit is estimated at 50 cents to the participant and 50 cents to the Federal Government. The participant's share would become part of the regular part B premium. The Federal contribution would, as is the present case with Federal participation in the costs of the part B program, come from general revenues. The cost to general revenues would be offset in part by a reduction in the amount of drug expense deductions on Federal income tax returns.

V. TECHNICAL EXPLANATION OF THE FOREIGN INVESTORS TAX ACT

For the technical explanation of this title, other than the amendments made by your committee, see the report of the Committee on Ways and Means—House Report 1450. For a discussion of the amendments made by your committee see the general explanation section of this report.

VI. CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill, as reported).