(12)

Treaty obligations; absence of permanent establishment (*page 45, line 25; page 46, line 7*)

The effect of Section 11(b) of the Bill is to treat a nonresident alien individual or a resident foreign corporation which is engaged in trade or business within the United States as not having a permanent establishment in the United States. Such persons would thus be entitled to the lower treaty withholding rates on nonbusiness income. This benefit should also be extended to nonresident alien individuals and foreign corporations which are not engaged in trade or business, but which do have a permanent establishment in the United States. For example, ownership of certain real property in the United States may constitute having a permanent establishment without being engaged in trade or business. Proposed Sections 871(f) (starting at line 20, page 8) and 881(b) (starting at line 22, page 19) provide elections to treat real property income as business income; however, there may be non-income-producing real property which could constitute a permanent establishment.

(13)

Other provisions of the present code requiring clarification

The application of a withholding tax to salaries of nonresident aliens for services performed in the United States is now unclear, since present Section 3401(a)(6) exempts wages paid to an alien individual so that withholding will fall under present Section 1441. The Bill provides that all salaries, wages, etc. will be taxable at regular graduated rates. Since it is already proposed that present Section 1441 be amended to provide no withholding on income taxed under proposed Section 871(b)(1), present Section 3401 should also be amended so that a nonresident alien will be subject to the withholding tax under present Section 3401 in the same manner as any citizen or resident.