

ment of gains which are treated as capital gains, although not derived from a sale or exchange, such as distributions under section 301(c)(3)(A) and section 852(b)(3)(B).

It also appears that in its present form proposed section 871(b)(3) would exclude from the category of business income, gains from the sale or exchange of stock by a dealer in securities. It is not clear that this result is intended. Section 871(c)(2)(A) impliedly provides that a dealer in securities is engaged in trade or business within the United States. Section 871(b)(3) and section 882(a)(3) should be reviewed from the policy viewpoint to determine whether or not there should be included in the category of business income, gains realized upon the sale of stock or securities by a dealer in securities.

The Treasury Department release of March 8, 1965, accompanying H.R. 5916, states that no legislative change is necessary to provide that the volume of transactions is not material in determining whether an investor is engaged in trade or business in the United States since this is the rule under existing law. It is not felt that the existing law in this regard is as clear as the Treasury release would indicate and it therefore is suggested that a specific clause be inserted in the proposed section 871(c)(2) affirmatively stating that the volume of securities or commodities transactions is not material in the determination of whether an investor is engaged in trade or business within the United States.

Proposed section 871(f) permits a nonresident alien to elect to be taxed on a net basis with respect to income from real property, rents, or royalties from the operation of mines, wells, or other natural deposits, and gains from the sale or exchange of real property, etc. In its present form the section does not cover gains or income from the disposition of timber. Since there appears to be no valid reason for this omission, consideration should be given to the amendment of the section to permit a nonresident alien individual to elect to be taxed on the gains or income from the disposition of timber on a net basis. Such election, however, should be limited to those cases wherein an election under section 631(a) of the code is not made. Section 871(f) should also indicate whether interest on a loan secured by a mortgage on real property falls within the election.

The phrase "under regulations prescribed by the Secretary or his delegate" appearing in the seventh line of proposed section 871(f)(1) should be deleted inasmuch as it is redundant in view of the provisions of proposed section 871(f)(3).

The revision of section 871 accomplished by section 3 of the bill fails to resolve an ambiguity under present law in the use of the term "taxable year." Under this bill, as under present law, tax consequences follow from the presence of the nonresident alien for specified numbers of days "during the taxable year" or from the receipt of specified amounts of income "during the taxable year." Where in the course of a calendar or fiscal year the taxpayer's status changes from a citizen, or resident alien, to a nonresident alien, or vice versa, however, it is not clear whether the change of status is considered to close the taxable year.

For example, an alien, reporting on the calendar year basis, is resident and physically present in the United States for the first 9 months of 1966. On October 1, 1966 he becomes a nonresident alien, and during the remaining 3 months of the year realizes net gains from