may not be judicially set aside in seeking to render the proclamation void, absent an abuse of discretion. If so, it seems arguable that this finding also may be exempt from an attack on the merits in determining whether under the proclamation a foreign tax law provides a similar credit. It should be made clear that once a proclamation is issued, the nonresident alien will have the same remedies to contest the denial of a foreign tax credit as he has under existing law.

Section 8(b): Estates of nonresidents not citizens, credits against tax.

The maximum credit for State death taxes is limited by proposed section 2102(b). This limitation is defined in terms of a ratio of (1) the value of the property "at the date of death" subject to State death taxes to (2) the value of the total gross estate. If alternate valuation is elected, the use of the date of death value for the numerator of the fraction might result in substantial distortion. Accordingly, the phrase "at the date of death" should be eliminated.

Section 8(c): Property within the United States

By this provision of the bill, section 2104(c) of the code is amended to make it clear that where a debt obligation of a U.S. obligor is owned by a nonresident alien, the obligation shall be treated as property within the United States no matter where it is located. However, from the standpoint of clarity it would appear that it should also be made clear that a foreign obligation physically located in the United States will not be treated as property within the United States. This result would seem to be a logical extension of the proposal with respect to U.S. obligations. The same comment can be made under section 9(b) which amends section 2501(a)(2) to set forth similar situs rules in the gift tax area.

Section 8(f)

Proposed section 2108 of the code allows the President by proclamation, to apply the pre-1966 estate tax law to residents of foreign countries under certain conditions. It is stated that the President shall proclaim that the tax be determined without regard to amendments made "on or after the date of enactment of this section." Since the nature of amendments which will be made in the future is unknown, it would seem advisable to restrict the presidential authority to the amendments made by the pending bill. If it should be desired to grant the same authority to the President with respect to future amendments, such authority can be granted in the future legislation. This comment is equally applicable to section 5 of the bill.

Additional considerations

1. It is submitted that consideration should be given to the inclusion of a provision in the bill that would permit domestic fiduciaries to administer estates and trusts for the exclusive benefit of foreign beneficiaries and remaindermen without being subjected to capital gains tax in respect of gains realized upon the sales of the trusts' or estates' portfolio securities. It is recognized that such a rule would be in derogation of existing case law.

2. Consideration also should be given to abolishing the present requirement that a visiting alien, before departing from the United States, must secure a tax clearance and sailing permit. Present procedures in this regard are harassing and annoying to visiting aliens and do not produce a significant amount of revenue.