HERRICK, SMITH, DONALD, FARLEY & KETCHUM,
Boston, Mass., June 23, 1965.

Hon. WILBUR D. MILLS,
Chairman, House Ways and Means Committee,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN MILLS: It is understood that your committee has invited comments on proposed legislation to encourage foreigners to invest in the United States.

The observations below are addressed to the provisions affecting the U.S. estate tax in H.R. 5916, 89th Congress, 1st session, which you introduced in the House of Representatives on March 8.

1. Expatriation to avoid estate tax

H.R. 5916, page 38, would add a new section 2107 to the Interna Revenue Code, providing in part:

> (a) RATE OF TAX.—A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States dying after the date of enactment of this section, *if within the 10-year period ending with the date of death such decedent lost United States citizenship and such loss had for one of its principal purposes the avoidance of United States taxes.*

The main purpose of the underlined portion is doubtless to discourage resident U.S. citizens from renouncing their citizenship and thereby having their estates taxed at the rates applicable to nonresidents. It can be expected that an executor will have a heavy burden in proving that a decedent who renounced his citizenship did not have as one of his principal purposes the avoidance of U.S. taxes. This burden is entirely appropriate when a U.S. citizen residing in the United States on March 8, 1965, thereafter renounces his citizenship. It is, I believe, an unfair burden to place upon the executor of a U.S. citizen who was a nonresident of the United States for most of his life or for many years before 1965.

The following situation is not uncommon: F, a Canadian, emmigrated to the United States in 1920, became naturalized here, married a woman born in Canada, and died in 1923 leaving a child, C, who was born in the United States and, therefore, a citizen of the United States. Upon her husband's death, the widow returns to her home in Canada with the infant C. C lives in Canada for the rest of his life. Many reasons may prompt C to renounce his U.S. citizenship and become a citizen of the country in which he was brought up, educated, and has made his living. In these circumstances the executor should not have the burden above mentioned if C happens to become a Canadian citizen within 10 years prior to his death. It is recommended that 2107(d) be amended as follows:

> (d) EXCEPTION FOR LOSS OF CITIZENSHIP FOR CERTAIN CAUSES.—Subsection (a) shall not apply to the transfer of the estate of a decedent
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> (1) who lost U.S. citizenship under section 301(b), 350, or 355, of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487); or