

it may be preferable to establish such an international financing organization in the United States rather than abroad. Under the present estate tax law of the United States with respect to debt obligations, this can be done without subjecting the estate of a nonresident alien purchaser of the securities to such tax. The law now provides that bonds situated outside of the United States on the date of the nonresident decedent's death are not subject to imposition of U.S. estate tax.

Paragraph (c) of section 8 of H.R. 5916 would change the estate tax situs rule of section 2104 of the Internal Revenue Code of 1954 to provide that debt obligations owned by a nonresident alien shall be deemed to constitute U.S. situs property "if issued by or enforceable against a domestic corporation." This, in fact, would extend the rule presently applied in determining situs of stock of a domestic corporation to debt obligations issued by such entity. Therefore, under this new rule the estate of a nonresident decedent containing bonds issued by a domestic company would for the first time be subject to U.S. estate tax liability.

Although, under the other provisions of the proposed act, the estate tax liability of foreigners owning U.S. property at death would generally be modified favorably and although such provisions would cushion the impact of the broadening of the estate tax base to include U.S. issued bonds, foreign investors understandably are interested in avoiding any estate tax liability in the United States. This consideration may well have a detrimental effect upon a nonresident alien's decision to participate or not to participate in a bond offering abroad by a U.S. corporation. As noted in recommendation 29 of the task force report, "The U.S. estate taxes * * * are believed to be one of the most important deterrents in our tax laws to foreign investment in the United States." Accordingly, the proposed change in the situs rule with respect to bonds is directly contrary to recommendation 29 in which the elimination of U.S. estate taxes on "all intangible personal property of nonresident alien decedents" was proposed.

In view of the Treasury Department's interest in the continuing improvement of this country's balance-of-payments position, tax barriers should be removed from the path of those directly or indirectly contributing to the improvement of that position. To this end, it is urged that recommendation 29 of the task force report be effectively implemented by providing that all intangibles situated outside the United States at the date of a nonresident alien's death be excluded from such decedent's gross estate. This solution would seem to constitute the most effective and simplest method of inducing foreigners to invest here.

It is worthy of note that the estate tax rules contained in the proposed act on the situs of bonds and other securities do not apply for purposes of determining a bona fide nonresident alien's gift tax liability. In fact, under H.R. 5916 the gift tax situs rules would be liberalized with respect to stock issued by a domestic corporation to provide that the nonresident alien will never under any circumstances be subject to gift tax liability on the transfer of intangibles. It is urged that a consistent rule should apply for the purpose of subjecting a nonresident alien to estate tax, particularly in view of the close relationship between the two taxes.