

their investments and who would, therefore, never have been subject to section 1232 tax had they been residents.¹ Most important, the excessively harsh results of such a system to unwary foreigners who were ultimate holders of a discount instrument would certainly drive away foreign investments in U.S. securities.

The mechanical complexities involved in withholding from section 341 gains would be much greater when account is taken of the endless intricacies of section 341(d) and section 341(e). It seems clear that a withholding requirement would present problems of administration infinitely more complex than those which can be anticipated from withholding on those pseudo capital gains which are presently subject to section 1441.

Beyond the mechanical complexities it would produce, the application of a withholding rule to section 341 gains would, inevitably, involve disputes as to the basic applicability of the taxing section. Presumably, a withholding agent could avoid these by withholding 30 percent of the proceeds of a sale transaction as if section 1441(c)(5) were applicable even if it were not specifically made so. However, if a withholding requirement were introduced, it would be inevitable that some Americans who purchased stock from foreign sellers would realize only after the event, and to their sorrow, that they had bought stock in a collapsible corporation from a foreigner and had become personally liable for a withholding tax. When this occurred, it would almost certainly occur under circumstances in which the foreign seller would be unavailable and the American purchaser would find it impossible to marshal evidence to defend against the applicability of the tax and impossible to recoup withholding tax from the person to whom it was in truth chargeable. Although a rule applying withholding to section 1232 gains would certainly not produce as many disputes over the basic applicability of the law as a requirement to withhold from section 341 gains would, there are substantial areas in which there is doubt whether original issue discount is inherent in a debt instrument (for example, if a debt instrument is given in payment for property purchased).

For all the above reasons, it seems both impractical and inequitable to extend section 1441 to require Americans to withhold on section 341 or section 1232 gains taxable to foreigners under the proposed amendments to sections 871 and 881. Thus, while the proposed extensions of sections 871 and 881 cannot be enforced effectively in their present form, it also seems unlikely that they could be enforced practically through withholding. It seems fundamentally wrong to enact any statute taxing foreigners if it can be anticipated that the statute cannot be thoroughly and equitably enforced.

TECHNICAL AND POLICY PROBLEMS SUGGESTED BY THE SOURCE RULES

The application of the source rules of the code suggests technical problems involved in an attempt to tax gains in the sale of collapsible corporation stock and original issue discount as investment in-

¹ Were a withholding tax imposed on the lines suggested, some of the prior holders might be U.S. citizens or residents not subject to withholding who had long since paid the tax allocable to those portions of the original issue discount inherent in the instrument which were realized by them at the termination of their holding periods.