

come. A consideration of these technical problems suggests fundamental policy questions about the proposed statutory amendments.

It seems clear that gain from the sale of a collapsible stock has its source at the place where the stock is sold. Accordingly, the proposed amendments to sections 871 and 881 could easily be avoided by a knowledgeable foreigner simply by selling his collapsible stock abroad. Thus, in so far as they apply to section 341 gains, the amendments would do little more than create a trap for the unwary.

It is interesting to note that section 341 is not drawn with reference to U.S. individual income tax on the shareholders of the collapsible corporation. (Compare section 341(b)(1) with section 532(a) drawn to achieve a fundamentally similar purpose.) Taking the statute literally, there seems no bar to regarding a foreign corporation as collapsible even though it has had no contact whatever with the United States until the day its sole shareholder brings the certificate representing its stock into this country to sell it to an American purchaser. If that conclusion is correct, the bill would tax a Frenchman who sold the stock of a French corporation operating in France to an American at a closing in the United States if the French corporation met the collapsible tests. As a bare minimum, the bill should be revised to make it clear that this cannot occur.

The basic statutory pattern of section 341 perhaps implies that gain from collapsible stock should be considered to have as its source the place which would have been the source of the collapsible corporation's gain had it realized its income at the corporate level. Such a highly specialized source rule would certainly require extensive amendments of sections 861 et seq. based on assumptions about where unrealized gain would have been realized had it been realized. It is difficult to imagine that even the most elaborate provisions would function well in their application to any collapsible corporation other than one which was almost solely a real estate corporation.

The bill treats section 341 gains and section 1232 gains as if they presented identical technical problems in the context of the bill. As noted above, they would produce somewhat different problems were an attempt made to enforce the tax by withholding. The technical differences between the classes of income becomes even clearer when source of income problems are considered.

It seems clear that original issue discount taxable under section 1232 has a hermaphroditic character for income tax purposes. It is not subject to withholding because it is neither interest nor fixed or determinable annual or periodical income. Nonetheless, its functional equivalence to interest has required that discount income arising from a debt instrument be treated as income from the same source as stated interest paid or accrued on the same debt instrument. See appendix A. Accordingly, it seems clear that the amendments to sections 871 and 881 would tax only those original issue discounts realized on the obligations of debtors whose stated interest payments would have a U.S. source. Ibid. Although the conclusion from the authorities seems clear, the proposed amendments to sections 871 and 881 should not be enacted unless an explicit source rule for original issue discounts is made a part of the bill.