as interest for income tax purposes. The precedents directly in point are reviewed under the following topic. Authorities equating original issue discount income with interest under other sections of the Code are then discussed. Finally, reference will be made to legislation which demonstrates a Congressional intent that earned original issue discount and interest be treated in the same manner.

*A. Authorities as to the Source of Original Issue Discount Income Hold That the Source is the Same as for Interest*

The question of the source of original issue discount income was considered by the Service in I.T. 2330, VI–1 C.B. 76. Under section 233 of the Revenue Act of 1926, as under section 882(b) of the Internal Revenue Code, foreign corporations were subject to tax only upon domestic source income. Section 217(a)(1) of the 1926 Act, like section 861(a)(1)(B) of the Code, provided that "interest" from domestic corporations deriving 20 percent or more of their gross income from United States sources constituted United States source income. The question posed was whether this latter section was determinative of the source of income received by a foreign corporation which had purchased, and held to maturity, bankers acceptances issued at a discount by United States corporations which derived at least 20 percent of their gross income from this country.

I.T. 2330 held that irrespective of where payment was made at maturity, the source of income was to be determined in the same manner as interest and that therefore the taxpayer had received United States source income subject to tax. In equating the source rules for original issue discount income and interest, it was stated that:

"* * * It is believed that the gain derived upon the receipt of the principal at maturity of an interest-bearing obligation which was purchased at a discount should be regarded as having the same source as interest; that is, that the source of income depends upon the status of the obligor. * * *" VI–1 C.B. at page 77.

Prior to I.T. 2330 the Service had concluded that for withholding tax purposes appreciation upon bankers acceptances did not constitute "interest" or other "fixed or determinable annual or periodical income" under the sections corresponding to sections 1441 and 1442 of the Code, requiring withholding upon such types of United States source income paid to nonresident aliens and foreign corporations not in business here. 0.1024, 2 C.B. 189; I.T. 1398, 1–2, C. B. 149. These rulings would appear to have been based largely upon the practical consideration that since the amount of original issue discount income cannot be determined unless the purchase price of the obligation is known, a contrary conclusion would have resulted in withholding agents often being unable to compute the tax to be withheld.

Under section 231(a) of the Revenue Act of 1936, United States source income of foreign corporations not in business in the United States was, for the first time, subject to tax only if it was of a type that was also subject to withholding, that is, "fixed or determinable annual or periodical gains, profits, and income." This limitation is now embodied in section 881(a) of the Code.[2] As a consequence, even though under I.T. 2330 the source of income from bankers acceptances

[2] A like limitation applies to United States source income of nonresident alien individuals not engaged in trade or business in this country. 1936 Revenue Act, § 211(a); Code § 871.