issued by United States corporations at a discount, is domestic, it no longer is taxable to foreign corporations not engaged in trade or business in this country.

It is clear, however, that the characterization of original issue discount income for this purpose does not carry over to the source rules. This conclusion, follows not only from I.T. 2330—which was promulgated after 0.1024 and I.T. 1398—but from the fact that I.T. 1398 had itself spelled out that the source rule was different than the withholding rule. I.T. 1398 held in part, that:

"* * * where an agent in this country of a foreign bank, a corporation not having an office or place of business in the United States, purchases in this country bank acceptances at a certain rate of discount, and sells such acceptances for a price greater than the price for which purchased, the amount of gain received as the result of the transaction represents income from sources within the United States but not such income as is subject to withholding. * * *" I–2 C.B. 149.

See also O.D. 890, 4 C.B. 114, holding that gain realized by a foreign corporation or nonresident alien not in business in the United States upon the retirement of bonds of a foreign government or foreign corportions, regardless of whether payable at maturity abroad or in the United States "is in neither case derived from sources within the United States and, therefore, is not taxable."

Only a single court decision has been found dealing with the source of earned original issue discount, *Helvering* v. *Stein*, 115 F. 2d 468 (4th Cir. 1940), aff'g 40 B.T.A. 848 (1939), nonacq. 1940–1 C.B. 8, and the decision also accords with the source rules followed in the above rulings. Taxpayers in *Stein* were members of a German banking firm which dealt in negotiable instruments issued by the firm's customers in Germany. A transaction began by the firm acquiring a draft drawn by a customer for an amount less than face; that is, the firm acquired the paper at a "discount". It then transmitted the draft to New York where a United States bank "accepted" it by agreeing to pay the face amount. Immediately after "acceptance" the taxpayers' firm sold the paper either to the accepting bank or to a third party for an amount greater than it had paid for the draft but still less than face.

The "discount" on the sale after acceptance reflected the accepting bank's credit, since it had become the principal obligor. The firm had secured this credit through agreeing to pay the bank a fee for accepting the draft and by agreeing to repurchase all drafts presented to the bank at face two days before maturity.

The Commissioner argued that the members of the banking firm realized income from United States sources under the source of income rules governing the purchase and sale of property, since the firm had "purchased" drafts outside the United States and resold them in the United States. The Board held that the income was not taxable because the acquisition was not a "purchase." 40 B.T.A. at pp. 853, 855. The Court of Appeals decision made this same mechanical point. 115 F. 2d at pp. 471, 472.

However, the Court of Appeals went further and pointed out that the essence of the entire transaction was that the taxpayers' firm had advanced funds to its customers in Germany at a rate exceeding the costs of the firm's financing those advances in the United States. Accordingly,