No greater criticism of this vague concept can be found, it is submitted, then the inability of the draftsman of H.R. 11297 to define the term "effectively connected income." Section II of H.R. 11297 amending section 864 of the code relating to definitions under the source of income rules seeks to define the term "effectively connected income, etc.," but the proposed definition does not even purport to be a definition; it merely lists three factors which are to be "taken into account" in determining whether income is "effectively connected" with the conduct of a trade or business. These factors are:

> (1) Whether the income is derived from assets used in, or held for use in, the conduct of such trade or business; (2) whether income is accounted for through such trade or business; or (3) whether activities of trade or business were a material factor in the realization of the income.

These three factors are merely three additional elements of uncertainty added to the basic uncertainty of "effectively connected income."

Uncertainty added to uncertainty is a far cry from operating under the relatively certain source rules now contained in the code, rules which have been amplified by years of experience, Treasury regulations and rulings, and court decisions. The underlying purpose behind H.R. 11297 is to encourage foreign investment in the United States. The almost certain broadening of a foreign corporation's income subject to U.S. tax liability under H.R. 11297 will lead to no such encouragement. On the contrary, it will lead to foreign corporations withdrawing from the United States to the further impairment of our balance-of-payments position. This is not a purpose consistent with the committee studies that led to the introduction of H.R. 11297.

Taxpayers concerned about the impact of this almost hidden change incorporated in H.R. 11297 have received informal assurance from Treasury officials that the bill, if enacted, will be administered sympathetically but the function of the Internal Revenue Service is to protect the revenue of the United States and statements of intended "sympathetic administration" by Treasury officials today cannot and will not prevent the Internal Revenue Service from the most possible restrictive enforcement tomorrow. The "effectively connected income" approach sought by the Treasury Department will lead to taxation measured not by rule of law but by administrator's fiat. It is submitted that no such approach should be enacted.

The Manufacturers Life Insurance Co.,
Toronto, Canada, January 19, 1966.

Re H.R. 11297, Foreign Investors Tax Act of 1965.

Dr. Laurence N. Woodworth,
Chief of Staff,
Joint Committee on Internal Revenue Taxation,
Washington, D.C.

Dear Dr. Woodworth: Enclosed are three copies of the memorandum which it was arranged we should prepare following our meeting with you and your associates in Washington on December 16 last. The points discussed are features of the above bill which present spe-