

compensation for withholding) be required to act at their peril in determining such a complex question.

3. Insurance companies

Section 4 of the bill applies the same general rules to foreign insurance companies as are applied to other foreign corporations. The income effectively connected with the insurance business carried on in the United States is taxed in the same manner as that of domestic insurance companies, while income not so connected is subject to the flat tax withheld at the source.

The difference in the effective rate of tax upon dividends (7.2 or 30 percent) under the two rules, makes the determination of whether dividend income is effectively connected with the conduct of the U.S. business, of extreme importance to foreign insurers doing business here. In the event the "effectively connected" concept is adopted, it would seem that the investment income should be deemed to be effectively connected with the conduct of the U.S. insurance business. If there is any doubt as to this the statute should be clarified.

Section 4(j)(2) amends section 953(b)(3)(F) of the code with respect to insurance companies, by substituting 832(c)(5) for 832(b)(5). This change has nothing to do with the changes being made by the bill, but merely corrects an error in the present law. The erroneous reference 832(b)(5) had the effect of disallowing insurance losses rather than capital losses as clearly intended. The correction therefore should be made retroactively, rather than to limit it to taxable years beginning after December 31, 1965, as provided by section 4(k).

NEW YORK STATE BAR ASSOCIATION,
TAX SECTION,
February 10, 1966.

LEO H. IRWIN, Esq.,
*Chief Counsel, Committee on Ways and Means,
House of Representatives, Washington, D.C.*

DEAR SIR: Enclosed for the use of the chairman and members of the House Ways and Means Committee and their staff are 20 copies of a report on H.R. 11297 which was prepared by the Subcommittee on Income Tax Problems of Nonresident Aliens, which is a subcommittee of the Personal Income Tax Committee of the tax section of the New York State Bar Association. We will forward 10 more copies of this report to you as soon as they are available.

The enclosed report has been approved by the executive committee of the tax section of the New York State Bar Association, but it has not been submitted to the bar association as a whole or to the executive committee of the bar association. Accordingly, the views expressed should be regarded as the views of the persons preparing and reviewing the report rather than the official position of the New York State Bar Association.

We hope that the comments contained in this report will prove useful.

Very truly yours,

THOMAS C. PLOWDEN-WARDLAW,
Chairman.