

gaged in trade or business under section 864(b)(1), will, nevertheless, cause his foreign employer to be deemed to be engaged in trade or business in the United States. It is recommended that a decision be made as to whether the foreign employer in such cases should be deemed to be engaged in trade or business here and that the decision be spelled out in the statute.

The proposed section also raises the question of why a nonresident alien working for a domestic entity with an office or place of business abroad is treated differently from a nonresident alien working for a domestic entity that has no office or place of business abroad. The determinative facts would appear to be that a nonresident alien is employed by a U.S. entity, that the normal working location of the nonresident alien is abroad, and that he is required to be present in the United States only for limited periods of time. It would appear that the 90-day-\$3,000 rule is a sufficient test by itself.

Bill section 2(d)(1): IRC section 864(b)(2)—Trading in securities

This proposed section provides that trading in stocks or securities for the nonresident alien's own account will generally not be deemed a "trade or business in the United States." However, a foreign investment company is denied this benefit "if its principal office is in the United States." Since many incorporation statutes provide that the "principal office" of a corporation must be in the country of incorporation, it should be made clear that the phrase "principal office" as used in the proposed bill is used to describe the actual activities of the office rather than the statutory office. Perhaps the phrase should be expanded to read, "if its main, principal or most important office is in the United States."

Bill sections 2(d)(1), 3(a)(1), 3(b)(1), 4(b): IRC sections 864(c), 871(b), 872(a), 882(b)—Effectively connected income—Gross income

The proposed bill does away with the "force of attraction" principle (whereby the foreigner's engaging in business in the United States causes all of his U.S. source income to be taxed at normal rates) which characterizes the present law. Under the new concept, the foreigner (individual or corporate) will be subject to progressive taxation on net income only with respect to his "taxable income effectively connected with the conduct of his trade or business." Thus, the same foreigner may have various types of income—income from passive investment and income effectively connected to a U.S. trade or business—each subject to a different method of U.S. taxation.

This subcommittee feels that the new approach is sound in principle. Since the bill provides no definition of "effectively connected" income, other than to lay down guidelines (sec. 864(c)) as to the factors to be considered in reaching a determination, it is to be expected that administrative difficulties will ensue and that results, at least for a while, will be haphazard. No ready solution is available.

The subcommittee, however, is of the opinion that the inclusion of "effectively connected" income from sources outside the United States is not justified. Source rules have, over the years, become well known to the Internal Revenue Service and the public, and the increased revenue from the attempt to enlarge the tax base by inclusion of "effec-