

measure. Little if any revenue can be derived from this source since the tax can easily be avoided by (a) selling the asset abroad, (b) forming foreign corporations for U.S. investments or, apparently, (c) setting up foreign trusts for such investments. Under these circumstances, the proposed capital gains tax would be applicable in most cases only to unsophisticated nonresident aliens as distinguished from aliens who have the advice of tax counsel. For the foregoing reasons, despite a possible justification of the capital gains tax on theoretical grounds, it is recommended that the capital gains tax on nonresident aliens be completely eliminated except with respect to capital gains effectively connected with the conduct of a trade or business in the United States.

*Bill section 3(a)(1) : IRC section 871(d)—Real estate income*

Proposed section 871(d) grants to the non-resident-alien individual an election to have certain U.S.-source income from specified interests in real property, including gain from the sale of realty, treated as "income which is effectively connected with the conduct of a trade or business within the United States," and thus as income taxed in the manner provided in proposed section 871(b) which renders such income taxable as provided in section 1 or section 1201(b) of the code.

(a) Proposed section 871(d) does not make reference to loss on the sale or exchange of realty, suggesting that only gain is to be taken into account. The provision should be clarified. Compare proposed section 873.

(b) As a matter of basic policy, quare why the election should not be given with respect to all U.S. source income rather than just realty income.

The comparable provision of prior H.R. 5916 was a proposed section 871(f). In this subcommittee's report on that section there appeared criticisms in addition to the above comments. The new provision of H.R. 11297 eliminates those additional criticisms.

*Bill section 3(b)(3) : IRC section 872(b)(4)—Savings bonds income*

Proposed section 872(b)(4) would exclude from U.S. source gross income of certain non-resident-alien individuals "income" from series E and series H bonds. The text of the provision correctly refers to "income" on such bonds but the heading of proposed section 872(b)(4) incorrectly refers to "interest" on bonds. As the reference to interest is inappropriate in the case of series E bonds, it should be changed in the heading to read "income".

*Bill section 3(e)(1) : IRC section 877—Expatriation*

The proposed amendment would, unless none of the principal purposes of the expatriation was to avoid U.S. income, estate or gift tax, subject expatriates to regular income taxes, for a period of 5 years after expatriation, on their U.S.-source income, defined to include gains on all sales of property located in the United States and on sales of stock and securities of U.S. corporations, plus their "effectively connected" income even if from foreign sources.

It does not seem appropriate that a principal purpose to avoid estate tax or gift tax should have the prescribed income tax effects. It is suggested that references to subtitle B be eliminated from the open-