

Concern over the precise terms of this bill arises from two causes, one more narrowly related to the specific purpose of the legislation and the other of potentially much wider consequence.

In the first category, I refer to the inclusion in the bill of the following features:

1. Estate tax at rates up to 25 percent (as contrasted with 15 percent in H.R. 5916 and zero as recommended by the Fowler task force) on intangible personal property of nonresident-alien decedents.

2. Inclusion of U.S. bank deposits owned by nonresident aliens not engaged in trade or commerce in the United States in the taxable estate of aliens dying after enactment of the bill.

3. Inclusion in the taxable estate of nonresident aliens of bonds issued by domestic corporations or governmental units in this country although held by the nonresident alien outside the United States.

4. The indicated intention after December 31, 1970, to tax interest received by nonresident-alien individuals or foreign corporations on U.S. bank deposits.

All of these changes have some tendency to discourage foreign investment in U.S. securities and none, I believe, will produce any significant revenue. For this reason, as one who was a member of the Fowler task force and as an officer of a corporation having a tremendous interest in the U.S. balance of payments, I regret and respectfully counsel against these provisions.

Even more significant are the provisions of H.R. 11297 which would include in the United States taxable income of nonresident aliens and foreign corporations engaged in trade or business in the United States their worldwide income provided that it is "effectively connected" with the U.S. trade or business. This departure from source rules in the taxation of foreigners is a major departure from long-existing tax jurisprudence in this country.

This statutory language and the proposed statement of criteria for determining "effective connection" are so broadly drawn as to result in great uncertainty: wide areas would have to be filled in part by Treasury regulations and decisions and in part by the results of litigation. We understand from conferences with members of the Treasury Department that this vagueness has been recognized but it is their view that the report of your committee will solve the problem through a detailed discussion of the applicability of the new provisions. It would seem preferable that the relevant provisions of H.R. 11297 be strengthened and clarified to reduce the need for relying upon lengthy explanations in your committee's report.

We understand that certain relatively narrow tax situations motivate the Treasury in this context; specifically, we have been advised that the new provisions are aimed at nonresident alien individuals and foreign corporations controlled abroad and are not aimed at the controlled foreign subsidiaries of U.S. corporations. Your committee took the leading role in formulating provisions in the Revenue Act of 1962 which deal with controlled foreign corporations as now defined in section 957(a). It seems that it would be unnecessary and unwise to subject such corporations both to the subpart F income provisions