

States unless the nonresident alien or foreign corporation has a fixed place of business in the United States and the income, gain or loss is attributable to that place of business. Also, this provision applies to only three types of income from sources without the United States. A foreign corporation which to a minimal extent, or occasionally, uses the U.S. office of a related corporation will not thereby be treated as having a fixed place of business here. Moreover, the fact that top management decisions are made in the United States will not of itself mean that the foreign corporation has an office or fixed place of business here. For example, a foreign sales corporation which is a wholly owned subsidiary of a domestic corporation will not be considered to have a U.S. office because of the presence here of the officers of its domestic parent who are generally responsible only for its policy decisions, provided the foreign sales corporation has a managing director that conducts its day-to-day business from a foreign office. This person may or may not be an officer of the U.S. corporation. Also, in such a case, the managing director could regularly confer with the officers of the domestic parent and if necessary occasionally visit the U.S. offices of the domestic parent and, during such visits, temporarily conduct the business of the foreign subsidiary out of the domestic parent's office without thereby establishing a U.S. office.

As indicated above, this provision applies only to three specific types of income from without the United States and in no event applies with respect to income which is "subpart F" income or to dividend, interest or royalty income derived from a foreign corporation more than 50 percent owned by a nonresident alien or foreign corporation receiving the income. The three types of income with respect to which this provision applies are:

- (i) Rents and royalties derived from the active conduct of a licensing business;
- (ii) Dividends, interest, or gain from stock or bond or debt obligations derived in the active conduct of a banking, financing or similar business; and
- (iii) Certain sales income attributable to a U.S. sales office.

The sales income referred to above is not to be considered as "effectively connected" to a U.S. trade or business if the property is sold for use outside the United States and an office of the foreign person outside the United States contributes materially to the sale. Thus in this case foreign source sales income will be attributed to the U.S. trade or business only when the U.S. office is the primary place of the activity giving rise to the income. In the case of foreign source income where the products are destined for the United States, the income will be treated as effectively connected with a U.S. business to the extent the sales activity is carried on by the U.S. office.

The amount of income attributable to the U.S. sales office is not to be more than would have been attributable to it if the sale had been made in this country. This gives assurance, for example, that the sales income attributable to a U.S. business will not include income properly attributable to manufacturing or any other activities (apart from sales) occurring outside the United States.

In the case of a foreign corporation having a life insurance business in the United States, the bill provides that income from sources