

*Trade or business within the United States*

New section 864(b) specifies rules for determining whether certain activities do, or do not, constitute engaging in trade or business within the United States for purposes of part I (relating to determination of sources of income) of subchapter N of the code, of part II (relating to nonresident aliens and foreign corporations) of subchapter N, and of chapter 3 (relating to withholding of tax on nonresident aliens and foreign corporations and tax free covenant bonds) of the code. A similar provision in existing section 871(c) of the code is deleted from section 871, as amended by section 3(a) of the bill, and replaced by the provisions of new section 864(b).

Paragraph (1) of new section 864(b) is substantively identical to the provisions of the second sentence of existing section 871(c) (relating to U.S. business), except that the test of existing section 871(c) (2) has been broadened to conform to section 861(a) (3) (C) (ii), as amended by subsection (c) of this section of the bill. This conforming amendment permits the nonresident alien individual, subject to the other conditions, to perform services in the United States for an office or place of business maintained in a foreign country or in a possession of the United States by an individual who is a citizen or resident of the United States or by a domestic partnership (as well as by a domestic corporation) yet not be considered to be engaged in trade or business within the United States.

Paragraph (2) of new section 864(b) concerns trading in stocks, securities, or commodities. Existing section 871(c) of the code provides that a nonresident alien individual or foreign corporation is not engaged in trade or business within the United States if he effects, through a resident broker, commission agent, or custodian, transactions in the United States in stocks or securities. This provision has been so interpreted, however, that the nonresident alien individual is engaged in trade or business within the United States if the trading in securities would otherwise constitute engaging in trade or business and if the trading transactions are effected while the nonresident alien individual is present in the United States (*Zareh Nubar*, 13 T.C. 566 (1949), rev'd 185 F. 2d 584 (4th Cir. 1950), cert. denied 341 U.S. 925 (1951)). It has also been held that a nonresident alien individual is engaged in trade or business in the United States when his trading in securities is otherwise sufficient to constitute a trade or business and such transactions are effected by a resident agent who exercises discretionary authority with respect to such trading (*Fernand Adda*, 10 T.C. 273 (1948), aff'd 171 F. 2d 457 (4th Cir. 1948), cert. denied 336 U.S. 952 (1949)).

Subparagraph (A) (i) of section 864(b) (2) provides generally that a nonresident alien individual or foreign corporation who is not a dealer in stocks or securities is not engaged in trade or business within the United States by reason of trading in stocks or securities for the taxpayer's own account, irrespective of where the activities instrumental to such trading are performed or how the actual trading transactions are effected. It is immaterial whether the corporation or individual conducts the trading activities and effects the stock or security transactions himself or through his employees or uses agents in the United States, whether independent or dependent, to perform any or all of the functions instrumental to such trading. It is also immaterial