

and is not permitted to use the special formula available to domestic banks.

Second, to the extent that losses from the sale of securities exceed the gains therefrom, a domestic bank may claim such excesses as an ordinary deduction applicable against income taxed at 48 percent. A resident foreign bank may only carry such excess loss forward for a period of 5 years to be offset against gains taxed at 25 percent.

To the extent that the resident foreign bank does not have capital gains to offset against such losses the carryovers can be lost forever.

Thirdly, a domestic bank is permitted to deduct interest paid on deposits and other expenses incurred in earning tax exempt interest income from State and municipal securities. A resident foreign bank may only deduct those expenses related to earning taxable income from sources within the United States. This means that any expenses incurred in earning tax-exempt interest income from State and municipal bonds is not deductible by a resident foreign bank.

It is, therefore, submitted that taxing the U.S. office of a foreign bank on its foreign source dividends, interest, and gains from the sales of securities will not achieve the stated purpose of the bill to provide equitable tax treatment for their investments in the United States.

Furthermore, a provision taxing a U.S. branch or agency of a foreign bank on foreign source income attributable thereto is in conflict with practically all of our income tax treaties of the United States which are presently in effect.

A foreign bank organized in a treaty country can only be taxed on its U.S. source income which is attributable to a permanent establishment in the United States.

A foreign bank organized in a nontreaty country would be taxed on United States and foreign source income attributable to its U.S. place of business under H.R. 13103.

Thus, this provision would also provide inequitable U.S. tax treatment even between foreign banks doing business in the United States.

Lastly, it has always been fundamental to American democrat philosophy that the Federal Government's right to tax is based upon the protection of life and property, and that the income to be levied upon is the income which is created by activities and property protected by the Government. The mere fact that a bond or a security or bill of exchange is physically located in the United States or is accounted for by the U.S. branch or agency does not mean that the United States is protecting the property represented by this document.

The foreign resident's country, the obligor upon the bond or bill of exchange, protects the property rights represented by the security, and properly exercises the jurisdiction to tax the foreign bank which holds the obligation. By the same token, the country of organization of the foreign bank, which holds the obligation, may also choose to tax the income because it offers worldwide protection to that foreign bank. It seems it is unconscionable for the United States to attempt to tax such transactions where the securities and negotiable instruments are not governed by the laws of the United States, none of the parties handling the transactions are located in the United States, and all transfers of currency concerning principal and interest take place outside the United States, simply because the physical document, the document may be physically held in the U.S. office of the resident foreign