From the foregoing illustration, it is evident that the resident foreign bank will not secure a foreign tax credit in its home land for net United States income taxes paid since the interest income is not from U.S. sources. Furthermore, while Section 6 of the Bill permits a credit for foreign taxes paid or accrued on income from sources without the United States which is effectively connected with the conduct of a trade or business within the United States, such credit is only allowed for the foreign tax levied by the country of source and not the country of organization. Therefore, no credit would be allowed in the United States for taxes paid to country X since the income is sourced in country Y. As a result, there would be multiple taxation due to the inability to claim full foreign tax credits.

Finally, it has always been fundamental to American democratic philosophy that the Federal government's right to tax is not based upon mere physical force but on the underlying theory that the consideration given for taxation is the protection of life and property, and that the income rightly to be levied upon to defray the burdens of government is that income which is created by activities and property protected by the government or obtained by persons enjoying such protection (Mertens, Section 45.27). This basic tenet of tax philosophy is violated by the provisions of the Foreign Investors Tax Act that propose to tax foreign source income of a foreign corporation controlled by non-United States persons merely because it is deemed to the attributable to a United States place of business. The fact that a bill of exchange, promissory note or bond, the instrument evidencing a debt, is physcially located in the United States, is accounted for in the United States, or the United States office acquired it does not mean that the United States is protecting the property represented by that document. The residence of the obligor determines the location of the property right, and it is that country who properly exercises the jurisdiction to tax the income earned thereon since it protects the property rights represented by the security. By the same token, the country of organization of the obligee may also choose to tax the income because it offers world-wide protection to the taxpayer entity.

This latter country will generally allow a foreign tax credit for income taxes paid to the country of source, if it also chooses to tax the same income. Let us take the case of a Lebanese resident foreign banking institution. It negotiates the purchase of Chilean bonds through its head office in Lebanon. The loan is governed by the laws of Chile or Lebanon; the currency in which the bonds are payable is Chilean escudos; none of the parties to the transaction are located in the United States; and all transfers of currency concerning principal and interest take place outside of the United States. Nevertheless, the resident foreign bank could be taxed in the United States on the interest income earned from these Chilean government bonds simply because they might be held in the United States to secure additional lines of credit under the New York State banking laws or because the funds of the New York branch or agency were used to make the purchase. Yet, the foreign bank cannot use the United States courts to enforce the property rights represented by these bonds, such as the payment of principal or interest. It must turn to the courts in Chile or Lebanon for redress and protection. Furthermore, since the United States is not the country of organization, it does not offer world-wide protection to this entity, which is fundamental to the philosophy for taxing a U.S. entity on foreign source income. If the bonds are being used to secure loans made in the United States, it would seem that the proper income to tax is the income generated by utilizing such loan funds, not the foreign source income earned by the security provided for such loans. In other words, it is the U.S. source income from such loans which is properly attributable to the U.S. place of business, not the foreign source income from the bonds used as security to obtain the loans. Therefore, it would seem that to tax the interest income derived from such Chilean bonds would be an undue extension of the authority of the Federal government in exercising its taxing jurisdiction.

A similar situation exists with respect to other evidences of indebtedness, such as bills of exchange, drafts and promissory notes, where the obligor and obligee are foreign individuals or entities and the income earned therefrom is foreign source income.

In conclusion, it is submitted that the Foreign Investors Tax Act will further aggravate the present discrimination against resident foreign banking institutions instead of providing more equitable tax treatment for their investments in the United States. If Congress wishes to fulfill its stated objective, then it should choose between either not taxing resident foreign banks on their foreign source dividends, interest and gains from the sale of securities or else extend to them the same tax privileges accorded to domestic banks.