

4. Foreign base company income when it is established, with respect to that income, that the organization of the foreign subsidiary does "not have the effect of substantial reduction [of taxes]."

We think that the reasons for these specific exemptions from Subpart F were considered at great length by Congress during its prolonged deliberation on the Revenue Act of 1962 and we feel that it would be most unwise to change these decisions and now permit the use of the proposed "effectively connected" concept to reach such items of income. Accordingly, we urge that the Subpart F exclusion included in the bill be amended to make it clear that it applies to all Subpart F income and also income of the foreign subsidiary which would be considered Subpart F income but for one or more of the exclusions contained in Subpart F itself.

This concludes our comments on the "effectively connected" concept included in the proposed Foreign Investors Tax Act. We appreciate this opportunity of commenting on H.R. 13103. If the Institute or its staff can be of further assistance in the Committee's consideration of the bill we trust that you will not hesitate to call on us.

Respectfully,

CHARLES I. DERR,
Senior Vice President.

WILLKIE FARR GALLAGHER WALTON & FITZGIBBON,
New York, N.Y., July 11, 1966.

Re Foreign Investors Tax Act of 1966 section 2(d)(2).

Hon. RUSSELL B. LONG,
Chairman, Committee on Finance, U.S. Senate,
Washington, D.C.

SIR: I am writing to you concerning the Foreign Investors Tax Act of 1966. More specifically I am concerned with section 2(d)(2) of the Act which adds proposed new section 864(b)(2) to the Internal Revenue Code. This new section of the Internal Revenue Code would permit a taxpayer who is not a dealer in stocks or securities to trade in stocks or securities for his own account directly or through an employee or a discretionary agent located in the United States without being treated as being engaged in a trade or business in the United States. The House Ways and Means Committee report indicates that this proposed amendment of the Internal Revenue Code is intended to amend section 871(c) of the Code and expand the scope of activities in the United States in which a foreign taxpayer trading in stocks or securities may engage without being classified as being engaged in trade or business in the United States.

As section 2(d)(2) of the Act now stands, it applies to a "taxpayer" trading for taxpayer's own account. I believe that the use in the section of the term "taxpayer"—i.e., a person subject to internal revenue tax (I.R.C. § 7701(a)(14))—unduly and probably unintentionally, restricts the application of the provision. Thus, for example, if a nonresident alien individual were a limited partner in a partnership whose only activity in the United States involved trading in stocks or securities, the new provision would not apply to that individual since trading in stocks or securities did not take place for the taxpayer's own account, but rather for the partnership's account. This produces the rather anomalous result that a nonresident alien individual who is a limited partner in a partnership trading in stocks or securities may be considered to be engaged in a trade or business in the United States because of the partnership's trading activities in the United States, although he, as a limited partner, cannot even participate in the trading activities of the partnership; in contrast, that same nonresident alien individual could be personally present in the United States or have an employee or discretionary agent here and not be considered to be engaged in a trade or business in the United States because of the trading activities carried on by the taxpayer, his employees or his agents.

Not only is this result anomalous, but I believe it may operate to deter some foreign investment in the United States by foreign investors who want to invest in United States' securities and derive the benefits of diversification of investment and professional management which an investing partnership can produce. I represent several persons who are presently engaged in forming a partnership, which includes a substantial number of foreigners, for the purpose of investing in United States stocks and bonds. My clients have found that a great many foreign investors have indicated a desire to be able to be investors in such a