

limited partnership and my clients believe that use of this type of investment vehicle will be very attractive to potential foreign investors.

I would respectfully suggest that section 2(d)(2) of the Foreign Investors Tax Act of 1966 could be amended so as to solve the problem which I have raised by use of the term "person"—i.e., an individual, a trust, estate, partnership, association, company or corporation (I.R.C. § 770(a)(1))—in place of the term "taxpayer." Alternatively, I would suggest that the section of the Act could be amended by adding the following sentence as clause (iii) in proposed section 864(b)(2)(A):

(iii) Except in the case of a partnership which is a dealer in stocks or securities, in the case of a limited partner, trading in stocks or securities for the partnership's own account by the partnership or through a resident broker, commission agent, custodian or other agent, and whether or not any such agent has discretionary authority to make decisions in effecting the transaction.

I would very much appreciate your consideration of the matters raised in this letter. If I may be of any assistance to you in obtaining additional information for you as to the points raised, please communicate with me. I would also appreciate being notified as to when Committee on Finance hearings are scheduled to commence on the Foreign Investors Tax Act of 1966.

Very truly yours,

THOMAS N. TARLEAU.

WILLKIE FARR GALLAGHER WALTON & FITZGIBBONS,
New York, N.Y., August 10, 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.

DEAR SENATOR: I have received your letter of August 1, 1966 inviting me to testify before your Committee. Although I am unable to personally appear, I would like to take this opportunity to communicate to you some comments on the proposed legislation. I had previously written to you on July 11, 1966 with respect to the proposed legislation.

I am especially concerned about the unfortunate, and perhaps unintended, effect of Sec. 2(d)(2) in view of stated Congressional design to encourage, by introduction of the Foreign Investors Tax Act of 1966, the investment of foreign capital in this country with consequent improvement in the balance of payments. Sec. 2(d)(2), which adds proposed Sec. 864(b)(2) to the Internal Revenue Code, would permit a non-resident alien other than a dealer in stocks and securities to grant discretionary authority to a United States broker or other agent to carry out transactions in the United States with respect to stocks, securities or commodities without the non-resident alien being considered engaged in carrying on a trade or business in this country. Under present law the granting of such discretionary authority would expose the non-resident alien to tax on grounds of doing business.

Section 2(d)(2) of the proposed Act applies to a "taxpayer" trading for his own account in the United States through an employee or agent in the United States who may or may not have discretionary authority. It seems to me that the proposed legislation unnecessarily and inequitably inhibits the attraction of foreign capital by restricting the change in the law to a taxpayer trading for his own account. In general, a foreigner who desires professional management of his money in United States securities has two operating vehicles available, namely, to give an agent in the United States discretionary authority to buy and sell, or to become a limited partner in a domestic private investment partnership. In such a partnership the general partners are professional money managers, and the limited partners are, in effect, investors. The limited partnership route is similar in nature to the agent who has broad discretionary power in terms of achieving the desired effect of professional personnel managing funds; however, a foreigner who wishes to invest substantial sums of money may desire the private investment partnership route for the following reasons:

1. It affords the foreigner greater diversification of risk since his money is being pooled with monies of other limited partners to purchase a bigger and more diversified portfolio.