

residents or for domestic partnerships where the conditions set forth above are met.

Effective date.—These amendments are applicable with respect to taxable years beginning after December 31, 1966.

2. DEFINITIONS USED IN DETERMINING TAXABLE STATUS OF INCOME

a. Trading in stocks or securities or in commodities (sec. 102(d) of the bill and sec. 864(b)(2) of the code)

Present law.—Present law specifically excludes from the activities which constitute engaging in a trade or business within the United States the trading activities conducted by a nonresident alien in stocks, securities, or commodities in the United States through a resident broker, commission agent, or custodian.

This rule also applies with respect to foreign corporations. However, a question has arisen as to whether a nonresident alien or foreign corporation is to be treated as carrying on a trade or business within the United States if the foreign person grants discretionary authority to a U.S. broker or other agent to carry out transactions in the United States with respect to his stocks, securities, or commodities. Under present law, the granting of this discretionary authority may prevent a nonresident alien or foreign corporation from qualifying for this exclusion, with the result that income arising from these transactions and all other U.S. source income is subject to U.S. tax at the regular individual or corporate rates (based on a determination that such activities constitute carrying on a trade or business in the United States).

Reasons for provision.—The granting of discretionary authority to a U.S. broker or agent is thought by many foreign investors to be a desirable protective device in the event they are not in a position to give buy or sell orders at any time and, in any event, such an arrangement is frequently the most convenient method of effecting stock, security, or commodity transactions. The mere grant of this discretionary authority to a U.S. broker or agent would not appear to be significant enough to warrant treating the foreign person acting for his own account as engaging in a trade or business here. Moreover, individuals who trade in U.S. stocks and commodities are not treated as thereby being engaged in the business of buying and selling stocks and commodities, whether or not the volume of their activity is large. Also, the confusion regarding the status of a foreign investor who has granted discretionary authority to a U.S. agent may have acted to deter some foreign investment in the United States.

Explanation of provision.—For the above reasons your committee agrees with the House and has amended present law to specifically provide that the trading in stocks, securities, or commodities in the United States, for one's own account, whether by a foreign person physically present in the United States, through an employee located here, or through a resident broker, commission agent, custodian, or other agent—whether or not that agent has discretionary authority—does not constitute a trade or business in the United States. This treatment, however, does not apply to dealers in stocks, securities, or commodities or to a foreign investment corporation if it has its principal office here.