

chapter S corporation's income from foreign sources, i.e., in computing their own limitations on foreign tax credit, the Subchapter S corporation shareholders would include as income from foreign sources an appropriate portion of the Subchapter S corporation's income from foreign sources.

Code Section 962 provides a precedent whereby individual taxpayers are granted foreign tax credits under Section 902, otherwise applicable only to corporate taxpayers. Please note that under this provision the foreign tax credit is allowed under an election whereby the individual taxpayer is bound to pay tax on the foreign corporation dividend income at corporation tax rates. Such an approach might also be considered in connection with the proposed legislation outlined herein.

Legislation such as the foregoing would create an incentive to repatriate dividends from foreign subsidiaries where the domestic parent is a Subchapter S corporation.

Would you please give this matter your consideration. Thank you.

Yours very truly,

J. R. COLEMAN.

SAN FRANCISCO, CALIF., February 27, 1968.

Hon. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, House of Representatives,
Washington, D.C.

DEAR MR. MARTIN: This statement is submitted in accordance with the announcement of the Chairman of the Committee that has been published in Paragraph 6185 of the Commerce Clearing House Report, No. 11, Page 71142. It is limited to the serious constitutional question presented in Sub-paragraph (1) (b) of one of the two major proposals of the Chairman's announcement of the testimony the Committee would receive.

The United States Supreme Court, in *Kent vs. Dulles*, 357 U.S. 116, 78 S. Ct. 1113, 2 L.Ed.2d. 1204, a case involving the question whether the Secretary of State had exceeded his discretion in denying a passport to an applicant on the ground of his alleged communist connections, said:—

"The right to travel is a part of the 'liberty' of which the citizens cannot be deprived without due process of law under the Fifth Amendment. So much is conceded by the Solicitor General * * *

"Freedom to travel is, indeed, an important aspect of the 'citizen's liberty'." The Court also said that travel was an "activity included in Constitutional protection". The opinion further said that "the right of exit is a personal right included within the word 'liberty' as used in the Fifth Amendment." The Court concluded by saying that "we deal here with a *Constitutional right of the citizen*" (emphasis supplied).

This is a clear pronouncement that every citizen has the absolute right under the Constitution to travel. The question involved in the present proposal is not whether a non-discriminatory tax can be imposed in connection with travel under some circumstances as an excise tax; the tax here proposed is admittedly, and indeed is expressly asserted to be, for the avowed purpose of preventing large numbers of middle-class and moderate income Americans from exercising what the Supreme Court has declared to be a constitutional right.

An earlier Supreme Court case, dealing with a tax on another right guaranteed by the Constitution, the tax being for the deliberate purpose of limiting or of burdening the exercises of that right, is *Grosjean vs. American Press Co.*, 297 U.S. 233, 56 S.Ct. 444, 80 L.Ed. 660. This case involved the Constitutional right guaranteed by the First Amendment of freedom of the press. The tax was at the rate of two percent (2%) on the advertising revenue of newspapers, and, like the tax here proposed, was directly aimed at the exercise of that right. The unanimous Court, which included Justices Brandeis and Cardozo, both well known "liberal" members of the Court, said, *inter alia*:—

"If (the tax) were increased to a high degree, as it could be if valid (citing cases), it might well result in destroying both advertising and circulation."

The court also said:—

"The tax here involved is bad, not because it takes money from the pockets of the appellees. If that were all, a wholly different question would be presented. It is bad because in the light of its history, and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circula-