

INTEREST EQUALIZATION TAX ACT

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AUGUST 15, 1964.—Ordered to be printed
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Mr. MILLS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 8000]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8000) to amend the Internal Revenue Code of 1954 to impose a tax on acquisitions of certain foreign securities in order to equalize costs of longer-term financing in the United States and in markets abroad, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows: That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 105, 106, 107, 108, 109, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, and 130, and agree to the same.

Amendment numbered 91:

That the House recede from its disagreement to the amendment of the Senate numbered 91, and agree to the same with an amendment as follows:

On page 30 of the Senate engrossed amendments; in the last line, strike out "section.—" and insert *section—*; and the Senate agree to the same.

Amendment numbered 104:

That the House recede from its disagreement to the amendment of the Senate numbered 104, and agree to the same with an amendment as follows:

On page 42, line 10, of the Senate engrossed amendments, strike out "subparagraphs" and insert *subparagraph*; and the Senate agree to the same.

Amendment numbered 110:

That the House recede from its disagreement to the amendment of the Senate numbered 110, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

“Subchapter B—Acquisitions by Commercial Banks

“Sec. 4931. Commercial bank loans.

“SEC. 4931. COMMERCIAL BANK LOANS.

“(a) STANDBY AUTHORITY.—The provisions of this section shall apply only if the President of the United States—

“(1) determines that the acquisition of debt obligations of foreign obligors by commercial banks in making loans in the ordinary course of the commercial banking business has materially impaired the effectiveness of the tax imposed by section 4911, because such acquisitions have, directly or indirectly, replaced acquisitions by United States persons, other than commercial banks, of debt obligations of foreign obligors which are subject to the tax imposed by such section, and

“(2) specifies by Executive order that the provisions of this section shall apply to acquisitions by commercial banks of debt obligations of foreign obligors, to the extent specified in such order.

Such Executive order shall be effective, to the extent specified therein, with respect to acquisitions made during the period beginning on the day after the date on which the order is issued and ending on the date set forth in section 4911(d). Such Executive order may be modified from time to time (by Executive order), except that no such modification shall (A) have the effect of excluding from the application of subsection (b) or (c) a significant class of acquisitions to which such subsection applied under such Executive order or any modification thereof, or (B) subject any acquisition made on or before the date of issuance of such modification to the application of subsection (b) or (c).

“(b) DEBT OBLIGATIONS WITH MATURITY OF 3 YEARS OR MORE, ETC.—During the period in which an Executive order issued under subsection (a) is effective, and to the extent specified in such order (and any modifications thereof), sections 4914(b)(2)(A), 4914(j)(1)(A)(ii), and 4915(c)(2)(A) shall not apply.

“(c) DEBT OBLIGATIONS WITH MATURITY FROM 1 TO 3 YEARS.—During the period in which an Executive order issued under subsection (a) is effective, and to the extent specified in such order (and any modifications thereof), there is hereby imposed, on each acquisition by a United States person (as defined in section 4920(a)(4)) which is a commercial bank of a debt obligation of a foreign obligor (if such obligation has a period remaining to maturity of 1 year or more and less than 3 years), a tax equal to a percentage of the actual value of the debt obligation measured

by the period remaining to its maturity and determined in accordance with the following table:

"If the period remaining to maturity is:	The tax, as a percentage of actual value, is:
At least 1 year, but less than 1¼ years.....	1.05 percent
At least 1¼ years, but less than 1½ years.....	1.30 percent
At least 1½ years, but less than 1¾ years.....	1.50 percent
At least 1¾ years, but less than 2¼ years.....	1.85 percent
At least 2¼ years, but less than 2¾ years.....	2.30 percent
At least 2¾ years, but less than 3 years.....	2.75 percent

For purposes of this title, the tax imposed under this subsection shall be treated as imposed under section 4911, except that, for such purposes, the provisions of section 4918 shall not apply.

"(d) EXCLUSIONS.—

"(1) EXPORT LOANS.—The provisions of subsection (b), and the tax imposed under subsection (c), shall not apply with respect to the acquisition by a commercial bank of a debt obligation arising out of the sale of personal property or services (or both) if—

"(A) not less than 85 percent of the amount of the loan is attributable to the sale of property manufactured, produced, grown, extracted, created, or developed in the United States, or to the performance of services by United States persons, or to both, and

"(B) the extension of credit and the acquisition of the debt obligation related thereto are reasonably necessary to accomplish the sale of property or services out of which the debt obligation arises, and the terms of the debt obligation are not unreasonable in light of credit practices in the business in which the United States person selling such property or services is engaged.

"(2) FOREIGN CURRENCY LOANS BY FOREIGN BRANCHES.—The provisions of subsection (b), and the tax imposed under subsection (c), shall not apply to the acquisition by a commercial bank of a debt obligation of a foreign obligor payable in the currency of a foreign country if, under regulations prescribed by the Secretary or his delegate—

"(A) such bank establishes and maintains, for each of its branches located outside the United States, a fund of assets with respect to deposits payable in foreign currency to customers (other than banks) of such branch, and

"(B) such debt obligation is designated, to the extent permitted by this paragraph, as part of a fund of assets described in subparagraph (A) (but only after debt obligations of foreign obligors payable in foreign currency having a period remaining to maturity of less than one year held by such bank have been designated as part of such a fund).

A debt obligation may be designated as part of a fund of assets described in subparagraph (A) only to the extent that, immediately after such designation, the adjusted basis of all the assets held in such fund does not exceed 110 percent of the deposits payable in foreign currency to customers (other than banks) of the branch with respect to which such fund is maintained.

“(3) *PREEXISTING COMMITMENTS.*—The provisions of subsection (b), and the tax imposed under subsection (c), shall not apply to the acquisition by a commercial bank of a debt obligation of a foreign obligor—

“(A) made pursuant to an obligation to acquire which on August 4, 1964—

“(i) was unconditional, or

“(ii) was subject only to conditions contained in a formal contract under which partial performance had occurred; or

“(B) as to which on or before August 4, 1964, the acquiring commercial bank (or, in a case where 2 or more commercial banks are making acquisitions as part of a single transaction, a majority in interest of such banks) had taken every action to signify approval of the acquisition under the procedures ordinarily employed by such bank (or banks) in similar transactions and had sent or deposited for delivery to the foreign person from whom the acquisition was made written evidence of such approval in the form of a document setting forth, or referring to a document sent by the foreign person from whom the acquisition was made which set forth, the principal terms of such acquisition.

“(e) *REGULATIONS.*—The Secretary or his delegate shall prescribe such regulations (not inconsistent with the provisions of this section or of an Executive order issued under subsection (a)) as may be necessary to carry out the provisions of this section.”

And the Senate agree to the same.

W. D. MILLS,
CECIL R. KING,
HALE BOGGS,

Managers on the Part of the House.

HARRY F. BYRD,
RUSSELL B. LONG,
GEO. A. SMATHERS,
JOHN J. WILLIAMS,
FRANK CARLSON,

Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8000) to amend the Internal Revenue Code of 1954 to impose a tax on acquisitions of certain foreign securities in order to equalize costs of longer-term financing in the United States and in markets abroad, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The following Senate amendments made technical, clerical, clarifying, or conforming changes: 1, 2, 3, 4, 9, 10, 16, 17, 20, 21, 22, 25, 26, 27, 28, 33, 35, 38, 39, 40, 44, 45, 48, 49, 50, 55, 56, 57, 59, 60, 61, 63, 67, 69, 72, 73, 75, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 99, 100, 101, 108, 109, 113, 115, 116, 118, 119, 123, 124, 125, 126, 128, and 130. With respect to these amendments the House recedes. The remaining Senate amendments are discussed below; except as otherwise indicated, the discussion of each amendment is set forth under the heading of the section in the new chapter 41 of the Internal Revenue Code of 1954 (added by sec. 2(a) of the bill) to which it relates.

SECTION 4912. ACQUISITIONS

Amendment No. 5: In the House bill, section 4912(b)(1) exempted from the new interest equalization tax contributions made by an employee to a foreign pension or profit-sharing trust established by his employer, where such employee performs personal services for the employer on a full-time basis in a foreign country (and is not an owner-employee). The Senate amendment added language also exempting from the tax contributions made by an employer to such a trust established by him for the exclusive benefit of employees (not owner-employees) who perform personal services for him on a full-time basis in a foreign country. The House recedes.

Amendment No. 6: In the House bill, section 4912(b)(2) provided that certain transfers of money or other property to a foreign corporation or foreign partnership are deemed to be acquisitions of stock of a foreign corporation—taxable as such unless otherwise excluded—equal in amount to the actual value of the money or property transferred. The Senate amendment added a new subparagraph providing that if a domestic corporation or partnership transfers money or other property to (or applies money or other property for the benefit of) a branch office as to which an election to be treated as a foreign corporation or partnership (as described in the new sec. 4920(a)(5)(E), discussed below under amendments Nos. 103 and 104) is in effect, or if funds are borrowed by such branch office from a U.S. bank (other than a bank branch located outside the United States and lending such funds in the ordinary course of its business), the domestic corporation or partnership is deemed to have acquired stock of a foreign

corporation or partnership equal in amount to the actual value of the money or property transferred or applied, or the funds borrowed. The House recedes.

Amendments Nos. 7 and 8: In the House bill, section 4912(b)(4) provided that an acquisition of stock or debt obligations of a foreign issuer or obligor in a reorganization exchange to which section 354, 355, or 356 of the code applies (or would apply but for sec. 367) is deemed to be an acquisition from the foreign issuer or obligor in exchange for its stock or debt obligations (and thus, pursuant to section 4914(a)(4), not treated as an acquisition for purposes of the tax or treated as subject to the limitations contained in section 4913(a)). The Senate amendments added a provision (1) extending the coverage of section 4912(b)(4) to an acquisition which is prevented from otherwise qualifying as such a reorganization exchange because the U.S. person receives money or other property (in addition to voting stock) in the transaction, and (2) treating any transaction occurring before the date of enactment of the bill as having occurred on such date so that it may qualify as an exchange under section 354 or 356 pursuant to a reorganization under section 368(a)(1)(B), as amended by the Revenue Act of 1964. The House recedes.

SECTION 4913. LIMITATION ON TAX ON CERTAIN ACQUISITIONS

Amendment No. 11: In the House bill, section 4913(a)(3)(A) limited the tax, in cases where stock is acquired pursuant to the exercise of a right to convert a debt obligation, to the amount of tax which would have applied if the debt obligation had been treated as stock at the time of its acquisition reduced by any tax actually paid by the U.S. person exercising the right (or a decedent from whom he acquired the right) when he acquired the debt obligation. The Senate amendment permitted a similar reduction in cases where the acquisition of the debt obligation was nontaxable, as for example where the acquisition was from another U.S. person, equal to the amount of tax which would have been imposed if the acquisition had been subject to tax. The House recedes.

Amendments Nos. 12, 13, 14, and 15: In the House bill, section 4913(a)(3)(B) limited the tax, in cases where stock or a debt obligation of a foreign issuer or obligor is acquired by a shareholder pursuant to the exercise of an option or similar subscription right, to the exercise price specified in the subscription offer (rather than the difference between the market value of the securities at the time of exercise and the value of the right exercised) if the offering by its terms expires within 90 days from the date the rights involved are distributed. The Senate amendments made this limitation available to subsequent purchasers of the rights involved as well as to the shareholder himself, and also extended the limitation to any case in which such rights are in fact exercised within 90 days from the date the rights are distributed whether or not any termination date is specified in the offering. The House recedes.

Amendment No. 18: This amendment added to section 4913 a new subsection (c) to prevent the imposition of two taxes in certain transactions involving the acquisition by a U.S. person of stock or debt obligations of a domestic corporation or partnership which was formed or availed of by a foreign issuer or obligor to obtain funds in the United States. In such cases the acquisition is taxable (as though it were

from a foreign issuer or obligor) under section 4912(b)(3), and the domestic corporation or partnership may also be subject to tax if it transfers the funds received to the foreign issuer or obligor in return for stock or debt obligations. The Senate amendment in effect limits the tax on the two acquisitions to the larger of the amounts of tax which would otherwise be due. The House recedes.

SECTION 4914. EXCLUSION FOR CERTAIN ACQUISITIONS

Amendment No. 19: In the House bill, section 4914(a) enumerated several types of transactions which are not to be considered acquisitions of stock or debt obligations (and which are therefore not subject to tax). The Senate amendment added to this list of excluded transactions (in a new par. (5)) corporate distributions of stock or debt obligations to a shareholder, in complete or partial liquidation, in cases where the distributing corporation owned the securities involved on July 18, 1963, to the extent that the shareholder acquired his stock ownership in such corporation in a transaction not excluded from tax under section 4914(b), 4915, 4916, or 4917. The House recedes.

Amendment No. 23: In the House bill, section 4914(b) enumerated several types of acquisitions which are not subject to tax. The Senate amendment added to this list of excluded acquisitions (in a new par. (4)) the acquisition of stock or debt obligations by a U.S. person doing business in a foreign country, if and to the extent that the acquisition is made (in conformity with such country's laws) as a substitute for the payment of tax to such country. The House recedes.

Amendment No. 24: This amendment added to the list of excluded acquisitions in section 4914(b) (in a new paragraph (5)) the acquisition of stock in a foreign cooperative housing corporation. The House recedes.

Amendment No. 29: This amendment added to the list of excluded acquisitions in section 4914(b) (in a new par. (10)) the acquisition of debt obligations in connection with the sale or liquidation of a wholly owned foreign corporation, to the extent provided in the new section 4914(g) (discussed below, under amendment No. 52). The House recedes.

Amendment No. 30: This amendment added to the list of excluded acquisitions in section 4914(b) (in a new par. (11)) the acquisition of debt obligations secured by real property located in the United States and arising out of the purchase of such property from U.S. persons, to the extent provided in the new section 4914(h) (discussed below, under amendment No. 53). The House recedes.

Amendment No. 31: This amendment added to the list of excluded acquisitions in section 4914(b) (in a new par. (12)) the acquisition by a U.S. person residing in a foreign country of stock of a foreign issuer which invests exclusively in the United States, to the extent provided in the new section 4914(i) (discussed below, under amendment No. 54). The House recedes.

Amendment No. 32: In the House bill, section 4914(c)(1) exempted from tax the acquisition from a foreign obligor of a debt obligation arising out of the sale of tangible personal property or services (or both) to such obligor by a U.S. person if payment of the debt obligation is guaranteed or insured (in whole or in part) by an agency or wholly

owned instrumentality of the United States, such as the Export-Import Bank. The Senate amendment extended the exemption to any related debt obligation arising out of such a sale. The House recedes.

Amendments Nos. 34 and 36: In the House bill, section 4914(c)(2) exempted from tax the acquisition by a U.S. person of stock or a debt obligation arising out of the sale of tangible personal property or services (or both) to the foreign issuer or obligor if at least 30 percent of the purchase price is attributable to property produced in the United States, and services performed, by that particular person (and affiliated companies) and at least 50 percent of such price is attributable to property produced in the United States, and services performed, by U.S. persons generally. The Senate amendments also provided an exemption from tax, in situations of this kind, where at least 60 percent of the actual value of the stock or debt obligation acquired is attributable to property produced in the United States, and services performed, by the person making the acquisition (and affiliated companies) and 100 percent of such value is attributable to property produced in the United States, and services performed, by U.S. persons generally. The House recedes.

Amendment No. 37: This amendment added to section 4914(c) a new paragraph (3); exempting from tax the acquisition by a U.S. person from a foreign issuer or obligor of its stock or debt obligations in connection with the sale or license to such issuer or obligor of an interest in intangible personal property (such as patents, inventions, models, designs, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, etc.), with or without the performance of related services by such person or by affiliated companies, if at least 85 percent of the purchase price or license fee is attributable to property produced, created, or developed in the United States (and to the performance of any such related services) by such U.S. person or affiliated companies. The House recedes.

Amendments Nos. 41, 42, and 43: In the House bill, section 4914(c)(4) (redesignated as section 4914(c)(5) by amendment No. 39) exempted from tax the acquisition by a U.S. person of a foreign debt obligation received (as all or part of the purchase price) under a contract in which the foreign obligor agrees to purchase over at least a 3-year period ores or minerals (or derivatives thereof) extracted outside the United States by such person, by an affiliated company, or by a corporation at least 10 percent of the voting power of which is owned by such person if at least 50 percent of such voting power is owned by U.S. persons each of whom owns at least 10 percent. It also exempted from tax the acquisition of a debt obligation where the proceeds of the loan involved are to be used by the foreign obligor to install, maintain, or improve storage and other facilities relating to ores or minerals extracted outside the United States by such a person, affiliated company, or 10-percent owned corporation.

The Senate amendments extended the exemption to any case where the ores or minerals involved are extracted by the U.S. person or an affiliated company, or by a corporation at least 10 percent of the voting power of which is owned by such person, such affiliated companies, or domestic corporations owning at least 50 percent of the voting stock of the U.S. person; the requirement that U.S. persons own 50 percent of the extracting company was eliminated. These amendments also extended the exemption to cases where the ores or

minerals involved were obtained under a contract entered into on or before July 18, 1963, regardless of whether such U.S. person, affiliated companies, or domestic corporations performed the actual extraction, and to cases where similar ores and minerals were obtained in exchange for ores or minerals so extracted or obtained. Finally, the provision exempting debt obligations arising out of loans to install, maintain, or improve storage and other facilities outside the United States was modified to reflect the changes discussed above, and was extended to cases where the installation, maintenance, or improvement involved is carried out by a person controlled by or controlling the obligor.

The House recedes.

Amendments Nos. 46, 47, and 51: In the House bill, section 4914(e) exempted from tax certain acquisitions by a U.S. insurance company of stock or debt obligations of a foreign issuer or obligor where such company (1) establishes a fund or funds of assets with respect to foreign risks insured by such company under contracts the proceeds of which are payable in foreign currency, and (2) designates such stock or debt obligations (within a limit of 110 percent of the applicable allowable reserve) as part of such fund or funds. Various provisions were included to govern the method for making these designations, the conditions and limitations applicable to the selection of the particular stock and debt obligations to be designated, the manner in which the assets involved are to be valued, and other matters bearing upon the computation and allowance of the exemption.

The Senate amendments (in addition to rearranging much of the material in sec. 4914(e)) made several changes in the latter provisions:

(1) A new method was provided for the initial designation of stock and debt obligations as part of a fund of assets, permitting certain foreign short-term debt obligations to be included and prescribing an order of priority to be followed in the designation. The date as of which such designation is to be made was changed from December 10, 1963, to July 18, 1963.

(2) The method of valuing designated assets was changed so that the value at which stock or a debt obligation will be taken into account as a fund asset is its adjusted basis (within the meaning of sec. 1011 of the code) rather than its actual value.

(3) The provisions relating to designations to maintain a fund of assets on a current basis were changed to permit the designation of stock or debt obligations acquired after July 18, 1963, rather than only those acquired after December 10, 1963.

(4) A new provision was added to require, after the end-of-year permissive designation of additional assets, the designation (up to the limit of 110 percent of the applicable allowable reserve) of stock and debt obligations acquired during the year but excluded from the tax by reason of an Executive order issued under section 4917.

(5) A new provision was added to make it clear that a designation is ineffective, and the acquisition of the stock or debt obligations involved is accordingly not exempt from tax under section 4914(e), to the extent that as a result of such designation the fund of assets would exceed the 110-percent limit.

(6) The provisions relating to determination of an allowable reserve for any calendar year were changed so that such deter-

mination (for purposes other than the initial designation) is to be made only as of the close of such year; the amount of the reserve for any year is thus made independent of the amount determined with respect to any earlier year.

The House recedes.

Amendment No. 52: This amendment added to section 4914 a new subsection (g), exempting from tax the acquisition by a U.S. person of a debt obligation of a foreign obligor arising out of the sale or liquidation of a wholly owned foreign subsidiary. This exemption would apply to acquisitions made in connection with the sale by such person (or by one or more affiliated companies) of all of the outstanding stock (except for qualifying shares) of a foreign corporation, or in connection with the liquidation by such person (or by one or more affiliated companies) of a foreign corporation all of whose outstanding stock (except qualifying shares) is owned by such person (or affiliated companies); but in the latter case the exemption would be available only if the debt obligation involved had been received by the foreign corporation as part or all of the purchase price in a sale of substantially all of its assets. The House recedes.

Amendment No. 53: This amendment added to section 4914 a new subsection (h), exempting from tax the acquisition by a U.S. person of a debt obligation secured by real property located in the United States, but only to the extent that such debt obligation is part of the purchase price of such property (and related personal property) or arises out of a loan (made by the U.S. person to the foreign obligor) the proceeds of which are concurrently used as part of such purchase price. The owner of the property would have to be a U.S. person, and at least 25 percent of the purchase price would have to be paid in U.S. currency by the foreign obligor to the seller from funds which have not been obtained from U.S. persons for the purpose of purchasing such property. The House recedes.

Amendment No. 54: This amendment added to section 4914 a new subsection (i), exempting from tax the acquisition by a U.S. person who is a bona fide resident of a foreign country, or who is regularly performing personal services on a full-time basis in a foreign country, of stock of a foreign issuer investing exclusively in United States securities; but this exemption would be available only with respect to the first \$5,000 of the stock of such foreign issuers acquired by the U.S. person in any calendar year, and it would not apply if the foreign issuer is 25 percent or more owned by U.S. persons. A U.S. person who obtains this exemption with respect to any stock will not be considered to be a U.S. person with respect to such stock, however, if he sells or otherwise disposes of it after July 30, 1964. The House recedes.

Amendment No. 58: In the House bill, section 4914(g) provided that a person may lose his entitlement to certain of the exemptions under section 4914 if he subsequently transfers the stock or debt obligations involved under specified circumstances. The Senate amendment added to this section (which was redesignated 4914(j) by amendment No. 55) new language permitting a U.S. person acquiring a foreign debt obligation in connection with certain export transactions to transfer it to any other U.S. person without incurring tax liability, if the original extension of credit and the acquisition of the debt obligation were reasonably necessary to accomplish the sale of the property or services involved and the terms of the debt obliga-

tion were not unreasonable in the light of the credit practices in the business in which such person was engaged. The House recesses.

SECTION 4915. EXCLUSION FOR DIRECT INVESTMENTS

Amendment No. 62: In the House bill, section 4915(a)(1) provided that an acquisition by a U.S. person of stock or debt obligations is not subject to tax if immediately after the acquisition such person (or one or more affiliated companies) owns (directly or indirectly) 10 percent or more of the total combined voting power of all classes of stock of the foreign corporation, or if such person owns (directly or indirectly) 10 percent or more of the profits interest of the foreign partnership. The Senate amendment extended this direct investment exclusion to the acquisition by a U.S. person of a debt obligation from such a foreign corporation if the corporation acquired such obligation in the ordinary course of its trade or business as a result of the sale or rental of products manufactured or assembled by it or the performance of services by it. The House recesses.

Amendments Nos. 64 and 65: In the House bill, section 4915(a) provided that the tax paid on the acquisition of stock of a foreign corporation or foreign partnership by a U.S. person will constitute an overpayment if such person continuously holds such stock from the time of its acquisition to the last day of the calendar year in which the acquisition was made and as of such last day owns 10 percent or more of the total combined voting power of all classes of stock of the corporation or 10 percent or more of the profits interest of the partnership.

The Senate amendments changed the holding period requirement to provide that a U.S. person may qualify for credit or refund with respect to an acquisition of stock or a debt obligation of a foreign corporation or foreign partnership (or a debt obligation referred to in the amended par. (1) of sec. 4915(a)) if such person meets the 10 percent or more ownership requirement of paragraph (1) with respect to such foreign corporation or foreign partnership at any time within 12 months from the date of acquisition of such stock or debt obligation and holds the stock or debt obligation continuously from the date of such acquisition to the last day of the calendar year in which such ownership requirement is first met.

The House recesses.

Amendment No. 66: In the House bill, section 4915(c)(1) provided that the provisions of subsections (a) and (b) of section 4915 are inapplicable where the foreign corporation or foreign partnership is formed or availed of by the U.S. person for the principal purpose of acquiring, through such corporation or partnership, an interest in stock or debt obligations (of one or more other foreign issuers or obligors) the direct acquisition of which by the U.S. person would be subject to the tax imposed by section 4911. Paragraph (2) of section 4915(c) provided that, for purposes of section 4915(c), the acquisition by a U.S. person of stock or debt obligations of a foreign corporation or foreign partnership which acquires stock or debt obligations of foreign issuers or obligors in making loans in the ordinary course of its business as a commercial bank shall not, by reason of such acquisitions, be considered an acquisition by the U.S. person of an interest in stock or debt obligations of foreign issuers or obligors.

This amendment added to paragraph (2) of section 4915(c) a provision that any foreign corporation or foreign partnership which is

regularly engaged in the business of accepting deposits from customers and receiving other borrowed funds in foreign currencies and making loans in such currencies shall be treated as a commercial bank for purposes of paragraph (2)(A).

The House recesses.

SECTION 4916. EXCLUSION FOR INVESTMENTS IN LESS DEVELOPED COUNTRIES

Amendment No. 68: In the House bill, paragraph (3) of section 4916(a) provided an exclusion from tax with respect to the acquisition by a U.S. person of a debt obligation issued by an individual or partnership resident in a less developed country in return for property which is used, consumed, or disposed of wholly within one or more less developed countries. Under paragraph (2) of section 4916(d), this exclusion terminates and liability for tax is incurred by the acquiring U.S. person as of the time the property exchanged for the foreign debt obligation is first used, consumed, or disposed of other than within one or more less developed countries. The Senate amendment added language to the foregoing paragraphs to make clear that the exclusion is available where money (as well as other property) is exchanged for the foreign debt obligation. The House recesses.

Amendment No. 70: This amendment added a new paragraph (4) to section 4916(a). Paragraph (4) grants an exclusion to a U.S. person acquiring the stock or debt obligations of a foreign issuer or obligor where such acquisition is required as a reinvestment within a less developed country by the terms of a contract with such country, or a political subdivision, agency, or instrumentality thereof (including any corporation or other business entity which is controlled by such government or a subdivision or agency thereof through ownership of more than 50 percent of its voting stock, or, in the case of a non-stock entity, through the authority to elect or appoint a majority of its directors or equivalent body). The contract must provide for the sale of (or indemnification for) property previously held within such country by the U.S. person or its controlled foreign corporation (as defined in sec. 957) more than 50 percent of the total combined voting power of all classes of stock entitled to vote of which is owned (within the meaning of sec. 958) by the U.S. person. This provision will apply only if the contract was entered into because the government of the less developed country or political subdivision, or the agency or instrumentality, (1) has nationalized or has expropriated or seized, or has threatened to nationalize or to expropriate or seize, a substantial portion of the property owned within such less developed country or such political subdivision by the U.S. person or the controlled foreign corporation, or (2) has taken action which has the effect of nationalizing or of expropriating or seizing, or of threatening to nationalize or to expropriate or seize, a substantial portion of the property so owned. The House recesses.

Amendment No. 71: This amendment modified section 4916(b), which defines the term "less developed country" for purposes of the exemption from tax under section 4916, to authorize the President to designate, by Executive order, a possession of the United States as a less developed country. It would thus permit a corporation organized outside the United States to include assets located in a

possession of the United States, such as Puerto Rico, and income derived therefrom, as less developed country assets and income for purposes of section 4916(c). The House recesses.

Amendments Nos. 74 and 76: These amendments to section 4916(c) revised and extended the asset and income criteria for determining whether a foreign corporation qualifies as a less developed country corporation (the acquisition of whose stock or debt obligations is excluded from tax). Substantive changes were as follows:

1. Tangible property located in the United States, stock of domestic corporations, obligations of a U.S. person (other than deposits in the United States with persons carrying on the banking business), and any right to the use in the United States of a patent or copyright, an invention, model, or design (whether or not patented), a secret formula or process, and any other similar property right, regardless of when acquired, and income derived therefrom, are to be excluded completely in making the 80-percent gross income and assets tests of both operating and holding companies.

2. Debt obligations of less developed country corporations are to be treated as qualifying assets for both operating and holding companies even though, at the time of their acquisition, they have a period remaining to maturity of less than 1 year.

3. In the case of holding companies—

(a) money, obligations of the United States, and deposits in the United States with persons carrying on the banking business are treated as assets which may qualify the corporation as a less developed country corporation;

(b) income from deposits in the United States with persons carrying on the banking business constitute qualifying income;

(c) deposits outside the United States (other than deposits in a less developed country) with persons carrying on the banking business and income from such deposits are excluded from the gross income and asset computations;

(d) debt obligations of partnerships and individuals resident in less developed countries constitute qualifying assets; and

(e) if such a corporation does not receive any gross income during an annual accounting period, the 80-percent income test is inapplicable.

The House recesses.

SECTION 4917. EXCLUSION FOR ORIGINAL OR NEW ISSUES WHERE REQUIRED FOR INTERNATIONAL MONETARY STABILITY

Amendment No. 90: In the House bill, section 4917(b) provided that an Executive order described in section 4917(a) may be applicable to all original or new issues, or only to an aggregate amount or classification thereof, as stated in the order. If the order is applicable to a limited aggregate amount of such issues, it will apply to those acquisitions as to which notice of acquisition is first filed, but any such acquisition must be made within 90 days after filing of such notice. The Senate amendment provided that a period of time longer than 90 days may be specified in the order. The House recesses.

Amendment No. 91: In the House bill, section 4917(c) provided that a debt obligation is treated as part of an original or new issue (for purposes of sec. 4917) only if acquired not later than 60 days after the date on which interest begins to accrue on such obligation. The Senate amendment substituted a 90-day period for the 60-day period. It also amended section 4917(c) to provide that a debt obligation secured by a lien on improvements on real property under construction or to be constructed at the time the obligation is issued (or if a series of obligations is involved, when the first is issued) will be treated as part of an original or new issue if two conditions are satisfied. First, the obligation must be acquired within 90 days of the date on which interest begins to accrue on the total amount of the obligation (or if a series of obligations is involved, on the last issued) and, second, the acquiring person must become committed to such acquisition not later than 90 days after the date interest first begins to accrue on any part of the obligation (or if a series of obligations is involved, on the first issued).

The House recedes with a clerical amendment.

SECTION 4918. EXEMPTION FOR PRIOR AMERICAN OWNERSHIP

Amendments Nos. 92 and 93: In the House bill, section 4918(a) provided an exemption from the tax imposed by section 4911 with respect to foreign stock or debt obligations acquired from a U.S. person if such person was a U.S. person throughout the period of his ownership or continuously since July 18, 1963. The acquiring person is permitted to establish such prior American ownership by any clear and convincing evidence. The Senate amendments changed section 4918(a) by deleting the reference to clear and convincing evidence and by prescribing a more specific procedure (set forth in new subsec. (f) of sec. 4918; see discussion below of amendment No. 95) for establishing prior American ownership. Section 4918(a), as amended, also provided that an exemption based on prior American ownership only applies if the U.S. person from whom a foreign stock or debt obligation is acquired was eligible to execute a certificate of American ownership. The House recedes.

Amendment No. 94: In the House bill, section 4918(c) provided that a written confirmation received from a member or member organization of a national securities exchange registered with the Securities and Exchange Commission (and having the requisite rules) stating that the acquisition was made in the regular market on such exchange serves as conclusive proof of prior American ownership for purposes of section 4918(a).

Under the Senate amendment, a written confirmation will serve as conclusive proof of prior American ownership if the confirmation does not contain a statement that such acquisition was made subject to a special contract. The House recedes.

Amendment No. 95: This amendment added to section 4918 a new subsection (f), providing that for purposes of section 4918(a) (general rule for exemption for prior American ownership) if a person establishes with respect to an acquisition that there is reasonable cause for his inability to establish prior American ownership under subsection (b), (c), or (d) of section 4918, he may establish prior American ownership by other evidence that the person from whom the acquisition was made was a U.S. person eligible to execute a certificate of

American ownership with respect to the acquisition. The House recesses.

SECTION 4919. SALES BY UNDERWRITERS AND DEALERS TO FOREIGN PERSONS

Amendment No. 96: This amendment modified section 4919(a) to permit an underwriter to obtain a refund of tax with respect to stock or debt obligations sold to foreigners in connection with a private placement or a public offering. Under the amendment, the provisions which in the House bill applied only to public offerings would also apply to private placements. The amended section 4919(a) permits a dealer to obtain a refund of tax not only if he sells a debt obligation to a foreigner within 90 days of purchase, but also if he sells it within 90 days of the purchase to another dealer who resells it to a foreigner on the day of purchase by the second dealer or on the following business day. Finally, this amendment permits a dealer to in effect purchase stock from a foreigner tax-free if he sells it to a foreigner on the day of purchase or on either of the two succeeding business days. The House recesses.

Amendment No. 97: This amendment modified section 4919(b) (which would still contain the same proof of sale to foreigner requirements which were contained in the House bill with respect to refunds of tax in cases involving sales in connection with an underwriting of foreign securities) to provide rules by which dealers may prove sales of stock or debt obligations to foreign persons in the special market of a registered national securities exchange and may prove sales of debt obligations to foreign persons in over-the-counter transactions. The House recesses.

Amendment No. 98: Under the House bill, a person had to be a member of the National Association of Securities Dealers to come within the definition of the term "dealer" contained in section 4919(c)(2). This amendment changed the definition so that the person may be a member of any national securities association registered with the Securities and Exchange Commission. The House recesses.

SECTION 4920. DEFINITIONS AND SPECIAL RULES

Amendments Nos. 103 and 104: These amendments changed the definition of domestic corporation and domestic partnership contained in section 4920(a)(5) to permit a domestic corporation or partnership which is a dealer in securities to elect, under certain circumstances to treat a foreign branch office as a foreign corporation or partnership for purposes of the tax. The House recesses.

Amendment No. 105: This amendment inserted the phrase "(including any bank deposit)" in section 4920(a)(7)(B)(iv) to make it clear that a demand bank deposit is to be treated as having a maturity of less than 3 years. The House recesses on amendment No. 103, and recesses with a clerical amendment on amendment No. 104.

Amendments Nos. 106 and 102: The last sentence of section 4920(a)(3) in the House bill provided that a class of stock of a foreign corporation will be treated as not being the stock of a foreign corporation for purposes of the tax if more than 50 percent of such class of stock was held by Americans on the last record date before July 19, 1963, and if U.S. registered securities exchanges constituted the

principal market for the stock in 1962. Amendment No. 102 struck out this last sentence, but amendment No. 106 inserted its substance as a new paragraph (8)(B) of section 4920(a). In addition, amendment No. 106 inserted a new paragraph (8)(A) which provides that a class of stock of a foreign corporation will be treated as not being the stock of a foreign corporation for purposes of the tax if Americans held more than 65 percent of such stock on the last record date before July 19, 1963, without regard to the principal market test. The House recedes.

Amendment No. 107: This amendment added to section 4920 a new subsection (b), under which a foreign underwriter may elect to be treated as a U.S. person with respect to his participation in a public offering by an underwriting group which includes one or more U.S. persons. The House recedes.

SECTION 4931. COMMERCIAL BANK LOANS

Amendment No. 110: This amendment added to chapter 41 of the code (as added by the House bill) a new subchapter B, consisting of section 4931 and providing under specified circumstances for the imposition of tax on acquisitions by commercial banks of debt obligations of foreign obligors having a maturity of 1 year or more; otherwise, such acquisitions either would not be subject to tax at all (where they involve debt obligations having maturities of less than 3 years) or would be exempted from tax under section 4914(b)(2)(A) (in other cases). Under the new section 4931, tax would be imposed upon these acquisitions if the President (1) determines that the acquisition of such obligations by commercial banks in the ordinary course of their banking business has materially impaired the effectiveness of the tax imposed by section 4911 because such acquisitions have (directly or indirectly) replaced acquisitions by U.S. persons, other than commercial banks, of debt obligations of foreign obligors which are subject to such tax, and (2) accordingly issues an Executive order making the new section applicable to such acquisitions (during the period and to the extent specified in the order). The tax rates on debt obligations having a period remaining to maturity of from 1 to 3 years would range from 1.05 percent for a debt obligation with a period of between 1 and 1¼ years to 2.75 percent for an obligation with a period of between 2¾ and 3 years. The tax imposed under section 4931(c) is treated as imposed under section 4911. The exclusions and exemptions otherwise provided under the new chapter 41 would apply, except that the exclusion for prior American ownership under section 4918 would not apply in the case of debt obligations having a maturity of from 1 to 3 years. In addition, certain export-related loans and certain foreign currency loans by foreign branches would be excluded.

The House recedes with an amendment in the nature of a substitute. Under the conference substitute (1) the tax thus provided for could not be imposed retroactively with respect to acquisitions made before such an Executive order is issued and could not be imposed with respect to acquisitions (whenever made) pursuant to preexisting commitments which were unconditional or substantially formalized no later than August 4, 1964, and (2) the Executive order (if issued) will be effective from the day following the date of its issuance to the date on which the interest equalization tax is to terminate. The Executive order may be

modified after it is issued, but not in such a way as to exempt from tax any significant class of acquisitions which had been subject to tax under the order as originally issued or as in effect under any previous modification; and in no case could any such modification apply so as to subject to tax any acquisition made on or before the date of issuance of that particular modification (or any acquisition, whenever made, which was covered on August 4, 1964, by a preexisting commitment as described above).

At the time the Committee on Ways and Means reported H.R. 8000 to the House, concern was expressed as to whether the exclusion for tax provided for loans made by commercial banks might lead to such loans being substituted for loans subject to the interest equalization tax. The report of the Committee on Ways and Means indicated an awareness that an exclusion of this type could be so abused. For that reason, the House version of the bill provided specific authority for the collection of information on the nature and trends in bank lending to foreign persons. It was indicated that this information would be used in determining whether the commercial bank exclusion should be continued. The views of the minority expressed still greater concern with this exclusion.

Since the third quarter of 1963 (the latest data available on bank credits to foreigners when the House considered this bill), both long- and short-term bank loans have increased. While much of the expansion in bank credits may well be attributable to necessary financing of exports, and be beneficial to the balance of payments, rather than a substitute for taxable obligations, nevertheless, the increase in bank credit since the third quarter of 1963 has convinced the conferees on the part of the House of the desirability of accepting, with the modifications indicated above, the Senate amendment giving the President standby authority to impose the tax with respect to commercial bank loans. The conferees understand that the President will follow closely the volume of commercial bank loans and should he become convinced that they are being used to an appreciable extent as a substitute (directly or indirectly) for obligations taxed by the bill, he will exercise the authority granted to him under this provision.

SECTION 2(c) OF THE BILL—EFFECTIVE DATE

Amendments Nos. 111 and 112: These amendments extended the exclusion (contained in sec. 2(c)(2)(B) of the House bill) for acquisitions pursuant to commitments which existed on July 18, 1963, to cases where approval of the acquisition had been sent to the person from whom the acquisition was made (rather than to the issuer or obligor as required by the House bill), and to cases where the commitment was evidenced by a draft purchase contract or other unsigned document. The House recedes.

Amendment No. 114: This amendment added a new subparagraph (C) to section 2(c)(2) of the bill, relating to preexisting commitments. Under the new subparagraph, the tax is not to apply to certain acquisitions of foreign securities pursuant to a contract entered into before July 19, 1963, with the government of a less developed country in connection with the nationalization of property owned within that country by the acquiring U.S. person (or a foreign corporation controlled by him). The House recedes.

Amendment No. 117: This amendment added a new subparagraph (E) to section 2(c)(2) of the bill. Under the new subparagraph, the tax is not to apply to an acquisition of stock in the initial capitalization of a foreign corporation which would be excluded from tax under section 4915 of the code (relating to direct investments) but for the provisions of subsection (c) thereof, if at least 75 percent in interest of the U.S. persons who acquired stock in such initial capitalization had signified on or before July 18, 1963, to the person coordinating the organization of such corporation the intention to invest a specified amount of money through the purchase of such stock, which amount was equal to or greater than the amount ultimately so invested. The House recesses.

SECTION 3 OF THE BILL—RETURNS

Amendment No. 120: This amendment provided that a U.S. person claiming an exemption on the basis of acquisition from a prior American owner (instead of submitting "clear and convincing evidence" of the exemption, as required under the House bill) must attach a statement to his quarterly interest equalization tax return setting forth a summary of the evidence establishing prior American ownership and the reasons for his inability to produce an exempting certificate or confirmation if he does not have a certificate of American ownership or a confirmation from a dealer for a transaction on a registered securities exchange or in an over-the-counter transaction. The House recesses.

Amendment No. 121: Under the House bill, paragraph (3) of the new section 6011(d) provided that members or member organizations of registered national securities exchanges or associations shall keep such records and file such information as is required by regulations prescribed by the Secretary of the Treasury or his delegate in connection with their sales as brokers and in connection with their acquisitions for their own account of stock or debt obligations as to which a certificate of American ownership, or blanket certificate of American ownership, is executed and filed under section 4918(e). Under the Senate amendment, paragraph (3) of section 6011(d) applies to acquisitions, as well as sales, effected by such member or member organizations as a broker and to acquisitions made for the accounts of such member or member organization, but only to those acquisitions or sales, as the case may be, as to which—

(1) a certificate of American ownership or a blanket certificate of American ownership is executed and filed with such member or member organization under section 4918(e), or

(2) a written confirmation is furnished to a U.S. person stating that the acquisition—

(i) in the case of a transaction on a national securities exchange, was made subject to a special contract, or

(ii) in the case of a transaction not on a national securities exchange, was from a person who had not filed a certificate of American ownership with respect to such stock or debt obligation or a blanket certificate of American ownership with respect to the account from which such stock or debt obligation was sold.

The House recesses.

SECTION 5 OF THE BILL—ORIGINAL ISSUE DISCOUNT

Amendment No. 122: This amendment added to the bill a new section 5 amending section 1232(b)(2) of the code, relating to the definition of the term "issue price" for purposes of determining original issue discount. The new section 5 provides that (in the case of privately placed issues) the price paid by the first buyer of bonds or other evidences of indebtedness will be increased by the amount of interest equalization tax (if any) paid under section 4911. The provision is inapplicable, however, to the extent that a credit, refund, or reimbursement of the tax is obtained, directly or indirectly. The House recedes.

SECTION 6 OF THE BILL—PENALTIES

Amendment No. 127: This amendment added to the new section 6681 of the code, relating to false equalization tax certificates, a new subsection (d). Under this new subsection, civil penalties are provided in cases where members of a registered securities exchange or of a national securities association willfully furnish false confirmations. The House recedes.

Amendment No. 129: This amendment changed the new section 7241 of the code to make it clear that the criminal penalties provided by that section are to apply only to violations occurring on or after the date of the enactment of this bill. The House recedes.

W. D. MILLS,
CECIL R. KING,
HALE BOGGS,
Managers on the Part of the House.

