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Title 26—Internal Revenue

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CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY (CONTINUED)

EDITORIAL NOTE: IRS published a document at 45 FR 6088, Jan. 25, 1980, deleting statutory sections from their regulations. In Chapter I cross references to the deleted material have been changed to the corresponding sections of the IRS Code of 1954 or to the appropriate regulations sections. When either such change produced a redundancy, the cross reference has been deleted. For further explanation, see 45 FR 20795, Mar. 31, 1980.

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SUBCHAPTER G—REGULATIONS UNDER TAX CONVENTIONS

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PART 509—SWITZERLAND

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AUTHORITY: 26 U.S.C. 62, 3791 and 7805.

Subpart—General Income Tax

SOURCE: Treasury Decision 6149, 20 FR 7587, Oct. 12, 1955; 25 FR 14022, Dec. 31, 1960, unless otherwise noted.

§ 509.101 Introductory.

The income tax convention between the United States and the Swiss Confederation, signed May 24, 1951, and proclaimed by the President of the United States on October 1, 1951, subject to the understanding expressed in the protocol of exchange, referred to in this part as the convention, provides as follows, effective for taxable years beginning on or after January 1, 1951:

ARTICLE I

(1) The taxes referred to in this Convention are:

(a) In the case of the United States of America: The Federal income taxes, including surtaxes and excess profits taxes.

(b) In the case of The Swiss Confederation: The federal, cantonal and communal taxes on income (total income, earned income, income from property, industrial and commercial profits, etc.).

(2) The present Convention shall also apply to any other income or profits tax of a substantially similar character imposed by either contracting State subsequently to the date of signature of the present Convention.

ARTICLE II

(1) As used in this Convention:

(a) The term ''United States'' means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(b) The term ''Switzerland'' means The Swiss Confederation.

(c) The term ''permanent establishment'' means a branch, office, factory, workshop, warehouse or other fixed place of business, but does not include the casual and temporary use of merely storage facilities, nor does it include an agency unless the agent has and habitually exercises a general authority to negotiate and conclude contracts on behalf of an enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the contracting States shall not be deemed to have a permanent establishment in the other State merely because it carries on business dealings in such other State through a commission agent, broker or custodian or other independent agent acting in the ordinary course of his business as such. The fact that an enterprise of one of the contracting States maintains in the other State a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. The fact that a corporation of one contracting State has a subsidiary corporation which is a corporation of the other State or which is engaged in trade or business in the other State shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation. The maintenance within the territory of one of the contracting States by an enterprise of the other contracting State of a warehouse for convenience of delivery and not for purposes of display shall not of itself constitute a permanent establishment within that territory even though offers of purchase have been obtained by an agent of the

enterprise in that territory and transmitted by him to the enterprise for acceptance.

(d) The term ''enterprise of one of the contracting States'' means, as the case may be, ''United States enterprise'' or ''Swiss enterprise''.

(e) The term ''United States enterprise'' means an industrial or commercial enterprise or undertaking carried on in the United States by a resident (including an individual, fiduciary and partnership) of the United States or by a United States corporation or other entity; the term ''United States corporation or other entity'' means a corporation or other entity created or organized under the law of the United States or of any State or Territory of the United States.

(f) The term ''Swiss enterprise'' means an industrial or commercial enterprise or undertaking carried on in Switzerland by an individual resident in Switzerland or by a Swiss corporation or other entity; the term ''Swiss corporation or other entity'' means a corporation or institution or foundation having juridical personality, or a partnership (association ''en nom collectif'' or ''en commandite''), or other association without juridical personality, created or organized under Swiss laws.

(g) The term ''competent authorities'' means, in the case of the United States, the Commissioner of Internal Revenue as authorized by the Secretary of the Treasury; and in the case of Switzerland, the Director of the Federal Tax Administration as authorized by the Federal Department of Finances and Customs.

(h) The term ''industrial or commercial profits'' includes manufacturing, mercantile, mining, financial and insurance profits, but does not include income in the form of dividends, interest, rents or royalties, or remuneration for personal services: Provided, however, that such excepted items of income shall, subject to the provisions of this Convention, be taxed separately or together with industrial or commercial profits in accordance with the laws of the contracting States.

(2) In the application of the provisions of the present Convention by one of the contracting States any term not otherwise defined shall, unless the context otherwise requires, have the meaning which such term has under its own tax laws.

ARTICLE III

(1)(a) A Swiss enterprise shall not be subject to taxation by the United States in respect of its industrial and commercial profits unless it is engaged in trade or business in the United States through a permanent establishment situated therein. If it is so engaged the United States may impose its tax upon the entire income of such enterprise from sources within the United States.

(b) A United States enterprise shall not be subject to taxation by Switzerland in respect of its industrial and commercial profits except as to such profits allocable to its permanent establishment situated in Switzerland.

(2) No account shall be taken in determining the tax in one of the contracting States of the mere purchase of merchandise therein by an enterprise of the other State.

(3) Where an enterprise of one of the contracting States is engaged in trade or business in the territory of the other contracting State through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(4) In the determination of the industrial or commercial profits of the permanent establishment there shall be allowed as deductions all expenses which are reasonably applicable to the permanent establishment, including executive and general administrative expenses so applicable.

(5) The competent authorities of the two contracting States may lay down rules by agreement for the apportionment of industrial and commercial profits.

ARTICLE IV

Where an enterprise of one of the contracting States, by reason of its participation in the management or the financial structure of an enterprise of the other contracting State, makes with or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with an independent enterprise, any profits which would normally have accrued to one of the enterprises, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE V

Income which an enterprise of one of the contracting States derives from the operation of ships or aircraft registered in that State shall be taxable only in the State in which such ships or aircraft are registered.

ARTICLE VI

(1) The rate of tax imposed by one of the contracting States upon dividends derived from sources within such State by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall not exceed 15 percent: Provided, however, that this paragraph shall have no application to Swiss tax in the case of dividends derived from Switzerland by a Swiss citizen (who is

not also a citizen of the United States) resident in the United States.

(2) It is agreed, however, that such rate of tax shall not exceed five percent if the shareholder is a corporation controlling, directly or indirectly, at least 95 percent of the entire voting power in the corporation paying the dividend, and if not more than 25 percent of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to five percent shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

(2) Switzerland may collect its tax without regard to paragraphs (1) and (2) of this Article but will make refund of the tax so collected in excess of the tax computed at the reduced rates provided in such paragraphs.

ARTICLE VII

(1) The rate of tax imposed by one of the contracting States on interest on bonds, securities, notes, debentures or on any other form of indebtedness (including mortgages or bonds secured by real property) derived from sources within such contracting State by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall not exceed five percent: Provided, however, that this paragraph shall have no application to Swiss tax in the case of interest derived from Switzerland by a Swiss citizen (who is not also a citizen of the United States) resident in the United States.

(2) Switzerland may collect its tax without regard to paragraph (1) of this Article but will make refund of the tax so collected in excess of the tax computed at the reduced rate provided in such paragraph.

ARTICLE VIII

Royalties and other amounts derived, as consideration for the right to use copyrights, artistic and scientific works, patents, designs, plans, secret processes and formulae, trademarks, and other like property and rights (including rentals and like payments in respect to motion picture films or for the use of industrial, commercial or scientific equipment), from sources within one of the contracting States by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall be exempt from taxation in such former State.

ARTICLE IX

(1) Income from real property (including gains derived from the sale or exchange of such property but not including interest from mortgages or bonds secured by real property) and royalties in respect of the operation of mines, quarries, or other natural resources, shall be taxable only in the contracting State in which such property, mines, quarries, or other natural resources are situated.

(2) A resident or corporation or other entity of one of the contracting States deriving any such income from such property within the other contracting State may, for any taxable year, elect to be subject to the tax of such other contracting State, on a net basis, as if such resident or corporation or entity were engaged in trade or business within such other contracting State through a permanent establishment therein during such taxable year.

ARTICLE X

(1) An individual resident of Switzerland shall be exempt from United States tax upon compensation for labor or personal services performed in the United States (including the practice of the liberal professions and rendition of services as director) if he is temporarily present in the United States for a period or periods not exceding a total of 188 days during the taxable year and either of the following conditions is met:

(a) His compensation is received for such labor or personal services performed as an employee of, or under contract with, a resident or corporation or other entity of Switzerland, or

(b) His compensation received for such labor or personal services does not exceed $10,000.

(2) The provisions of paragraph (1) of this Article shall apply mutatis mutandis, to an individual resident of the United States with respect to compensation for such labor or personal services performed in Switzerland.

(3) The provisions of this Article shall have no application to the income to which Article XI (1) relates.

(4) The provisions of paragraph (1)(a) of this Article shall not apply to the compensation, profits, emoluments or other remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

ARTICLE XI

(1)(a) Wages, salaries and similar compensation, and pensions paid by the United States or by the political subdivisions or territories thereof to an individual (other than a Swiss citizen who is not also a citizen of the United States) shall be exempt from Swiss tax.

(b) Wages, salaries and similar compensation and pensions paid by Switzerland or by any agency or instrumentality thereof or by any political subdivisions or other public authorities thereof to an individual (other than

a United States citizen who is not also a citizen of Switzerland) shall be exempt from United States tax.

(2) Private pensions and life annuities derived from within one of the contracting States and paid to individuals residing in the other contracting State shall be exempt from taxation in the former State.

(3) The term ''pensions'', as used in this Article, means periodic payments made in consideration for services rendered or by way of compensation for injuries received.

(4) The term ''life annuities'' as used in this Article, means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE XII

A professor or teacher, a resident of one of the contracting States, who temporarily visits the other contracting State for the purpose of teaching for a period not exceeding two years at a university, college, school or other educational institution in the other contracting State, shall be exempted in such other contracting State from tax on his remuneration for such teaching for such period.

ARTICLE XIII

A student or apprentice, a resident of one of the contracting States, who temporarily visits the other contracting State exclusively for the purposes of study or for acquiring business or technical experience shall not be taxable in the latter State in respect of remittances received by him from abroad for the purposes of his maintenance or studies.

ARTICLE XIV

(1) Dividends and interest paid by a corporation other than a United States domestic corporation shall be exempt from United States tax where the recipient is a nonresident alien as to the United States resident in Switzerland or a Swiss corporation, not having a permanent establishment in the United States.

(2) Dividends and interest paid by a corporation other than a Swiss corporation shall be exempt from Swiss tax where the recipient is a resident or corporation of the United States, not having a permanent establishment in Switzerland.

ARTICLE XV

(1) It is agreed that double taxation shall be avoided in the following manner:

(a) The United States in determining its taxes specified in Article I of this Convention in the case of its citizens, residents or corporations may, regardless of any other provision of this Convention, include in the basis upon which such taxes are imposed all items of income taxable under the revenue laws of the United States as if this Convention had not come into effect. The United States shall, however, subject to the provisions of section 131, Internal Revenue Code, as in effect on the date of the entry into force of this Convention, deduct from its taxes the amount of Swiss taxes specified in Article I of this Convention. It is agreed that by virtue of the provisions of subparagraph (b) of this paragraph, Switzerland satisfies the similar credit requirement set forth in section 131(a)(3), Internal Revenue Code.

(b) Switzerland, in determining its taxes specified in Article I of this Convention in the case of its residents, corporations or other entities, shall exclude from the basis upon which such taxes are imposed such items of income as are dealt with in this Convention, derived from the United States and not exempt from, and not entitled to the reduced rate of, United States tax under this Convention; but in the case of a citizen of the United States resident in Switzerland there shall be excluded all items of income derived from the United States. Switzerland, however, reserves the right to take into account in the determination of the rate of its taxes also the income excluded as provided in this paragraph.

(2) The provisions of this Article shall not be construed to deny the exemptions from United States tax or Swiss tax, as the case may be, granted by Article XI (1) of this Convention.

ARTICLE XVI

(1) The competent authorities of the contracting States shall exchange such information (being information available under the respective taxation laws of the contracting States) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the like in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

(2) Each of the contracting States may collect such taxes imposed by the other contracting State as though such taxes were the taxes of the former State as will ensure that the exemption or reduced rate of tax granted under Articles VI, VII, VIII and XI(2) of the present Convention by such other State shall not be enjoyed by persons not entitled to such benefits.

(3) In no case shall the provisions of this Article be construed so as to impose upon either of the contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either contracting State or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of the State making application.

ARTICLE XVII

(1) Where a taxpayer shows proof that the action of the tax authorities of the contracting States has resulted, or will result, in double taxation contrary to the provisions of the present Convention, he shall be entitled to present the facts to the State of which he is a citizen or a resident, or, if the taxpayer is a corporation or other entity, to the State in which it is created or organized. Should the taxpayer's claim be deemed worthy of consideration, the competent authority of such State shall undertake to come to an agreement with the competent authority of the other State with a view to equitable avoidance of the double taxation in question.

(2) Should any difficulty or doubt arise as to the interpretation or application of the present Convention, or its relationship to Conventions between one of the contracting States and any other State, the competent authorities of the contracting States may settle the question by mutual agreement.

ARTICLE XVIII

(1) The provisions of this Convention shall not be construed to deny or affect in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to such officers.

(2) The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws of one of the contracting States in the determination of the tax imposed by such State.

(3) The citizens of one of the contracting States shall not, while resident in the other contracting State, be subjected therein to other or more burdensome taxes than are the citizens of such other contracting State residing in its territory. The term ''citizens'' as used in this Article includes all legal persons, partnerships and associations created or organized under the laws in force in the respective contracting States. In this Article the word ''taxes'' means taxes of every kind or description, whether Federal, State, cantonal, municipal or communal.

ARTICLE XIX

(1) The competent authorities of the two contracting States may prescribe regulations necessary to carry into effect the present Convention within the respective States.

(2) The competent authorities of the two contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

ARTICLE XX

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Berne as soon as possible. It shall have effect for the taxable years beginning on or after the first day of January of the year in which such exchange takes place: Provided, however, that if such exchange takes place on or after October 1 of such year, Article VI (except paragraph (2) thereof) and Article VII of the Convention shall have effect only for taxable years beginning on or after the first day of January of the year immediately following the year in which such exchange takes place.

(2) The present Convention shall continue effective for a period of five years beginning with the calendar year in which the exchange of the instruments of ratification takes place and indefinitely after that period, but may be terminated by either of the contracting States at the end of the five-year period or at any time thereafter, provided that at least six months' prior notice of termination has been given and, in such event, the present Convention shall cease to be effective for the taxable years beginning on or after the first day of January next following the expiration of the six-month period.

Done at Washington, in duplicate, in the English and German languages, the two texts having equal authenticity, this 24th day of May, 1951.

For the President of the United States of America:

[SEAL]

DEAN ACHESON.

For the Swiss Federal Council:

[SEAL]

CHARLES BRUGGMANN.

PROCLAMATION BY THE PRESIDENT OF THE UNITED STATES DATED OCTOBER 1, 1951

* * * * *

And whereas the Senate of the United States of America, by their resolution of September 17, 1951, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the aforesaid convention, subject to a reservation, as follows:

''The Government of the United States of America does not accept paragraph (4) of Article X of the Convention, relating to the

profits or remuneration of public entertainers.''

And whereas the text of the aforesaid reservation was communicated by the Government of the United States of America to the Government of the Swiss Confederation and the aforesaid reservation was accepted by the Government of the Swiss Confederation;

And whereas the aforesaid convention was duly ratified by the President of the United States of America on September 20, 1951, in pursuance of the aforesaid advice and consent of the Senate and subject to the aforesaid reservation, and the aforesaid convention was duly ratified on the part of the Swiss Confederation;

And whereas the respective instruments of ratification of the aforesaid convention were duly exchanged at Bern on September 27, 1951, and a protocol of exchange of instruments of ratification, in the English and French languages, was signed at that place and on that date by the respective Plenipotentiaries of the United States of America and the Swiss Confederation, the said protocol containing a statement that it is understood by the two Governments that the convention aforesaid, upon entry into force in accordance with its provisions, is modified in accordance with the aforesaid reservation, so that, in effect, paragraph (4) of Article X of the convention is deemed to be deleted;

And whereas, so far as appertains to an exchange of instruments of ratification prior to October 1 of any year, it is provided in Article XX of the aforesaid convention that upon the exchange of instruments of ratification the convention shall have effect for the taxable years beginning or [sic] or after the first day of January of the year in which such exchange takes place;

Now, therefore, be it known that I, Harry S. Truman, President of the United States of America, do hereby proclaim and make public the aforesaid convention to the end that the said convention and each and every article and clause thereof, subject to the aforesaid reservation, may be observed and fulfilled with good faith by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

* * * * *

§ 509.102 Applicable provisions of law.

(a) *General*. The Internal Revenue Code of 1954 provides in part as follows:

SUBTITLE A—INCOME TAXES

* * * * *

SEC. 894. *Income exempt under treaty*. Income of any kind, to the extent required by any treaty obligation of the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.

* * * * *

SUBTITLE F—PROCEDURE AND ADMINISTRATION

* * * * *

SEC. 7805. *Rules and regulations*—(a) *Authorization*. Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary or his delegate shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity of regulations or rulings*. The Secretary or his delegate may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

* * * * *

(b) *Internal Revenue Code of 1939*. Any reference in §§ 509.101 to 509.122 to any provision of the Internal Revenue Code of 1954 shall, where applicable, be deemed also to refer to the corresponding provision of the Internal Revenue Code of 1939.

(c) *Effective date of regulations*. Pursuant to sections 894 and 7805 of the Internal Revenue Code of 1954, Article XIX of the convention, and other provisions of the internal revenue laws, §§ 509.101 to 509.122 are hereby prescribed effective for taxable years beginning on or after January 1, 1951. All regulations inconsistent herewith are modified accordingly.

§ 509.103 Scope of the convention.

(a) *Purposes of convention*. The primary purposes of the convention, to be accomplished on a reciprocal basis, are to avoid double taxation upon certain items of income derived from sources in one country by residents or corporations or other entities of the other country and to provide for administrative cooperation between the competent tax authorities of the two countries looking to the avoidance of double taxation and the prevention of fiscal evasion.

(b) *Exemption from United States tax.* The following items of income from sources within the United States are exempt from United States tax for taxable years beginning on or after January 1, 1951, subject to the respective articles of the convention:

(1) Industrial and commercial profits of a Swiss enterprise having no permanent establishment in the United States (Article III);

(2) Income derived by a Swiss enterprise from the operation of ships or aircraft registered in Switzerland (Article V);

(3) Patent and copyright royalties, and other like amounts, including motion picture film rentals, derived by a nonresident alien who is a resident of Switzerland, or by a Swiss corporation or other entity, if such alien, corporation, or other entity has no permanent establishment in the United States (Article VIII);

(4) Compensation, subject to certain limitations, for personal services performed in the United States by a nonresident alien individual who is a resident of Switzerland (Article X);

(5) Compensation and pensions paid by Switzerland to an alien individual, and to a citizen of Switzerland who is also a citizen of the United States, including such items as are from sources without the United States (Article XI);

(6) Private pensions and life annuities paid to a nonresident alien individual who is a resident of Switzerland (Article XI);

(7) Remuneration derived from certain teaching in the United States by a professor or teacher who is a nonresident alien residing in Switzerland (Article XII); and

(8) Dividends and interest paid by a foreign corporation to a nonresident alien who is a resident of Switzerland, or to a Swiss corporation, if such alien or corporation has no permanent establishment in the United States (Article XIV).

(c) *Students or apprentices.* Remittances received from abroad for the purpose of maintenance or studies by a student or apprentice, a nonresident alien residing in Switzerland, who is temporarily present in the United States under specified circumstances are also exempt from United States tax (Article XIII).

(d) *Reduced rates of United States tax.* Dividends and interest derived from sources within the United States by a nonresident alien who is a resident of Switzerland, or by a Swiss corporation or other entity, are subject to United States tax at reduced rates, if such alien, corporation, or other entity has no permanent establishment in the United States (Articles VI and VII).

(e) [Reserved]

(f) *United States citizens, residents, and corporations.* (1) Any citizen of Switzerland who is a resident of the United States is liable to United States tax as though the convention had not come into effect; however, such alien resident of the United States is entitled to the foreign tax credit in accordance with Article XV and is also entitled to the benefits of Article XI (1) and Article XVIII.

(2) A citizen of the United States, even though resident in Switzerland, or a domestic corporation, even though engaged in trade or business in Switzerland through a permanent establishment situated therein, is also liable to United States tax as though the convention had not come into effect but is entitled to the foreign tax credit and, to the extent, applicable, to the benefits of Article XI (1).

(g) *Other provisions applicable to Swiss residents and corporations.* Except as otherwise expressly provided by the convention, the United States tax liability of a nonresident alien who is a resident of Switzerland, or of a Swiss corporation or other entity, is determined in accordance with the provisions of the Internal Revenue Code of 1954 relating to nonresident alien individuals and foreign corporations.

[T.D. 6149, 20 FR 7587, Oct. 12, 1955; 25 FR 14022, Dec. 31, 1960, as amended by T.D. 8734, 62 FR 53497, Oct. 14, 1997]

§ 509.104 Definitions.

(a) *General.* Any term defined in the convention or §§ 509.101 to 509.122 shall have the meaning so assigned to it; any term not so defined shall, unless the context otherwise requires, have the meaning which such term has under the internal revenue laws of the United States.

(b) *Specific terms*. As used in §§ 509.101 to 509.122—

(1) *United States tax*. The term ''United States tax'' means the Federal income taxes, including surtaxes and excess profits taxes, and any other income or profits tax of a substantially similar character imposed by the United States after May 24, 1951.

(2) *Swiss tax*. The term ''Swiss tax'' means the federal, cantonal, and communal taxes on income—that is, on total income, earned income, income from property, industrial and commercial profits, etc.—and any other income or profits tax of a substantially similar character imposed by Switzerland after May 24, 1951.

(3) *United States*. The term ''United States'' means the United States of America; and, when used in a geographical sense, means the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(4) *Switzerland*. The term ''Switzerland'' means the Swiss Confederation.

(5) *Permanent establishment*—(i) *Fixed place of business*. The term ''permanent establishment'' means an office, factory, workshop, warehouse, branch, or other fixed place of business, but does not include the casual and temporary use of merely storage facilities. It implies the active conduct of a business enterprise. The mere ownership, for example, of timberlands or a warehouse in the United States by a Swiss enterprise does not mean that such enterprise, in the absence of any business activity therein, has a permanent establishment in the United States. Moreover, the maintenance within the United States by a Swiss enterprise of a warehouse for convenience of delivery, and not for purposes of display, does not of itself constitute a permanent establishment in the United States, even though offers of purchase have been obtained by an agent therein of the Swiss enterprise and transmitted by him to the Swiss enterprise for acceptance. The fact that a Swiss enterprise maintains in the United States an office or other fixed place of business used exclusively for the purchase for such enterprise of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise.

(ii) *Subsidiary corporation*. The fact that a Swiss corporation has a domestic subsidiary corporation, or a foreign subsidiary corporation which is engaged in trade or business in the United States through a permanent establishment situated therein, does not of itself constitute either subsidiary corporation the United States permanent establishment of the Swiss parent corporation.

(iii) *Agency*. A Swiss enterprise which has an agency in the United States does not thereby have a permanent establishment in the United States, unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or unless he has a stock of merchandise from which he regularly fills orders on its behalf. If the enterprise has an agent in the United States who has power to contract on its behalf, but only at fixed prices and under conditions determined by such principal, it does not thereby necessarily have a permanent establishment in the United States. The mere fact that an agent of a Swiss enterprise—assuming he has no general authority to negotiate and conclude contracts on behalf of his principal—maintains samples, or occasionally fills orders from incidental stocks of goods maintained, in the United States does not of itself mean that such enterprise has a permanent establishment in the United States. The mere fact that salesmen, employees of a Swiss enterprise, promote the sale of their employer's products in the United States or that a Swiss enterprise transacts business in the United States by means of mail order activities does not mean that such enterprise has a permanent establishment in the United States. A Swiss enterprise shall not be deemed to have a permanent establishment in the United States merely because it carries on business dealings in the United States through a commission agent, broker, custodian, or other independent agent, acting in the ordinary course of his business as such.

(6) *Enterprise*. The term ''enterprise'' means any commercial or industrial enterprise or undertaking carried on by any person, for example, by an individual partnership, or corporation. It

includes such activites as manufacturing, merchandising, mining, processing, banking, and insuring. It does not include the rendition of personal services. Hence, a nonresident alien individual who is resident of Switzerland and who performs personal services is not, merely by reason of such services, engaged in a Swiss enterprise within the meaning of the convention; consequently, his liability to United States tax is not determined under Article III of the convention, if he has not otherwise carried on a Swiss enterprise.

(7) *Swiss enterprise*. The term ''Swiss enterprise'' means an enterprise carried on in Switzerland by a nonresident alien individual who is a resident of Switzerland, or by a Swiss corporation or other entity. Thus, an enterprise carried on wholly outside Switzerland by a Swiss corporation is not a Swiss enterprise within the meaning of the convention.

(8) *Swiss corporation or other entity*. The term ''Swiss corporation or other entity'' means a corporation or institution or foundation having juridical personality, or a partnership (association ''en nom collectif'' or ''en commandite''), or other association without juridical personality, created or organized under Swiss laws.

(9) *United States enterprise*. The term ''United States enterprise'' means an enterprise carried on in the United States by a resident of the United States (including an individual, fiduciary, and partnership) or by a United States corporation or other entity.

(10) *United States corporation or other entity*. The term ''United States corporation or other entity'' means a corporation or other entity created or organized under the law of the United States or of any State or Territory of the United States.

(11) *Industrial and commercial profits*. The term ''industrial and commercial profits'' means profits arising from industrial, commercial, mercantile, manufacturing, and like activities of an enterprise, including mining, financial and insurance profits. It does not include income in the form of dividends, interests, rents, royalties, or remuneration for personal services. In determining the industrial and commercial profits from sources within the United States of a Swiss enterprise, no profits shall be deemed to arise from the mere purchase of goods or merchandise within the United States by such enterprise. Moreover, in determining such profits of the United States permanent establishment of such enterprise, there shall be allowed as deductions all expenses which are reasonably applicable to the permanent establishment, including executive and general administrative expenses so applicable. See sections 861 through 864, Internal Revenue Code of 1954, and the regulations thereunder.

(12) *Commissioner*. The term ''Commissioner'' means the Commissioner of Internal Revenue or his authorized representative.

(13) *Director of the Federal Tax Administration*. The term ''Director of the Federal Tax Administration'' means the Director of the Federal Tax Administration (Direktor der eidgenoessischen Steuerverwaltung) of Switzerland.

§ 509.105 Industrial and commercial profits.

(a) *General*. (1) Article III of the convention adopts the principle that an enterprise of one of the contracting States shall not be taxable by the other contracting State upon its industrial and commercial profits unless it is engaged in trade or business in the latter State through a permanent establishment situated therein. Accordingly, a Swiss enterprise is subject to United States tax upon its industrial and commercial profits, to the extent of such profits from sources within the United States, only if it is engaged in trade or business in the United States at some time during the taxable year through a permanent establishment situated therein.

(2) From the standpoint of the United States tax the article has application only to a Swiss enterprise and its industrial and commercial profits from sources within the United States. Thus, a nonresident alien individual who is a citizen of Switzerland, or a Swiss corporation or other entity, carrying on an enterprise which is not Swiss, is subject to tax on such income of such enterprise pursuant to section

871(c) or section 882(a), Internal Revenue Code of 1954, if such alien, corporation, or other entity has engaged in trade or business in the United States at any time during the taxable year, even though it has not had a permanent establishment therein at any time within such year.

(b) *No United States permanent establishment.* A Swiss enterprise is not subject to United States tax upon its industrial and commercial profits from sources within the United States, nor shall such profits be included in gross income, if it has not at any time during the taxable year engaged in trade or business in the United States through a permanent establishment situated therein. For example, if during the taxable year an enterprise carried on in Switzerland by a nonresident alien individual who is a resident of Switzerland, or by a Swiss corporation, were to sell merchandise, such as watches, dairy products, or liqueurs, in the United States through a commission agent or broker in the United States acting in the ordinary course of his business as such agent or broker, the profits arising from such sale would not be included in gross income and would be exempt from United States tax under Article III of the convention. Similarly, if during the taxable year such enterprise were to secure orders in the United States for such merchandise through its sales agents whose sole function in the United States is sales promotion, the orders being transmitted to Switzerland for acceptance, then the profits arising from such sales would not be included in gross income and would be exempt from United States tax.

(c) *United States permanent establishment*—(1) *General.* A Swiss enterprise is subject to United States tax upon its industrial and commercial profits from sources within the United States to the same extent as are nonresident aliens or foreign corporations which are subject to tax pursuant to section 871(c) or section 882(a), Internal Revenue Code of 1954, if such enterprise has at any time during the taxable year engaged in trade or business in the United States through a permanent establishment situated therein. If it is so engaged, it is subject to United States tax upon its entire income from sources within the United States except to the extent otherwise exempt from United States tax.

(2) *Allocation of profits.* In the determination of the income taxable to such enterprise for purposes of the United States tax, all industrial and commercial profits from sources within the United States shall be deemed to be allocable to the permanent establishment in the United States. Hence, if a Swiss enterprise which has a permanent establishment in the United States at some time during the taxable year were to sell in the United States, through a commission agent therein acting in the ordinary course of his business as such, merchandise which has been produced in Switzerland, the profits arising from such sale would be allocable to the permanent establishment to the extent they are derived from sources within the United States, even though the sale is made independently of the permanent establishment.

(3) *Independent basis.* The industrial and commercial profits of the permanent establishment in the United States shall be determined as if the establishment were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length, or on an independent basis, with the enterprise of which it is a permanent establishment.

§ 509.106 Control of a United States enterprise by a Swiss enterprise.

In effect, Article IV of the convention provides that, if a Swiss enterprise by reason of its control of a United States enterprise imposes on the latter enterprise conditions different from those which would result from normal business relations between independent enterprises, the accounts between the enterprises shall be adjusted in order to ascertain the true taxable income of each enterprise. The purpose is to place the controlled United States enterprise on a tax parity with an uncontrolled United States enterprise by determining, according to the standard of an uncontrolled enterprise, the true taxable income from the property and business of the controlled enterprise. The basic objective of the article is

that, if the accounting records do not truly reflect the taxable income from the property and business of the United States enterprise, the Commissioner shall intervene and, by making such distributions, apportionments, or allocations as he may deem necessary of gross income, deductions, credits, or allowances, or of any item or element affecting taxable income, between the United States enterprise and the Swiss enterprise by which it is controlled or directed, shall determine the true taxable income of the United States enterprise. The provisions of section 482 of the Internal Revenue Code of 1954, and the regulations thereunder, shall, insofar as applicable, be followed in the determination of the taxable income of the United States enterprise.

§ 509.107 Income from operation of ships or aircraft.

Under Article V of the convention so much of the income from sources within the United States of a Swiss enterprise as consists of earnings derived from the operation of ships or aircraft documented or registered in Switzerland shall not be included in gross income and shall be exempt from United States tax, even though at some time during the taxable year such enterprise has engaged in trade or business in the United States through a permanent establishment situated therein.

§ 509.108 Dividends.

(a) *General.* (1) The rate of United States tax imposed by the Internal Revenue Code of 1954 upon dividends derived from sources within the United States by a nonresident alien individual who is a resident of Switzerland, or by a Swiss corporation or other entity, shall not exceed 15 percent under the provisions of Article VI of the convention, if such alien, corporation, or other entity at no time during the taxable year in which such dividends are derived has a permanent establishment in the United States.

(2) If, for example, a nonresident alien individual who is a resident of Switzerland performs personal services within the United States during the taxable year, but has at no time during such year a permanent establishment within the United States, he is entitled to the reduced rate of tax with respect to dividends derived in that year from United States sources, as provided in Article VI of the convention, even though under the provisions of section 871(c) of the Internal Revenue Code of 1954 he has engaged in trade or business within the United States during such year by reason of his having performed personal services therein.

(b) *Dividends paid by related corporation.* The rate of United States tax imposed by the Internal Revenue Code of 1954 upon dividends derived from sources within the United States by a Swiss corporation shall not exceed 5 percent under the provisions of Article VI (2) of the convention if:

(1) The Swiss corporation is a shareholder which controls, directly or indirectly, at the time the dividend is paid 95 percent or more of the entire voting power in the corporation paying the dividend;

(2) Not more than 25 percent of the gross income of the paying corporation for the three-year period immediately preceding the taxable year in which the dividend is paid consists of dividends and interest (other than dividends and interest received by such paying corporation from its own subsidiary corporations, if any);

(3) The relationship between the paying corporation and the Swiss corporation has not been arranged or maintained primarily with the intention of securing the reduced rate of 5 percent; and

(4) The Swiss corporation at no time during the taxable year in which such dividends are derived has a permanent establishment in the United States.

§ 509.109 Interest.

The rate of United States tax imposed by the Internal Revenue Code of 1954 upon interest on bonds, securities, notes, debentures, or on any other form of indebtedness, including interest on obligations of the United States, obligations of instrumentalities of the United States, and mortgages and bonds secured by real property, which is derived from sources within the United States by a nonresident alien individual who is a resident of Switzerland, or by a Swiss corporation or other entity, shall not exceed 5 percent

under the provisions of Article VII of the convention, if such alien, corporation, or other entity at no time during the taxable year in which such interest is derived has a permanent establishment in the United States.

§ 509.110 Patent and copyright royalties and film rentals.

Royalties and other amounts representing consideration for the right to use copyrights, artistic and scientific works, patents, designs, plans, secret processes and formulae, trademarks, and other like property and rights, including rentals and like payments in respect to motion picture films or for the use of industrial, commercial, or scientific equipment, which are derived from sources within the United States by a nonresident alien individual who is a resident of Switzerland, or by a Swiss corporation or other entity, are exempt from United States tax under the provisions of Article VIII of the convention if such alien, corporation, or other entity at no time during the taxable year in which such items of income are derived has a permanent establishment in the United States.

§ 509.111 Real property income and natural resource royalties.

(a) *General.* Income of whatever nature derived by a nonresident alien who is a resident of Switzerland, or by a Swiss corporation or other entity, from real property situated in the United States, including gains derived from the sale or exchange of such property, rentals from such property, and royalties in respect of the operation of mines, quarries, or other natural resources situated in the United States, is not exempt from United States tax by the convention. Such items of income are subject to taxation under the provisions of the Internal Revenue Code of 1954 generally applicable to the taxation of nonresident alien individuals and foreign corporations. See Article IX of the convention. Interest derived from mortgages and bonds secured by real property does not constitute income from real property for purposes of this section but is subject to the provisions applicable to interest generally. See § 509.109.

(b) *Net basis*—(1) *General.* Notwithstanding the provisions of paragraph (a) of this section, a nonresident alien who is a resident of Switzerland, or a Swiss corporation or other entity, who during the taxable year derives from sources within the United States any income from real property as described in such paragraph may elect for such taxable year to be subject to United States tax on a net basis as though such alien, corporation, or other entity were engaged in trade or business in the United States during such year through a permanent establishment situated therein.

(2) *Manner of electing.* Such nonresident alien (including an individual, fiduciary, and member of a partnership) shall signify his election to be subject to tax on such a basis by filing Form 104B clearly marked at the top of the first page thereof as follows: ''Return of Resident of Switzerland Electing to File on a Net Basis Pursuant to Article IX of Swiss Income Tax Convention''. Such corporation shall signify its election to be subject to tax on such a basis by filing Form 1120 clearly marked at the top of the first page there of as follows: ''Return of Swiss Corporation Electing to File on a Net Basis Pursuant to Article IX of Swiss Income Tax Convention''. The election so signified shall be irrevocable for the taxable year for which such election is made. All income from sources within the United States, including gains from the sale or exchange of capital assets or of other property, shall be disclosed on the return so filed. See sections 871 and 882 of the Internal Revenue Code of 1954 and the regulations thereunder.

§ 509.112 Compensation for labor or personal services.

(a) *Exemption from tax.* Under Article X of the convention compensation received by a nonresident alien individual who is a resident of Switzerland for labor or personal services, including the practice of the liberal professions and the rendition of services as a director, performed in the United States shall not be included in gross income and shall be exempt from United States tax in either of the following situations:

(1) *Swiss employer*. Where such individual is temporarily present in the United States for a period or periods not exceeding in the aggregate a total of 183 days during a taxable year beginning on or after January 1, 1951, any compensation received by him (irrespective of when received, if received in taxable years beginning on or after January 1, 1951) for such labor or personal services performed in the United States during such year as an employee of, or under contract with, a nonresident alien (including a nonresident alien individual and fiduciary) who is a resident of Switzerland, or a Swiss corporation or other entity, whether or not such alien, corporation, or other entity is engaged in trade or business within the United States, shall not be included in gross income and shall be exempt from United States tax.

(2) *Other employers*. Where such individual is temporarily present in the United States for a period or periods not exceeding in the aggregate a total of 183 days during a taxable year beginning on or after January 1, 1951, any compensation received by him (irrespective of when received, if received in taxable years beginning on or after January 1, 1951) for such labor or personal services performed in the United States during such year shall not be included in gross income and shall be exempt from United States tax if such compensation does not exceed $10,000 in the aggregate. Thus, if a nonresident alien individual who is a resident of Switzerland performs personal services in the United States during the taxable year as an employee of a domestic corporation for which he receives compensation of $15,000 in the aggregate, none of such compensation shall be exempt from United States tax even though such individual is present in the United States during such year for a period or periods not exceeding a total of 183 days, since the aggregate compensation received is in excess of $10,000.

(b) *Definitions*. For purposes of this section, the term ''compensation for labor or personal services'' shall include, but shall not be limited to, the compensation, profits, emoluments, or other remuneration of public entertainers, such as, stage, motion picture, television, or radio artists, musicians, and athletes. For the allocation or segregation as between sources within, and sources without, the United States in the case of compensation for labor or personal services, see sections 861 through 864, Internal Revenue Code of 1954, and the regulations thereunder.

(c) *Exception*. The provisions of this section have no application to the income to which Article XI(1) of the convention relates.

§ 509.113 Government wages, salaries, and pensions.

(a) *General*. Under Article XI of the convention any wage, salary, or similar compensation, or any pension, paid by Switzerland or any agency or instrumentality thereof, or by any political subdivisions or other public authorities of Switzerland, to any alien individual (whether or not a resident of the United States) or to any individual who occupies the dual status of a citizen of the United States and a citizen of Switzerland shall not be included in gross income and shall be exempt from United States tax, even though at some time during the taxable year such individual has engaged in trade or business in the United States through a permanent establishment situated therein.

(b) *Definition*. As used in this section, the term ''pensions'' means periodic payments made in consideration for services rendered or by way of compensation for injuries received. Under Article XV(2) of the convention the exclusion from gross income, and exemption from United States tax, provided by this section shall not be denied despite the provisions of Article XV. See § 509.118.

(c) *Cross reference*. For the taxation generally of compensation of alien employees of foreign governments and the consequences of executing and filing the waiver provided for in section 247(b) of the Immigration and Nationality Act, see section 893 of the Internal Revenue Code of 1954 and the regulations thereunder.

§ 509.114 Private pensions and life annuities.

(a) *General*. Private pensions and life annuities derived from sources within

the United States and paid to a nonresident alien individual who is a resident of Switzerland shall not be included in gross income and shall be exempt from United States tax, in accordance with Article XI of the convention, even though at some time during the taxable year such individual has engaged in trade or business in the United States through a permanent establishment situated therein.

(b) *Definitions.* As used in this section, the term ''pensions'' means periodic payments made in consideration for services rendered or by way of compensation for injuries received; and the term ''life annuities'' means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

§ 509.115 Visiting professors or teachers.

(a) *General.* Pursuant to Article XII of the convention, a professor or teacher, a nonresident alien who is a resident of Switzerland, who temporarily visits the United States for the purpose of teaching for a period not exceeding two years at any university, college, school, or other educational institution situated within the United States shall, for a period not exceeding two years from the date of his initial arrival in the United States, be exempt from United States tax with respect to his remuneration earned in taxable years beginning on or after January 1, 1951, for such teaching during such period not in excess of two years.

(b) *More than two years.* The exemption granted by Article XII is applicable to remuneration earned during such part of the individual's visit as does not exceed two years from the date of arrival even though the total period of his presence in the United States may extend beyond two years, provided that during such entire period he may be considered to be temporarily visiting the United States.

(c) *Residence.* Such exemption shall not apply to the remuneration of an alien who is a resident of the United States or who is not a resident of Switzerland.

(d) *Nonresidence presumed.* An individual who otherwise qualifies for the exemption from United States tax granted by Article XII shall, for a period of not more than two years immediately succeeding the date of his arrival within the United States for the purpose of such teaching, be deemed to have the tax status of a nonresident alien in the absence of proof of his intention to remain indefinitely in the United States. See section 871 of the Internal Revenue Code of 1954 and the regulations thereunder.

§ 509.116 Students or apprentices.

(a) *General.* Under Article XIII of the convention, a student or apprentice, a nonresident alien who is a resident of Switzerland, who temporarily visits the United States exclusively for the purposes of study or for acquiring business or technical experience shall not include in gross income, and shall be exempt from United States tax with respect to, amounts derived by him in taxable years beginning on or after January 1, 1951, and received during such years from without the United States as remittances for the purposes of his maintenance or studies.

(b) *Residence.* The exemption shall not apply to remittances received by an alien who is a resident of the United States or who is not a resident of Switzerland.

§ 509.117 Dividends and interest paid by a foreign corporation.

(a) [Reserved]

(b) *Exemption from United States tax.* Notwithstanding the provisions of paragraph (a) of this section, Article XIV(1) of the convention provides that dividends and interest paid by any foreign corporation and derived by a nonresident alien who is a resident of Switzerland, or by a Swiss corporation, shall not be included in gross income and shall be exempt from United States tax if such alien or corporation at no time during the taxable year in which such items of income are derived has a permanent establishment in the United States. The exemption so provided shall apply even though the corporation paying the dividends or interest is a resident foreign corporation at the time of payment and without regard to

the percentage of its gross income from sources within the United States.

[T.D. 6149, 20 FR 7587, Oct. 12, 1955; 25 FR 14022, Dec. 31, 1960, as amended by T.D. 8734, 62 FR 53497, Oct. 14, 1997]

§ 509.118 Credit against United States tax for Swiss tax.

(a) *General*—(1) *Taxable as though no convention.* Notwithstanding any other provision of the convention the United States, in determining the United States tax of a citizen or resident of the United States, or of a domestic corporation, may, under Article XV(1)(a) of the convention, include in the basis upon which such tax is imposed all items of income taxable under the revenue laws of the United States, as though the convention had not come into effect. For example, despite the exemption from United States tax granted by Article VIII of the convention with respect to a copyright royalty derived from sources within the United States by a resident of Switzerland, such royalty shall be included in gross income and is subject to United States tax when so derived by a resident of Switzerland who is a citizen of the United States, even though such resident has no permanent establishment in the United States.

(2) *Exception.* Notwithstanding the provisions of subparagraph (1) of this paragraph, the exclusion from gross income, and exemption from United States tax, granted by Article XI(1) of the convention with respect to wages, salaries, and similar compensation, and pensions, paid by Switzerland or any agency or instrumentality thereof, or by any political subdivisions or other public authorities of Switzerland, shall not be denied. See Article XV(2) of the convention.

(b) *Application of credit*—(1) *General.* For the purpose of mitigating double taxation, Article XV(1)(a) of the convention provides that a citizen or resident of the United States, or a domestic corporation, deriving income from sources within Switzerland shall be allowed a credit against the United States tax for the amount of Swiss tax paid or accrued during the taxable year. This credit shall be made in accordance with the provisions of section 131 of the Internal Revenue Code of 1939 as in effect on September 27, 1951, but subject to the provisions of Article XVIII(2) of the convention.

(2) *Similar credit requirement.* (i) Article XV(1)(a) further provides that, by virtue of the provisions of Article XV(1)(b) of the convention, relating to the exclusion from basis for computing the Swiss tax, Switzerland satisfies the similar credit requirement set forth in section 901(b)(3), Internal Revenue Code of 1954, relating to alien residents of the United States, etc.

(ii) This provision of Article XV(1)(a) shall be taken to mean that, solely by reason of the exclusion granted by it under Article XV(1)(b) and without reference to concessions otherwise made by such country, Switzerland satisfies the similar credit requirement only with respect to taxes paid to Switzerland, and not with respect to taxes paid to another foreign country. Nothing in this subdivision shall be construed, however, to prevent Switzerland from otherwise satisfying the similar credit requirement, in accordance with section 901 of the Internal Revenue Code of 1954 and the regulations thereunder, with respect to taxes paid to another foreign country. Thus, if pursuant to a convention between Switzerland and another foreign country, Switzerland were to exempt from its income taxes the income received from sources within such other foreign country by a United States citizen residing in Switzerland, then Switzerland would, in accordance with such regulations under section 901, satisfy the similar credit requirement of section 901(b)(3) with respect to income taxes paid to such other country by a Swiss citizen residing in the United States.

§ 509.120 Double taxation claims.

(a) *General.* Under Article XVII of the convention, where the taxpayer shows proof that the action of the tax authorities of the United States or Switzerland has resulted, or will result, in double taxation contrary to the provisions of the convention, he is entitled to present the facts to the country of which he is a citizen; or, if he is not a citizen of either country, to the country of which he is a resident; or, if the

taxpayer is a corporation or other entity, to the country in which it is created or organized. The article provides that, should the taxpayer's claim be deemed worthy of consideration, the competent authority of the country to which the facts are presented shall undertake to come to an agreement with the competent authority of the other country with a view to equitable avoidance of the double taxation in question.

(b) *Manner of filing claim.* Such a claim on behalf of a United States citizen, corporation, or other entity, or on behalf of a resident of the United States who is not a Swiss citizen, shall be filed with the Commissioner. The claim shall be set up in the form of a letter addressed to ''The Commissioner of Internal Revenue, Washington, D.C.'' and shall show fully all facts and laws on the basis of which the claimant alleges that such double taxation has resulted or will result. If the Commissioner determines that there is an appropriate basis for the claim under the convention, he shall take up the matter with the Director of the Federal Tax Administration with a view to arranging an agreement of the character contemplated by Article XVII.

§ 509.121 Beneficiaries of an estate or trust.

(a) *Qualified beneficiary.* If he otherwise satisfies the requirements of the respective articles concerned, a nonresident alien who is a resident of Switzerland and who is a beneficiary of an estate or trust shall be entitled to the exemption from, or reduction in the rate of, United States tax granted by Articles VI, VII, VIII, and XIV of the convention with respect to dividends, interest, and royalties and other like amounts, to the extent that (1) any amount paid, credited, or required to be distributed by such estate or trust to such beneficiary is deemed to consist of such items and (2) such items would, without regard to the convention, be includible in his gross income.

(b) *Amounts otherwise includible in gross income of beneficiary.* For the determination of amounts which, without regard to the convention, are includible in the gross income of the beneficiary, see subchapter J of chapter 1 of the Internal Revenue Code of 1954, and the regulations thereunder.

PARTS 510–512 [RESERVED]

PART 513—IRELAND

Subpart—Withholding of Tax

Sec.
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513.3 Interest.
513.4 Patent and copyright royalties and film rentals.
513.5 Natural resource royalties and real property rentals.
513.6 Pensions and life annuities.
513.7 Release of excess tax withheld at source.
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513.10 Beneficiaries of a domestic estate or trust.
513.11 Refund of income tax withheld during 1951.

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Subpart—Withholding of Tax

§ 513.2 Dividends.

The fact that the payee of the dividend is not required to pay Irish tax on such dividend because of the application of reliefs or exemptions under Irish revenue laws does not prevent the application of the reduction in rate of United States tax with respect to such dividend. If the dividend would have been subject to Irish tax had the payee thereof derived an income large enough to require payment of tax then liability to Irish tax exists for the purpose of the reduction in rate of United States tax. As to what constitutes a permanent establishment, see Article II(1)(i) of the convention.

[T.D. 8734, 62 FR 53497, Oct. 14, 1997; 63 FR 2723, Jan. 16, 1998]

§ 513.3 Interest.

The provisions of § 513.2 relating to the degree of liability to Irish tax in

the case of dividends are equally applicable with respect to the income falling within the scope of this section.

[T.D. 8734, 62 FR 53497, Oct. 14, 1997]

§ 513.4 Patent and copyright royalties and film rentals.

The provisions of § 513.2 relating to the degree of liability to Irish tax in the case of dividends are equally applicable with respect to the income falling within the scope of this section.

[T.D. 8734, 62 FR 53498, Oct. 14, 1997]

§ 513.5 Natural resource royalties and real property rentals.

The provisions of § 513.2 relating to the degree of liability to Irsh tax in the case of dividends are equally applicable with respect to the income falling within the scope of this section.

[T.D. 8734, 62 FR 53498, Oct. 14, 1997]

§ 513.6 Pensions and life annuities.

(a) Pensions, other than pensions paid by the Government of the United States to individuals in respect of services rendered thereto in the discharge of governmental functions, and any life annuity, derived from sources within the United States in taxable years beginning on or after January 1, 1951, by a nonresident alien individual who is resident in Ireland for the purposes of Irish tax are exempt from United States tax under the provisions of Article XII of the convention.

(b) To obviate withholding at the source in the case of such exempt income the nonresident alien individual who is resident in Ireland for the purposes of Irish tax shall notify the withholding agent by letter in duplicate that such income is exempt from United States tax under the provisions of Article XII of the convention. The letter of notification shall be signed by the owner of the income, shall show the name and address of both the payer and the owner, and shall contain a statement that the owner, an individual, is neither a citizen nor a resident of the United States but is resident in Ireland for the purposes of Irish tax. This letter shall constitute authorization for the payment of such income without deduction of the tax at source unless the Commissioner of Internal Revenue subsequently notifies the withholding agent that the tax should be withheld from payments of such income made after receipt of such notice. If, after filing a letter of notification, the owner of the income ceases to be eligible for the benefit of the convention, he must promptly notify the withholding agent by letter in duplicate.

(c) Each letter of notification, or the duplicate thereof, must be immediately forwarded by the withholding agent to the Commissioner of Internal Revenue, Clearing Branch, Washington 25, D.C.

§ 513.7 Release of excess tax withheld at source.

(a) *General.* (1) In order to bring the convention into force and effect at the earliest practicable date,

(i) The reduced rate of tax of 15 percent to be withheld at the source from dividends, natural resource royalties, and real property rentals, and

(ii) The exemption from tax otherwise withheld at the source from interest, patent royalties, copyright royalties, film rentals, and the like,

are hereby made effective beginning January 1, 1952, in any case in which such natural resource royalties, real property rentals, interest, patent royalties, copyright royalties, film rentals, and the like are derived from sources within the United States, or in which such dividends are derived from a United States corporation, by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is resident in Ireland for the purposes of Irish tax, or by a foreign corporation whose business is managed and controlled in Ireland, if such alien or corporation is subject to Irish tax on such income and at no time during the taxable year in which such income is so derived had a permanent establishment within the United States.

(2) In the case of every such taxpayer whose address at the time of payment was in Ireland and who furnishes to the withholding agent the letter of notification prescribed in §§ 513.3(b), 513.4, or § 513.5, where United States tax at the rate of 30 percent has been withheld on or after January 1, 1952, there shall be

released (except as provided in paragraph (e) of this section) by the withholding agent and paid over to the person from whom it was withheld:

(i) In the case of natural resource royalties and real property rentals, an amount equal to 15 percent of such royalties and rentals, and

(ii) In the case of interest (other than coupon bond interest), patent royalties, copyright royalties, film rentals, and the like, an amount equal to the tax so withheld.

(3) In the case of every such taxpayer whose address at the time of payment was in Ireland and who furnishes to the withholding agent Form 1001–IR in duplicate, where United States tax at the rate of 28 percent or 30 percent, as the case may be, has been withheld from coupon bond interest on or after January 1, 1952, there shall be released (except as provided in paragraph (e) of this section) by the withholding agent and paid over to the person from whom it was withheld an amount equal to the tax so withheld, if such taxpayer also files in duplicate with the withholding agent as authorization for the release of such amount a Form 1001–IR clearly marked ''Substitute''. One such substitute form shall be filed in duplicate with respect to each issue of bonds and will serve with respect to that issue to replace all Forms 1001 previously filed by such taxpayer in the calendar year in which the excess tax is released. The use of Form 1001–IR with each presentation of interest coupons for the purpose of obviating withholding of tax at source is set forth in § 513.3(b).

(4) In the case of dividends derived from a United States corporation and paid to a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) or to a foreign corporation, whose address at the time of payment was in Ireland, where United States tax at the rate of 30 percent has been withheld from such dividends on or after January 1, 1952, there shall be released (except as provided in paragraph (d) of this section) by the withholding agent and paid over to the person from whom it was withheld an amount equal to 15 percent of such dividends.

(b) *Amounts withheld during 1951.* For provisions respecting the refund of excess tax withheld during the calendar year 1951, see § 513.11.

(c) *Pensions and life annuities.* (1) In order to bring the convention into force and effect at the earliest practicable date the exemption from tax otherwise withheld at the source from life annuities and pensions, other than pensions paid by the Government of the United States to individuals in respect of services rendered thereto in the discharge of governmental functions, is hereby made effective beginning January 1, 1952, in any case in which such pensions and life annuities are derived from sources within the United States by a nonresident alien individual who is resident in Ireland for the purposes of Irish tax.

(2) In the case of every such taxpayer whose address at the time of payment was in Ireland and who furnishes to the withholding agent the letter of notification prescribed in § 513.6, where United States tax at the rate of 30 percent has been withheld on or after January 1, 1952, from such pensions or life annuities, as the case may be, there shall be released by the withholding agent and paid over to the person from whom it was withheld an amount equal to the tax so withheld.

(d) *Subsidiary's dividends.* (1) United States tax shall be withheld at the rate of 15 percent from any dividend derived from a United States corporation and paid on or after January 1, 1952, to a foreign corporation whose address is in Ireland unless, prior to the date of payment thereof, the Commissioner of Internal Revenue notifies the domestic corporation that such dividend falls within the scope of the proviso of Article VI(1) of the convention.

(2) In the case of every domestic corporation receiving notification from the Commissioner of Internal Revenue under the provisions of § 513.2(b) that dividends paid or to be paid by it fall within the scope of the proviso of Article VI(1) of the convention, where United States tax in excess of the applicable rate of 5 percent has been withheld on or after January 1, 1952, from dividends which come within the scope of such proviso, the withholding agent shall, if so authorized in such notification, release and pay over to the foreign corporation from which it was

withheld the excess tax withheld with respect to such dividends.

(e) *Interest paid where degree of stock ownership is determined.* In the case of every foreign corporation whose address at the time of payment was in Ireland and which (1) furnishes to the domestic corporation a copy of the Commissioner's authorization of release prescribed in §513.3(c) and (2) files the letter of notification prescribed in §513.3(b), or the substitute Form 1001–IR prescribed in paragraph (a) of this section, whichever is applicable, where United States tax at the rate of 28 percent or 30 percent, as the case may be, has been withheld on or after January 1, 1952, the withholding agent shall release and pay over to the foreign corporation from which it was withheld an amount equal to the tax so withheld.

§513.8 Addressee not actual owner.

(a) If any person with an address in Ireland who receives a dividend from a United States corporation with respect to which United States tax at the rate of only 15 percent has been withheld at source is a nominee or representative through whom such dividend flows to a person other than one described in §513.2(a) as being entitled to such reduced rate of 15 percent, such recipient in Ireland will withhold an additional amount of United States tax equivalent to the difference between the United States tax which would have been withheld had the convention not been in effect (30 percent as of the date of approval of this subpart) and the 15 percent withheld at the source with respect to such dividend pursuant to §513.2(d).

(b) In any case in which a fiduciary or partnership with an address in Ireland receives, otherwise than as a nominee or representative, a dividend from a United States corporation with respect to which United States tax at the rate of only 15 percent has been withheld at source, if a beneficiary of such fiduciary or a partner in such partnership is not entitled to the reduced rate of tax provided in Article VI(1) of the convention, the fiduciary or partnership will withhold an additional amount of United States tax with respect to the portion of such dividend included in such beneficiary's share of the distributed or distributable income, or in such partner's distributive share of the income, of such fiduciary or partnership, as the case may be. The amount of the additional tax is to be calculated in the same manner as under paragraph (a) of this section.

(c) If any amount of United States tax is released pursuant to §513.7(a) by the withholding agent in the United States with respect to a dividend received by such a person with an address in Ireland, the latter will also withhold from such released amount any additional amount of United States tax, otherwise required to be withheld by the preceding provisions of this section in respect of such dividend, in the same manner as if at the time of payment of such dividend United States tax at the rate of only 15 percent had been withheld at source therefrom.

(d) The amounts so withheld by such withholding agents in Ireland will be deposited, without converting such amounts into United States dollars, with the Irish Revenue Commissioners on or before the 15th day after the close of the calendar year quarter in which such withholding in Ireland occurs. Each withholding agent making such deposit will render therewith the appropriate Irish form as prescribed in regulations made by the Revenue Commissioners. The Revenue Commissioners have arranged that the amounts so deposited will be remitted by draft in United States dollars to the District Director of Internal Revenue, Baltimore, Maryland, U.S.A., on or before the end of the calendar month in which the deposits are made, such draft to be accompanied by the Irish form rendered by the withholding agents in Ireland in connection with such deposits.

§513.9 Information to be furnished in ordinary course.

In compliance with the provisions of Article XX of the convention the Commissioner of Internal Revenue will transmit to the Irish Revenue Commissioners, as soon as practicable after the close of the calendar year 1952 and of each subsequent calendar year during which the convention is in effect, the

following information relating to such preceding calendar year:

(a) The name and address of each person whose address as disclosed on each available Form 1042 is in Ireland deriving from sources within the United States dividends, interest, rent, royalties, salaries, wages, pensions, annuities, and other fixed or determinable annual or periodical income; and the amount of such income as disclosed on such form with respect to each such person.

(b) The duplicate copy of each available ownership certificate, Form 1001–IR, filed pursuant to § 513.3(b), and substitute Form 1001–IR, filed pursuant to § 513.7(a), in connection with coupon bond interest.

§ 513.10 Beneficiaries of a domestic estate or trust.

A nonresident alien who is resident in Ireland for the purposes of Irish tax and who is a beneficiary of a domestic estate or trust shall be entitled to the exemption from, or reduction in the rate of, United States tax provided in Articles VI, VII, VIII, IX, and XV of the convention with respect to dividends, interest, royalties, natural resource royalties, and real property rentals to the extent such item or items are included in his share of the distributed or distributable income of such estate or trust. In order to be entitled in such instance to the exemption from, or reduction in the rate of, tax such beneficiary must otherwise satisfy the requirements of these respective Articles of the convention and must, where applicable, execute and submit to the fiduciary of such estate or trust in the United States the appropriate letter of notification prescribed in §§ 513.3(b), 513.4, and 513.5.

§ 513.11 Refund of income tax withheld during 1951.

(a) If United States tax withheld at the source during the year 1951 from dividends, interest, royalties, natural resource royalties, real property rentals, pensions, or life annuities is in excess of the tax imposed by Chapter 1 (relating to the income tax) of the Internal Revenue Code, as modified by the convention, claim by the taxpayer for the refund of any overpayment shall be made under section 322 of the Internal Revenue Code by filing Form 843 together with Form 1040NB, Form 1040NB-a, Form 1040B, or Form 1120NB, whichever is applicable, or with an amended return.

(b) The taxpayer's total gross income from sources within the United States, including every item of capital gain subject to tax under the provisions of section 211(a)(1)(B) or 211(c) of the Internal Revenue Code, shall be disclosed on the return. In the event that securities are held in the name of a person other than the actual or beneficial owner, the name and address of such person must be furnished with the claim. There shall also be included in such claim for refund a statement:

(1) That the taxpayer was, at the time when the item or items of income were derived, (i) a nonresident alien (including a nonresident alien individual, fiduciary, or partnership) who at such time was resident in Ireland for the purposes of Irish tax, or (ii) a foreign corporation whose business at such time was managed and controlled in Ireland.

(2) That the taxpayer at no time during the taxable year in which the income was derived had a permanent establishment in the United States.

(3) That the taxpayer is subject to Irish tax on the item or items of income for which the benefit of the convention is claimed.

(c) If, however, the taxpayer is an individual who during the taxable year derived from sources within the United States income which consists exclusively of pensions or life annuities entitled to the benefit of Article XII of the convention, the statements specified in paragraph (b) (2) and (3) of this section will not be required.

(d) As to additional information required in the case of a foreign corporation claiming the benefit of the 5 percent rate on dividends, or in certain doubtful cases the benefit of the exemption with respect to interest, paid by a domestic corporation, see § 513.2(b) or § 513.3(c).

PART 514—FRANCE

Subpart—Withholding of Tax

Sec.
514.1 Introductory.
514.2 Dividends.
514.3 Dividends received by addressee not actual owner.
514.4 Interest.
514.5 Patent and copyright royalties and film rentals.
514.6 Private pensions and life annuities.
514.7 Beneficiaries of a domestic estate or trust.
514.8 Release of excess tax withheld at source.
514.9 Refund of excess tax withheld.
514.10 Effective date.

TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1966, OR DIVIDENDS, INTEREST, AND ROYALTIES PAID ON OR AFTER AUGUST 11, 1968

514.22 Dividends received by persons not entitled to reduced rate of tax.

AUTHORITY: 26 U.S.C. 7805.

Subpart—Withholding of Tax

SOURCE: Treasury Decision 6273, 22 FR 9530, Nov. 28, 1957; 25 FR 14022, Dec. 31, 1960, unless otherwise noted.

§514.1 Introductory.

(a) *Applicable provisions of convention.* The income tax convention between the United States and France, signed on July 25, 1939, and October 18, 1946, as modified by the supplemental convention, signed June 22, 1956 (the instruments of ratification of which were exchanged on June 13, 1957), referred to in this part as the convention, provides in part as follows, the quoted articles being effective as indicated:

Article I(a) of the Supplemental Convention of 1956, on June 13, 1957.

Article I(d) of the Supplemental Convention of 1956, on January 1, 1952.

Article 7 and the Protocol of the Convention of 1939, on January 1, 1945.

The supplemental convention signed June 22, 1956, provides in part as follows:

ARTICLE I

The provisions of the Convention and Protocol between the United States and the French Republic signed at Paris on July 25, 1939 are hereby modified and supplemented as follows:

(a) By striking out Article 1(a) and inserting in lieu thereof the following:

''(a) In the case of the United States: The Federal income taxes (including surtaxes and excess profits taxes) and the documentary taxes on sales or transfers of shares or certificates of stock or bonds.''

* * * * *

(d) By adding immediately after Article 6 the following new articles:

''ARTICLE 6A

Dividends and interest derived, on or after January 1, 1952, from sources within one of the contracting States by a resident or corporation or other entity of the other State, not having a permanent establishment in the former State shall be subject to tax by such former State at a rate not in excess of 15 percent of the gross amount of such dividends or interest. Such reduced rate of tax shall not apply to dividends or interest paid prior to the calendar year in which are exchanged the instruments of ratification of the present Convention if, for the taxable year in which such dividends or interest is received, penalty for fraud with respect to the taxes which are the subject of the present Convention has been imposed against the recipient of such dividends or interest.''

* * * * *

ARTICLE III

(a) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Paris as soon as possible.

(b) Its provisions shall come into force and shall become effective as of the date of the exchange of the instruments of ratification subject both to the provisions of Article I (d) and (e) and to the provisions set forth herein below.

* * * * *

(c) If refund of any overpayment resulting from the application of Article I(d) of the present Convention is prevented on the date of exchange of instruments of ratification or within two years from such date by the operation of any law, refund of such overpayment (without interest) shall nevertheless be made provided that claim for refund is filed within two years after the date of the exchange of instruments of ratification of the present Convention with the contracting State to which such overpayment was made.

(d) The present Convention shall remain effective so long as the Conventions signed July 25, 1939 and October 18, 1946, remain effective.

The convention of July 25, 1939, provides, in part, as follows:

ARTICLE 7

* * * * *

Royalties derived from within one of the contracting States by a resident, or by a corporation or other entity of the other contracting State as consideration for the right to use copyrights, patents, secret processes and formulae, trademarks and other analogous rights shall be exempt from taxation in the former State, provided such resident, corporation or other entity does not have a permanent establishment there.

ARTICLE 8

* * * * *

Private pensions and life annuities derived from within one of the contracting States and paid to individuals residing in the other contracting State shall be exempt from taxation in the former State.

Protocol:

* * * * *

III. As used in this Convention:

(a) The term ''permanent establishment'' includes branches, mines and oil wells, plantations, factories, workshops, stores, purchasing and selling and other offices, agencies, warehouses, and other fixed places of business but does not include a subsidiary corporation.

When an enterprise of one of the contracting States carries on business in the other State through an employee or agent, established there, who has general authority to negotiate and conclude contracts or has a stock of merchandise from which he regularly fills orders which he receives, this enterprise shall be deemed to have a permanent establishment in the latter State. But the fact that an enterprise of one of the contracting States has business dealings in the other State through a bona fide commission agent or broker shall not be held to mean that such enterprise has a permanent establishment in the latter State.

Insurance enterprises shall be considered as having a permanent establishment in one of the States as soon as they receive premiums from or insure risks in the territory of that State.

IV. The term ''life annuities'' referred to in Article 8 of this Convention means a stated sum payable periodically at stated times during life, or during a specified number of years to the person who has paid the premium or a gross sum for such an obligation.

The convention of October 18, 1946, provides, in part, as follows:

TITLE III

Administrative Assistance

* * * * *

ARTICLE 13

(1) The competent authorities of the two Contracting States may prescribe regulations necessary to interpret and carry out the provisions of the present Convention and the Convention of July 25, 1939.

* * * * *

(b) *Definitions*—(1) *In general.* Any term defined in the convention or §§ 514.1 to 514.10 shall have the meaning so assigned to it; any term not so defined shall, unless the context otherwise requires, have the meaning which such term has under the internal revenue laws of the United States.

(2) *France.* As used in §§ 514.1 to 514.10, the term ''France'', when used in a geographical sense, means continental France, exclusive of Algeria and the Colonies.

§ 514.2 Dividends.

(a) *General.* (1) The rate of United States tax imposed by the Internal Revenue Code upon dividends derived from sources within the United States on or after January 1, 1952, by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of France when such dividend is so paid, or by a French corporation, shall not exceed 15 percent if such alien or corporation at no time during the taxable year in which such dividends are so received has no permanent establishment within the United States. Article I(a) of the convention, signed June 22, 1956. As to what constitutes a ''permanent establishment'' see Protocol III(a), in § 514.1.

(2) Thus, if a nonresident alien individual who is a resident of France performs personal services within the United States during the taxable year but has at no time during such year a permanent establishment within the United States, he is entitled to the reduced rate of tax with respect to dividends derived from United States sources, as provided in Article I(d) of the convention even though under the

provisions of section 871(c) of the Internal Revenue Code of 1954 he has engaged in trade or business within the United States during such year by reason of his having rendered personal services therein.

(b) *Effect of address in France on withholding in the case of dividends.* For the purpose of withholding of United States tax in the case of dividends, every nonresident alien (including a nonresident alien individual, fiduciary, and partnership) whose address is in France shall be deemed by United States withholding agents to be a nonresident alien who is a resident of France not having a permanent establishment in the United States; and every foreign corporation whose address is in France shall be deemed by such withholding agents to be a French corporation not having a permanent establishment in the United States.

(c) *Rate of withholding.* (1) Withholding at source in the case of dividends derived from sources within the United States and paid on or after January 1, 1957, to nonresident aliens (including a nonresident alien individual, fiduciary, and partnership) and to foreign corporations, whose addresses are in France, shall be at the rate of 15 percent in every case except that in which, prior to the date of payment of such dividends, the Commissioner of Internal Revenue has notified the withholding agent that the reduced rate of withholding shall not apply.

(2) The preceding provisions respecting the application of the reduced withholding rate in the case of dividends paid to nonresident aliens and foreign corporations with addresses in France are based upon the assumption that the payee of the dividend is the actual owner of the capital stock from which the dividend is derived and consequently is the person liable to the United States upon such dividend. As to action by the recipient who is not the owner of the dividend, see § 514.3.

(3) The rate at which the United States tax has been withheld from any dividend paid at any time after the expiration of the thirtieth day after the date on which §§ 514.1 to 514.10 are published in the FEDERAL REGISTER to any person whose address is in France at the time the dividend is paid shall be shown either in writing or by appropriate stamp on the check, draft, or other evidence of payment or on an accompanying statement.

§ 514.3 Dividends received by addressee not actual owner.

(a) *Additional tax to be withheld*—(1) *Nominee or representative.* The recipient in France of any dividend, paid on or after January 1, 1957, from which United States tax at the reduced rate of 15 percent has been withheld at source pursuant to § 514.2(c)(1), who is a nominee or representative through whom the dividend is received by a person other than one described in § 514.2(a) as being entitled to the reduced rate, shall withhold an additional amount of United States tax equivalent to the United States tax which would have been withheld if the convention had not been in effect (30 percent as of the date of approval of §§ 514.1 to 514.10) minus the 15 percent which has been withheld at the source.

(2) *Fiduciary or partnership.* A fiduciary or a partnership with an address in France which receives, otherwise than as a nominee or representative, a dividend from which United States tax at the reduced rate of 15 percent has been withheld at source pursuant to § 514.2 shall withhold an additional amount of United States tax from the portion of the dividend included in the gross income from sources within the United States of any beneficiary or partner, as the case may be, who is not entitled to the reduced rate of tax in accordance with § 514.2(c). The amount of the additional tax is to be calculated in the same manner as under subparagraph (1) of this paragraph.

(3) *Released amounts of tax.* If any amount of United States tax is released pursuant to § 514.8(a)(1) by the withholding agent in the United States with respect to a dividend paid to a nominee, representative, fiduciary, or partnership with an address in France, the latter shall withhold from such released amount any additional amount of United States tax, otherwise required to be withheld from the dividend by the provisions of subparagraphs (1) and (2) of this paragraph, in the same manner as if at the time of payment of the dividends United States tax at the

rate of only 15 percent had been withheld at source therefrom.

(b) *Returns filed by French withholding agents.* The amounts withheld pursuant to paragraph (a) of this section by any withholding agent in France shall be deposited, without converting the amounts into United States dollars, with the Directeur General des Impots of France on or before the 15th day after the close of the quarter of the calendar year in which the withholding in France occurs. The withholding agent making the deposit shall render therewith such appropriate French form as may be prescribed by the Directeur General des Impots. The amounts so deposited should be remitted by the Directeur General des Impots by draft in the United States dollars to the Director, International Operations Division, Internal Revenue Service, Washington 25, D. C., U. S. A., on or before the end of the calendar month in which the deposit is made, and should be accompanied by such French form as may be required to be rendered by the withholding agent in France in connection with the deposit.

§ 514.4 Interest.

(a) *General.* The rate of United States tax imposed by the Internal Revenue Code upon interest on bonds, securities, notes, debentures, or on any other form of indebtedness, including interest on obligations of the United States, obligations of instrumentalities of the United States, and mortgages and bonds secured by real property, which is derived from sources within the United States in taxable years beginning on or after January 1, 1952, by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of France, or by a French corporation or other entity, shall not exceed 15 percent under the provisions of Article I(d) of the convention if such alien, corporation, or other French entity at no time during the taxable year in which such interest is received has a permanent establishment in the United States. As to what constitutes a permanent establishment see Article III(a) of the convention.

(b) *Application of reduced rate at source.* (1) To secure withholding of United States tax at the rate of 15 percent at source in the case of coupon bond interest, the nonresident alien who is a resident of France, or the French corporation or other entity, shall, for each issue of bonds, file Form 1001–F in duplicate when presenting the interest coupons for payment. This form shall be signed by the owner of the interest, or by his trustee or agent, and shall show the name and address of the obligor, the name and address of the owner of the interest, and the amount of the interest. It shall contain a statement that the owner (i) is a resident of France, or is a French corporation or other entity, and (ii) has no permanent establishment in the United States.

(2) The reduction in the rate of United States tax contemplated by Article 6A of the convention, insofar as it concerns coupon bond interest, is applicable only to the owner of the interest. The person presenting the coupon or on whose behalf it is presented shall, for the purpose of the reduction in tax, be deemed to be the owner of the interest only if he is, at the time the coupon is presented for payment, the owner of the bond from which the coupon has been detached. If the person presenting the coupon, or on whose behalf it is presented, is not the owner of the bond, Form 1001, and not Form 1001–F, shall be executed.

(3) The original and duplicate of Form 1001–F shall be forwarded by the withholding agent to the Director, International Operations Division, Internal Revenue Service, Washington 25, D. C., with the annual return on Form 1042. Form 1001–F shall be listed on Form 1042.

(4) To secure the reduced rate of United States tax at source in the case of interest other than coupon bond interest, the nonresident alien individual who is a resident of France, or the French corporation or other entity, shall file Form 1001A-F in duplicate with the withholding agent in the United States. This form shall be signed by the owner of the interest, or by his trustee or agent, and shall show the name and address of the obligor and the name and address of the owner of the interest. It shall contain a statement that the owner (i) is a resident of

France, or is a French corporation or other entity, and (ii) has no permanent establishment in the United States.

(5) Form 1001A-F shall be filed with the withholding agent for each successive three-calendar-year period during which such interest is paid. For this purpose, the first such period shall commence with the beginning of the calendar year in which such income is first paid on or after January 1, 1957. Each such form filed with any withholding agent shall be filed not later than 20 days preceding the date of the first payment within each successive period, or, if that is not possible because of special circumstances, as soon as possible after such first payment. Once such a form has been filed in respect of any three-calendar-year period, no additional Form 1001A-F need be filed in respect thereto unless the Commissioner of Internal Revenue notifies the withholding agent that another such form shall be filed by the taxpayer. If, after filing such form, the taxpayer ceases to be eligible for the reduced rate of United States tax granted by Article 6A of the convention in respect to such interest, he shall promptly notify the withholding agent by letter in duplicate. When any change occurs in the ownership of the interest as recorded on the books of the payer, the reduction in rate of withholding of United States tax shall no longer apply unless the new owner of record is entitled to and does properly file a Form 1001A-F with the withholding agent.

(6) The duplicate of each Form 1001A-F shall be immediately forwarded by the withholding agent to the Director, International Operations Division, Internal Revenue Service, Washington 25, D. C.

§ 514.5 Patent and copyright royalties and film rentals.

(a) *Exemption from tax.* Royalties for the right to use copyrights, patents, designs, secret processes and formulae, trademarks, and other analogous property, and royalties and rentals in respect of motion picture films or for the use of industrial, commercial, or scientific equipment, which are derived from sources within the United States on or after January 1, 1945, by a nonresident alien individual who is a resident of France, or by a French corporation, are exempt from United States tax under the provisions of Article 7 of the convention signed July 25, 1939, as modified by Article 7(b) of the convention signed October 18, 1946, if such alien or corporation at no time during the taxable year in which such income is derived has engaged in trade or business within the United States through a permanent establishment situated therein.

(b) *Exemption from withholding of United States tax.* To avoid withholding of United States tax at source in the case of items of income to which this section applies, the nonresident alien who is a resident of France, or the French corporation, shall file Form 1001A-F, in duplicate, with the withholding agent in the United States.

(c) *Manner of filing.* The provisions of § 514.4 relating to the execution, filing, effective period, and disposition of Form 1001A-F, are equally applicable with respect to the income falling within the scope of this section.

(d) *Revocation of 26 CFR (1939) 7.418 (Treasury Decision 5499).* Effective January 1, 1957, the provisions of 26 CFR 7.418 (Rev. 1953, Parts 1–79, and Supps.) (Treasury Decision 5499, 11 F.R. 2158), approved February 27, 1946, are hereby made inapplicable, and the provisions of this section are hereby substituted therefor with respect to payments of royalties and film rentals made on or after January 1, 1957.

§ 514.6 Private pensions and life annuities.

(a) *Exemption from tax.* Private pensions and life annuities as defined in paragraph (d) of this section, derived from sources within the United States on or after January 1, 1945, and paid to a nonresident alien who is a resident of France are exempt from United States tax under the provisions of Article 8 of the convention of July 25, 1939.

(b) *Exemption from withholding of United States tax—Form to use.* To secure exemption from withholding of United States tax at the source in the case of private pensions and life annuities, the nonresident alien who is a resident of France shall file Form

1001A-F, in duplicate, with the withholding agent in the United States.

(c) *Manner of filing.* The provisions of § 514.4 relating to the execution, filing, effective period, and disposal of Form 1001A-F are equally applicable with respect to the income falling within the scope of this section.

(d) *Definition.* As used in this section, the term ''pensions'' means periodic payments made in consideration for services rendered or by way of compensation for injuries received, and the term ''life annuities'' means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration in money or money's worth. Neither term includes retired pay or pensions paid by the United States or by any State or Territory of the United States.

§ 514.7 Beneficiaries of a domestic estate or trust.

(a) *Entitled to benefits of convention.* If he otherwise satisfies the requirements of the respective articles concerned, a nonresident alien individual who is a resident of France and who is a beneficiary of a domestic estate or trust shall be entitled to the reduction in the rate of, or exemption from, United States tax granted by Articles 6A and 7 of the convention with respect to dividends, interest, and patent royalties and other like amounts to the extent that (1) any amount paid, credited, or required to be distributed by such estate or trust to such beneficiary is deemed to consist of such items, and (2) such items would, without regard to the convention, be includible in his gross income.

(b) *Withholding of United States tax.* In order to be entitled, because of the application of paragraph (a) of this section, to the reduction in rate of, or exemption from, withholding of United States tax the beneficiary must otherwise satisfy the requirements of the respective articles concerned, and shall, where applicable, execute and submit to the fiduciary of the estate or trust in the United States the appropriate form or forms prescribed in §§ 514.4(b) and 514.6(b).

(c) *Amounts otherwise includible in gross income of beneficiary.* For the determination of amounts which, without regard to the convention, are includible in the gross income of the beneficiary, see subchapter J of chapter 1 of the Internal Revenue Code of 1954, and the regulations thereunder.

§ 514.8 Release of excess tax withheld at source.

(a) *Amounts to be released*—(1) *Dividends derived from domestic corporation.* If United States tax has been withheld at the statutory rate on or after January 1, 1957, from dividends described in § 514.2(a) and derived from a domestic corporation by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) or by a foreign corporation, whose address at the time of payment was in France, the withholding agent shall release and pay over to the person from whom the tax was withheld an amount which is equal to the difference between the tax so withheld and the tax required to be withheld pursuant to § 514.2(c).

(2) *Coupon bond interest*—(i) *Substitute form.* In the case of every taxpayer who furnishes to the withholding agent Form 1001–F clearly marked ''Substitute'' and executed in accordance with § 514.4(b)(1), where United States tax has been withheld at the statutory rate on or after January 1, 1957, from coupon bond interest, the withholding agent shall release and pay over to the person from whom the tax was withheld an amount which is equal to the difference between the tax so withheld and the tax required to be withheld pursuant to § 514.4(b)(1) if the taxpayer also attaches to such form a letter in duplicate, signed by the owner, trustee, or agent and containing the following:

(*a*) The name and address of the obligor;

(*b*) The name and address of the owner from which the excess tax was withheld;

(*c*) A statement that, at the time when the interest was derived from which the excess tax was withheld, the owner was neither a citizen nor a resident of the United States but was a resident of France, or, in the case of a corporation, the owner was a French corporation; and

(*d*) A statement that the owner at no time during the taxable year in which the interest was derived was engaged in trade or business within the United States through a permanent establishment situated therein.

One such substitute form shall be filed, in duplicate, with respect to each issue of bonds and will serve with respect to that issue to replace all Forms 1001 previously filed by the taxpayer in the calendar year in which the excess tax was withheld and with respect to which such excess is released. If the person presenting the coupon, or on whose behalf it is presented, is not the owner of the bond, Form 1001, and not Form 1001–F, shall be executed.

(ii) *Disposition of form.* The original and duplicate of substitute Form 1001–F (and letter) shall be forwarded by the withholding agent to the Director, International Operations Division, Internal Revenue Service, Washington, D.C., with the annual return on Form 1042. Substitute Form 1001–F need not be listed on Form 1042.

(3) *Noncoupon interest, royalties, private pensions, and life annuities.* (i) If a taxpayer furnishes to the withholding agent a Form 1001A-F, properly executed as prescribed by §514.4(b)(4), and United States tax has been withheld at the statutory rate on or after January 1, 1957, from noncoupon interest payments in respect of which the form is filed, the withholding agent should release and pay over to the person from whom the tax was withheld an amount which is equal to the difference between the tax so withheld and the tax required to be withheld pursuant to §514.4(b)(4).

(ii) If a taxpayer furnishes to the withholding agent a Form 1001A-F, properly executed as prescribed by §514.4(b)(4), and United States tax has been withheld at the statutory rate on or after January 1, 1957, from royalties, private pensions, and life annuities in respect of which the form is filed, the withholding agent shall release and pay over to the person from whom the tax was withheld an amount which is equal to the total tax so withheld.

(b) *Amounts not to be released.* The provisions of this section do not apply to excess tax withheld at source which has been paid by the withholding agent to the internal revenue officer entitled to receive payment of the tax withheld under chapter 3 of the Internal Revenue Code of 1954.

(c) *Statutory rate.* As used in this section, the term ''statutory rate'' means the rate prescribed by chapter 3 of the Internal Revenue Code of 1954 and the regulations thereunder, as though the convention had not come into effect.

§514.9 Refund of excess tax withheld.

(a) *Years 1952, 1953, 1954, 1955, 1956.* Where the tax withheld at the source upon dividends and interest paid in any one or more of the calendar years 1952, 1953, 1954, 1955, and 1956 is in excess of the tax due from the taxpayer under the convention, supplemented as set forth above, it will be necessary for the taxpayer to file an income tax return (Form 1040NB France for individuals and Form 1120NB France for corporations) with respect to such taxable year or years. The return shall cover all years for which a refund is claimed. The return must be filed on or before June 13, 1959. One return shall cover all years for which a refund is claimed. The taxpayer's total fixed or determinable, annual or periodical income (other than royalties) from sources within the United States should be reported on the return, and the income for each taxable year should be shown separately. There shall also be shown on such returns the amounts, if any, received in any of such years of capital gains (other than gains from the sale or exchange of stocks, securities or commodities) from sources within the United States. For this purpose, beginning with the calendar year 1954, certain distributions from employees' trusts, and amounts received incident to disposal of timber or coal or patent rights shall be included in such capital gains. See section 871(a)(1) of the Internal Revenue Code of 1954 for provisions pertaining to individual taxpayers and section 881(a) for provisions pertinent to corporate taxpayers. There shall be included with the return the following statements:

(1) That the taxpayer was a nonresident alien (including a nonresident alien individual, fiduciary, or partnership) resident in France or was a

French corporation, during the year or years for which the return is filed;

(2) That the taxpayer had no permanent establishment in the United States during the respective years in which the income was received;

(3) That no penalty for fraud has been imposed by the United States against the taxpayer claimant with respect to income tax for the year or years for which the return is filed.

In addition to the above statements, all information requested on the return must be furnished. Any tax paid in excess of that due from the owner of the income will be refunded by the United States Government as required by law. For the purpose of refund of excess tax withheld resulting from the tax convention, a properly executed return on Form 1040NB France or Form 1120NB France shall constitute a claim for refund or credit for the amount of the overpayment disclosed by such return.

(b) *Date of payment of tax.* The United States tax withheld from dividends and interest derived from sources within the United States by nonresident aliens, or by a foreign corporation not engaged in trade or business in the United States, is deemed to have been paid on March 15 of the calendar year immediately succeeding that in which such income has been so derived. Section 1461, Internal Revenue Code of 1954. Hence, the United States tax withheld from dividends and interest derived by such aliens resident in France and such French corporations for the years 1952, 1953, 1954, 1955, and 1956 is deemed to have been paid, respectively, on March 15, 1953, March 15, 1954, March 15, 1955, March 15, 1956, and March 15, 1957.

§ 514.10 Effective date.

The provisions of §§ 514.1 through 517.9 shall be effective with respect to taxable years beginning after December 31, 1956, and before January 1, 1967, or with respect to dividends, interest, and royalties paid before August 11, 1968.

[T.D. 6986, 34 FR 136, Jan. 4, 1969]

TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1966, OR DIVIDENDS, INTEREST, AND ROYALTIES PAID ON OR AFTER AUGUST 11, 1968

SOURCE: Treasury Decision 6986, 34 FR 136, Jan. 4, 1969, unless otherwise noted.

§ 514.22 Dividends received by persons not entitled to reduced rate of tax.

(a) *General.* Article 27(1) of the convention provides that each Contracting State shall undertake to lend assistance and support to the other Contracting State in the collection of taxes covered by the convention.

(b) *Additional French tax to be withheld in the United States*—(1) *By a nominee or representative.* The recipient in the United States of any dividend from which French tax has been withheld at the reduced rate of 15 percent, who is a nominee or representative through whom the dividend is received by a person who is not a resident of the United States, shall withhold an additional amount of French tax equivalent to the French tax which would have been withheld if the convention had not been in effect (25 percent as of the date of approval of this Treasury decision) minus the 15 percent which has been withheld at the source.

(2) *By a fiduciary or partnership.* A fiduciary or partnership with an address in the United States which receives, otherwise than as a nominee or representative, a dividend from sources within France from which French tax has been withheld at the reduced rate of 15 percent, shall withhold an additional amount of French tax from the portion of the dividend included in the gross income from sources within France of any beneficiary or partner, as the case may be, who is not entitled to the reduced rate of tax in accordance with the applicable provisions of the convention. The amount of the additional tax is to be calculated in the same manner as under subparagraph (1) of this paragraph.

(3) *Withholding additional French tax from amounts released or refunded.* If any amount of French tax is released by the withholding agent in France with respect to a dividend received by a nominee, representative, fiduciary, or partnership in the United States, the

recipient shall withhold from such released amount any additional amount of French tax otherwise required to be withheld from the dividend by the provisions of subparagraphs (1) and (2) of this paragraph, in the same manner as if at the time of payment of the dividends French tax at the rate of 15 percent had been withheld therefrom.

(4) *Return of French tax by U.S. withholding agents.* Amounts of French tax withheld pursuant to this paragraph by withholding agents in the United States shall be deposited in U.S. dollars with the Director, Office of International Operations, Internal Revenue Service, Washington, D.C. 20225, on or before the 16th day after the close of the quarter of the calendar year in which the withholding occurs. Such withholding agent shall also submit such appropriate forms as may be prescribed by the Commissioner of Internal Revenue.

[T.D. 6986, 34 FR 136, Jan. 4, 1969, as amended by T.D. 8734, 62 FR 53498, Oct. 14, 1997]

PARTS 515–520 [RESERVED]

PART 521—DENMARK

Subpart—General Income Tax

TAXATION OF NONRESIDENT ALIENS WHO ARE RESIDENTS OF DENMARK AND OF DANISH CORPORATIONS

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521.117 Claims in cases of double taxation.

AUTHORITY: 26 U.S.C. 62, 143, 144, 211, and 231.

Subpart—General Income Tax

SOURCE: Treasury Decision 5777, 15 FR 1595, Mar. 22, 1950, unless otherwise noted. Redesignated at 25 FR 14022, Dec. 31, 1960.

TAXATION OF NONRESIDENT ALIENS WHO ARE RESIDENTS OF DENMARK AND OF DANISH CORPORATIONS

§ 521.101 Introductory.

The income tax convention between the United States and the Kingdom of Denmark, signed May 6, 1948, proclaimed (with reservations thereto) by the President of the United States on December 8, 1948, and effective for taxable years beginning on and after January 1, 1948 (referred to in this subpart as the convention), provides in part as follows:

ARTICLE I

(1) The taxes referred to in this Convention are:

(a) In the case of the United States of America: The Federal income tax, including surtaxes.

(b) In the case of Denmark:

The national income tax, including the war profits tax.

The intercommunal income tax.

The communal income tax.

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed by either contracting State subsequently to the date of signature of the present Convention.

ARTICLE II

(1) As used in this Convention:

(a) The term ''United States'' means the United States of America, and when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(b) The term ''Denmark'' means the Kingdom of Denmark; the provisions of the Convention shall not, however, extend to the Faroe Islands; nor do they apply to Greenland.

(c) The term ''permanent establishment'' means a branch office, factory, warehouse or

other fixed place of business, but does not include the casual and temporary use of merely storage facilities, nor does it include an agency unless the agent has and exercises a general authority to negotiate and conclude contracts on behalf of an enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the contracting States shall not be deemed to have a permanent establishment in the other State merely because it carries on business dealings in such other State through a bona fide commission agent, broker or custodian acting in the ordinary course of his business as such. The fact that an enterprise of one of the contracting States maintains in the other State a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. The fact that a corporation of one contracting State has a subsidiary corporation which is a corporation of the other State or which is engaged in trade or business in the other State shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation.

(d) The term ''enterprise of one of the contracting States'' means, as the case may be, ''United States enterprise'' or ''Danish enterprise''.

(e) The term ''enterprise'' includes every form of undertaking whether carried on by an individual, partnership, corporation, or any other entity.

(f) The term ''United States enterprise'' means an enterprise carried on in the United States of America by a resident of the United States of America or by a United States corporation or other entity; the term ''United States corporation or other entity'' means a partnership, corporation or other entity created or organized in the United States of America or under the law of the United States of America or of any State or Territory of the United States of America.

(g) The term ''Danish enterprise'' means an enterprise carried on in Denmark by a resident of Denmark or by a Danish corporation or other entity; the term ''Danish corporation or other entity'' means a partnership, corporation, or other entity created or organized in Denmark or under Danish laws.

(h) The term ''competent authorities'' means, in the case of the United States, the Commissioner of Internal Revenue or his authorized representative; and in the case of Denmark, the Chief of the Taxation Department of the Ministry of Finance (Generaldirektoren for Skattevaesenet) or his authorized representative.

(2) In the application of the provisions of the present Convention by one of the contracting States any term not otherwise defined, shall, unless the context otherwise requires, have the meaning which such term has under its own tax laws.

ARTICLE III

(1) An enterprise of one of the contracting States shall not be subject to taxation in the other contracting State in respect of its industrial and commercial profits unless it is engaged in trade or business in such other State through a permanent establishment situated therein. If it is so engaged such other State may impose its tax upon the entire income of such enterprise from sources within such other State.

(2) In determining the industrial or commercial profits from sources within the territory of one of the contracting States of an enterprise of the other contracting State, no profits shall be deemed to arise from the mere purchase of goods or merchandise within the territory of the former contracting State by such enterprise.

(3) Where an enterprise of one of the contracting States is engaged in trade or business in the territory of the other contracting State through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment and the profits so attributed shall, subject to the law of such other contracting State, be deemed to be income from sources within the territory of such other contracting State.

ARTICLE IV

Where an enterprise of one of the contracting States, by reason of its participation in the management or the financial structure of an enterprise of the other contracting State, makes with or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with an independent enterprise, any profits which would normally have accrued to one of the enterprises but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE V

(1) Income which an enterprise of one of the contracting States derives from the operation of ships or aircraft registered in that State shall be exempt from taxation in the other contracting State.

(2) The present Convention shall not be deemed to affect the arrangement between the United States and Denmark providing for relief from double income taxation on shipping profits, effected by exchanges of

notes dated May 22, August 9 and 18, October 24, 25, and 28, and December 5 and 6, in the year 1922.

ARTICLE VI

(1) Dividends shall be taxable only in the contracting State in which the shareholder is resident or, if the shareholder is a corporation or other entity, in the contracting State in which such corporation or other entity is incorporated or organized.

(2) Each of the contracting States reserves, however, the right to collect and retain the tax which, under its revenue laws, is deductible at the source with respect to such dividends, but the tax shall not exceed 15 percent of the amount of dividends derived from sources within such State by a resident, corporation or other entity of the other State, if the recipient has no permanent establishment in the contracting State from which the dividends are derived.

(3) It is agreed, however, that the rate of dividend tax at the source shall not exceed five percent if the shareholder is a corporation controlling, directly or indirectly, at least 95 percent of the entire voting power in the corporation paying the dividend, and if not more than 25 percent of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to five percent shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

ARTICLE VII

Interest on bonds, securities, notes, debentures, or on any other form of indebtedness derived from sources within one of the contracting States by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall be exempt from tax by such former State.

ARTICLE VIII

Royalties and other amounts derived as consideration for the right to use copyrights, patents, designs, secret processes and formulas, trade-marks and other like property (including rentals and like payments in respect of motion picture films) derived from sources within one of the contracting States by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall be exempt from taxation in such former State.

ARTICLE IX

(1) Income from real property (not including interest derived from mortgages and bonds secured by real property) and royalties in respect of the operation of mines, quarries, or other natural resources, shall be taxable only in the contracting State in which such property, mines, quarries, or other natural resources are situated.

(2) A resident or corporation of one of the contracting States deriving any such income from sources within the other contracting State may, for any taxable year, elect to be subject to the tax of such other contracting State, on a net basis, as if such resident or corporation were engaged in trade or business within such other contracting State through a permanent establishment therein during such taxable year.

ARTICLE X

(1) Wages, salaries, and similar compensation and pensions paid by one of the contracting States or by any other public authority within that State to individuals residing in the other State shall be taxable only in the former State.

(2) Private pensions and life annuities derived from within one of the contracting States and paid to individuals residing in the other contracting State shall be exempt from taxation in the former State.

(3) The term ''life annuities'' as used herein means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in consideration of a gross sum paid for such obligation.

ARTICLE XI

(1) Compensation for labor or personal services, including the practice of the liberal professions, shall be taxable only in the contracting State in which such services are rendered.

(2) The provisions of paragraph (1) are, however, subject to the following exceptions:

(a) A resident of Denmark shall be exempt from United States tax upon compensation for labor or personal services if he is temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year and the compensation received for such services does not exceed $3,000 in the aggregate. If, however, his compensation is received for labor or personal services performed as an employee of, or under contract with, a resident or corporation or other entity of Denmark, he will be exempt from United States tax if his stay in the United States does not exceed a total of 180 days during the taxable year.

(b) The provisions of paragraph (2)(a) of this Article shall apply mutatis mutandis, to a resident of the United States with respect to compensation for personal services otherwise subject to income tax in Denmark.

(3) The provisions of this Article shall have no application to the income to which Article X (1) relates.

ARTICLE XII

Gains derived in one of the contracting States from the sale or exchange of capital assets by a resident or corporation or other entity of the other contracting State shall be exempt from taxation in the former State if such resident or corporation or other entity is not engaged in trade or business in such former State. [This Article deleted by reservation, see President's Proclamation hereinafter.]

ARTICLE XIII

Students or apprentices, citizens of one of the contracting States, residing in the other contracting State exclusively for purposes of study or for acquiring business experience, shall not be taxable in the latter State in respect of remittances (other than their own income) received by them from abroad for the purposes of their maintenance or studies.

ARTICLE XIV

A professor or teacher, a resident of one of the contracting States, who temporarily visits the territory of the other contracting State for the purpose of teaching for a period not exceeding two years at a university, college, school or other educational institution in the other contracting State, shall be exempted in such other contracting State from tax on his remuneration for such teaching for such period.

ARTICLE XV

It is agreed that double taxation shall be avoided in the following manner:

(a) The United States in determining the income taxes, including surtaxes, of its citizens, residents or corporations may, regardless of any other provision of this Convention, include in the basis upon which such taxes are imposed all items of income taxable under the revenue laws of the United States as if this convention had not come into effect. The United States shall, however, subject to the provisions of section 131, Internal Revenue Code, deduct from its taxes the amount of Danish taxes specified in Article I of this Convention.

(b) Denmark, in determining its taxes specified in Article I of this Convention, may regardless of any other provision of this Convention, include in the basis upon which such taxes are imposed all items of income subject to such taxes under the taxation laws of Denmark. Denmark shall, however, deduct from the taxes so calculated the United States tax on income coming within the provisions of Articles III, IX, X (1), XIII and XIV of this Convention and on earned income earned within the United States, but in an amount not exceeding that proportion of the Danish taxes which such income bears to the entire income subject to tax by Denmark. Denmark will also allow as a deduction from its taxes an amount equal to 15 percent (five percent in the case of dividends covered by Article VI (3)) of the gross amount of dividends (reduced by the United States tax applicable to such dividends) from sources within the United States.

ARTICLE XVI

(1) The citizens of one of the contracting States shall not, while resident in the other contracting State, be subjected therein to other or more burdensome taxes than are the citizens of such other contracting State residing in its territory. As used in this paragraph:

(a) The term ''citizens'' includes all legal persons, partnerships, and associations created or organized under the laws in the respective contracting States, and

(b) The term ''taxes'' means taxes of every kind or description whether national, Federal, state, provincial or municipal.

(2) It is agreed that section 25, paragraph 5, of the Danish law No. 391 of July 12, 1946, prescribing an addition of 50 percent of the capital increment tax on corporations in cases where more than 50 percent of the entire stock capital is owned by a single shareholder residing outside Denmark, shall not be applicable when the shareholder in question is a resident of the United States or a United States corporation or other entity.

ARTICLE XVII

The competent authorities of the contracting States shall exchange such information (being information available under the respective taxation laws of the contracting States) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the administration of statutory provisions against tax avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information shall be exchanged which would disclose any trade secret or trade process.

ARTICLE XVIII

(1) The contracting States undertake to lend assistance and support to each other in the collection of the taxes which are the subject of the present Convention, together with interest, costs, and additions to the taxes.

(2) In the case of application for enforcement of taxes, revenue claims of each of the contracting States which have been finally determined may be accepted for enforcement by the other contracting State and may be collected in that State in accordance with the laws applicable to the enforcement and collection of its own taxes.

(3) Any application shall include a certification that under the laws of the State making the application the taxes have been finally determined.

(4) The assistance provided for in this Article shall not be accorded with respect to the citizens, corporations, or other entities of the State to which application is made, except as is necessary to insure that the exemption or reduced rate of tax granted under the present Convention to such citizens, corporations, or other entities shall not be enjoyed by persons not entitled to such benefits.

ARTICLE XIX

The State to which application is made for information or assistance shall comply as soon as possible with the request addressed to it except that such State may refuse to comply with the request for reasons of public policy or if compliance would involve violation of a trade, business, industrial or professional secret or trade process.

ARTICLE XX

Where a taxpayer shows proof that the action of the revenue authorities of the contracting States has resulted in double taxation in his case in respect of any of the taxes to which the present Convention relates, he shall be entitled to lodge a claim with the State of which he is a citizen or, if he is not a citizen of either of the contracting States, with the State of which he is a resident, or, if the taxpayer is a corporation or other entity, with the State in which it is created or organized. Should the claim be upheld, the competent authority of such State may come to an agreement with the competent authority of the other State with a view to equitable avoidance of the double taxation in question.

ARTICLE XXI

(1) The provisions of this Convention shall not be construed to deny or affect in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to such officers.

(2) The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance accorded by the laws of one of the contracting States in the determination of the tax imposed by such State.

(3) Should any difficulty or doubt arise as to the interpretation or application of the present Convention, or its relationship to Conventions between one of the contracting States and any other State, the competent authorities of the contracting States may settle the question by mutual agreement.

ARTICLE XXII

The competent authorities of the two contracting States may prescribe regulations necessary to interpret and carry out the provisions of this Convention. With respect to the provisions of this Convention relating to exchange of information and mutual assistance in the collection of taxes, such authorities may, by common agreement, prescribe rules concerning matters of procedure, forms of application and replies thereto, conversion of currency, disposition of amounts collected, minimum amounts subject to collection and related matters.

ARTICLE XXIII

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

(2) Upon the exchange of instruments of ratification, the present Convention shall have effect.

(a) In the case of United States tax, for the taxable years beginning on or after the first day of January of the year in which such exchange takes place;

(b) In the case of Danish tax, for the taxable years beginning on or after the first day of April of the year in which such exchange takes place.

(3) The present Convention shall continue effective for a period of five years and indefinitely after that period, but may be terminated by either of the contracting States at the end of the five-year period or at any time thereafter, provided that at least six months' prior notice of termination has been given and, in such event, the present Convention shall cease to be effective.

(a) As respects United States tax, for the taxable years beginning on or after the first day of January next following the expiration of the six-month period;

(b) As respects Danish tax, for the taxable years beginning on or after the first day of April next following the expiration of the six-month period.

Done at Washington, in duplicate, in the English and Danish languages, the two texts having equal authenticity, this 6th day of May 1948.

For the President of the United States of America:

[SEAL]

G. C. MARSHALL.

For his Majesty the King of Denmark:

[SEAL]

HENRIK KAUFFMAN.

PROCLAMATION OF THE PRESIDENT OF THE UNITED STATES DATED DECEMBER 8, 1948

* * * * *

And whereas the Senate of the United States of America, by their resolution of

June 17, 1948, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the aforesaid convention subject to a reservation, as follows:

The Government of the United States of America does not accept Article XII of the convention relating to gains from the sale or exchange of capital assets.

And whereas the text of the aforesaid reservation was communicated by the Government of the United States of America to the Government of Denmark and thereafter the Government of Denmark gave notice of its acceptance of the aforesaid reservation;

And whereas the aforesaid convention was duly ratified by the President of the United States of America on November 24, 1948, in pursuance of the aforesaid advice and consent of the Senate and subject to the aforesaid reservation, and the said convention, with the exception of Article XII thereof, was duly ratified on the part of Denmark;

And whereas the respective instruments of ratification of the aforesaid convention were duly exchanged at Washington on December 1, 1948, and a protocol of exchange of instruments of ratification, in the English and Danish languages, was signed on that date by the respective Plenipotentiaries of the United States of America and Denmark, the English text of which protocol reads in part: ''it is the understanding of both Governments that Article XII of the convention aforesaid shall be deemed to be deleted and of no effect.'';

* * * * *

§ 521.102 Applicable provisions of the Internal Revenue Code.

(a) The Internal Revenue Code provides in part as follows:

CHAPTER I—INCOME TAX

* * * * *

SEC. 22. GROSS INCOME.

* * * * *

(b) *Exclusions from gross income.* The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

* * * * *

(7) *Income exempt under treaty.* Income of any kind, to the extent required by any treaty obligation of the United States;

* * * * *

SEC. 62. RULES AND REGULATIONS. The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter.

(b) Pursuant to section 62 of the Internal Revenue Code, other provisions of the internal revenue laws, and to Article XXII of the convention, the following regulations, which are designated as §§ 521.101 to 521.117 are hereby prescribed and all regulations inconsistent herewith are modified accordingly.

§ 521.103 Scope of the convention.

(a) The primary purposes of the convention, to be accomplished on a reciprocal basis, are to avoid double taxation upon major items of income derived from sources in one country by persons resident in, or by corporations of, the other country, and to provide for administrative cooperation between the competent tax authorities of the two countries looking to the avoidance of double taxation and fiscal evasion.

(b) The specific classes of income from sources within the United States exempt under the convention from United States tax for taxable years beginning on and after January 1, 1948, are:

(1) Industrial and commercial profits of a Danish enterprise having no permanent establishment in the United States (Article III);

(2) Income derived by a nonresident alien who is a resident of Denmark, or by a Danish corporation, from the operation of ships or aircraft registered in Denmark (Article V);

(3) Interest and royalties (including motion picture film rentals) derived by a nonresident alien who is a resident of Denmark or by a Danish corporation if such alien or corporation has no permanent establishment in the United States (Articles VII and VIII);

(4) Compensation and pensions paid by Denmark to aliens for services rendered to Denmark (Article X(1));

(5) Private pensions and life annuities derived by nonresident alien individuals residing in Denmark (Article X(2));

(6) Compensation, subject to certain limitations, for personal services derived by a nonresident alien who is a resident of Denmark (Article XI);

(7) Remittances from sources outside the United States received in the United States by a Danish citizen who is temporarily present in the United States for the purposes of study or for acquiring business experience, such remittances being for the purpose of his maintenance or studies (Article XIII);

(8) Remuneration derived from teaching in the United States for a period of not more than two years by a professor or teacher who is a resident of Denmark but who is temporarily present in the United States (Article XIV).

(c) The convention also reduces to 15 percent the rate of tax otherwise imposed upon dividends derived by a nonresident alien who is a resident of Denmark, or by a Danish corporation, if such alien or corporation has no permanent establishment in the United States (Article VI).

(d) [Reserved]

(e) The convention does not affect the liability to United States income taxation of citizens of Denmark who are residents of the United States except that such individuals are entitled to the benefits of Article XV (relating to credit for Danish income tax), and of Article XVI (relating to equality of taxation). Except as provided in Article XV, relating to the credit for income tax, the convention does not affect taxation by the United States of a citizen of the United States or of a domestic corporation, even though such citizen is resident in Denmark and such corporation is engaged in trade or business in Denmark.

[T.D. 5777, 15 FR 1595, Mar. 22, 1950, as amended by T.D. 8732, 62 FR 53498, Oct. 14, 1997]

§ 521.104 Definitions.

(a) As used in §§ 521.101 to 521.117, unless the context otherwise requires, the terms defined in the convention shall have the meanings so assigned to them. Any term used in §§ 521.101 to 521.117, which is not defined in the convention but which is defined in the Internal Revenue Code shall be given the definition contained therein unless the context otherwise requires.

(b) As used in §§ 521.101 to 521.117.

(1) The term ''permanent establishment'' means a branch office, factory, warehouse or other fixed place of business, but does not include the casual and temporary use of merely storage facilities. The fact that a Danish corporation has a domestic subsidiary corporation or a foreign subsidiary corporation having a branch in the United States, does not of itself constitute either subsidiary corporation a permanent establishment of the parent Danish enterprise. The fact that a Danish enterprise has business dealings in the United States through a bona fide commission agent, broker, or custodian, acting in the ordinary course of his business as such, or maintains in the United States an office or other fixed place of business used exclusively for the purchase of goods or merchandise, does not mean that such Danish enterprise has a permanent establishment in the United States. If, however, a Danish enterprise carries on business in the United States through an agent who has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or if it has an agent who maintains within the United States a stock of merchandise from which he regularly fills orders on behalf of his principal, then such enterprise shall be deemed to have a permanent establishment in the United States. However, an agent having power to contract on behalf of his principal but only at fixed prices and under conditions determined by the principal does not necessarily constitute a permanent establishment of such principal. The mere fact that an agent (assuming he has no general authority to contract on behalf of his employer or principal) maintains samples or occasionally fills orders from incidental stocks of goods maintained in the United States will not constitute a permanent establishment within the United States. The mere fact that salesmen, employees of a Danish enterprise, promote the sale of their employer's products in the United States or that such enterprise transacts business in the United States by means of mail order activities, does not mean such enterprise has a permanent

establishment therein. The term ''permanent establishment'' as used in the convention implies the active conduct therein of a business enterprise. The mere ownership, for example, of timberlands or a warehouse in the United States by a Danish enterprise does not mean that such enterprise has a permanent establishment therein. As to the effect of the maintenance of a permanent establishment within the United States upon exemption from United States tax in the case of interest and royalties and reduction in the rate of United States tax in the case of dividends, see § 521.108.

(2) The term ''enterprise'' means any commercial or industrial undertaking whether conducted by an individual, partnership, corporation, or other entity. It includes such activities as manufacturing, merchandising, mining, processing, and banking. It does not include the rendition of personal services. Hence, a non resident alien who is a resident of Denmark and who renders personal services is not, merely by reason of such services, engaged in an enterprise within the meaning of the convention and his liability to United States tax is not affected by Article III of the convention.

(3) The term ''Danish enterprise'' means an enterprise carried on in Denmark by a resident of Denmark or by a Danish corporation or other entity. The term ''Danish corporation or other entity'' means a partnership, corporation or other entity created or organized in Denmark or under the laws of Denmark.

(4) The term ''industrial or commercial profits'' means profits arising from industrial, commercial, mercantile, manufacturing, and like activities of a Danish enterprise as defined in this section. Such term does not include rentals, royalties, interest, dividends, fees, compensation for personal services, nor gains derived from the sale or exchange of capital assets. Such enumerated items of income are not governed by the provisions of Article III of the convention.

§ 521.105 Scope of convention with respect to determination of "industrial or commercial profits".

(a) *General.* Article III of the convention adopts the principle that an enterprise of one of the contracting States shall not be taxable by the other contracting State upon its industrial or commercial profits unless it has a permanent establishment in the latter State. Hence, a Danish enterprise is subject to United States tax upon its industrial and commercial profits to the extent of such profits from sources within the United States only if it has a permanent establishment within the United States. From the standpoint of Federal income taxation, the article has application only to a Danish enterprise and to the industrial and commercial income thereof from sources within the United States. It has no application for example, to compensation for labor or personal services performed in the United States nor to income derived from real property located in the United States, including rentals and royalties therefrom, nor to gains from the sale or disposition of such property, nor to interest, dividends, royalties, other fixed or determinable annual or periodical income and gains derived from the sale or exchange of capital assets.

(b) *No United States permanent establishment.* A nonresident alien (including a nonresident alien individual, fiduciary and partnership) who is a resident of Denmark or a Danish corporation, carrying on an enterprise in Denmark and having no permanent establishment in the United States, is not for taxable years beginning on or after January 1, 1948, subject to United States income tax upon industrial or commercial profits from sources within the United States. For example, if the Danish enterprise carried on by such alien or corporation sells, in 1948, merchandise, such as silverware, dairy products, or liquors, through a bona fide commission agent or broker in the United States acting in the ordinary course of his business as such agent or broker, the resulting profits are, under the terms of Article III of the convention, exempt from United States income tax. Likewise no permanent establishment exists and no United

States income tax attaches to such profits if such enterprise, through its sales agents in the United States, secures orders for its products, the sales being made in Denmark.

(c) *United States permanent establishment.* A nonresident alien (including a nonresident alien individual, fiduciary and partnership), who is a resident of Denmark, or a Danish corporation, whether or not carrying on a Danish enterprise, having a permanent establishment in the United States, is subject to tax upon industrial or commercial profits from sources within the United States to the same extent as are nonresident aliens and foreign corporations engaged in trade or business therein. In the determination of the income taxable to such alien or foreign corporation all industrial and commercial profits from sources within the United States shall be deemed to be allocable to the permanent establishment in the United States. Hence, for example, if a Danish enterprise having a permanent establishment in the United States sells in the United States, through a commission agent therein goods produced in Denmark, the resulting profits derived from United States sources from such transactions are allocable to such permanent establishment even though such transactions were carried on independently of such establishment. In determining industrial and commercial profits no account shall be taken of the mere purchase of merchandise within the United States by the Danish enterprise. The industrial or commercial profits of the permanent establishment shall be determined as if the establishment were an independent enterprise engaged in the same or similar activities and dealing at arm's length with the enterprise of which it is a permanent establishment.

§ 521.106 Control of a domestic enterprise by a Danish enterprise.

Article IV of the convention provides, in effect, that if a Danish corporation by reason of its control of a domestic enterprise imposes on such later enterprise conditions different from those which would result from normal business relations between independent enterprises, the accounts between the enterprises may be adjusted so as to ascertain the true net income of each enterprise. The purpose is to place the controlled domestic enterprise on a tax parity with an uncontrolled domestic enterprise by determining, according to the standard of an uncontrolled enterprise, the true net income from the property and business of the controlled enterprise. The basic objective of the article is that if the accounting records do not truly reflect the net income from the property and business of such domestic enterprise the Commissioner of Internal Revenue may intervene and, by making such distributions, apportionments, or allocations as he may deem necessary of gross income or deductions of any item or element affecting net income as between such domestic enterprise and the Danish enterprise by which it is controlled or directed, determine the true net income of the domestic enterprise. The provisions of § 29.45–1 of Regulations 111 (26 CFR 1949 ed. Supps. 29.45–1) [and § 39.45–1 of Regulations 118 (26 CFR, Rev. 1953, Parts 1–79, and Supps.)] shall, insofar as applicable, be followed in the determination of the net income of the domestic business.

§ 521.107 Income from operation of ships or aircraft.

The income derived from the operation of ships or aircraft registered in Denmark by a nonresident alien who is a resident of Denmark, or by a Danish corporation, and carrying on an enterprise in Denmark, is, for taxable years beginning on or after January 1, 1948, exempt from United States income tax under the provisions of Article V of the convention.

§ 521.108 Exemption from, or reduction in rate of, United States tax in the case of dividends, interest and royalties.

(a) *Dividends*—(1) *General.* The tax imposed by the Internal Revenue Code in the case of dividends received from sources within the United States by (i) a nonresident alien (including a nonresident alien individual, fiduciary and partnership) who is a resident of Denmark, or (ii) a Danish corporation is, for taxable years beginning on and

after January 1, 1948, limited to 15 percent under the provisions of Article VI (relating to dividends) if such alien or corporation, at no time during the taxable year in which such dividends were so derived, had a permanent establishment within the United States. Thus, if a nonresident alien who is a resident of Denmark, performs personal services within the United States during the calendar year 1948 but has at no time during such year a permanent establishment within the United States, he is entitled to the reduced rate of tax with respect to such dividends derived in that year from United States sources, as provided in Article VI of the convention, even though by reason of his having rendered personal services within the United States he is engaged in trade or business therein in that year within the meaning of section 211(b) of the Internal Revenue Code. If, for example, A, a nonresident alien who is a resident of Denmark, derives in 1948, $5,000 compensation for such personal services and his only other income from sources within the United States consists of dividends, the dividends are subject to tax at a rate not to exceed 15 percent and his earned income is subject to normal tax and surtax without taking the dividends into account in determining the tax on such earned income.

(2) *Dividends paid by a United States subsidiary corporation.* Under the provisions of Article VI(3) of the convention, dividends paid by a domestic corporation to a Danish corporation are subject to tax at the rate of only 5 percent if (i) such Danish corporation controls, directly or indirectly, at the time the dividend is paid 95 percent or more of the voting power in such domestic corporation, (ii) not more than 25 percent of the gross income of the domestic corporation for the three-year period immediately preceding the taxable year in which the dividend is paid consists of dividends and interest (other than dividends and interest paid to such domestic corporation by its own subsidiary corporations, if any), and (iii) the relationship between such domestic corporation and such Danish corporation has not been arranged or maintained primarily with the intention of securing such reduced rate of 5 percent.

(b) *Interest and royalties.* (1) Interest, whether on bonds, securities, notes, debentures, or any other form of indebtedness (including interest on obligations of the United States and on obligations of instrumentalities of the United States), and royalties for the right to use copyrights, patents, designs, secret processes and formulae, trade-marks, and other analogous property and royalties (including rentals and like payments in respect of motion picture films) received from sources within the United States by (i) a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of Denmark, or (ii) a Danish corporation, are, for taxable years beginning on and after January 1, 1948, exempt from United States tax under the provisions of Articles VII and VIII of the convention if such alien or corporation at no time during the taxable year in which such interest or royalty was so derived had a permanent establishment situated within the United States.

(2) Such interest and royalties are, therefore, not subject to the withholding provisions of the Internal Revenue Code.

(c) *Beneficiaries of an estate or trust.* (1) A nonresident alien who is a resident of Denmark and who is a beneficiary of a domestic estate or trust shall be entitled to the exemption, or reduction in the rate of tax, as the case may be, provided in Articles VI, VII and VIII of the convention with respect to dividends, interest and royalties to the extent that such item or items are included in his distributive share of income of such estate or trust if he at no time during the taxable year had a permanent establishment in the United States. In such case such beneficiary must, in order to be entitled to the exemption or reduction in the rate of tax execute Form 101–D or Form 1001A-D (modified to show dividends where applicable) and file such form with the fiduciary of such estate or trust in the United States.

(2) In any case in which dividends, interest or royalties are derived from United States sources by a Danish estate or trust, any beneficiary of such

estate or trust who is not a resident of Denmark, or who has a permanent establishment in the United States, is not entitled to any exemption under the convention with respect to such income included in his distributive share of the income of the estate or trust.

§ 521.109 Real property income, natural resource royalties.

Under Article IX of the convention, a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of Denmark, or a Danish corporation, who derives from sources within the United States in any taxable year beginning on or after January 1, 1948, income from real property (not including interest derived from mortgages or bonds secured by real property) or royalties from the operation of mines, quarries, oil wells or other natural resources may, for such taxable year, elect to be subject to Federal income tax as if such alien or corporation were engaged in trade or business within the United States by reason of having a permanent establishment therein during such taxable year. Such election shall be made by so signifying on the return for such year. The election so signified shall be irrevocable for the taxable year for which such election is made. In such case a return may be filed by the nonresident alien or foreign corporation even though the sole income of such alien or corporation from sources within the United States is fixed or determinable annual or periodical income upon which the tax has been fully satisfied at the source and there exists no necessity for the filing of the return except for the purposes of securing the benefits of Article IX of the convention. See § 29.217–2 of Regulations 111 (26 CFR 1949 ed. Supps. 29.217–2) [and § 39.217–2 of Regulations 118 (26 CFR, Rev. 1953, Parts 1–79, and Supps.)]

§ 521.110 Government wages, salaries, pensions and similar remuneration.

Under Article X (1) of the convention any wage, salary, similar compensation or pension paid by the Government of Denmark or by any other public authority within Denmark to an individual in the United States is exempt from Federal income tax for taxable years beginning on and after January 1, 1948. By reason, however, of the application of Article XV (a) of the convention, such exemption does not apply to recipients of such income who are either citizens of the United States or alien residents therein. As to the taxation generally of compensation of alien employees of foreign governments, see section 116(h) of the Internal Revenue Code and § 29.116–2 of Regulations 111 (26 CFR 1949 ed. Supps. 29.116–2) [and § 39.116–2 of Regulations 118 (26 CFR, Rev. 1953, Parts 1–79, and Supps.)].

§ 521.111 Pensions and life annuities.

Under the provisions of Article X(2) of the convention, private pensions and life annuities derived from sources within the United States by nonresident alien individuals who are residents of Denmark are exempt from Federal income tax for taxable years beginning on and after January 1, 1948. The term ''life annuities'' is defined in Article X(3). The term ''private pensions'' does not include pensions or retired pay paid by the United States or by any State or Territory of the United States; it does include periodic payments made in consideration for services rendered or by way of compensation for injuries received.

§ 521.112 Compensation for labor or personal services.

Article XI of the convention adopts the principle that compensation for labor or personal services, including the practice of the liberal professions, is subject to tax only in the contracting State in which such services are rendered. Hence, in general, such compensation derived by a nonresident alien individual residing in Denmark for services rendered in the United States is subject to Federal income tax. Under Article XI of the convention this general rule is subject to the following exceptions:

(a) Where such individual is temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year, compensation received for labor or personal services within the United States during such year is exempt from

Federal income tax provided such compensation does not exceed $3,000 in the aggregate.

(b) Where such individual is temporarily present in the United States for a period or periods not exceeding a total of 180 days during the taxable year, compensation for labor or personal services within the United States during such year is exempt from Federal income tax provided such compensation is received for services performed as a worker or employee of, or under contract with, a resident or corporation of Denmark (even though such resident or corporation is engaged in trade or business in the United States) which resident or corporation actually bears the expense of such compensation and is not reimbursed therefor by another person.

As to the source of compensation for labor or personal services, see section 119(a)(3) of the Internal Revenue Code.

§ 521.113 Students and apprentices; remittances.

Under Article XIII of the convention, citizens of Denmark who are temporarily present in the United States as students or apprentices exclusively for the purposes of study or for acquiring business experience, are exempt for taxable years beginning on or after January 1, 1948, from Federal income tax upon amounts representing remittances from sources outside the United States for the purposes of their maintenance or studies.

§ 521.114 Visiting professors or teachers.

Under Article XIV of the convention, an alien who is a resident of Denmark but who is temporarily present within the United States for the purpose of teaching, lecturing, or instructing at any university, college, school, or other educational institution, situated within the United States, is, for a period not exceeding two years from the date of his arrival in the United States, exempt for taxable years beginning on or after January 1, 1948, from Federal income tax on remuneration received for such services. It shall be deemed that such alien coming to the United States for the purposes indicated has, for a period of not more than two years immediately succeeding the date of his arrival within the United States for such purposes, the tax status of a nonresident alien in the absence of proof of his intention to remain indefinitely in the United States.

§ 521.115 Credit against United States tax liability for Danish tax.

For the purpose of avoidance of double taxation, Article XV provides that, on the part of the United States, there shall be allowed against the United States income tax a credit for the amount of Danish taxes described in Article I of the convention imposed on income derived from sources within Denmark for taxable years beginning on and after January 1, 1948. Such credit, however, is subject to the limitations provided in section 131 of the Internal Revenue Code (relating to the credit for foreign taxes). See §§ 29.131–1 to 29.131–10 of Regulations 111 (26 CFR 1949 ed. Supps. 29.131–1 to 29.131–10) [and §§ 39.131(a) 1 to 39.131(j)–1 of Regulations 118 (26 CFR, Rev. 1953, Parts 1–79, and Supps.)].

§ 521.116 Reciprocal administrative assistance.

(a) *General.* (1) By Article XVII of the convention, the United States and Denmark adopt the principle of exchange of such information as is necessary for carrying out the provisions of the convention or for the prevention of fraud or for the detection of practices which are aimed at reduction of the revenues of either country, but not including information which would disclose a trade, business, industrial or professional secret or trade process.

(2) The information and correspondence relative to exchange of information may be transmitted directly by the Commissioner of Internal Revenue to the Chief of the Taxation Department of the Ministry of Finance (Generaldirektoren for Skattevaesenet) of Denmark.

(b) *Information to be furnished in due course.* (1) Pursuant to such principle, withholding agents shall, in the preparation of withholding returns, Form 1042, report on such returns, for the calendar year 1949 and each subsequent calendar year, in addition to the items of income upon which tax has been

withheld at the source, those items of income paid to a nonresident alien individual resident in Denmark, or to a Danish corporation, upon which tax has not been withheld at the source. Such return shall show the same information with respect to such items of income upon which tax has not been withheld at the source as is shown with respect to items of income upon which the tax has been withheld at the source.

(2) In accordance with the provisions of Article XVII of the convention, the Commissioner of Internal Revenue will transmit to the Chief of the Taxation Department of the Ministry of Finance of Denmark, as soon as practicable after the close of the calendar year 1949, and of each calendar year thereafter during which the convention is in effect, the following information relating to such calendar year: The names and addresses of all persons whose addresses are in Denmark as disclosed on such withholding return, Form 1042, deriving from sources within the United States dividends interest (other than coupon bond interest), rents, royalties, salaries, wages, pensions, annuities and other fixed or determinable annual or periodical profits or income, and the amount of such income with respect to such persons as disclosed on such return, together with ownership certificate, Form 1001–D, filed in connection with coupon bond interest. Such transmission shall constitute compliance with Article XVII of the convention and of §§ 521.101 to 521.117.

(c) *Information in specific cases*. Under the provisions and limitations of Article XVII of the convention, and subject to the provisions of Article XIX and Article XXII of the convention, and upon the request of the Chief of the Taxation Department of the Ministry of Finance of Denmark, the Commissioner of Internal Revenue shall furnish to the Chief of the Taxation Department information available to or obtainable by the Commissioner of Internal Revenue relative to the tax liability of any person under the revenue laws of Denmark in any case in which such information is necessary to the administration of the provisions of the convention or for the prevention of fraud or the administration of statutory provisions against tax avoidance.

§ 521.117 Claims in cases of double taxation.

Under Article XX of the convention, where the action of the revenue authorities of the contracting States has resulted in double taxation in respect of any of the taxes to which the convention relates, the taxpayer is entitled to lodge a claim with the country of which he is a citizen or, if he is not a citizen of either country, with the country of which he is a resident, or if the taxpayer is a corporation or other entity, with the country in which it is created or organized. Article XX further provides that should the claim be upheld, the competent authority of the country with which the claim is lodged may come to an agreement with the competent authority of the other country with a view to equitable avoidance of the double taxation. Such a claim on behalf of a United States citizen or corporation or other entity, or on behalf of a resident of the United States who is not a Danish citizen, shall be filed with the Commissioner of Internal Revenue, Washington, D.C. The claim should be set up in the form of a letter and should show fully all facts on the basis of which the claimant alleges that such double taxation has resulted. If the Commissioner of Internal Revenue determines that there is an appropriate basis for the claim under the convention, he will take the matter up with the Chief of the Taxation Department of the Ministry of Finance of Denmark with a view to arranging an agreement of the character contemplated by Article XX.