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the income of such estate or trust which is (or would, but for such exemption, be) includable in the gross income of the beneficiary, provided that he otherwise satisfies the requirements of these respective articles. In order to be entitled in such instance to the exemption from withholding of United States tax such beneficiary must otherwise satisfy such requirements and shall, where applicable, execute and submit to the fiduciary of such estate or trust in the United States the appropriate letter of notification prescribed in §§ 503.3(b) and 503.4(b).

§ 503.9 Land Berlin.

The convention shall also apply to Land Berlin effective for taxable years beginning on or after January 1, 1954, but only if the notification has been furnished to the United States Government in accordance with Article XX (2) of the convention. After application of the convention to Land Berlin in accordance with Article XX, references in the convention and in this part to the Federal Republic of Germany shall also be considered references to Land Berlin.

PARTS 504–507 [RESERVED]

PART 509—SWITZERLAND

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

Subpart—Withholding of Tax

SOURCE: Treasury Decision 5867, 16 FR 11910, Nov. 27, 1951, unless otherwise noted. Redesignated at 25 FR 14022, Dec. 31, 1960.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53497, Oct. 14, 1997, Subpart—Withholding of Tax, consisting of §§ 509.1 through 509.10, was removed, effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000. By T.D. 8856, 64 FR 73408, Dec. 30, 1999, the effective date was delayed until Jan. 1, 2001.

§ 509.1 Introductory.

The income tax convention between the United States and the Swiss Confederation, signed May 24, 1951, proclaimed by the President of the United States on October 1, 1951, and effective as to taxable years beginning after December 31, 1950 (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 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.

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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.

(3) 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 States through a permanent establishment therein during such taxable year.

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ARTICLE XI

(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.

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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 non-resident 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.

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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

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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.

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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 fol-

lowing the expiration of the six-month period.

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As used in this Treasury decision, unless the context otherwise requires, the terms defined in the above articles of the convention shall have the meanings so assigned them.

§ 509.2 Dividends.

(a) *General.* Under Article VI of the convention, the rate of tax imposed with respect to dividends by section 211(a) of the Internal Revenue Code (relating to nonresident alien individuals not engaged in trade or business within the United States) and by section 231(a) of the Internal Revenue Code (relating to foreign corporations not engaged in trade or business within the United States) is reduced to 15 percent in the case of dividends received in taxable years beginning on or after January 1, 1951, from sources within the United States by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of Switzerland or by a Swiss corporation if such alien or corporation at no time during the taxable year had a permanent establishment within the United States. As to what is a Swiss corporation (see Article II(1)(f) of the convention. Thus, if a nonresident alien who is a resident of Switzerland performs personal services within the United States during the calendar year 1952, 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, 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. As to what constitutes a permanent establishment, see Article II(1)(c) of the convention.

In the case of dividends paid on or after January 1, 1951, by any foreign corporation to a nonresident alien who is a resident of Switzerland or to a