

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