

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