

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.

**§ 509.119 Exchange of information.**

(a) *General.* (1) By Article XVI of the convention the United States and Switzerland adopt the principle of exchange of such information as is necessary for carrying out the provisions of the convention, preventing fraud, or detecting practices which are aimed at the reduction of the revenues of either country, but not including information which would be contrary to public policy or which would disclose any trade, business, industrial, or professional secret or any trade process.

(2) The information and correspondence relative to exchange of information may be transmitted directly by the Commissioner to the Director of the Federal Tax Administration.

(b) *Return of information by withholding agents.* (1) To facilitate compliance with Article XVI of the convention, every United States withholding agent shall make and file in duplicate with the District Director of Internal Revenue, Baltimore 2, Maryland, an information return on Form 1042 Supplement, with respect to persons having addresses in Switzerland, which shall be filed for the calendar year 1955 and subsequent calendar years. This return shall be filed simultaneously with Form 1042.

(2) There shall be reported on such Form 1042 Supplement all items of fixed or determinable annual or periodical income (and amounts described in section 402(a)(2), section 631(b) and (c), and section 1235 of the Internal Revenue Code of 1954, which are consid-

ered to be gains from the sale or exchange of capital assets) derived from sources within the United States and paid to nonresident aliens (including nonresident alien individuals, fiduciaries, and partnerships) and to nonresident foreign corporations, whose addresses at the time of payment were in Switzerland, including such items of income upon which, in accordance with the withholding regulations under the convention, no withholding of United States tax is required; except that any of such items which constitute interest in respect of which Form 1001-S or substitute Form 1001-S has been filed in duplicate with the withholding agent is not required to be reported on such Form 1042 Supplement.

(c) *Information to be furnished in ordinary course.* In compliance with the provisions of Article XVI of the convention the Commissioner will transmit to the Director of the Federal Tax Administration, as soon as practicable after the close of the calendar year 1955 and of each subsequent calendar year during which the convention is in effect, the following information relating to such preceding calendar year:

(1) The duplicate copy of each available Form 1042 Supplement filed pursuant to paragraph (b) of this section; and

(2) The duplicate copy of each available ownership certificate, Form 1001-S, and substitute Form 1001-S, filed pursuant to the withholding regulations under the convention, in connection with coupon bond interest.

(d) *Information in specific cases.* Under the provisions and limitations of Article XVI of the convention and upon request of the Director of the Federal Tax Administration, the Commissioner shall furnish to the Director information available to, or obtainable by, the Commissioner relative to the tax liability of any person under the revenue laws of Switzerland in any case in which such information is necessary for carrying out the provisions of the convention or for the prevention of fraud or the like in relation to the taxes which are the subject of the convention.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53497, Oct. 14, 1997, § 509.119 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.

**§ 509.120 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.

**§ 509.122 Swiss partnerships.**

(a) *General.* Whether an individual, corporation, or other entity, a member of a partnership created or organized under Swiss laws, is subject to United States tax upon such person's distributive share of the income of such partnership depends upon both the status of the partnership and the status of such member.

(b) *Citizen partner.* A citizen or resident of the United States, or a domestic corporation, is subject to United States tax upon such person's distributive share of the income of such partnership as though the convention had not come into effect, but subject to the provisions of § 509.118; even though other members, by reason of benefits granted by the convention, are not subject to United States tax upon their distributive share of such income.

(c) *Noncitizen partner.* In any case in which income is derived from sources within the United States by a partnership created or organized under Swiss laws, any member of such partnership who has a permanent establishment in the United States or who is either a nonresident alien not a resident of Switzerland or is a foreign corporation which is not Swiss is not entitled, with respect to such member's distributive share of such income, to any benefit granted by the convention solely to nonresident aliens residing in Switzerland, or to Swiss corporations or other