

## § 509.8

## 26 CFR Ch. I (4-1-00 Edition)

constitute authorization to the payer of such income, where tax at the rate of 30 percent has been withheld on or after January 1, 1951, to release and pay over to the person from whom it was withheld an amount equal to the tax so withheld.

(c) *Subsidiary's dividends.* With respect to a dividend paid on or after January 1, 1951, by a domestic corporation to a Swiss corporation whose address is in Switzerland, tax shall be withheld in accordance with the provisions of § 509.2 unless prior to the date of payment of such dividend the Commissioner of Internal Revenue has notified the paying corporation that such dividend falls within the scope of Article VI(2) of the convention. As soon as practicable after information required under § 509.2(b) is filed, the Commissioner of Internal Revenue will determine whether the dividend involved falls within the scope of Article VI(2) and may authorize the release of the excess tax withheld with respect to dividends which come within the scope of such provision.

### § 509.8 Addressee not actual owner.

If the first recipient with an address in Switzerland of any dividend from sources within the United States is a nominee or representative through whom the dividend flows to a third person, such recipient in Switzerland 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 at the date of approval of this Treasury decision) and the 15 percent withheld at the source with respect to such dividend pursuant to § 509.2(d).

In any case in which a fiduciary or a partnership with an address in Switzerland receives, otherwise than as a nominee or representative, a dividend from United States sources, 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 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 or part-

ner's net 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 the preceding paragraph.

The amounts so withheld by such withholding agents in Switzerland, as well as the amount of tax released with respect to the calendar year 1951 by the withholding agent in the United States in the case of a dividend flowing to a third person through a nominee or representative whose address is in Switzerland, will be deposited by such agents in Swiss francs with the Federal Tax Administration, Berne, Switzerland, - Account: "Zusätzlicher Steuerrückbehalt USA" ("Additional tax withholdings USA"); and the appropriate Swiss form will be filed therewith. The Federal Tax Administration has arranged that the amounts so deposited will, after adjustment for tax refunded to persons entitled to the reduced rate of 15 percent, be periodically remitted by draft in United States dollars to the Collector of Internal Revenue, Baltimore, Maryland, U.S.A.

### § 509.9 Return of tax withheld and information return with respect to persons whose addresses are in Switzerland.

Every United States withholding agent shall make and file with the collector, in duplicate, an information return on Form 1042F, in addition to the withholding return, Form 1042, for the calendar year 1951 and each subsequent calendar year, with respect to:

(a) Dividends from which a tax of 15 percent was withheld from persons whose addresses are in Switzerland (5 percent in the case of dividends falling within the scope of the provisions of Article VI(2) of the Convention);

(b) Interest (other than coupon bond interest reported on Form 1001-S) from which a tax of 5 percent was withheld from persons who have furnished to the withholding agent Form 1001A-S;

(c) Royalties and like amounts from which no tax was withheld from persons who have furnished to the withholding agent Form 1001A-S; and

(d) All other fixed or determinable annual or periodical income paid to such persons.

**§ 509.10 Beneficiaries of a domestic estate or trust.**

A nonresident alien who is a resident of Switzerland and who is a beneficiary of a domestic estate or trust shall be entitled to the exemption from tax, 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 such item or items are included in his distributive share of the income of such estate or trust. In such case such beneficiary must, in order to be entitled to the exemption from, or reduction in the rate of, tax in the case of interest or royalties, execute Form 1001A-S and file such form with the fiduciary of such estate or trust in the United States.

**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.