

in the sections having specific references to the respective items of income.

(b) *No United States permanent establishment.* A nonresident alien individual who is a resident of France, or a French corporation or other French entity carrying on a French enterprise, but having no permanent establishment in the United States, is not subject to United States income tax upon industrial and commercial profits from sources within the United States. For example, if such French corporation sells stock in trade, such as wines or perfumery or cheese, through a bona fide commission agent or broker in the United States, the resulting profit is, under the terms of Article 3 of the convention, exempt from United States income tax. Such French corporation, however, remains subject to tax upon all other items of income from sources within the United States which are not expressly exempted from such tax under the convention.

(c) *United States permanent establishment.* A nonresident alien individual who is a resident of France, or a French corporation or other entity, carrying on a French enterprise having a permanent establishment in the United States is subject to tax upon his or its industrial and commercial profits from sources within the United States. In the determination of the income of such resident of France or French corporation or other entity from sources within the United States, all industrial and commercial profits from such sources shall be deemed to be allocable to the permanent establishment within the United States. Hence, for example, if a French enterprise, having a permanent establishment in the United States, sells directly in the United States through a commission agent or broker therein goods produced in France, the resulting profits derived from United States sources from the latter transactions are allocable to such permanent establishment. The net income from sources within the United States, including the industrial and commercial profits, shall be determined in accordance with the provisions of section 119 of the Internal Revenue Code and the regulations thereunder. In determining indus-

trial and commercial profits no account shall be taken of the mere purchase of merchandise effected in the United States by such French enterprise. A nonresident alien who is a resident of France, a member of a French partnership having a permanent establishment within the United States, shall by reason of such fact be deemed to have a permanent establishment within the United States.

§514.106 Control of a domestic enterprise by a French enterprise.

Article 5 of the convention provides that if a French enterprise by reason of its control of a domestic business imposes conditions different from those which would result from normal business relations between independent enterprises, the accounts between the enterprises will be adjusted so as to ascertain the true net income of the domestic enterprise. The purpose is to place the controlled domestic enterprise on a tax parity with an uncontrolled domestic enterprise by determining, according to the standard of an uncontrolled enterprise, the true net income from the property and business of the controlled enterprise. The convention contemplates that if the accounting records do not truly reflect the net income from the property and business of such domestic enterprise the Commissioner of Internal Revenue shall intervene and, by making such distributions, apportionments, or allocations as he may deem necessary of gross income or deductions of any item or element affecting net income as between such domestic enterprise and the French enterprise by which it is controlled or directed, determine the true net income of the domestic enterprise. The provisions of §29.45-1 of Regulations 111 (26 CFR 1949 ed. Supps. 29.45-1) [and §39.45-1 of Regulations 118 (26 CFR, Rev. 1953, Parts 1-79, and Supps.)], shall, in so far as applicable, be followed in the determination of the net income of the domestic business.

§514.107 Income from operation of ships or aircraft.

The income derived by a French enterprise from the operation of ships documented under the laws of France, or of aircraft registered in France, is