

and stylistic advice as well as working capital. The Philippine corporation takes title to the goods at the factory and arranges for temporary warehousing, insurance, transportation to the dock, and all of the formalities required for exportation. Sales to customers in Canada as well as the United States are negotiated by a single employee working from a sales office maintained by the Philippine corporation in Seattle, Washington. Title to the merchandise normally passes to the customer at the time of shipment from Manila, so that none of the resultant profit is from a "source" within the United States.

Under these facts, the Philippine corporation is clearly subject to whatever income taxes the Philippine Government may see fit to impose. (Moreover, Philippine tax would also be imposed if the above described business were conducted by a Philippine branch of a Panamanian corporation.) Thus, this case cannot properly be considered to involve the type of "tax avoidance" at which H.R. 13103 is said to be aimed.

The Council therefore submits that the office in Manila should be considered as having "participated materially in [the] sale" of the goods sold through the Seattle office, so that the tax imposed by H.R. 13103 would not apply to profits from those sales made to Canadian customers.² This interpretation of "sale" would be essential to carry out the stated objective of the Ways and Means Committee that "foreign source sales income will be attributed to the U.S. trade or business only when the U.S. office is the primary place of the activity giving rise to the income."

In support of this position, it should be pointed out that, under the House version of H.R. 13103, it is clear that, where a foreign office of a foreign corporation participates materially in the selling activities, no U.S. tax would then be imposed on any profits from sales to foreign customers negotiated through its U.S. office.³ If selling activities by a foreign

² This hypothetical example also serves to highlight the fact that H.R. 13103 could not impose U.S. tax on foreign source income of a Philippine corporation without renegotiation of the Income Tax Convention with the Philippines. Article 3(1) of that Convention (as submitted to the Senate on July 29, 1965) provides, in effect, that the United States may tax a Philippine corporation only on income derived from "sources" within the United States. As previously noted, however, H.R. 13103 does not recharacterize income "effectively connected" with a U.S. office as income having its "source" within the United States. On the contrary, it is clear from the proposed section 864 (c) (4) of the Code that no change in existing "source" rules is intended.

Enactment of H.R. 13103 would therefore have one of the two undesirable consequences: (1) it would require renegotiation of the Income Tax Convention with the Philippines and 17 other countries, i.e., Australia, Austria, Denmark, Finland, Greece, Honduras, India (proposed), Ireland, Israel (proposed), Italy, Japan, Luxembourg, New Zealand, Norway, Pakistan (proposed), Switzerland, Thailand (proposed), or (2) it would not apply to foreign corporations having their domicile or seat of management in the foregoing countries and thus would create a capricious discrimination in favor of those foreign corporations as distinguished from foreign corporations belonging to all of the other nations of the world.

³ This is true both of goods exported from the United States and goods exported from one foreign country to another.