

"The amount of income attributable to the U.S. sales office is not to be more than would have been attributable to it if the sale had been made in this country.<sup>4</sup> This gives assurance, for example, that the sales income attributable to a U.S. business will *not include income properly attributable to manufacturing or any other activities (apart from sales) occurring outside the United States.*" (Emphasis added)

The general intention is clearly to exempt "income properly attributable to . . . activities . . . occurring outside the United States."

The Council is concerned, however, that the U.S. Treasury might try to tax the entire profit, without allocation, in cases where the foreign corporation imports into the United States goods which it has purchased (rather than manufactured, extracted, grown or produced) through an office or place of business maintained by it abroad, e.g., the case of the Philippine corporation using a Seattle office to sell hand-embroidered linens purchased through its extensive home-office facilities in the Philippines (described above).

This concern stems from an existing Regulation<sup>5</sup> which would, under present law, cause a foreign corporation to be taxable upon its entire profit from the purchase and sale, if it were to pass title to U.S. customers when the goods arrive in the United States rather than when the goods are shipped from the foreign country. This Regulation might lead the U.S. Treasury to argue that under H.R. 13103 the same amount, i.e., the entire profit, should be taxed in cases where title to the goods passes to the U.S. customer in the foreign country rather than in the United States.

It is submitted that any such interpretation would be unjustified: (a) on equitable grounds, (b) in view of the stated purposes of H.R. 13103, and (c) in view of the conflicting treaty obligations of the United States.

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<sup>4</sup> This sentence appears to be directed to cases where the foreign corporation manufactures, extracts, or produces outside the United States the goods marketed to U.S. customers through its U.S. sales office. There the foreign corporation would pay U.S. tax under existing law on only an allocated part of its total profit from such sales if it were to pass title to the goods within the United States. (The method of allocation is described in Regulation Sec. 1.863-3(b)). Since H.R. 13103 would extend U.S. taxation to cases in which title to such U.S. imports passes outside the United States, the above-quoted sentence assures that the amount taxable under H.R. 13103 would not exceed the allocated part of the profit taxable under existing law where title passes within the United States.

<sup>5</sup> Regulation Sec. 1.861-7 provides:

"(a) General. Gains, profits, and income derived from the purchase and sale of personal property shall be treated as derived *entirely* from the country in which the property is sold. Thus, gross income from sources within the United States includes gains, profits, and income derived from the purchase of personal property without the United States and its sale within the United States." . . .

"(c) Country in which sold. For the purposes of part I (section 861 and following), subchapter N, chapter 1 of the Code, and the regulations thereunder, a sale of personal property is consummated at the time when, and the place where, the rights, title, and interest of the seller in the property are transferred to the buyer." (Emphasis added).