BILATERAL

CONVENTION BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAX...

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Note: The Convention is pending ratification.

CONVENTION BETWEEN THE REPUBLIC OF THE PHILIPPINES
AND THE UNITED STATES OF AMERICA
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of the Philippines and the Government of the United States of America, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have appointed for that purpose their respective Plenipotentiaries.

The Government of the Republic of the Philippines:

Mauro Mendez, Secretary of Foreign Affairs of the
Republic of the Philippines, and
Rufino G. Hechanova, Secretary of Finance of the
Republic of the Philippines,

The Government of the United States of America:

Dean Rusk, Secretary of State of the United States of America,

who, having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:

ARTICLE 1
Taxes Covered

(1) The taxes which are the subject of the present Convention are:

(a) In the case of the United States, the Federal income tax, including surtax, imposed by Subtitle A of the Internal Revenue Code (but not including the tax on improperly accumulated earnings or the personal holding company tax).

(b) In the case of the Philippines, the income tax imposed by Title II of the National Internal Revenue Code (but not including the tax on improperly accumulated earnings or the personal holding company tax).

(2) The present Convention shall also apply to taxes substantially similar to those covered by paragraph (1) of this Article which are subsequently imposed in addition to, or in place of, existing taxes.

(3) For the purpose of Article 6, this Convention shall also apply to taxes of every kind, and to those imposed at

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the national, state, or local level.

ARTICLE 2
General Definitions

(1) In the present Convention, unless the context otherwise requires:

(a) The term "United States" means the United States of America, and when used in a geographical sense means the States thereof, the District of Columbia and Wake Island;

(b) The term "Philippines" means the Republic of the Philippines, and when used in a geographical sense means the territories comprising the Philippines;

(c) The terms "one of the Contracting States" and "the other Contracting State" mean the United States or the Philippines, as the context requires;

(d) The term "person" comprises an individual, a corporation and any other body of individuals or persons;

(e) The term "corporation" means any body corporate, association or joint stock company or other entity which is treated as a body corporate for tax purposes;

(f) The term "United States corporation" means a corporation created or organized under the laws of the United States or of any State thereof or the District of Columbia;

(g) The term "Philippine corporation" means a corporation created or organized under the laws of the Philippines;

(h) The terms "resident or corporation of one of the Contracting States" and "resident or corporation of the other Contracting Stale" mean a resident or corporation of the United States or a resident or corporation of the Philippines, as the context requires;

(i) The term "competent authority" means:

(1) in the United States, the Secretary of the Treasury or his delegate;

(2) in the Philippines, the Secretary of Finance or his delegate.

(2) As regards the application of the present Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the present Convention.

ARTICLE 3
General Rules of Taxation

(1) A resident or corporation of one of the Contracting States shall be taxable by the other Contracting State only on income derived from sources within that other Contracting State.

(2) A resident or corporation of one of the Contracting States shall be taxed by the other Contracting State on income taxable under paragraph (1) in accordance with the limitations set forth in the present Convention. Any income to which the provisions of the present Convention are not expressly applicable shall be taxable by each of the Contracting States in accordance with its own law. The provisions of the present Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded (a) by the laws of one of the Contracting States in the determination of the tax imposed by that State or (b) by any other agreement between the Contracting States.

(3) Except as provided in paragraph (4), a Contracting State may tax an individual who is a citizen or resident of

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that Contracting State (whether or not such person is also a resident of the other Contracting State) or a corporation of that Contracting State (whether or not also a corporation of the other Contracting State) as if the present Convention had not come into effect.

(4) The provisions of paragraph (3) shall not affect —

(a) the benefits conferred by a Contracting State under Articles 4 and 6;

(b) the benefits conferred by the United States under Article 18; and

(c) the benefits conferred by a Contracting State under Articles 14, 15, 16 and 17 upon individuals other than citizens of, or individuals having immigrant status in, that Contracting State.

ARTICLE 4
Relief from Double Taxation

Double taxation of income shall be avoided in the following manner:

(1) The United States shall allow as a credit against its tax specified in subparagraph (l)(a) of Article 1 the appropriate amount of taxes paid to the Philippines. Such appropriate amount shall be based upon the full amount of tax paid to the Philippines, and such credit shall, in other respects, be allowed in accordance with the applicable revenue laws of the United States. It is agreed for this purpose that the Philippine tax specified in subparagraph (l)(b) of Article 1 shall be considered to be an income tax, and that by virtue of the provisions of paragraph (2) of this Article the Philippines satisfies the similar credit requirement prescribed by section 901 (b) (3), Internal Revenue Code of 1954, with respect to taxes paid to the Philippines.

(2) The Philippines shall allow to a resident or corporation of the Philippines as a credit against its tax specified in subparagraph (l)(b) of Article 1 the appropriate amount of taxes paid to the United States. Such appropriate amount shall be based upon the full amount of tax paid to the United States, and such credit shall, in other respects, be allowed in accordance with the revenue laws of the Philippines. It is agreed for this purpose that the United States tax specified in subpragraph (l)(a) of Article 1 shall be considered to be an income tax and that by virtue of the provisions of paragraph (1) of this Article the United States satisfies the similar credit requirement prescribed by section 30 (c)(3)(B), National Internal Revenue Code, with respect to taxes paid to the United States.

ARTICLE 5
Source of Income

For purposes of Article 3 and 4:

(1) Income from the performance of personal services (including private pensions and annuities paid in respect of such services) or the furnishing of personal services shall be treated as income from sources within the State in which such services are performed. Compensation for personal services performed aboard ships or aircraft operated by a resident or corporation of a Contracting State and, in the case of the United States, registered in the United States (including private pensions and annuities paid in respect of such services) shall be treated as income from sources within that Contracting State, if rendered by a member of the regular complement of the ship or aircraft.

(2) The source of any item of income to which the provisions of this Article are not expressly applicable shall be determined by each of the Contracting States in accordance with its own law.

ARTICLE 6

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Nondiscrimination

(1) A citizen of one of the Contracting States who is a resident of the other Contracting State shall not be subjected in that other Contracting State to more burdensome taxes than is a citizen of that other Contracting State who is resident therein.

(2) A permanent establishment which a citizen or corporation of one of the Contracting States has in the other Contracting State shall not be subject in that other Contracting State to more burdensome taxes than is a citizen or corporation of that other Contracting State carrying on the same activities. This paragraph shall not be construed as obliging either Contracting State to grant to citizens of the other Contracting State who are not residents of the former Contracting State any personal allowances or deductions which are by its law available only to residents of that former Contracting State.

(3) A corporation of one of the Contracting States, the capital of which is wholly or partly owned by one or more citizens or corporations of the other Contracting State, shall not be subjected in the former Contracting State to 'more burdensome taxes than is a corporation of the former Contracting State, the capital of which is wholly owned by one or more citizens or corporations of that former Contracting State.

ARTICLE 7
Business Profits

(1) A resident or corporation of one of the Contracting States shall be subject to tax in the other Contracting State with respect to its industrial or commercial profits only if that resident or corporation has a permanent establishment in that other Contracting State.

(2) In the imposition of such tax —

> (a) there shall be allowed as deductions ordinary and necessary expenses, wherever incurred, which are allocable, to the reasonable satisfaction of the competent authority of that Contracting State, to income from sources within that Contracting State; and
>
> (b) no profits shall be deemed to be derived from sources within that Contracting State merely by reason of the purchase of goods or merchandise.

(3) For purposes of paragraph (1) the term "industrial or commercial profits" means income derived from the active conduct of a trade of business. It includes profits from manufacturing, mercantile, agricultural, fishing and mining activities, and from the furnishing of personal services. It does not include income from the performance of personal services, dividends, interest, royalties, income from the rental of personal property, income from real property, insurance premiums, or gains derived from the sale or exchange of capital assets.

ARTICLE 8
Definition of Permanent Establishment

(1) The term "permanent establishment" means a fixed place of business through which a resident or corporation of one of the Contracting States engages in trade or business.

(2) The term "a fixed place of business" includes, but is not limited to, a branch; an office; a store or other sales outlet; a workshop; a factory; a warehouse; a mine, quarry or other place of extraction of natural resources; a building site, or construction or installation site, which exists for more than three months.

(3) The term "permanent establishment" shall not be deemed to include any one or more of the following:

> (a) facilities used for the purpose of storage, display or delivery of goods or merchandise belonging to the

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resident or corporation;

(b) the maintenance of a stock of goods or merchandise belonging to the resident or corporation for the purpose of storage, display and/or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the resident or corporation for processing by another person;

(d) a fixed place of business maintained for the purpose of purchasing goods or merchandise, and/or for the collection of information, for the resident or corporation;

(e) a fixed place of business maintained for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the resident or corporation.

(4) Even if a resident or corporation of one of the Contracting States does not have a permanent establishment in the other Contracting State under paragraphs (1) — (3) of this Article, nevertheless he shall be deemed to have a permanent establishment in the latter Slate if he engages in trade or business in that State through an agent who —

(a) has an authority to conclude contracts in the name of that resident or corporation and regularly exercises that authority in the latter State unless the exercise of the authority is limited to the purchase of goods or merchandise;

(b) regularly secures orders in the latter State for that resident or corporation; or

(c) maintains in the latter State a stock of goods or merchandise belonging to that resident or corporation from which he regularly makes deliveries or fills orders,

(5) Notwithstanding paragraph (4) of this Article, a resident or corporation of a Contracting State shall not. be deemed to have a permanent establishment in the other Contracting State merely because it uses the services in that State of a bona fide broker, general commission agent, forwarding agent, in-dentor or other agent of independent status acting in the ordinary course of its business. For this purpose, an agent shall not be considered to be an agent of independent status if it acts as an agent exclusively or almost exclusively for the resident or corporation (or for that resident or corporation and any other person controlling, controlled by, or under common control with that resident or corporation) and carries on any of the activities described in paragraph (4) of this Article.

(6) The fact that a corporation of one of the Contracting States controls or is controlled by or is under common control with (a) a corporation of the other Conracting State or (b) a corporation which engages in trade or business in that other Contracting State (whether through a permanent esablishment or otherwise) shall not be taken into account a determining whether the activities or fixed place of business of either corporation constitutes a permanent establishment of the other corporation.

(7) A resident or corporation of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if that resident or corporation provides the services in the latter State of public entertainers referred to in Article 13, paragraph (3).

(8) If a resident or corporation of one of the Contracting States has a permanent establishment in the other Contracting State at any time during the taxable year, it shall be considered to have a permanent establishment in that other Contracting State for the entire taxable year.

ARTICLE 9
Related Persons

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(1) Where a resident or corporation of a State deriving commercial and industrial profits in one of the Contracting States and any other person are related and where such related persons make arrangements or impose conditions between themselves which are different from those which would be made between independent persons, then any income which would, but for those arrangements or conditions, have accrued to such resident or corporation hut, by reason of those arrangements or conditions, has not so accrued, may be included in the income of such resident or corporation for purposes of the present Convention and taxed by that Contracting State accordingly.

(2) (a) A person other than a corporation is related to a corporation if such person participates directly or indirectly in the management, control or capital of the Corporation.

> (b) A corporation is related to another corporation if either participates directly or indirectly in the management, control, or capital of the other, or if any person or persons participate directly or indirectly in the management, control or capital of both corporations.

ARTICLE 10
Interest

Interest received by the Government of one of the Contracting States or any agency or instrumentality wholly owned by that Government shall be exempt from tax by the other Contracting State.

ARTICLE 11
Income from Real Properly

A resident or corporation of one of the Contracting States subject to tax in the other Contracting State on income from the rental of buildings or from real property which is improved with buildings, including gains derived from the sale or exchange of such property, or on royalties in respect of the operation of mines, quarries, or other natural resources may elect for any taxable year to compute that tax on such income on a net basis.

ARTICLE 12
Gains upon Transfers to Controlled Corporations

A resident or corporation of one of the Contracting States shall be exempt from tax in the other Contracting State with respect to gain realized upon the Transfer of property to a corporation in exchange for stock in such corporation —

> (1) If immediately thereafter such resident or corporation, or such person together with any other persons making similar transfers as part of the same transaction, owns stock of such corporation possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation; and
>
> (2) Where the transferee corporation is a Philippine corporation, if the property is transferred and recorded on the books of account of the corporation at a value not exceeding the value at which such property was recorded on the books of account of the transferror.

ARTICLE 13
Income from Personal Services

1) An individual who is a resident of one of the Contracting States shall be exempt from tax by the other Contracting State with respect to income from personal services if —

> (a) he is present within the latter Contracting State for a period or periods not exceeding in the aggregate 90 days during the taxable year, and

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(b) such income is not deducted in computing the profits of a permanent establishment of a resident or corporation of the former Contracting State subject to a tax in the latter Contracting State, and

(c) in the case of employment income, the services are performed as an employee of a resident or corporation of the former Contracting State, and

(d) the aggregate amount of such income does not exceed $3,000 {or its equivalent in Pesos).

(2) For purposes of paragraph (1) of this Article, the term "income from personal services" includes employment income and income earned by an individual from the performance of personal services in an independent capacity. The term "employment income" includes income from services performed by officers and directors of corporations. Income from personal services performed by partners shall generally be treated as income from the performance of services in an independent capacity, but a salary or other fixed amount paid by a partnership to an active partner shall be considered income from employment by the partnership, if similar payments are not made to inactive partners.

(3) Notwithstanding paragraph (1) of this Article, the income from personal services of public entertainers, such as athletes, musicians and actors, from their activities as such, may he taxed in the Contracting State in which the services are performed if such income exceeds cither $100 (or its equivalent in Pesos) for each day the individual is present in the latter Contracting Slate or an aggregate amount of $3,000 (or its equivalent in Pesos).

(4) Compensation received by any individual for personal services performed aboard ships or aircraft operated by a resident or corporation of a Contracting State (and, in the case of the United States, registered in the United States) shall, subject to paragraph (3) of Article 3, be exempt from tax by the other Contracting State, if the services are rendered by a member of the regular complement of the ship or aircraft.

ARTICLE 14
Teachers

An individual who is a resident of one of the Contracting States at the beginning of his visit to the other Contracting State and who, at the invitation of the Government of the other Contracting State or of a university or other accredited educational institution situated in the other Contracting State, visits the latter Contracting State for the purpose of teaching or engaging in research, or both, at a university or other accredited educational institution shall be exempt from tax by the latter Contracting State on his income from personal services for teaching or research at such educational institution, or at other such institutions, for a period not exceeding two years from the date of his arrival in the latter Contracting State.

ARTICLE 15
Students and Trainees

(1) (a) An individual who is a resident of one of the Contracting States at the beginning of his visit to the other Contracting State and who is temporarily present in the other Contracting State for the primary purpose of —

(i) studying at a university or other accredited educational institution in that other Contracting State,
(ii) securing training required to qualify him to practice a profession or professional specialty, or
(iii) studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary or educational organization,

shall be exempt from tax by that other Contracting State with respect to —

(A) gifts from abroad for the purposes of his maintenance, education, study, research or training;
(B) the grant, allowance, or award; and

(C) income from personal services performed in the other Contracting State in an amount not in excess of $2,000 or its equivalent in Pesos for any taxable year; or, if such individual is securing training necessary for qualification in a medical profession or medical specialty, including any physician, medical technologist, nurse, pharmacist or other person under the Exchange Visitors Program, not in excess of $5,000 or its equivalent in Pesos for any taxable year.

(b) The benefits under this paragraph shall only extend for such period of time as may be reasonable or customarily required to effectuate the purpose of the visit, but in no event shall any individual have the benefits of this paragraph for more than five taxable years.

(2) A resident of one of the Contracting States who is present in the other Contracting State for a period not exceeding one year, as an employee of, or under contract with, a resident or corporation of the former State, for the primary purpose of —

(i) acquiring technical, professional, or business experience from a person other than that resident or corporation of the former Contracting State, or
(ii) studying at a university or other accredited educational institution in that other Contracting State,

shall be exempt from tax by that other Contracting State with respect to his income from personal services performed in the other Contracting State for that period in an amount not in excess of $5,000 or its equivalent in Pesos.

(3) A resident of one of the Contracting States who is present in the other Contracting State for a period not exceeding one year, as a participant in a program sponsored by the Government of the other Contracting State, for the primary purpose of training, research, or study shall be exempt from tax by that other State with respect to his income from personal services performed in that other Contracting State and received in respect of such training, research, or study in an amount not in excess of $10,000 or its equivalent in Pesos.

ARTICLE 16
Governmental Salaries

Wages, salaries, and similar compensation, and pensions, annuities, or similar benefits paid by, or directly out of public funds of, one of the Contracting States or the political subdivisions thereof to an individual who is a national of that Contracting State for services rendered to that Contracting State or to any of its political subdivisions in the discharge of governmental functions shall be exempt from tax by the other Contracting State,

ARTICLE 17
Rules Applicable to Personal Service Articles

(1) For purposes of Articles 13, 14, 15 and 16, reimbursed travel expenses shall be considered to be income from personal services or compensation, but shall not be taken into account in computing the maximum amount of exemptions specified in Articles 13 and 15.

(2) An individual who qualifies for benefits under more than one of the provisions of Articles 13, 14, and 15 may select the application of that provision most favorable to him, but he shall not be entitled to the benefits of more than one provision in any taxable year.

ARTICLE 18
Deduction for Charitable Contributions

In the computation of taxable income under' the United States income tax, a deduction shall be allowed to citizens and residents of the United States and United States corporations for contributions to any organization created or

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organized under the laws of the Philippines which constitutes a non-profit organization under section 27(e) of the National Internal Revenue Code of the Philippines if —

(a) such contributions are used entirely within the Philippines and
(b) the recipient organization has qualified as a tax-exempt organization under subsection 501(e) (3) of the United States Internal Revenue code.

Such deductions shall not, however, exceed an amount which would have been allowable under the United States Internal Revenue Code if such organization had been created or organized under the laws of the United States and if such contributions were used within the United States.

ARTICLE 19
Consultation and Taxpayer Claims

(1) The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention. Should any difficulty or doubt arise as to the interpretation or application of the present Convention, or its relationship to conventions between one of the Contracting States and any other State, the competent authorities shall endeavor to settle the question as quickly as possible by mutual agreement.

(2) The competent authorities may consult together for the purpose of considering the amendment of this Convention to add provisions dealing with such matters affecting income taxation and not covered in this Convention as may be deemed appropriate.

(3) In particular, the competent authorities of the Contracting States may consult together to endeavor to agree —

(a) to the same apportionment of industrial or commercial profits between a resident or corporation of one of the Contracting States and its permanent establishment situated in the other Contracting State; or

(b) to the same allocation of income between a resident or corporation and a related person, dealt with in Article 9,

and to the appropriate procedures for affectuating such apportionment or allocation.

(4) A taxpayer shall be entitled to present his case to the Contracting State of which he is a citizen or resident, or, if the taxpayer is a corporation of one of the Contracting States, to that State, if he considers that the action of the other Contracting State has resulted, or will result for him in taxation contrary to the provisions of the Convention. Should the taxpayer's claim be considered to have merit by the competent authority of the Contracting State to which the claim is made, it shall endeavor to come to an agreement with the competent authority of" the other Contrating State with a view to the avoidance of taxation contrary to the provisions of the Convention.

ARTICLE 20
Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment, collection or enforcement of the taxes which are the subject of this Convention (including a court or administrative body).

(2) In no case shall the provisions of paragraph (1) be construed so as to impose on one of the Contracting States the obligation:

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(a) to carry out administrative measures at variance with the laws or administrative practices of that Contracting State or the other Contracting State;

(b) to supply particulars which are not obtainable under the laws of, or in the normal course of administration in, that Contracting State or the other Contracting State; or

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to its public policy.

ARTICLE 21
Assistance in Collection

(1) Each of the Contracting States shall endeavor to collect such taxes imposed by the other Contracting State as will ensure that any exemption granted under the present Convention by the other State shall not be enjoyed by persons not entitled to such benefits. The Contracting State making such collections shall be responsible to the other Contracting State for the sums thus collected. (2) In no case shall the provisions of this Article be construed so as to impose upon either of the Contracting States the obligation to carry out administrative measures at variance with the regulations and practices of the Contracting State endeavoring to collect the tax or which would be contrary to that State's sovereignty, security or public policy.

ARTICLE 22
Exchange of Legal Information

(1) The competent authorities of the Contracting States shall notify each other of any amendments of the tax laws referred to in Article 1, paragraph (1), and of the adoption of any taxes referred to in Article 1, paragraph (2), by transmitting the texts of any amendments or new statutes at least once a year.

(2) The competent authorities of the Contracting States shall exchange the texts of all published material interpreting the present Convention under the laws of the respective States, whether in the form of regulations, rulings or judicial decisions.

ARTICLE 23
Effective Dates and Ratification

(1) The present Convention shall be ratified and the instruments of ratification exchanged at Manila as soon as possible.

(2) After the exchange of instruments of ratification, the present Convention shall have effect with respect to taxable years beginning on or after the first day of January of the year following that in which such exchange takes place.

(3) The present Convention shall continue in effect indefinitely, but it may be terminated by either of the Contracting States, on the initiative of the competent authority of that State, at any time after five years from the date specified in paragraph (2) of this Article, provided that at least six months' prior notice of termination has been given. In such event, the present Convention shall cease to be effective with respect to taxable years beginning on or before the first day of January next following the expiration of the six-month period.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed the present Convention.

DONE at Washington, in duplicate, this fifth day of October, 1964.

FOR THE GOVERNMENT OP THE REPUBLIC OF THE PHILIPPINES:

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

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