



"Those who say it cannot be done should not interfere with those of us who are doing it"© - S. Hickman

[Home](#)

[Against the Grain Press Loss of Liberty Revealed](#)

[Working Tommy C.](#)

[Livid Leigh](#)

[Boilin' Ed](#)

[D. Tom](#)

[The Informer](#)

[Knowledge is Freedom](#)

[Privacy](#)

[Links](#)

[Court Case](#)

[Contact Us](#)

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## The Informer

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10 FOREIGN RELATIONS, 1930, VOLUME III

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The Secretary of State to the Ambassador in France (Edge)

NO. 158 WASHINGTON, May 13, 1930

SIR: I refer to my instruction of April 23, 1930, concerning informal discussions to take place during May between representatives of this Government and of the French Government in the double assessment of taxes upon American corporations in France through French subsidiaries and now transmit a draft of a double taxation convention between the United States France.

The provisions of this draft treaty conform to the principles rained in H. R. 10165, a bill recently prepared by the Treasury Department and introduced in the House of Representatives by Mr. Hawley which is entitled a "bill to reduce international double taxation". A copy of the bill is enclosed for your convenience.(11)

While this draft represents only a tentative basis for the discussions under reference, it has been carefully examined by the Department and appears to present a possible solution of the difficulties now confronting the American and French Governments in connection taxation matters.

This draft treaty is only applicable in this country to the Federal Government. **The omission of the word "national" in the of the first paragraph would seemingly make it applicable to the several States.** The Department deems it preferable that if the discussions be confined to taxation imposed in France by the central Government and in the United States by the Federal Government. However, should the French representatives indicate a disposition to make the inclusion of the several States of the Union within the purview of the proposed treaty a sine qua non of the conclusion such a treaty, the Department as at present advised is prepared on the principle to have the several States covered by the provisions of a double taxation treaty.

As you are aware it has been the Federal Government's policy in past to affect as little as possible the rights of the several States to regulate matters normally coming within their jurisdiction. **However, the tremendous expansion of the activities in foreign American corporations and nationals places an increased on the Federal Government to endeavor by all possible means to protect such interests from discrimination by foreign Governments.**

In order to remove any discrimination against American interests abroad it is generally necessary to assure the foreign Government reciprocally their corporations **and nationals** will not be discriminated

11. Not reprinted.

against in this country on account of alienage. Naturally enough, foreign Governments may insist that such assurances should also include the several States.

By national treatment of foreign corporations in this country, in so far as the several States are concerned, is meant the treatment which one State extends to an American foreign corporation i.e., a corporation organized under the laws of some other State of the Union. To extend to a corporation organized under the laws of a foreign country the same rights as are accorded in this country by one of the several States to a corporation organized under its own laws would place **Alien foreign corporations"** on a more favorable basis than **"American foreign corporations"**. The Department obviously would not be prepared to consider the latter contingency with favor. It is understood that as a general rule the laws of the several States of the Union do not discriminate in matters of taxation between "American foreign corporations" and "alien foreign corporations". **In a few however, such a discrimination exists especially in the case of insurance companies.**

The foregoing is, of course, for the confidential guidance of your Embassy and the American representatives and I again reiterate that the Department would prefer not to include the States in which may be concluded with France.

I am [etc.]  
the Secretary of State:

For  
J.P.

Cotton

[Enclosure]

Tentative Draft of a Double "Taxation Convention Between the United States and France

The United States of America and the Republic of France, being desirous of preventing the double imposition **of national income taxes on their nationals** and on corporations created or organized in or under of either country, have decided to conclude a Convention for that purpose, and to that end have appointed as their pleni-potentiaries:

The President of the United States of America: ..... and The President of the French Republic:

Who, having exhibited to each other their full powers, found to be in due form, have agreed upon the following Articles:

12 FOREIGN RELATIONS, 1930, VOLUME III  
Article 1

Except as provided in the following Articles, individuals in the territories of one of the High Contracting Parties and corporations created or organized in or under the law of one of the Contracting Parties, and deriving income from sources within other High Contracting Party, shall be subject to income taxes in the State in which such individuals are resident or in which corporations were created or organized.

An individual shall not be considered a resident of the territory, of either High Contracting Party unless he maintains his home in such territory and has maintained it there for at least six months in the taxable year.

The exemptions from tax authorized by this Article shall be by each High Contracting Party, either by refunding tax at the source of the income or by not collecting any tax at such source in accordance with its own legislation.

Article. 2

The following kinds of income shall be taxable through prior right by the High Contracting Party in whose territory the source of income, as described below, is located. When the recipient of such income, if an individual, is resident in the territory of the High Contracting Party, or if a corporation, is organized under laws of such other High Contracting Party, such other High contracting Party shall grant sufficient relief from its own taxes to vent double taxation.

(a) Income derived from any business, trade or profession which is allocable to a **permanent establishment** situated in the territories said High Contracting Party.

The term "permanent establishment" includes **centers of management, statutory offices or seats, branches, mines, oil wells, workshans, warehouses, offices**

offices, branches, mines, or quarries, workshops, warehouses, stores, agencies, and other fixed places business; but the fact that an individual who is a resident of territory of one of the High Contracting Parties or a created or organized in or under the law of such High Contracting Party has **business dealings** in the territories of the other High Contracting Party through a bona fide commission agent or broker shall not be held to mean that such individual or corporation has a permanent establishment in the territories of the latter High Party. Income allocable to permanent establishments in the territory of each High Contracting Party shall be determined in accordance with rules established by informal agreements between the competent administrations of the High Contracting Parties.

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13

(b) Compensation for labor or personal services performed in the territory of said High Contracting Party;

**(c) Income derived from real property located in the territories of said High Contracting Party or from any interest in real property rentals and royalties therefrom, gains from the sale or other disposition thereof, and interest on obligations (other than obligations of a corporation) secured by such property.**

ARTICLE 3

Compensation paid by **one High Contracting Party to its nationals for labor or personal services performed in the territories of the other High Contracting Party shall be taxable only by the High Contracting Party which makes such payment.**

ARTICLE 4

Pensions paid by one High Contracting Party to an individual in the territory of the other High Contracting Party, shall be taxable only by the High Contracting Party which makes such payment.

ARTICLE 5

The income of an individual who is a resident in the territory of the High Contracting Parties, or of a corporation created or organized in or under the law of one of the High Contracting Parties, **which consists exclusively of earnings derived from the operation of ships or aircraft shall be taxable only by the High Contracting Party in whose territory such individual is resident or in which such corporation was created or organized.**

ARTICLE 6

The present Convention shall be ratified and the ratifications shall be exchanged at Paris as soon as possible. It shall be effective from the beginning of the calendar year in which ratifications are exchanged. It shall be terminable at the expiration of five years, or at the end of any calendar year thereafter, on a notice of twelve months given by either High Contracting Party to the other.

In faith whereof the respective plenipotentiaries have signed this Convention in duplicate, in the English and French languages, both texts having equal force, and hereunto affixed their seals.

Done at....., on the ..... day of ....., in the year one thousand nine hundred and .....

