4 T.C. 80 (1944)

Whether a foreign corporation has an “office or place of business” in the United States for tax purposes is determined by the facts of each tax year, focusing on whether there is a place for the regular transaction of business, not merely casual or incidental transactions.

Summary

The Linen Thread Co., Ltd., a Scottish corporation, contested the Commissioner’s determination that it was taxable as a nonresident foreign corporation for 1939 and 1940. The company argued it had an “office or place of business” in the U.S. through its resident agent. The Tax Court, while acknowledging similar facts to a prior case involving different tax years, ruled against applying res judicata and independently determined that the company’s activities did not constitute maintaining an office or place of business in the U.S. during those years, thus affirming its status as a nonresident foreign corporation.

Facts

The Linen Thread Co., Ltd. was a Scottish corporation with manufacturing plants and its head office in Glasgow. It held investments in the U.S. and elsewhere. The company sold manufactured products to its wholly-owned American subsidiary, The Linen Thread Company, Inc. William J. Maclnnis served as the petitioner’s resident agent in the U.S. He received dividends from U.S. investments (American Thread Co., United Shoe Machinery Corporation, Linen Thread Co.), deposited funds in a New York bank, paid rent and taxes, and remitted the balance to Scotland. Maclnnis also filed tax returns and monitored investments and business matters.

Procedural History

The Commissioner determined tax deficiencies, arguing the petitioner was taxable as a nonresident foreign corporation. The Tax Court previously held that the petitioner did not have an office or place of business in the United States for the years 1937 and 1938. That decision was affirmed by the Second Circuit Court of Appeals, and certiorari was denied. The Commissioner raised a plea of res judicata based on the prior decision. The Tax Court rejected the res judicata argument.

Issue(s)

Whether the petitioner had an office or place of business in the United States during 1939 and 1940, thus entitling it to be taxed as a resident foreign corporation.

Holding

No, because based on the evidence specific to 1939 and 1940, the petitioner’s activities did not constitute maintaining an office or place of business in the U.S.

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Court’s Reasoning

The court rejected the Commissioner’s plea of res judicata, stating that the determination of whether the petitioner maintained an office or place of business must be decided on the specific facts existing in 1939 and 1940, independently of prior adjudications for different tax years. The court quoted *Engineer’s Club of Philadelphia v. United States*, 42 Fed. Supp. 182, emphasizing that activities in different periods, even if similar, are a “completely different set of events.” The court applied Treasury Regulations 101 and 103, which define “office or place of business” as implying “a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected.” Even though the petitioner maintained an office, the court determined that the activities conducted there were not sufficient to constitute a “regular transaction of business.” The court adhered to its prior decision and found the company taxable as a nonresident foreign corporation.

Practical Implications

This case illustrates the fact-specific nature of determining whether a foreign corporation has an “office or place of business” in the U.S. for tax purposes. The ruling emphasizes that each tax year must be evaluated independently, even if the corporation’s activities are substantially similar across different years. Attorneys advising foreign corporations must carefully document the nature and extent of U.S.-based activities each year to accurately determine the corporation’s tax status. The case reinforces the principle that simply having a physical location is insufficient; the activities conducted at that location must amount to the regular transaction of business. Subsequent cases must examine the specific activities within a tax year to determine the regularity and business nature of those activities.

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