11 T.C. 127 (1948)

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A foreign corporation is not considered to be “engaged in trade or business” within the United States for tax purposes based solely on an isolated sale of goods, especially when the sale occurs due to unforeseen circumstances and without the corporation’s direct involvement or control.

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Summary

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European Naval Stores Co., a Belgian corporation, sought a ruling that it wasn’t engaged in trade or business in the U.S. in 1942. The company had purchased naval stores in the U.S. in 1939, but shipment was blocked by war. In 1942, without the company’s consent, the seller resold the goods. The Tax Court ruled that the company was a nonresident corporation not engaged in trade or business within the U.S. in 1942. The court found that the isolated resale, without the company’s active participation, did not constitute engaging in trade or business.

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Facts

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European Naval Stores (ENS), a Belgian corporation, bought naval stores from Peninsular-Lurton Co. (PLC) in the U.S. in 1939. ENS intended to import the goods to Europe.r
War embargoes in 1940 prevented shipment. Germany occupied Belgium, severing communications between ENS and PLC.r
The goods remained in storage in the U.S.r
In March 1942, PLC resold the stores to itself (effectively repurchasing them) without ENS’s knowledge or consent, crediting the profit to ENS’s account.r
ENS had no U.S. office, employees, or sales agents. All prior transactions were negotiated via mail and cable from Belgium.r

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Procedural History

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The Commissioner of Internal Revenue determined deficiencies in ENS's corporate income tax, declared value excess profits tax, excess profits tax, and penalties for 1942.r
The Commissioner argued that ENS was a resident foreign corporation engaged in trade or business in the U.S. during 1942 due to the resale of naval stores.r
ENS petitioned the Tax Court for a redetermination of the deficiencies.r

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Issue(s)

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Whether ENS, a foreign corporation, was "engaged in trade or business" within the United States during 1942 under Section 231(b) of the Internal Revenue Code, based on the resale of its goods by PLC.r
Whether PLC acted as an agent of ENS in the United States.r

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Holding

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No, because the isolated resale of goods, without ENS's active participation or control, does not constitute "engaging in trade or business."r
No, because the facts did not support a principal-agent relationship between ENS and PLC.r

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Court's Reasoning

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The court emphasized that

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