***Hopag S. A. Holding de Participation et de Gestion de Brevets Industriels v. Commissioner of Internal Revenue*, 14 T.C. 38 (1950)**

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Payments received by a foreign corporation are not considered royalty income from United States sources, for personal holding company tax purposes, unless the corporation possesses an actual ownership interest in the underlying patents generating the income.

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Summary

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The Tax Court addressed whether payments credited to a Swiss corporation (Hopag) constituted royalty income from U.S. sources, thus subjecting it to personal holding company taxes. Hopag received payments based on a contract with another foreign corporation (Redynam), which licensed U.S. companies to use patents owned by inventor Bernard Salomon. The court held that Hopag's payments were not royalties because Hopag lacked an actual ownership interest in the patents; its right to receive payments stemmed from a contractual agreement with Redynam, not from direct ownership of the patents themselves. Therefore, Hopag was not a personal holding company for tax purposes.

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Facts

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Bernard Salomon, a French engineer, invented a motor vibration damper and obtained patents. Salomon assigned his U.S. patent rights to Apic, a French corporation, which then licensed Wright Aeronautical Corporation (Wright) to manufacture vibration dampers in the U.S. Apic later restored the patent rights to Salomon, who formed Redynam, a Luxemburg corporation, and assigned his patent rights to it. Redynam entered a new licensing agreement with Wright. Hopag, a Swiss corporation, was formed by members of an association that had previously promoted Salomon's inventions. Redynam contracted to pay Hopag 25% of the gross revenues from the exploitation of Salomon's patents. Wright made payments to Irving Trust Co. in New York, which then credited Hopag's account. The Commissioner argued that these credits constituted royalty income to Hopag from U.S. sources.

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Procedural History

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The Commissioner of Internal Revenue assessed deficiencies against Hopag for income and personal holding company taxes for the years 1940-1945. The Commissioner determined that Hopag was subject to surtax under Section 500 of the Internal Revenue Code, and a 25% penalty for 1940 was added for failure to file a return. Hopag petitioned the Tax Court for a redetermination of these deficiencies.

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Issue(s)

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Whether amounts credited to Hopag’s account at a New York bank constitute “gross income from sources within the United States” and are taxable to it as personal holding company income under Section 502 and 119 of the Internal Revenue Code.

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Holding

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No, because Hopag did not have an

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