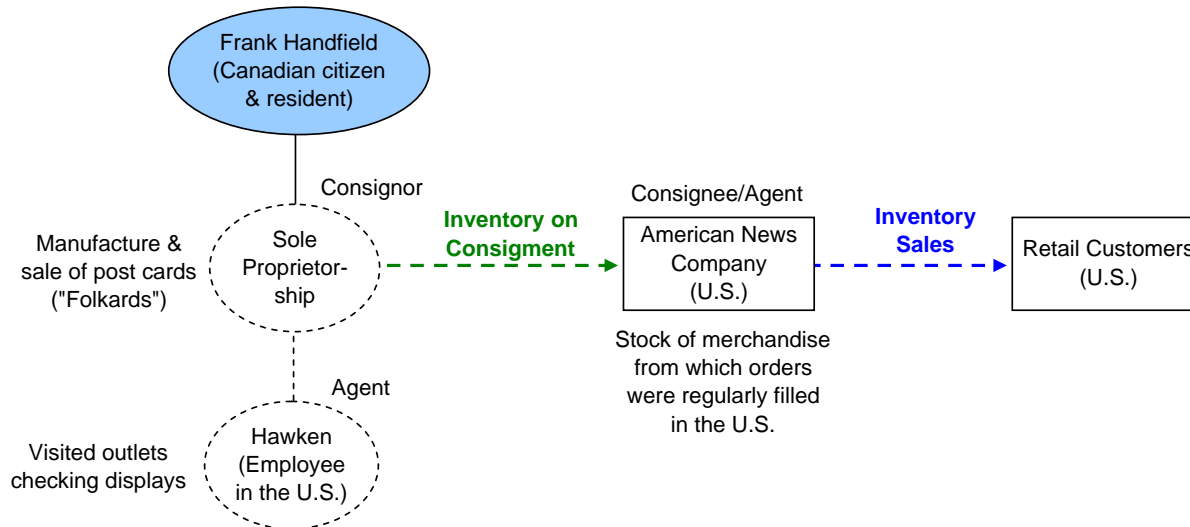


**Handfield v. Commissioner
23 T.C. 633 (1955)**

**Canadian Manufacturer Had a
Permanent Establishment in the U.S.**

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Excerpt from the case:

[Handfield] is a non-resident alien individual residing in Montreal, Quebec, Canada. . . . He was engaged in the manufacture of picture post cards in Canada The business was organized and operated by petitioner as a sole proprietorship.

[Handfield] managed the business and carried on his activities from his office in Montreal. He visited the United States for a total of 24 days in four trips in pursuit of his business activities during the fiscal year in issue. [Handfield] also employed R. H. Hawken . . . a resident of the United States, for the entire year involved. Hawken's duties were to check the vendors of The American News Company . . . to insure that the cards were being properly displayed. . . . Prints of Folkards were made in Canada from dies which, at all times material, were located in Canada. . . .

. . . [W]e think that the arrangement between [Handfield] and the News Company was one in which the News Company was his agent in the United States. We think that the cards were shipped on consignment to the News Company for sale to the public. . . .

Article III of the Tax Convention . . . subjects the industrial and commercial profits of a Canadian enterprise derived through a "permanent establishment" within the United States to the income taxes of this country. . . . The Protocol implementing the Convention defines . . . a "permanent establishment" as follows, in part: "When an enterprise of one of the contracting States carries on business in the other contracting State through an employee or agent established there, who has general authority to contract for his employer or principal or has a stock of merchandise from which he regularly fills orders which he receives, such enterprise shall be deemed to have a permanent establishment in the latter State." [Paragraph 3(f)]

The News Company, under its contract with petitioner, was an "agent" in the United States with a "stock of merchandise" from which it regularly filled orders for the public. Therefore, within the meaning of the above Protocol, we think the petitioner had a "permanent establishment" in the United States under his arrangement with the News Company. It follows, then, that he was engaged in business within the United States

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