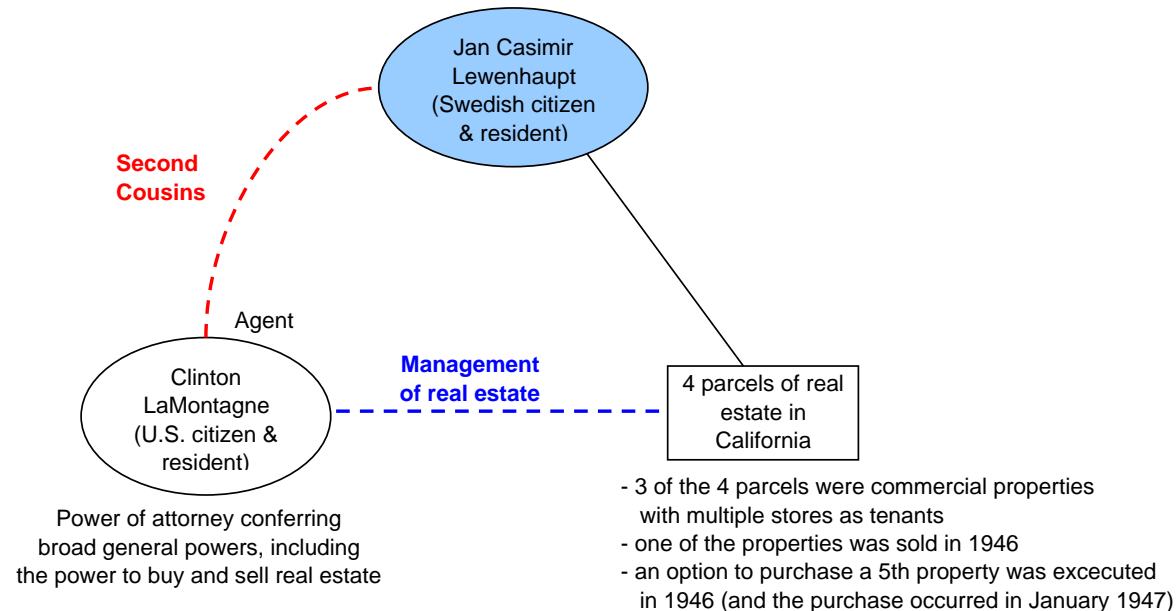


## Lewenhaupt v. Commissioner 20 T.C. 151 (1953)

### Swedish Count Engaged in U.S. Real Estate Business

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Prior to the calendar year 1941, Lewenhaupt owned no real or personal property in the United States. He was, however, the beneficiary of a trust established under the will of his mother, the corpus of which comprised four parcels of real property and securities in the United States. Petitioner's mother died in 1925. The corpus was distributed to him on April 1, 1941. On January 28, 1941, Lewenhaupt appointed LaMontagne, who was a resident of California, as his agent for the purpose of managing the personal and real property Lewenhaupt was to receive upon distribution of the trust assets. LaMontagne was a second cousin of Lewenhaupt. The power of attorney dated January 28, 1941, executed by Lewenhaupt in favor of LaMontagne conferred broad general powers on LaMontagne to manage Lewenhaupt's affairs and property in the United States, including the power to buy and sell real estate and securities, and "to do and transact all and every kind of business of what nature and kind soever" for and in the name of the Lewenhaupt. LaMontagne was a real estate broker, licensed under the laws of California.

LaMontagne's activities, during the taxable year, in the management and operation of Lewenhaupt's real properties included the following: executing leases and renting the properties, collecting the rents, keeping books of account, supervising any necessary repairs to the properties, paying taxes and mortgage interest, insuring the properties, executing an option to purchase real property, and executing the sale of real property. In addition, the agent conducted a regular correspondence with Lewenhaupt's father in England who held a power of attorney from Lewenhaupt identical with that given to LaMontagne; he submitted monthly reports to the Lewenhaupt's father; and he advised him of prospective and advantageous sales or purchases of property. The court held (in a reviewed by the court decision) that the activities, which were carried on in Lewenhaupt's behalf by his agent, were beyond the scope of mere ownership of real property, or the receipt of income from real property. The activities were considerable, continuous and regular and, constituted engaging in a business.

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