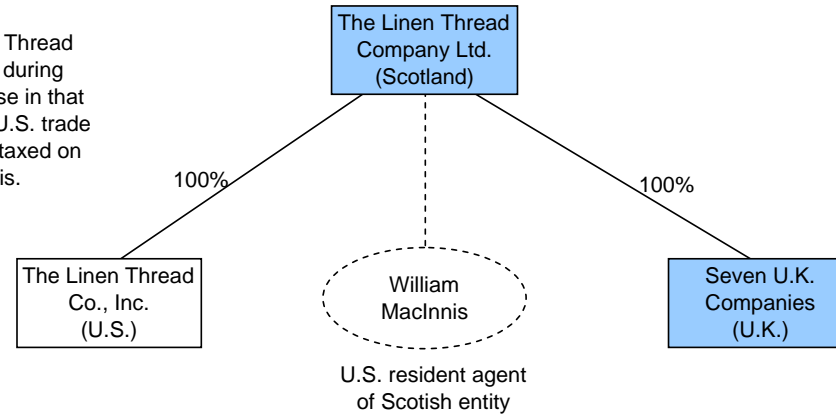


Linen Thread Co. v. Commissioner 14 T.C. 725 (1950)

Two U.S. Sales Did Not Create U.S. Trade or Business

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The issue in the case was whether Linen Thread was engaged in a U.S. trade or business during 1943 and 1944. This was an unusual case in that the taxpayer wanted to be engaged in a U.S. trade or business. The taxpayer wanted to be taxed on its net income rather than on a gross basis.



The Linen Thread Co. ("Linen Thread") is a corporation organized and existing under the laws of Scotland with its principal office and place of business in Glasgow, Scotland. Linen Thread is engaged in the manufacture and sale of linen thread and knitting twines. Linen Thread itself does not manufacture but manufactures through seven wholly-owned subsidiaries in the United Kingdom. Linen Thread also owns all of the stock of The Linen Thread Company, Inc. ("LT US"), a Delaware corporation. From 1937 to the middle of 1944 William J. Maclnnis was the resident agent of Linen Thread in the United States. Under a power of attorney in fact he was authorized to collect dividends and interest for Linen Thread from LT US, and to remit them to Linen Thread and to file Federal and state income tax returns for Linen Thread and otherwise to represent Linen Thread in connection with tax matters.

Two transactions were carried out in 1943 by Linen Thread through its American office. Marguerite G. Brooks, who was engaged in a home mail order business in New York City, ordered a supply of linen thread for lace making from Linen Thread in Glasgow. Linen Thread's resident agent did not solicit the sale. The resident agent merely delivered the goods from the post office to the customer, collected the amount due from her, and remitted the value of the shipment to Linen Thread in Scotland, all in accordance with instructions from Linen Thread in Scotland, where the sale had been negotiated. The only other sale made by Linen Thread in the United States during 1943 was a sale of three cases of thread, amounting to \$655.87, to LT US. The resident agent had nothing to do with soliciting that business and the goods were shipped directly from Linen Thread in Scotland to the subsidiary in Paterson, N. J. The New York office handled only the paper work of the transaction. The total amount of these two sales, as reported by Linen Thread in its 1943 calendar year return, was \$785.41, with \$633.83 cost of goods sold, and \$151.58 gross profit from sales. The only other item of income reported by Linen Thread for the calendar year 1943 was: "Dividends \$632,500."

To hold that Linen Thread was engaged in trade or business within the United States on the strength of two sales, where in one sale the resident agent was only the deliveryman and in the other he did only the "paper work," merely because title to the goods sold was, for no business reason, made to pass in this country would be "to exalt artifice above reality". *Gregory v. Helvering*, 293 U. S. 465. The test is both a quantitative and a qualitative one. The phrases "engaged in business," "carrying on business," and "doing business" were defined in *Lewellyn v. Pittsburgh, B. & L. E. R. Co.* (C. C. A., 3rd Cir., 1915), 222 Fed. 177. It was stated therein: "The three expressions, either separately, or connectedly, convey the idea of progression, continuity, or sustained activity." The court held that there is nothing of continuity or of sustained activity in these two small isolated transactions so as to warrant regarding Linen Thread as engaged in trade or business in the United States through its New York office.

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