

**Amalgamated Dental Co. Ltd.
v. Commissioner
6 T.C. 1009 (1946)**

**Purchaser-Seller Relationship
Did Not Cause Purchaser to be
Engaged in a U.S. Trade or Business**

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Amalgamated Dental Company, Ltd., ("Amalgamated") was a British corporation with its principal office and place of business in London, England. For a number of years it had been engaged in the business of manufacturing, buying, and selling dental supplies. It had no plant, office, or place of business, officers or employees in the United States during the taxable years.

Amalgamated owned about one-third of the capital stock of the Dentist Supply Co. of New York ("Dentist Supply"), a domestic corporation with an office and place of business in New York, New York, and factories at York and Philadelphia, Pennsylvania. Dentist Supply, for a number of years, has been engaged in the business of manufacturing and selling artificial teeth, and for many years sold large quantities of its products to Amalgamated who in turn resold the merchandise to its customers throughout the British Empire and European Continent. The association between the two companies had been of about 40 years standing. Under an agreement between Amalgamated and Dentist Supply, Amalgamated could not sell artificial teeth to customers within the Western Hemisphere, and Dentist Supply could not sell artificial teeth to customers outside the Western Hemisphere, except as to some customers in the Far East and Japan.

During the year 1940 (about May 3rd), Amalgamated changed its method in regard to business transacted with Dentist Supply. This change was precipitated primarily and directly because of war conditions, rendering it impossible for Amalgamated to import teeth from America to resell to customers; Amalgamated could no longer secure import licenses; also, because of the "blitz" and severe conditions in England, Amalgamated was unable to ship from the United Kingdom to many old customers, it not being feasible for Dentist Supply to ship to Amalgamated in London or for the latter to ship to its customers. To overcome this difficulty, Amalgamated made arrangements with Dentist Supply wherein the latter would ship the merchandise direct to its customers. Under this arrangement, Amalgamated would forward the orders from its customers to Dentist Supply. In some instances Dentist Supply received orders direct from Amalgamated's customers. Upon receipt of such orders, Dentist Supply would send them to its factory for preparation.

The issue in the case was whether Amalgamated was "engaged in trade or business within the United States." The question as to what constitutes doing business is one of fact. *Higgins v. Commissioner*, 312 U. S. 212. The court concluded that Amalgamated was not engaged in trade or business within the United States. Amalgamated contended that after May 3, 1940 a change occurred so that Dentist Supply Company became its agent. However, the court found that the change entailed a mere enforced modification of the previous operation of a purchaser and seller relationship. There was no formal expression of a contract of agency and what was done appeared, not as agency, but as detail in carrying on the previous arrangement in a not greatly different way.

