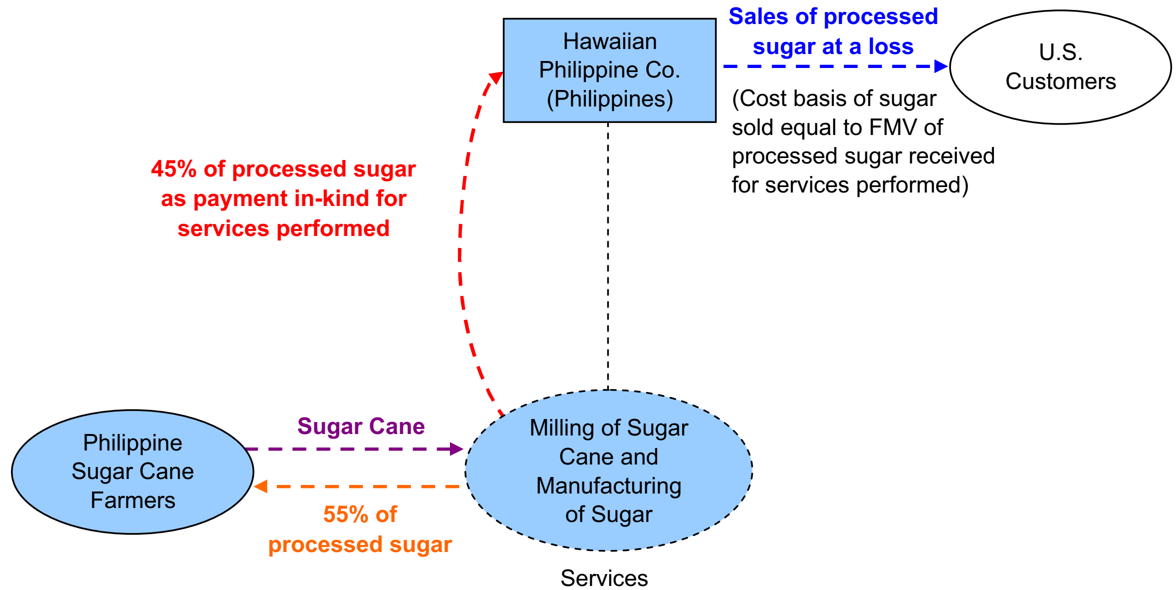
Commissioner v.
Hawaiian Philippine Co.
100 F.2d 988 (2d Cir. 1939)

Processed Sugar Payment In-kind for Manufacturing Services



The issue in the case was whether Hawaiian Philippine Co. ("Hawaiian"), a Philippine corporation, derived any taxable net income from sources within the United States during the year 1930. For a number of years Hawaiian had been engaged in the business of milling sugar cane and manufacturing sugar in the Philippine Islands. The cane is obtained from planters under long-term contracts, entered into prior to 1921, whereby the planters agreed to plant their lands to sugar cane for a period of thirty years, cut the cane at their own expense, and deliver it to Hawaiian's railroad cars. Hawaiian agreed to transport the cane to the mill and to manufacture it into raw centrifugal sugar. The contracts provide that "as full compensation for all its services * * * the Mill shall have and retain 45% of the sugar produced from the cane of each Planter milled hereunder (or, at its option, forty-five per cent of the net proceeds of sales of said sugar), based on the weight and analyses of the sugar cane milled, the other 55% thereof to belong to the Planter * * *." It was provided that "title to the share of sugar belonging to the Mill * * * shall pass to the Mill upon the manufacture thereof, and prior thereto the right to the Mill to receive, retain and mill the sugar cane shall be absolute." The contracts were to run with the land.

The IRS argued that the income realized by Hawaiian was from the manufacture of sugar in the Philippine Islands and its sale in the United States constituted "gains, profits and income * * * from the sale of personal property * * * produced (in whole or in part) by the taxpayer without and sold within the United States." Hawaiian asserted that the case was governed by section 119(c)(3). This provision is as follows: "(c) Gross income from sources without the United States.--The following items of gross income shall be treated as income from sources without the United States: * * * (3) Compensation for labor or personal services performed without the United States."

Hawaiian's share of the sugar manufactured under the milling contracts was received as "compensation for its milling services," and constituted income to it to the extent of its fair market value at the time and place of receipt. Although in a broad sense Hawaiian may be deemed a "manufacturer" of sugar, as contended by the Commissioner, it is plain that it did not manufacture sugar for its own account. The operation was carried on as a service to the planters. The fact that the services rendered were manufacturing services does not render inapplicable the provisions of section 119(c)(3). Nor did the court find the milling services as any the less personal because they were performed, in part, through the use of machinery, or because of the magnitude of Hawaiian's operations.