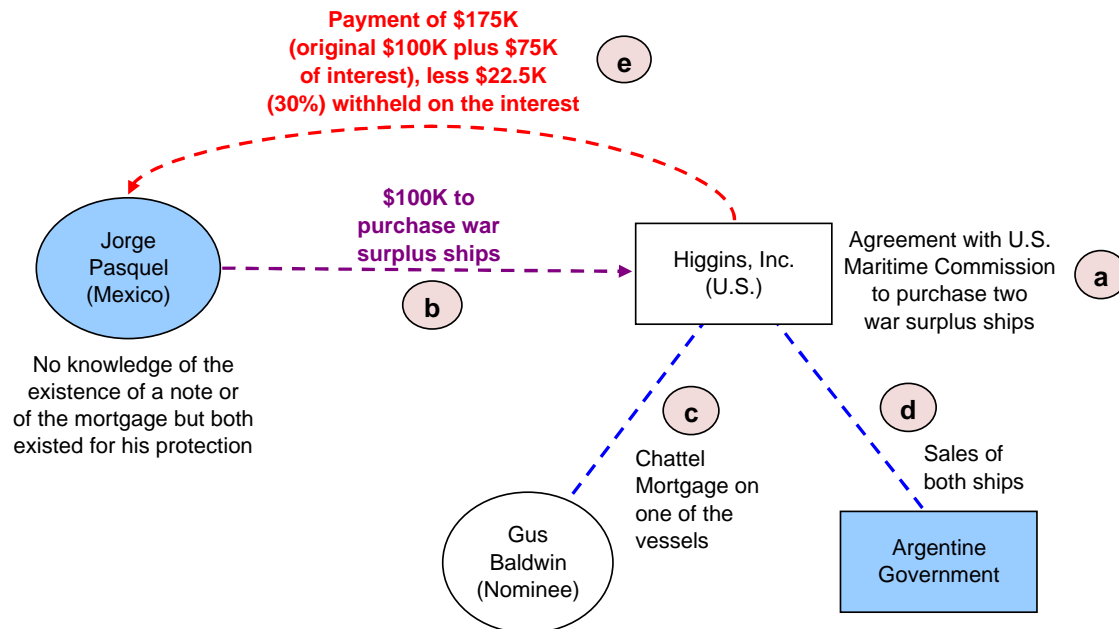


**Pasquel v. Commissioner
12 TCM 1431 (1953)**

**Isolated U.S. Loan Did Not Cause NRA
To Be Engaged in U.S. Trade or Business**

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The issue in the case was whether Jorge Pasquel was engaged in a U.S. trade or business. In April, 1947, Higgins, Inc., a New Orleans shipbuilding corporation, arranged with the United States Maritime Commission for the purchase of two war surplus ships for \$75,000 each. After making a deposit on the purchase price, Higgins, Inc., requested the permission of the Maritime Commission to defer payment of the balance and delivery of the vessels for a period of three months to obtain additional time in which to raise the balance of the purchase price since Higgins, Inc., was in bad financial condition at that time.

Pasquel advanced \$100,000 to Higgins, Inc. to purchase the ships. From the facts it was not perfectly clear that the advance was a loan. Andrew Higgins, Jr. regarded the advances made by Pasquel as essentially a loan and felt that he had at least a moral obligation to return the \$100,000 with a minimum profit of \$25,000 in any event. On June 27, 1947, Andrew Higgins, Jr., caused to be made a note in the amount of \$125,000 payable by Higgins, Inc., to Higgins, Inc., endorsed in blank and secured by a recorded chattel mortgage on one of the vessels in question. The mortgage was in favor of one Gus B. Baldwin, Jr., a nominee. Although neither document was ever delivered to Pasquel nor did he have any knowledge of their existence, they were caused to be made for his protection. Andrew Higgins, Jr., took this action in an effort to prevent losses to Pasquel in the event of a worsening of the financial condition of Higgins, Inc. The avoidance of Pasquel's name in the documents was designed to conceal the financial difficulties of Higgins, Inc., from Pasquel who had an excellent opinion of that corporation.

In August, 1947, the vessels were sold to the Government of Argentina. Immediately thereafter Pasquel's \$100,000 was returned, along with an additional \$75,000 as his share of the profits, less \$22,500 withheld by Higgins, Inc., and sent to the Treasury Department with Form #1042, Annual Return of Income Tax To Be Paid at Source. The ships were subsequently converted under the direction of Higgins, Inc., by a subcontractor. Pasquel had nothing to do with the conversion of the vessels. It was the IRS's position that the relationship between Pasquel and Higgins, Inc., constituted a joint venture to be treated, for tax purposes, as a partnership. The Tax Court stated that Higgins brought Pasquel "into the transaction only as an expedient means of financing an existing commitment which it could not meet by itself." The Tax Court further held that "Pasquel's participation in this single and isolated transaction does not amount to engaging in trade or business in the United States."

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