

Revenue Ruling 63-113

No PE for Consignment Sales to U.S. Trading Company

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A corporation, organized under the laws of Canada as a manufacturing concern ("CanCo"), entered into an agreement with a trading company in the United States ("USCo") to handle its products on a consignment basis. The agreement provided, among other things, that products ordered by USCo will be delivered to a carrier at CanCo's plant in Canada, to be forwarded by such carrier for and on behalf of, and at the expense and risk of, USCo to such point or points in the United States as USCo may designate. All responsibility for such products is assumed by USCo, which may from time to time and without notice to or consent of CanCo, move such products to such locations as it desires.

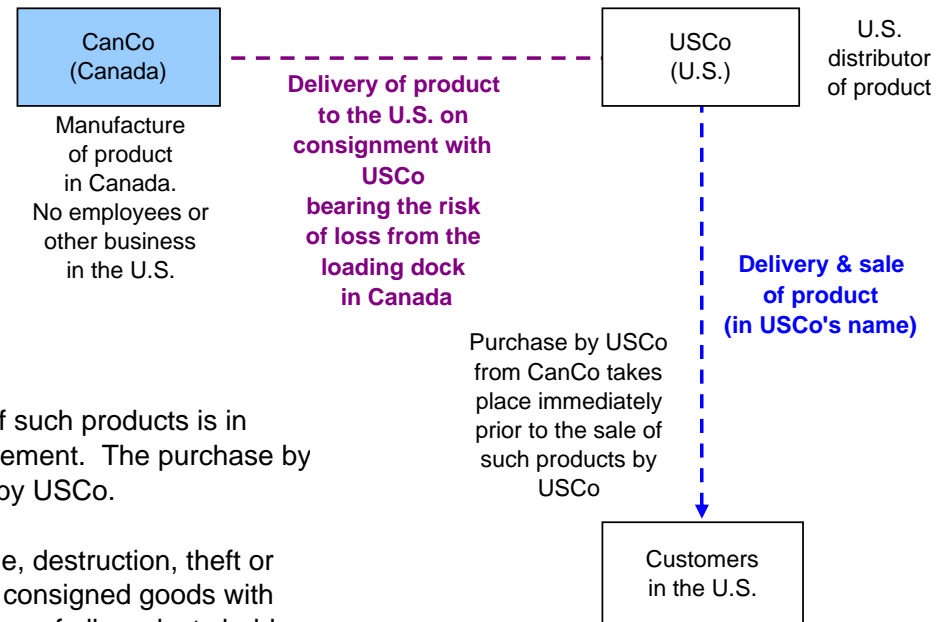
The products are held by USCo on consignment. The title to and ownership of such products is in CanCo until purchased by USCo in accordance with the provisions of the agreement. The purchase by USCo from CanCo takes place immediately prior to the sale of such products by USCo.

The agreement further provides that USCo is responsible to CanCo for damage, destruction, theft or loss of goods prior to purchase by it. USCo bears the cost of insurance of the consigned goods with loss payable to CanCo. Upon request, USCo furnishes CanCo with an inventory of all products held on consignment, but it is not liable to account to CanCo for the proceeds of sales made by USCo.

Also, USCo is under no obligation to purchase the consigned products. CanCo has the right to recall any consigned products prior to the time of their purchase by USCo. CanCo has no employees in the United States and conducts no other business in the United States. USCo sells in its own name to its own customers.

Under the concepts of the U.S.-Canada Income Tax Treaty, the absence of a permanent establishment, on the part of an enterprise having business dealings in the country concerned, is based in part upon the premise that such business dealings are through a commission agent, broker or other independent agent. Under the agreement in the instant case, it is doubtful that even such a limited agency is established. It is clear, however, that no general agency is established. Instead, the relationship between CanCo and USCo is more in the nature of seller and purchaser, since the power USCo has in determining when title to the consigned goods passes from CanCo is exercisable only as a purchaser.

Further, while CanCo has a "stock of merchandise" in the United States, it has no employee or agent in the United States from which stock of merchandise it "regularly fills orders" which it receives. Accordingly, it was held that CanCo did not have a permanent establishment in the United States within the meaning of the U.S.-Canada Income Tax Treaty. Therefore, the income derived by CanCo from transactions with USCo in accordance with the terms of the agreement is not subject to U.S. Federal income tax.



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