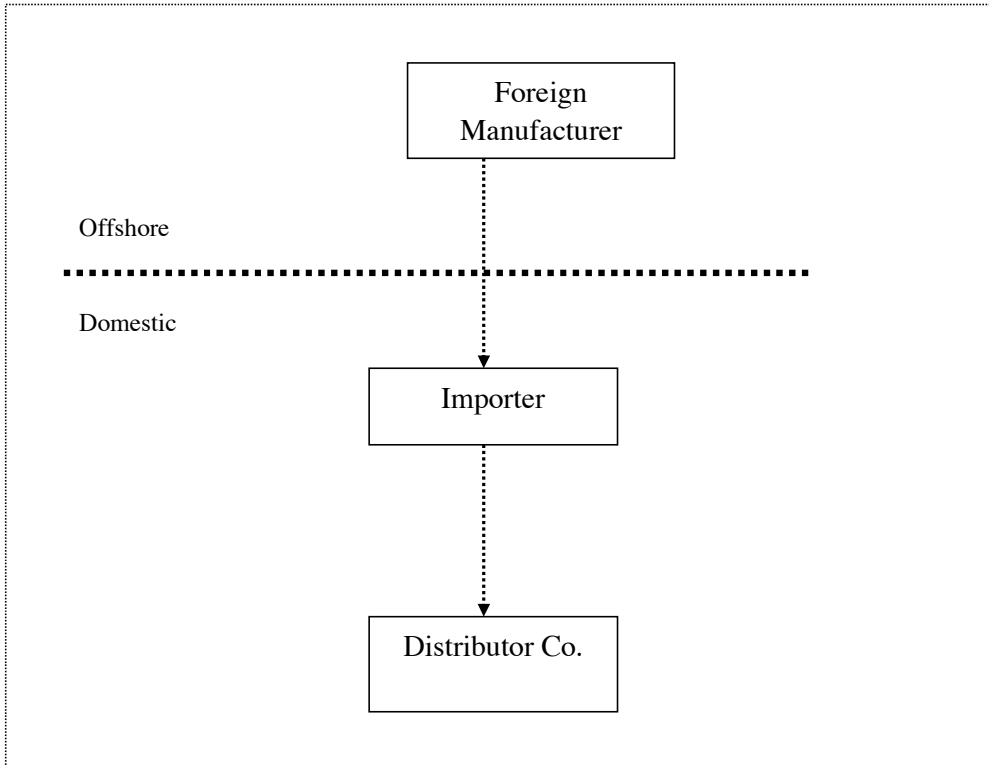


Archery and Sportfishing FET Scenarios

Scenario 1A



- ◆ Importer, a U.S. corporation, is a trading company that imports fishing rods and sportfishing tackle from a number of foreign companies.
- ◆ Importer has a well-established relationship with Foreign Manufacturer, who fabricates fishing rods and other sportfishing tackle for Importer and other companies.
- ◆ Distributor Co., a U.S. corporation, distributes fishing rods and other sportfishing tackle to retailers in the United States.
- ◆ There is no common ownership of Importer, Distributor Co. and Foreign Manufacturer. All transactions are at arm's length.
- ◆ Importer provides Foreign Manufacturer with all of the design specifications for the fishing rods. The two companies then negotiate the price at which Foreign Manufacturer will sell the fishing rods to Importer.

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Archery and Sportfishing FET Scenarios

- ◆ Importer uses its own intellectual property and its own brand in developing the products.
- ◆ Importer guarantees payment to Foreign Manufacturer by letter of credit, wire transfer, express check or other means upon delivery of the fishing rods.
- ◆ Under the terms of the agreement, Importer purchases the fishing rods F.O.B. at Foreign Manufacturer's plant.
- ◆ Importer bears the full risk if fishing rods are lost or damaged in transit from Foreign Manufacturer's plants to Importer's warehouses in the U.S. or to Importer's customers.
- ◆ Importer may or may not carry fishing rods and other sportfishing tackle in inventory.
- ◆ When Importer does carry inventory, the fishing rods and the other sportfishing tackle in its inventory are offered for sale in bulk to Importer's customers at a fixed price.
- ◆ Importer is heavily engaged in advertising the fishing rods to the general public.
- ◆ Distributor Co. purchases some of the fishing rods from Importer. Distributor Co. then distributes these fishing rods and other sportfishing tackle purchased from other unrelated parties to retailers.

Question:

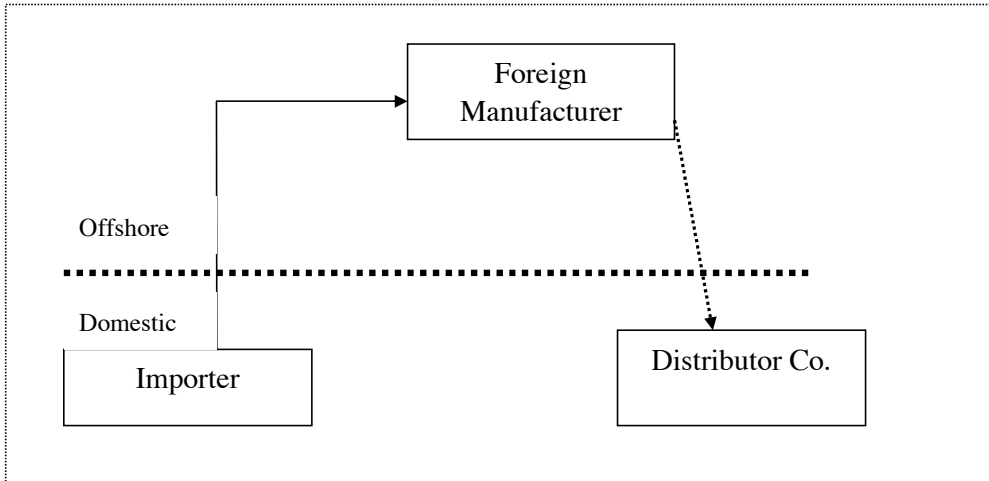
For the federal excise tax imposed by § 4161, who is the taxpayer?

Answer:

Importer is the taxpayer because Importer controls all aspects of the importation of the fishing products and is not acting as an agent for Distributor Co.

Archery and Sportfishing FET Scenarios

Scenario 1B



Same facts as Scenario 1A, except:

Importer imports the product and ships the items direct from the Foreign Manufacturer to the Distributor Company.

Importer owns title and risk of loss until received by Distributor Company.

Importer does not maintain a warehouse.

Question:

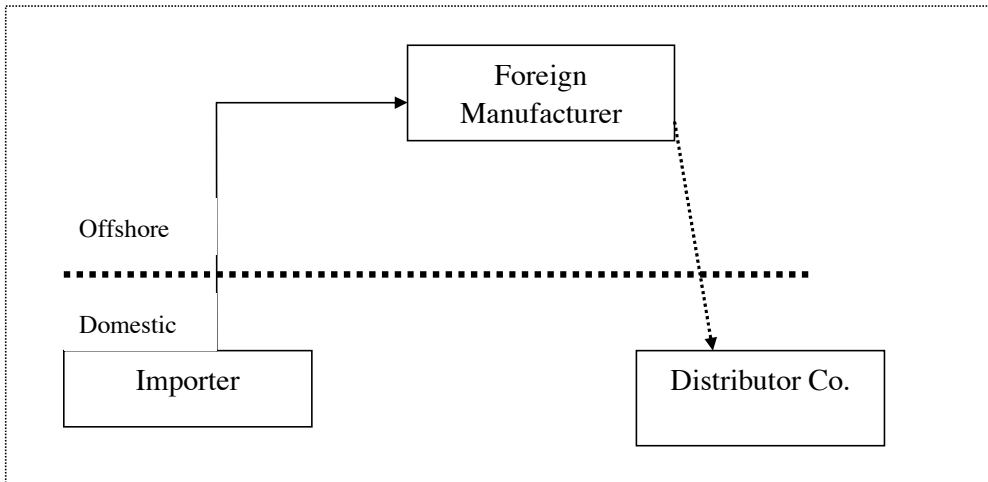
For the federal excise tax imposed by § 4161, who is the taxpayer?

Answer:

The answer is the same as in scenario 1A because Importer controls all aspects of the importation and bears all risk of loss even though it does not maintain a warehouse.

Archery and Sportfishing FET Scenarios

Scenario 1C



Same facts as Scenario 1A, except:

- Importer determines the components used in rod manufacture.
- At the request of Distributor Co., the rod is manufactured with a special color and Distributor Co.'s label is affixed to it, with no other design revisions.

Question:

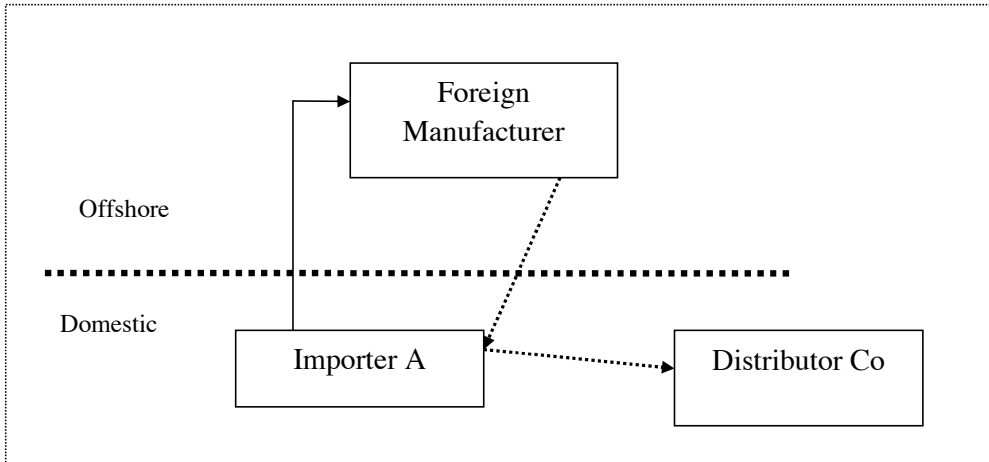
For the federal excise tax imposed by § 4161, who is the taxpayer?

Answer:

The answer remains the same as 1A. The fact that Distributor Co.'s label is affixed is not a significant factor.

Archery and Sportfishing FET Scenarios

Scenario 2A –



- ◆ Importer A is a U.S. import company that develops tackle products on its own to sell into the U.S. market through various distribution channels.
- ◆ Distributor Co. is a brand-name company selling its products into the market through various channels.
- ◆ Importer A has an arm's length relationship with Foreign Manufacturer and with Distributor Co., none of which are related parties.
- ◆ Importer A arranges to affix Distributor Co.'s brand name or licensed names to products it manufactures for Distributor Co.
- ◆ Importer A establishes the sales prices of the products it sells to Distributor Co.

Question:

For the federal excise tax imposed by § 4161, who is the taxpayer?

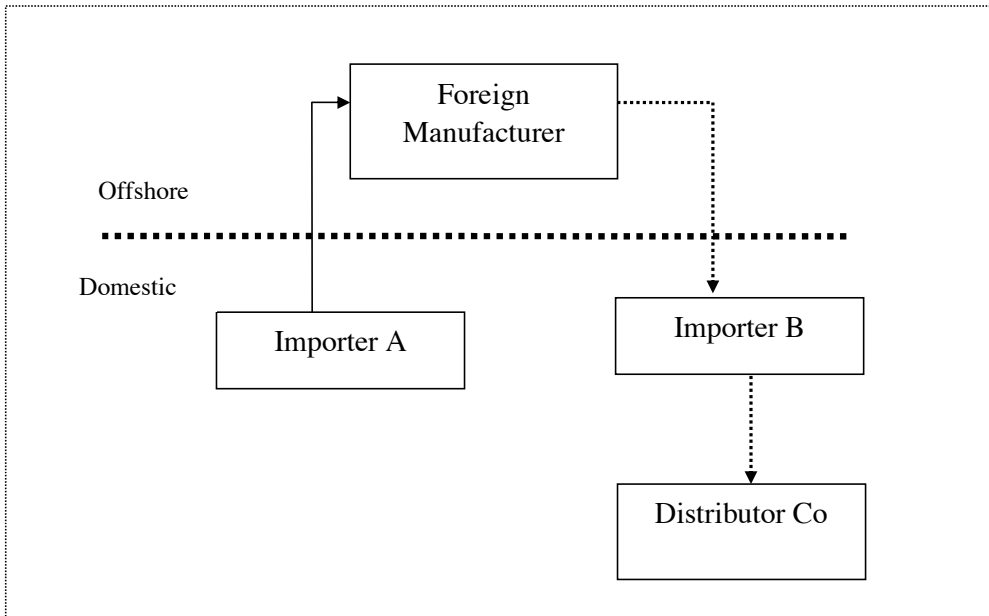
Answer:

Importer A is the taxpayer because Importer A has control of substantially all aspects of the development, pricing, and importation of the goods.

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Archery and Sportfishing FET Scenarios

Scenario 2B



- ◆ Same facts as Scenario 2A except:
- ◆ Occasionally, Distributor Co. requires that Importer A provide some of its products on an F.O.B. offshore basis so that they may be imported directly by Importer B, as agent for Distributor Co.

Question:

For the federal excise tax imposed by § 4161, who is the taxpayer?

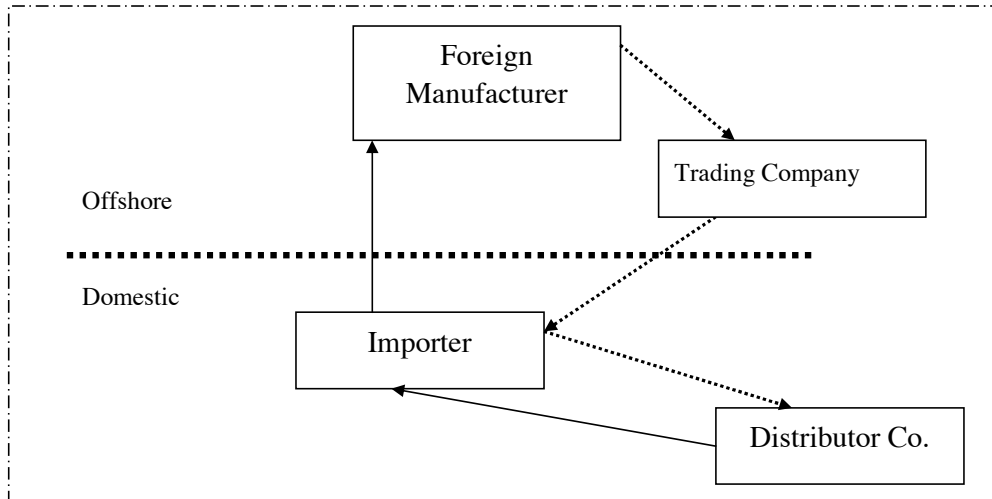
Answer:

Distributor Co. is the taxpayer because the first sale of these products in the U.S. is made by Distributor Co. The sale by Importer B to Distributor Co. is disregarded because Importer B acts merely as an agent for Distributor Co.

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Archery and Sportfishing FET Scenarios

Scenario 2C



- ◆ Distributor Co. develops fishing products directly with Foreign Manufacturer and affixes its own or licensed brand names to the products.
- ◆ Distributor Co. and Foreign Manufacturer meet for various reasons including assuring quality control and assisting with any development and engineering problems.
- ◆ Trading Company provides translation, documentation, inspection and other services to Distributor Co.
- ◆ Distributor Co. orders fishing products from Importer. Importer purchases these products from Foreign Manufacturer.
- ◆ Foreign Manufacturer ships the fishing products to Trading Company, who exports the products to Importer.
- ◆ Importer imports the product into the U.S. and sells the product directly to Distributor Co.
- ◆ Distributor Co. sells the product to retailers in the U.S.

Question:

For the federal excise tax imposed by § 4161, who is the taxpayer?

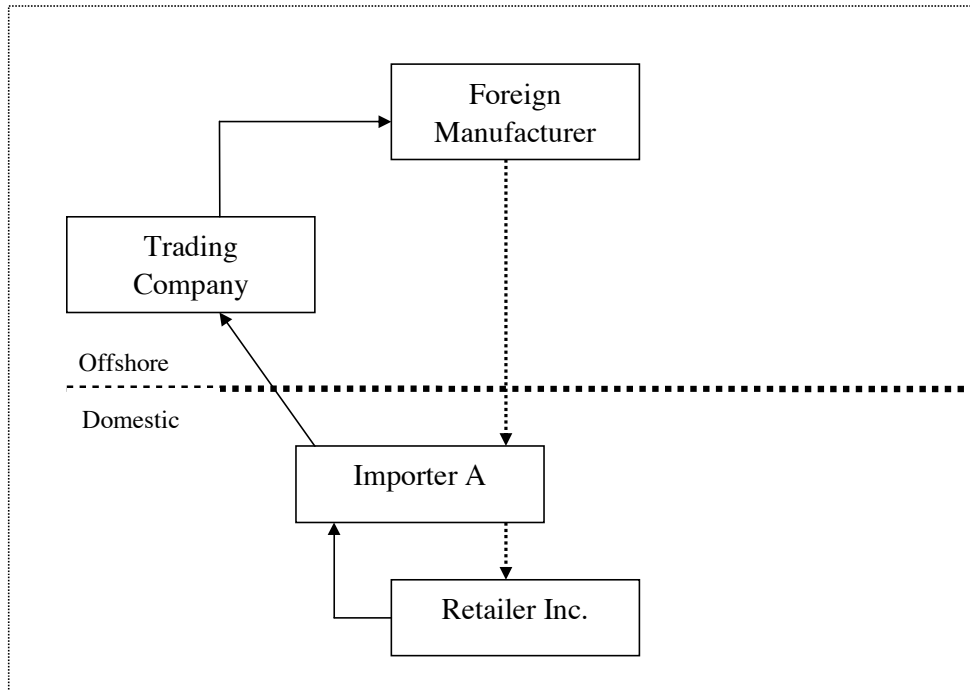
Answer:

Distributor Co. is the taxpayer because Distributor Co. develops and imports directly from the Foreign Manufacture. Importer acts merely as an agent for Distributor Co.

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Archery and Sportfishing FET Scenarios

Scenario 3A



- ◆ Retailer Inc. is a U.S. brand-name retailer selling through its own stores and direct-to-consumer channels.
- ◆ Retailer Inc. buys fishing rods from Importer A. Importer A develops and engineers these goods to satisfy the requirements of Retailer Inc.
- ◆ Retailer Inc. has no ownership of the designs or physical or intellectual property used by Importer A to develop the fishing rods.
- ◆ Importer A arranges to affix Retailer Inc.'s name or licensed name(s) to the fishing rods it supplies to Retailer Inc.
- ◆ Importer A uses its own resources and its own physical and intellectual property to develop and price the fishing rods.
- ◆ Importer A orders the fishing rods it develops from Foreign Manufacturer through its own agent, Trading Company.
- ◆ Foreign Manufacturer delivers the fishing rods F.O.B. from Foreign Manufacturer's plant

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Archery and Sportfishing FET Scenarios

to Importer A, who imports them into the U.S.

- ◆ Importer A sells the fishing rods to Retailer Inc. The fishing rods are shipped F.O.B. to destinations determined by Retailer Inc.

Question:

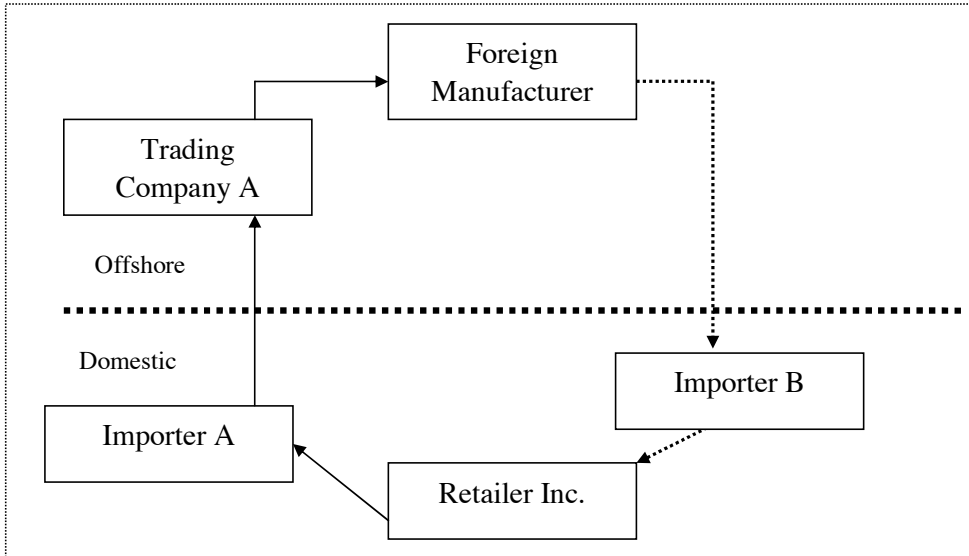
For the federal excise tax imposed by § 4161, who is the taxpayer?

Answer:

The taxpayer is Importer A because Importer A has control of substantially all aspects of the development, pricing and importation of the fishing rods.

Archery and Sportfishing FET Scenarios

Scenario 3B



Same facts as 3A accept:

- ◆ Occasionally, Retailer Inc. requests that Importer A provide fishing rods to Retailer Inc. with title passing to Retailer Inc. in a foreign country.
- ◆ For these F.O.B. purchases of fishing rods, Importer B imports the goods into its own warehouse until shipped to Retailer Inc. Importer B provides the warehousing and inventory services to Retailer Inc. on a negotiated fee basis.
- ◆ Although Importer B handles the paperwork for import of the fishing rods, Retailer Inc. still controls the purchase through Importer A.

Question:

For the federal excise tax imposed by § 4161, who is the taxpayer?

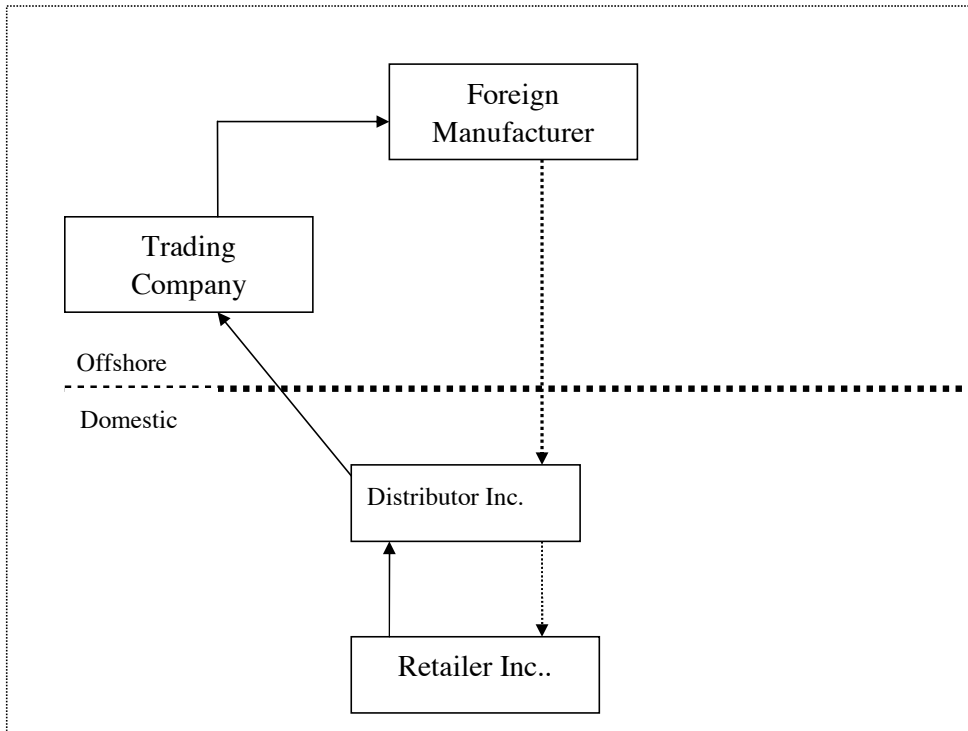
Answer:

Retailer Inc. is the taxpayer. Importer B provides warehouse and inventory services for Retailer Inc. on a negotiated fee basis. Importer B does not hold title to the fishing rods or control any aspect of their import. Retailer Inc. purchased and took title to the fishing rods overseas and the first sale in the U.S. subject to tax is the sale by Retailer Inc.

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Archery and Sportfishing FET Scenarios

Scenario 4



- ◆ Distributor Inc. is a brand-name supplier of tackle under its own brand name.
- ◆ Distributor Inc. controls all stages of development of its own branded products.
- ◆ Retailer Inc. purchases Distributor Inc.'s branded products which Retailer Inc. sells through its own channels of distribution.
- ◆ Distributor Inc. sells its brand name reel exclusively to Retailer Inc.
- ◆ Distributor Inc. and Retailer Inc. are unrelated parties.

Question:

For the federal excise tax imposed by § 4161, who is the taxpayer?

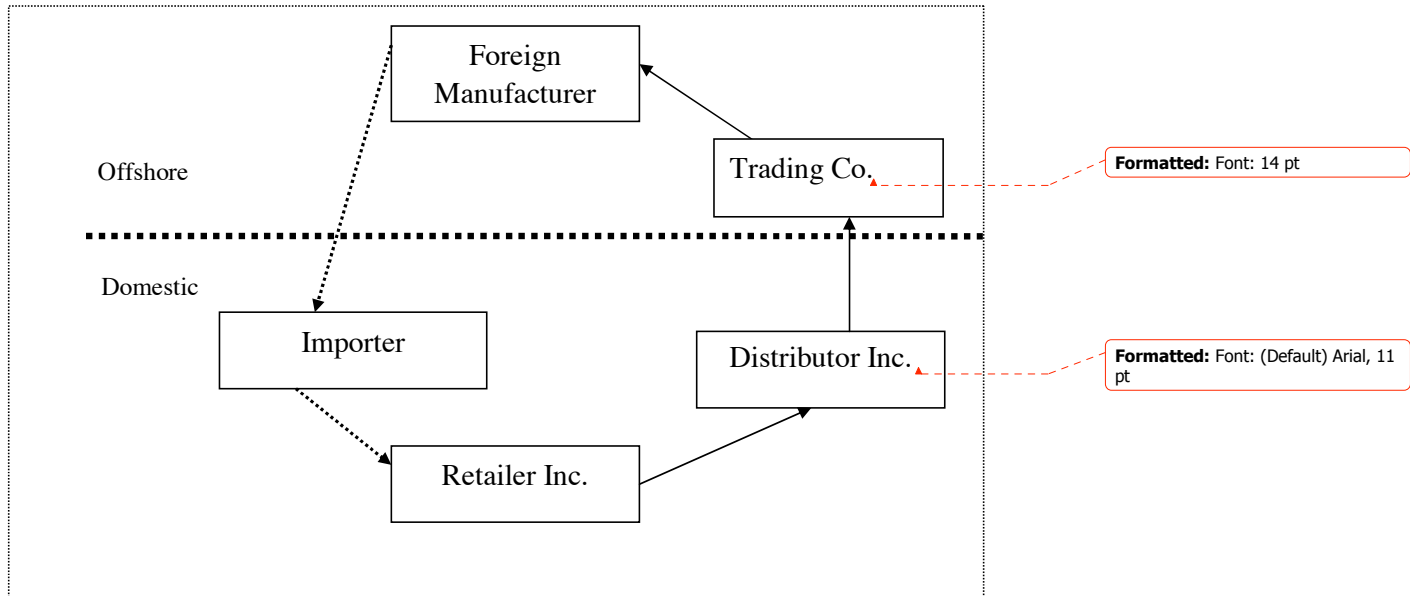
Answer:

The taxpayer is Distributor Inc. because Distributor Inc. controls all aspects of the development and importation of its branded products, even though all of its branded products are sold to Retailer Inc.

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Archery and Sportfishing FET Scenarios

Scenario 5



- ◆ Distributor Inc. agrees to develop fishing rods to meet specifications determined by Retailer Inc.
- ◆ Distributor Inc. sends specifications to Trading Co., an offshore company. Trading Co. then has the product manufactured by Foreign Manufacturer.
- ◆ At the request of Distributor Inc. and/or Retailer Inc. the fishing rods are sold to Importer, an agent for Retailer Inc. Importer then sells the rods to Retailer Inc.,.

Question:

For the federal excise tax imposed by § 4161, who is the taxpayer?

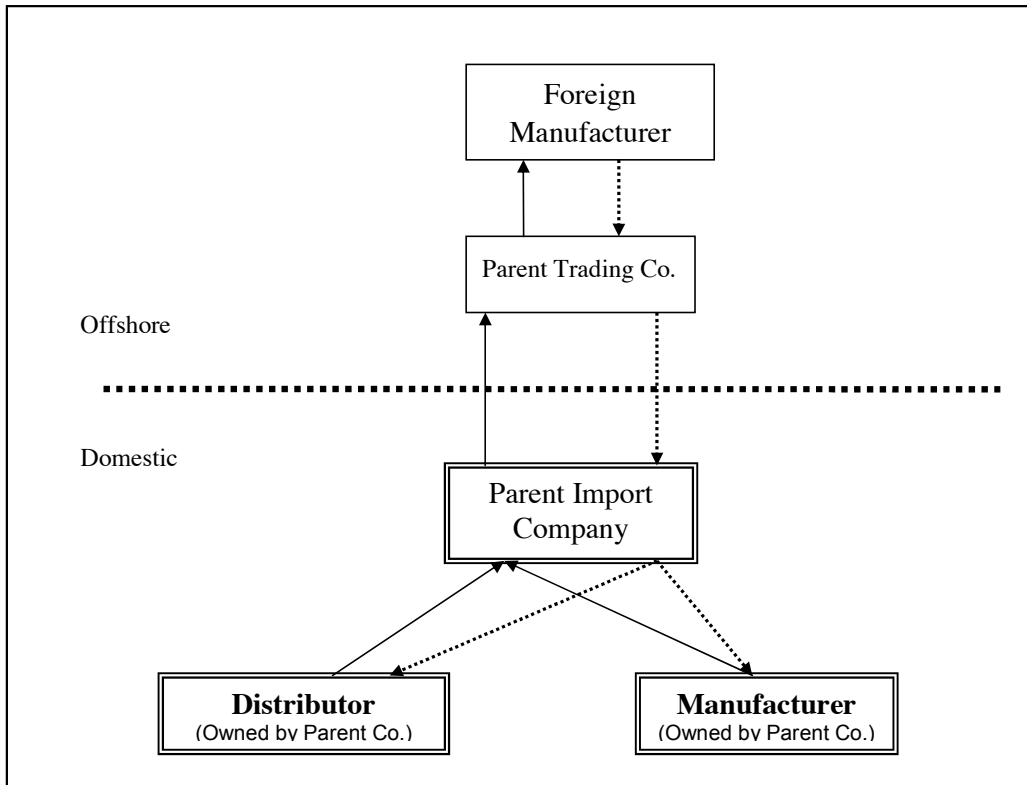
Answer:

Retailer Inc. is the taxpayer. Distributor Inc. does not make the first sale of the fishing rods in U.S. because the fishing rods are imported through Retailer Inc.'s agent, Importer. Distributor Inc. is a development and sourcing agent for Retailer Inc. Importer has not made a sale on its own behalf, but rather facilitates the agreement between Distributor Inc. and Retailer Inc. Therefore, Retailer Inc. makes the first sale in the U.S.

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Archery and Sportfishing FET Scenarios

Scenario 6



- ◆ Manufacturer is a U.S. company with a wholly owned manufacturing facility in the U.S. that makes some of its tackle products. Manufacturer also imports some tackle products.
- ◆ Distributor is a U.S. company selling primarily imported tackle products.
- ◆ Manufacturer and Distributor are subsidiaries of Parent Company, a U.S. company.
- ◆ Manufacturer and Distributor sell independently to the market through various channels.
- ◆ Manufacturer's representatives and engineers routinely contact and visit Foreign Manufacturer, an offshore manufacturer, and/or its subcontractors to develop tackle products and negotiate prices and terms of production.
- ◆ Distributor routinely contacts and visits Foreign Manufacturer and/or its subcontractors to develop tackle products and negotiate prices and terms of production.

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Archery and Sportfishing FET Scenarios

- ◆ Parent Co., Parent Trading Co, and Parent Import Company are related parties. Parent Trading Co. and Parent Import Company perform services primarily for Parent Co. Parent Trading Co. is an offshore subsidiary of Parent Company. Parent Import Company is a domestic subsidiary of Parent Company.
- ◆ Manufacturer and Distributor are usually accompanied by representatives of Parent Trading Co. when visiting Foreign Manufacturer.
- ◆ Manufacturer and Distributor place purchase orders for the tackle products with Parent Import Company.
- ◆ Parent Import Company places orders for Foreign Manufacturer's goods through Parent Trading Co.
- ◆ Foreign Manufacturer ships the goods to Parent Import Company, who imports the goods into the U.S.
- ◆ Parent Trading Company provides translation, paperwork and banking functions and other services for the goods being shipped to Parent Import Company.
- ◆ Parent Import Company sells and ships the goods to Manufacturer and Distributor.
- ◆ Manufacturer and Distributor, independently of each other, sell their tackle products into the U.S. market through a variety of channels.

Question:

For the federal excise tax imposed by § 4161, who is the taxpayer?

Answer:

Manufacturer:

- ◆ Imported tackle products: Manufacturer is the taxpayer for the tackle products it imports.
- ◆ Tackle products produced by Manufacturer at its U.S. factory: Manufacturer is the taxpayer for the tackle products produced by Manufacturer at its U.S. factory.

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Archery and Sportfishing FET Scenarios

Distributor:

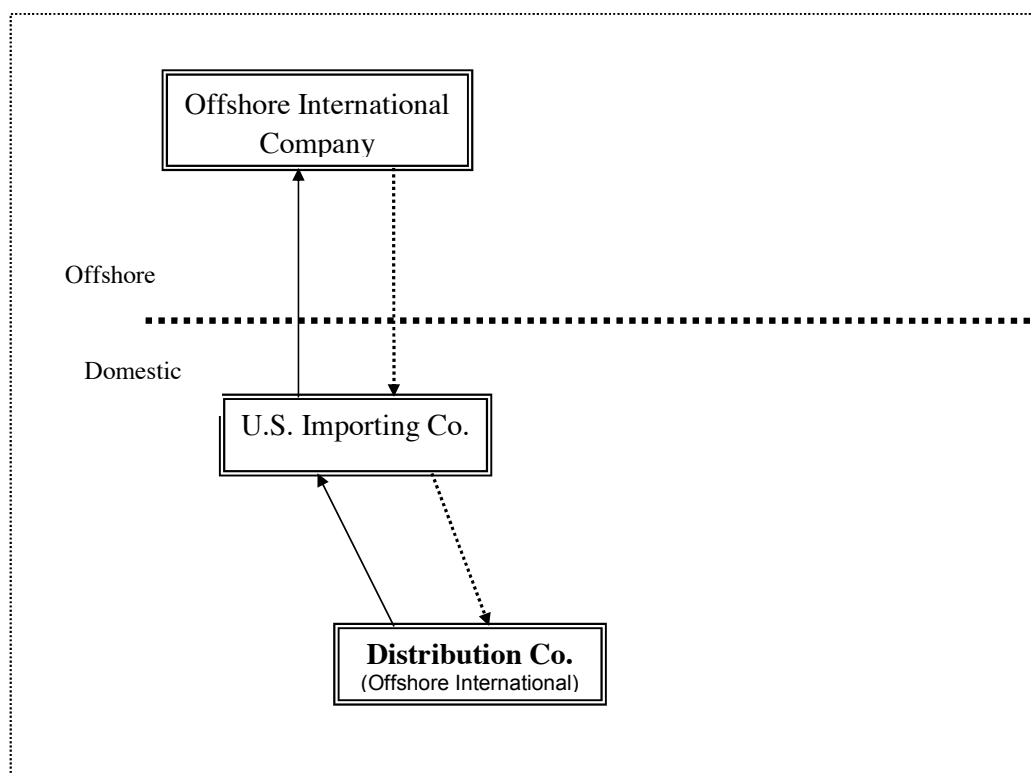
- ◆ Distributor is the taxpayer for the tackle products that it imports.

Because ownership is common throughout all layers of the transaction, no valid arm's-length relationship exists between any significant layer of the transaction. Tackle products that are designed and negotiated by either Manufacturer or Distributor with the Foreign Manufacturer pass only through agents of Manufacturer or Distributor or other entities controlled by Parent. While Parent Import Company does the importing and actively arranges shipping details with Foreign Manufacturer, it does this as an agent of either Manufacturer or Distributor, under common ownership and control.

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Archery and Sportfishing FET Scenarios

Scenario 7



Foreign international company with U.S. subsidiaries

- ◆ Offshore International Company is parent to U.S. Importing Co. and Distribution Co. It also owns its own offshore manufacturing facilities as well as subcontracts for product manufacturing from other foreign companies.
- ◆ Offshore international company's U.S. importing company:
 - Completes all product development and sourcing for Distribution Co.

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Archery and Sportfishing FET Scenarios

- Contracts with multiple foreign manufacturers throughout Europe and Asia for manufacturing.
 - Contracts with foreign manufacturers, some of which are fully or partially owned by Offshore International Co.
 - US Importing Co. has established an office in China to conduct engineering, product development and quality control.
 - Purchases from foreign factories, imports products to the U.S. and sells them to the Distribution Co. at profit.
- ◆ Distribution Co.
- Purchases solely from US Importing Co.
 - Sells to U.S. retailers and distributors

Question:

For the federal excise tax imposed by § 4161, who is the taxpayer?

Answer:

Taxpayer is Distribution Co. Because ownership is common throughout all layers of the transaction, no valid arm's-length relationship exists among any significant layer of the transaction. Products that are designed and negotiated by U.S. Importing Co. with the foreign manufacturer pass only through entities controlled by Offshore International Co.