Rule

In order to decide this case, we must determine the basis for computing the gain realized by the taxpayer in 1934 from the redemption of 72 shares of preferred stock of United Carbon Company at $110 per share. The taxpayer acquired the stock in 1925 in the course of a liquidation distribution of the assets of the Liberty Carbon Company, of which he was a stockholder. In the latter year, the Liberty Carbon Company and a number of other corporations, engaged in the manufacture of carbon black, transferred their assets to the United Carbon Company, the inventories for cash and the other assets in exchange for shares of preferred and no-par common stock of the transferee. Thereafter the Liberty Carbon Company was dissolved and the taxpayer received in liquidation 72 shares of the preferred and 288 shares of the common stock of the United Carbon Company. The preferred stock at the time had a fair market value of $100 per share and the common stock, $26.88 per share.\n\nThe taxpayer adopted $7,200 as the basis for computing the gain from the redemption of the preferred stock in 1934, and reported a gain of $720. But the Commissioner of Internal Revenue asserted, and the Board of Tax Appeals held, that the true basis was a proportionate part of the basis of the assets of the Liberty Carbon Company, for which the stock of the United Carbon Company was exchanged. Computing the profit on this basis, the Commissioner determined a deficiency of $933.12.

Analysis

Liberty Carbon Company transferred 92 per cent, i. e., "substantially all" of its assets, to the United Carbon Company for stock and cash; and that the stock received in the exchange represented 73 per cent, i. e., a "material" part of the value of the transferred assets. These facts being established, the conclusion that a statutory reorganization took place is inevitable. The taxpayer received the United Carbon Company stock within the meaning of § 203(b) (3) as the result of a transaction in which the Liberty Carbon Company, a party to a reorganization, exchanged property "in pursuance of the plan of reorganization, solely for stock or securities" in United Carbon Company "another corporation a party to the reorganization".

Rule

"We have held that where the consideration consists of cash and short term notes the transfer does not amount to a reorganization within the true meaning of the statute, but is a sale upon which gain or loss must be reckoned. We have said that the statute was not satisfied unless the transferor retained a substantial stake in the enterprise and such a stake was thought to be retained where a large proportion of the consideration was in common stock of the transferee, or where the transferor took cash and the entire issue of preferred stock of the transferee corporation. And, where the consideration is represented by a substantial proportion of stock, and the balance in bonds, the total consideration received is exempt from tax under Sec. 112 (b) (4) and 112(g)."

Analysis

From the facts in the pending case outlined above, it is clear that the consideration for the transfer did not consist merely of cash or evidences of indebtedness, but was represented by a substantial proportion of preferred and common stock in the transferee corporation, so that the transferor retained a substantial stake in the new enterprise.

Analysis

Nor do we think that the taxpayer correctly interprets § 203 when he contends that if two or more transferors are engaged in the transactions 14*14 referred to in § 203, the only applicable sub-section is § 203(b) (4); and therefore, in such an event, there can be no statutory reorganization under § 203 (b) (2) or § 203(b) (3) unless the transferors receive amounts of stock proportionate to their interests in the property transferred. Such a construction would unduly restrict the meaning of the statute and run counter to the decisions of the Supreme Court. Nothing in our former opinion justifies such an interpretation.

Rule

It is obvious that § 203 contemplates that no gain or loss shall be recognized for taxation purposes in a number of different contingencies that are separately described in the several sub-sections, and that a given transaction may fall outside the terms of one sub-section and yet satisfy the terms of another. This view is illustrated by the Supreme Court in Nelson Co. v. Helvering, supra, (296 U.S. at page 377, 56 S.Ct. 273, 80 L.Ed. 821) where the court pointed out that a statutory reorganization may occur under the terms of § 203(h) (1) (A), although the transferor does not acquire a controlling interest in the transferee as is provided in § 203(h) (2); and again in Helvering v. Minnesota Tea Co., supra, (296 U.S. at page 384, 56 S.Ct. 269, 80 L.Ed. 284) where the court pointed out that a taxpayer may find relief under Clause A of 203(h) (1), although Clause B may not be applicable to his case.

Analysis

That is the situation in the present case. § 203(b) (4) is inapplicable for the reasons stated in our former decision; but § 203(b) (3) correctly describes the transaction. Such would have been our decision in the prior case had the Commissioner not based his contention entirely upon a sub-section that did not fit the facts.

Conclusion

Since the transaction under consideration in the present case falls within the terms of § 203(b) (3), no gain or loss was recognizable at the time of the transfer in 1925; and the basis for computing the gain of the taxpayer in 1934 is the cost of his allocable share of the assets of the Liberty Carbon Company. This was indeed the attitude that the taxpayer himself assumed in regard to the transaction in 1925, because he made no report in his tax return for that year of gain from the acquisition of the stock of the United Carbon Company.\n\nThe decision of the Board of Tax Appeals is therefore affirmed.