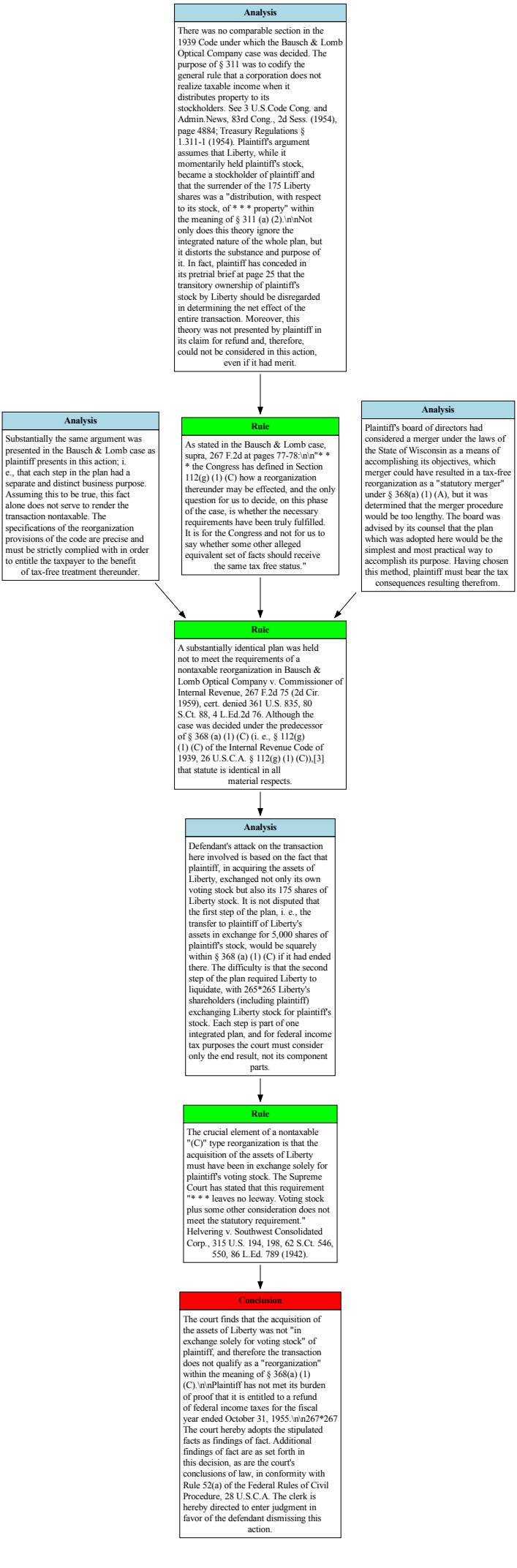
Analysis
There was no comparable section in the 1939 Code under which the Bausch & Lomb Optical Company case was decided. The purpose of § 311 was to codify the general rule that a corporation does not realize taxable income when it distributes property to its stockholders. See 3 U.S.Code Cong. and Admin.News, 83rd Cong., 2d Sess. (1954), page 4884; Treasury Regulations § 1.311-1 (1954). Plaintiff's argument assumes that Liberty, while it momentarily held plaintiff's stock, became a stockholder of plaintiff and that the surrender of the 175 Liberty shares was a "distribution, with respect to its stock, of * * * property" within the meaning of § 311 (a) (2).\n\nNot only does this theory ignore the integrated nature of the whole plan, but it distorts the substance and purpose of it. In fact, plaintiff has conceded in its pretrial brief at page 25 that the transitory ownership of plaintiff's stock by Liberty should be disregarded in determining the net effect of the entire transaction. Moreover, this theory was not presented by plaintiff in its claim for refund and, therefore, could not be considered in this action, even if it had merit.
Rule
As stated in the Bausch & Lomb case, supra, 267 F.2d at pages 77-78:\n\n"* * * the Congress has defined in Section 112(g) (1) (C) how a reorganization thereunder may be effected, and the only question for us to decide, on this phase of the case, is whether the necessary requirements have been truly fulfilled. It is for the Congress and not for us to say whether some other alleged equivalent set of facts should receive the same tax free status."
Analysis
Substantially the same argument was presented in the Bausch & Lomb case as plaintiff presents in this action; i. e., that each step in the plan had a separate and distinct business purpose. Assuming this to be true, this fact alone does not serve to render the transaction nontaxable. The specifications of the reorganization provisions of the code are precise and must be strictly complied with in order to entitle the taxpayer to the benefit of tax-free treatment thereunder.
Analysis
Plaintiff's board of directors had considered a merger under the laws of the State of Wisconsin as a means of accomplishing its objectives, which merger could have resulted in a tax-free reorganization as a "statutory merger" under § 368(a) (1) (A), but it was determined that the merger procedure would be too lengthy. The board was advised by its counsel that the plan which was adopted here would be the simplest and most practical way to accomplish its purpose. Having chosen this method, plaintiff must bear the tax consequences resulting therefrom.
Rule
A substantially identical plan was held not to meet the requirements of a nontaxable reorganization in Bausch & Lomb Optical Company v. Commissioner of Internal Revenue, 267 F.2d 75 (2d Cir. 1959), cert. denied 361 U.S. 835, 80 S.Ct. 88, 4 L.Ed.2d 76. Although the case was decided under the predecessor of § 368 (a) (1) (C) (i. e., § 112(g) (1) (C) of the Internal Revenue Code of 1939, 26 U.S.C.A. § 112(g) (1) (C)),[3] that statute is identical in all material respects.
Analysis
Defendant's attack on the transaction here involved is based on the fact that plaintiff, in acquiring the assets of Liberty, exchanged not only its own voting stock but also its 175 shares of Liberty stock. It is not disputed that the first step of the plan, i. e., the transfer to plaintiff of Liberty's assets in exchange for 5,000 shares of plaintiff's stock, would be squarely within § 368 (a) (1) (C) if it had ended there. The difficulty is that the second step of the plan required Liberty to liquidate, with 265*265 Liberty's shareholders (including plaintiff) exchanging Liberty stock for plaintiff's stock. Each step is part of one integrated plan, and for federal income tax purposes the court must consider only the end result, not its component parts.
Rule
The crucial element of a nontaxable "(C)" type reorganization is that the acquisition of the assets of Liberty must have been in exchange solely for plaintiff's voting stock. The Supreme Court has stated that this requirement "* * * leaves no leeway. Voting stock plus some other consideration does not meet the statutory requirement." Helvering v. Southwest Consolidated Corp., 315 U.S. 194, 198, 62 S.Ct. 546, 550, 86 L.Ed. 789 (1942).
Conclusion
The court finds that the acquisition of the assets of Liberty was not "in exchange solely for voting stock" of plaintiff, and therefore the transaction does not qualify as a "reorganization" within the meaning of § 368(a) (1) (C).\n\nPlaintiff has not met its burden of proof that it is entitled to a refund of federal income taxes for the fiscal year ended October 31, 1955.\n\n267*267 The court hereby adopts the stipulated facts as findings of fact. Additional findings of fact are as set forth in this decision, as are the court's conclusions of law, in conformity with Rule 52(a) of the Federal Rules of Civil Procedure, 28 U.S.C.A. The clerk is hereby directed to enter judgment in favor of the defendant dismissing this action.