#### Analysis

These proposals were accepted by some 12 companies and were carried out by them as of February 14, 1925. The Cosmos Carbon Company transferred to the United Carbon Company inventories of a value of \$277,855.33, for which it was paid in cash, and it transferred physical and depletable properties of a value of \$1,988,310.06, for which it received 9,240 shares of preferred stock and 36,960 shares of common stock. The cash and notes and bills and accounts receivable retained by the Cosmos Company had a value of \$208,094.83, and it also retained 1,160 shares of stock in the Natural Gas Products Company. The property transferred by Cosmos was 91.6 percent of all of its assets.

#### Analysis

The Natural Gas Products Company transferred to the United Carbon Company inventories for which it was paid \$122,450.32 in cash, and it transferred physical and depletable properties appraised at \$529,169.23, for which it received 2,645 shares of preferred stock, and 10,580 shares of common stock of the United Carbon Company. It retained cash and notes and bills and accounts receivable of the value of \$29,176.49. The property it transferred was 95.7 percent of all of its assets.

#### Procedural History

Plaintiff sues to recover additional income taxes assessed against him by the Commissioner of Internal Revenue. He alleges that the Commissioner used the wrong basis for the determination of gain derived by him from the disposition of 1,324 shares of the capital stock of the United Carbon Company.

result of the consolidation of a number of different corporation and a partnership. The Commissioner was of the opinion that the consolidation of these companies was a reorganization as that term is defined by section 203(h)(1)(A) of the Revenue Act of 1926, 44 Stat. 9, 14, 26 U.S.C. Aln Rev. Acts, page 150, and that the taxpayer had received this stock pursuant to the plan of reorganization. It followed therefrom that the receipt of this stock by the taxpayer was tax-free, and that, in order to determine the gain or loss from a subsequent disposition of it, the proper basis was the original cost of an aliquot part of his stock in the Cosmos Carbon Company and the Natural Gas Products Company, whose assets had been transferred to the United Carbon Company in return in part for its stock.\text{hu\text{The}} the taxpayer contends that he did not receive this stock pursuant to a plan of reorganization and that, therefore, he is taxable on the difference between the sale price of the stock and its value at the time he received it.

Background Facts

Plaintiff had acquired these shares as a

#### Analysis

We are of the opinion that both the Cosmos Carbon Company and the Natural Gas Products Company transferred to the United Carbon Company "substantially all" its assets. In the one case 91.6 per cent of its assets were transferred, and in the other 95.7 per cent. The transferor companies remained liable for their debts and, of course, used the assets retained to discharge them, and, hence, in determining whether substantially all its assets were transferred, the amount of the retained assets should be offset by the amount of the liabilities. Taking this into consideration, there would seem to be no doubt that "substantially all" of its assets were transferred. If so, the facts of the case clearly make the transaction a reorganization as that term is defined in the Act.

#### Analysis

it is reasonably inferable from all the facts and circumstances that this was a part of the plan of reorganization. The declared purpose, as shown by the findings, was the unification of the properties of the various corporations nto a single ownership and the elimination of competition. In conformity with this purpose, all of the transferor corporations denuded themselves of all of their assets, except as noted, and, hence, were incapable of continuing operations. It is not reasonable to suppose that it was intended that, after they had converted their remaining assets into cash and had discharged their liabilities, they should remain in existence merely as shells. Plaintiff offered no proof to rebut this inference. We have, accordingly, found as a fact that it was a part of the plan of reorganization that the transferor companies should distribute to their stockholders not only the cash, but also the stock eceived from the United Carbon Company

## Rul

Section 203(e) makes the provisions of section 203(b)(3) applicable if the corporation receiving money or other property in addition to stock "distributes it in pursuance of the plan of reorganization." Section 203(h)(1)(A) defines a reorganization as "merger or consolidation (including the acquisition by one corporation of \* \* \* substantially all the properties of another corporation)," and section 203(c) provides that a stockholder of a transferor corporation receiving stock of the transferee corporation pursuant to the plan of reorganization, realizes no gain or loss on the transaction.

# Analysis

Since we are of the opinion that both the Cosmos Carbon Company and the Natural Gas Products Company were parties to the reorganization and exchanged property for money and stock "in another corporation a party to the reorganization," then no gain nor loss is to be recognized, if the Cosmos Carbon Company and the Natural Gas Products Company distributed the money received "in pursuance of the plan of reorganization." Sec. 203(e) (1). It was in fact distributed and we are of opinion that it was distributed in pursuance of the plan of reorganization.

## Rule

Section 203(b)(3) reads:\n\n"No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization."

## Conclusion

Under these sections we are of opinion that plaintiff realized no gain or loss on the stock of the United Carbon Company received by him as a result of the liquidation of the Cosmos Carbon Company and the Natural Gas Products Company.

## Rule

"If there is distributed, in pursuance of a plan of reorganization, to a shareholder in a corporation a party to the reorganization, stock or securities \* \* \* in another corporation a party to the reorganization, without the surrender by such shareholder of stock or securities in such a corporation, no gain to the distributee from the receipt of such stock or securities shall be recognized."