

Background Facts
<p>The evidentiary facts, as found by the Tax Court, are not in dispute. The inferential facts and conclusions of the court only are controverted. The National Typesetting Company (herein called the Company) was incorporated under the laws of Missouri in 1927 with 1000 shares of no par value stock. In July, 1940, petitioner, Richard H. Survaunt, and one Lee M. Hartwell owned all of the stock of the Company in equal shares. Hartwell died on July 19, 1940, and his widow, Eleanor L. Hartwell, was appointed executrix of his estate. At the time of Hartwell's death he and petitioner Survaunt were indebted in equal amounts on their individual unpaid and past due promissory notes. As of December 30, 1940, the aggregate amount of unpaid principal of these notes was \$29,534.18, and the holders of the notes were insisting upon payment. Neither Survaunt nor the Hartwell estate had any assets, other than their stock in the Company, with which to pay. confronted with this situation the debtors decided to attempt to refund their individual notes with corporate notes issued by the Company. Their counsel, however, advised them that under the law of Missouri the Company could not assume their individual obligations. In order, therefore, to provide means to meet their indebtedness the stockholders decided to dissolve and liquidate the Company. Accordingly at a meeting of the stockholders held December 30, 1940, a resolution was unanimously adopted immediately dissolving the Company and distributing all of its property to the stockholders who assumed the Company's debts. The dissolution of the Company thus consummated, all the property received by the stockholders, less enough to pay the Company's debts, was conveyed by them by bill of sale to a new corporation which they had caused to be organized under the laws of Missouri on December 30, 1940, under the name of National Typesetting Corporation (herein called the Corporation), which had a certificate of authority to commence business on December 31, 1940. The Corporation was authorized to issue 4000 shares of capital stock without par value. After the transfer the Corporation without interruption continued with no change in policy to conduct the identical business previously conducted by the Company. The agreed price of the assets conveyed to the Corporation by the bill of sale was \$113,297.57, consisting of promissory notes aggregating \$29,534.18, equaling the amount of Survaunt and Hartwell's individual indebtedness, and the 4000 shares of the Corporation's authorized no par value capital stock at an agreed value of \$83.763.39. The notes aggregating \$29,534.18 called for in the bill of sale were never actually issued. After the organization of the Corporation Survaunt and Mrs. Hartwell did not arrive at a settlement with their creditors until July 21, 1941, when notes of the corporation in the amount of \$27,967.80 and cash furnished by Survaunt and Mrs. Hartwell were used to satisfy the indebtedness to their creditors. On August 8, 1941, the Probate Court having jurisdiction of the Hartwell estate, acting upon petition of Mrs. Hartwell, entered "755" as order *** that all right, title and interest of the Estate of Lee M. Hartwell, deceased, in *** 2000 shares of the capital stock of National Typesetting Corporation" and "notes of said Corporation" *** be assigned, transferred and delivered to Eleanor L. Hartwell, in her individual capacity, in consideration of her assumption of the claims" against the Hartwell estate, "and in full release and discharge of this estate thereof, and in full settlement of the claim of Eleanor L. Hartwell for her year's support and absolute property." *** in No. 13,339 the Tax Court sustained a deficiency in the income tax return of petitioner Survaunt for the taxable year ending December 31, 1940, in the amount of \$74.95. The deficiency results from the denial by the Commissioner of Survaunt's claimed deduction of \$891.23 for a net long term capital loss of \$1,782.46 as a stockholder upon the liquidation of the Company on December 30, 1940. The Commissioner held and the Tax Court found that the transaction in which the Company's assets were transferred to the Corporation leaving the stockholders of the old Company in control of the new corporation was a reorganization under § 112(g) (1) (D) of the Internal Revenue Code and not a mere liquidation of the old Company. In the petitions in Nos. 13,340 and 13,341 are duplications of the same deficiency in the income tax of National Typesetting Corporation for the taxable year ending November 30, 1941, in that the appeal to the Tax Court in No. 13,341 was taken to correct an error in No. 13,340 resulting from the issuance of two notices of deficiency for the same tax deficiency. No. 13,340 was dismissed by the Tax Court, and the deficiency in No. 13,341 was sustained. A petition for review was filed in No. 13,340 because § 1117(d) of the Internal Revenue Code, 26 U.S.C.A. Int.Rev.Code, § 1117(d) provides that in order of dismissal by the Tax Court "shall be considered as its decision that the deficiency is the amount determined by the Commissioner." The parties agree that No. 13,340 should be reversed and remanded to the Tax Court with directions to enter a decision of no deficiency. It will be so ordered. In No. 13,341 the Corporation in its income tax return for 1941 claimed a deduction of \$5,567.01 for depreciation computed on the alleged cost or fair market value of \$72,092.05 for the depreciable assets acquired for its stock and notes at the time of its organization. The Commissioner disallowed the deduction to the extent of \$4,643.64 on the ground that such assets were acquired in connection with a reorganization within the meaning of § 112 (g) (1) (D) of the Code, and that the Corporation was required to take the basis for depreciation of its predecessor. The Corporation also deducted \$1,900 as legal and accounting fees incurred in connection with its organization. The deduction was denied on the ground that such expenses should be capitalized and not deducted as current expenses. The total deficiency of the Corporation redetermined by the Tax Court was \$965.30.</p>

Procedural History
<p>The Tax Court found that the whole transaction by which the Corporation succeeded to the Company's business was pursuant to a plan of reorganization; and, in its opinion, the Court declared that there was a "reorganization" and not a mere "liquidation" of the old Company, that considering all parts of the transaction together and not separately, the liquidation of the old Company assumes the character of only one step in an integrated transaction; and that by means of the entire operation there was a "transfer" within the meaning of Internal Revenue Code, § 112(g) (1) (D), by the old "corporation of all or a part of its assets to another corporation" and "immediately after the transfer the transferee or its shareholders or both" were in control — that is, held 80 per cent of the stock, § 112(b), — of the transferee corporation; that "it does not change the result that the stockholders acted as a conduit for the delivery of the assets ***; that there was a partial alteration of the derivative interests, which occurred independently of the plan and would have taken place irrespective of a ***; or even that the stockholders had a personal, — as opposed to a corporate — reason for the 75%*76 arrangement ***; and that the expenses incurred for attorney's fees and related charges are to be capitalized, and are not deductible as current expense."</p>

Analysis
<p>The Tax Court held that the transaction constituted a tax-free reorganization and that the new Corporation was required to take the basis for depreciation of its predecessor. We are unable "to separate the elements" of the Tax Court's decision "so as to identify a clear-cut mistake of law."</p>

Analysis
<p>The Tax Court did not predicate its conclusion that there was a reorganization upon any single finding of fact nor a single step in the transaction. It reached its conclusion by following the rule "that requires all parts of the transaction to be considered together rather than separately."</p>

Analysis
<p>The short answer to this contention is that the transfer of this stock to Eleanor L. Hartwell was not a part of the plan of reorganization at the time the plan was conceived and executed. The "tax" is to be determined by the character of the transaction as originally contemplated. Spirella Co., Inc., v. Commissioner, 2 Cir., 155 F.2d 908, 909. Further, it is not logical to contend that the holding of the stock for more than seven months by the estate was transitory and at the same time to argue that the holding of the title to the assets of the old Company by the estate from December 30th until December 31st was not transitory.</p>

Analysis
<p>In the first transaction it was not intended that the assets of the old Company should remain in the hands of the stockholders but that they should transfer them to the new corporation. The stockholders in the transfer of the assets acted as a mere conduit, Minnesota Tea Co. v. Helvering, 302 U.S. 609, 614, 58 S.Ct. 395, 82 L.Ed. 474, while the transfer of the stock to Eleanor L. Hartwell was not contemplated in December, 1940.</p>

Rule
<p>Usually *** the continuance of the business in the hands of the transferee (or by a reorganized company in the case of a recapitalization) is deemed sufficient indication of the required "business purpose" and the Treasury Regulations *** (103, § 19 (12)(g)-1) list this as a requirement of the statutory reorganization." And see Lyon, Inc., v. Commissioner, supra, 127 F.2d at page 213.</p>

Analysis
<p>In any event the finding of the Tax Court that the liquidation of the old Company was but one step in an integrated transaction is a finding of fact and does not violate any law or regulation. The finding is therefore binding on this court.</p>

Rule
<p>Implicit Intermediate Conclusion (vauachNkyur)</p>

Rule
<p>The plan of reorganization must comprehend, and the new corporation created, must when consummated carry on in whole or in part the corporate business of the old corporation. The motive of the stockholders is immaterial, if a reorganization of the corporate business is in fact accomplished.</p>

Rule
<p>That the transfer of the assets of one corporation to another through an intermediary will satisfy the requirements of § 112 is well settled.</p>

Conclusion
<p>We conclude that there is a rational basis in law for the decision of the Tax Court that a reorganization occurred when the series of undepreciated transactions are considered as an integrated whole. The decisions of the Tax Court in No. 13,339 and in No. 13,341 are accordingly affirmed, and the decision in No. 13,340 is reversed with directions to enter a decision of no deficiency therein.</p>