Rule

But the Supreme Court in the Gregory case, where the transferee corporation was merely used as a conduit for the distribution of a dividend to the shareholder, has said that in addition to compliance with the literal terms of the statutory definition there must be a "business purpose" i.e. it.'s "business purpose" i. e., it is necessary that there be "a transfer made in pursuance of a plan of reorganization' § 112(g) of corporate business; and not a transfer of assets by one corporation to another in pursuance of a plan having no relation to the business of either

Ordinarily as in the Gregory case the use of the transferee company to avoid taxes and its immediate dissolution are taxes and its immediate dissolution are sufficient to indicate that the transaction was not "required by business exigencies", was not a "necessary incident of the [conduct of the] enterprise" and was not undertaken for "reasons germane to the continuance of the business". But immediate dissolution of the transferee comporation does not necessarily. corporation does not necessarily indicate a Gregory situation if there were business reasons for its creation

Rule

Usually, however, the continuance of the business in the hands of the transferee (or by a reorganized company in the ca of a recapitalization) is deemed sufficient indication of the required "business purpose" and the Treasury Regulations quoted above list this as a requirement for the statutory reorganization.

Rule

On the other hand, the court in the Electrical case applied the Gregory doctrine where the existence of the transferor was ephemeral despite continuation of the business by the transferee. But the immediate liquidation and dissolution of the liquidation and dissolution of the transferor is frequently part of the plan of reorganization and does not prevent the reorganization from being within the statute if the transaction conforms to the statutory definition and "business purpose" is found.

Analysis

Here then the Tax Court's finding of fact that the purposes of the transfer were to continue the business under the were to continue the business under the new company and to liquidate and dissolve the old company cannot be treated as necessarily indicating absence or presence of "business purpose". Moreover, we have difficulty in finding the "business exigencies" or "reasons germane to the continuance of the business" which necessitated this transaction. The only result of this "reorganization" obvious to us seems to have been to place the old company in a have been to place the old company in a position to effect a complete liquidation. When the series of transactions here accomplished are examined as a unit rather than in their separate parts

and regard is had for substance rather than form

Analysis

the ultimate result seems to have been merely the partial liquidation of the ultimate ic... erely the partial liquid old company.

Analysis

The Tax Court in its opinion and the Commissioner in his brief concede that Commissioner in his brief concede that he effect of these transactions was a partial liquidation. Since the gain under a partial liquidation would be treated under the then existing provisions of the Internal Revenue Code as a short term capital gain, the taxpayer of course seeks to avoid this result. If the avoidance of the tax consequences of a partial liquidation consequences of a partial liquidatio was the sole consideration for the 'reorganization" we are unable to discern how the Gregory requireme been satisfied and especially is this true if shareholder business purpose are considered as not satisfying the business purpose" requiremen

Analysis

None of the usual examples of "business purpose" seem to be here present; e. g. modification of the corporate structure,

Analysis

the addition of new business enterprisor the severance of part of the old,

Where an essential finding is lacking and such finding is necessary to a proper decision of the case, the correct procedure is to remand the case to the Tax Court to make such a finding and to render a decision accordingly

This procedure should also be followed where only the ultimate finding is lacking even though the reviewing court should consider itself competent to mak-such findings.

Conclusion

Thus we are obliged to remand the case even though there be findings of fact which we would consider a foundation for a proper finding of "business purpose"

Rule

Conclusion

It can therefore be readily observed that the "business purpose" requirement is not necessarily satisfied by a finding that the purpose of the exchange was the continuation of the business in the hands of the transferee since every

decision depends on the particular facts in each cas

It is our view that if the Tax Court found either that "business purpose" existed or was lacking, the rule of the Dobson case would prevent our reexamination of the question



Rule

If on the other hand the Tax Court were If on the other hand the Tax Court were to say that a "reorganization" under § 112(g) (1) had occurred despite the lack of "business purpose", it would seem that a clear cut question of law would be presented.



Likewise review might be had of the Tax Court's construction of "business urpose" if not in conformity with court decisions or the Regulations



Analysis

Here the Tax Court made no finding concerning "business purpose" except the limited finding mentioned above which we pointed out as not being determinative. Nor does the statement in the court's opinion that "there was a plan of reorganization within the meaning of the statute" demonstrate that a finding of "business purpose" was made inferentially since the Tax Court may have ignored that requirement or applied the wrong standard or an improper construction of "business purpose" to the facts and inferences drawn therefrom. rning "business nurnose" except the