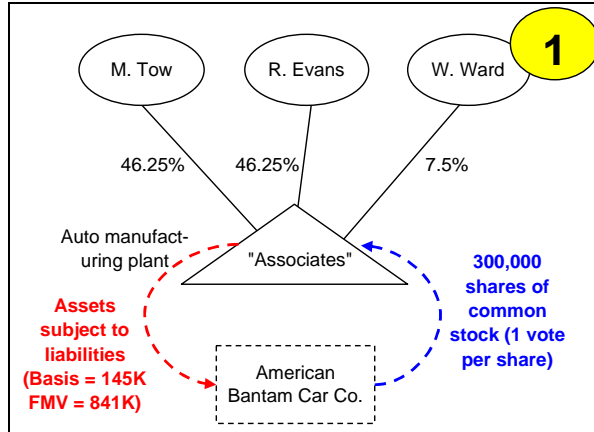
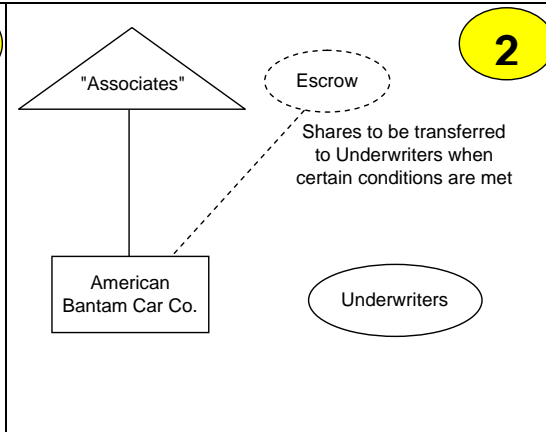


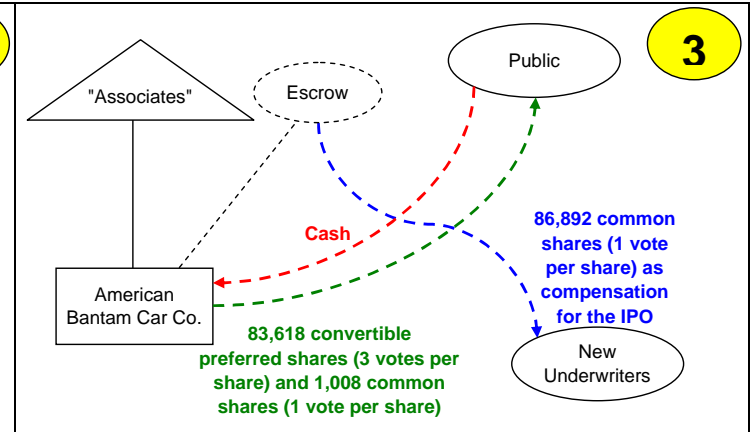
Incorporation (June 3, 1936)



Failed IPO (June 8, 1936 to October 1936)



Successful IPO (October 1936 to October 1937)

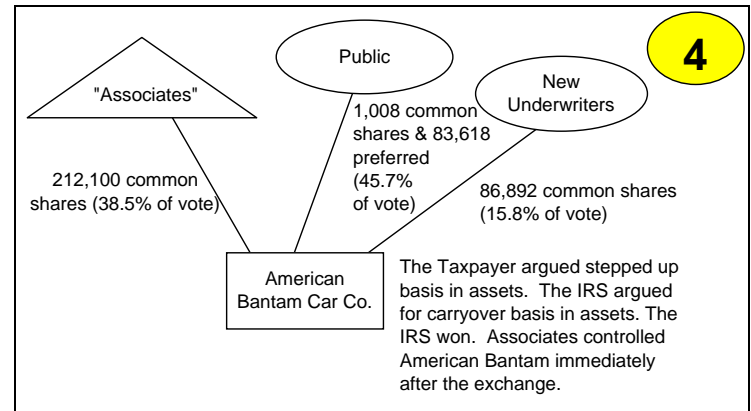


The issue in the case was whether the exchange on June 3, 1936, where American Bantam's assets were acquired, was one in which gain or loss was recognized for tax purposes. If gain or loss was recognized, then the proper basis for the assets was their cost to American Bantam on the date of their acquisition (as was contended by American Bantam). If the exchange was one in which no gain or loss was recognized, then the proper basis for the assets was their basis in the hands of the transferors (as was contended by the IRS).

In American Bantam's income tax returns filed for its taxable years through June 30, 1941, the basis for the assets acquired from the associates on June 3, 1936, was stated to be \$145,075. For the taxable years ending, respectively, June 30, 1942 and June 30, 1943, American Bantam stated the basis of the assets to be \$840,800. The Tax Court held for the IRS, finding that the Associates controlled American Bantam immediately after the June 3, 1936 exchange.

One factor that the court considered was that there was no written contract prior to the exchange binding the Associates to transfer stock to the underwriters. At the most there was an informal oral understanding of a general plan contemplating the organization of a new corporation, the exchange of assets for stock, and marketing of preferred stock of the new corporation to the public. A written contract providing for the transfer of shares from the Associates to the underwriters did not come until five days after the exchange. Secondly, when the transfer of shares to the underwriters was embodied specifically in a formal contract, the underwriters received no absolute right to ownership of the common stock, but only when, as and if, certain percentages of preferred stock were sold. The Tax Court stated that:

Ending Point (October 31, 1937)



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To allow [American Bantam's] contention is to permit a 15-month time lag after the exchange before determining "control immediately after the exchange"; such a proposition defeats the very language of the statute.