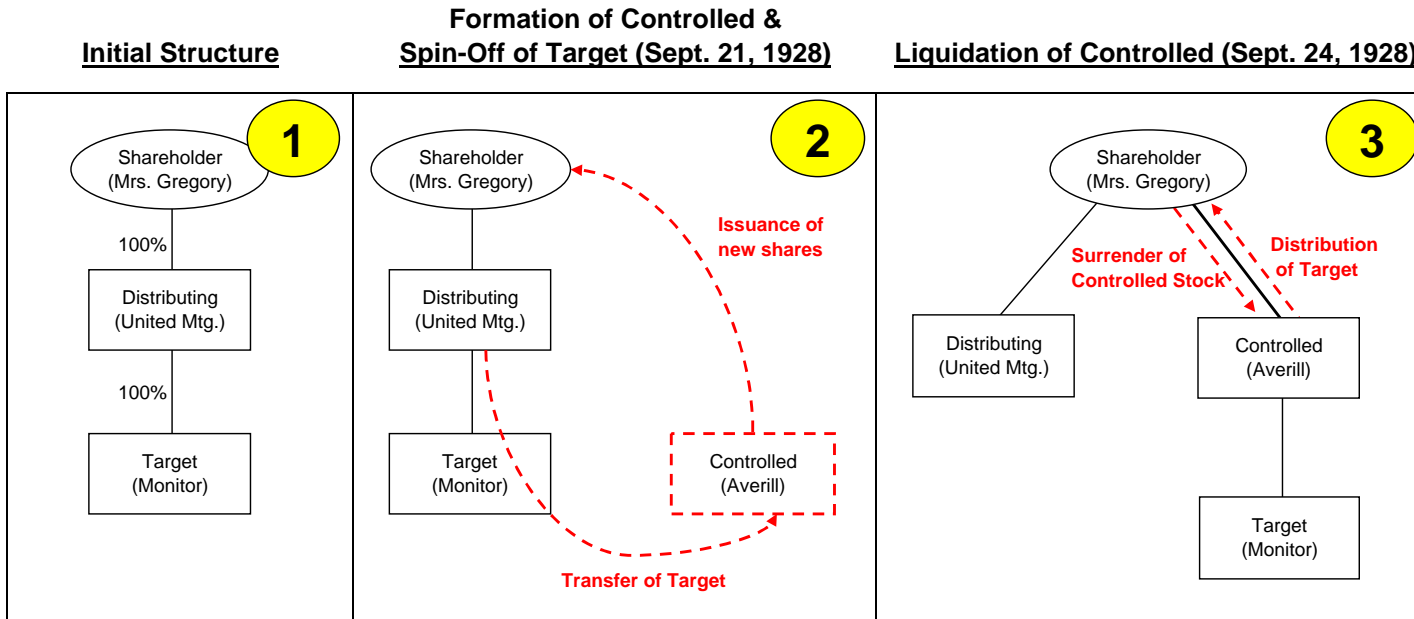


Spin-off with Transitory Controlled

Excerpt from Esmark v. Commissioner, 90 TC 171 (1988):

In Gregory, the United Mortgage Company (United) held among its assets 1,000 shares of the stock of Monitor Securities Corporation (Monitor). The taxpayer, United's sole shareholder, planned to sell the shares of Monitor and receive the proceeds of the sale. In order to avoid the double tax that would result if United sold the shares and distributed the proceeds as a dividend, the taxpayer had United contribute the stock of Monitor to a new corporation, which issued its stock to the taxpayer. This transaction was within the literal definition of "reorganization" under the law as then in effect. Following this "reorganization," the taxpayer dissolved the new corporation and sold the Monitor stock. The Supreme Court disregarded the form of the transaction as having no independent significance.



Excerpt from Gregory v. Helvering:

The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted. But the question for determination is whether what was done, apart from the tax motive, was the thing which the statute intended. . . .

. . . Putting aside, then, the question of motive in respect of taxation altogether, and fixing the character of the proceeding by what actually occurred, what do we find? Simply an operation having no business or corporate purpose--a mere device which put on the form of a corporate reorganization as a disguise for concealing its real character, and the sole object and accomplishment of which was the consummation of a preconceived plan, not to reorganize a business or any part of a business, but to transfer a parcel of corporate shares to the petitioner. (citations omitted).

