



Corporation X is a manufacturing corporation that had outstanding 100 shares of voting common stock. Five shares of X's stock were owned by corporation Y, a holding company. The remaining shares of X stock were held by 49 individuals, 5 of whom owned 12 shares of X stock as well as all of the outstanding stock of Y. With the exception of the 5 shareholders of X who owned Y stock, the individual shareholders of X had no direct or indirect interest in Y. In addition to the 5 shares of X stock, which had a value of 90x dollars, the assets of Y consisted of 6x dollars in cash and land having a fair market value of 36x dollars. Y had liabilities of 6x dollars.

In order for X to acquire the land owned by Y, X and Y entered into a plan and agreement of reorganization whereby X acquired all of the assets of Y, solely in exchange for 7 shares of X voting stock plus the assumption by X of Y's liabilities. In order to eliminate a state transfer tax, however, X only issued 2 shares of its stock to Y in exchange for Y's assets, and upon its dissolution, Y distributed the 2 shares of X stock received from X plus the 5 shares of X stock that it already owned to its 5 shareholders in exchange for all of their Y stock.

The issue of whether a "downstream" merger comes within the intent of the reorganization statutes was determined in *Gilmore v. Commissioner*, 44 B.T.A. 881 (1941), aff'd., 1930 F.2d 791 (3rd Cir. 1942), acq., 1946-2 C.B. 2. Therein, the downstream merger of a holding company whose principal asset was the stock of its subsidiary corporation into its subsidiary was held to be a reorganization within the meaning of section 112(g)(1) of the Revenue Act of 1934, predecessor to section 368(a)(1)(A).

Since Y transferred all of its business assets to X pursuant to a plan of reorganization solely in exchange for voting stock of X (consisting of the 5 shares of X stock originally held by Y and the 2 shares of newly-issued X stock), the transaction between X and Y qualified as a reorganization within the meaning of section 368(a)(1)(C). See *George v. Commissioner*, 26 T.C. 396 (1956), acq., 1956-2 C.B. 5.