

**John A. Nelson Co. v. Helvering**  
**296 U.S. 374 (1935)**

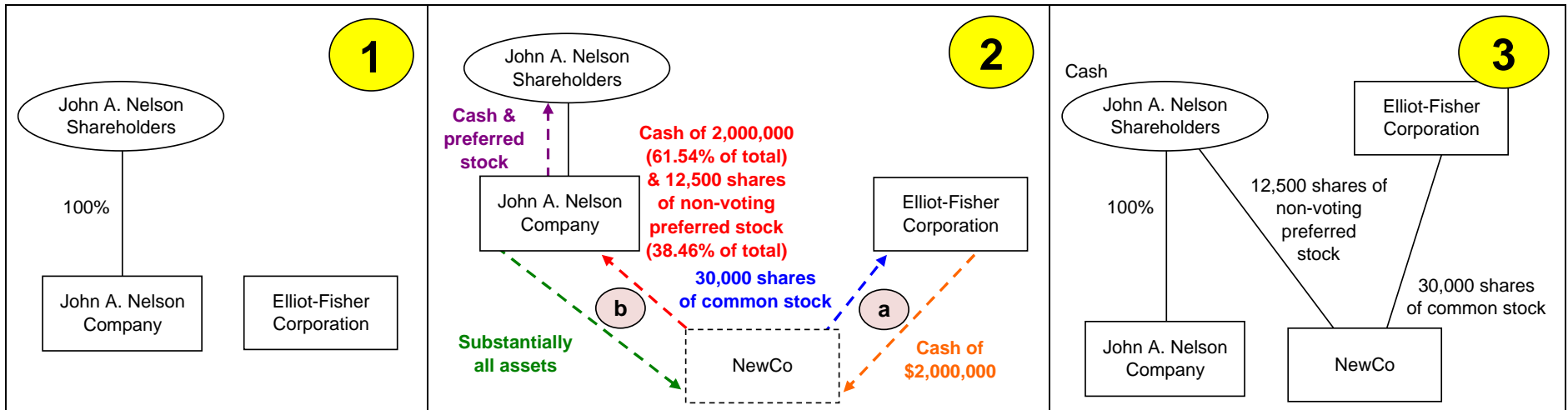
**Continuity of Interest: 38.5%**  
**of Non-Voting Preferred Stock**

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**Initial Structure**

**Reorganization**

**Ending Point**



In 1926, under an agreement with John A. Nelson Company, the Elliott-Fisher Corporation organized a new corporation with 12,500 shares non-voting preferred stock and 30,000 shares of common stock. It purchased the latter for \$2,000,000 cash. This new corporation then acquired substantially all of John A. Nelson Company's property, except \$100,000, in return for \$2,000,000 cash and the entire issue of preferred stock. Part of this cash was used to retire John A. Nelson Company's own preferred shares, and the remainder and the preferred stock of the new company went to its stockholders. It retained its franchise and \$100,000, and continued to be liable for certain obligations. The preferred stock so distributed, except in case of default, had no voice in the control of the issuing corporation.

The court below thought the facts showed "that the transaction essentially constituted a sale of the greater part of John A. Nelson Company's assets for cash and the preferred stock in the new corporation, leaving the Elliott-Fisher Company in entire control of the new corporation by virtue of its ownership of the common stock." The controlling facts leading to this conclusion are that John A. Nelson Company continued its corporate existence and its franchise and retained a portion of its assets; that it acquired no controlling interest in the corporation to which it delivered the greater portion of its assets; that there was no continuity of interest from the old corporation to the new; that the control of the property conveyed passed to a stranger, in the management of which petitioner retained no voice.

The mere acquisition of the assets of one corporation by another does not amount to reorganization within the statutory definition. *Pinellas Ice Co. v. Commissioner*, 287 U. S. 462. But where, the seller acquires a definite and substantial interest in the affairs of the purchasing corporation, a wholly different situation arises. The owner of preferred stock is not without substantial interest in the affairs of the issuing corporation, although denied voting rights. The statute does not require participation in the management of the purchaser; nor did it demand that the conveying corporation be dissolved. A controlling interest in the transfer corporation is not a statutory requisite.

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