

The transaction here involved is within the description of reorganization recognized by the Treasury Regulation above quoted. And if the regulation can be taken as properly interpreting the statute, the challenged judgment must be affirmed.

The court below recites the history of the Treasury Regulation above quoted and concludes that, in view of the reenactment of the paragraph to which it refers without change, Congress intended to approve the regulation as written.

The Commissioner here maintains that the definition of reorganization found in § 203 (h) (1) (A), Revenue Act, 1924, should be limited to transactions which partake of the nature of mergers or consolidations and that here the Vanadium merely made an investment in Ferro Alloys stock and obtained only the rights of a stockholder therein. It is also urged that an exchange of stocks for bonds results in a substantial change of position and that such bonds are "other property" within the meaning of the statute and as such subject to tax. Much of the argument presented is the same as the one considered in the *Minnesota Tea Company* case, and it need not be again followed in detail. The bonds, we think, were securities within the definition and cannot be regarded as cash, as were the short term notes referred to in *Pinellas Ice Co. v. Commissioner*, 287 U. S. 462.

The judgment of the court below must be

*Affirmed.*

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G. & K. MANUFACTURING CO. v. HELVERING,  
COMMISSIONER OF INTERNAL REVENUE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE  
FOURTH CIRCUIT.

No. 187. Argued November 20, 1935.—Decided December 16, 1935.

1. A transfer by one corporation to another of substantially all of its assets for cash and common stock of the transferee corporation

amounts to a reorganization under § 112 (i) (1) (A) of the Revenue Act of 1928; even though the transferor corporation and its subsidiaries continued in business. P. 391.

2. The Board of Tax Appeals having omitted to make a finding as to whether the transfer was of substantially all of the assets of the transferor corporation, the cause is remanded for determination by the Board of this essential fact. P. 391.

76 F. (2d) 454, reversed.

CERTIORARI \* to review a judgment affirming a decision of the Board of Tax Appeals, which sustained a determination of a deficiency in income tax. Compare with the three cases preceding.

*Mr. Llewellyn A. Luce* for petitioner.

*Mr. J. Louis Monarch*, with whom *Solicitor General Reed*, *Assistant Attorney General Wideman*, and *Messrs. James W. Morris* and *Sewall Key* were on the brief, for respondent.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

The petitioner contests the validity of a deficiency assessment for 1929 income taxes. It maintains that the transaction out of which the alleged gains arose amounted to a reorganization within the intendment of § 112 (i) (1) (A), Revenue Act, 1928.†

The court below was of opinion that the transaction involved amounted to a sale of the assets and business of the taxpayer. In November, 1929, petitioner transferred what the Board of Tax Appeals seems to have assumed was substantially all of its assets to the Kraft-Phenix Cheese Corporation and received therefor \$200,000 in cash and 17,250 shares common stock of the purchaser, then worth possibly thirty dollars per share. After the trans-

\* See Table of Cases Reported in this volume.

† Margin of opinion in *Helvering v. Minnesota Tea Co.*, ante, p. 378.

fer, the taxpayer remained in existence and continued to do business. It also retained assets of undisclosed value, namely, shares of certain subsidiary corporations and some other property. If the claim of the taxpayer that the transfer included substantially all its property is correct, then we think what was done amounted to a reorganization within the statute. The facts in respect of this were not found by the Board of Tax Appeals, and the cause must be returned there in order that the omission may be supplied. The mere fact that the taxpayer and its subsidiaries continued actively in business would not defeat the claim of reorganization. The ownership of the stock in the Kraft-Phenix Cheese Corporation gave the taxpayer a substantial and continuing interest in the affairs of that corporation.

The judgment of the court below is reversed. The cause will be remanded to the Circuit Court of Appeals with direction to that Court to remand the case to the Board of Tax Appeals for determination of the value of the retained assets and such further proceedings as may be necessary.

*Reversed.*

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BUS & TRANSPORT SECURITIES CORP. *v.* HELVERING, COMMISSIONER OF INTERNAL REVENUE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 490. Argued November 20, 1935.—Decided December 16, 1935.

A corporation transferred shares of stock which it owned to another corporation in exchange for shares of stock which the latter owned, neither party to the exchange acquiring any definite immediate interest in the other. *Held*, not a reorganization within § 112 of the Revenue Act of 1928. P. 393.

79 F. (2d) 509, affirmed.