

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.

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.

CERTIORARI * to review a judgment affirming a decision of the Board of Tax Appeals which sustained an order determining a deficiency in income tax.

Mr. Albert E. James for petitioner.

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

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

Petitioner—Bus and Transport Securities Corporation—challenges a deficiency income tax assessment for 1929, and says that the transaction from which the alleged taxable gain arose was reorganization within § 112, Rev. Act, 1928. Paragraphs (b) (4), (i) (1) and (i) (2) are specially relied upon.†

Jacobus owned practically all shares of two corporations, herein designated "A" and "B," which operated bus lines. The Public Service Corporation of New Jersey—the projecter—desired to control these lines; and to that end engineered the following plan.

Public Service Coördinated Transport Company, affiliated with the projecter, caused the organization of C. Easman Jacobus, Inc., took all the stock and paid therefor by transferring 2500 of the projecter's shares.

Jacobus caused petitioner to be organized and acquired all its stock in exchange for all shares of "A" and "B" corporations. Thereafter petitioner transferred to Public Service Coördinated Transport Company these "A" and "B" shares and took all shares of C. Easman Jacobus, Inc.

Thus, petitioner, through Jacobus, Inc., came to control 2500 of the projecter's shares. And Public Service

* See Table of Cases Reported in this volume.

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

Coördinated Transport Company became owner of all shares of "A" and "B" corporations. Through these manipulations, the projector obtained indirect control of corporations "A" and "B" and the lines which they operate.

The Commissioner, the Board of Tax Appeals, and the Circuit Court of Appeals all rightly concluded that petitioner was not party to a reorganization within the statute. Certain corporate shares owned by it were exchanged for shares which another corporation owned. Neither party to the exchange acquired any definite immediate interest in the other. Nothing here, we think, even remotely resembles either merger or reorganization as commonly understood. *Pinellas Ice Co. v. Commissioner*, 287 U. S. 462.

The challenged judgment must be

Affirmed.

HILL v. MARTIN, STATE TAX COMMISSIONER,
ET AL.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW JERSEY.

No. 193. Argued November 11, 12, 1935.—Decided December 16,
1935.

1. Under the law of New Jersey the review by the Supreme Court of the State of a decree of the Prerogative Court affirming a tax assessment, is a judicial proceeding as distinguished from an administrative one. P. 400.
2. Upon appeal from a tax assessment, the Prerogative Court of New Jersey acquires jurisdiction not only to determine the tax due, but to take proceedings for its collection; and the docketing of its decree affirming a tax, gives it the effect of a judgment creating a lien and enforceable by execution. P. 401.

* Together with No. 194, *Dorrance et al. v. Martin, State Tax Commissioner, et al.* Appeal from the District Court of the United States for the District of New Jersey.