necessary as well as wise. Moreover, the substitution of a simple, conservative capital structure for a highly complicated one may be a primary requirement of any reorganization plan. There is no necessity to construct the new capital structure on the framework of the old.

Affirmed.

HELVERING, COMMISSIONER OF INTERNAL REVENUE, *v.* LE GIERSE ET AL., EXECUTORS.

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

No. 237. Argued January 9, 10, 1941.—Decided March 3, 1941.

1. Within the meaning of § 302 (g) of the Revenue Act of 1926 as amended, amounts "receivable as insurance" are amounts receivable as the result of transactions which involved at the time of their execution an actual insurance risk. P. 537.
2. Risk-shifting and risk-distribution are essentials of a contract of life insurance. P. 539.
3. A contract in the standard form of a life insurance policy, containing the usual provisions, including those for assignment or surrender, was issued to a woman of eighty years of age, without physical examination, for a single premium less than the face of the policy, together with an annuity policy for another premium calling for annual payments to her until her death Although both policies were, on the face, separate contracts, neither referring to the other, and each was treated as independent in the matters of application, computation of premium, report and book entry of premium payment, maintenance of reserve, etc., they were issued at the same time, and the making of the annuity contract was a condition to the issuance of the life policy; and the combined effect was such that, in case of premature death, the gain to the insurance company under one would neutralize its loss under the other. *Held:*
   (1) That the contracts must be considered together. P. 540.
   (2) They created no insurance risk. P. 541.

Any risk that the prepayment would earn less than the amount paid by the insurance company as an annuity was an investment risk, not an insurance risk.

(3) The amount payable to the beneficiary named in the life policy, upon the death of the "insured," was not in the scope of § 302 (g), supra, but was properly taxed in the decedent's estate under § 302 (c) as a transfer to take effect in possession or enjoyment at or after death. P. 542.

110 F. 2d 734, reversed.

CERTIORARI, 311 U. S. 625, to review the affirmance of a decision of the Board of Tax Appeals, 39 B. T. A. 1134, reversing a deficiency assessment of estate tax.

Assistant Attorney General Clark, with whom *Solicitor General Biddle* and *Messrs. Sewall Key, J. Louis Monarch, Richard H. Demuth,* and *Maurice J. Mahoney* were on the brief, for petitioner.

Mr. Frederick O. McKenzie for respondents.

The life insurance policy and the annuity were separate, distinct, complete contracts. For each there was a separate application and a separate consideration. Regular, standard forms were used. Neither referred to the other directly or indirectly; either could have been surrendered without affecting the company's liability under the other. The company regarded the transactions as separate and distinct and they were so reported to the Commissioner of Insurance of the State of Connecticut, as required by law. Separate receipts were issued to the decedent by the company covering payment received by it for each contract. The consideration, or premium, for each contract was computed on an actuarial basis and in accordance with the company's regular schedule of rates. In other words, in computing the single premium charged for the life insurance policy, no adjustment or allowance was made for the annuity premium, and in computing the annuity premium, no adjustment or allowance was

made for the insurance premium. The amount received by the company as a single premium for the insurance policy was credited to its insurance reserve and the amount received by it for the annuity, to its annuity reserve. All the legal incidents of ownership enjoyed by the owner of any ordinary life insurance policy were vested in the decedent with respect to the policy here in question and she could have exercised any or all of them without reference to the annuity contract.

All the evidence points to an intention of the parties to enter into a life insurance and an annuity contract, separate, distinct and independent of each other. Williston, Contracts, 2d Ed., § 628.

Even where the contracting parties combine all their promises in one document, if the agreement sets forth separate features, clearly severable, each feature must be given its proper application. *Equitable Life Assur. Society* v. *Deem,* 91 F. 2d 569, 575; *Connecticut General Life Ins. Co.* v. *McClellan,* 94 F. 2d 445, 446; *Downey* v. *German Alliance Ins. Co.,* 252 F. 701, 703, 704; *Legg* v. *St. John,* 296 U. S. 489, 490–495; *Bodine* v. *Commissioner,* 103 F. 2d 982, 985. Dist'g *Pearson* v. *McGraw,* 308 U. S. 313.

Contracts executed as a condition precedent to, or in conjunction with, other contracts are commonplace in business transactions. With respect to the issuance of the annuity as a condition precedent to the issuance of the life insurance policy, we think that the court below covered the point succinctly when it said: "The fact that she could not have gotten that policy unless she had also bought an annuity contract does not change the character of what she got."

The decedent's age and the fact that she was not required to take a physical examination are in no way material to the issues.

We should hesitate to accept any definition of the oft-used term "insurance risk." Where insurance risk leaves off and investment risk begins is also difficult to determine. For example, we know that the investment element is of minor consideration in the low premium term contract, whereas it becomes a very important factor in the costly single premium endowment contract.

If the decedent had surrendered her life insurance policy at the end of the first year, a loss or a gain to the company on the two contracts would depend almost entirely on how long the decedent lived thereafter. The possibility of such a loss under such circumstances clearly existed at the time the two contracts were issued.

The fact that the company sought to underwrite the risk by different means than it ordinarily used in underwriting life insurance policies does not make the policy something other than life insurance. There is nothing in the exempting statute which requires that the insurance proceeds be receivable from a particular kind of life insurance contract, or that the policy be written in any particular way or conform to any particular standard, or that it be issued only after a physical examination of the insured, or that it be written according to any specific group of underwriting principles. The statute does not preclude the exemption on any of these grounds, and expresses no concern with any action the insurance company may take to relieve its underwriting problems or to minimize the risk in particular cases.

From a standpoint of underwriting, the reason the insurance company here would not have issued the life insurance policy to the decedent without the annuity was not because of her advanced age, not because she did not pass a physical examination, but because it would have been difficult to get a sufficient number of persons of her age to apply for similar policies and thus be

brought into the broad average for underwriting purposes. Since it was impractical to sell insurance to a large class of the age of decedent, the company accepted in lieu of a physical examination the issuance of the life annuity.

Petitioner would argue that if this decedent had been fifty years of age instead of eighty and had voluntarily purchased the annuity along with the policy, she would have received neither a life insurance policy nor an annuity but would have received instead one "investment contract."

Insurance policies should not be treated as *inter vivos* transfers akin to testamentary dispositions. There is no indication whatever that such was the intention of Congress in enacting § 302 (c) or § 302 (g). *Helvering* v. *Hallock,* 309 U. S. 106, and *Klein* v. *United States,* 283 U. S. 231, are inapplicable.

Most forms of life insurance provide some sort of cash value which is in itself an investment feature. It is common knowledge that life insurance is frequently purchased for investment purposes.

The contract in question presents the essential requisites of life insurance. For a stipulated consideration the company undertook to indemnify the beneficiary against loss by a specified contingency, peril or risk. That contingency was the death of the insured, this decedent. And the death of the decedent was the sole contingency for the payment of the principal amount of the policy. The fact that an annuity contract imposing entirely different obligations on the company was issued at the same time does not make the life insurance contract something other than life insurance.

The instant case is clearly distinguishable from the "deposit arrangement" cases. *Old Colony Trust Co.* v. *Commissioner,* 102 F. 2d 380; *State ex rel. Thornton* v. *Probate Court,* 186 Minn. 351.

The history of the statute indicates no intention on the part of Congress to restrict the exemption to proceeds of certain types of insurance contracts.

The contracts in question were entered into by the decedent neither in contemplation of death nor as a plan to evade or even avoid the payment of taxes.

The Board of Tax Appeals found as a matter of fact and held as a matter of law that the proceeds were received by the beneficiary "as insurance" within the meaning of the exempting statute. Such finding was supported by substantial evidence and should not be disturbed on review. *Colorado National Bank* v. *Commissioner,* 305 U. S. 23, 27; *Helvering* v. *Rankin,* 295 U. S. 123, 131.

The purchase of a single premium life insurance policy is not a "transfer" within the meaning of any of the provisions of § 302 (c) of the Revenue Act of 1926.

The plain language of the statute granting the exemption to life insurance proceeds should not be limited by implication to insurance issued under certain conditions. *Gould* v. *Gould,* 245 U. S. 151, 153; *United States* v. *Merriam,* 263 U. S. 179, 187–188; *Burnet* v. *Niagara Brewing Co.,* 282 U. S. 648, 654.

Mr. Justice Murphy delivered the opinion of the Court.

Less than a month before her death in 1936, decedent, at the age of 80, executed two contracts with the Connecticut General Life Insurance Co. One was an annuity contract in standard form entitling decedent to annual payments of $589.80 as long as she lived. The consideration stated for this contract was $4,179. The other contract was called a "Single Premium Life Policy—Non Participating" and provided for a payment of $25,000 to decedent's daughter, respondent Le Gierse, at decedent's death. The premium specified was $22,946. Decedent paid the total consideration, $27,125, at the

time the contracts were executed. She was not required to pass a physical examination or to answer the questions a woman applicant normally must answer.

The "insurance" policy would not have been issued without the annuity contract, but in all formal respects the two were treated as distinct transactions. Neither contract referred to the other. Independent applications were filed for each. Neither premium was computed with reference to the other. Premium payments were reported separately and entered in different accounts on the company's books. Separate reserves were maintained for insurance and annuities. Each contract was in standard form. The "insurance" policy contained the usual provisions for surrender, assignment, optional modes of settlement, etc.

Upon decedent's death, the face value of the "insurance" contract became payable to respondent Le Gierse, the beneficiary. Thereafter, a federal estate tax return was filed which excluded from decedent's gross estate the proceeds of the "insurance" policy. The Commissioner notified respondents Bankers Trust Co. and Le Gierse, as executors of decedent's estate, that he proposed to include the proceeds of this policy in the gross estate and to assess a deficiency. Suit in the Board of Tax Appeals followed, and the Commissioner's action was reversed. 39 B. T. A. 1134. The Circuit Court of Appeals affirmed. 110 F. 2d 734. We brought the case here because of conflict with *Commissioner* v. *Keller's Estate,* 113 F. 2d 833, and *Helvering* v. *Tyler,* 111 F. 2d 422. 311 U. S. 625.

The ultimate question is whether the "insurance" proceeds may be included in decedent's gross estate.

Section 302 of the Revenue Act of 1926 (44 Stat. 9, 70; as amended, 47 Stat. 169, 279; 48 Stat. 680, 752) provides: "The value of the gross estate of the decedent shall be determined by including the value at the time

of his death of all property, real or personal, tangible or intangible . . .—(g) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over $40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life." Thus the basic question is whether the amounts received here are amounts "receivable as insurance" within the meaning of § 302 (g).

Conventional aids to construction are of little assistance here. Section 302 (g) first appeared in identical language in the Revenue Act of 1918 as § 402 (f). 40 Stat. 1057, 1098. It has never been changed.[1] None of the acts has ever defined "insurance." Treasury Regulations, interpreting the original provision, stated simply: "The term 'insurance' refers to life insurance of every description, including death benefits paid by fraternal beneficial societies, operating under the lodge system." Treasury Regulations No. 37, 1921 edition, p. 23. This statement has never been amplified.[2] The committee report accompanying the Revenue Act of 1918 merely noted that the provision taxing insurance receivable by the executor clarified existing law, and that the provision taxing insurance in excess of $40,000 receivable by specific beneficiaries was inserted to prevent tax evasion. House Report No. 767, 65th Cong., 2d Sess., p. 22.[3] Sub-

[1] Act of 1921: 42 Stat. 227, 279; Act of 1924: 43 Stat. 253, 305; Act of 1926: 44 Stat. 9, 71; Code of 1939: 53 Stat. 1, 122.

[2] Regulations No. 63, p. 26; Regulations No. 68, p. 31; Regulations No. 70, 1926 edition, p. 30; Regulations No. 70, 1929 edition, p. 33; Regulations No. 80, p. 62.

[3] ". . . [Insurance payable to specific beneficiaries does] not fall within the existing provisions defining gross estate. It has been brought to the attention of the committee that wealthy persons have and now anticipate resorting to this method of defeating the

sequent committee reports do not mention § 302 (g). Transcripts of committee hearings in 1918 and since are equally uninformative.[4]

Necessarily, then, the language and the apparent purpose of § 302 (g) are virtually the only bases for determining what Congress intended to bring within the scope of the phrase "receivable as insurance." In fact, in using the term "insurance" Congress has identified the characteristic that determines what transactions are entitled to the partial exemption of § 302 (g).

We think the fair import of subsection (g) is that the amounts must be received as the result of a transaction which involved an actual "insurance risk" at the time the transaction was executed. Historically and commonly insurance involves risk-shifting and risk-distributing. That life insurance is desirable from an economic and social standpoint as a device to shift and distribute risk of loss from premature death is unquestionable. That these elements of risk-shifting and risk-distributing are essential to a life insurance contract is agreed by courts and commentators. See for example: *Ritter* v. *Mutual Life Ins. Co.,* 169 U. S. 139; *In re Walsh,* 19 F. Supp. 567; Guaranty Trust Co. v. Commissioner, 16 B. T. A. 314; Ackerman v. Commissioner, 15 B. T. A. 635; Couch, Cyclopedia of Insurance, Vol. I, § 61; Vance,

estate tax. Agents of insurance companies have openly urged persons of wealth to take out additional insurance payable to specific beneficiaries for the reason that such insurance would not be included in the gross estate. A liberal exemption of $40,000 has been included and it seems not unreasonable to require the inclusion of amounts in excess of this sum. *Id.,* p. 22.

The same comment appears in Senate Report No. 617, 65th Cong., 3d Sess., p. 42.

[4] The curious consistency and inadequacy of § 302 (g) have not escaped notice. See Paul, Life Insurance and The Federal Estate Tax, 52 Harv. L. Rev. 1037; Paul, Studies in Federal Taxation, 3d Series, p. 351; *United States Trust Co.* v. *Sears,* 29 F. Supp. 643, 650.

Insurance, §§ 1–3; Cooley, Briefs on Insurance, 2d edition, Vol. I, p. 114; Huebner, Life Insurance, Ch. 1. Accordingly, it is logical to assume that when Congress used the words "receivable as insurance" in § 302 (g), it contemplated amounts received pursuant to a transaction possessing these features. *Commissioner* v. *Keller's Estate, supra; Helvering* v. *Tyler, supra; Old Colony Trust Co.* v. *Commissioner,* 102 F. 2d 380; Ackerman v. Commissioner, *supra.*

Analysis of the apparent purpose of the partial exemption granted in § 302 (g) strengthens the assumption that Congress used the word "insurance" in its commonly accepted sense. Implicit in this provision is acknowledgment of the fact that usually insurance payable to specific beneficiaries is designed to shift to a group of individuals the risk of premature death of the one upon whom the beneficiaries are dependent for support. Indeed, the pith of the exemption is particular protection of contracts and their proceeds intended to guard against just such a risk. See *Commissioner* v. *Keller's Estate, supra; United States Trust Co.* v. *Sears,* 29 F. Supp. 643; Hughes, Federal Death Tax, p. 91; Comment, 38 Mich. L. Rev. 526, 528; compare *Chase National Bank* v. *United States,* 28 F. Supp. 947; *In re Walsh, supra; Moskowitz* v. *Davis,* 68 F. 2d 818. Hence, the next question is whether the transaction in suit in fact involved an "insurance risk" as outlined above.

We cannot find such an insurance risk in the contracts between decedent and the insurance company.

The two contracts must be considered together. To say they are distinct transactions is to ignore actuality, for it is conceded on all sides and was found as a fact by the Board of Tax Appeals that the "insurance" policy would not have been issued without the annuity contract. Failure, even studious failure, in one contract to refer to the other cannot be controlling. Moreover,

authority for such consideration is not wanting, however unrealistic the distinction between form and substance may be. *Commissioner* v. *Keller's Estate, supra; Helvering* v. *Tyler, supra.* See Williston, Contracts, Vol. III, § 628; Paul, Studies in Federal Taxation, 2d series, p. 218; compare *Pearson* v. *McGraw,* 308 U. S. 313.[5]

Considered together, the contracts wholly fail to spell out any element of insurance risk. It is true that the "insurance" contract looks like an insurance policy, contains all the usual provisions of one, and could have been assigned or surrendered without the annuity. Certainly the mere presence of the customary provisions does not create risk, and the fact that the policy could have been assigned is immaterial since, no matter who held the policy and the annuity, the two contracts, relating to the life of the one to whom they were originally issued, still counteracted each other. It may well be true that if enough people of decedent's age wanted such a policy it would be issued without the annuity, or that if the instant policy had been surrendered a risk would have arisen. In either event the essential relation between the two parties would be different from what it is here. The fact remains that annuity and insurance are opposites; in this combination the one neutralizes the risk customarily inherent in the other. From the company's viewpoint, insurance looks to longevity, annuity to transiency. See *Commissioner* v. *Keller's Estate, supra; Helvering* v. *Tyler, supra; Old Colony Trust Co.* v. *Commissioner, supra; Carroll* v. *Equitable Life Assur. Soc.,* 9 F. Supp. 223; Note, 49 Yale L. J. 946; Cohen, Annuities and Transfer Taxes, 7 Kan. B. A. J. 139.

[5] *Legg* v. *St. John,* 296 U. S. 489, is not to the contrary. There nothing indicated that the one contract would not have been issued without the other; there was no necessary connection between the two.

Here the total consideration was prepaid and exceeded the face value of the "insurance" policy. The excess financed loading and other incidental charges. Any risk that the prepayment would earn less than the amount paid to respondent as an annuity was an investment risk similar to the risk assumed by a bank; it was not an insurance risk as explained above. It follows that the sums payable to a specific beneficiary here are not within the scope of § 302 (g). The only remaining question is whether they are taxable.

We hold that they are taxable under § 302 (c) of the Revenue Act of 1926, as amended, as a transfer to take effect in possession or enjoyment at or after death. See *Helvering* v. *Tyler, supra; Old Colony Trust Co.* v. *Commissioner, supra; Kernochan* v. *United States,* 29 F. Supp. 860; Guaranty Trust Co. v. Commissioner, *supra;* compare, *Gaither* v. *Miles,* 268 F. 692; Comment, 38 Mich. L. Rev. 526; Comment, 32 Ill. L. Rev. 223.

The judgment of the Circuit Court of Appeals is

Reversed.

The CHIEF JUSTICE and MR. JUSTICE ROBERTS think the judgment should be affirmed for the reasons stated in the opinion of the Circuit Court of Appeals.