

**Avery v. Commissioner
292 U.S. 210 (1934)**

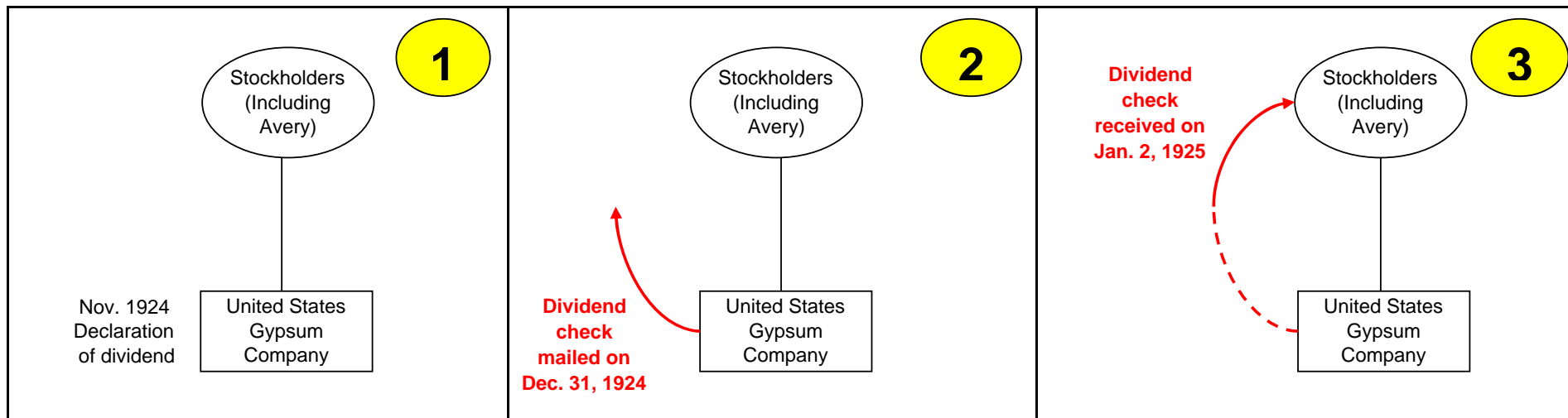
**Dividend Not Taxable Until
Unqualifiedly Made Subject
to Shareholder's Demands**

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Dividend Declaration

Dividend Paid (Dec. 31, 1924)

Dividend Received (Jan. 2, 1925)



Sewell Avery was a large stockholder, and president, of the United States Gypsum Company. In November 1924, the Company declared a dividend payable on or before the 31st day of December following. Its check, dated December 31st, for the amount attributable to his stock, payable to him, was received by Avery on January 2, 1925. A similar circumstance occurred between 1929 and 1930.

Reg. 1.301-1(b) provides that "a distribution made by a corporation to its shareholders shall be included in the gross income of the distributees when the cash or other property is unqualifiedly made subject to their demands." The Court stated that:

[T]he dividends . . . were not actually received by the taxpayer during 1924 and 1929. Certainly, they were not received when declared. . . .

[T]he dividends cannot properly be considered as cash or other property unqualifiedly subject to the petitioner's demand on December 31st. It was the practice of the Company to pay all dividends by checks not intended to reach stockholders until the first business day of January; there is nothing to show that petitioner could have obtained payment on December 31st, he did not expect this and the practice shows the company had no intention to make actual payment on that day. Nothing indicates that it recognized an unrestricted right of stockholders to demand payment except through checks sent out in the usual way. The checks did not constitute payments prior to their actual receipt. The mere promise or obligation of the corporation to pay on a given date was not enough to subject to petitioner's unqualified demand "cash or other property"; and none of the parties understood that it was.