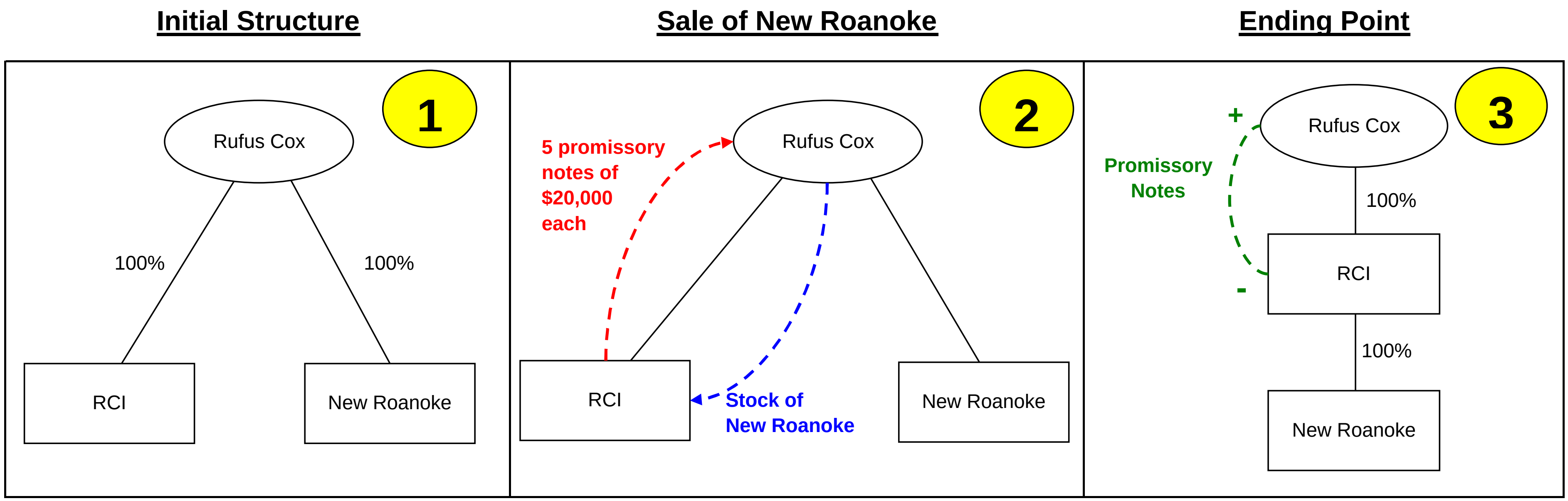
Cox v. Commissioner
78 T.C. 1021 (1982)

Installment Sale Treatment Not Available For 304 Transaction



Prior to the sale, the taxpayer owned 100% of both New Roanoke and RCI. Section 304(a)(1) thus applies to the sale and the RCI notes are treated as a distribution in redemption of RCI stock. Therefore, section 302(b) must be addressed to determine whether this distribution is to be treated as a distribution under section 301 , pursuant to section 302(d), or payment in exchange for the stock, pursuant to section 302(a). Section 304(b)(1) states that in testing the transaction under section 302(b) the determination must be made with reference to the stock of the "issuing corporation," i. e., the New Roanoke stock.

After the sale to RCI, the taxpayer still owned 100% of New Roanoke by reason of his 100% ownership of RCI, section 318(a)(2)(C). Therefore the redemption failed to satisfy any of the tests of section 302(b) and is a distribution to be treated under section 301. See United States v. Davis, 397 U. S. 301 (1970). Section 453 serves as a relief provision which allows a taxpayer to report the gain from a sale over the period during which he is receiving payments thereon. When what is in form an installment sale is in substance not an installment sale, section 453 is inapplicable. Griffiths v. Commissioner, 308 U. S. 355 (1939) ("installment sale" of stock found to be rescission of contract from which "seller" had previously been allowed a loss).

The purpose of section 304(a)(1) was to prevent the "bail out" of the accumulated earnings of a corporation by its shareholders at capital gains rates by the use of a stock sale to a related corporation. The effect of the operation of section 304 is to characterize as redemptions distributions which are cast in the form of sales. Section 453 is unavailable to the taxpayer who, because of the application of section 304(a)(1) , is deemed to have received a distribution under section 301.