

Johnson v. U.S.
435 F.2d 1257 (4th Cir. 1971)

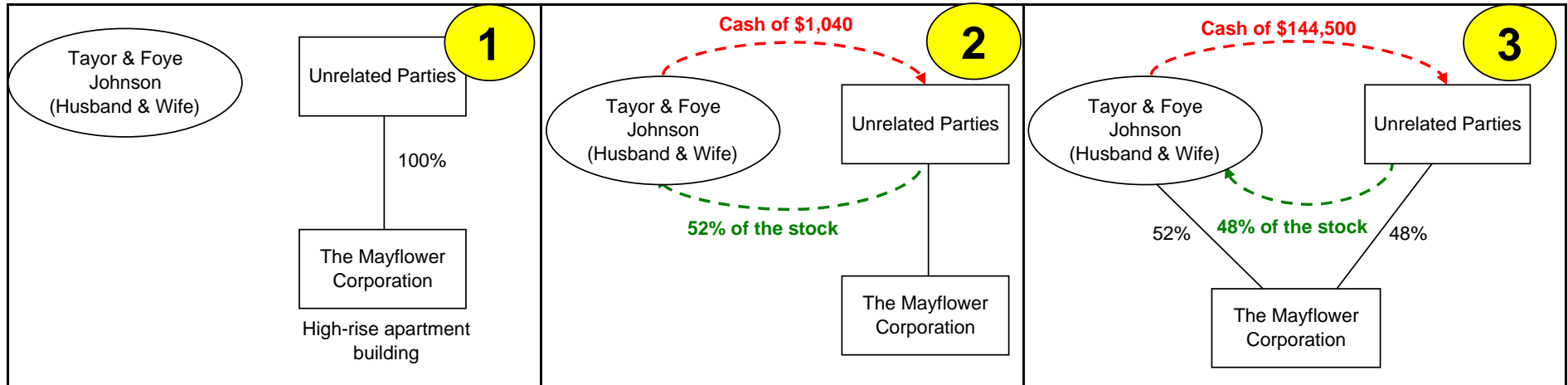
**No Basis Aggregation For
Section 301 Distribution**

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Initial Structure

First Purchase (1949)

Second Purchase (1954)



The Mayflower Corporation owned a high-rise apartment building at Virginia Beach, Virginia. The taxpayers acquired 52% of the corporation's stock in 1949 at a cost of \$1,040. The remaining 48% of the stock was purchased in 1954 at a cost of \$144,500. From 1949 until 1962 no distributions were made to the stockholders. On June 21, 1963, a Board of Directors meeting was held and a resolution was adopted calling for the distribution of \$169,000 to be paid June 26, 1963. In preparing the minutes of the stockholders' meeting, taxpayers' attorney did not specify whether the distribution was to be made on a 'pro rata' or 'non-pro rata' basis.

It was agreed that \$13,565 of the \$169,000 distributed was a dividend of current corporate income. The dividend was paid on a pro rata basis, and was taxable to the Johnsons as ordinary income. The issue was how the receipt of the remainder--\$155,435--should be treated. The court held that sections 301(c) and 1012 preclude the aggregation of the cost of the two lots of stock, and that the transaction must be treated as a pro-rata distribution. Therefore, gain was recognized under section 301(c)(3) on the distribution related to the first block of shares acquired.

Section 301 Distribution (1963)

