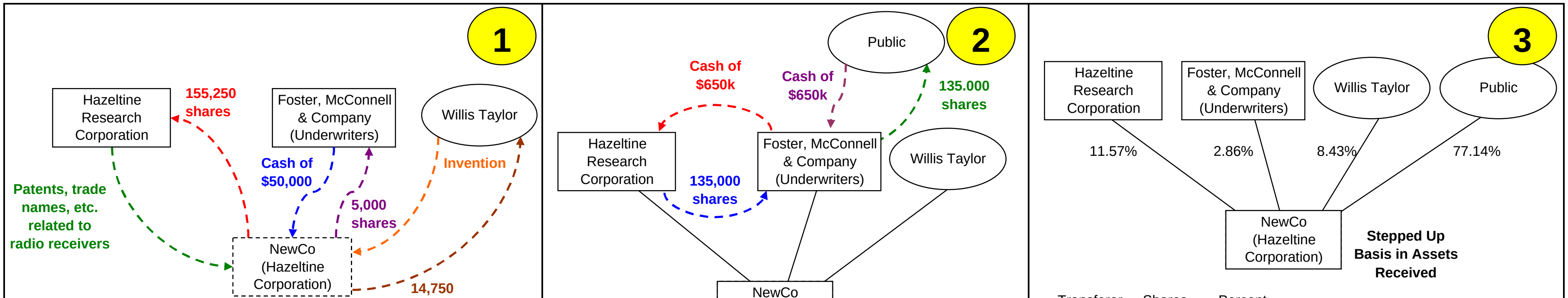
Hazeltine Corp. v. Commissioner
89 F. 2d 513 (3d Cir. 1937)

Busted 351 Exchange

Incorporation | **Sale of Shares (Pre-Existing Obligation)** | **Ending Point**



Transferor	Shares	Percent
HRC	155,250	88.71%
Foster	5,000	2.86%
W. Taylor	14,750	8.43%
Total	175,000	100.00%

Transferor	Shares	Percent
HRC	20,250	11.57%
Foster	5,000	2.86%
W. Taylor	14,750	8.43%
Public	135,000	77.14%
Total	175,000	100.00%

The case involved the depreciable basis of property acquired by a corporation in exchange for stock. The cost of the property measured by the fair market value of the stock issued in exchange for it was held to be the correct basis for determining the depreciation.

The taxpayer was a newly organized corporation which had acquired assets from its predecessor, Hazeltine Research Corporation, in exchange for 155,250 shares of its stock. Prior to the exchange the transferors of its assets had executed a contract with an underwriter which required Hazeltine Research Corporation to sell 135,000 of its shares in the new company to the underwriter for resale to the public. The terms of the underwriter's agreement were performed 21 days after the formation of the taxpayer and the underwriter commenced public trading in the taxpayer's stock.

The Court of Appeals for the Third Circuit sustained the taxpayer's contention that the transaction did not qualify as a nontaxable exchange under section 112(b)(5) of the Revenue Act of 1928 [current section 351] because the transferors never possessed more than momentary control of the transferee. The Court of Appeals there said:

> An examination of the contract of February 2d discloses quite clearly that there was no intention by Hazeltine Research Corporation to retain more than 20,250 shares of petitioner's stock for any length of time; the remaining 135,000 shares to which it was entitled were to be simultaneously delivered to Foster, McConnell & Co. for $650,000 in cash. * * * We are satisfied that the transaction must be viewed as a whole. * * * So viewed, Hazeltine Research Corporation did not retain control of petitioner after it was carried through. * * *

However, now see Reg. 1.351-1(a)(3) for sales through underwriters.