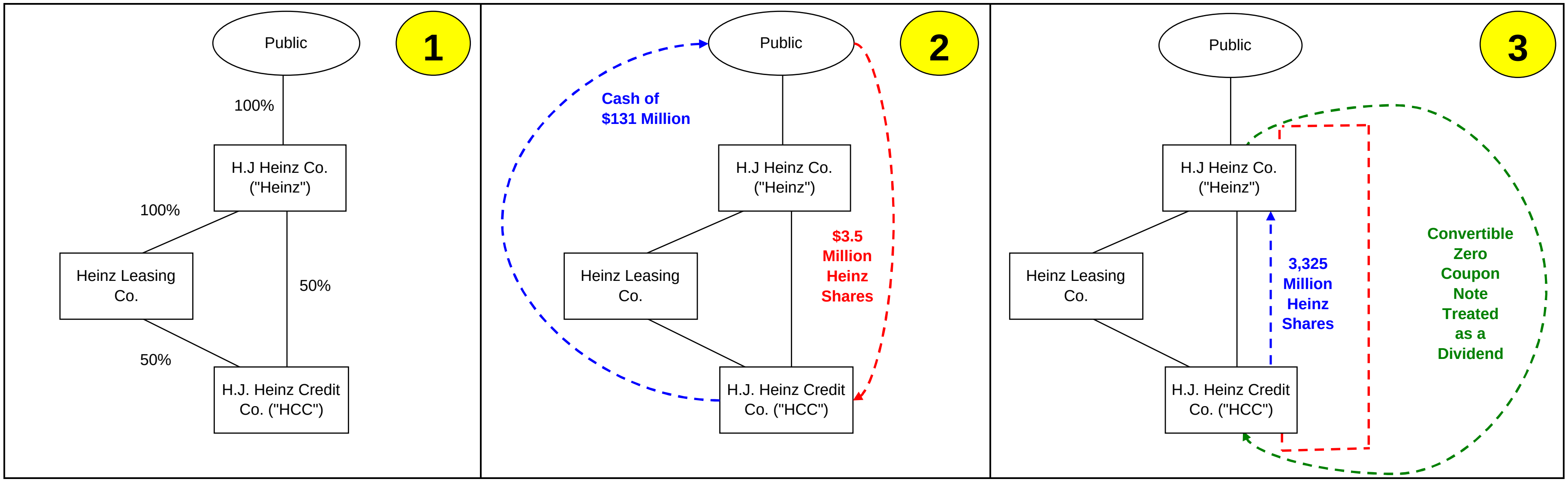
H.J. Heinz Co. v. U.S.
___F.3d___(Ct.Cl. 2007)

Subsidiary Purchase & Sale of Parent Stock

Initial Structure | **Share Purchases (Aug. - Nov. 1994)** | **Partial Redemption (Jan. 1995)**



Excerpt from the case:

At issue is whether H.J. Heinz Credit Company (HCC), a subsidiary of the H.J. Heinz Company (Heinz), may deduct a capita loss of $124,134,189 on a sale of 175,000 shares of Heinz stock in May 1995. In 1994, HCC purchased 3,500,000 shares of Heinz stock, 3,325,000 shares of which were transferred to Heinz in January of 1995 in exchange for a convertible note issued by Heinz. Heinz asserts that this was a redemption which should be taxed as a dividend, and that HCC's basis in the redeemed stock should be added to its basis in the 175,000 shares it retained. HCC sold the latter stock in May of 1995 and, in plaintiff's view, recognized a capital loss arising from the increase in basis that occurred upon the earlier redemption. . . .

[I]t appears preliminarily that HCC possessed the burdens and benefits associated with the Heinz stock and, to that extent, the later redemption qualified under section 317(b). . . . Stripped of its veneer, the acquisition by HCC of the Heinz stock hac one purpose, and one purpose alone - producing capital losses . . . . There was no other genuine business purpose. As such, under the prevailing standard, the transaction in question must be viewed as a sham - a transaction imbued with no significant tax-independent considerations, but rather characterized, at least in terms of HCC's participation, solely by tax-avoidance features. The tax advantage sought by Heinz via this sham must be denied. . . .

Hence, under either the end result or interdependence tests, it would appear that HCC's ownership of the Heinz stock must be ignored, with Heinz being viewed as having acquired that stock on the market. That other steps in the overall transaction here, or the transaction as a whole, may have had legitimate business reasons does not alter this result. . .

Because, under both the sham and step transaction doctrines, Heinz cannot be viewed as having obtained the stock from HCC in a transaction that qualified as a redemption under section 317(b) of the Code, the transfer of the 3,325,000 shares tc Heinz did not cause a dividend to arise under section 302(d) of the Code. As such, the reattribution rules of Treasure Regulation §1.302-2(c) were not triggered here and HCC's basis in the 175,000 shares it retained was not increased by the cost basis of the shares it relinquished. It follows, a fortiori, that the sale of the retained shares did not produce the capital losses claimed, making the loss carrybacks in question inappropriate.

Sale at a Loss (May 1995)