

**Helvering v. F. & R. Lazarus & Co.
308 U.S. 252 (1939)**

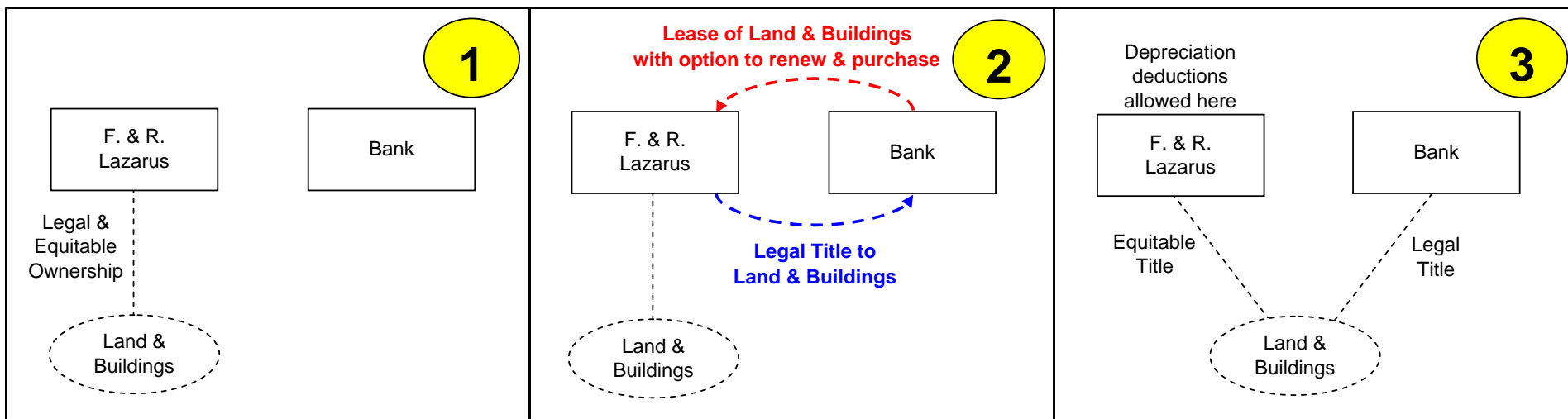
**Transfer of Legal Title
Was Security for a Loan**

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Initial Structure

Title Transfer & Lease Back

Ending Point



In computing its net taxable income for 1930 and 1931, Lazarus claimed depreciation on buildings occupied and used in its business as a department store. During those years, the legal titles of these properties were in a bank as trustee for certain land-trust certificate holders. These properties had been transferred to the trustee by Lazarus in 1928 and the trustee had at the same time leased them back to Lazarus for ninety-nine years, with option to renew and purchase. In claiming the depreciation deduction, Lazarus insisted that the capital loss from wear, tear, and exhaustion of the buildings was falling upon it, thus entitling it to the statutory allowance for depreciation of buildings.

The Board of Tax Appeals in substantial effect found, and the Supreme Court affirmed, that the instrument under which the taxpayer purported to convey legal ownership to the trustee bank was in reality given and accepted as no more than security for a loan on the property; the "rent" stipulated in the concurrently executed ninety-nine year "lease" back was intended as a promise to pay an agreed five per cent interest on the loan; and the "depreciation fund" required by the "lease" was intended as an amortization fund, designed to pay off the loan in forty-eight and one-half years.

In the field of taxation, the courts are concerned with substance and realities, and formal written documents are not rigidly binding. Congress has specifically emphasized the equitable nature of proceedings before the Board of Tax Appeals by requiring the Board to act "in accordance with the rules of evidence applicable in courts of equity of the District of Columbia."

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