

**Martin Ice Cream v. Commr.,  
110 T.C. 189 (1998)**

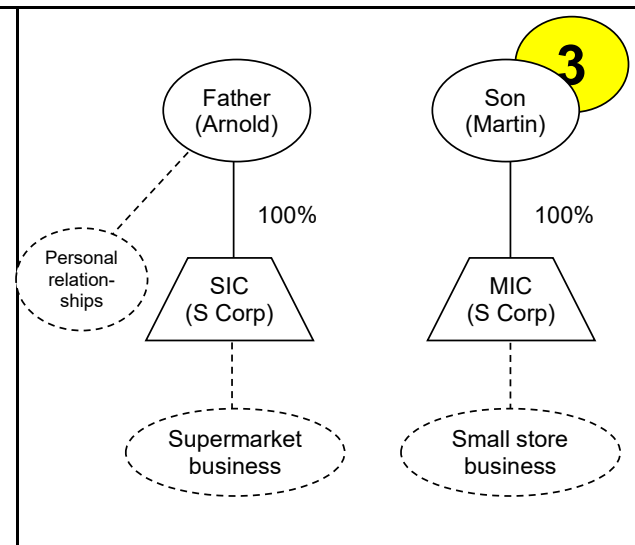
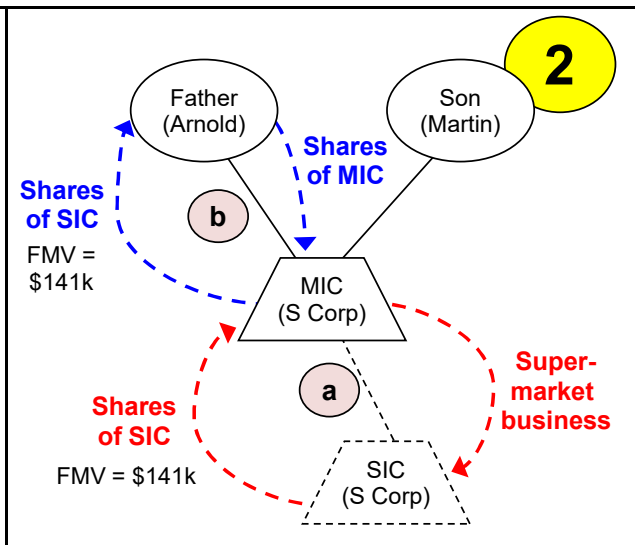
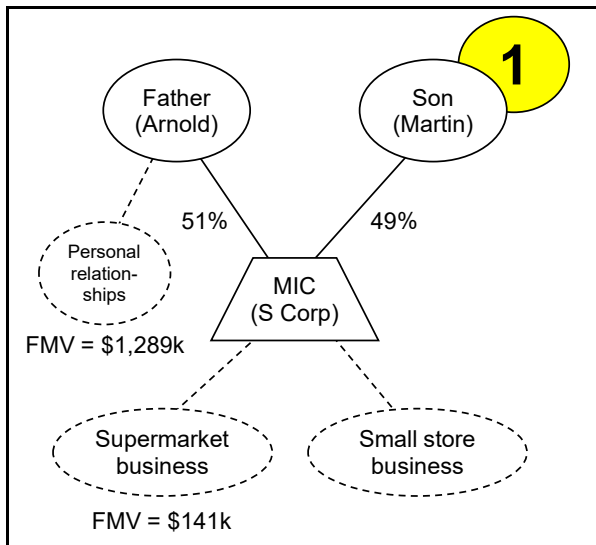
**Ice Cream Distribution Rights  
Were Owned By A Shareholder**

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**Post-Split-Off Structure**

**Initial Structure**

**Attempted Tax-Free Split-Off**

**Post-Split-Off Structure**



The Tax Court held that the split-off transaction in Step 2 above did not qualify for tax free treatment under section 355 because SIC was not engaged in an active trade or business immediately after the transaction. Thus, gain was recognized by Martin Ice Cream (MIC) under section 311(b) on the distribution of the shares of SIC. In addition, built-in gain was also recognized by MIC under section 1374 because MIC was a former C corporation.

However, to determine the amount of the gain recognized by MIC on the distribution of the SIC shares, it was necessary to determine the value of shares of SIC. In determining this value, the Tax Court held that MIC never owned all the assets that were sold to Häagen-Dazs. Arnold, acting on his own behalf and as agent for SIC, of which he was the sole shareholder, entered into a contract to sell Häagen-Dazs two distinctly different types of assets: The first, and much more valuable, was the intangible assets of Arnold's oral agreement with the founder of Häagen-Dazs and his relationships with the owners and managers of the supermarkets; the second, and much less valuable, was the business records that had been created by MIC during Arnold's development of the supermarket business, and transferred by MIC to SIC.

The Tax Court held that the fair market value of the SIC stock was \$141,000. The remainder of the assets sold (\$1,289,340) were the assets held personally by Arnold. These types of assets are sometimes colloquially referred to as "personal goodwill."

**Sale to Häagen-Dazs**

