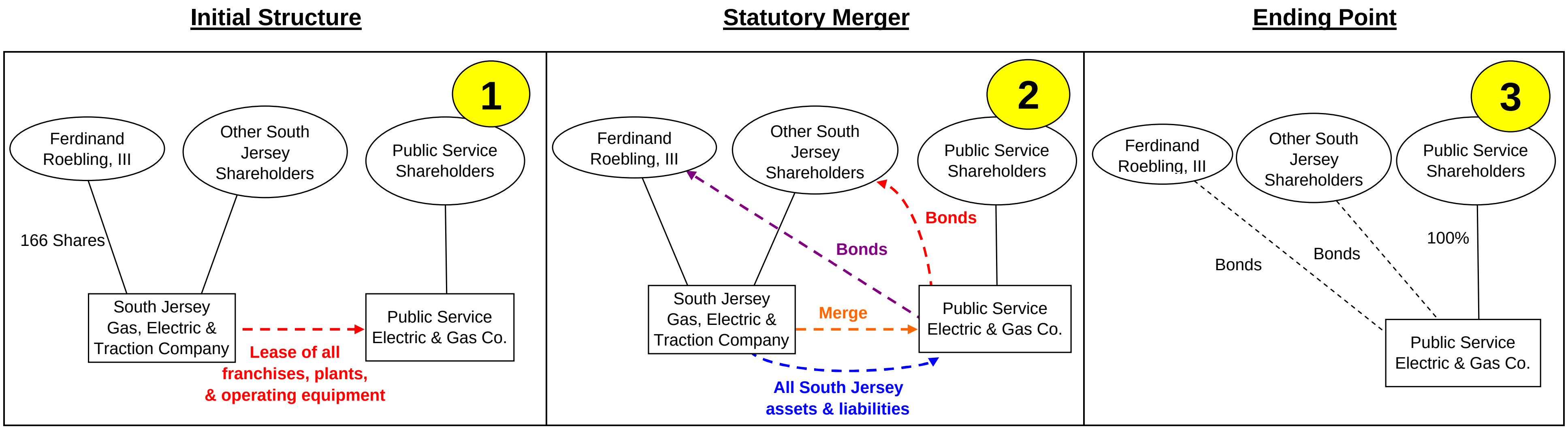
Roebling v. Commissioner
143 F.2d 810 (3d Cir. 1944)

Continuity of Interest Applies to Statutory Mergers



Roebling had acquired by gift 166 shares of the stock of South Jersey Gas, Electric and Traction Co. ("South Jersey"). This stock had been acquired by the donor at a cost of $16,600. South Jersey had leased all its franchises, plants and operating equipment to Public Service Corporation of New Jersey for 900 years. On May 10, 1937, the directors of South Jersey and of Public Service Electric and Gas Company adopted a "Plan of Reorganization" under which it was proposed that the former company be merged into the latter in accordance with the statutes of New Jersey. This plan provided that the stockholders of South Jersey (other than Public Service Electric and Gas Company) should exchange, dollar for dollar, their stock in South Jersey for 8% one hundred years first mortgage bonds of Public Service Electric and Gas Company. The stock of South Jersey held by Public Service Electric and Gas Company was not to participate in the exchange but was to be delivered up and cancelled. The "Agreement of Merger" was consummated pursuant to its provisions. In accordance therewith the taxpayer received in exchange for his 166 shares of stock in South Jersey, $16,600, principal amount of 8% bonds which on November 25, 1938, had a fair market value of $34,777.

The court held that a "true statutory merger" is insufficient without more to qualify as a "reorganization" and a "continuity of interest" as enunciated in numerous decisions of the Supreme Court and the pertinent Treasury Regulation must still be present to establish a true reorganization. It has been recognized that a transaction may not qualify as a "reorganization" under the various revenue acts though the literal language of the statute is satisfied. The Pinellas Ice case introduced the continuity of interest theory to eliminate those transactions which had "no real semblance to a merger or consolidation" (287 U. S. 470) and to avoid a construction which "would make evasion of taxation very easy." The merger requirements of New Jersey law did not supersede the "continuity of interest" test as applied in LeTulle v. Scofield and the numerous other decisions.