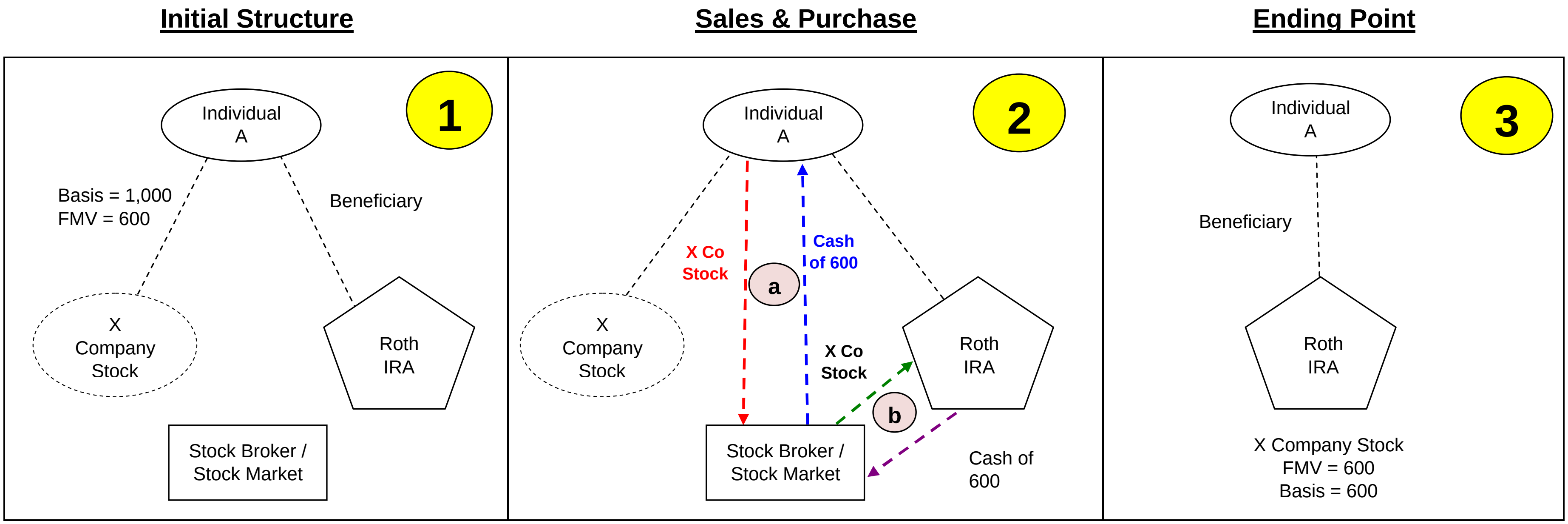
Revenue Ruling 2008-5

Loss Disallowed on Wash Sale to Roth IRA



A, an individual, owns 100 shares of X Company stock with a basis of $1,000. On December 20, 2007, A sells the 100 shares of X Company stock for $600 (the "Sale"). On December 21, 2007, A causes an individual retirement account (within the meaning of §408) or a Roth IRA (within the meaning of §408A), established for the exclusive benefit of A or A's beneficiaries, to purchase 100 shares of X Company stock for its then fair market value (the "Purchase"). A executes the Sale and the Purchase with different, unrelated market participants. A is not a dealer in stock or securities.

Section 1091(a) provides that in the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange on which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction shall be allowed under §165 unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business. Section 1091(d) provides rules for determining the basis of stock or securities the acquisition of which resulted in the nondeductibility under §1091 (or corresponding provisions of prior law) of the loss from the sale or other disposition of substantially identical stock or securities.

In Security First National Bank of Los Angeles, 28 BTA 289 (1933), the taxpayer sold bonds (at a market price) to a corporation of which the taxpayer was the sole shareholder. On the same day, in exchange for land, the corporation transferred the same bonds at the same price to a trust over which the taxpayer had absolute dominion and control. The BTA found that the predecessor to §1091(a) applied to disallow the loss. Applying the reasoning of this case to the facts of this ruling, even though an individual retirement account is a tax-exempt trust, A has nevertheless acquired, for purposes of §1091(a), 100 shares of Company stock on December 21, 2007, by virtue of the Purchase. See also Shoenberg v. Commissioner, 77 F.2d 446 (8 th Cir. 1935). This ruling holds that the loss on the Sale of stock is disallowed under §1091. A's basis in the individual retirement account or Roth IRA is not increased by virtue of §1091(d). This ruling does not address any issue arising under §4975.