



X is a manufacturing and industrial corporation whose stock is widely held. Y is a manufacturing corporation all of whose stock is held by eight individuals. In accordance with an agreement and plan of reorganization, X acquired all of Y's assets and assumed certain of Y's liabilities in exchange for 850 shares of X voting stock in a transaction qualifying as a reorganization under section 368(a)(1)(C). Pursuant to, and as a condition for, X's consummating the transaction, Y's shareholders assumed Y's obligation to pay 50 shares of the X stock received to a certain individual as a finder's fee in connection with the transaction. The liability could only be satisfied with the X stock. The Y shareholders satisfied this obligation by paying to the finder 50 shares of the X stock they received when Y was liquidated immediately after the reorganization pursuant to the plan. The finder was not related to X, Y, or their respective shareholders.

The question presented was whether the assumption and payment of Y's liability for the finder's fee by the Y shareholders will result in gain or loss to Y. Y would recognize gain or loss under sections 1001 and 1002 in the amount of the difference between the fair market value of the X stock and its adjusted basis in the hands of Y if Y had paid the liability for the finder's fee directly. See situation (1) in Rev. Rul. 70-271.

In the instant case, Y's shareholders assumed the liability for the finder's fee as part of a prearranged plan. They received the 50 shares of X stock as a fund they were bound to pass on to the finder. They did not receive the stock for their own benefit. They were merely intermediaries in the transfer of X stock to the finder. The liability could have been satisfied by Y's direct transfer of the X stock to the finder. Therefore, since the assumption of the liability by the Y shareholders was a meaningless and unnecessary incident in the transfer of the X stock to the finder, the assumption and payment of the liability will be treated as a direct transfer of the X stock by Y in satisfaction of the finder's fee.

Accordingly, Y will recognize gain or loss on the transfer of the X stock in satisfaction of the finder's fee liability pursuant to sections 1001 and 1002. Situation (3) of Rev. Rul. 70-271 is distinguishable from the instant case, since the shareholders in situation (3) did not assume the liability with an obligation to satisfy it with assets received concurrently with the assumption as in the instant case.