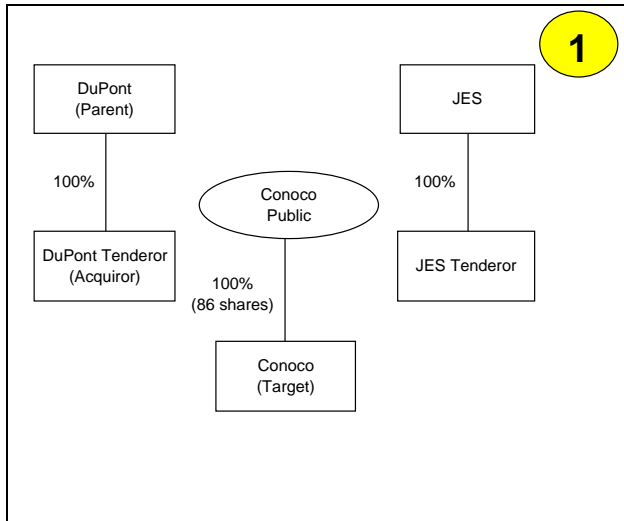


**J.E. Seagram v. Commissioner**  
**104 T.C. 75 (1995)**  
 (Share amounts in millions)

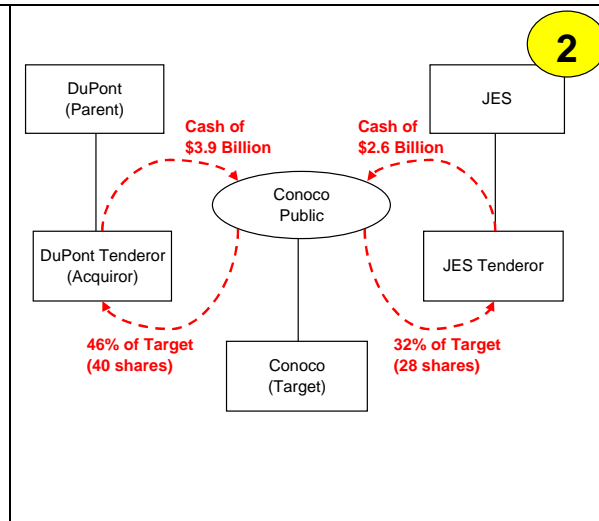
**Pre-Acquisition Continuity of Interest**  
**in Multi-Step Forward Triangular Merger**

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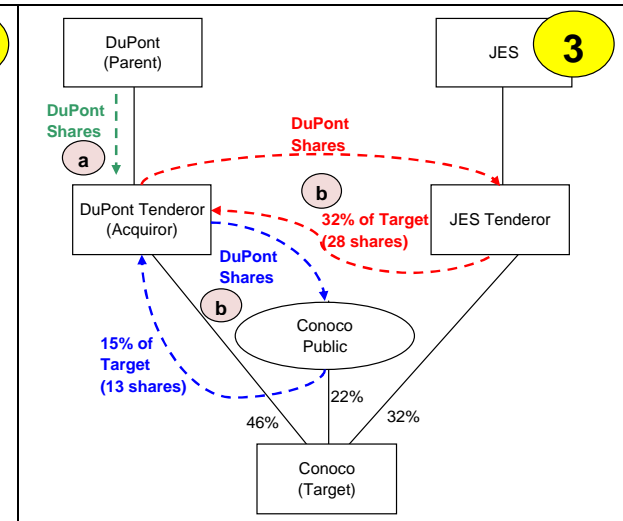
**Initial Structure**



**DuPont & JES Cash Tenders (8/1/81 to 8/7/81)**



**Dupont Stock Tender Offer (8/17/81)**



In early August 1981, JES Tenderor purchased, in a tender offer, approximately 28 million shares of Conoco for \$92 per share, with a total purchase price of approximately \$2.6 billion. Dupont made a competing tender offer for Conoco.

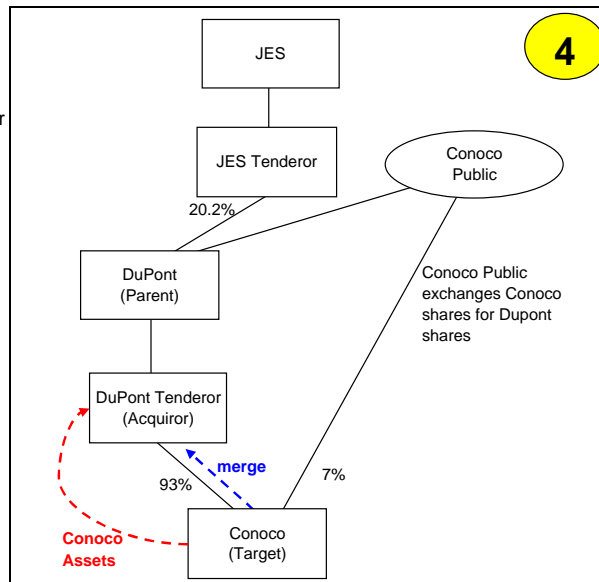
On August 17, 1981, JES Tenderor exchanged its Conoco shares for DuPont shares with a conversion ratio of 1.7 DuPont shares for each Conoco share. On August 17, 1981 DuPont shares traded for \$43 per share. Thus, the value of the DuPont shares received by JES Tenderor in exchange for its Conoco stock was approximately \$2.0 billion (\$43 X 1.7 X 28 million shares).

JES argued that the August 17th exchange was a taxable exchange and that it recognized a short term capital loss of \$530 million. JES relied primarily on two alternative arguments 1) that there was no plan of reorganization, or 2) that there was insufficient continuity of interest.

The Tax Court held that there was a plan of reorganization, that there was sufficient continuity of interest, and that the August 17th exchange was one step in a multi-step tax free reorganization under sections 368(a)(1)(A) and 368(a)(2)(D) (forward triangular merger). DuPont, while not a party to this litigation, had consistently maintained that the exchange was part of a tax free reorganization.

For purposes of determining continuity of interest, the current regulations generally ignore pre-acquisition transfers of Target stock that are not part of the reorganization itself. Reg. 1.368-1(e) provides that "a proprietary interest in [Target] . . . is not preserved to the extent that consideration received prior to a potential reorganization . . . is treated as other property or money received in the exchange for purposes of section 356 . . ."

**Conoco Merger into DuPont Tenderor (9/30/81)**



**Ending Point**

