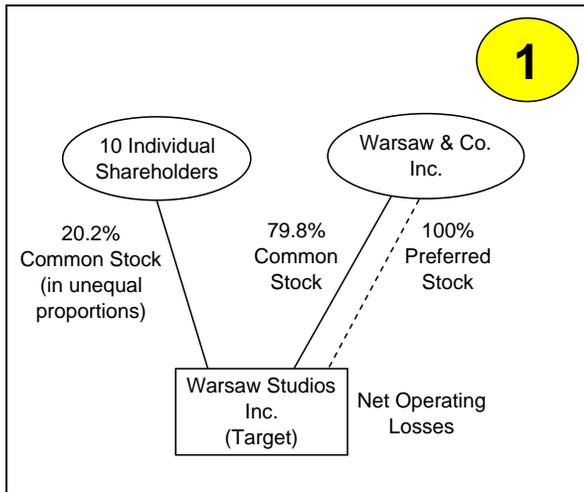


**Warsaw Photographic Associates, Inc.  
v. Commissioner  
84 T.C. 21 (1985)**

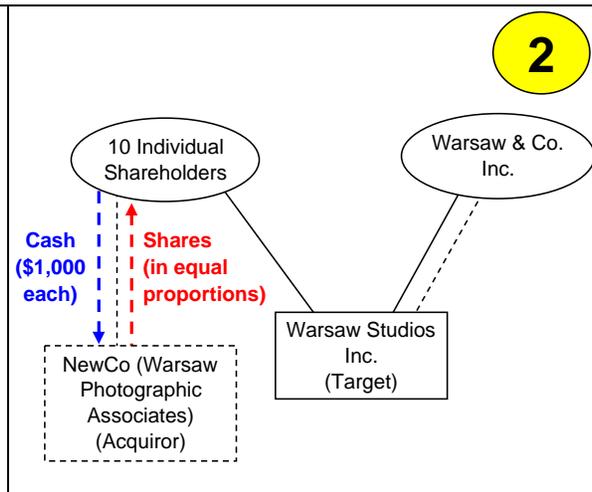
**Purported D Reorganization: No Meaningless  
Gesture if No Identity of Shareholders**

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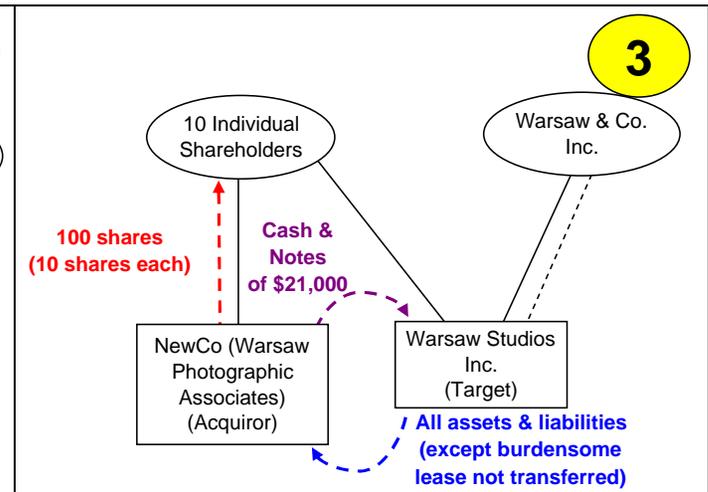
**Initial Structure**



**NewCo Formation**



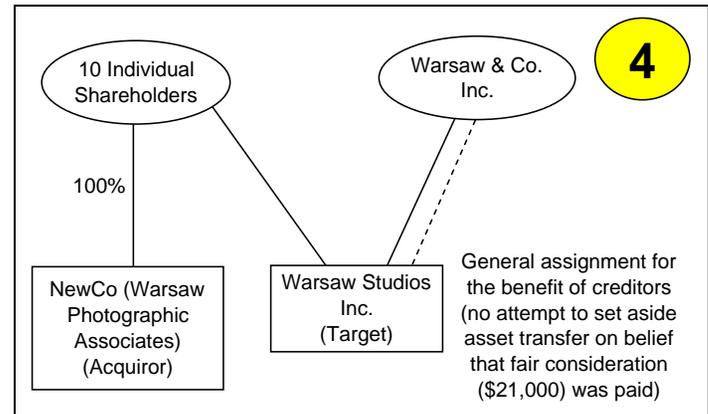
**Acquisition**



The above transaction was not a D reorganization because of the failure to satisfy the statutory requirement that the acquiror's stock be distributed in a transaction which qualifies under section 354. There was not literally a transfer of the acquiror's stock from acquiror to Studios and a distribution of this stock by Studios to Studios' shareholders. The statute's formal requirements have not been met.

The Tax court has "repeatedly held that, when the stock ownership or transferor and transferee is identical, the actual distribution would be a mere formality and the statute [section 368(a)(1)(D)] may be satisfied without it." See *American Manufacturing Co. v. Commissioner*, 55 T.C. 204, 221 (1970); *James Armour, Inc. v. Commissioner*, 43 T.C. 295, 307 (1964). *Atlas Tool Co. v. Commissioner*, 70 T.C. 86, 97 (1978), affd. 614 F.2d 860, 865 (CA3 1980). See also *Rose v. United States*, 640 F.2d 1030, 1034 (CA9 1981). However, in *Warsaw*, the stock ownerships of NewCo and Studios were not identical. Warsaw & Co., Inc., which owned about 80 percent of Studios' common stock and all of Studios' preferred stock, was not a shareholder in the acquiror. The 10 shareholders, each holding 10 percent of NewCo's shares, had differing holdings in Studios. Indeed, most of the shareholders did not hold the same percentage of Studios' shares as of NewCo's shares. Thus, the case did not qualify for the one exception that the courts have created regarding the stock transfer and distribution rule.

**Ending Point**



The 100 shares issued by NewCo effected no change, not even a subtle one, in the positions of the 10 shareholders. Each of the 10 shareholders merely had one extra piece of paper. Although the 100 shares were supposed to be issued to the 10 shareholders in their capacities as Studios' shareholders, they were issued in proportion to the 10 shareholders' ownership of NewCo and not in proportion to the 10 shareholders' ownership of Studios. As a practical matter, the appearance of the 100 shares in the transaction provides "only a smell of reorganization." The court concluded that the 100 shares did not constitute any part of the acquiror's consideration for the assets, that it received from Studios. There was no substance to the issuance of the 100 shares.