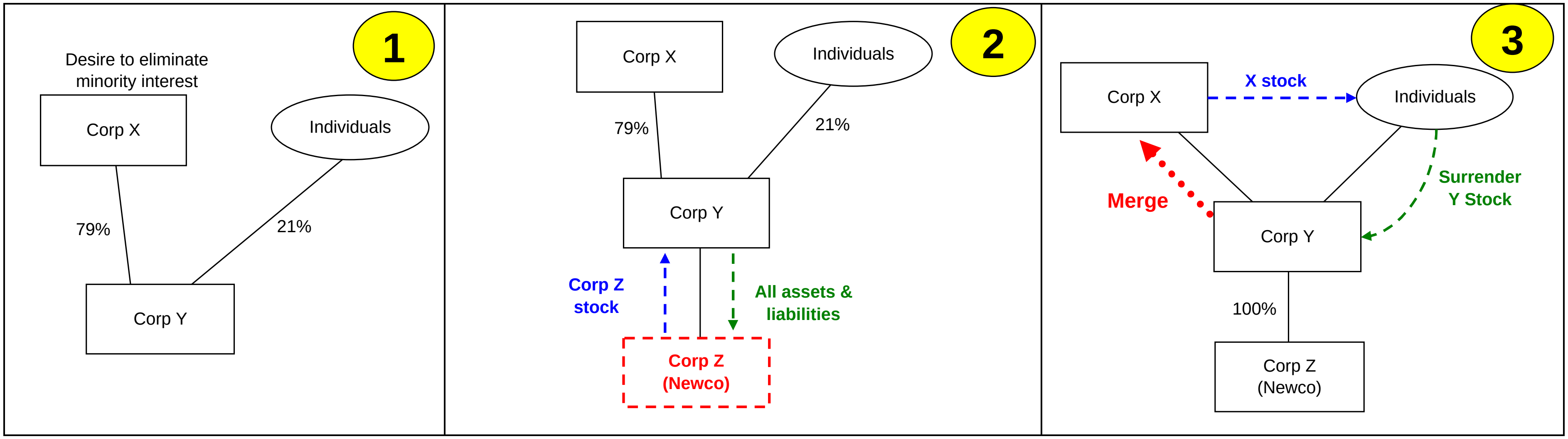
Revenue Ruling 58-93

A Reorganization With a Drop (But Drop Precedes Merger)

Initial Structure | **Downstream Transfer** | **Merger**



Corp Y had outstanding one class of common shares, of which 79% was owned by Corp X and 21% was owned by various individuals. For valid business reasons, Corp X desired to eliminate the minority interest and continue the activities of Corp Y through a wholly-owned subsidiary.

A plan of reorganization was adopted under which Corp Y transferred all of its assets, subject to all of its liabilities, to new Corp Z in exchange for all of the capital stock of Corp Z. Immediately thereafter, Corp Y was merged into Corp X. Pursuant to the merger, the minority shareholders of Corp Y exchanged their Y stock for stock of Corp X. The assets of Corp Y were transferred to Corp Z prior to the statutory merger (rather than after) for the reason that Corp X was not licensed to do Corp Z's business and therefore could not directly receive the Y assets.

Section 368(a)(2)(C) permits the transfer of assets acquired in a statutory merger to a subsidiary, which may be a new subsidiary. The statute speaks of assets "acquired" so that it seems clear that the transfer contemplated is ordinarily one which occurs after the merger or at the same time as the merger. In the instant case, the transfer to the new subsidiary was required to be made immediately prior to the merger. However, in either case the ultimate effect is practically the same, and the timing of the transfer of the assets to the new subsidiary should not disqualify the reorganization. Therefore the transaction should be treated as though Corp Y had been merged into Corp X and thereafter Corp X had transferred the Y assets to the new subsidiary, Corp Z. See Revenue Ruling 57-278 where a similar result was achieved in a case involving similar facts in a reorganization qualifying under section 368(a)(1)(C).

Ending Point