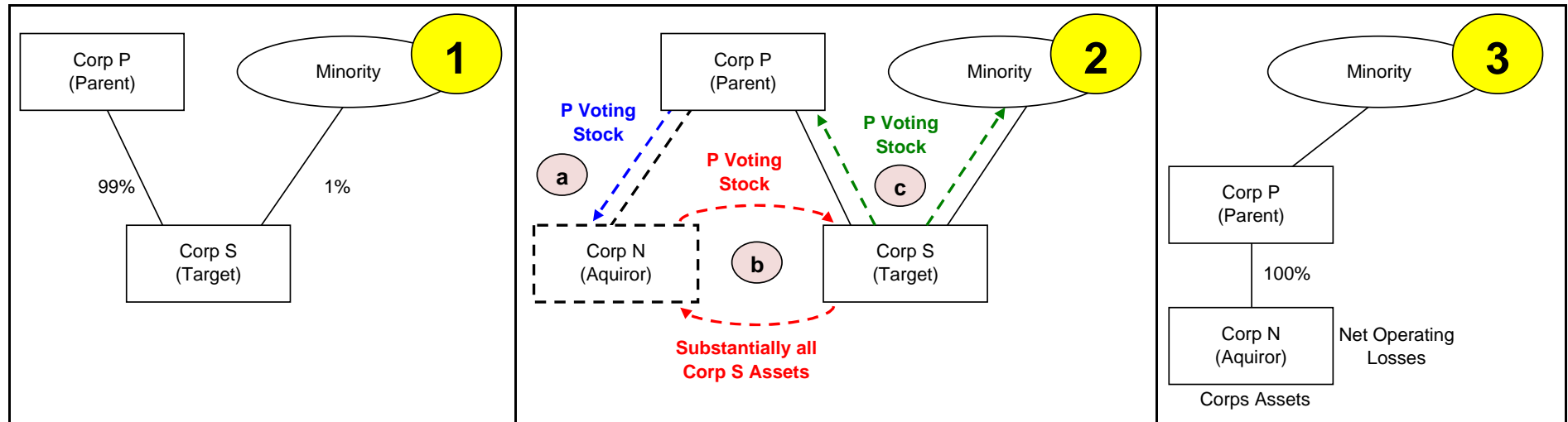


**Parent of Acquiror Not A Party to A Purported F Reorganization**

**Initial Structure**

**Triangular C Reorganization**

**Net Operating Losses**



Corporation P owned ninety-nine percent of the outstanding stock of corporation S, an operating subsidiary. For good business reasons, P created a new subsidiary corporation N which acquired substantially all of the assets of S in exchange solely for shares of the voting stock of P and the assumption by N of the liabilities of S. S distributed the stock of P to its shareholders in exchange for all of its outstanding stock and dissolved. The transaction qualified as a reorganization defined in section 368(a)(1)(C) since substantially all of the assets of S were acquired by N in exchange solely for part of the voting stock of P which was in control of both S and N, and all of the P stock received was exchange for all of the stock of S pursuant to section 354(a)(1).

Subsequent to the reorganization, N incurred operating losses. The specific question presented by the ruling was whether N may carry back such losses to a taxable year of S ended before the date of the reorganization. Section 381(b) provides that except in the case of a reorganization qualifying under section 368(a)(1)(F), the corporation acquiring property in the transfer or distribution is not entitled to carry back a net operating loss for a taxable year ending after the date of transfer to a taxable year of the distributor or transferor corporation. Reg. 1.381(b)-1(a)(2) provides that in a reorganization qualifying under section 368(a)(1)(F), whether or not such reorganization also qualifies under any other provision of section 368(a)(1), the acquiring corporation is to be treated for purposes of section 381 just as the transferor corporation would have been treated had there been no reorganization.

A reorganization as defined in section 368(a)(1)(F) of the Code is "a mere change in identity, form, or place of organization, however effected." However, section 368(b) does not include as "a party to a reorganization" the corporation controlling the acquiring corporation in a reorganization qualifying under section 368(a)(1)(F). Since section 361 is not applicable to the transfer of the property of S to N for purposes of section 368(a)(1)(F), the transaction is not a reorganization under section 368(a)(1)(F) and, therefore, Reg. 1.381(b)-1(a)(2) has no application to the transaction. Accordingly, since the transaction is not a reorganization under section 368(a)(1)(F), the taxable year of S ends under section 381(b) on the date of the transfer of assets to N and N is not permitted to carry back its net operating loss to a taxable year of S ended before the date of the transfer of assets.