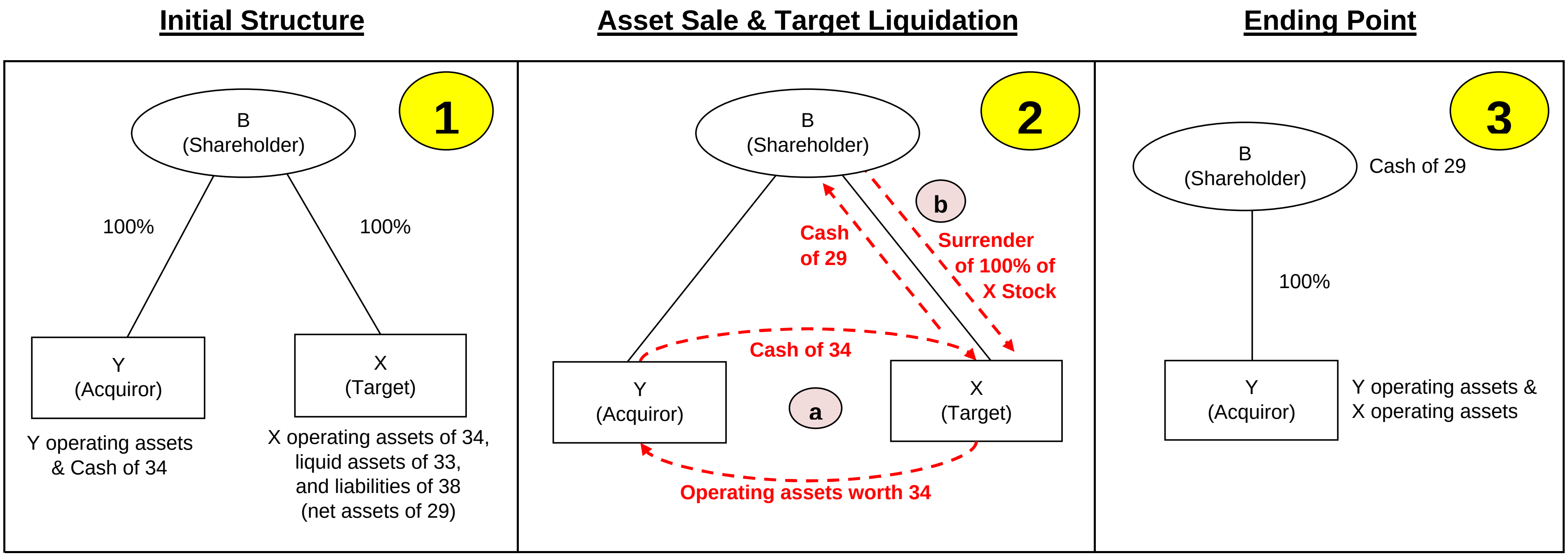
Revenue Ruling 70-240

Asset Sale & Liquidation Treated as a D Reorg



After Target received the cash of 34 on the sale of its assets, it paid off its debts of 38 and distributed the remaining cash (29) to B.

The ruling provides that the asset sale and the liquidation should be treated as a D reorganization. As part of the D reorganization, B is treated as having received Y stock in exchange for his X stock, plus a cash distribution of 29. What the ruling doesn't explicitly state, but is implied in the D reorganization is that X also received Y stock as part of the consideration for the transfer of the operating assets. The deemd transfer of the Y stock to X and from X to B is considerec a "meaningless gesture" because B owns 100% of both Y and X.

Citing Davant, 366 F.2d 874 (5th Cir. 1966), the ruling holds that the E&P of both the Acquiror and the Target is included in determining the amount to be characterized as a dividend under section 356(a)(2). However, the Tax Court in American Manufacturing Co., 55 T.C. 204 (1970), and the Third Circuit in Atlas Tool, 614 F.2d 860 (1980) have rejected Davant to the extent that it holds that the E&P of both entities is considered for purposes of section 356(c)(2).