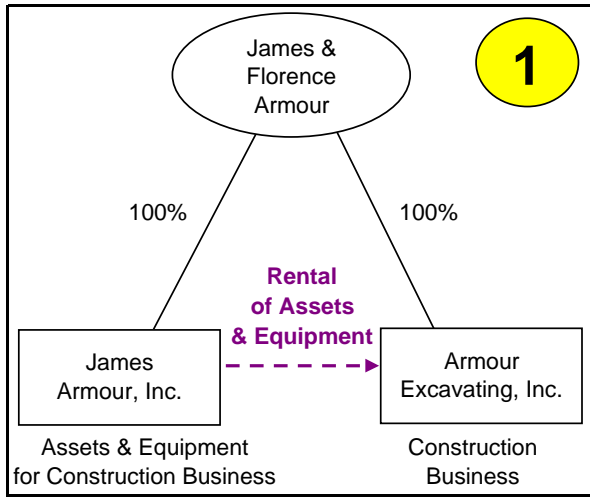
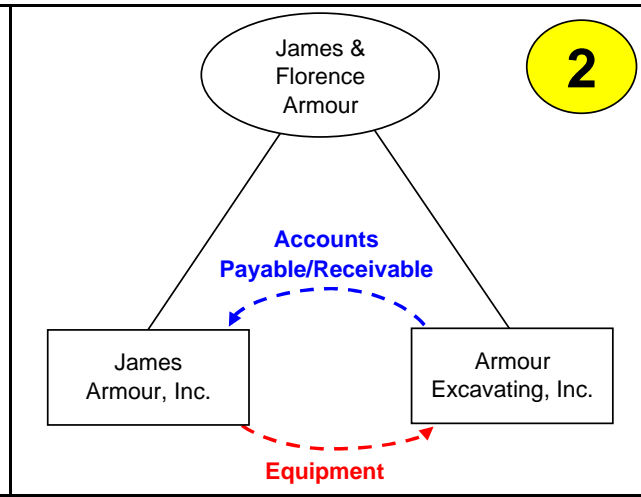


**Intercompany Sale of Assets &
Liquidation was a D Reorganization**

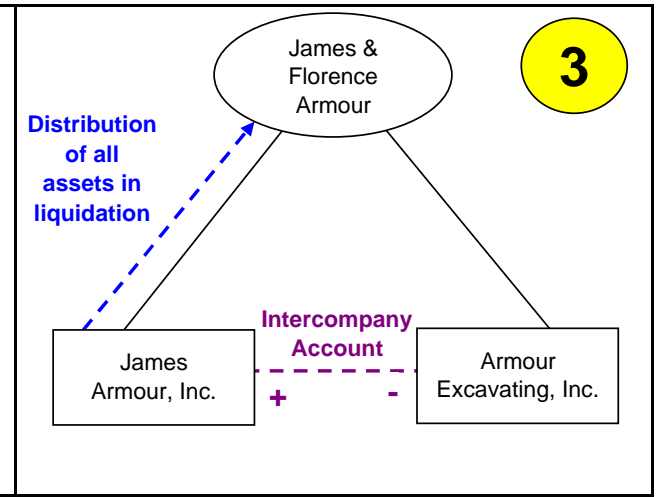
Initial Structure



Step 1 - Liquidation / Reorganization



Step 2 - Liquidation / Reorganization



The issue in the case was whether the transfer of construction equipment and certain other assets by James Armour, Inc. to Armour Excavating, Inc., and the subsequent distributions by James Armour, Inc. to its stockholders of its remaining assets, including an account receivable from Armour Excavating, Inc., on account of the transfer of the construction equipment, constituted a sale of such equipment and a liquidation of James Armour, Inc., pursuant to section 337, with the result that such distributions constituted liquidating distributions to the individual petitioners taxable as capital gains pursuant to sections 331 and 346, or whether such transactions constituted a reorganization under section 368(a)(1)(D), rendering the distributions taxable to the individual petitioners as dividends under section 356 to the extent of the undistributed earnings and profits of James Armour, Inc.

It is proper to consider the situation as it existed at the beginning and end of a series of steps to determine whether a statutory reorganization occurred, and that the liquidation of a corporation may be merely a step in a reorganization. The issuance of further stock would have been a meaningless gesture. There was in substance an exchange of stock of Armour, Inc. for stock of

Excavating, which meets the requirements of sections 354 and 356. Petitioners contended that there was not a section 368 (a)(1)(D) reorganization because Excavating did not acquire substantially all the assets of Armour, Inc., as required by section 354(b)(1)(A). The term "substantially all" is a relative term, dependent on the facts of any given situation. Whether the properties transferred constitute "substantially all" is a matter to be determined from the facts and circumstances in each case rather than by the application of any particular percentage.

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Ending Point

