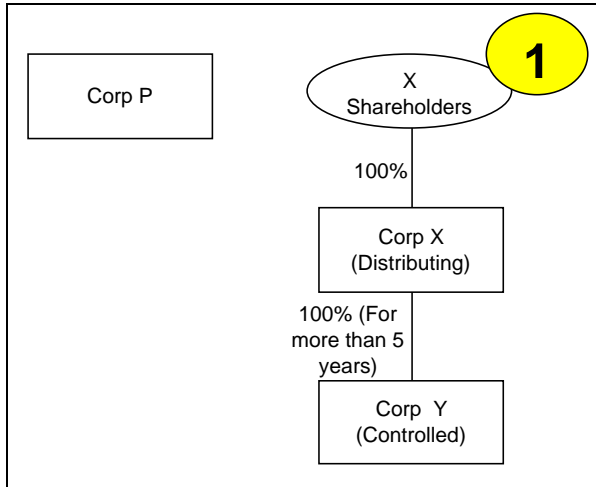
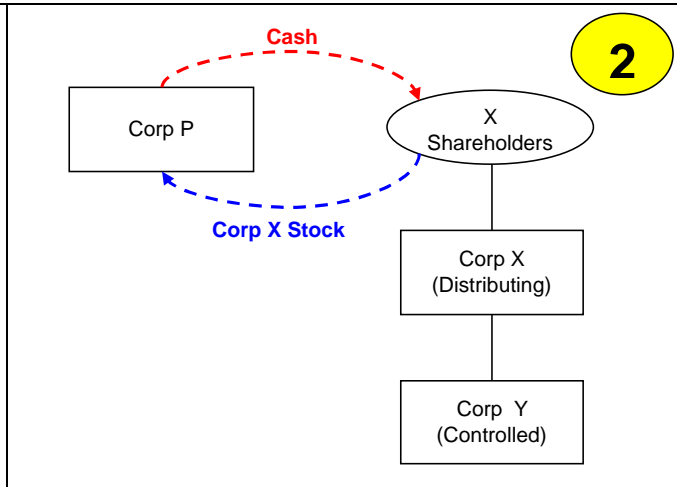


Failed Spin-Off: Control Acquired with Gain Recognized

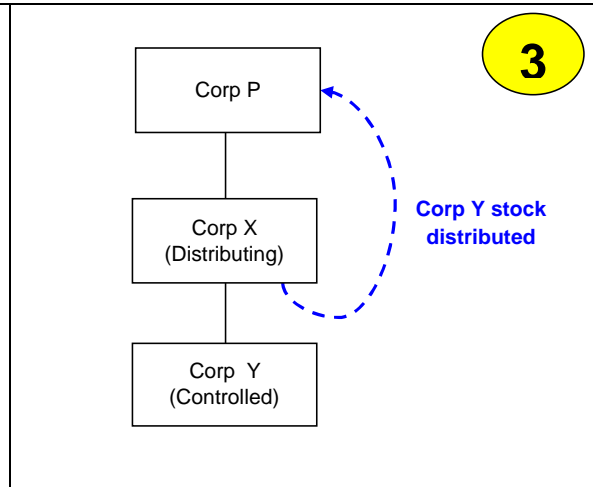
Initial Structure



Stock Purchase



First Distribution (2 Years Later)



This revenue ruling obsoletes Rev. Rul. 74-5, in light of the amendment of section 355(b)(2)(D) the Revenue Act of 1987, ("Act") and the Technical and Miscellaneous Revenue Act of 1988 ("TMRA"). Rev. Rul. 74-5 involved a distribution of the stock of a controlled corporation, Y, by a distributing corporation, X, to X's parent corporation, P, 2 years after P acquired the stock of X for cash in a transaction in which gain or loss was recognized ("first distribution"). At the time of the first distribution, X had owned the stock of Y for more than 5 years. P subsequently distributed the stock of Y to its shareholders at a time when it had not owned the stock of Y directly or indirectly through X for a 5-year period prior to the distribution ("second distribution"). Rev. Rul. 74-5 considered whether the requirements of section 355(b)(2)(D) were met with regard to each of the distributions, since P acquired control of X directly and Y indirectly in a transaction in which gain or loss was recognized within the 5-year period prior to each of the distributions.

Rev. Rul. 74-5 held that section 355(b)(2)(D) was inapplicable to the first distribution and held that the second distribution did not meet the requirements of section 355(b)(2)(D) because the distributing corporation, P, indirectly acquired control of the controlled corporation, Y, through another corporation, X, in a transaction in which gain or loss was recognized within the 5-year period prior to the distribution. The Act and TMRA amended section 355(b)(2)(D) to provide that a corporation is engaged in the active conduct of a trade or business only if control of a corporation which (at the time of acquisition of control) was conducting such trade or business (i) was not acquired by any distributee corporation directly (or through one or more corporations, whether through distributing corporation or otherwise) within the 5-year period ending on the date of the distribution, and was not acquired by the distributing corporation directly (or through one or more corporations) within such period, or (ii) was so acquired by any such corporation within such period, but, in each case in which such control was so acquired, it was so acquired only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period. Under section 355(b)(2)(D), as amended the Act and TMRA, the first distribution fails to meet the active trade or business requirement of section 355(b)(2)(D).

Second Distribution

