

Elkhorn Coal Co. v. Commissioner
95 F.2d 732 (4th Cir. 1937)

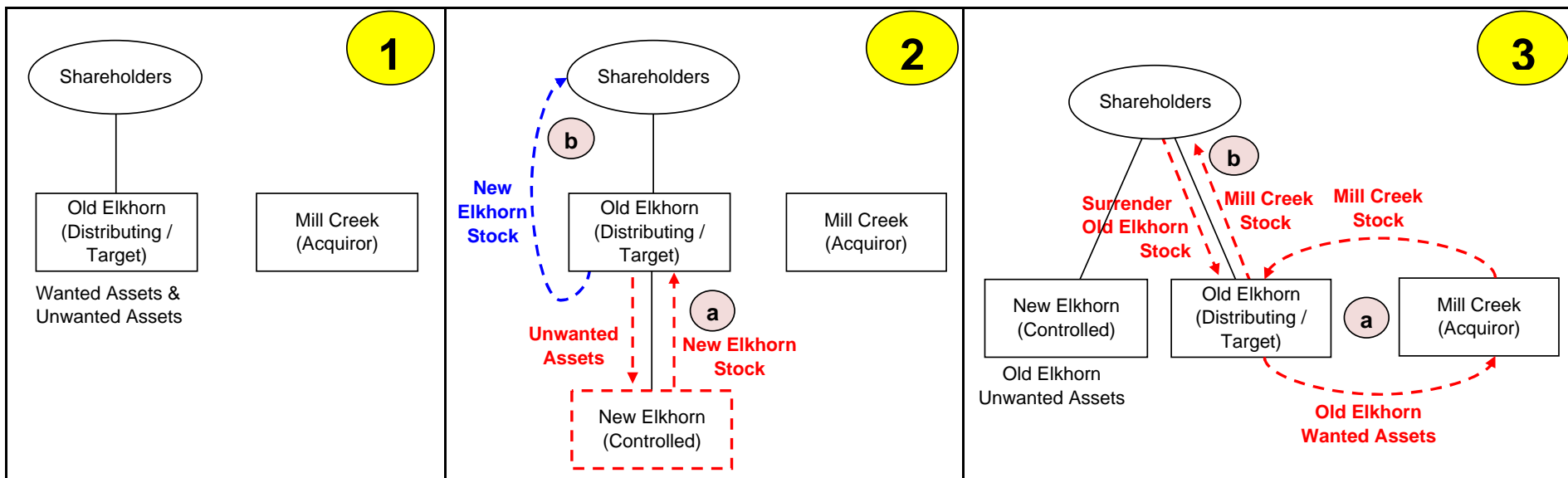
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**Spin-Off & Purported
 C Reorg of Distributing**

Initial Structure

D Reorg / Spin-Off

Purported C Reorg



The issue in Elkhorn Coal was not whether the spin-off qualified as a tax free reorganization. Rather, the focus was on the tax free status of the subsequent transfers.

The specific issue was whether Old Elkhorn had transferred substantially all of its assets to Mill Creek (in step 3(a)). The statute at issue was the predecessor to section 368(a)(1)(C). The court held that it was not a tax free reorganization because substantially all of Old Elkhorn's assets were not transferred to Mill Creek.

Compare Revenue Ruling 2003-79, which holds that the substantially all assets requirement is met where the unwanted assets remain in Distributing and the wanted assets are transferred to Controlled.

Note that, under current law, Distributing would be required to recognize gain on the distribution of Controlled stock (step 2(b)) under section 355(e), but the shareholders would not be required to recognize gain.

Ending Point

