

**Kansas Sand & Concrete, Inc.  
v. Commissioner  
462 F.2d 805 (10th Cir. 1972)**

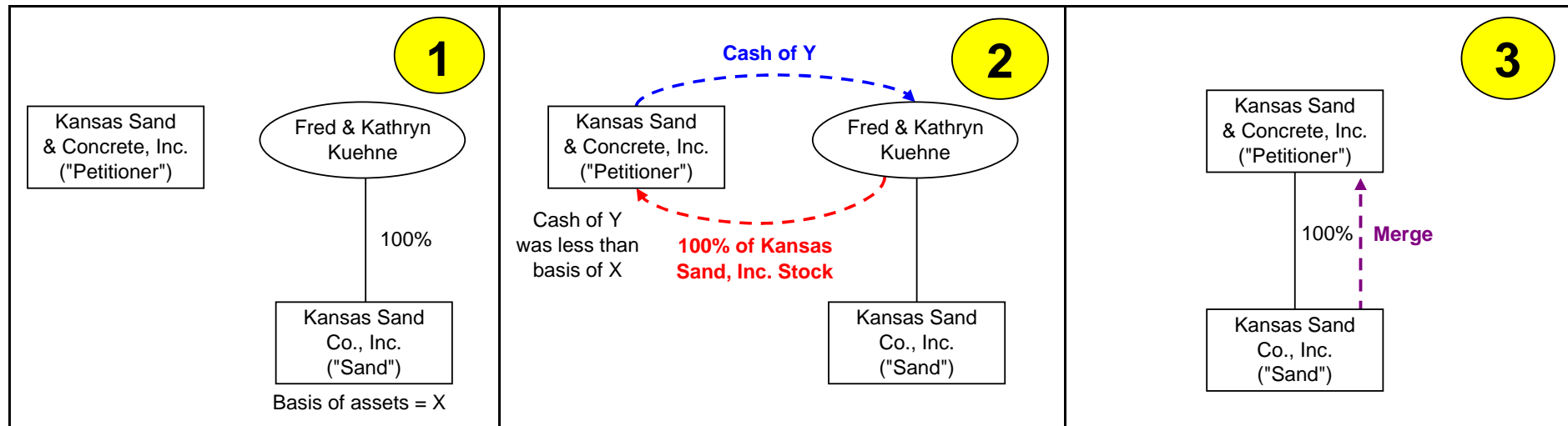
**Pre-Section 338 Stock Purchase  
& Upstream Merger**

Copyright © 2009 Andrew Mitchel LLC  
International Tax Services  
www.andrewmitchel.com

**Initial Structure**

**Stock Purchase (Sept. 28, 1964)**

**Upstream Merger (Dec. 31, 1964)**



On September 28, 1964, petitioner purchased all of the capital stock of another corporation, Sand. On December 31, 1964, in substantial accordance with Kansas corporation law, Sand was merged into petitioner. The purchase price allocable to Sand's depreciable assets was appreciably less than Sand's basis in those same assets. The issue raised was whether petitioner must use a purchase-price basis as prescribed by section 334(b)(2) or a carryover basis as prescribed by section 362(b) in computing its allowable depreciation deduction with respect to assets which it acquired from Sand as a result of the December transaction.

Since the December transaction constituted a distribution in complete liquidation and satisfied the additional requirements of section 332, it is not material that the transaction could also be described as a merger under Kansas law. Section 332 takes precedence over section 368 in these circumstances. Thus, the tax basis is determined under section 334(b)(2).

**Ending Point**

