

**Revenue Ruling 2008-18,
Situation 1**

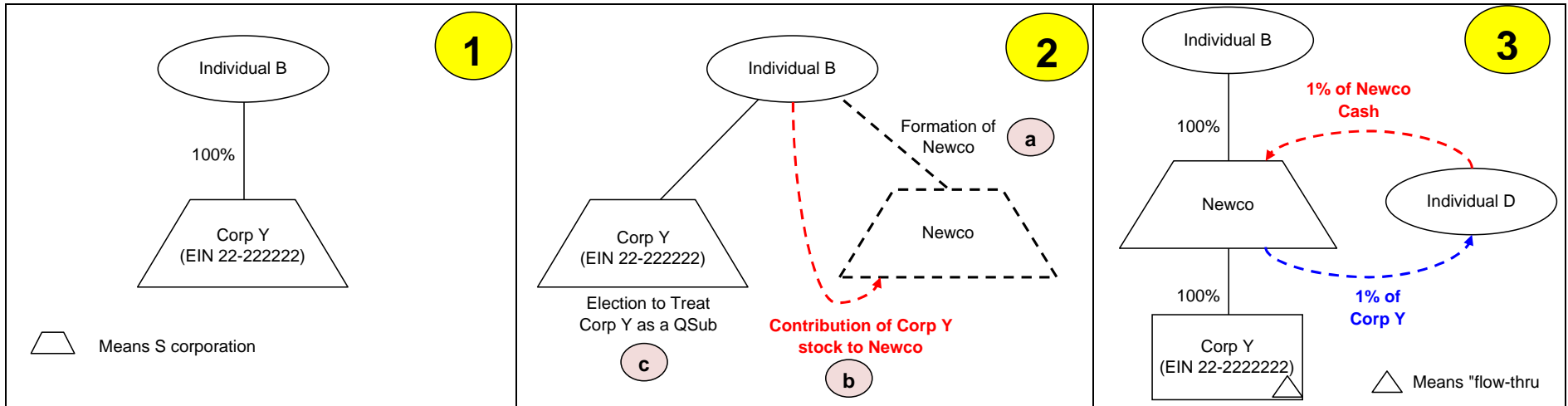
S Election In F Reorg With QSub

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Initial Structure

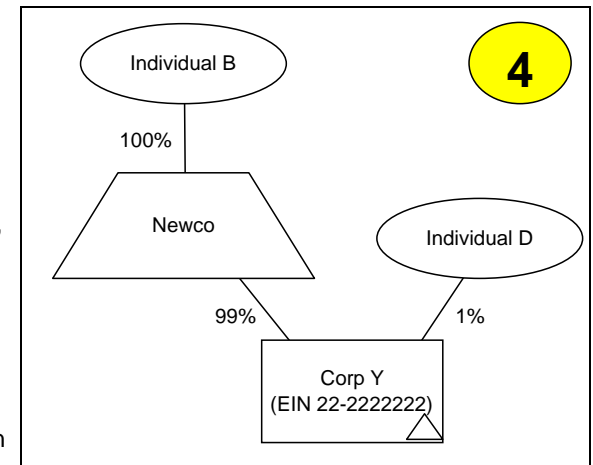
F Reorganization (Year 1)

Sale of 1% of Newco (Year 2)



B, an individual, owns all of the stock in Y, an S corporation. Y's EIN is 22-222222. In Year 1, B forms Newco and contributes all of the Y stock to Newco. Newco meets the requirements for qualification as a small business corporation and timely elects to treat Y as a qualified subchapter S subsidiary (QSub), effective immediately following the transaction. The transaction meets the requirements of a reorganization under section 368(a)(1)(F). In Year 2, Newco sells a 1% interest in Y to D.

Ending Point



Reg. 1.1361-4(a)(2) provides that, if an S corporation makes a valid QSub election with respect to a subsidiary, the subsidiary is deemed to have liquidated into the S corporation and that, except as provided in Reg. 1.1361-4(a)(5), the tax treatment of the liquidation of a larger transaction that includes the liquidation is determined under the Code and general principles of tax law, including the step transaction doctrine. The rules applicable to corporate reorganizations, as well as other provisions, recognize the unique characteristics of reorganizations qualifying under section 368(a)(1)(F). In contrast to other types of reorganizations, which can involve two or more operating corporations, a reorganization of a corporation under section 368(a)(1)(F) involves a single operating entity.

Rev. Rul. 64-250 provides that when an S corporation merges into a newly formed corporation in a transaction qualifying as a reorganization under section 368(a)(1)(F), and the newly formed surviving corporation also meets the requirements of an S corporation, the reorganization does not terminate the S election. Thus, the S election remains in effect for the new corporation. See also Rev. Rul. 2004-85. Because the QSub is treated as a separate corporation for certain federal tax purposes, the QSub must retain and use its EIN when it is treated as a separate corporation for federal tax purposes. Thus, it would not be appropriate for the acquiring corporation in a reorganization under section 368(a)(1)(F) to retain the EIN of the transferor corporation that becomes a QSub.

Consistent with Rev. Rul. 64-250, Y's original S election does not terminate but continues for Newco. Newco must obtain a new EIN. Y must retain its EIN (EIN 22-222222) even though a QSub election is made for it and must use its original EIN any time the QSub is otherwise treated as a separate entity for federal tax purposes (including for employment and certain excise taxes) or if the QSub election terminates. In Year 2, when Newco sells a 1% interest of Y to D, Y's QSub election terminates pursuant to section 1361(b)(3)(C). Y must use its original EIN of 22-222222 following the termination of Y's QSub election.