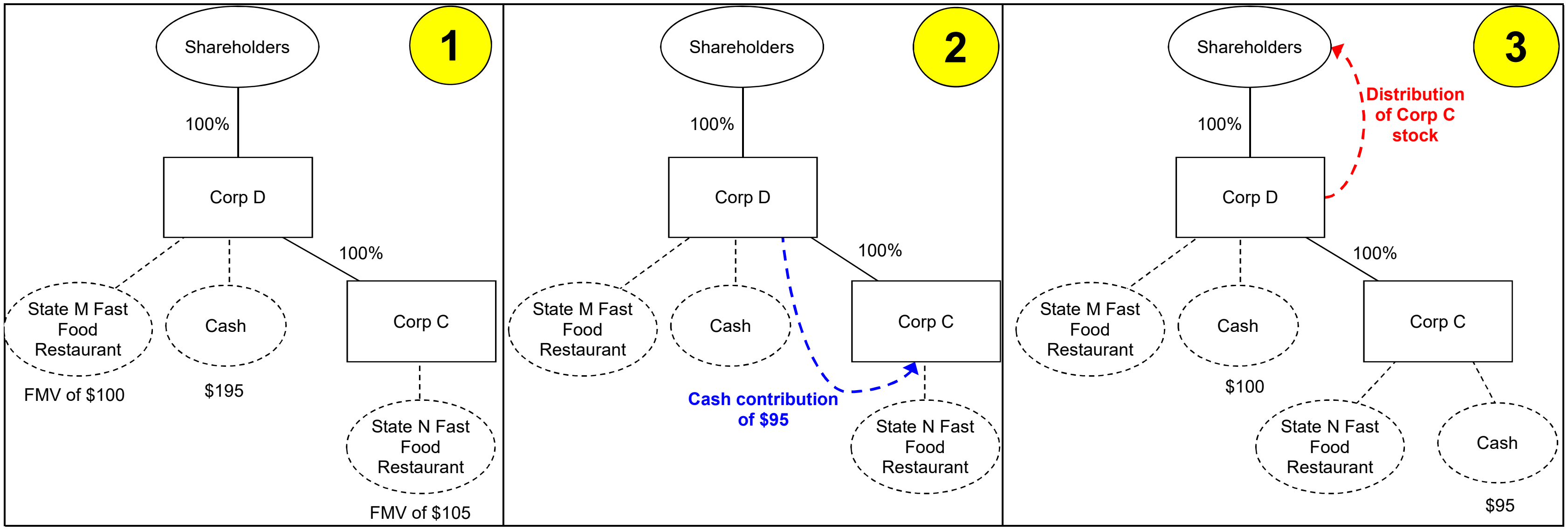
Prop. Reg. 1.355-2(d)(4)
Example 3

Proportionate Division of Nonbusiness Assets (Nondevice)

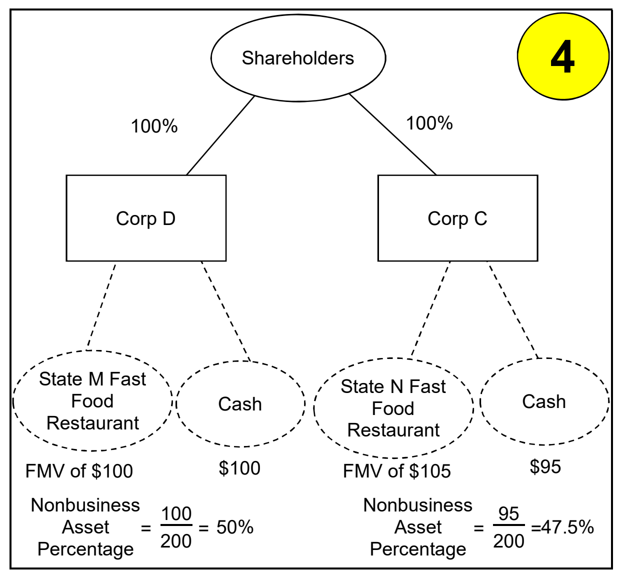
Initial Structure | **Cash Contribution** | **Spin-Off**



D owns and operates a fast food restaurant in State M and owns all of the stock of C, which owns and operates a fast food restaurant in State N. The value of the Business Assets of D's and C's fast food restaurants are $100 and $105, respectively. D also has $195 cash which D holds as a Nonbusiness Asset. D and C operate their businesses under franchises granted by competing businesses F and G, respectively. G has recently changed its franchise policy and will no longer grant or renew franchises to subsidiaries or other members of the same affiliated group of corporations operating businesses under franchises granted by its competitors. Thus, C will lose its franchise if it remains a subsidiary of D. The franchise is about to expire. The lease for the State M location will expire in 24 months, and D will be forced to relocate at that time. While D has not made any plans, it is weighing its option to purchase a building for the relocation. D contributes $95 to C, which C will retain, and distributes the stock of C pro rata among D's shareholders.

After the distribution, D's Nonbusiness Asset Percentage is 50 percent ($100/$200) and C's Nonbusiness Asset Percentage is 47.5 percent ($95/$200), each of which is evidence of device. The difference between D's Nonbusiness Asset Percentage and C's Nonbusiness Asset Percentage (2.5 percentage points) is less than 10 percentage points and thus is not evidence of device. The corporate business purpose for the distribution is evidence of nondevice. Based on all the facts and circumstances, the transaction is considered not to have been used principally as a device.

Ending Point



HUNDREDS of additional charts at www.andrewmitchel.com