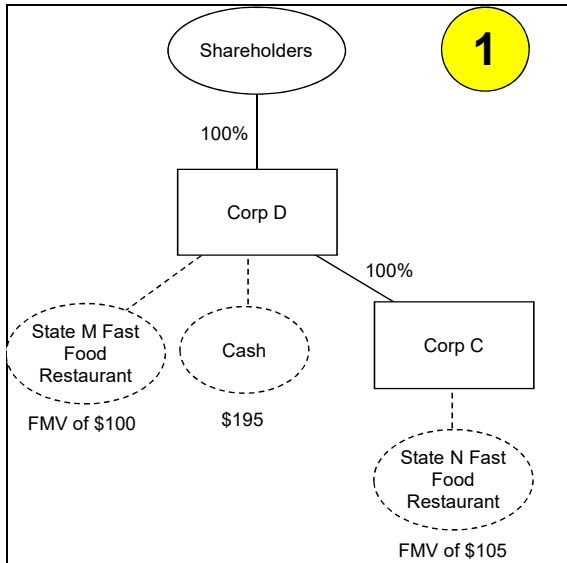
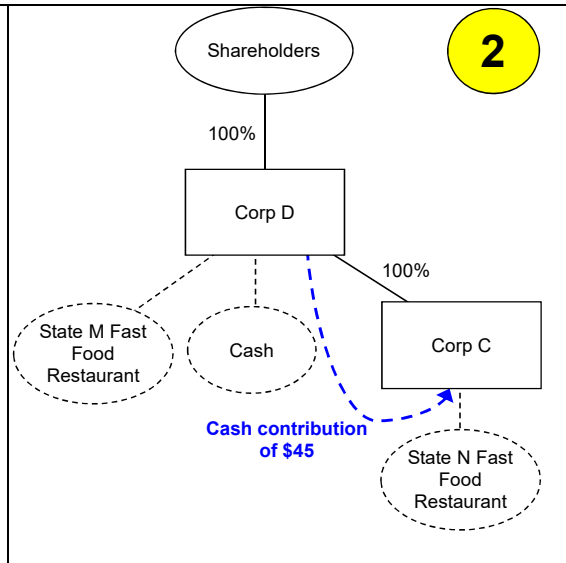


**Disproportionate Division of
Nonbusiness Assets (Nondevice)**

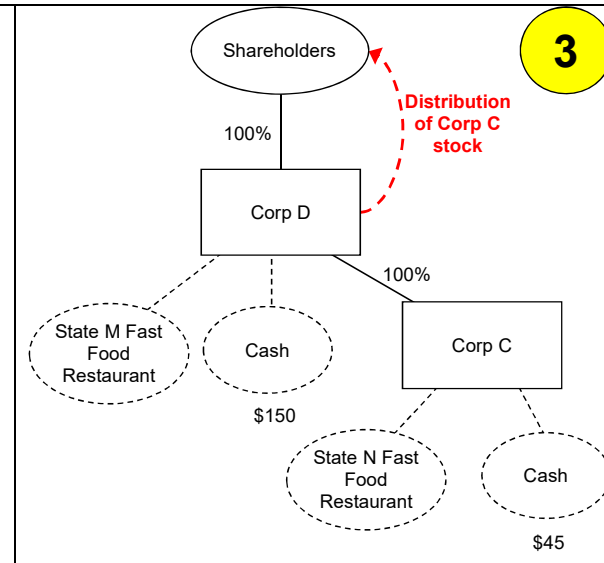
Initial Structure



Cash Contribution



Purported 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 6 months, and D will use \$80 of the \$150 cash it retains to purchase a nearby building for the relocation. D contributes \$45 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 60 percent, and C's Nonbusiness Asset Percentage is 30 percent. D's and C's ownership of Nonbusiness Assets of at least 20 percent of their respective Total Assets is evidence of device with respect to each. The difference between D's Nonbusiness Asset Percentage and C's Nonbusiness Asset Percentage is 30 percentage points, which is also evidence of device. However, D has a corporate business purpose for a significant part of the difference of Nonbusiness Asset Percentages because D's use of \$80 is required by business exigencies. The fact that the distribution is pro rata is also evidence of device. The corporate business purpose for the distribution is evidence of nondevice. Based on all the facts and circumstances, the transaction is not considered to have been used principally as a device.

Ending Point

