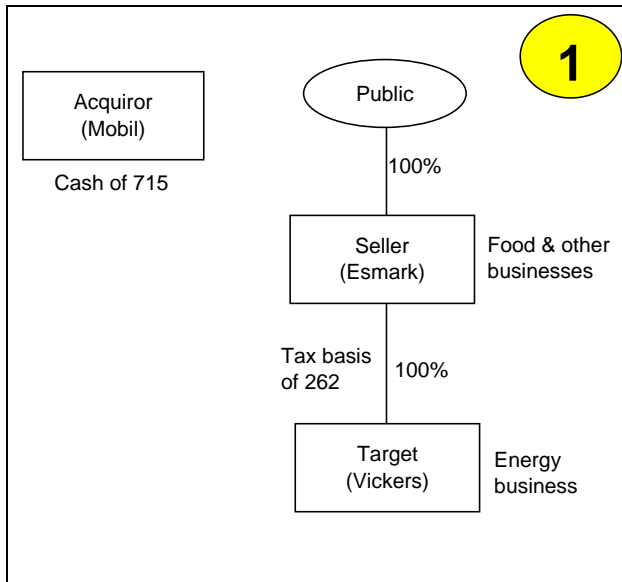


**Esmark v. Commissioner**  
**90 T.C. 171 (1988)**

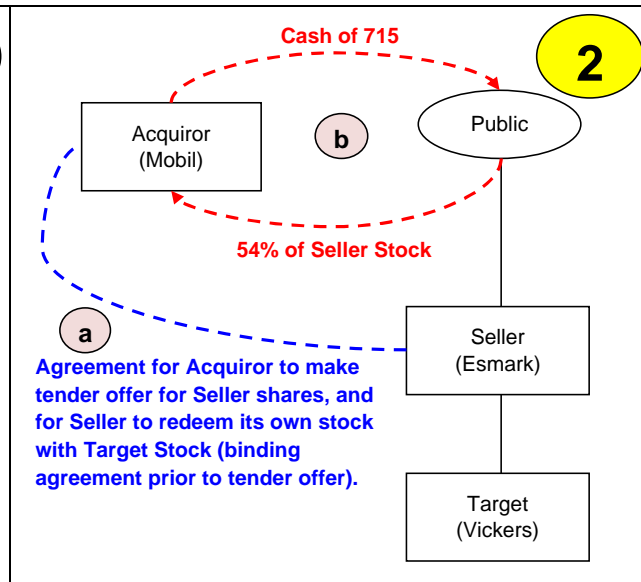
**Tender Offer followed by In-Kind Redemption**

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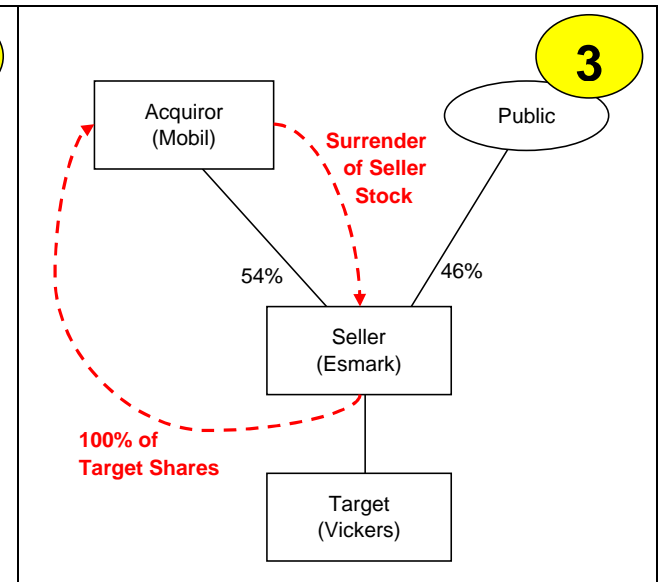
**Initial Structure**



**Agreement and Tender Offer**



**In-Kind Redemption**



Esmark had two goals: 1) reduce its outstanding capital stock, and 2) dispose of Vickers. The General Utilities Doctrine was repealed in a piecemeal manner. The excerpt below from Esmark provides a brief history:

In 1935 the Supreme Court decided *General Utilities* . . . [which] . . . allowed a corporation to avoid recognition of gain on the distribution of appreciated property to its shareholders. In 1954 Congress codified the *General Utilities* doctrine in section 311. . . . The Tax Reform Act of 1969 . . . amended section 311 by adding a new subsection (d) [currently subsection (b)] . . . [which] . . . undermined . . . the *General Utilities* doctrine. As a result of the amendment, corporations no longer enjoyed favorable non-recognition treatment on most transfers of appreciated property in redemption of stock. . . . [However,] Section 311(d)(2)(B) made [gain recognition] inapplicable if . . . a subsidiary's stock was used to redeem the stock of its parent corporation.

The Tax Court stated that "[t]his is a challenging case" and quoted a similar case (*Standard Linen Service*) saying that "the substance of what occurred conceivably can very well differ depending on the position from which the transactions are viewed." The Tax Court did not step together the tender offer and the redemption, but instead respected them as separate steps. Esmark saved over \$100 million in tax.

**Ending Point**

