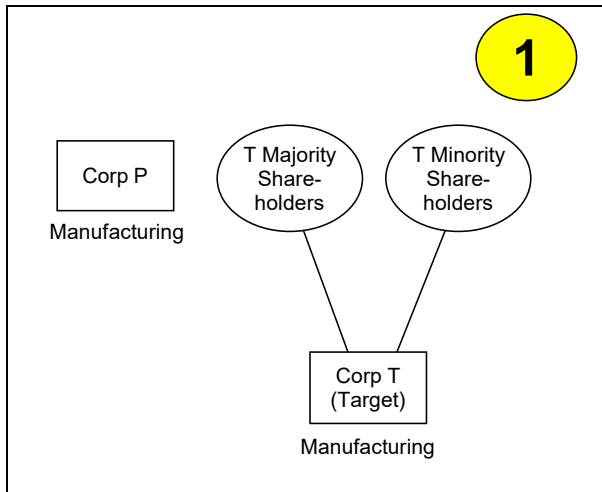
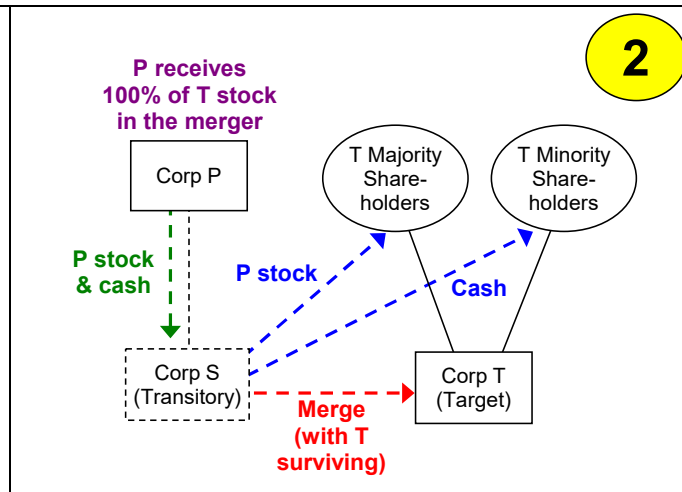


**Substantially All Properties
In Reverse Triangular Merger**

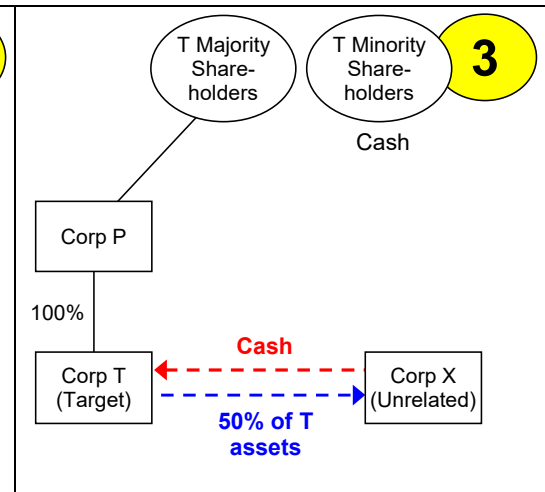
Initial Structure



Reverse Triangular Merger



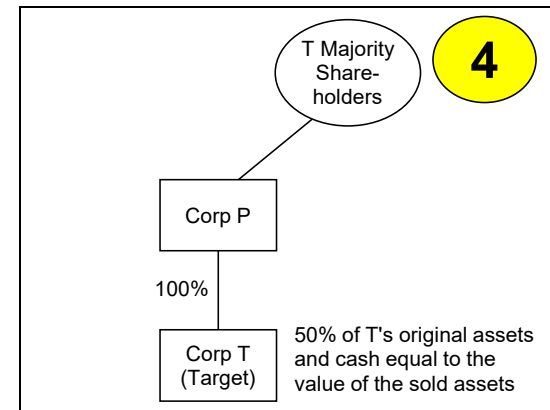
Asset Sale



P is a manufacturing corporation organized under the laws of state A. T is also a manufacturing corporation organized under the laws of state A. P organizes corporation S as a wholly owned state A subsidiary of P, and S merges with and into T in a statutory merger under the laws of state A. In the merger, the shareholders of T holding 90% of the T stock exchange their T stock for voting stock of P. The remaining shareholders of T receive \$y cash for their T stock. Immediately after the merger and as part of a plan that includes the merger, T sells 50% of its operating assets for \$z cash to X, an unrelated corporation. After the sale of the assets to X, T retains the sales proceeds. Without regard to the requirement that T hold substantially all of the assets of T and S, the merger satisfies all the other requirements applicable to reorganizations under sections 368(a)(1)(A) and 368(a)(2)(E).

Section 368(a)(1)(A) states that the term “reorganization” means a statutory merger or consolidation. Section 368(a)(2)(E) provides that a transaction otherwise qualifying under section 368(a)(1)(A) will not be disqualified by reason of the fact that stock of a corporation (the “controlling corporation”) that before the merger was in control of the acquiring corporation is used in the transaction, if (1) after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction), and (2) in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation that constitutes control of such corporation. Reg. 1.368-2(j)(3)(iii) provides that, for purposes of §368(a)(2)(E), “[t]he term ‘substantially all’ has the same meaning as in section 368(a)(1)(C).” Rev. Rul. 88-48 holds that the requirement of section 368(a)(1)(C) that the acquiring corporation acquire “substantially all” of the properties of a target corporation is satisfied when immediately prior to the target corporation’s transfer of assets to the acquiring corporation, the target corporation sells 50% of its historic assets to unrelated parties for cash and immediately transfers that cash, along with its other properties, to the acquiring corporation. Section 368(a)(2)(E) uses the term “holds” rather than the term “acquisition” as do sections 368(a)(1)(C) and 368(a)(2)(D) because it would be inapposite to require the surviving corporation to “acquire” its own properties. The “holds” requirement of section 368(a)(2)(E) does not impose requirements on the surviving corporation before and after the merger that would not have applied had such corporation transferred its properties to another corporation in a reorganization under section 368(a)(1)(C) or a reorganization under sections 368(a)(1)(A) and 368(a)(2)(D).

Ending Point



In this case, T’s post-merger sale of 50% of its operating assets for cash to X prevents T from holding substantially all of its historic business assets immediately after the merger. As in Rev. Rul. 88-48, however, the sales proceeds continue to be held by T. Therefore, the post-acquisition sale of 50% of T’s operating assets where T holds the proceeds of such sale along with its other operating assets does not cause the merger to violate the requirement of section 368(a)(2)(E) that the surviving corporation hold substantially all of its properties after the transaction. Accordingly, the merger qualifies as a reorganization under sections 368(a)(1)(A) and 368(a)(2)(E).