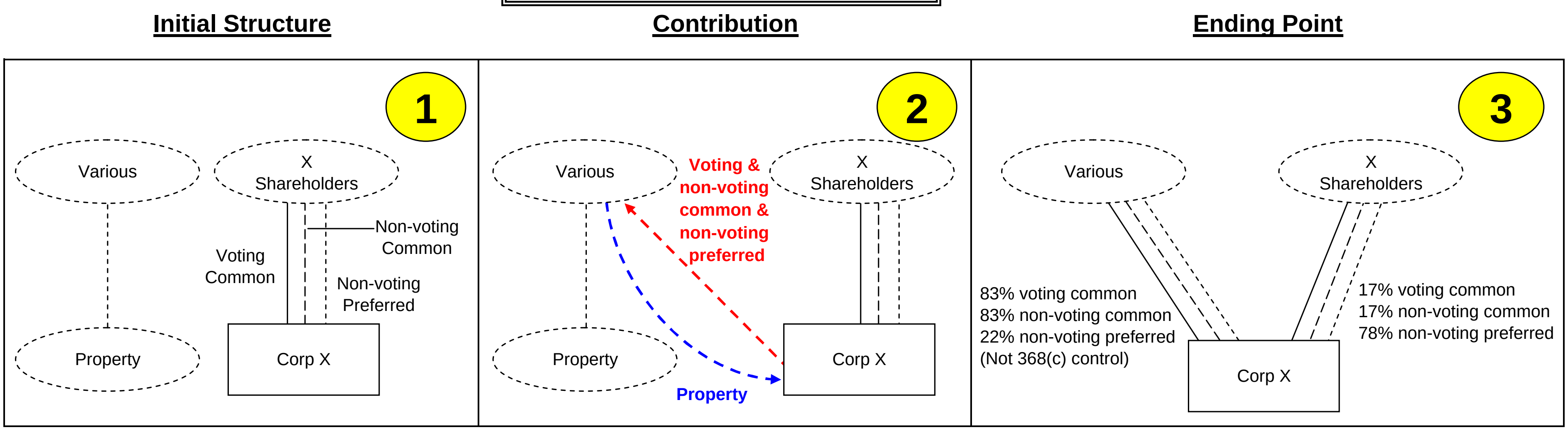
Revenue Ruling 59-259

368(c) Control - At Least 80% of Total Number of Shares of Each Class of Non-Voting Stock



Certain persons transferred property to a corporation in exchange for voting and non-voting stock, i.e., 83 percent of the Class A voting common stock, 83 percent of the Class A non-voting common stock, and 22 percent of the non-voting preferred stock. However, due to the relative number of non-voting common and preferred shares outstanding, these persons owned more than 80 percent of the total number of shares of the outstanding non-voting stock.

Section 351 provides, in effect, that no gain or loss shall be recognized to the transferors of property to a corporation if immediately after the transfer, the transferors are in "control" of the corporation as defined by section 368(c). Section 368(c) defines "control" to mean the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

The legislative history of section 368(c) indicates a congressional intent that ownership of each class of non-voting stock is required. Thus, "control" as defined by section 368(c) requires ownership of stock possessing at least 80 percent of the total combined voting power of all classes of voting stock and the ownership of at least 80 percent of the total number of shares of each class of outstanding non-voting stock. Therefore, the transfer of property under the above circumstances does not constitute a transfer to a controlled corporation within the purview of section 351.