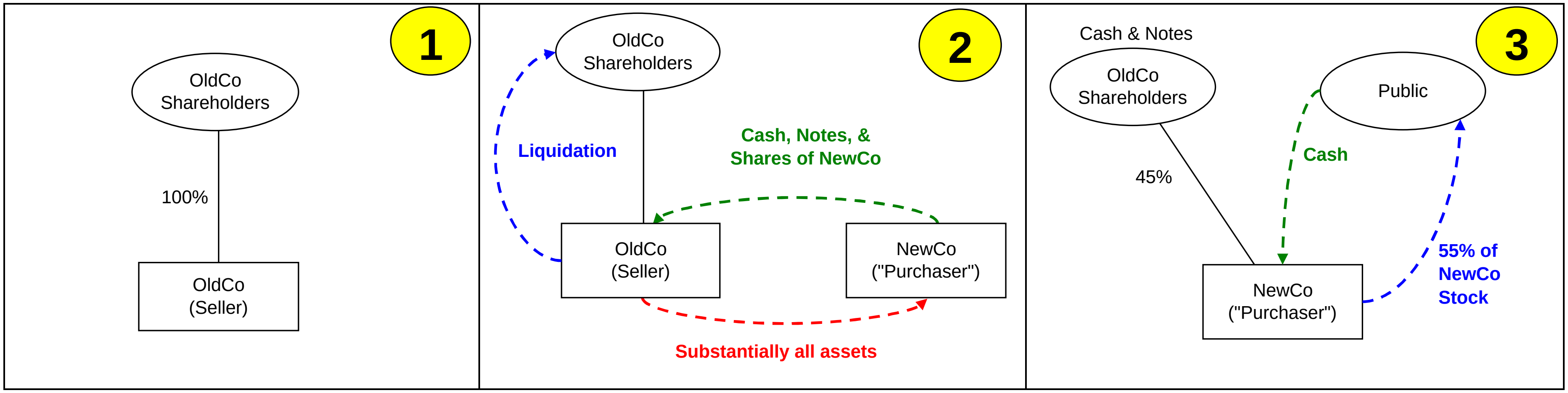
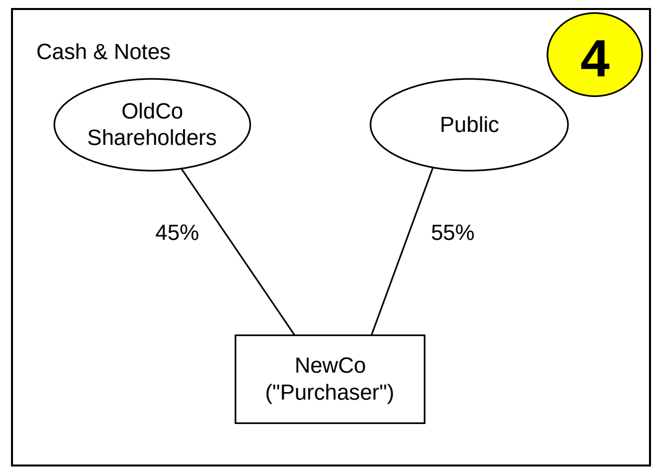
Revenue Ruling 61-156

Liquidation - Reincorporation with 45% Common Ownership

Initial Structure | **Sale of Substantially All Assets** | **Initial Public Offering**



Ending Point



Within a 12-month period following the adoption of a plan of complete liquidation, a corporation sold substantially all of its assets to a new corporation formed by the management of the selling corporation. Immediately thereafter, the new corporation sold shares of its stock, equal to 55% of all the shares to be issued, to the public through underwriters. The "selling" corporation was then completely liquidated, paying off its liabilities and distributing the balance of its assets, including a 45% stock interest in the purchasing corporation, long-term notes, and cash to its shareholders.

Reg. 1.331-1(c) provides: "A liquidation which is followed by a transfer to another corporation of all or part of the assets of the liquidating corporation or which is preceded by such a transfer may . . . have the effect of the distribution of a dividend or of a transaction in which no loss is recognized and gain is recognized only to the extent of 'other property.'" The issuance of stock to new investors can be disregarded as being a separate transaction. The transaction was shaped so as to make it essentially "a device whereby it has been attempted to withdraw corporate earnings at capital gains rates by distributing all the assets of a corporation in complete liquidation and promptly reincorporating" them. See Conf. Rpt. No. 2543, 83d Cong., to accompany H.R. 8300 (Internal Revenue Code of 1954), page 41.

The fact that the shareholders of the "selling" corporation own only 45% of the "purchasing" corporation does not dispose of the reorganization question. John A. Nelson Co. v. Helvering, 296 U.S. 374, (1936). The transaction was held to constitute a reorganization within the meaning of sections 368(a)(1)(E) and (F). In addition, the distribution of cash, long-term notes, and other assets should be treated as a distribution under section 301.