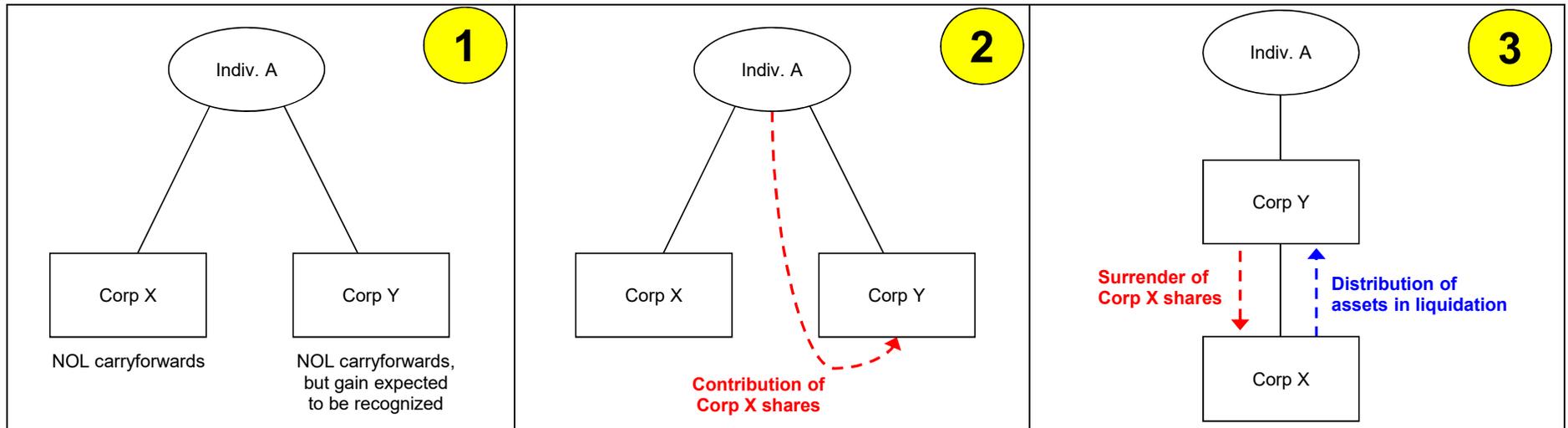


Contribution & Liquidation Was An Asset Reorganization & Section 269 Did Not Apply

Initial Structure

Contribution

Liquidation

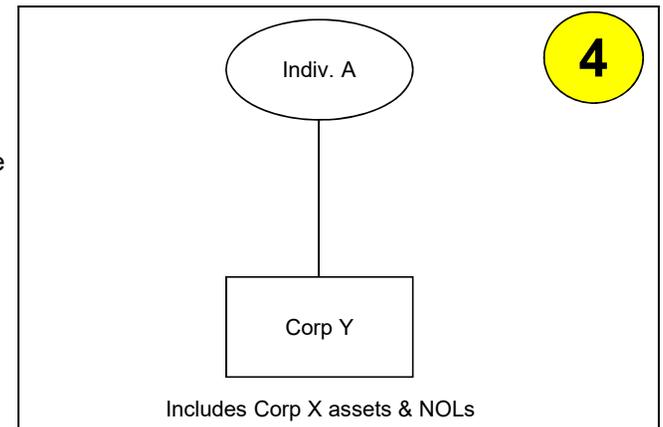


A, an individual, in January 1961, purchased all of the stock of unrelated corporations X and Y, each of which was actively engaged in a business. In the 5-year period preceding the acquisition, both corporations operated at a profit. During 1961 and 1962 the corporations were operated separately and both corporations showed a small profit. During 1963, 1964, and 1965 both corporations incurred substantial losses. In 1964, the Federal Government initiated procedures to condemn a portion of Y's land.

In February 1966, in anticipation of the large gain to be realized from the condemnation, A contributed his X stock to Y. Five days later X was liquidated into Y so that the losses of both businesses could be used to partially offset Y's gain.

While Y, as a matter of form, acquired control of X, the transitory control lacked substance since it was merely the initial step of a pre-arranged plan to liquidate X into Y. Thus, the "essential nature of the transaction" involved in the present case was the indirect acquisition by Y of the X property. See Reg. 1.269-2(b). Accordingly, since section 269(a)(1) pertains only to the acquisition of control of a corporation and not to the acquisition of its assets, the section is not applicable to the described transaction. Moreover, section 269(a)(2) is not applicable since A owned all of the stock of each corporation prior to the acquisition of X's property by Y. The net operating losses in this type of case will carry over under section 381 provided the transaction qualifies as a reorganization under section 368(a)(1). Thus, the taxpayer here would have to demonstrate that corporations X and Y were combined for a valid business purpose and not merely in order to secure the benefits of the net operating loss carryovers. See Reg. 1.368-1. See also Rev. Rul. 67-274.

Ending Point



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