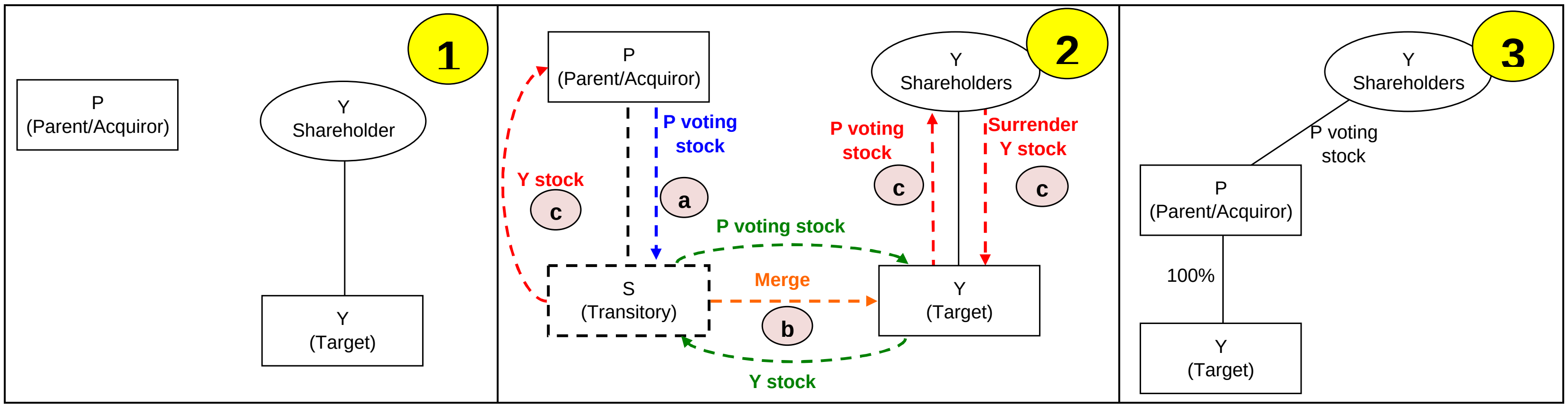
Revenue Ruling 67-448

Reverse Triangular Merger Was, in Substance, a B Reorganization

Initial Structure | **Reverse Triangular Merger/ B Reorganization** | **Ending Point**



Corporation P and Corporation Y are publicly owned corporations. Corporation P wanted to acquire the business of Corporation Y but could do so with an effective result only if the corporate entity of Y were continued intact due to the necessity of preserving its status as a regulated public utility. P also desired to eliminate the possibility of minority shareholders in the event less than all of the shareholders of Y agreed to the transaction. Since an outright acquisition of stock pursuant to a reorganization as defined in section 368(a)(1)(B) would not achieve this result, the plan of reorganization was consummated as follows:

(a) P transferred shares of its voting stock to its newly formed subsidiary, S, in exchange for shares of S stock.
(b) S (whose only asset consisted of a block of the voting stock of P) merged into Y in a transaction which qualified as a statutory merger under the applicable state law.
(c) Pursuant to the plan of reorganization and by operation of state law, the S stock owned by P was converted into Y stock. At the same time the Y stock held by its shareholders was exchanged for the P stock received by Y on the merger of S into Y. The end result of these actions was that P acquired from the shareholders of Y in exchange for its own voting stock more than 95% of the stock of Y.
(d). Y shareholders owning less than five percent of the stock of Y dissented to the merger and had the right to receive the appraised value of their shares paid solely from the assets of Y. No funds, or other property, have been or will be provided by P for this purpose.

Thus, upon the consummation of the plan of reorganization Y became a wholly owned subsidiary of P. At the time of the transaction P had no plan or intention to liquidate Y or to merge it into any other corporation. The transaction described above does not constitute a reorganization within the meaning of either section 368(a)(1)(A) or section 368(a)(1)(C) because no assets of Y were transferred to nor acquired by another corporation in the transaction but rather all assets (except for amounts paid to dissenting shareholders) were retained in the same corporate entity. [Note that under current law this transaction would qualify as a reverse triangular merger under sections 368(a)(1)(A) and 368(a)(2)(E).] Section 368(a)(1)(B) provides in part that the term "reorganization" means the acquisition by one corporation, in exchange solely for all or a part of its voting stock, of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition).

It is evident that the shortest route to the end result described above would have been achieved by a transfer of P voting stock directly to the shareholders of Y in exchange for their stock. This result is not negated because the transaction was cast in the form of a series of interrelated steps. The transitory existence of the new subsidiary, S, will be disregarded. The effect of all the steps taken in the series is that Y became a wholly owned subsidiary of P, and P transferred solely its voting stock to the former shareholders of Y. Accordingly, the transaction will be treated as an acquisition by P, in exchange solely for part of its voting stock, of stock of Y in an amount constituting control (as defined in section 368(c)) of Y, which qualifies as a reorganization within the meaning of section 368(a)(1)(B).