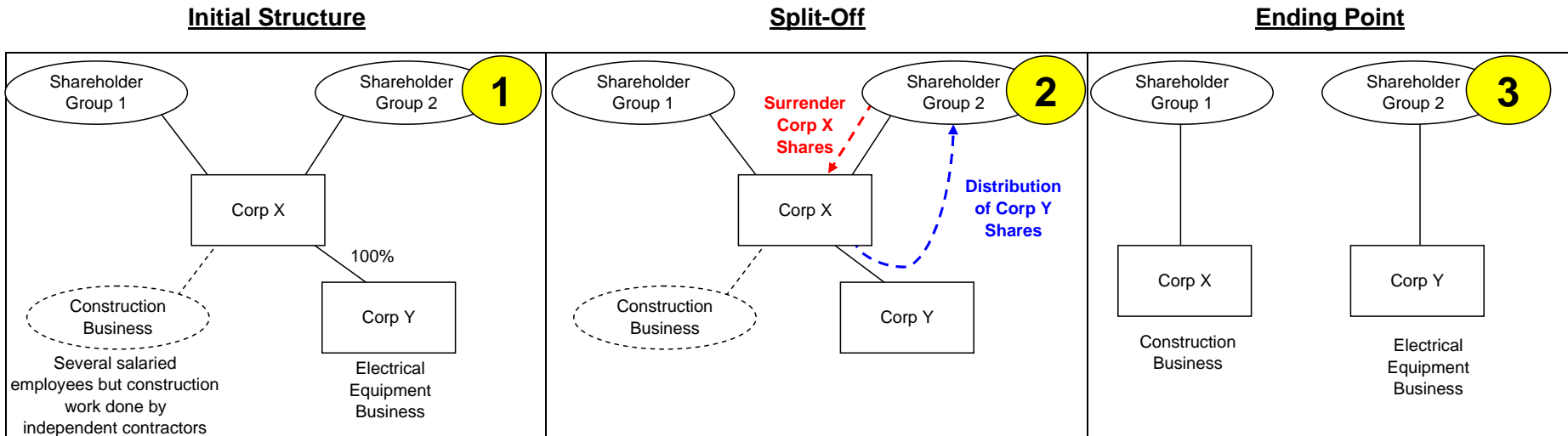


**Active Business Even With
Some Independent Contractors**



Since 1960, X corporation has been engaged in business as a general contractor in the construction industry. During this same period Y corporation, a wholly-owned subsidiary of X corporation, has been actively engaged in the manufacture and sale of electrical equipment. The activities of X corporation, performed by several salaried employees, consist of submitting bids on prospective jobs; negotiating and entering into contracts with principals and with subcontractors, acting as independent contractors; purchasing or leasing equipment or supplies, depending on the particular job; and supervising work of subcontractors to determine if it conforms to contract specifications. X has the primary responsibility for the completion of each job. For valid business reasons, X corporation proposes to distribute the stock of Y corporation to those shareholders who are primarily interested in the manufacture and sale of electrical equipment in exchange for all their stock in X corporation. The shareholders of X corporation who are interested in the construction business will become the owners of all the outstanding X corporation stock after the exchange.

For such treatment section 355(b)(1)(A) requires that both the distributing corporation and the controlled corporation must be engaged immediately after the distribution in the active conduct of a trade or business. Section 355(b)(2)(B) provides that a corporation will be treated as engaged in the active conduct of a trade or business if and only if such trade or business has been actively conducted throughout the five-year period ending on the date of distribution. Section 355, by requiring that a trade or business be actively conducted, connotes substantial management and operational activities directly carried on by the corporation itself and not the activities of others outside the corporation, including independent contractors. However, the fact that a portion of a corporation's business activities is performed by independent contractors will not preclude the corporation from being engaged in the active conduct of a trade or business if the corporation itself directly performs active and substantial management and operational functions. In the instant case, X's general contracting activities include its direct performance of active and substantial management and operational functions, apart from those activities performed by the subcontractors acting as independent contractors. Accordingly, X is engaged in the active conduct of a trade or business within the meaning of section 355(b). Provided all the other requirements of section 355 are met, the distribution by X of the stock of Y, as described above, will qualify as a distribution under section 355(a)(1).