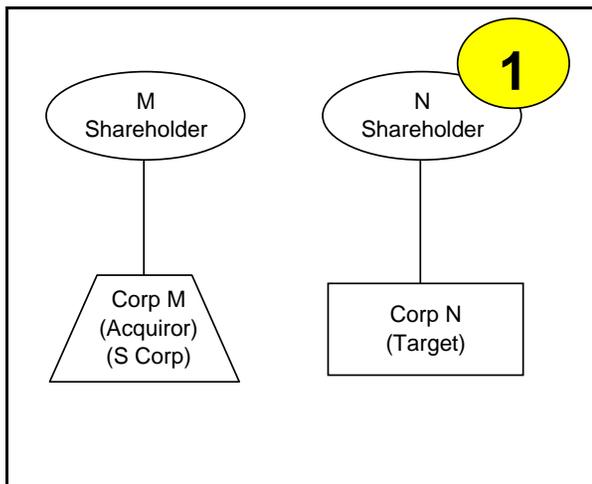
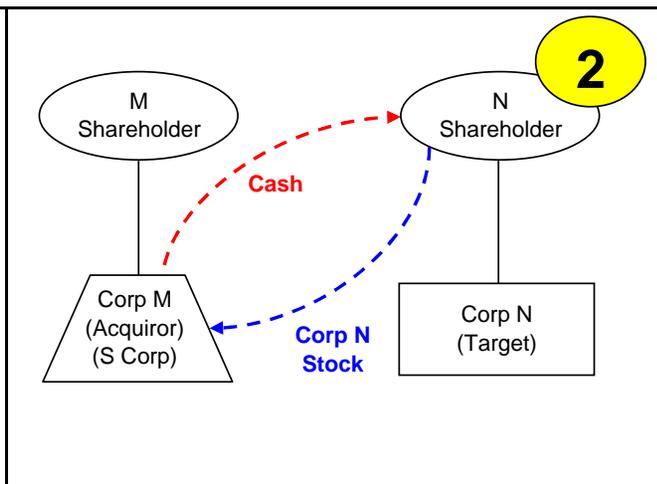


Momentary Ownership of Corp Did Not Terminate S Election

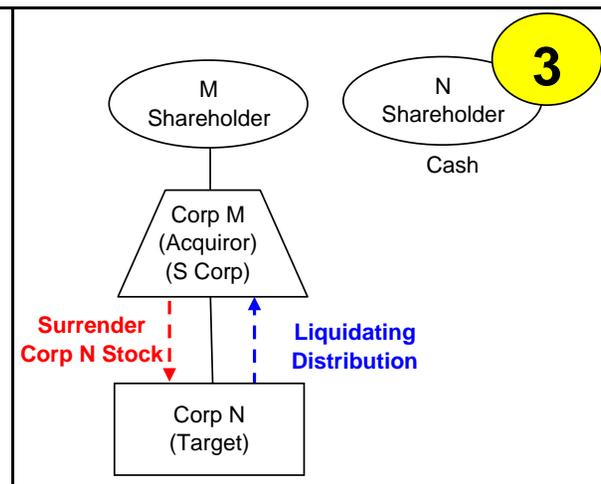
Initial Structure



Stock Acquisition (March 3, 1970)



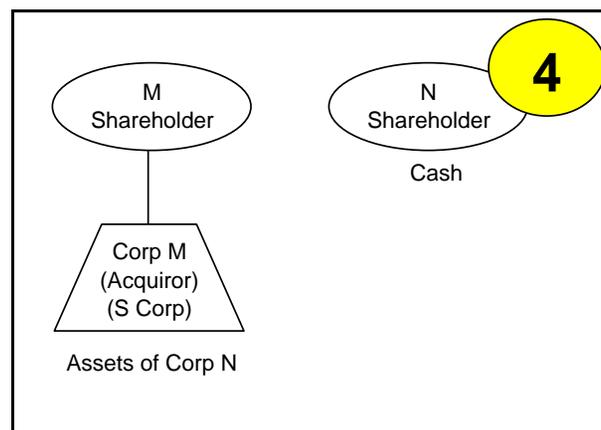
Liquidation (April 1, 1970)



On March 3, 1970, M corporation, pursuant to a plan to acquire the assets of N corporation, purchased all of the stock of N corporation through a tender offer accepted by the shareholders of N. On April 1, 1970, N was liquidated and all of its property was distributed to M. M had in force an election to be taxed as a Subchapter S corporation. The Code provided the general rule that an election under subsection (a) made by a small business corporation, shall terminate if the corporation ceases to be a small business corporation. The Code provided that the term "small business corporation" means a domestic corporation which is not a member of an affiliated group as defined in section 1504.

In the instant case, M purchased the stock of N for the purpose of acquiring N's assets. While M, as a matter of form briefly owned N's stock, that ownership was merely a momentary control since it was the initial step of a plan to acquire the assets of N. Accordingly, although an affiliated group, as defined in section 1504, consisting of M and N came into existence when M completed its acquisition of at least 80 percent of the outstanding stock of N, for purposes of qualifying as an S corporation momentary control will not be considered as terminating M's election as a small business corporation since the liquidation of N under section 334(b)(2) occurred within 30 days of M's acquisition of N's stock. **Note that in 1997, section 1361(b)(2) was amended to eliminate the affiliated group prohibition.**

Ending Point



Compare Rev. Rul. 72-320, which holds that since one corporation never contemplated more than momentary control of a second corporation, such affiliation will not be considered as terminating the first corporation's election under Subchapter S.

 Means the entity is classified as an S corporation