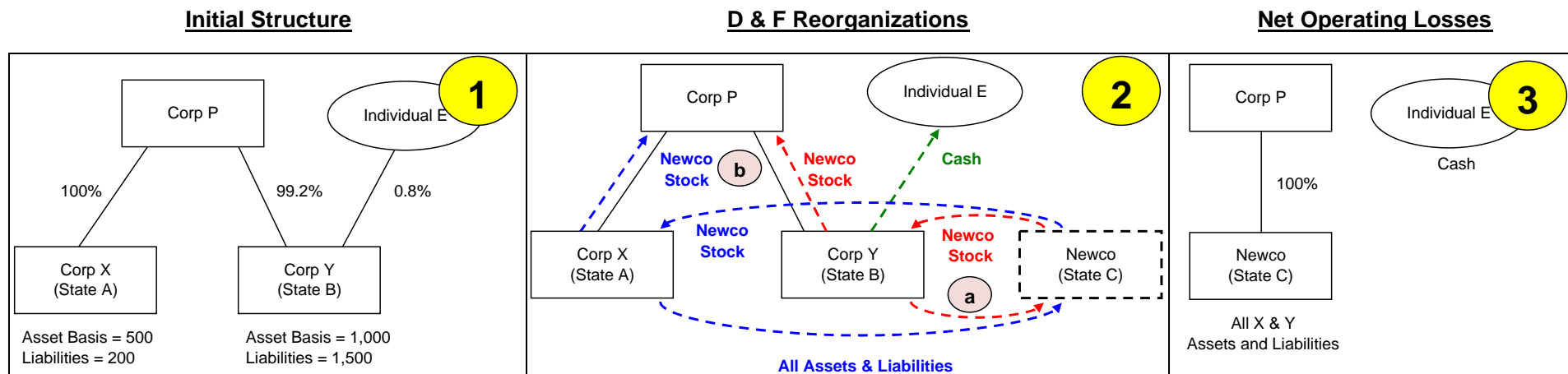


**D & F Reorganization with Liabilities Exceeding Basis**



P, a domestic corporation, owns 100 percent of the outstanding stock of X, a corporation organized under the laws of State A. P also owns 99.2 percent of the outstanding stock of Y, a corporation organized under the laws of State B. The remaining stock of Y is owned by E, an individual. In order to avoid the imposition of franchise taxes newly enacted by State A and State B, a decision was made to reincorporate X and Y in State C. In order to effect the plan, a new corporation (Newco) was formed under the laws of State C. X and Y transferred to Newco all of their assets solely in exchange for voting stock of Newco, and the assumption by Newco, of the liabilities of X and Y in a transaction that qualified as a reorganization within the meaning of section 368(a)(1)(D) and section 368(a)(1)(F). E dissented to the plan and received, from Y, the cash value of E's Y stock. Following the transaction, Newco continued unchanged the business activities of the transferor corporations.

The X assets transferred consisted of a plant and equipment with a total adjusted basis of 500x dollars. The liabilities of X assumed by Newco totaled 200x dollars. The Y assets transferred consisted of a plant and equipment with a total adjusted basis of 1,000x dollars. The liabilities of Y assumed by Newco totaled 1,500x dollars.

Rev. Rul. 75-161 and Rev. Rul. 76-188 are distinguishable from the instant case because the transactions described therein do not qualify as reorganizations under section 368(a)(1)(F). Rev. Rul. 75-161 holds that a reorganization that qualifies as only a D reorganization is subject to section 357(c)(1)(B). Section 357(c) is not applicable to reorganizations described in section 368(a)(1)(F), even though the transaction is also described as another type of reorganization such as section 368(a)(1)(D), because section 368(a)(1)(F) reorganizations are nothing more than a mere change in identity, form, or place of organization and the recognition of gain on such transactions is not intended by section 357(c). Note that section 357(c)(1)(B) was amended in 2004 as part of the American Jobs Creation Act. This amendment obsoletes Rev. Rul. 75-161 and Rev. Rul. 79-289. Section 357(c)(1)(B) now only applies to divisive D reorganizations (i.e., section 355 spin-offs, split-offs, and split-ups). See Rev. Rul. 2007-8.