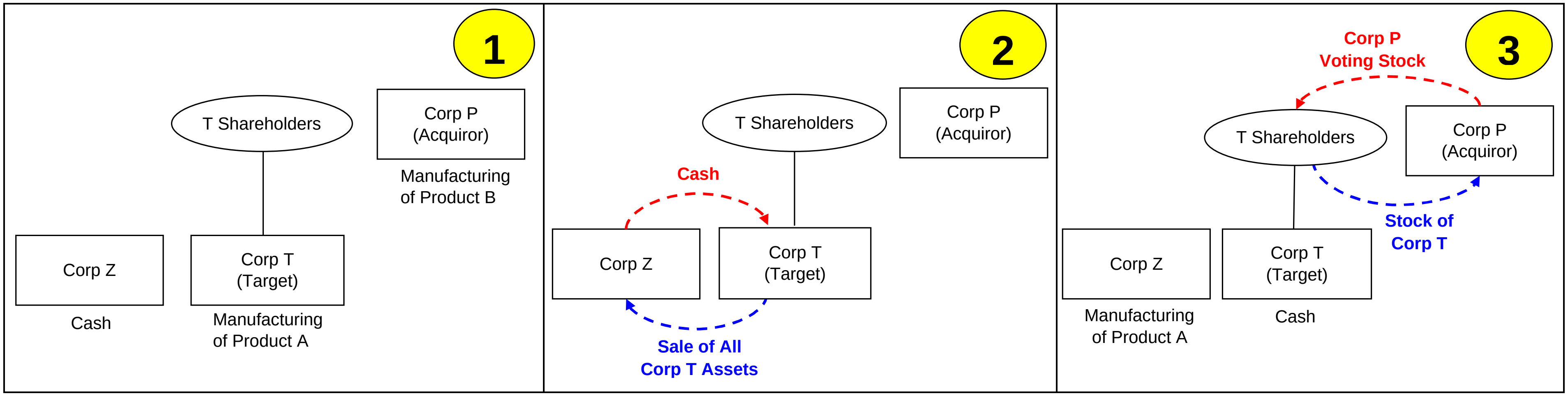
Revenue Ruling 81-92

No COBE For All Cash Target in Purported B Reorganization

Initial Structure | **Sale of Assets** | **Purported B Reorganization**



T, a corporation engaged in manufacturing, sold all of its assets for cash to Z, an unrelated corporation. The sale was made as part of a plan of reorganization in which P, a corporation engaged in the manufacture of products different than those previously manufactured by T, acquired all of the outstanding stock in T from T's shareholders, in exchange solely for P voting stock. T, as a wholly owned subsidiary of P, then used the cash realized on the sale of its manufacturing assets to engage in a business entirely unrelated to its previous manufacturing business.

Reg. 1.368-1(d) provides, in general, that the continuity of business enterprise ("COBE") requirement of section 1.368-1(b) is satisfied if the transferee in a corporate reorganization either (i) continues the transferor's historic business or (ii) uses a significant portion of the transferor's historic business assets in a business. Because the COBE requirement must be met for a transaction to qualify as a reorganization, Reg. 1.368-1(d) is applicable to a transaction intended to qualify as a tax free reorganization under section 368(a)(1)(B). Therefore, the transferee corporation must continue the transferor's historic business, or continue to use a significant portion of the transferor's historic business assets, in modified corporate form as a subsidiary of the transferee corporation for the transaction to qualify under section 368(a)(1)(B).

In the instant transaction, the acquisition by P of the T stock solely for P's voting stock does not qualify as a tax-free reorganization under section 368(a)(1)(B) since P did not continue T's historic (the manufacturing) business or use a significant portion of T's historic business assets (those used in the manufacturing business) in a business conducted as a subsidiary of P after the transaction.

Ending Point