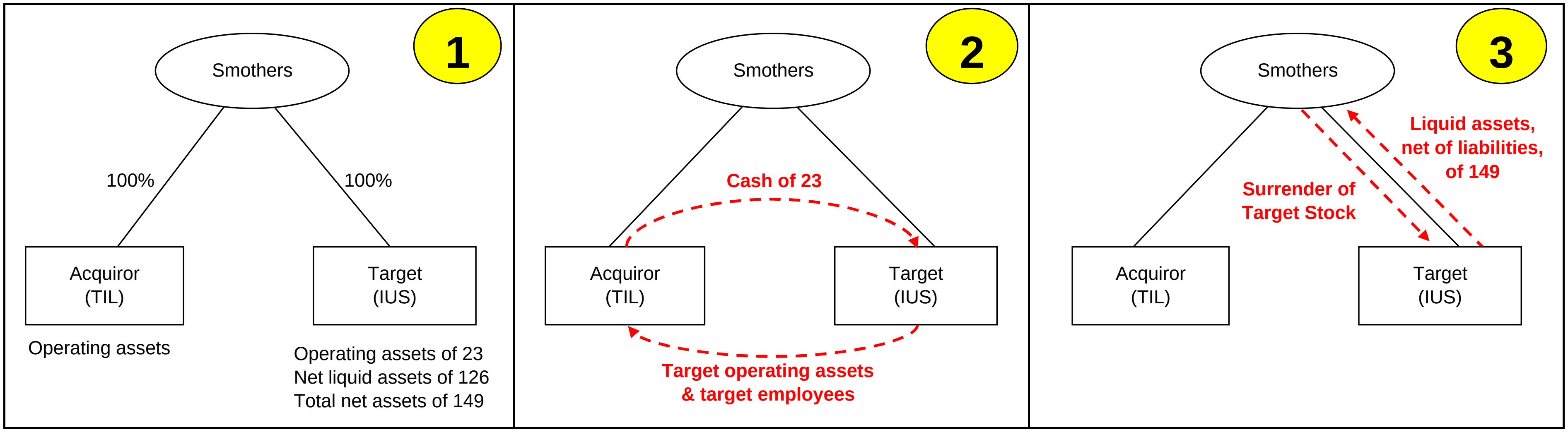
Smothers v. United States
642 F.2d 894 (5th Cir. 1981)

Liquidation-Reincorporation: D Reorg with Boot

Initial Structure | **Sale of Operating Assets** | **Target Liquidation**



This case occurred prior to the repeal of the General Utilities doctrine. Thus, no corporate level tax would have been imposed if the transactions were treated as a liquidation of Target.

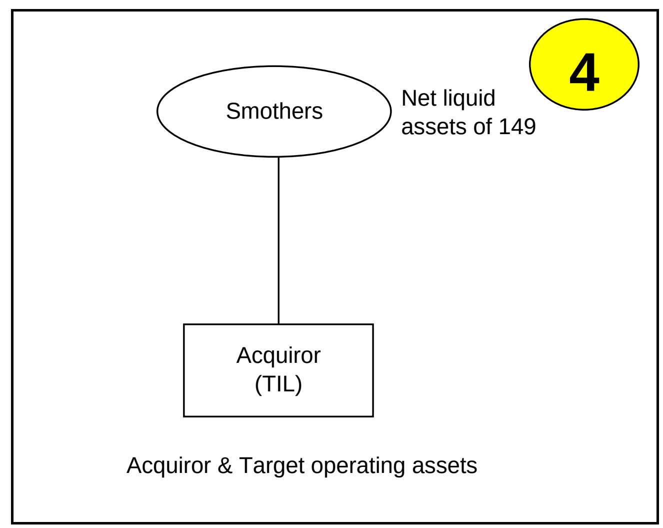
The taxpayer argued that the "substantially all assets" requirement of section 354(b)(1)(A) was not met. The Court stated:

> To maintain the integrity of the dividend provisions of the Code, "substantially all assets" in this context must be interpreted as an inartistic way of expressing the concept of "transfer of a continuing business".

The Court also stated that:

> [T]he literal language of §368(a)(1)(D) and §§ 354(a), 354(b)(1)(B), requires that the transferee corporation "exchange" some of its "stock or securities" for the assets of the transferor, and that those items be "distributed" to the shareholders of the transferor, before a D reorganization can be found. Yet both of those requirements have uniformly been ignored as "meaningless gestures" in the reincorporation context, in which the same shareholders own all the stock of both corporations.

Ending Point



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