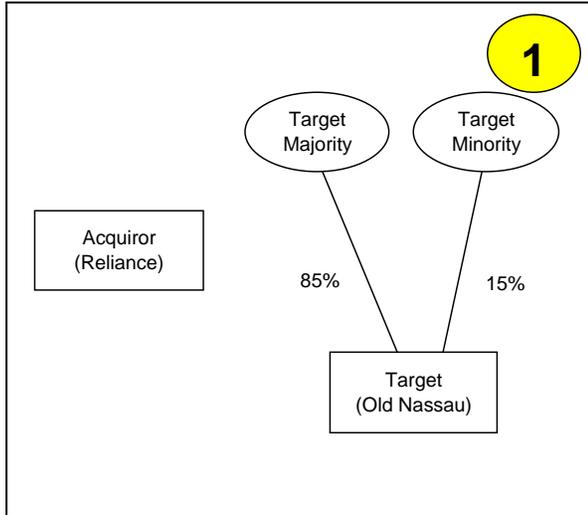
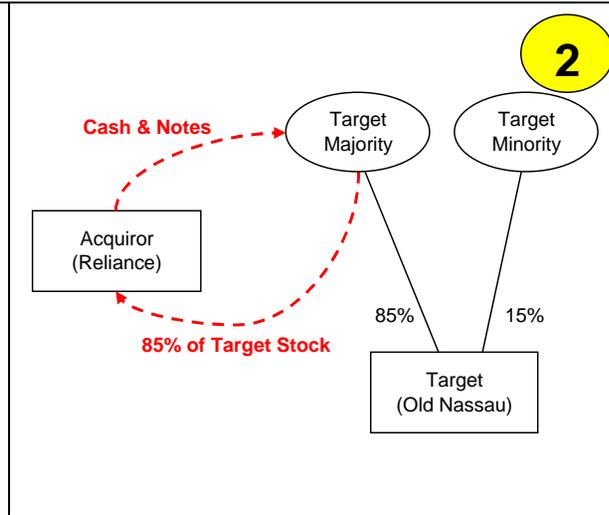


**85% Stock Purchase Followed
 by Taxable Reorganization**

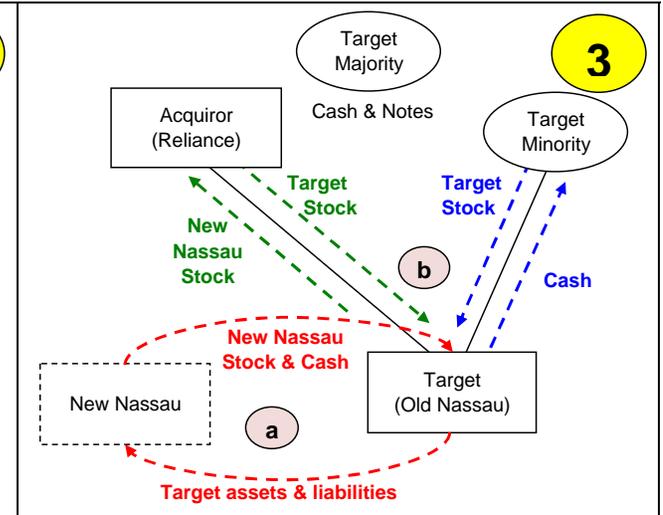
Initial Structure



Stock Purchase of Majority



Purported Reorganization



Taxpayer wanted step-up in basis for assets. Taxpayer argued step-up in basis via [former] section 334(b)(2) or via the Kimbell-Diamond doctrine.

The IRS argued (in step 3 above) that the transfers should be treated as an F reorganization (prior to 1982 amendment of section 368(a)(1)(F) saying "one corporation") or should be treated as a D reorganization.

The Tax Court, in a reviewed decision, held that the transfers did not constitute an F reorganization because there was a lack of sufficient continuity of interest. The court also held that the transfers did not constitute a D reorganization because there was no control under the step-transaction doctrine. Thus, the court treated the Acquiror as having purchased the assets of Target with a step-up in basis. Note that this result, in the case of a section 338 "qualified stock purchase", would not be the same today. See Reg. 1.338-3(d).

The question of whether Target should be taxed in order for Acquiror to obtain a step up in basis (tax symmetry) was not addressed by the court. At the time of this case (prior to the repeal of the General Utilities Doctrine) a sale by Target of its assets followed by Target's liquidation would have been tax free to Target.

Ending Point

