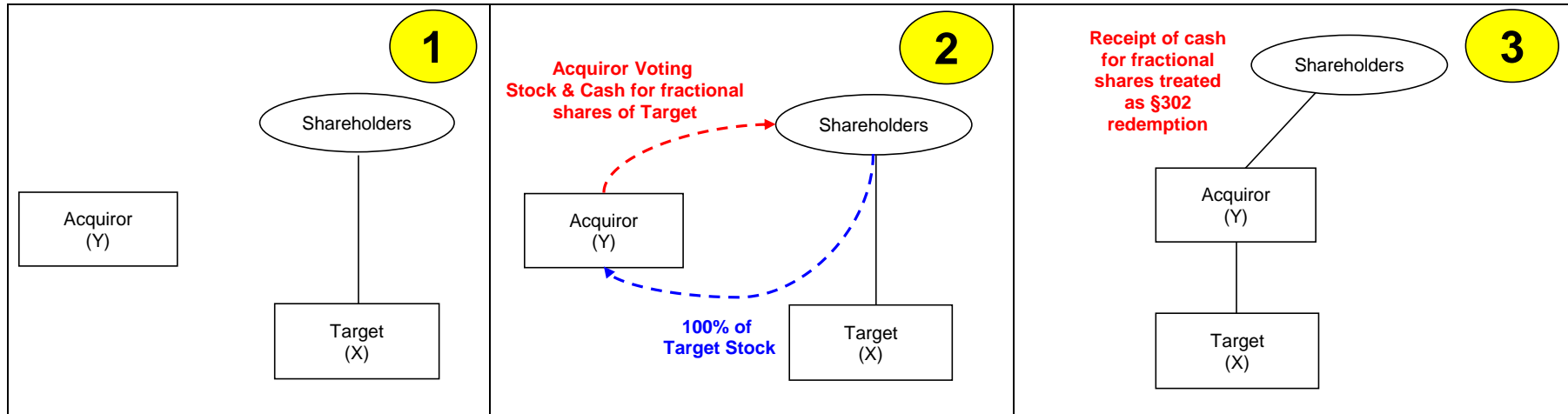


**Solely for Voting Stock -
Cash in Lieu of Fractional Shares**

Initial Structure

"B" Reorg & §302 Redemption

Ending Point



In *Mills, et al. v. Commissioner*, 331 F. 2d 321 (1964), the United States Court of Appeals for the Fifth Circuit held that the “solely for voting stock” requirement of section 368(a)(1)(B) was satisfied where the acquiring corporation received all of the stock of several corporations and distributed in return for such stock, shares of its voting common stock and a small amount of cash in lieu of fractional shares. After finding that the cash given in lieu of fractional shares was simply a mathematical rounding-off for the purpose of simplifying the corporate and accounting problems which would have been caused by the actual issuance of fractional shares, the Court concluded that the receipt of the stock of the acquired corporations was for all practical purposes “solely in exchange for voting stock”. The IRS will follow the decision of the Court of Appeals in *Mills, et al. v. Commissioner* in similar factual situations. Accordingly, the “solely for voting stock” requirement of section 368(a)(1)(B) and (C) will not be violated where the cash paid by the acquiring corporation is in lieu of fractional share interests to which the shareholders are entitled, representing merely a mechanical rounding-off of the fractions in the exchange, and is not a separately bargained-for consideration. Where, however, the cash paid by the acquiring corporation is not in lieu of fractional share interests to which the shareholders are entitled or is a separately bargained-for consideration, the “solely for voting stock” requirement of section 368(a)(1)(B) and (C) will not be satisfied.

If the cash payment made by the acquiring corporation is in lieu of fractional share interests of stock which in section 306 stock, such cash payment will be treated as a distribution in redemption to which section 301 applies unless it is established to the satisfaction of the Commissioner that the distribution of cash was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax. See section 306(b)(4).