For the Qs below, assume that the T distribution requirement is met.

1. T Corporation has 1,000x of assets and 0x of liabilities. P acquires all of T’s assets for 1,000x of P voting stock.
2. T Corporation has 1,000x of assets and 150x of liabilities. P acquires all of T’s assets and assumes all of T’s liabilities in exchange for 850x of P voting stock.
3. T Corporation has 1,000x of assets and 350x of liabilities. P acquires all of T’s assets and assumes all of T’s liabilities in exchange for 650x of P voting stock.
4. T Corporation has 1,000x of assets and 0x of liabilities. P acquires all of T’s assets for 850x of P voting stock and 150x of $.
5. T Corporation has 1,000x of assets and 150x of liabilities. P acquires all of T’s assets and assumes all of T’s liabilities in exchange for 800x of P voting stock and 50x of $.
6. T Corporation has 1,000x of assets and 150x of liabilities. P acquires all of T’s assets and assumes all of T’s liabilities in exchange for 799x of P voting stock and 51x of $.
7. T Corporation has 1,000x of assets and 0x of liabilities. T sells ½ of its assets for $, and P acquires all of T’s assets, including the $, for 1,000x of P voting stock. Rev. Rul. 88-48.

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| The Target Fund and the Acquiring Fund shall have received a favorable opinion of Paul Hastings LLP satisfactory to each of them (which opinion will be subject to certain qualifications), substantially to the effect that, on the basis of existing provisions of the Code, U.S. Treasury regulations promulgated thereunder, current administrative rules and court decisions, as further described below, generally for U.S. federal income tax purposes, the transactions contemplated by this Agreement will constitute a **reorganization** within the meaning of Section **368**(**a**)(**1**) of the Code, and the Target Fund and the Acquiring Fund will each be a “party to a **reorganization**” within the meaning of Section 368(b) of the Code. |

A few comments on Qs 33 and 34.

Q33 was intended to primarily highlight the issue of “substantially all” (SA) and the importance of form in a C reorg. There is no guidance in the regulations, and case law isn’t particularly helpful—a lower bound for SA may be 68% of net assets. Rev. Proc. 77-37 requires 90% of net assets and 70% of gross for ruling purposes.

Rev. Rul. 57-518 provides that no specific percentage is controlling, and what matters “are the nature of the properties retained by the transferor, the purpose of the retention, and the amount thereof.” Not too helpful. In the ruling, Target retained cash, ARs, and 3% of its inventory, which were applied to its outstanding debts. The ruling distinguished the case where a corporation has 1MM of gross assets and liabilities of 900K, and stated that a transfer of net assets of 100K would not be SA.

In 33(a), although 100% of net assets go over, P acquires only 9% of GA. This doesn’t satisfy the requirements in Rev. Proc. 77-37, and this is exactly the transaction criticized in Rev. Rul. 57-518. 33(b) is technically fine, but it may not be a reorg given the size of the liabilities. Reg 1.368-2(d)(1), last 2 sentences.

33(c) raises a question of substantially all. In Rev. Rul. 88-48, a corporation sold ½ of its assets and transferred all of its property including the proceeds of the sale. The IRS ruled Target had transferred SA of its assets. In this problem, however, the assets transferred to the creditors aren’t transferred to acquiror. Also, it may be difficult to satisfy COBE.

33(d) is obviously bad—too much boot.

33(e) is technically a good C reorg, and T shouldn’t recognize G when the P stock is distributed. §361(c)(3). Would a creditor agree to accept P stock?

33(f): It’s not clear whether T would recognize gain—the property T is distributing to its creditors ($) isn’t the property received (P stock).

34. Please see the revisions: specifically, in 34(c), (d), and (e), P acquires **ALL** of T’s assets, not only T’s operating assets. 34(a) raises the issue of SA again—it’s only 65% of GAs. One could maybe get comfortable if the assets retained were used to pay off creditors under Rev. Rul. 57-518. 34(b) is bad because the consideration is VS of P and GP, which is prohibited. Reg 1.368-2(d)(1)—the stock of GP is not even boot. In 34(c), the problem is the boot relaxation rule is violated—the P NVS is boot, which in turn, makes the liabilities boot as well. 368(a)(2)(B), flush language.

34(d) Good “C”—the liabilities aren’t boot. 34(e). Since P is the acquirer, the GP assumption of liabilities apparently can’t be ignored and are therefore boot. Rev. Rul. 70-170. Consequently, the transaction is not a good C reorg since all of the liabilities would now be treated as boot. As discussed in class, it’s not clear whether the boot relaxation rule would apply b/c it seems to apply to liabilities assumed by the acquiring corporation, which is P. One way to avoid this result would be for GP to provide a guarantee instead of an assumption.