

# **CONTROLLED GROUP ANALYSIS AND HOW IT RELATES TO THE AFFORDABLE CARE ACT.**

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JUNE 24, 2021

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*The materials and information contained herein are intended only to provide general information and in no way constitute legal advice. If you have specific questions or concerns, please consult legal counsel.*

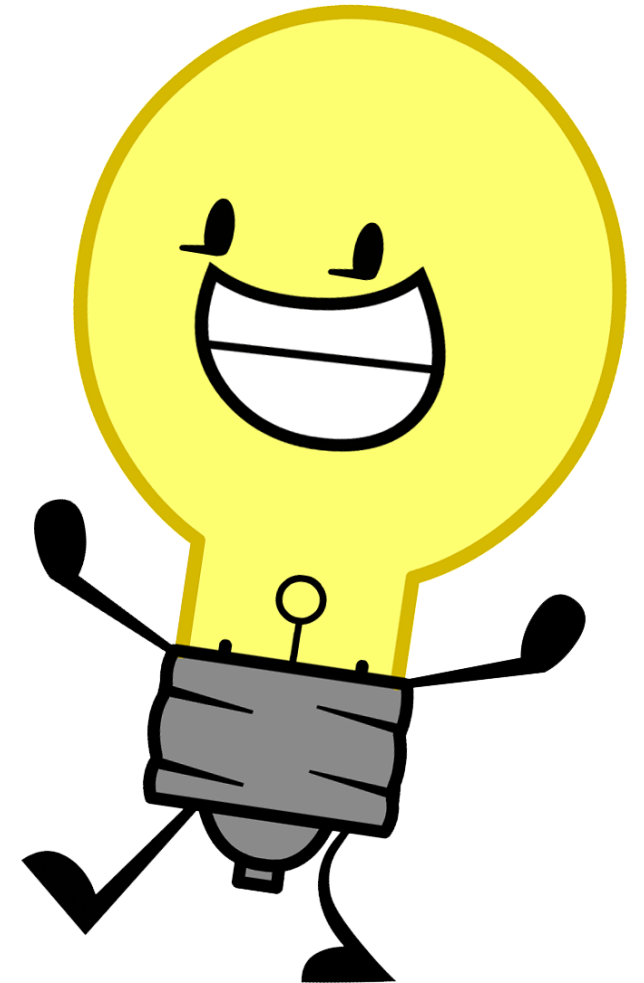
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*Finally, this presentation is current as of June 24, 2021, and the information contained herein is subject to change.*

**Disclaimer**

## COMMON OWNERSHIP AND THE AFFORDABLE CARE ACT

- Internal Revenue Code's controlled group rules under IRC §§414(b), (c), (m) or (o).
- All count for determination of Pay or Play.
- Penalties of non-compliance are entity specific.
- First "30 free" are apportioned pro-rata per entity.



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# COUNTING YOUR (CLIENT'S) WORKFORCE

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Control Group Rules – multiple EINs could equate to one ALE.

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Affiliated Service Group Rules – Management Company (MEWA rules to share in a Plan).

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Misclassification of independent contractors.

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Common Law Employer and co-employment relationships.

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**Formal Legal/CPA Analysis may be Needed.**

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# CONTROLLED GROUP – CONNECTED THROUGH OWNERSHIP

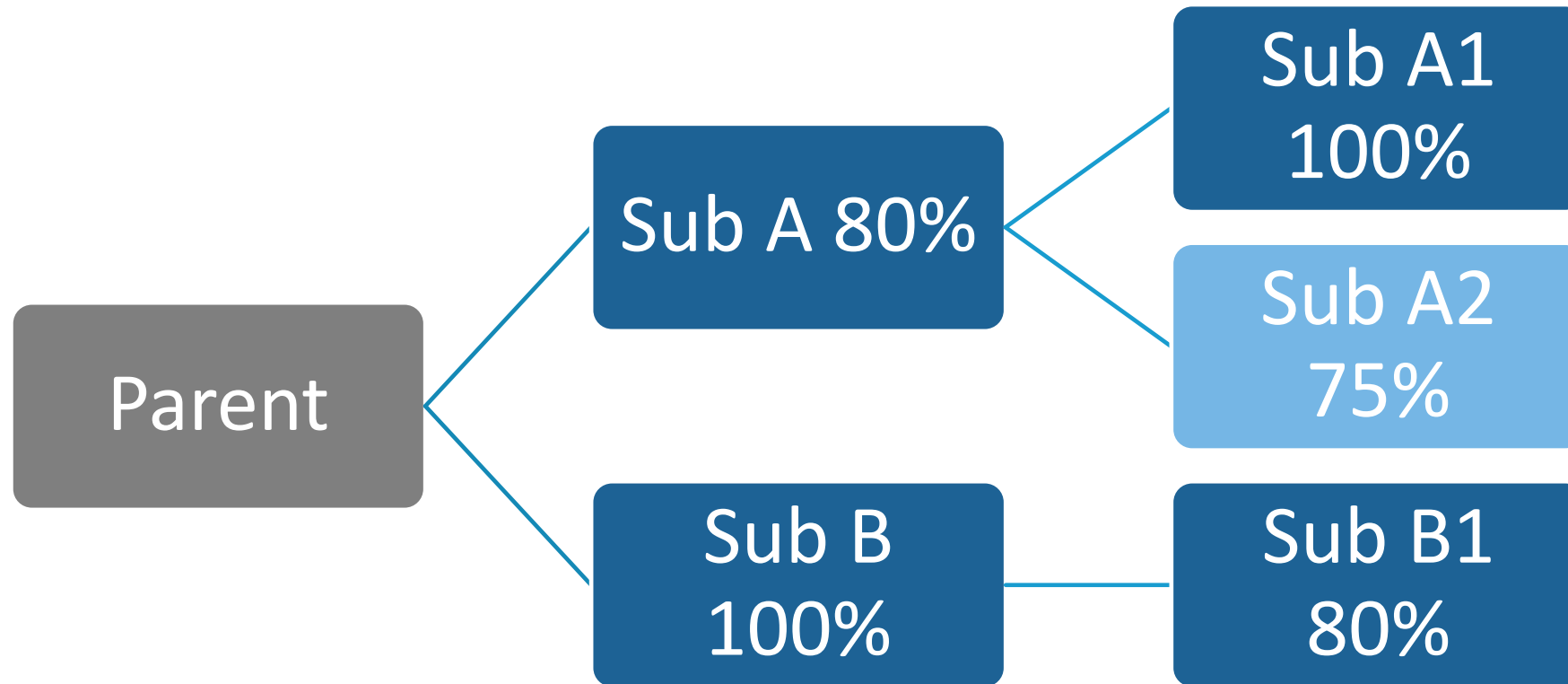
A "**parent-subsidiary**" controlled group exists when a parent company directly or indirectly owns 80% of a subsidiary organization;

A "**brother-sister**" controlled group exists where the same five or fewer persons own more than 80% of two or more other entities and own more than 50% when taking into account the ownership of each person only to the extent that it is identical with respect to each such entity; and

A "**combined**" controlled group exists where a group includes both parent-subsidiary and brother-sister members.



## PARENT-SUBSIDIARY CONTROLLED GROUP



The controlled group includes: Parent, SubA, SubB, SubA1 and SubB1. **Sub A2 is excluded.**

# BROTHER-SISTER CONTROLLED GROUP

Individual Owners	Taco Place	Pizza Place	Burger Place	Cars Unlimited
Alicia	40%	10%	15%	60%
Fred	35%	40%	30%	25%
Jan	10%	35%	30%	15%
Others	15%	15%	25%	0%

**Controlling Interest Test** (at least 80% aggregate ownership): Taco Place, Pizza Place and Cars Unlimited. **Burger Place is excluded.**

**Effective Control Test** (smallest % exceeds 50%): Taco Place and Cars Unlimited. **Pizza Place is excluded because**

- **Alicia smallest % is 10% (PP), Fred smallest % is 25% (CU), Jan smallest % is 10% (TP).**
- **Remove PP and Alicia smallest % is 40%, Fred smallest % is 25%, Jan smallest % is 10% - which exceeds 50%.**

# ATTRIBUTION RULES

In the case of a:	Ownership relates to the:	
Trust or Estate	Actual Interest (drill down to the person)	
Ownership Interests of:	Attributed to:	Exceptions
Spouse	Spouse	Unless no direct ownership/participation AND no more than 50% gross income = passive
Minor child (under 21)	Parent	And visa versa but not both
Parent/Adult Child	Adult Child/Parent	Attributed to other if ownership is more than 50%
Grandparent/Child	Child/Grandparent	Attributed to other if ownership is more than 50%
Sibling	None	





## AFFILIATED SERVICE GROUP RULES

- Affiliated service groups are groups of companies that must be combined for purposes of employee benefit plans due to the nature of the relationship between the entities in question.

### Key Considerations:

- Business Relationship
  - Does one entity provide services to the other that are customarily provided by the recipient's employees; or
  - Do the entities join together to provide services to the same clients?
- Common Ownership
  - Is there any common ownership among the entities? As little as 10% may be enough, although an ASG may sometimes exist even if there is no common ownership.
- Management
  - Does one entity provide management oversight over the other entity?



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