



Do the Rules About Related Companies Apply to Non-Profits with No Owners

Facts

I work for a non-profit organization that is thinking of setting up a retirement plan. One of the service providers who we've spoken to about this said something about determining whether we are related to any other businesses through over-lapping ownership.

Question

Since we are a non-profit that does not have any owners, is this something we need to be concerned about? If so, how does it work in our situation.

Answer

The short answer is that the rules about related companies do apply to non-profit organizations even though they do not have ownership. How the rules work in those situations is a bit longer of an explanation. Before we get into those details, however, we should quickly note why it matters. When entities are related in this context, all of the employees of each related entity must be considered in the aggregate when performing the various [nondiscrimination tests](#) that apply to retirement plans. That doesn't necessarily mean they must all be covered by the plan and receive the same benefits, only that they must all be factored into the tests to ensure the [highly compensated employees](#) do not receive benefits that are disproportionate to those provided to the non-HCEs.

Related Company Overview

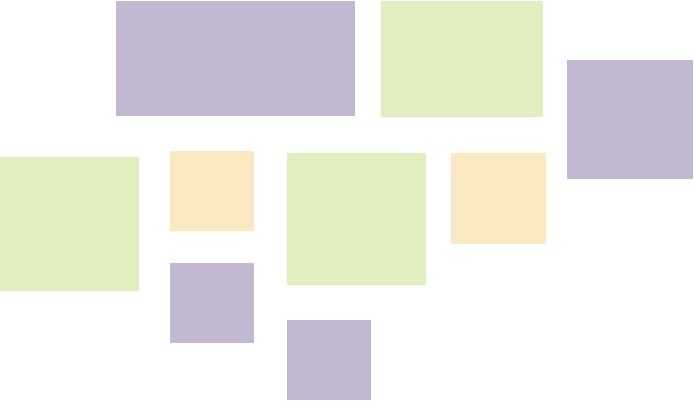
In general, there are two types of related organizations – [controlled groups](#) and [affiliated service groups](#). We will focus here on controlled groups, and again, there are two types:

- **Parent/Subsidiary:** A parent company owns at least 80% of one or more subsidiaries.
- **Brother/Sister:** The same five or fewer individuals have identical ownership of more than 50% and common ownership of at least 80%.

Related Non-Profits

When looking at whether several non-profit organizations are part of a controlled group, we look at common control instead of stock ownership. The determination is based on the control of the directors or trustees of the organization. If 80% or more of the directors or trustees of one organization are representatives of, or directly or indirectly controlled by, another organization, then those organizations make up a controlled group.

So how do you determine if a director or trustee is a representative of the other organization? If he or she is also a director, trustee, agent or employee of the other tax-exempt organization, they are a representative of that organization. Another factor to look at is if the other organization has the authority to remove said director or



trustee and designate a replacement. The IRS regulations translate this “control” over directors/trustees in tax-exempt organizations as “ownership” for the purposes of applying the controlled group rules.

If two or more exempt organizations “regularly coordinate” their day to day activities, the IRS allows them to choose to aggregate the organizations for retirement plan purposes even if they fall below the 80% common control. This is referred to as permissive aggregation.

Churches

There are some variations in how the controlled group rules are applied to certain church plans. An organization that is otherwise eligible to participate in a church plan does not have to be combined with another organization unless the following criteria are met:

- One organization directly or indirectly provides 80% or more of the operating funds for the other organization during the preceding taxable year of the recipient organization; and,
- The common management or supervision between the two organizations is such that the organization that is providing the operating funds is directly involved in the day-to-day operations of the other organization.

If the organization is a nonqualified church-controlled organization (NCCO), the controlled group rules discussed above for tax-exempt entities apply. An NCCO is a church-controlled, tax-exempt organization that provides goods, services or facilities on more than a nominal basis and which has significant funding from the government or its related trade or business activities. Generally, NCCOs are church hospitals, colleges, universities or nursing homes.

Church organizations or associations of churches (those that share common religious convictions) also have the option to permissively aggregate for purposes of the retirement plan. On the other hand, they may also choose to treat themselves separately from other entities that are churches. This in essence, allows a non-church organization that is controlled by a church to be treated separately even though, based on the rules above, they would be a related group.

Making a controlled group determination can be quite complex, especially when dealing with tax-exempt or church organizations as the “ownership” of those entities is seldom clear cut. As always, DWC is here to help.



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