



Pensions on PEACHTREE 2023



CONTROLLED GROUP/ASG PRIMER FUNDAMENTALS OF RELATED EMPLOYERS



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RELATED EMPLOYER BASICS



MANY WAYS TO HAVE RELATED EMPLOYERS

- Controlled groups
- Groups under common control
- Tax-exempt common control
- Affiliated Service Groups
 - A-Org
 - B-Org
- Management function groups



WHY DO WE CARE IF WE HAVE RELATED EMPLOYERS?

- They are treated as the same employer for ...
 - Coverage
 - Vesting
 - Minimum participation
 - 415 limits
 - Top heavy
 - Nondiscrimination
 - Exclusive benefit rule



DO EMPLOYEES OF ALL RELATED EMPLOYERS HAVE TO BE IN THE SAME PLAN?



No. Not if you can pass coverage and nondiscrimination.



But having them in the same plan often makes life easier

COVERAGE TESTING WITH SEPARATE PLANS

	HCE	NHCE
A	4	6
B	6	14
Total	10	20

- A and B are related employers. Each has a 401(k) plan covering its own employees. The nonexcludable employees are shown.
- Does the A plan pass ratio percentage?
 - $6/20 \div 4/10 = 30\% / 40\% = 75\%$
- Does the B plan pass ratio percentage?
 - $14/20 \div 6/10 = 70\%/60\% = 116.67\%$



COVERAGE TESTING WITH SEPARATE PLANS

	HCE	NHCE
A	4	6
B	6	14
C	2	10
Total	12	30

- C is now part of the group and doesn't have a plan or participate in the A or B plan
- Does the A plan pass ratio percentage?
 - $6/30 \div 4/10 = 20\% / 33\% = 60\%$
- What can A do?
 - Bring in some C employees
 - Pass average benefit test
 - Permissibly aggregate the A and B plans
 - $20/30 \div 10/12 = 67\%/83\% = 80\%$



WHAT ABOUT UNRELATED EMPLOYERS?



They can sponsor the same plan

It's a Multiple Employer Plan

It could be a Pooled Employer Plan



It's more complicated than related employers



Some vendors don't offer MEPs



CONTROLLED GROUP/ COMMON CONTROL



CONTROLLED GROUP AND COMMON CONTROL

- Controlled groups
 - Two or more corporations
- Groups of trades or businesses under common control
 - Two or more
 - Corporations
 - Partnerships
 - LLCs
 - Sole proprietorships . . .
- Common control adapts the controlled group rules to these other types of businesses

80% OVERLAPPING OWNERSHIP

- The key to controlled groups is 80% overlapping ownership
 - If you don't have it, you don't have a controlled group
 - One exception
- There are complex attribution rules so you can be deemed to own stock held by others:
 - Spouse
 - Children/Parents/Grandchildren/Grandparents
 - Partnerships or other entities
 - Options

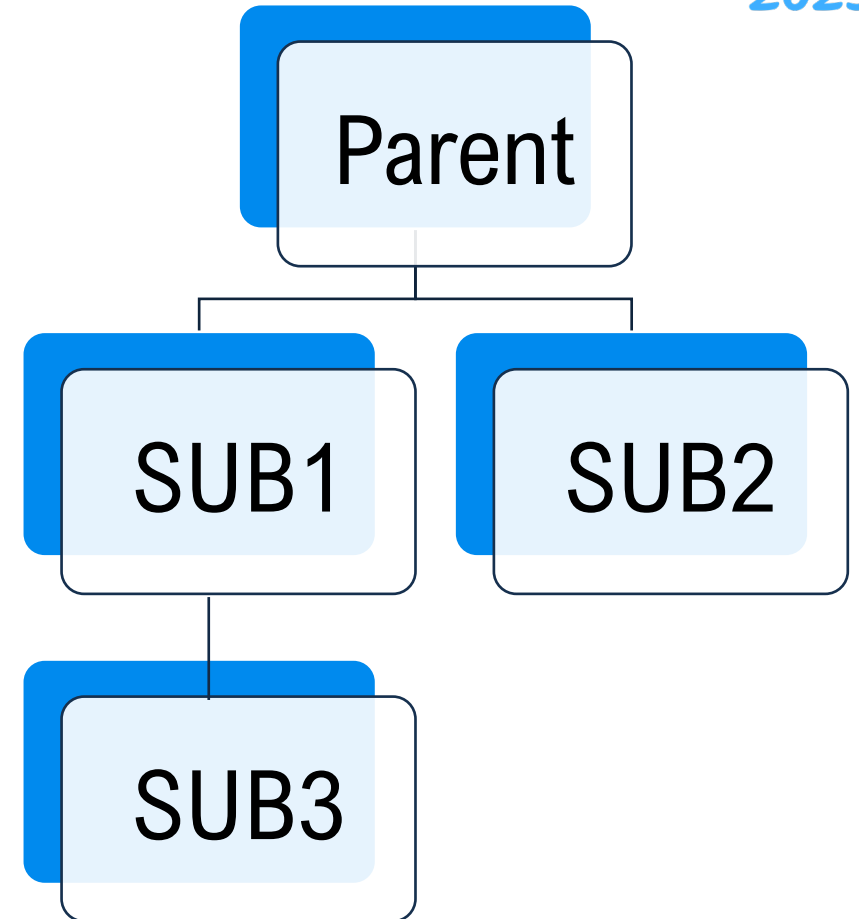


PARENT-SUBSIDIARY EXAMPLES

Parent owns 80% of Sub1

Parent owns 80% of Sub1 and Sub2

Parent owns 80% of Sub1 and Sub1 owns 80% of Sub3



BROTHER-SISTER CONTROLLED GROUPS

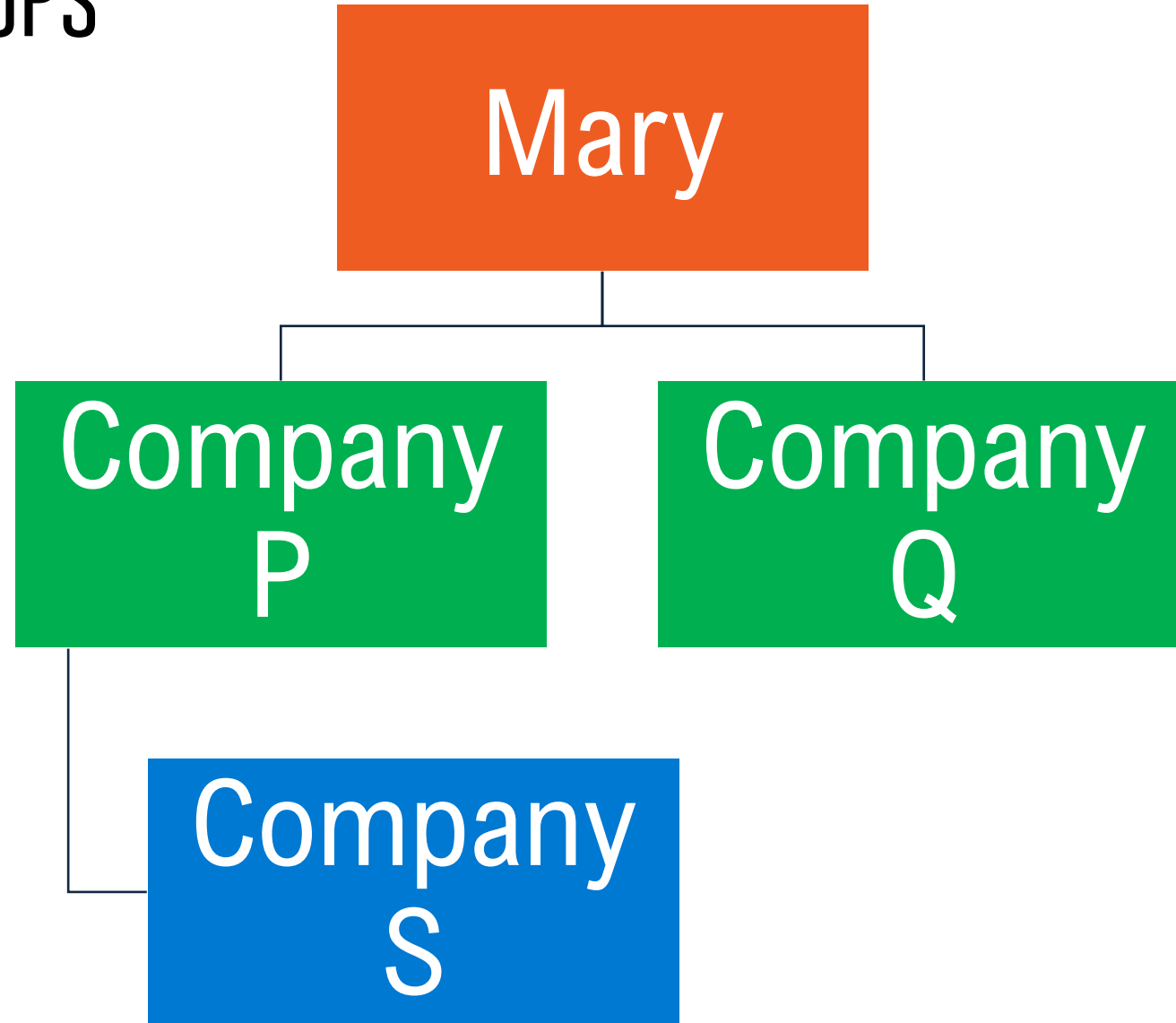
Are Controlled Groups

- Jack owns 100% of A and 80% of B
- *Jack owns 100% of A and 60% of B, and Jack's adult son owns the remaining 40% of B*
- Jack, Jill, and Jerry each own 33% of A and 30% of B. X owns the remaining 10% of B

Are NOT Controlled Groups

- Jack owns 100% of A and 70% of B. X owns 30% of B
- *Jack owns 100% of A and Jack's son owns 100% of B*
- Jack, Jill, and Jerry each own 33% of A and 20% of B. X owns the remaining 40% of B

COMBINED GROUPS



WHAT'S OWNERSHIP?

Corporation

- Value of stock
- Voting power

Partnership

- Profits
- Capital

Trust

- Beneficial interest
- Grantor trust
- Special rules for retirement trust

LLC

- How is it taxed?
 - Corp
 - Partnership
 - Disregarded

DETAIL ON BROTHER-SISTER GROUPS

- Same 5 or fewer individuals, estates, or trusts must hold:
 - Controlling interest
 - Ownership of at least 80% of each entity
 - Effective control
 - Ownership of more than 50%, considering each owner's interest where it is least
- Disregard individuals whose effective control is zero
- Apply attribution rules to determine ownership
- Certain ownership may be excluded if doing so creates a group



EXAMPLE: COMPUTING EFFECTIVE CONTROL 1

Owner	X	Y	Z	Effective Control
Anne	20%	30%	40%	20%
Bill	25%	55%	20%	20%
Cindy	55%	15%	40%	15%
Total	100%	100%	100%	55%

- Anne, Bill, and Cindy have a controlling interest in each company
- They also have effective control
- X, Y, and Z are in a brother-sister controlled group

EXAMPLE: COMPUTING EFFECTIVE CONTROL 2



Owner	X	Y	Z	Effective Control
Anne	20%	30%	40%	20%
Bill	5%	60%	20%	5%
Cindy	75%	10%	40%	10%
Total	100%	100%	100%	35%

- Anne, Bill, and Cindy have a controlling interest in each company
- But, they don't have effective control
- So, **no** controlled group



TOO MANY OWNERS SPOILS THE GROUP

	X	Y	Eff. Cont.
Adam	14%	15%	14%
Betty	14%	15%	14%
Charlie	14%	14%	14%
Doris	14%	14%	14%
Evan	14%	14%	14%
Francis	15%	14%	14%
Gary	15%	14%	14%
Total	100%	100%	14%

- 7 roughly equal shareholders
- Any 5 of them have 70% effective control 
- Any 5 of them own at most 72% of either company 
- **No** controlled group

DISREGARD PEOPLE WITH NO EFFECTIVE CONTROL

Owner	A	B	Eff. Cont.
Jack	100%	70%	70%
X	0%	30%	0%
Total	100%	70%	70%

- Jack has effective control on his own
- But X has 0 effective control
- Take X out of the picture
- Jack doesn't have a controlling interest in B
- **No** controlled group



ATTRIBUTION RULES IMPACT RESULTS

Owner	A	B	Eff. Cont.
Jack	100%	70%	70%
Jack Jr.	0%	30%	0%
Total	100%	100%	70%

- Jack is deemed to own his son's stock
- So, Jack is deemed to own 100% of each company
- Now, you have a controlled group



CONTROLLED GROUP ATTRIBUTION IS WEIRD

- Maybe I'm deemed to own my wife's stock; maybe not
- I am deemed to own the stock of my children under age 21
 - And they are deemed to own mine
- I am deemed to own the stock of my adult children and my grandchildren only if I own (or am deemed to own) more than half of the company
 - And vice versa
- Use family attribution rules only once for each share
- SECURE 2.0 changes attribution rules in 2024



CG ATTRIBUTION – FROM SPOUSE

- I am deemed to own stock held by my wife unless either:
 - We are divorced (final or interlocutory) or legally separated; or
 - All four of the following apply (called non-involvement spousal exception):
 - Spouse doesn't own stock in the company directly
 - Spouse is not a director or employee and doesn't participate in management
 - Not more than 50% of company's gross income is from rents, royalties, dividends, interest, annuities
 - The stock isn't subject to sale restrictions in favor of me or my children under age 21



OTHER ATTRIBUTION RULES (USED TO CREATE GROUPS)

- Options
 - If I have an option to buy stock, it is as though I own the stock
- Pro rata ownership from entities
 - A corporation of which I own at least 5%
 - A trust in which I have a 5% beneficial interest
 - A partnership in which I own at least 5% of profit or capital
- 100% attribution from grantor trust



IMPORTANT ATTRIBUTION NOTE

- Attribution rules let us choose between several owners: pick the owner that creates a controlled group
- Attribution rules do not change the number of shares outstanding

Owner	X	Y
Husband	50%	20%
Wife	50%	20%
Stranger	0%	60%

- H and W are deemed to own each other's stock
- But, between them they still own only 40% of Y

EXCLUSION RULES: CALL THE ATTORNEY

- Always exclude
 - Treasury stock
 - Nonvoting preferred stock
- Possibly exclude
 - Stock held by retirement plan trust
 - Stock subject to transfer restrictions (such as right of first refusal)

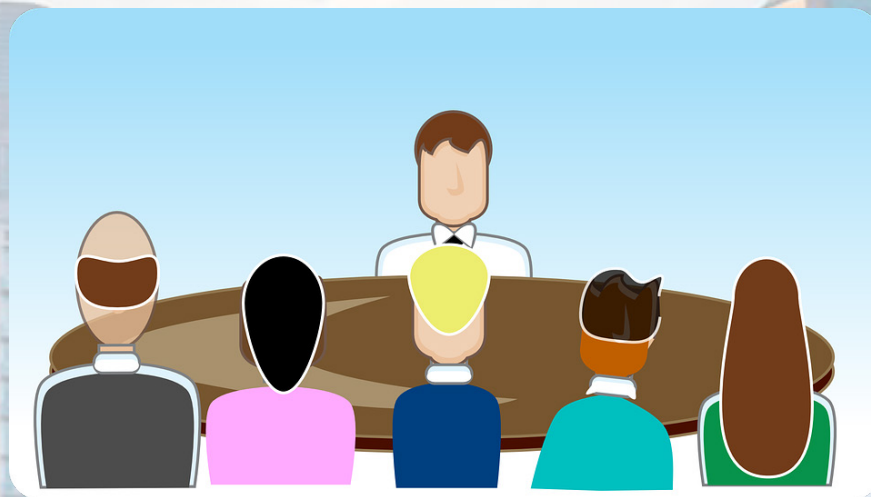


TAX-EXEMPT ORGANIZATIONS

- Possible for two tax-exempts to be under common control
- Or tax-exempt and taxable
- Look at control of board of directors/overlapping boards
- Special rules for churches
- Governments based on reasonable/good faith standard



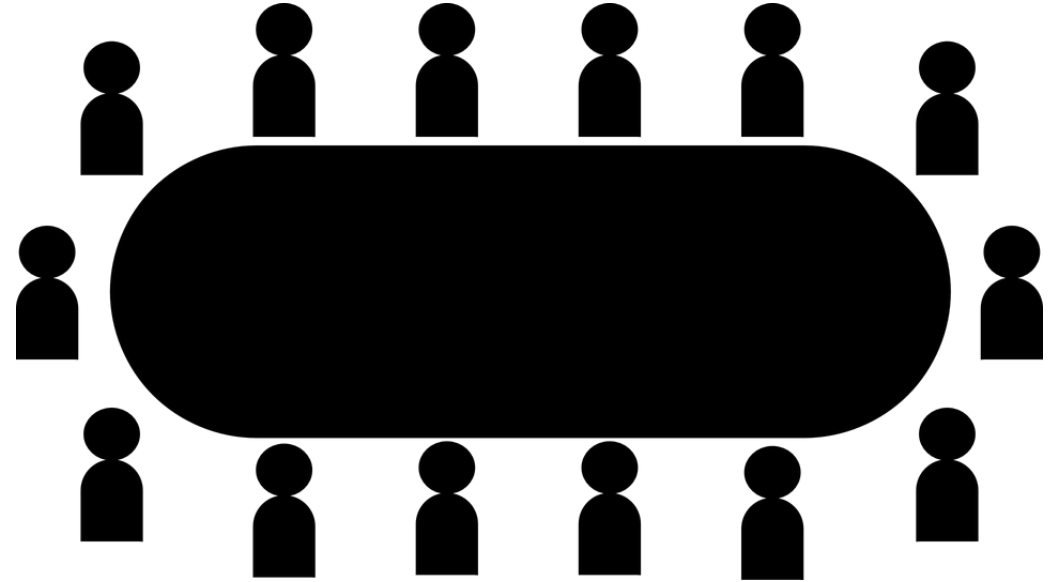
MANAGEMENT FUNCTION GROUPS [M-ORGS; 414(M)(5)]



WHAT IS MANAGEMENT FUNCTION GROUP?

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- Special kind of ASG
- No ownership required
- The group consists of:
 - A management company
 - The company (companies) it manages



WHAT IS A MANAGEMENT COMPANY?

- An organization with the principal business purpose of providing management functions to:
 - 1 or 2 other companies
 - 1 other company and companies that are related to that company
- No formal definitions:
 - Principal business purpose
 - Management functions
- Really complex issue: “related” companies



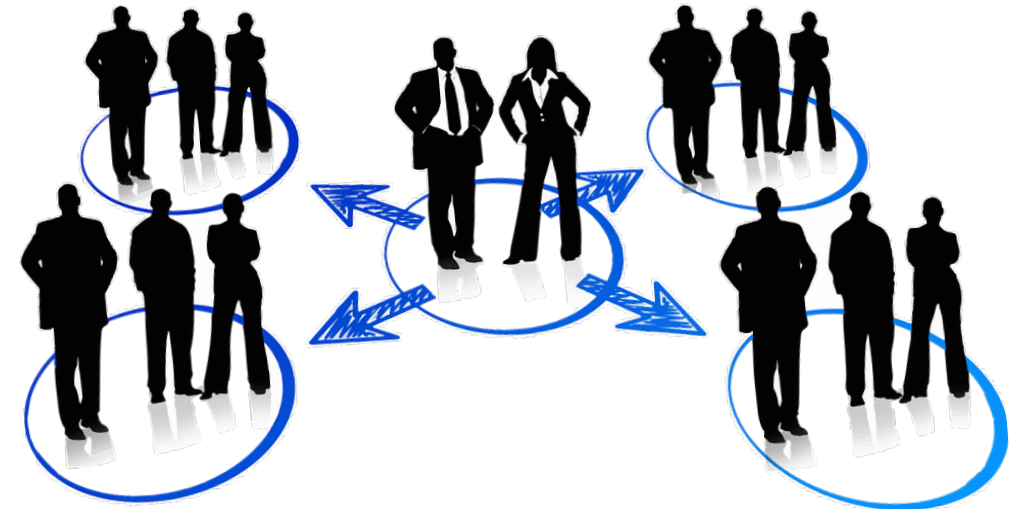
MFG EXAMPLE 1

- Emilee is CEO of XYZ
 - Emilee doesn't own any stock in XYZ
- Emilee sets up her own Corporation
 - Emilee's Company
 - She resigns as an XYZ employee
- XYZ hires Emilee's Company, which provides Emilee to run XYZ
- Emilee's Company and XYZ are an MFG



MFG EXAMPLE 2

- Emilee's Company rents Emilee's services to 4 other companies
- All the companies are unrelated
- None of the companies accounts for more than 30% of Emilee's time or revenues.
- Emilee's Company is not in an MFG
 - Providing management functions to 1 other entity is not her principal business purpose



AFFILIATED SERVICE GROUPS



SPOTTING TRADITIONAL AFFILIATED SERVICE GROUPS (ASGs)

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- Major factors:
 - Some level of common ownership
 - At least one of the businesses is a service business
 - Health, law, accounting, consulting, insurance, etc.
 - Capital is not a material income producing factor
 - Either:
 - One business regularly provides services to another
 - The businesses are “regularly associated” in providing services to third parties
 - I.e., they work together a lot



- Consists of an FSO (First Service Organization) and
 - One or more
 - A-Orgs or
 - B-Orgs
- FSO is a service organization



TRADITIONAL ASGS FOCUS ON SERVICE ORGANIZATIONS

- If entity is not a service organization, it cannot be an FSP or an A-Org
- Two ways to be a service organization:

- In the fields of:

- Health
- Law
- Engineering
- Architecture
- Accounting
- Actuarial Science
- Performing Arts
- Consulting
- Insurance

- An organization for which capital is not a material income producing factor, considering all facts and circumstances
- Capital is material:
 - For banks and similar organizations
 - If substantial investment in inventory, equipment, plant, and machinery
- Capital is not material if income primarily from fees/commissions for personal services



EXAMPLE: NOT AN ASG

- Company 1 manufactures auto parts
- Company 2 sells auto parts
- Neither organization is a service organization
- Therefore, neither can be an FSO
- Therefore, there is no ASG



A-ORG



- Is a service organization
- Owner or shareholder in FSO
 - Any ownership will do (.0001%)
 - Generous attribution rules
- Regularly performs services for FSO or regularly associated with FSO in providing services to others
- FSO for A-Org must be either:
 - Unincorporated or
 - Professional service corporation



EXAMPLE: CLASSIC **A-ORGANIZATION** AFFILIATED SERVICE GROUP

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- Pension Legal Group is a law firm
 - Employs secretaries and law clerks
- Two partners in Pension Legal Group
 - Ilene, Inc.
 - Alison, Inc.
- Ilene, Inc. and Alison, Inc. work for Pension Legal Group
 - PLG bills customers, pays for staff, and sends profits to Ilene, Inc. and Alison, Inc.
- All three companies are an ASG



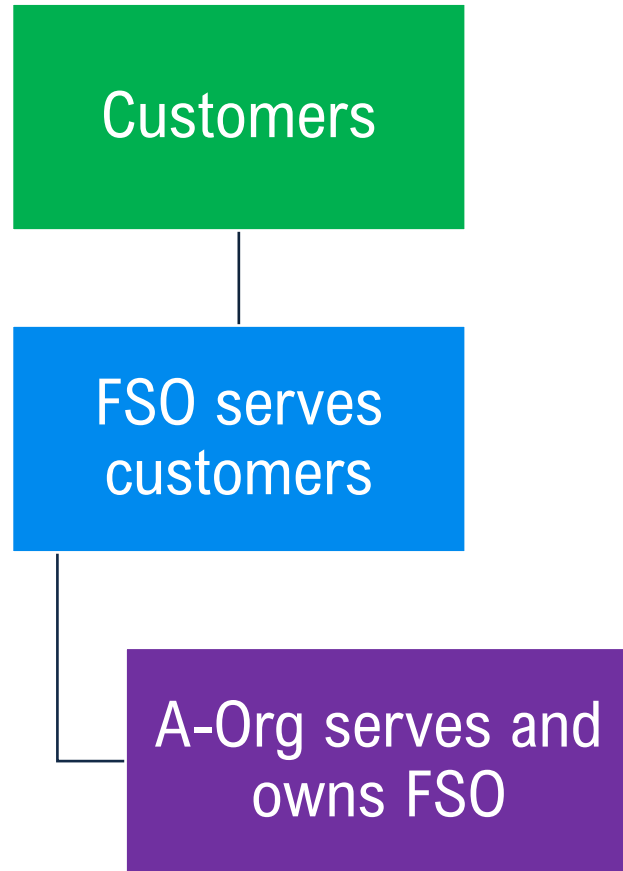
CLASSIC A-ORGANIZATION AFFILIATED SERVICE GROUPS

- ABC Clinic is a medical partnership equally owned by doctors Aaron, Betty, and Chris
 - Each is a Surgeon; Each owns 3% of Anytown Outpatient Surgery Center
- Every Tuesday, Aaron performs procedures at the surgery center
- Patients get two bills:
 - ABC Clinic for the surgeon
 - Surgery Center for the facility, nurse, anesthesia, etc.
- It is an ASG: treated as one employer
 - The two organizations are regularly associated in serving the public
 - Both are in the field of health, and there is common ownership

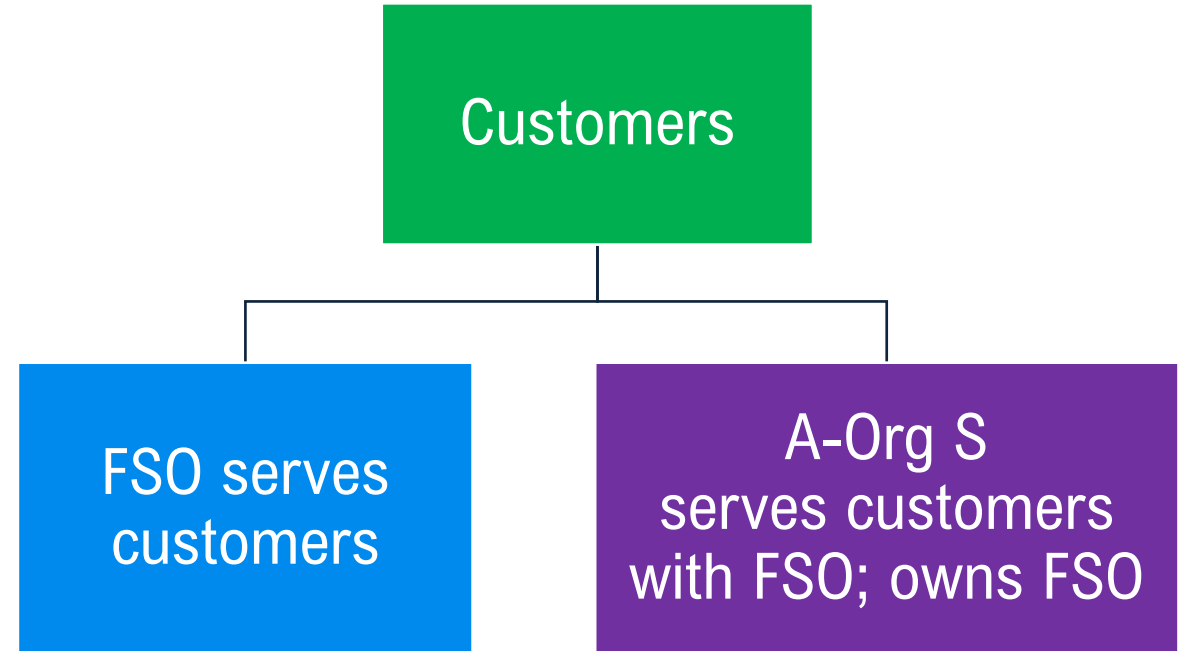


TWO WAYS TO HAVE AN A-ORGANIZATION ASG

A-Org Serves FSO



FSO and A-Org Regularly Associated



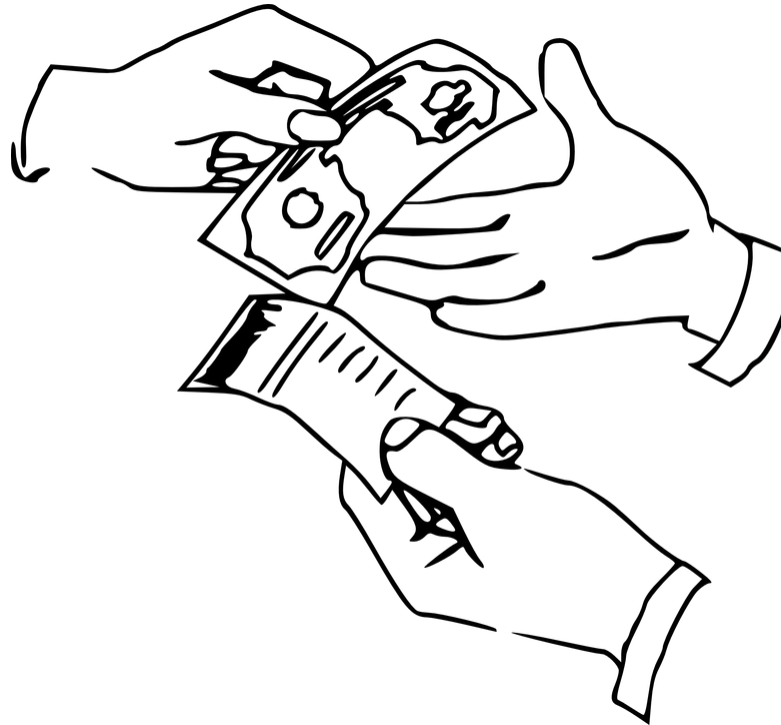
PROFESSIONAL SERVICE CORPORATION EXEMPTION

- FSO of an A-Org must either be:
 - Unincorporated or
 - A professional service corporation
 - Accountants, actuaries, architects, attorneys, chiropractists, chiropractors, medical doctors, dentists, professional engineers, optometrists, osteopaths, podiatrists, psychologists, and veterinarians
- Sometimes, incorporating the entities will break up the ASG



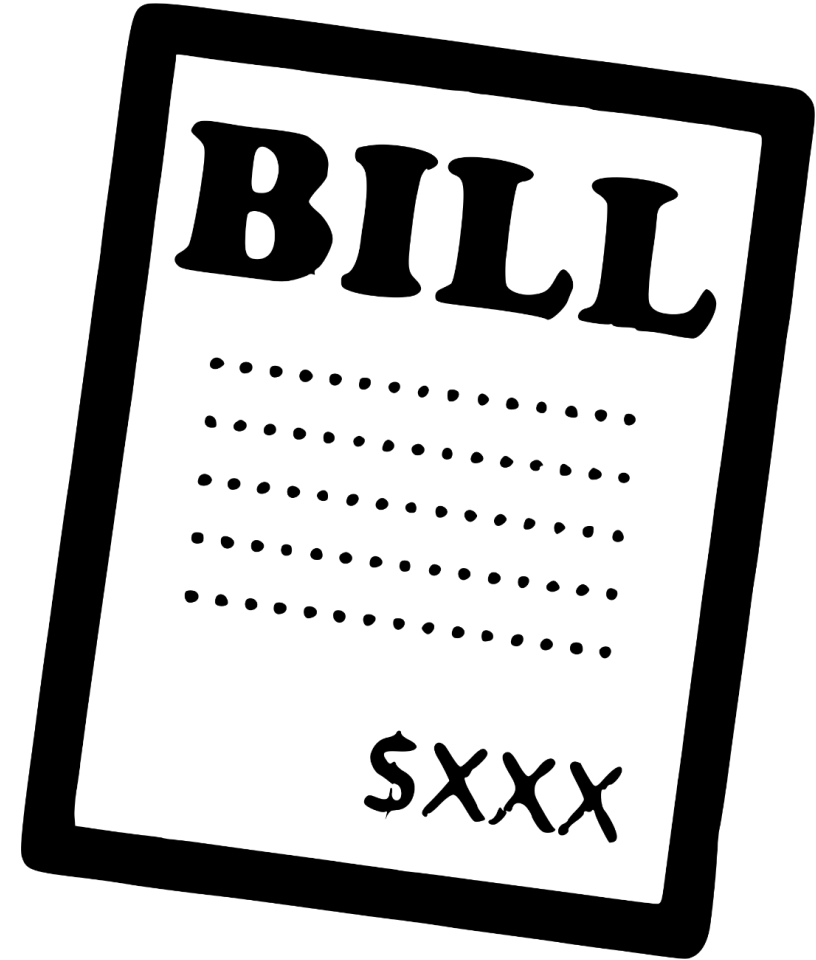
B-ORG BASICS

- Doesn't have to be a service organization
- Common ownership
- Gets at least 5% of revenue from performing employee functions for FSO or its A-Orgs



CLASSIC B-ORGANIZATION AFFILIATED SERVICE GROUPS: BILLING SERVICE

- Aaron, Betty, Charles, Doreen, and Evan are each doctors, and each owns 100% of a medical corporation.
- Each owns 20% of Doctors Billing Company. Doctors Billing company does billing services for the 5 doctors.
- Doctors Billing Company is related to each of the 5 FSO medical corporations.



B ORGANIZATION

- At least 10% of B Organization must be owned by HCEs of
 - FSO or
 - its A-Orgs
- Doesn't actually require cross-ownership
 - HCE could include someone with high compensation
- Could include former HCEs

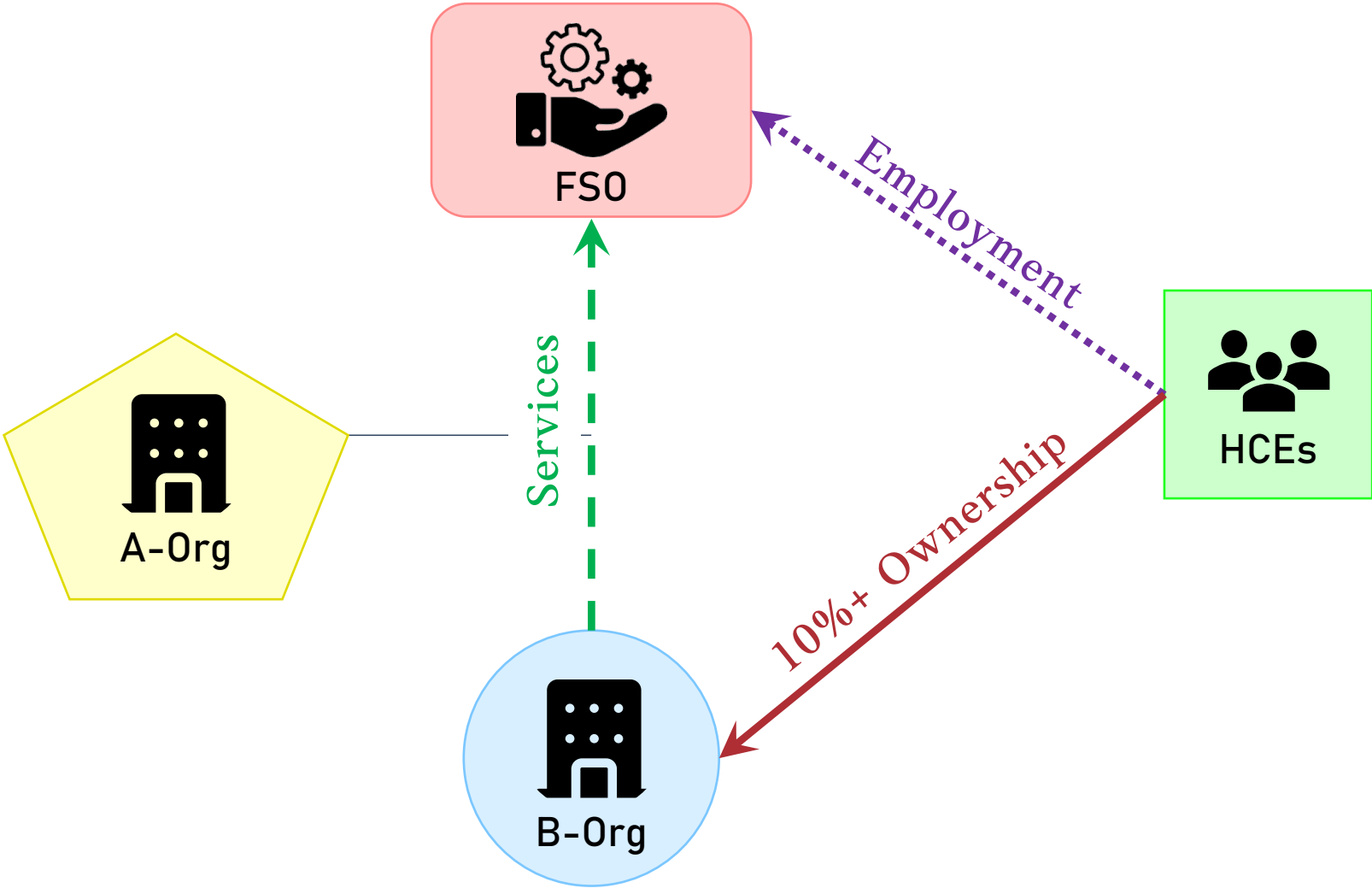


EMPLOYEE SERVICES

- A "significant portion" of the business of the B-Org is performing services for the FSO and/or its A-Orgs.
 - If it accounts for 5% of revenue, it may be significant
 - If it accounts for 10%, it is significant
- Those services are of a type historically performed in the field of the FSO or its A-Orgs by employees.
 - Check out 1980 for "historically performed by"



B-ORG DIAGRAM



FUZZY ISSUES

- “Regularly performs services”
- “Regularly associated with”
- Judgment calls
- Track the \$
- Check the websites
- Probably a good idea to bring in counsel



ATTRIBUTION RULES: SAME AS FOR HCE

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- I am deemed to own stock held by:
 - My wife
 - My kids
 - My grandkids
 - My parents
- Option attribution
- Attribution from entities (special rule for C corporations)
- Attribution TO entities



OF COUNSEL ATTORNEY

- Perry is sole practitioner criminal attorney
 - Billem & Gougem Law Firm lists Perry as “of counsel”
 - Refer all criminal work to Perry
 - Perry advises firm on criminal aspects of civil cases
 - Perry derives substantial revenues from
 - The firm itself; and
 - The clients the firm refers
 - Perry and firm are service organizations, and are regularly associated in providing services to 3rd parties
 - Perry doesn't own an interest in Firm and Firm doesn't own an interest in Perry
- So, no ASG! BUT, if Perry's dad owns 2% of the firm, then it's an ASG



QUESTIONS?

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