

Controlled & Affiliated Service Groups: Issues and Implications for Employee Benefit Plans



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Agenda

- ▼ **Benefits - Where We Are**
- ▼ **Treatment as One “Employer” – Why It Matters**
- ▼ **Controlled Group Rules**
- ▼ **Affiliated Service Group Rules**
- ▼ **Implications for Employee Benefit Plans**
 - ▼ **Retirement Plans and Health & Welfare Plans**

Benefits – Where We Are

- ▼ Race for the White House
- ▼ ACA Implications?
 - ▼ Partial/Total Repeal?
- ▼ HIPAA – OCR Issues \$240,000 civil money penalty against covered entity
 - ▼ Failure to develop and implement policies and procedures to protect PHI removed from its offices
 - ▼ Failure to reasonably safeguard individuals' PHI, and
 - ▼ Allowed unauthorized individual to access PHI
- ▼ FLSA Proposed Regulations – Expected Timeline

Treatment as One “Employer” – Why It Matters

- ▼ Separate employers that constitute a controlled group or affiliated service group are treated as one employer for various benefits and tax purposes
- ▼ Frequently missed or misunderstood
- ▼ Familial and Organizational Ownership Attribution Rules
- ▼ Implications include
 - ▼ Qualified retirement plan implications
 - ▼ Health and welfare benefit considerations
 - ▼ ACA employer mandate compliance implications

Types of Controlled Groups

▼ Parent-Subsidiary Groups

- ▼ One or more chains connected by ownership with common parent and parent owns at least 80% of one other organization

▼ Brother-Sister Groups

- ▼ The same five or fewer individuals own at least an 80% controlling interest in two or more companies and have effective control of the companies

▼ Combined Parent-Subsidiary and Brother-Sister Groups.

- ▼ Three or more organizations are each a member of either a parent-subsidiary or a brother-sister group, and
- ▼ One entity is the common parent of a parent-subsidiary group and is also a member of a brother-sister group

Types of Affiliated Service Groups

▼ A-Organizations

- ▼ *First Service Organization (FSO)* + a service organization (the A-Org) that is a shareholder or partner in the FSO and that either:
 - ▼ regularly performs services for the FSO, or
 - ▼ is regularly associated with the FSO in performing services for third parties

▼ B-Organizations

- ▼ *First Service Organization* + another organization (the B-Org) and the following tests are satisfied:
 - ▼ *Working Relationship Test* - A significant portion of the business of the B-Org is the performance of services (of a type historically performed by employees in the service field of the FSO) for the FSO
 - ▼ *Ownership Test* - 10% or more of the interests in the B-Org are held by individuals who are highly compensated employees of the FSO

Types of Affiliated Service Groups

▼ *First Service Organization* - Defined

- ▼ The performance of services is the principal business of the organization (*i.e.*, capital is not a material income-producing factor for the organization)
- ▼ *Per se* service fields: Health, Actuarial Science, Law, Performing Arts, Engineering, Consulting, Architecture, Insurance, and Accounting

▼ Management Organizations

- ▼ An organization for which the *principal business* is performing management functions on a *regular and continuing basis* for a recipient organization (and related organizations)

Retirement Plan Implications

- ▼ The controlled and affiliated service group rules affect many requirements for qualified retirement plans
- ▼ The rules often require plans to consider
 - ▼ All plans maintained by employers in a combined group
 - ▼ All employees of and compensation paid by employers in a combined group
 - ▼ A participant's services performed for all employers in a combined group

Retirement Plan Implications

- ▼ **Nondiscrimination Testing**
- ▼ **Compensation Limits under Code § 401(a)(17) (\$265,000 for 2016)**
- ▼ **Eligibility and Vesting – Important with employee transfers, including transfer to employer with separate plans or no plans**
- ▼ **Minimum Participation for Qualified Defined Benefit Plans**
- ▼ **Code § 415 Compensation Definition and Maximum Contribution/Benefit limits**
- ▼ **Number of Key Employees and Top Heavy Status**

Retirement Plan Implications

- ▼ **Required Minimum Contributions to Pension Plans and Related Taxes**
 - ▼ All liability for both funding and excise tax obligations may be assessed against any member of the combined group
- ▼ **Simplified Employee Pension Plans (SEPs) and Savings Incentive Match Plans (SIMPLEs)**
 - ▼ All members of a combined group are treated as one employer for purposes of eligibility and required contributions
- ▼ **Exceptions may be available (e.g., SLOB and QSLOB)**

Health & Welfare Plan Implications

▼ COBRA

- ▼ Which employers are covered and whether an employer is eligible for the small employer exemption from COBRA liability
- ▼ Determining COBRA obligations in mergers and acquisitions

▼ Small or Large Group Market

- ▼ Employees of all employers in the same controlled group or affiliated service group are considered in determining whether the small group rules apply

Health & Welfare Plan Implications

▼ Nondiscrimination for Self-Funded Group Health Plans

- ▼ Remember: Nondiscrimination rules for fully-insured plans still pending

▼ Cafeteria Plans

- ▼ Determining which employees may participate in an employer's cafeteria plan
- ▼ Cafeteria plan nondiscrimination rules
- ▼ FSA salary reduction contribution limits

ACA Implications – Employer Mandate

- ▼ Employers in a controlled group or affiliated service group are treated as one “ALE Group”
 - ▼ Each separate employer is an “ALE Member” – generally based on FEIN
- ▼ ALE Status
- ▼ Hours of Service
- ▼ Separate Penalties

ACA Implications – ACA Reporting

- ▼ **1094-C - Must indicate if you were a member of an Aggregated ALE Group during any month of the calendar year (even if only part of one or more calendar months)**
- ▼ **Reporting ALE Group on the 1094-C:**
 - ▼ **Indicate “yes” in Line 21**
 - ▼ **Check the box in Column (d) of Part III for the applicable month(s)**
 - ▼ **List the other members in Part IV**
 - ▼ **Each other ALE member will do the same**

Reporting Your “Aggregated ALE Group” on the 1094-C

Form **1094-C** Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns CORRECTED 12011b
OMB No. 1545-2041
2015

Department of the Treasury
Internal Revenue Service
Information about Form 1094-C and its separate instructions is at www.irs.gov/form1094c.

Part I Applicable Large Employer Member (ALE Member)

1 Name of ALE Member (employer) _____ 2 Employer identification number (EIN) _____

3 Street address (including room or suite no.) _____

4 City or town _____ 5 State or province _____ 6 Country and ZIP or foreign postal code _____

7 Name of person to contact _____ 8 Contact telephone number _____

9 Name of Designated Government Entity (only if applicable) _____ 10 Employee identification number (EIN) _____

11 Street address (including room or suite no.) _____

12 City or town _____ 13 State or province _____ 14 Country and ZIP or foreign postal code _____

15 Name of person to contact _____ 16 Contact telephone number _____

17 Reserved _____

18 Total number of Forms 1095-C submitted with this transmittal _____

19 Is this the authoritative transmittal for this ALE Member? If "Yes," check the box and continue. If "No," see instructions _____

Part II ALE Member Information

20 Total number of Forms 1095-C filed by you on behalf of ALE Member _____

21 Is ALE Member a member of an Aggregated ALE Group? Yes No
If "No," do not complete Part IV.

22. Check one box to indicate ALE Member's eligibility (select all that apply):

A. Qualifying Offer Method B. Qualifying Offer Method Transition Relief C. Section 4980H Transition Relief D. 98% Offer Method

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature _____ Title _____
For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 87137

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Form 1094-C (2015) 12021b
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Part III ALE Member Information - Monthly

		(a) Minimum Essential Coverage Offer Indicator		(b) Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Section 4980H Transition Relief Indicator
		Yes	No				
23	All 12 Months	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
24	Jan	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
25	Feb	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
26	Mar	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
27	Apr	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
28	May	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
29	June	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
30	July	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
31	Aug	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
32	Sept	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
33	Oct	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	

Form **1094-C** (2015)

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Form 1094-C (2015) 120315
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Part IV Other ALE Members of Aggregated ALE Group

Enter the names and EINs of Other ALE Members of the Aggregated ALE Group (who were members at any time during the calendar year).

Name	EIN	Name	EIN
36		51	
37		52	
38		53	
39		54	
40		55	
41		56	
42		57	
43		58	
44		59	
45		60	
46		61	
47		62	
48		63	
49		64	
50		65	

Form **1094-C** (2015)

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MEWA Implications

- ▼ **Misunderstanding of controlled group status often causes unintentional creation of MEWA**
- ▼ **Common Scenarios**
 - ▼ Plans maintained by one employer or a group of employers under common control
 - ▼ Plans maintained by groups or associations of unrelated employers
 - ▼ Plans maintained by employee leasing organizations
- ▼ **M-1 obligations**
- ▼ **ERISA exemptions to state insurance laws may not apply**
- ▼ **Self-Funded vs. Fully-Insured MEWAs**
- ▼ **ERISA application: MEWA-level or employer-level?**



TRUE

NETWORK OF ADVISORS

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