CONTROLLED GROUP FACT SHEET

FACT SHEET

To determine whether your tax-exempt organization is an applicable large employer (ALE) for Affordable Care Act (ACA) purposes – and thus subject to the ACA's Employer Shared Responsibility Provision – you need to know whether your organization is part of a controlled group and thus treated as a single employer with other organizations. Employers, including church-related organizations, must apply the controlled group rules under Internal Revenue Code section 414 to determine if they are members of a controlled group.

This fact sheet includes provisions from Section 336 of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) enacted on December 18, 2015, which clarifies the controlled group rules for church organizations.

For purposes of this Fact Sheet, the term "church organization" can include churches, conventions or associations of churches as well as church-related organizations such as colleges, universities and hospitals.

For ALE determinations, there are different controlled group rules depending upon whether the organization is:

1. A church (including a convention or association of churches) or a qualified church-controlled organization (QCCO), an example of a QCCO is a church camp that receives more than 75% of its support from the sponsoring church (thus, less than 25% of its support is from camp fees or government sources).
2. A non-qualified church-controlled organization (NQCCO) such as church-related colleges, universities, hospitals and nursing homes that are open to the general public.

A qualified church-controlled organization (QCCO) is generally an church-controlled 501(c)(3) tax-exempt organization that (1) does not offer goods, services or facilities for sale to the general public or (2) normally receives 25% or less of its support from governmental sources or from sales in activities related to its general purpose.

A non-qualified church-controlled organization (NQCCO) is generally a church-controlled 501(c)(3) tax-exempt organization that (1) offers goods, services or facilities for sale to the general public, other than those sold at a nominal charge, and (2) normally receives more than 25% of its support from either governmental sources or receipts from admissions, sales of merchandise, performance of services or furnishing of facilities , or a combination of both.

GENERAL RULE

A controlled group will exist among organizations able to sponsor a church plan and therefore be treated as a single employer ALE determinations if:

1. One organization provides (directly or indirectly) at least 80% of the operating funds for the other organization during the preceding taxable year of the recipient organization

   and

2. There is a degree of common management or supervision between the organizations so that the organization providing the operating funds is directly involved in the day-to-day operations of the other organization.

An example of a controlled group would be a pregnancy crisis center which receives 80% or more of its financial support from a church and the church staff are directly involved in the day-to-day operations of the pregnancy crisis center.

This general rule can also apply if a NQCCO satisfies the financial control and common management or supervision requirements described above with respect to a QCCO. In that case, aA controlled group will exist between a the NQCCO and thean NQCCO and they will be treated and therefore be as a single employer for ALE determinations if the general rules of (1) financial control and (2) common management or supervision are present.

SPECIAL RULES

Applicable in Determining Whether a Controlled Group Exists Between Two or More NQCCOs

For a NQCCO to be considered aggregated with one or more other NQCCOs (or taxable organizations) and thus treated as a single employer for ALE determinations, at least 80% of the directors or trustees of the other organization must be either representatives of, or indirectly or directly controlled by, the first organization. Therefore, it is possible for two NQCCOs to be treated as one employer, even though the church that controls both organizations is not aggregated with either of the two NQCCOs.

For example, a church has a day care center and a Mother's Day Out program that are operated as separate legal entities from the church. Eight of 10 directors from the day care center are also directors of the Mother's Day Out program. In this example, the day care center entity and the Mother's Day Out program entity would be considered a controlled group and treated as one employer under the ACA-but the church would not be part of the controlled group because the church neither provides 80% of the operating funds nor oversees the day-to-day operations of either facility.

ANTI-ABUSE RULE

The anti-abuse rule means the IRS can treat an entity as part of a controlled group if the IRS determines the structure of one or more organizations was taken by the organization to avoid or evade the requirements imposed on ALEs.

Important Notes

If a controlled group has 50 or more full-time employees (including full-time equivalent employees), then all employers within the controlled group are considered ALEs. However, each employer within a controlled group is separately subject to the Employer Shared Responsibility Provision and thus separately responsible for any penalties owed by that employer.

The IRS has reserved the right to issue future regulatory guidance about how the controlled group rules apply to churches and conventions and associations of churches.

Additional Information

For additional information related to the PATH Act, please review Conner & Winters client alert dated January 27, 2016.
