

# CONTROLLED GROUP FACT SHEET

Determining if your tax-exempt organization is part of a controlled group and treated as a single employer for the purposes of the Affordable Care Act (ACA) helps define if you are an applicable large employer (ALE) and therefore subject to the Employer Shared Responsibility Provision. The Employer Shared Responsibility Provision states that church-related organizations must apply *Internal Revenue Code* section 414(c)(2) 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 test for church organizations.**

A church organization includes churches, conventions or associations of churches as well as church-related organizations such as colleges, universities and hospitals.

For medical plan determinations as of January 1, 2016, there are different rules depending upon whether the organization is:

- 1 A church (including a convention or association of churches) or a qualified church-controlled organization (QCCO) such as certain church schools or day cares or
- 2 A non-qualified church-controlled organization (NQCCO) such as church-related colleges, universities, hospitals and nursing homes open to the general public.

A qualified church-controlled organization (QCCO) is an organization that (1) does not offer goods, services or facilities for sale to the general public and (2) normally receives 25% or less of its support from governmental sources or from sales in activities related to its general purpose, i.e., a QCCO receives most of its support from the church or donations. See IRC section 3121(w)(3)(B).

A non-qualified church-controlled organization (NQCCO) is generally a church-controlled 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.

## GENERAL RULE

### Applicable to Churches and QCCOs

A controlled group will exist among organizations able to sponsor a church plan and therefore be treated as a single employer 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 that is financially supported (at least 80%) by a church and the church staff are directly involved in the day-to-day operations of the pregnancy crisis center.

### **Applicable in Determining Whether a Controlled Group Exists Between a QCCO and an NQCCO**

A controlled group will exist between a QCCO and an NQCCO and therefore be a single employer 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 an NQCCO to be considered aggregated with one or more other NQCCOs (or taxable organizations) and treated as a single employer, 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. 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 and the Mother's Day Out program 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 PROVISION**

The anti-abuse provision rule means the IRS can treat an entity as a controlled group if the IRS determines the structure of one or more organizations was taken by the organization to avoid being treated as an ALE.

### **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 penalties assigned by the IRS.

The IRS reserves 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](#).

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