

Entities Under Common Control

The Single Business Tax Act does not specifically define "entities under common control". The Department of Treasury has chosen to adopt the Internal Revenue Service Regulation 11.414(c) Relating to two or more businesses qualifying for pension, profit sharing, and stock bonus plans.

The term "entities under common control" means any one of the following groups of entities:

1. Parent - Subsidiary Group
2. Brother - Sister Group
3. Combined Group

Although not defined, there are three references to "entities under common control" in the Single Business Tax Act.

Section 36(2) (MCL 298.35)

"... an entity under common control..."

"...shall be entitled to only one exemption..."

Section 36(4) (MCL 208.36)

"...an entity under common control..."

"...shall not be allowed to take the credit allowed by this section unless the business activities of the entities are consolidated."

Section 73(5) (MCL 208.73)

For tax years ending after July 6, 1994 an affiliated group or an entity under common control shall consolidate gross receipts for purposes of the filing requirement.

The Michigan Department of Treasury issued Revenue Administrative Bulletin 1989-48 on May 31, 1989. The bulletin titled "Entities Under Common Control" reflects the state's definition for purposes of the limitation on the statutory exemption and the Small Business Credit.

For determining entities under common control under MCL 208.35(2) and MCL 208.36(4), the Department adopts the U.S. Department of Treasury Regulation 1.414(c) relating to two or more trades or businesses qualifying for pension, profit-sharing and stock bonus plans. Entities under common control shall include any person as defined in MCL 208.6(1) including "an individual, firm, bank, financial institution, limited partnership, co-partnership, partnership, joint venture, association, corporation, receiver, estate, trust, or any other group or combination acting as a unit."

Parent-Subsidiary Group of Entities Under Common Control

Parent subsidiary group of entities under common control means one or more chains of entities engaged in a business activity connected through ownership of a controlling interest with a common parent providing the following conditions exists:

1. A controlling interest in each of the organizations, except the common parent organization, is owned (directly or indirectly) by one or more of the other organizations, and
2. The common parent organization owns (directly or indirectly) a controlling interest in at least one of the other organizations, excluding, in computing such controlling interest, any direct ownership interest by such other organizations.

EXAMPLES OF A PARENT SUBSIDIARY GROUP OF ENTITIES UNDER COMMON CONTROL

	<u>Entity Owner</u>	<u>% of Ownership</u>	<u>Entities</u>	<u>Common Parent</u>	<u>Other Members</u>
1.		ABC Ptshp S Corp	80%	S CorpABC	Ptshp
2.	ABC Ptshp S Corp	80% 80%	S Corp DEF Ptshp	ABC Ptshp	S Corp & DEF Ptshp
3.	L Corp T Corp N Corp	80% 80% 40% 40%	T Corp N Corp GHI Ptshp GHI Ptshp	L Corp	T Corp, N Corp GHI Ptshp
4.	ABC Ptshp X Corp Y Corp	75% 25% 25%	X Corp 75% Y Corp X Corp	ABC PtshpX Corp, Y Corp	Y Corp

NOTE: Inter-organization ownership (X and Y's ownership) is excluded ABC Ptshp has 100% interest in X and Y Corporations.

A Controlling Interest Means:

1. Corporations: 80 percent of total combined voting power of all classes of stock entitled to vote, OR, at least 80 percent of the total value of the shares of all classes of stock of such corporation.
2. Trust and estates: ownership of an actuarial interest of at least 80 percent of such trust or estate.
3. Partnerships: 80 percent of the profits or capital.
4. Sole proprietorship: ownership of such proprietorship.

Brother-Sister Group of Entities Under Common Control

Brother-sister groups of entities under common control means two or more entities engaged in a business activity providing the following conditions exist:

1. The same five or fewer persons who are individuals, estates or trusts own, (directly or indirectly), a controlling interest of each entity, and
2. Taking into account the ownership of each such person only to the extent such ownership is identical with respect to each such entity; such persons are in effective control of each entity. The five or fewer persons, whose ownership is considered for purposes of the controlling interest requirement of each organization, must be the same persons whose ownership is considered for purposes of the effective control requirement.

**BROTHER-SISTERCONTROLLED GROUP OF ENTITIES:
GRID ANALYSIS**

Shareholder/Partners,Etc	Entity				Row Minimums
	1	2	3	4	
Column Total					

- Step 1: Determine the group of entities which is a suspect brother-sister group.
- Step 2: Determine ownership percentages (including related party percentages) for each shareholder/partner, etc.
- Step 3: Fill in the grid with ownership percentages (including related party percentages) for each shareholder/partner, etc.

Step 4: Foot each "entity column".

Step 5: If each column total is at least 80%, proceed to Step 6. If each column total is not at least 80%, a brother-sister-controlled group does not exist.

Step 6: Place lowest percent of ownership across columns in "row minimums" column.

Step 7: Foot "row minimums" column.

Step 8: If the "row minimums" total is more than 50% and no row minimum shows a zero, a brother-sister controlled group exists. If the "row minimums" total is more than 50% and at least one row minimum is a zero, remove shareholders from the grid who have row minimums of zero. Then repeat Steps 3-8.

Effective Control

Persons are in "effective control" of an organization if:

1. Corporations: Persons own stock greater than 50 percent of the total combined voting power of all classes of stock entitled to vote, OR, greater than 50 percent of the total value of shares of all classes of stock of such corporation;
2. Trusts and estates: Persons own an aggregate actuarial interest of more than 50 percent of such trust or estate;
3. Partnerships: Persons own an aggregate of more than 50 percent of the profits or capital of such partnership; and
4. Sole proprietorship: Such person owns such sole proprietorship.

Combined Group of Entities Under Common Control

Combined group of entities under common control means any group of three or more entities providing the following conditions exist:

1. Each entity is a member of either a parent subsidiary group or a brother-sister group of entities under common control.
2. At least one entity is the common parent entity of a parent subsidiary group of entities under common control and is also a member of a brother-sister group of entities under common control.

EXAMPLE OF A COMBINED GROUP OF ENTITIES UNDER COMMON CONTROL

Brother - Sister Group:

<u>Individual</u>	<u>Entities</u>	
A	ABC Ptshp 80%	DEF Ptshp 80%

Parent Subsidiary Group:

<u>Entity Owner</u>	<u>%</u>	<u>Entity</u>
ABC Ptshp	80%	X Corp

Since all entities are either a member of a parent subsidiary group or brother-sister group and at least one entity (ABC Ptshp) is a parent of the parent subsidiary as well as a member of the brother-sister group, there is a combined group of entities under common control consistent of ABC Ptshp, DEF Ptshp, and X Corp.

Exclusion of Certain Interests or Stock in Determining Control

The terms "interest" and "stock" do not include an interest that is treated as not outstanding. In addition, the term "stock" does not include treasury stock or nonvoting stock that is limited and preferred as to dividends.

If a parent organization has effective control of another subsidiary organization, then the "interest" owned by the principal owners of the parent organization and subsidiary organization shall be treated as not outstanding. A principal owner is a person (or entity) who has an "interest" in both the parent organization and the subsidiary organization.

Rules for Determining Control

The Department will follow the IRS rules on exclusion of certain interest or stock in determining control. (See IRS Regulation 1.414.(c)-3.)

Constructive Ownership

The Department will follow the IRS Rules for determining constructive ownership. This means ownership attributed from partnerships, estates, trusts, corporations, spouse, and relatives will be used in determining entities under common control. (See IRS Regulation 1.414(c)-4.).

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