**Chapter 2 Eligibility Determination – Employer and Employee**

**Q 2.01: What are the various types of business entities?**

***Sole Proprietor***

A sole proprietorship is owned and run by one individual and there is no legal or tax distinction between the owner and the business. The owner receives all profits (subject to taxation specific to the business) and has unlimited responsibility for all losses and debts. Every asset of the business is owned by the proprietor and all debts of the business are the proprietor's. It is a "sole" proprietorship in contrast with [partnerships](http://en.wikipedia.org/wiki/Partnership). A sole proprietor may use a [trade name](http://en.wikipedia.org/wiki/Trade_name) or business name other than his or her legal name.

Advantages:

* It is easy to organize this business.
* Only small amounts of capital are needed to start and run a business.
* It permits a high degree of flexibility to the owner because he or she is the boss of the business establishment.
* Due to the owner's unlimited liability, some creditors are more willing to extend credit.
* The owner receives all the profit of the business.
* There is no risk of fraud by a partner.

Disadvantages:

* Raising capital for a proprietorship is more difficult because an unrelated investor has less peace of mind concerning the use and security of his or her investment and the investment is more difficult to formalize; other types of business entities require more documentation.
* The enterprise may be crippled or terminated if the owner becomes ill.
* Because the business has the same legal entity as the proprietor, it ceases to exist upon the proprietor's death.
* Because the enterprise rests exclusively on one person, it often has difficulty in raising long-term capital.
* The proprietorship has limited resources. Banks are reluctant to grant loans to a proprietorship considering its small assets and high failure rate.
* The proprietorship has unlimited liability for business debts. The single owner is responsible for paying all debts and damages of the business.
* If the firm fails, creditors may force the sale of the proprietor's personal property as well as business property to satisfy their claim.
* When the owner dies, the continuation of the business is difficult, because a new owner must typically accept all liabilities of the business.

***Partnership***

A partnership is an agreement between two or more people to finance and operate a business. Partnerships, unlike sole proprietorships, are entities legally separate from the partners themselves. In a general partnership, however, profits and losses flow through to the partners’ tax returns. Each general partner has equal responsibility and authority to run the business. Any partner may represent the business without the knowledge of the other partners and the actions of one partner can bind the entire partnership. If one partner signs a contract on behalf of the partnership, the general partnership and each partner are responsible for that contract.

The shared ownership concept that characterizes a business partnership gives it certain distinct advantages and disadvantages. Partnerships are relatively easy to establish; however, time should be invested in developing the partnership agreement. In a partnership agreement, the following arrangements, among others, should be spelled out:

* How will the business be financed?
* Who will do what work?
* What happens if a partner dies?
* What happens if one or both partners want to dissolve the partnership?
* How will partnership profits be shared?

Advantages:

* Partnerships are relatively easy to establish.
* With more than one owner, the ability to raise funds may be increased, both because two or more partners may be able to contribute more funds and because their borrowing capacity may be greater.
* Prospective employees may be attracted to the business if given the incentive to become a partner.
* A partnership may benefit from the combination of complementary skills of two or more people.
* There is a wider pool of knowledge, skills, and contacts.
* Partnerships can be cost-effective as each partner specializes in certain aspects of their business.

Disadvantages:

* Business partners are jointly and individually liable for the actions of the other partners.
* Profits must be shared with others. The partners have to decide how they value each other’s time and skills. What happens if one partner can put in less time due to personal circumstances?
* Because decisions are shared, disagreements can occur. A partnership is for the long term, and expectations and situations can change, which can lead to dramatic and traumatic split ups.
* The partnership may have a limited life; it may end upon the withdrawal or death of a partner.
* A partnership usually has limitations that keep it from becoming a large business.
* Partners should discuss decisions to avoid disagreements and inappropriate commitments.
* A major disadvantage of a partnership is unlimited liability. General partners are liable without limit for all debts contracted and errors made by the partnership.

***Corporation (C Corporation)***

A corporation (sometimes referred to as a C corporation) is an independent legal entity owned by its shareholders. The corporation itself, not the shareholders that own it, is held legally liable for the actions and debts the business incurs. Corporations are more complex than other business structures because they tend to have more costly administrative fees and complex tax and legal requirements. Because of these issues, corporations are usually, but not always, suggested for established, larger companies with multiple employees. For businesses in that position, corporations offer the ability to sell ownership shares in the business through stock offerings.

A corporation is formed under the laws of the state in which it is registered. To [register a business](http://www.sba.gov/content/5-steps-registering-your-business) as a corporation, the organizers need to file certain documents, typically articles of incorporation, with the state’s Secretary of State. Some states require corporations to have directors and issue stock certificates to initial shareholders in the registration process.  Once a business is registered, the organizers must obtain business licenses and permits. Regulations vary by industry, state, and locality. Corporations are required to pay federal, state, and in some cases, local taxes. Most businesses must register with the IRS and [state and local revenue agencies](http://www.sba.gov/content/learn-about-your-state-and-local-tax-obligations), and receive a [tax ID number or permit](http://www.sba.gov/content/getting-tax-identification-number). When organizers form a corporation, they create a separate tax-paying entity. Regular corporations are called “C corporations” because Subchapter C of Chapter 1 of the Internal Revenue Code contains the general tax rules affecting corporations and their shareholders. Unlike sole proprietors and partnerships, corporations pay income tax on their profits. In some cases, corporations are taxed twice: first, when the company makes a profit, and again when dividends are paid to shareholders.

Advantages:

* **Limited liability.** When it comes to taking responsibility for business debts and the actions of a corporation, shareholders’ personal assets are protected. Shareholders can generally be held accountable only for their investment in the stock of the company.
* **Ability to generate capital.** Corporations have an advantage when it comes to raising capital for their business, i.e., the ability to raise funds through the sale of stock.
* **Corporate tax treatment.** Corporations file taxes separately from their owners. Owners of a corporation pay taxes only on corporate profits paid to them in the form of salaries, bonuses, and dividends, while any additional profits are awarded a corporate tax rate, which is usually lower than a personal income tax rate.
* **Attractive to potential employees.** Corporations are generally able to attract and hire high-quality and motivated employees because they offer competitive benefits and the potential for partial ownership through stock options.

Disadvantages:

* **Time and money.** Corporations are costly and time-consuming ventures to start and operate. Incorporating requires start-up, operating, and tax costs that most other structures do not require.
* **Double taxation.** In some cases, corporations are taxed twice, first when the company makes a profit, and again when dividends are paid to shareholders.
* **Additional paperwork.** Because corporations are highly regulated by federal, state, and in some cases local agencies, there are increased paperwork and recordkeeping burdens associated with this entity.
* Higher administrative costs. Generally, administrative costs are higher than other forms of business, e.g., sole proprietorships and partnerships.

***Subchapter S Corporation***

An S corporation is a corporation that is treated, for federal tax purposes, as a pass-through entity through an election made with the Internal Revenue Service (IRS) to be considered an S Corporation. The owners, who are shareholders, have the same protection from liability as shareholders of a [C corporation](http://www.bizfilings.com/c-corporation.aspx). An S corporation shareholder’s **personal** assets, such as personal bank accounts, cannot be seized to satisfy **business** liabilities. However, like a [sole proprietorship](http://www.bizfilings.com/sole-proprietorship.aspx) or a partnership, an S corporation passes through most of its income and loss items to the shareholders. Unlike a regular corporation, there is no "double taxation," once at the corporate level and again on the individual shareholder level. Each shareholder is subject to his or her own individual tax rate on the income (or losses) passed through to him or her.

Advantages:

* **Protected assets.** An S corporation protects the personal assets of its shareholders. Absent an express personal guarantee, a shareholder is not personally responsible for the business debts and liabilities of the corporation. Creditors cannot pursue the personal assets (house, bank accounts, etc.) of the shareholders to pay business debts. In a sole proprietorship or general partnership, owners and the business are legally considered the same—leaving personal assets vulnerable.
* **Pass-through taxation.** An S corporation does not pay federal taxes at the corporate level. Any business income or loss is "passed through" to shareholders who report it on their personal income tax returns. This means that business losses can offset other income on the shareholders’ tax returns. This can be extremely helpful in the startup phase of a new business.
* **Tax-favorable characterization of income.** S corporation shareholders can be employees of the business and draw salaries as employees. They can also receive dividends from the corporation, as well as other distributions that are tax-free to the extent of their investment in the corporation. A **reasonable** characterization of distributions as salary or dividends can help the owner-operator reduce self-employment tax liability, while still generating business expense and wages-paid deductions for the corporation.
* **Straightforward transfer of ownership.** Interests in an S corporation can be freely transferred without triggering adverse tax consequences. In a partnership or a limited liability company (LLC), the transfer of more than a 50 percent interest can trigger the termination of the entity. The S corporation does not need to make adjustments to property basis or comply with complicated accounting rules when an ownership interest is transferred.
* **Heightened credibility.** Operating as an S corporation may help a new business establish credibility with potential customers, employees, vendors, and partners because they see that the owners have made a formal commitment to their business.

Disadvantages:

* **Higher formation and ongoing expenses.** To operate as an S corporation, it is necessary to first incorporate the business by filing Articles of Incorporation with the desired state of incorporation, obtain a [registered agent](http://www.bizfilings.com/registered-agent.aspx) for the company, and pay the appropriate fees. Many states also impose ongoing fees, such as annual report or franchise tax fees. Although these fees usually are not expensive, and can be deducted as a cost of doing business, they are expenses that a sole proprietor or general partnership will not incur.
* **Tax qualification obligations.** Mistakes regarding the various election, consent, notification, stock ownership, and filing requirements can accidentally result in the termination of S corporation status. Although this is relatively rare, and usually can be remedied easily, it is still an issue that is not a factor with other business forms.
* **Stock ownership restrictions.** An S corporation can have only one class of stock, although it can have both voting and nonvoting shares. Therefore, there cannot be different classes of investors who are entitled to different dividends or distribution rights. Also, there cannot be more than 100 shareholders. Foreign ownership is prohibited, as is ownership by certain types of trusts and other entities.
* **Closer IRS scrutiny.** Because amounts distributed to a shareholder can be dividends or salary, the IRS scrutinizes payments to make sure the characterization conforms to reality. As a result, wages may be recharacterized as dividends, costing the corporation a deduction for compensation paid. Conversely, dividends may be recharacterized as wages, which subjects the corporation to employment tax liability.
* **Less flexibility in allocating income and loss.** Because of the one class of stock restriction, an S corporation cannot easily allocate losses or income to specific shareholders. Allocation of income and loss is governed by stock ownership, unlike a partnership or an LLC in which the allocation can be set in the operating agreement.

***Limited Liability Company (LLC)***

A limited liability company is a hybrid type of legal structure that provides the limited liability features of a corporation and the tax efficiencies and operational flexibility of a partnership. The "owners" of an LLC are referred to as "members." Depending on the state, the members can consist of a single individual (one owner), two or more individuals, corporations, or other LLCs. Unlike shareholders in a corporation, LLCs are not taxed as a separate business entity. Instead, all profits and losses are "passed through" the business to each member of the LLC. LLC members report profits and losses on their personal federal tax returns, just like the owners of a partnership would.

Advantages:

* Owners of an LLC have the liability protection of a corporation. An LLC exists as a separate entity much like a corporation. Members cannot be held personally liable for debts unless they have signed a personal guarantee.
* Limited liability companies can select varying forms of distribution of profits. Unlike a common partnership in which the split is 50–50, LLC have much more flexibility.
* Corporations are required to keep formal minutes, have meetings, and record resolutions. The LLC business structure requires no corporate minutes or resolutions and is easier to operate.
* All the business losses, profits, and expenses flow through the company to the individual members. The LLC avoids the double taxation of paying corporate tax and individual tax. Generally, this will be a tax advantage, but circumstances can favor a corporate tax structure.

Disadvantages:

* Corporations can live forever, whereas an LLC is dissolved when a member dies or undergoes bankruptcy.
* Business owners with plans to take their company public, or issuing employee shares in the future, may be best served by choosing a corporate business structure rather than an LLC.
* Running a sole proprietorship or partnership will have less paperwork and complexity. An LLC may federally be classified as a sole proprietorship, partnership, or corporation for tax purposes. Classification should be selected or a default may apply.

***Limited Liability Partnership (LLP)***

A limited liability partnership is a special business structure that provides protection for individual partners against the negligence of other partners within the organization. In general partnerships, each participant is personally responsible for the actions of the company. This includes debts, liabilities, and the wrongful acts of other partners. Individuals in a partnership are normally liable for filing personal income taxes, self-employment taxes, and estimated taxes for themselves, according to the IRS. The partnership itself is not responsible for paying taxes. The credits and deductions of the company are passed through to partners to file on their individual tax returns. Credits and deductions are divided by the percentage of individual interest each partner has in the company. This can be beneficial for partners who have a limited interest in the company or special tax requirements due to their interests in other businesses.

Advantages:

* One advantage of a limited liability partnership is the liability protection it affords. This type of partnership structure protects individual partners from personal liability for the negligent acts of other partners or employees not under their direct control.
* Individual partners are not personally responsible for company debts or other obligations.
* Limited liability partnerships offer participants flexibility in business ownership. Partners have the authority to decide how they will individually contribute to business operations.
* Managerial duties can be divided equally or separated based on the experience of each partner.
* In addition, partners who have a financial interest in the company can elect to not have any authority over business decisions but still maintain ownership rights based on their percentage interest in the company.
* The partnership itself is not responsible for paying taxes. The credits and deductions of the company are passed through to partners to file on their individual tax returns. Credits and deductions are divided by the percentage of individual interest each partner has in the company. This can be beneficial for partners who have a limited interest in the company or special tax requirements due to their interests in other businesses.

Disadvantages:

* Taxing authorities in some states recognize the structure as a nonpartnership for tax purposes.
* Unlike general partnerships, limited liability partnerships are not recognized as legal business structures in every state.
* Some states limit the creation of a limited liability partnership to professionals such as doctors or lawyers.
* Individual partners are not obligated to consult with other partners in certain business agreements.

**Controlled Groups**

When a group of organizations is considered to be a controlled group, all the employees of the group are considered to be employed by one employer for purposes of the nondiscrimination rules,[[1]](#footnote-1) the limitation on compensation,[[2]](#footnote-2) the coverage and participation rules,[[3]](#footnote-3) the vesting rules,[[4]](#footnote-4) the limitations on benefits and contributions,[[5]](#footnote-5) the top-heavy rules,[[6]](#footnote-6) the simplified employee pension (SEP) rules,[[7]](#footnote-7) and the rules for SIMPLE plans.[[8]](#footnote-8)

**Q 2.02: What is a parent-subsidiary controlled group?**

A parent-subsidiary controlled group is defined as one or more chains of corporations connected through stock ownership with a common parent corporation, if:

1. Stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, is owned by one or more of the other corporations; and

2. The common parent corporation owns stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations.[[9]](#footnote-9)

**Example 1:** P Corporation owns 90 percent of A Corporation. Because P, the parent, owns 80 percent or more of A, P and A are a parent-subsidiary controlled group.

P Corporation → A Corporation

**Example 2:** P Corporation owns 90 percent of A Corporation, and A Corporation owns 85 percent of B Corporation. Because A and B are controlled as a result of A’s 85-percent ownership of B, then P, which owns more than 80 percent of A, is the parent and P, A, and B are a parent-subsidiary controlled group.

P Corporation → A Corporation → B Corporation

**Example 3:** P Corporation owns 90 percent of A Corporation and owns 85 percent of B Corporation. Because P owns at least 80 percent of each corporation, P, A, and B are a parent-subsidiary controlled group.

P Corporation

↓ ↓

A Corporation B Corporation

**Example 4:** L Corporation owns 80 percent of T Corporation, and T Corporation owns 40 percent of GHI Partnership. L also owns 80 percent of N Corporation, and N Corporation owns 40 percent of GHI Partnership. L is the common parent of the parent-subsidiary controlled group, including L Corporation, T Corporation, N Corporation, and GHI Partnership.

L Corporation

↓ ↓

T Corporation N Corporation

↓ ↓

GHI Partnership

**Q 2.03: What is a brother-sister controlled group?**

A brother-sister controlled group is defined as two or more corporations, if five or fewer persons who are individuals, estates, or trusts own:

1. at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each corporation; and

2. more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.[[10]](#footnote-10)

The five or fewer persons referred to in the previous definition must be the *same* five or fewer persons in all corporations.

**Example 1:** Ownership of Corporations X and Y is shared by the following individuals (all owners are nonrelated):

Name X Corporation Y Corporation Common

John 25% 15% 15%

Stanley 10% 0% 0%

Susan 30% 30% 30%

William 15% 10% 10%

Carol 20% 30% 20%

Michael 0% 15% 0%

This example satisfies item 2 in the preceding definition of a brother-sister controlled group, because John, Susan, William, and Carol own at least 80 percent of both X Corporation (90 percent) and Y Corporation (85 percent). Identical ownership is measured based on the lowest common ownership of all companies in the controlled group. John owns 25 percent of X and 15 percent of Y, so the lowest common ownership is 15 percent, whereas Michael’s lowest common ownership is zero. Because the ownership of X Corporation and Y Corporation satisfies both items 1 and 2 in the preceding definition, X and Y are a brother-sister controlled group.

**Example 2:** Assume the same nonrelated owners as in Example 1. Changing the stock holdings slightly also changes the result:

Name X Corporation Y Corporation Common

John 25% 15% 15%

Stanley 10% 0% 0%

Susan 0% 30% 0%

William 15% 10% 10%

Carol 20% 30% 20%

Michael 30% 15% 15%

Here there are two groups of five owners in each corporation who own more than 80 percent of the stock; however, there is no common group of five owners who own more than 80 percent of the stock in *both* corporations.

X Corporation John, Stanley, Carol, and Michael own 85% (60% in Corporation Y)

John, William, Carol, and Michael own 90% (70% in   
Corporation Y)

Y Corporation Susan, William, Carol, and Michael own 85% (65% in   
Corporation X)

John, Susan, William, and Carol own 85% (60% in   
Corporation X)

Because there is no common group of *the same* five or fewer owners that own more than 80 percent of the stock of both corporations, this is not a brother-sister controlled group.

**Q 2.04: What is a combined group?**

A combined group is a combination of three or more corporations, each of which is a member of a group of corporations described as a parent-subsidiary controlled group or a brother-sister controlled group *and* one of which is both:

1. a common parent corporation included in a group of corporations described as parent-subsidiary; and

2. included in a group of corporations described as a brother-sister controlled group.

**Example:** Ownership in Companies A, B, and C is shared, as follows:

A Corporation B Corporation C Corporation

John 50% 50%

Michael 35% 50%

Carol 15% 0%

A Corporation 80%

This configuration satisfies item 1 of the combined group definition, because A Corporation is the common parent of B Corporation. The ownership configuration also satisfies item 2 of the definition, because A and C Corporations are a brother-sister controlled group, i.e., the same five or fewer stockholders own more than 80 percent of the stock of both corporations and the common ownership is more than 50 percent.

**Q 2.05: What is an affiliated service group?**

Affiliated service group has the following complex definition.[[11]](#footnote-11)

An affiliated service group is a group consisting of a first service organization (the FSO) and one or more of the following:

1. Any service organization (A Organization) that:

a. is a shareholder or partner in the first organization; and

b. regularly performs services for the first organization or is regularly associated with the first organization in performing services for third persons.

2. Any other organization (B Organization) if:

a. a significant portion of its business is the performance of services (for the first organization, for organizations described in item 1, or for both) of a type historically performed in that service field by employees; and

b. 10 percent or more of that organization’s interests are held by persons who are highly compensated employees (HCEs) of the first organization or an organization described in item 1.

An affiliated service group also includes a group consisting of:

1. an organization the principal business of which is performing, on a regular and continuing basis, management functions for one organization (or one organization and other organizations related to that one organization); and

2. the organization (and related organizations) for which such functions are so performed by the organization described in item 1.

To help with the analysis of whether a group of organizations is an affiliated service group, some of the related concepts are defined here in the order in which they first appear in the preceding definition of affiliated services group.

*Service organization’s principal business.* A service organization’sprincipal business is the performance of services if capital is not a material income-producing factor for the organization. This is a facts-and-circumstances determination based on whether there is a substantial investment in inventories, plant, machinery, or other equipment. Generally, if the income of the business consists primarily of fees, commissions, or other compensation for personal services of an individual, capital is not a material income-producing factor.[[12]](#footnote-12) Some fields are specifically identified as service organizations, including health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, and insurance.[[13]](#footnote-13)

*Regularly performs.*Whether an organization *regularly performs* services for the first service organization (FSO) or is regularly associated with the FSO in performing services for third persons is also a facts-and-circumstances determination. A key factor in this determination is the amount of income the organization receives from the FSO or from third persons.[[14]](#footnote-14)

*Significant portion of the business.*An organization is a B organization if a significant portion of the business of the organization is the performance of services for the FSO, or for one or more A organizations, or for both. This test is also a facts-and-circumstances determination, although an organization will not be considered a B organization if less than 5 percent of its gross receipts is derived from providing services to the FSO or one or more A organizations.[[15]](#footnote-15)

*Historically performed.*An organization is a B organization if it performs services for an FSO or for one or more A organizations that are historically performed by employees of the FSO in that service field. A service is considered historically performed if it was not unusual for the services to be performed by employees of organizations in that service field.[[16]](#footnote-16) An example of a B organization is one that employs nurses who provide services to an FSO that employs physicians and treats patients.

*Management functions.*Because there is no regulatory guidance on management functions, the typical responsibilities of a manager, including supervision, hiring and terminating employees, and establishing priorities, would be applied to this relationship.

The basis for determining which groups are affiliated service groups and management function groups is illustrated in the following examples:

**Example 1:**John is an attorney and provides legal services to the general public as John Q. Attorney, Esq. P.C. His professional corporation (P.C.) is also a partner in Legal Services Group Inc. John regularly provides services to the public in association with Legal Services Group Inc. The law firm would be considered a first service organization; John’s P.C. would be an A organization because it is a partner in the law firm and it is regularly associated with the law firm in providing services to third persons. The law firm and John’s P.C. are therefore an affiliated service group.

*For there to be an FSO/A organization affiliated service group when the FSO is a corporation, that corporation must be a* *professional service corporation*.

**Example 2:** Corporation F is a service organization that is a shareholder in Corporation G, another service organization. F regularly provides services for G. Neither corporation is a professional service corporation. Because neither corporation is a professional service corporation, neither F nor G can be an FSO, so F and G would not be an affiliated service group as an FSO and an A organization. These two organizations may, however, be affiliated as an A organization and a B organization.

**Example 3:** Regal Cleaning Service is a partnership with eleven partners. Each of the partners owns 1 percent of the stock in Dirt Away Inc. The corporation’s employees provide the cleaning services only to commercial offices contracted to Regal Cleaning Service. Because any service organization can be an FSO, Regal Cleaning Service would be considered the first service organization. The corporation, Dirt Away, Inc., is providing services to the FSO that would historically be provided by employees of the FSO and a significant portion of the business of the corporation is providing services to the FSO. In addition, more than 10 percent of the interest in the corporation is held by HCEs; eleven partners would each hold 9.091 percent of the partnership. This arrangement satisfies the requirements for an affiliated service group consisting of an FSO and a B organization.

**Example 4:** The classic example of an affiliated service group is the medical professional who is employed by a P.C. and owns all the stock of the P.C. The P.C. or the medical professional owns some interest in a clinic that employs several nurses and support staff, to which the P.C. provides professional services. Considering the clinic is the FSO and the P.C. is an A organization, the two constitute an affiliated service group. Before the issuance of Code Section 414(m), it was common for the P.C. to set up a rich pension plan with no plan or a token plan for the clinic employees assuming the two were not a parent-subsidiary or brother-sister controlled group.

**Q 2.06: What is a leased employee?**

A leased employee is any person who is not an employee of the recipient and who provides services to the recipient[[17]](#footnote-17) if:

1. Such services are provided pursuant to an agreement between the recipient and any other person (the leasing organization),

2. That person has performed such services for the recipient on a substantially full- time basis for at least one year, and

3. Such services are performed under the primary direction of or control by the recipient.

*Substantially full-time* basis is defined as the performance of services during any twelve-month period for at least 1,500 hours, or the performance of services during any twelve-month period for a number of hours at least equal to 75 percent of the average number of hours that are customarily performed by an employee of that recipient in a particular position.[[18]](#footnote-18)

Leasing employees became a popular method of eliminating common-law employees from qualified plans so that only the HCEs or owners of the sponsoring company could be eligible for the plans. The classic example was a medical practice that employed only one professional and leased all the other employees from a leasing organization, claiming those employees were employees of the leasing organization, not the medical practice. A rich plan was adopted by the medical practice employing the professional and no plan was adopted for the rank-and-file employees. With the addition of Code Section 414(n), these arrangements are no longer allowed.

If an employee is determined to be a leased employee under the preceding definition, that employee is treated as an employee of the recipient (the organization for whom the leased employee performs services).[[19]](#footnote-19) In that case the employee would be included, if eligible, in any qualified plan sponsored by the recipient and subject to the same rules and regulations as a common-law employee would be.

As an alternative, the leasing organization may establish a safe harbor plan that would allow the leased employee to be treated as an employee of the leasing organization for purposes of retirement benefits. The safe harbor plan must:[[20]](#footnote-20)

1. Be a money purchase pension plan with a nonintegrated employer contribution of at least 10 percent,

2. Provide for full and immediate vesting, and

3. Have each employee of the leasing organization, other than those employees providing substantially all of their services for the leasing organization, immediately participate in the plan.

In addition, to satisfy the safe harbor rule, leased employees may not be more than 20 percent of the recipient’s workforce.[[21]](#footnote-21) If the facts and circumstances indicate that the employees are actually employees of the recipient, the safe harbor plan does not satisfy the recipient’s obligations to cover those employees in any plan it sponsors.

**Q 2.07: What is the difference between an “employee” and an “independent contractor?**

The IRS Twenty Factor Test used to determine the relationship between a worker and the company that the worker works for was developed based on an examination of cases and rulings considering whether an individual is an employee or an independent contractor. The degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed.

1. *Instructions.* A worker required to comply with other persons’ instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the persons for whom the services are performed have the right to require compliance with instructions.

2. *Training.* Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the persons for whom the services are performed want the services performed in a particular method or manner.

3. *Integration.* Integration of the worker’s services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

4. *Services rendered personally.* If the services must be rendered personally, presumably the persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

5. *Hiring, supervising, and paying assistants.* If the persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the workers on the job; however, if one worker hires, supervises, and pays the other assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, this factor indicates independent contractor status.

6. *Continuing relationship.* A continuing relationship between the worker and the persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist when work is performed at frequently recurring although irregular intervals.

7. *Set hours of work.* The establishment of set hours of work by the persons for whom the services are performed is a factor indicating control.

8. *Full-time required.* If the worker must devote substantially full-time to the business of the persons for whom the services are performed, such persons have control over the amount of time the worker spends working and impliedly restrict the worker from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses.

9. *Doing work on the employer’s premises.* If the work is performed on the premises of the persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the persons receiving the services, such as at the office of the worker, indicates some freedom from control. This fact by itself does not mean, however, that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer’s premises. Control over the place of work is indicated when the persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.

10. *Order or sequence set.* If a worker must perform services in the order or sequence set by the persons for whom the services are performed, that factor shows that the worker is not free to follow the worker’s own pattern of work but must follow the established routines and schedules of the persons for whom the services are performed. Often, because of the nature of an occupation, the persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if such persons retain the right to do so.

11. *Oral or written reports.* A requirement that the worker submit regular oral or written reports to the persons for whom the services are performed indicates a degree of control.

12. *Payment by hour, week, or month.* Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor.

13. *Payment of business or traveling expenses.* If the persons for whom the services are performed ordinarily pay the worker’s business or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker’s business activities.

14. *Furnishing of tools and materials.* The fact that the persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

15. *Significant investment.* If the worker invests in facilities that are used by the worker in performing services and the facilities are not typically maintained by employees (such as the maintenance of an office rented at fair value from an unrelated party), that factor tends to indicate that the worker is an independent contractor. On the other hand, lack of investment in facilities indicates dependence on the persons for whom the services are performed for such facilities and, accordingly, the existence of an employer-employee relationship. Special scrutiny is required with respect to certain types of facilities, such as home offices.

16. *Realization of profit or loss.* A worker who can realize a profit or suffer a loss as a result of the worker’s services is generally an independent contractor, but the worker who cannot is an employee. For example, if the worker is subject to a real risk of economic loss as a result of significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, that factor indicates that the worker is an independent contractor. The risk that a worker will not receive payment for his or her services is common to both independent contractors and employees and thus does not constitute a sufficient economic risk to support treatment as an independent contractor.

17. *Working for more than one firm at a time.* If a worker performs more than *de minimis* services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. A worker who performs services for more than one person may, however, be an employee of each of the persons, especially when such persons are part of the same service arrangement.

18. *Making services available to the general public.* The fact that a worker makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship.

19. *Right to discharge.* The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer’s instructions. An independent contractor, on the other hand, cannot be fired as long as the independent contractor produces a result that meets the contract specifications.

20. *Right to terminate.* If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

These tests are only guidelines and are not meant to imply that the only issues to consider are those referred to above.

**Q 2.08: What is a Professional Employer Organization (PEO)?**

A professional employer organization (PEO) is a firm that provides a service under which an employer can outsource employee management tasks, such as employee benefits, payroll, workers' compensation, recruiting, risk/safety management, and training and development.The PEO does this by hiring a client company's employees, thus becoming their employer of record for tax purposes and insurance purposes. This practice is known as [joint employment](http://www.ask.com/wiki/Joint_employment?qsrc=3044) or co-employment.

PEOs operate currently in all fifty states. Some states have legislation specifically referencing a PEO or the employee leasing industry but do not have comprehensive registration or licensing requirements specific to the PEO employee leasing industry. . In addition, state unemployment codes, workers’ compensation acts, and other statutes may have PEO- specific references and guidelines. PEOs provide administrative services in four major areas: payroll, worker’s compensation, benefits and human resources.

PEOs generally offer participation in a multiple employer plan, usually a 401(k) plan, although this practice has come under scrutiny by the Department of Labor recently. Because the participating employers are not related the question of who is the employee’s employer is not clear. In the past the PEO has filed one form 5500 for all participating employers and one financial audit. If the PEO is not the employer but each participating employer is treated as a single employer each would have to file its own form 5500 and, if required, its own financial audit.

**Q 2.09: What is a shared employee?**

The next issue involves “shared employees.” A typical example of shared employees is a professional office in which several professionals work, each with independent practices, but they share support staff, e.g., secretaries, receptionist, typists, and nurses. In some cases each professional is responsible for and pays a proportional share of the expenses of the office, and in some cases one of the professionals pays all the expenses and is then reimbursed by the others. Unfortunately there is no current guidance on this arrangement.

Whether the nurses are employed full time with each corporation is not determined by the amount of services rendered to each. The amount of services rendered to each corporation may vary from day to day. Such variation does not, however, permit classifying the employees as part-time workers. The characteristics of an employee do not change when the efforts of such employee are shared by more than one employer.

The conclusion, based on this statement, is that shared employees are full-time employees of all employers sharing their services. This conclusion assumes that the shared employee works at least 1,000 hours when service for all employers is aggregated. These employees would be eligible participants in any plan sponsored by any of the employers assuming the employee satisfies the eligibility requirements, e.g., age twenty-one and one year of service. The contributions or benefits would be provided by each employer based on that employer’s share of the employee’s compensation.

**Example:** Consider the case of various employees working for Professionals A, B, and C, for the following salaries and percentages of time:

Salary Professional A Professional B Professional C

Secretary $30,000 20% 50% 30%

Typist $25,000 30% 35% 35%

Nurse 1 $40,000 100%

Nurse 2 $45,000 50% 50%

Based on this data, Nurse 1 is the exclusive employee of Professional A and is not a shared employee. All other employees are shared and would participate in each professional’s retirement plan to the extent of the employer’s share of their compensation.

Assume all the employees are over age twenty-one and have been employed more than one year. Professional A sponsors a 10 percent money purchase plan, Professional B sponsors a profit sharing plan and has made a 15 percent contribution for the current year; and Professional C sponsors a defined benefit plan providing a retirement benefit of 50 percent of compensation. The results would be as follows:

Salary Professional A Professional B Professional C

Secretary $30,000 $600 contribution $2,250 contribution $4,500 benefit/year  
 ($30,000 × 20% × ($30,000 × 50% × ($30,000 × 30% ×   
 10%) 15%) 50%)

Typist $25,000 $750 contribution $1,313 contribution $4,375 benefit/year  
 ($25,000 × 30% × ($25,000 × 35% × ($25,000 × 35% ×   
 10%) 15%) 50%)

Nurse 1 $40,000 $4,000 contribution  
 ($40,000 × 100% ×   
 10%)

Nurse 2 $45,000 $3,375 contribution $11,250 benefit/year  
 ($45,000 × 50% × ($45,000 × 50% × 15%) 50%)

**Q 2.09: What is a “Qualified Separate Line of Business?”**

A line of business is defined as “a portion of an employer that is identified by the property or services it provides to customers of the employer.”[[22]](#footnote-22) A separate line of business (SLOB) is “a line of business that is organized and operated separately from the remainder of the employer,” based on objective criteria.[[23]](#footnote-23)

If an employer operates separate lines of business for bona fide business reasons and:[[24]](#footnote-24)

1. The line of business has at least fifty employees excluding:

a. Employees who have not completed six months of service;

b. Employees who normally work less than seventeen and a half hours per week;

c. Employees who normally work not more than six months during any year;

d. Employees who have not attained age twenty-one; and

e. Union employees,

2. The employer notifies the Secretary of State that the line of business is being treated as separate for purposes of Code Section 410(b), and

3. The line of business meets guidelines prescribed by the Secretary of State or the employer receives a determination from the Secretary that the line of business may be treated as separate for purposes of Section 410(b),then the separate line of business satisfying these three rules is a “qualified” SLOB, and the employer may apply the rules of Code Section 410(b) (coverage rules) and Code Section 401(a)(26) (participation rules) separately to each qualifying line of business.

Generally this provision only applies to larger employers because of the nature of the SLOB qualification requirements. Rule 3 is invalid if the HCE percentage for that line of business is (a) not less than half, and (b) not more than twice the percentage that HCEs are of all employees of the employer. If at least 10 percent of all the HCEs of the employer perform services only for that line of business, Rule 1 is deemed satisfied.[[25]](#footnote-25)

An employer is treated as operating qualified SLOBs only if all property and services provided by the employer to its customers are provided exclusively by qualified SLOBs. When the SLOBs have been determined, no portion of the employer may remain that is not part of a qualified separate line of business of the employer.[[26]](#footnote-26)

The regulations setting forth the guidelines for SLOBs are more than forty pages long and apply only in limited situations based on the size and nature of the employer, so an in-depth discussion would not be appropriate for purposes of this book. In any case, the complexity of the regulations suggests that an experienced advisor should be consulted in this area of pension law.

**Ownership Attribution**

The concept of ownership attribution takes into consideration that in specific cases actual ownership is different than ownership for purposes of control. The guidelines for constructive ownership apply to three main groups, each with its own rules: parent-subsidiary controlled groups, brother-sister controlled groups, and affiliated service groups.

**Q 2.10: What attribution rules apply to parent-subsidiary groups?**

The following are the constructive ownership rules applicable to parent-subsidiary controlled groups.

1. Any stock owned by the corporation directly is considered toward the 80 percent requirement.[[27]](#footnote-27)

2. Any person who holds an option to acquire stock is assumed to own that stock.[[28]](#footnote-28)

3. Stock owned directly or indirectly by or for a partnership is assumed to be owned by any partner with a 5 percent or more interest in the partnership in proportion to his or her interest.[[29]](#footnote-29)

4. Stock owned directly or indirectly by or for an estate or trust is considered as owned by any beneficiary who has an *actuarial interest* of 5 percent or more in the stock in proportion to that actuarial interest.[[30]](#footnote-30)

An *actuarial interest* is based on the likelihood that the beneficiary will receive the stock considering the provisions of the estate or trust and the beneficiary’s life expectancy. For example, if the trust provides a 10-percent interest at the death of X, what is the likelihood that the beneficiary will survive X?

5. Stock owned directly or indirectly by a grantor trust is considered to be owned by the grantor.[[31]](#footnote-31)

**Q 2.11: What attribution rules apply to brother-sister groups?**

In a brother-sister controlled group all the preceding ownership rules apply, plus:

1. Stock owned directly or indirectly by or for a corporation is considered as owned by any person who owns 5 percent or more in value of its stock in proportion to the value owned.[[32]](#footnote-32)

2. An individual is considered as owning stock in a corporation owned directly or indirectly by or for his or her spouse, except when each of the following conditions is satisfied for the taxable year:[[33]](#footnote-33)

a. The individual does not at any time during the year own directly any stock in that corporation;

b. The individual is neither a director nor an employee and does not participate in the management of that corporation at any time during the year;

c. Not more than 50 percent of the corporation’s gross income for the year was derived from royalties, rents, dividends, interest, and annuities; and

d. The stock is not at any time during the year subject to conditions that substantially restrict or limit the spouse’s right to dispose of the stock in favor of the individual or his or her children under the age of twenty-one.

3. An individual is considered as owning stock owned directly or indirectly by or for his or her children who have not attained the age of twenty-one, and, if the individual has not attained the age of twenty-one, he or she is considered to own the stock owned directly or indirectly by or for his or her parents.[[34]](#footnote-34)

4. An individual who owns more than 50 percent of the total combined voting power of all classes of stock or more than 50 percent of the total value of shares of all classes of stock is considered as owning the stock directly or indirectly owned by or for his or her parents, grandparents, grandchildren, and children who have attained the age of twenty-one.[[35]](#footnote-35)

The attribution (ownership) rules for companies under common control[[36]](#footnote-36) are the same as those for brother-sister controlled groups and all the rules under Code Section 1563(e) (parent-subsidiary) apply.

**Q 2.12: What attribution rules apply to affiliated service groups?**

The ownership rules for affiliated service groups are based on Code Section 318(a).[[37]](#footnote-37) This is the same Code section used to determine ownership for purposes of identifying HCEs and key employees under the top-heavy rules of Code Section 416. These rules provide generally that:

1. An individual is considered owning stock owned directly or indirectly by or for his or her spouse, children, grandchildren, and parents.

2. Stock owned directly or indirectly by or for a partnership or estate is considered owned proportionally by its partners or beneficiaries.

3. Stock owned by or for a trust is considered owned by its beneficiaries in proportion to the actuarial interest of the beneficiaries.

4. Stock owned by a grantor trust is considered owned by the grantor.

5. If any person owns 50 percent or more of the value of a corporation directly or indirectly, that person is considered as owning the stock owned directly or indirectly by the corporation in proportion to the stock that person owns.

6. Stock owned directly or indirectly by or for a partner or beneficiary of an estate is considered owned by the partnership or estate.

7. Stock owned directly or indirectly by or for a beneficiary of a trust is considered owned by the trust unless the beneficiary has a contingent interest actuarially valued at 5 percent or less.

8. Stock owned directly or indirectly by or for any person considered to be the owner of a trust is considered owned by the trust.

9. If 50 percent or more of the value of the stock in a corporation is owned directly or indirectly by any person, that corporation is considered as owning the stock owned directly or indirectly by the person.

10. If any person has an option to acquire stock, that stock is considered as owned by that person.

On the positive side, there is no double attribution among family members. If a person owns stock and his or her spouse constructively owns that stock in accordance with Code Section 318(a)(1), that stock cannot be attributed to the spouse’s parents.[[38]](#footnote-38) A similar concept is true regarding stock attributed to partnerships, estates, trusts, and corporations. This stock cannot be attributed back to others to make them constructive owners if, in the absence of the stock being attributed to the partnership, estate, trust or corporation, they would otherwise not be constructive owners.[[39]](#footnote-39)

Although the rules under Code Section 318(a) for the most part refer to corporations and stock ownership, these rules apply equally to partnerships, sole proprietorships, and other business entities.

**Q 2.13: What are the allowable eligibility requirements?**

Eligibility is usually based on the employee’s age and length of service. Under current law, the maximum service that may be required before an employee is eligible to participate is one year, and the maximum age is twenty-one.[[40]](#footnote-40) If the plan provides for full and immediate vesting, the service requirement may be increased to two years.[[41]](#footnote-41) The choice of two years of service does not apply to the 401(k) deferral portion of profit sharing plans,[[42]](#footnote-42) which limits the service requirement to no more than one year.

Generally, the employee must complete at least 1,000 hours during a twelve-month period to be considered as having completed a year of service for eligibility. An hour of service is any hour for which an employee is paid or is entitled to be paid by the employer, e.g., including vacation time. The eligibility requirements can be changed to be more liberal, e.g. no service requirement or one-half year of service. The same is true of the choices for age, including no minimum age, age twenty and a half, or some other employer choice, but not later than age twenty-one. Regardless of the eligibility requirements a plan may also exclude union employees if retirement benefits were the subject of good faith bargaining. In addition the plan may exclude nonresident aliens who have no US source income.

**Q 2.14: What is the definition of “One Year of Service”?**

A year of service is defined as a twelve-month period during which the employee completes 1,000 hours; however, this does not apply if the service requirement in the plan is less than one year. Hours must be included for any period that the employee has received or will receive compensation, including vacation, sick leave, holidays, disability, jury duty, military duty, and leave of absence. If the plan provides for six months of service for eligibility a new employee will be eligible after six months of service whether he or she completed 1,000 hours or not. This is the disadvantage of using a service requirement of less than one year.

**Q 2.15: Are there any other options that can be used for eligibility?**

A plan may provide that any employees employed on the effective date of the plan are eligible immediately and all new employees must satisfy the age and service requirement otherwise chosen. The effective date is usually the first day of the plan year but may be different if the first plan year is a short year. With the popularity of 401(k) plans, some plans have varied eligibility for different benefits. Although called 401(k) “plans,” they are really a profit sharing plan with a 401(k) option. By including the 401(k) option, employers create a plan with several sources of funding, including employee deferrals, employer matching contributions, and employer profit sharing contributions. Each of these funding sources may have different eligibility requirements. For example, employers can provide that all employees are immediately eligible to make employee deferrals but must complete a year of service to participate in the employer’s matching or profit sharing contribution.

**Q 2.16: Are employees eligible to participate in the plan after satisfying the eligibility requirement?**

If the requirement for participation were eligibility, each employee’s date of participation would be based on the anniversary date of his or her employment—the date on which he or she completed one year of service, potentially 365 different periods. This would make the administration of the plan cumbersome. The reference to “Entry Date” in the plan document avoids that administrative problem. Entry date defines the date as of which employees can participate in the plan once they satisfy the eligibility requirements. The most common choices are:

1. the first day of the plan year in which the requirements are met;

2. the first day of the plan year in which the requirements are met, if met in the first six months of the plan year, or as of the first day of the next plan year if met in the last six months of the plan year;

3. the earlier of the first day of the seventh month or the first day of the plan year coinciding with or next following the date on which the requirements are met;

4. the first day of the plan year next following the date on which the requirements are met; and

5. the first day of the month coinciding with or next following the date on which the requirements are met.

Assuming the plan year is a calendar year, the eligibility requirements are one year of service and age twenty-one, and the employee has completed more than 1,000 hours. The dates of participation under each option above are:

*Option 1 2 3 4 5*

Employee hired 3/18/13 1/1/14 1/1/14 7/1/14 1/1/15 4/1/14

 (more than 1,000 hours in   
 first year)

Employee hired 8/12/13 1/1/14 1/1/15 1/1/15 1/1/15 9/1/14

 (less than 1,000 hours in   
 first year)

Regardless of which option is chosen, an employee may not be prevented from participating in the plan for more than six months after satisfying the eligibility requirements.[[43]](#footnote-43) Option 4 for the employee hired March 18, 2013, does not satisfy this requirement unless the eligibility requirements are six months and age twenty and a half. Clearly option 3 delays participation the longest in both cases and is usually the most common choice. A common choice in 401(k) plans is the first day of the calendar quarter following completion of the eligibility requirements. This allows employees hired during the year to participate sooner in some cases than under option 3. For the two employees here, the first, hired March 18, 2013, would participate April 1, 2014, and the second, hired August 12, 2013, would participate October 1, 2014.

1. IRC Sec. 401(a)(4). [↑](#footnote-ref-1)
2. IRC Sec. 401(a)(17). [↑](#footnote-ref-2)
3. IRC Sec. 401(a)(26), Sec. 410. [↑](#footnote-ref-3)
4. IRC Sec. 411. [↑](#footnote-ref-4)
5. IRC Sec. 415. [↑](#footnote-ref-5)
6. IRC Sec. 416. [↑](#footnote-ref-6)
7. IRC Sec. 408(k). [↑](#footnote-ref-7)
8. IRC Sec. 408(p). [↑](#footnote-ref-8)
9. Treas. Reg. §1.1563-3(b)(1). [↑](#footnote-ref-9)
10. Treas. Reg. § [1.1563-3(b)](http://www.law.cornell.edu/cfr/text/26/1.1563-3#b). [↑](#footnote-ref-10)
11. IRC Sec. 414(m). [↑](#footnote-ref-11)
12. Treas. Reg. §1.414(m)-2(f)(1). [↑](#footnote-ref-12)
13. Treas. Reg. §1.414(m)-2(f)(2). [↑](#footnote-ref-13)
14. Treas. Reg. §1.414(m)-2(b)(2). [↑](#footnote-ref-14)
15. Treas. Reg. §1.414(m)-2(c)(2). [↑](#footnote-ref-15)
16. Treas. Reg. §1.414(m)-2(c)(3). [↑](#footnote-ref-16)
17. IRC Sec. 414(n)(2). [↑](#footnote-ref-17)
18. Notice 84-11, Q & A #7, 1984-2 C.B. 469. [↑](#footnote-ref-18)
19. IRC Sec. 414(n)(1)(A). [↑](#footnote-ref-19)
20. IRC Sec. 414(n)(5)(B). [↑](#footnote-ref-20)
21. IRC Sec. 414(n)(5)(A)(ii). [↑](#footnote-ref-21)
22. Treas. Reg. §1.414(r)-1(b)(2)(ii). [↑](#footnote-ref-22)
23. Treas. Reg. §1.414(r)-1(b)(2)(iii). [↑](#footnote-ref-23)
24. IRC Sec. 414(r)(2). [↑](#footnote-ref-24)
25. IRC Sec. 414(r)(3)(A). [↑](#footnote-ref-25)
26. Treas. Reg. §1.414(r)-1(b)(1). [↑](#footnote-ref-26)
27. IRC Sec. 1563(d)(1)(A). [↑](#footnote-ref-27)
28. IRC Sec. 1563(e)(1). [↑](#footnote-ref-28)
29. IRC Sec. 1563(e)(2). [↑](#footnote-ref-29)
30. IRC Sec. 1563(e)(3)(A). [↑](#footnote-ref-30)
31. IRC Sec. 1563(e)(3)(B). [↑](#footnote-ref-31)
32. IRC Sec. 1563(e)(4). [↑](#footnote-ref-32)
33. IRC Sec. 1563(e)(5). [↑](#footnote-ref-33)
34. IRC Sec. 1563(e)(6)(A). [↑](#footnote-ref-34)
35. IRC Sec. 1563(e)(6)(B). [↑](#footnote-ref-35)
36. IRC Sec. 414(c). [↑](#footnote-ref-36)
37. IRC Sec. 414(m)(6)(B). [↑](#footnote-ref-37)
38. IRC Sec. 318(a)(5)(B). [↑](#footnote-ref-38)
39. IRC Sec. 318(a)(5)(C). [↑](#footnote-ref-39)
40. IRC Sec. 410(a)(1)(A). [↑](#footnote-ref-40)
41. IRC Sec. 410(a)(1)(B). [↑](#footnote-ref-41)
42. IRC Sec. 401(k)(2)(D). [↑](#footnote-ref-42)
43. IRC Sec. 410(a)(4). [↑](#footnote-ref-43)