

Testimony of:

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Committee on Small Business  
United States House of Representatives

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The Honorable Sam Graves (R-MO), Chairman  
The Honorable Nydia Velazquez (D-NY), Ranking Member

Good afternoon Chairman Graves, Ranking Member Velazquez and members of the Committee. I am Donna Baker, a CPA with 25 years of experience. I am an Associate Professor of Accounting at Siena Heights University and have owned my own CPA firm for the last 13 years.

### Executive Summary

The business aggregation rules in the Affordable Care Act will have a negative impact on small businesses. The aggregation rules require any group of companies under “common control” to be treated as a single employer. The primary key in determining which companies are combined is direct or attributed ownership, not operational control. The attributed ownership rules may cause unrelated businesses held by family members or trusts to be aggregated. Companies within a controlled group do not need to have the same management or operate in the same industry. All employees of the controlled group must be considered in determining if the health insurance mandate applies. These rules could cause employers to delay growth, manipulate ownership percentages or limit employees to less than 30 hours, discourage small businesses from investing in other businesses, and require health insurance coverage in industries where this is not the norm which will affect a businesses ability to compete.

Also, the aggregation rules are vast and detailed. They are rarely used by small business and small business advisors. The level of complexity and the unfamiliarity could create inaccurate application of the rules.

### Background

I live and practice in Lenawee County, Michigan, a rural area with a population of 99,000 and median household income of \$48,000. My practice includes tax and accounting services for several small businesses. I also own a small payroll company and retail store and my husband is a partner in a dairy farm.

The business aggregation rules in the Affordable Care Act will impact small businesses. The Affordable Care Act requires a business to apply the controlled group, affiliated service and leased employee rules to determine what groups of companies are to be treated as a single employer. All employees (including leased employees) of companies in the controlled group and affiliated service group must be included in the calculation of full time equivalent employees (FTEs). If the total number of full-time employees (including FTEs) for the entire group is at least 50, then each entity in the controlled group will be subject to the employer mandate rules of the Affordable Care Act and must provide the minimum essential health insurance coverage to all full time employees and their dependents.

The attribution rule applies in determining a controlled group and affiliated service group. Attribution is the concept of treating a person as owning an interest in a

business that is not actually owned by that person. Attribution may result from family or business relationships. One aspect of this rule is the family attribution rule between spouses that requires the business interest of one spouse to be attributed to the other spouse unless there is either no direct ownership, no participation in the company and no more than 50% of business gross income is passive investments.

### Implication of Requiring Small Business to use Controlled Group Rules

Many Small Businesses and Small Business Advisors are Unfamiliar with the Controlled Group Rules.

The controlled group rules are lengthy and complicated. These rules are typically used in determining if qualified retirement plan benefits are available on a nondiscriminatory basis. Many small employers, who offer a retirement plan, offer a safe harbor IRC Section 401(k) plan that does not require discrimination testing. Therefore, the rules are rarely applicable to small businesses. The lack of use of these rules, make them unfamiliar to both small businesses and small business advisors. Many CPA's, who work primarily with small businesses, do not have the specialized knowledge that is required to interpret the business aggregation rules. To add to the confusion, the use of "controlled group" is misleading and is often inaccurately assumed to mean "hands on control" instead of its actual emphasis on direct or attributed ownership.

Most Affordable Care Act training materials do not cover the specifics of controlled group rules. In reviewing ACA training modules from typical sources that small business advisors would use, (Michigan Association of CPA's, Michigan State University, CheckPoint Learning, Thomson Reuter), most materials mention that controlled group rules apply, but do not define the rules.

Examples of Applying Controlled Group Rules and Ownership Attribution.

Example 1: This is my personal example.

I own the following businesses:

CPA firm – 100% owner and manager – 20 employees

Payroll Company – 100% owner and manager – 10 employees (and growing!)

Retail store – 50% owner (75% capital investment) – I have no management responsibility and no control over business decisions– 5 employees. This store was purchased as an investment.

My husband is a 50% owner in a dairy farm with 8 employees. I have no management responsibilities and no control of business decisions in this entity. I am not a partner; however, my name is on some of the land in the partnership, therefore the family attribution rules apply.

Based on the controlled group rules, the full time equivalents (FTE's) would be:

CPA firm	20 employees
Payroll Company	10 employees
Retail Store	5 employees
Farm	<u>8</u> employees
Total FTE 's	43

I am currently not at the 50 FTE s that would make the businesses subject to the shared responsibility rules of the Affordable Care Act. However, the payroll company is 1 ½ years old and quickly growing. I anticipate hiring 10-15 more employees in the next 2 years. Alternatively, I may consider restructuring ownership in my entities or slowing growth so that I do not pass the 50 FTE mark.

Example 2: This is one of my clients.

Jane is an elderly woman that is a 100% owner of two local restaurants. Her son manages these restaurants and makes all business decisions for both of the entities.

Jane recently provided the capital, as an investment, for her nephew to start a restaurant in Florida. The nephew manages this restaurant and makes all business decisions for this entity. Jane is a 50% partner, but provided 100% of the capital. The controlled group rules would require all three entities to be treated as one employer. The number of employees from all three entities would exceed 50 full time equivalents and these entities would be required to provide the minimum essential health insurance coverage.

The two examples above illustrate how the controlled group rules will aggregate businesses that are not directly owned by the same person, or do not have the same management, and may not be in the same industry or in the same state.

In addition, I want to mention the increased cost of my health insurance plan. I currently provide basic health insurance for my employees in the CPA firm and the payroll company. My plan is being canceled and the closest plan will have an increased cost of 40% to 44%. This new plan also has reduced benefits. My businesses are located in a lower income area which translates into a lower profit margin. The increased health insurance cost will be very difficult to absorb.

In summary, the implication of requiring small businesses to use the business aggregation rules will have the following negative effects:

- (1) Hinder growth by discouraging owners to hire.
- (2) Create an environment where owners try to manipulate ownership percentages or limit employees to less than 30 hours per week.

- (3) Discourage small business owners from investing in other businesses.
- (4) Require small business owners to provide health insurance coverage in industries where this is not the norm. This additional cost would make it difficult for these companies to compete.