



Ed Kisscorni, CPA/MBA

edk@ehtc.com

616-575-3482

ATTRIBUTION BETWEEN FAMILY MEMBERS

It is essential that the tax practitioner have a good understanding of the Internal Revenue Code Section 318 attribution rules as they pertain to family members. These rules are found in IRC Section 318(a)(1)(A). The family member attribution rules are important not only for purposes of the “unitary business group” determination, but also for purposes of applying the disqualifiers for the Small Business Alternative Credit. The definition of “shareholder” in the Michigan Business Tax Act (MBTA) includes a reference to IRC Section 318(a)(1)(A).

The following excerpt from The Control Test For a Michigan Business Tax Unitary Business Group, Pages 15 through 22, describe with examples how the family member attribution rules are applied:

A book flyer and order form is located here:

www.ehtc.com/ehtc/documents/MBTOrderForm.pdf

Attribution Between Family Members

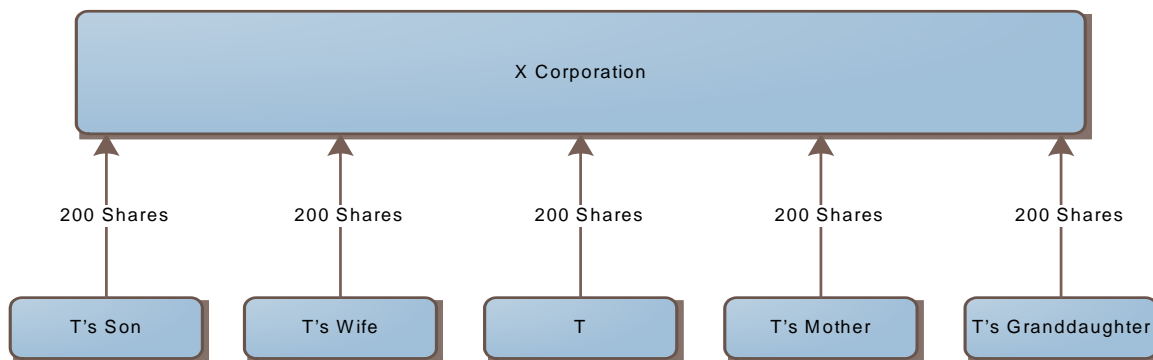
Section 318(a)(1)(A) provides that an individual is deemed to own stock owned (directly or indirectly) by his or her:

- spouse
- children
- grandchildren
- parents

Example 2: X Corporation has 1,000 shares outstanding.

They are owned as follows:

Taxpayer (T)	200 shares
T's Wife	200 shares
T's Son	200 shares
T's Mother	200 shares
T's Granddaughter	200 shares



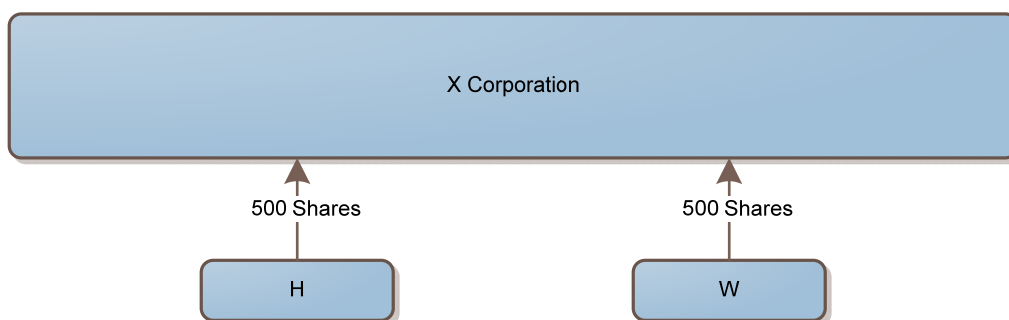
T actually owns 200 shares. Ownership of the remaining 800 shares is attributed to T under the family attribution rules of Section 318(a)(1)(A). Therefore T owns all 1,000 shares directly or indirectly.

T is deemed to own the 200 shares owned by his wife, the 200 shares owned by his son, the 200 shares owned by her mother, and the 200 shares owned by the granddaughter.

Ownership of stock held by a spouse who is legally separated under a decree of divorce or separate maintenance is not attributed to her spouse. [Section 318(a)(1)(A)(i)] An interlocutory decree of divorce, which is an interim decree and not final, does not terminate attribution of stock ownership between spouses. In *Commissioner. v. Ostler*, 237 F.2d 501 (9th Cir. 1956); Revenue Ruling 57-368, 1957-2 C.B. 896, stated that under an interlocutory decree, which is not final, the parties remain legally married.

Example 3: X Corporation has 1,000 shares outstanding. Husband (H) actually owns 500 shares and Wife (W) actually owns 500 shares.

If H and W are legally separated under a decree of divorce or separate maintenance, they are not attributed ownership of the shares of the other. Thus, H does not constructively own W's 500 shares and W does not constructively own H's 500 shares.



If H and W are separated without a decree or have obtained an interlocutory decree of divorce, each will be deemed to own the 500 shares held by the other. Thus, in this circumstance, H and W will each be deemed to own the entire 1,000 shares, 500 owned actually and 500 owned constructively under §318(a)(1)(A)(i).

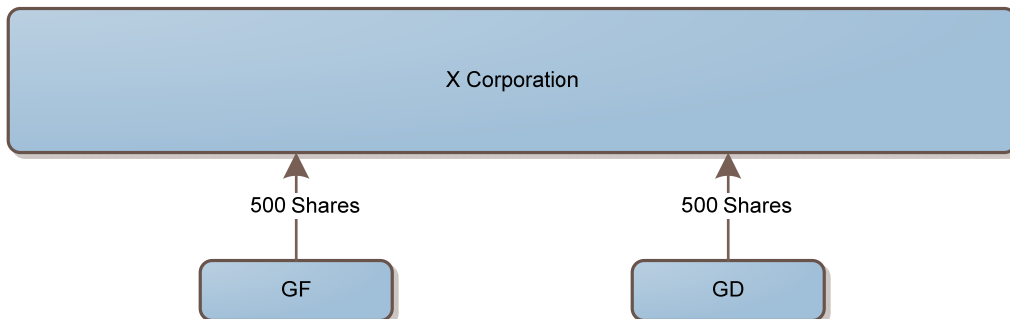
Attribution To and From Children

For purposes of Section 318(a)(1)(A)(ii), attribution of shares from children includes those held by legally adopted children. [Section 318(a)(1)(B)] For purposes of that section, the term “lineal descendants” includes legally adopted children and grandchildren. Without legal adoption by the step-parent, there is no attribution of shares from step-children to a step-parent or to step-grandparents. In addition, without legal adoption of the child, there is no attribution from a step-parent to step-children.

Attribution To and From Grandchildren

While a grandparent is deemed to own shares owned by his or her grandchildren, the grandchild is not deemed to own shares owned by his grandparents. [Income Tax Regulations Section 1.318-2(b)]

Example 4: Grandfather (GF) actually owns 500 shares and Granddaughter (GD) actually owns 500 shares of the 1,000 outstanding shares of X Corporation.



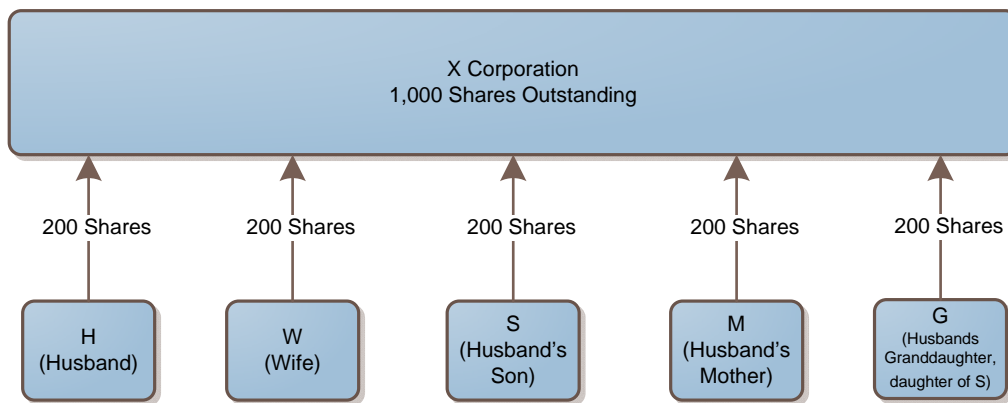
Under Section 318(a)(1), because grandfather actually owns 500 shares and constructively owns the 500 shares held by Granddaughter, Grandfather owns 1,000 shares of Corporation X.

As Grandfather's shares are not attributed to Granddaughter under Section 318(a)(1), her stock ownership is determined by reference to her actual ownership only — 500 shares.

There is no attribution of stock between siblings under Section 318(a)(1). Attribution of stock is limited to close family members. Moreover, aunts, uncles, nieces, nephews, and cousins are not within the purview of these attribution rules.

The Section 318 attribution rules aim to expand the concept of stock ownership in order to achieve the purposes of the numerous provisions for which they apply. This typically results in deemed ownership of all or a portion of the outstanding stock of a corporation by multiple related parties.

Example 5: Husband (H), Wife (W), Husband's Son (S), Husband's Mother (M) and Husband's Granddaughter (G), daughter of S, each actually own 200 shares of X Corporation, which has 1000 shares of stock outstanding. (Illustration of Section 318(a)(1)(A))



H actually owns 200 shares and is deemed to own the balance of the stock under the family attribution rules of Section 318(a)(1). This totals 1000: 200 actually owned and 800 deemed owned and 200 shares from W, S, M, and G.

W actually owns 200 shares and is deemed to own 200 shares held by H, 200 shares held by S, and 200 shares held by G. W's stock ownership totals 800 because she is not deemed to own the stock held by her mother-in-law.

M actually owns 200 shares and is deemed to own 200 shares held by her son H and 200 shares held by her grandson S. M's stock ownership totals

600 because she is not deemed to own the stock held by her daughter-in-law or her great granddaughter.

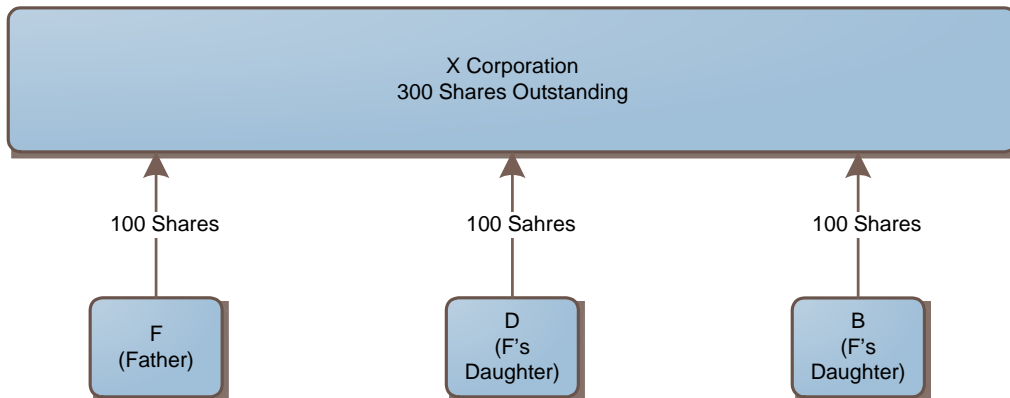
S actually owns 200 shares and is deemed to own 200 shares held by his father H, 200 shares held by his mother W, and 200 shares held by his daughter G. S's stock ownership totals 800 because he is not deemed to own the stock held by his grandmother M.

G actually owns 200 shares and is deemed to own 200 shares held by S, her father. G's stock ownership totals 400 because she is not deemed to own the stock held by her grandparents, H and W, and her great-grandmother, M.

Prohibition Against Double Attribution Between Family Members

Under Section 318(a)(5)(B), there is no double attribution of stock among family members. This means that if an individual is deemed to own stock from a family member by virtue of the Section 318(a)(1)(A) family attribution rules, ownership of those shares may not be attributed to another family member under those same rules. Thus, there is no attribution from one family member to another and then to another under Section 318(a)(1)(A).

Example 6: F and his two daughters, D and B, each actually owns one-third of the outstanding stock of X Corporation. Each owns 100 shares.



D actually owns 100 shares and is deemed to own F's 100 shares.

D is not deemed to own the 100 shares held by her sister, B, because the stock held by B is attributed to F, but is not re-attributed from F to D under Section 318(a)(5)(B). [Income Tax Regulations Section 1.318-4(b)]

The stock held by B is not directly attributed to D because the family attribution rules of Section 318(a)(1) do not provide for constructive ownership of the stock of siblings.

Stay tuned for more news and follow the [MichiganStateAndLocalTaxBlog](#) for information as it becomes available. If you have any questions, please go ahead and contact me. I am happy to help.

Sincerely,

Ed Kisscorni, CPA/MBA



5136 Cascade Rd. SE #2A
Grand Rapids, MI 49546
(800) 404-2065 / info@ehtc.com / www.ehtc.com/

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