
Family Attribution Rules (IRC §318(a)(1))

Family Attribution is used in determining if an individual is a Highly Compensated Employee and/or a Key Employee. Although the basic rules presented below are straight forward, they often have many additional nuances. Therefore, plan sponsors should seek expert legal advice on this subject.

IRC §318(a)(1) specifies family relationships for company ownership, spelling out the question of which family members are considered to own (constructively) the stock of another family member:

1. An individual is considered to own, directly or indirectly, the stock of:
 - his or her spouse (except legally separated or divorced), and
 - his or her children, grandchildren, and parents.
2. For purposes of Item 1, a legally adopted child is treated as a child by blood.

Some examples of these rules:

- Tom would be considered to own the stock of his wife Mary.
- Mary would be considered to own the stock of her husband Tom.
- Tom and Mary each would be considered to own the stock of their three children, Charles, Joseph and Ann.
- The three children would each be considered to own the stock of their mother and father.
- Tom and Mary also would be considered to own the stock of their grandchildren.
- Tom and Mary's grandchildren would not be considered to own the stock of Tom and Mary.
- Charles, Joseph or Ann is not considered to own each other's stock as sisters and brothers, and are not part of the family attribution rules.
- Tom (but not Mary) would be considered to own the stock of his parents, George and Ruth.
- Charles, Joseph and Ann would not be considered to own the stock of their grandparents, George and Ruth.

- When Charles, Joseph and/or Ann marry, Tom and Mary would not own the stock of their children's spouses, because in-laws are not covered by the family attribution rules.
- The spouses of Charles, Joseph and Ann would not own the stock of Charles, Joseph and Ann's parents, since in-laws are not part of the family attribution rules.
- Charles' children, Joseph's children and Ann's children would not own each other's stock, since they are cousins.

Attribution rules also exist for partnerships, estates, trusts and corporations.¹

1. IRC §318(a)(2) through §318(a)(5)