

Business Tax Administrative Rule 600.93-5A

600.93-5A – Definition of Owner – Partnership (LIC-1.03)

An owner of a partnership is any general or limited partner who has direct or indirect (as defined below) ownership of a percentage of the partnership's capital. An interest or share of only profits and/or losses is not ownership of capital. Additionally, wages are not capital. Partnership Form 1065, Schedule K-1 identifies those direct partners who are owners of capital in Question J. Indirect owners shall be defined as both controlling shareholders of corporations who are direct partners and general partners of partnerships who are direct partners of the subject partnership. Compensation paid by a partnership to indirect owners shall be deemed payments to the direct owner corporation or direct owner partnership. Generally, unless the corporation is a professional corporation, the sum of owners for compensation allowance purposes will be limited to the sum of direct owners.

A general or limited partner may be an individual, partnership, corporation, estate, trust, cooperative, or any other entity defined as a person under PCC 7.02.100 R and MCC 12.100.

If a general partner is a professional corporation, each shareholder of the professional corporation who performs services in connection with the business or profession in which the partnership is engaged shall be an owner as though the shareholder were a direct individual partner and not the professional corporation. No deduction shall be allowed for any compensation or interest paid to a person treated as an owner in this instance. However, a compensation allowance deduction will be allowed as provided by PCC 7.02.600 C and MCC 12.600 C.

Example 1: WXY partnership has three partners, (two individuals and one C corporation). The corporate partner has fifteen controlling shareholders. WXY Partnership pays compensation to three of the controlling shareholders in the Corporate partner. The partnership also pays interest to the Corporate partner and salaries to the two other individual partners. The partnership must add-back any compensation and interest paid to the three direct owners, plus the compensation paid to the three indirect owners in the Corporate partner. However, for compensation allowance deduction purposes, WXY Partnership has only three owners.

Example 2: A contract employee or a "junior" partner has been given the designation of partner without a direct percentage of capital ownership. The new "partner" merely receives a wage increase, contractual payments, other remuneration, or a profit sharing interest only. This person will not be deemed an owner.

Example 3: JKL partnership practices medicine in California, Oregon, Washington, and Montana and has 4 partners, all professional corporations. Each PC has 3 shareholders who each provide medical services on behalf and in the name of the partnership. No other business activity is performed by the 4 PCs. Even though the Federal Form 1065 K-1s will show only 4 partners (each PC), JKL may claim 12 owners since each shareholder in each PC provides/performs services in connection with the medical practice of the partnership. JKL will be required to prepare a supplemental schedule listing all shareholders being treated as owners and include PC ownership information, any compensation or interest paid to the shareholder by the partnership, and a statement of the medical services performed by the shareholder. Any compensation or

interest paid to the shareholders by the partnership will be added back to partnership net income, and an allowance deduction will be allowed for 12 owners.

Note: This rule sunsets 12/31/2022 and does not apply to tax years beginning on or after 1/1/2023. See 601.23-3 (LIC 1.07) for later tax years.

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Date

Director, Revenue Division

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