

23663 Regulation Examples



Agenda

- Background of regulation project and 1st IPM
- Draft default rules
- Draft alternative and correction framework

Requirements to Assign Credits

- Assignor and Assignee were members of the same combined reporting group when credit was earned (or July 1, 2008)
- Assignor and Assignee were members of the same combined reporting group on the last day of the tax year when the credit was assigned
- Assignment must be made on an original tax return
- Is irrevocable
- Cannot be reassigned

Regulation Background

- Why a regulation is needed
- Goals with the regulation

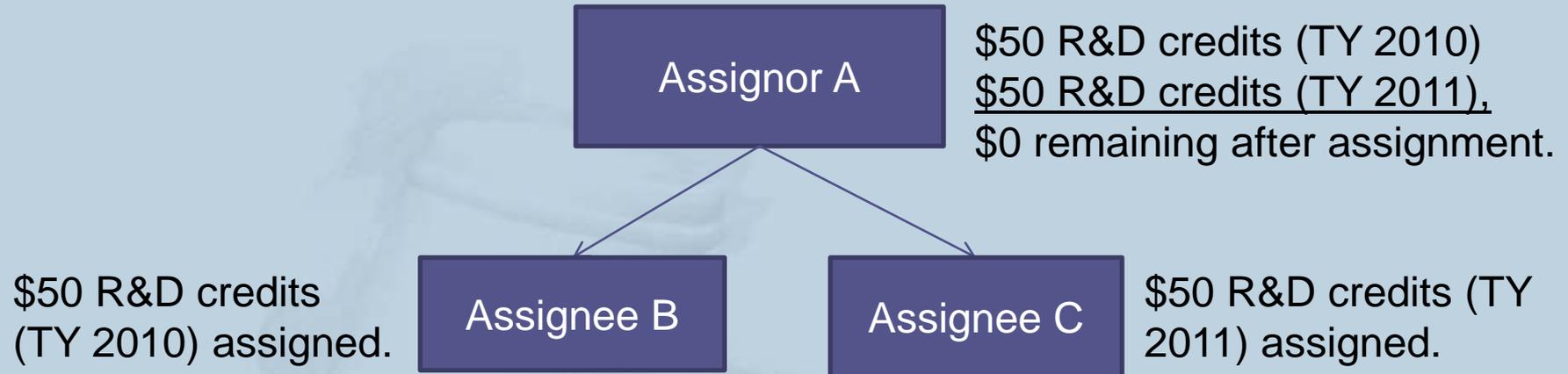
Default Examples



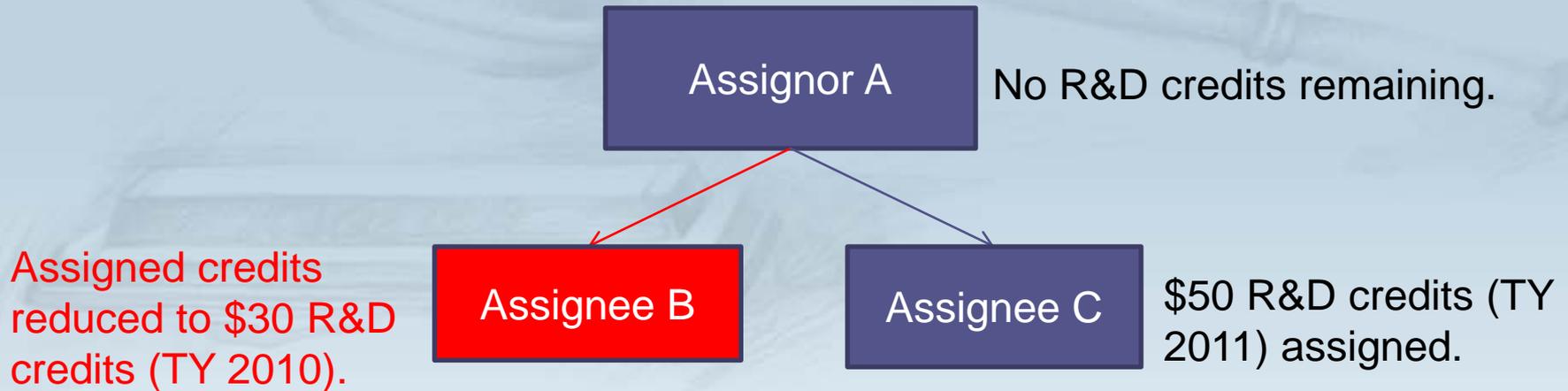
Example A

Definition of Assignment

The following assignments were made on the Assignor's 2011 tax return



- A actually only had \$30 R&D credits (TY 2010) available for assignment.



Example B

Different Assignment Years

The following assignments were made on the Assignor's 2010 and 2011 tax returns

2010 – Assignor's Form 3544

Assignor A

\$200 R&D credits (TY 2010),
\$100 remaining after assignment.

\$100 R&D credits (TY 2010) assigned.

Assignee B

2011 – Assignor's Form 3544

Assignor A

\$100 R&D credits (TY 2010),
\$0 remaining after assignment.

Assignee C

\$100 R&D credits (TY 2010) assigned.

- A actually only had \$150 R&D credits (TY 2010) available for assignment.
- The 2010 assignment of \$100 credits to B was valid.
- The 2011 assignment to C was defective.

Assignor A

No R&D credits remaining.

\$100 R&D credits (TY 2010) assigned in 2010.

Assignee B

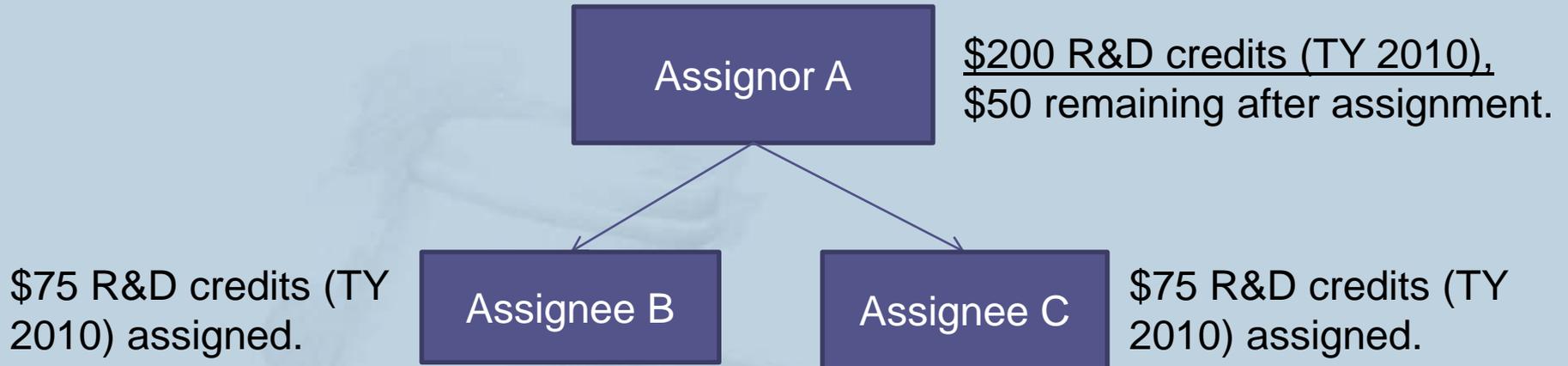
Assignee C

\$50 R&D credits (TY 2010) assigned in 2011.

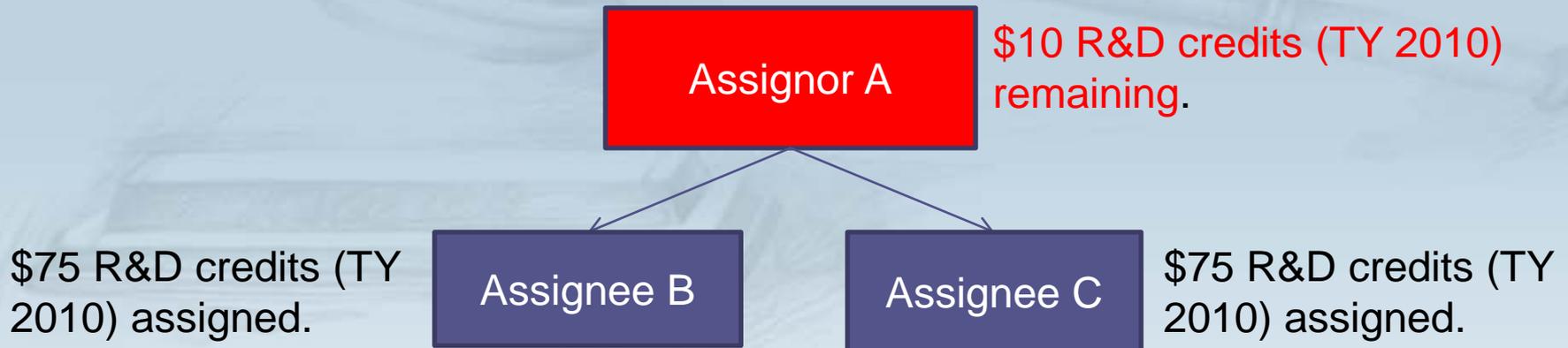
Example C

Credits > Amount Assigned

The following assignments were made on the Assignor's 2010 tax return



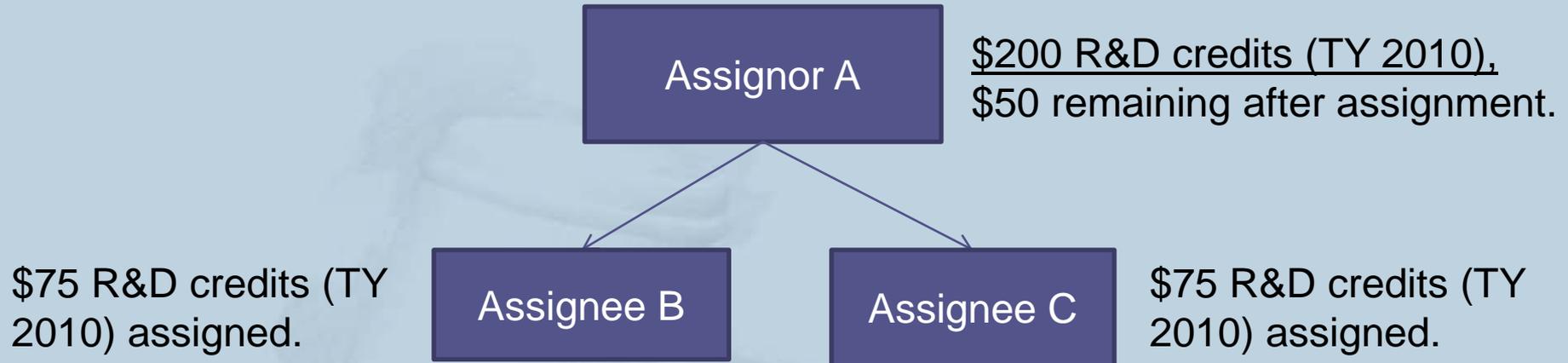
- A actually only has \$160 R&D credits (TY 2010).



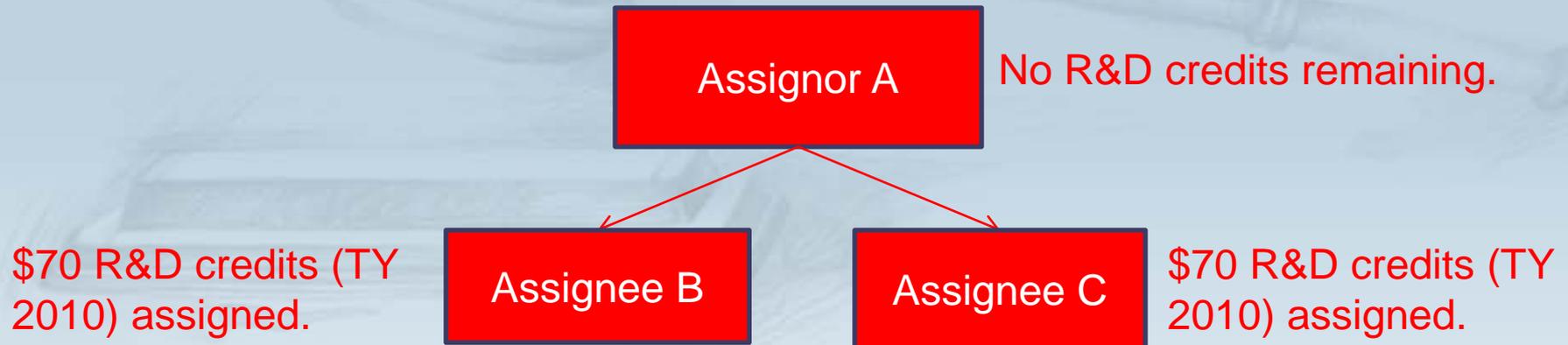
Example C (aggregation) / D (allocation/proration)

Credits < Amount Assigned

The following assignments were made on the Assignor's 2010 tax return



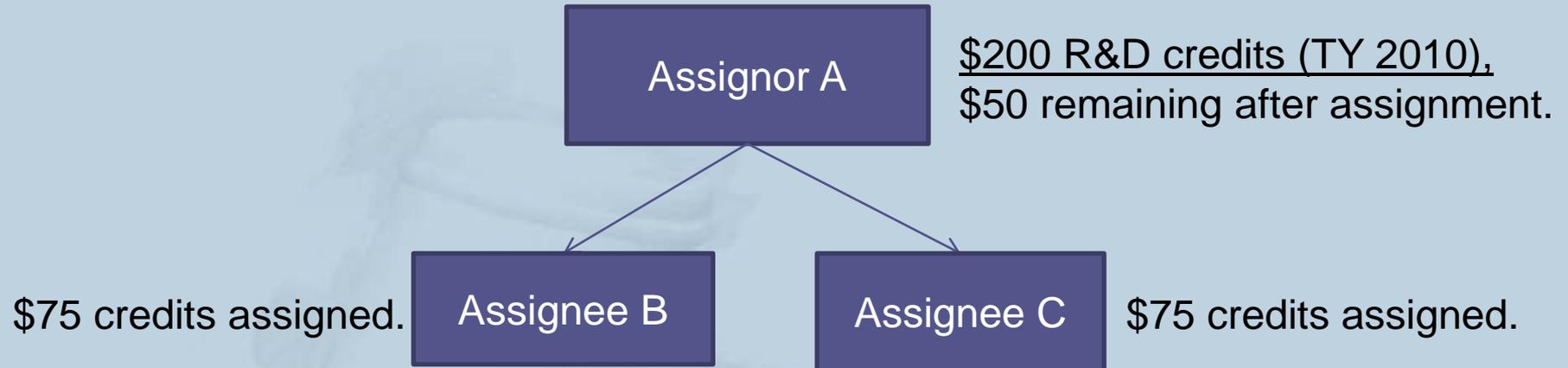
- A actually only had \$140 R&D credits (TY 2010).



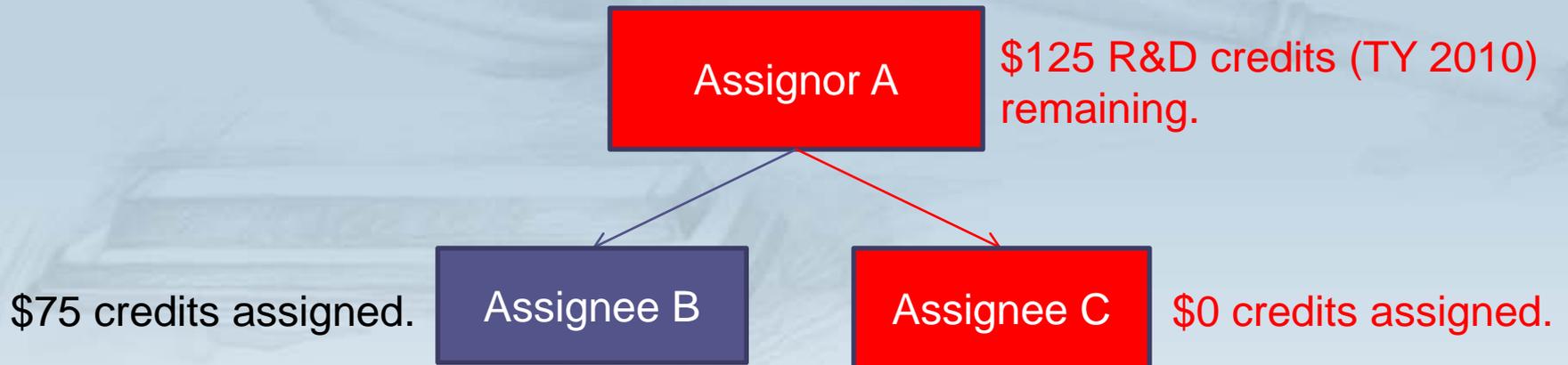
First Example E

Ineligible Assignee

The following assignments were made on the Assignor's 2010 tax return



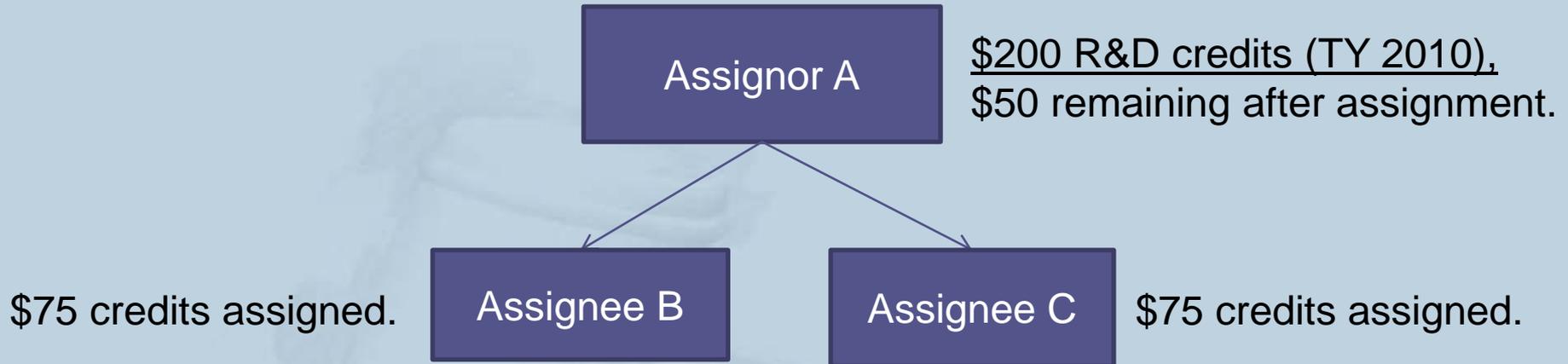
- C turns out to not be an eligible assignee.



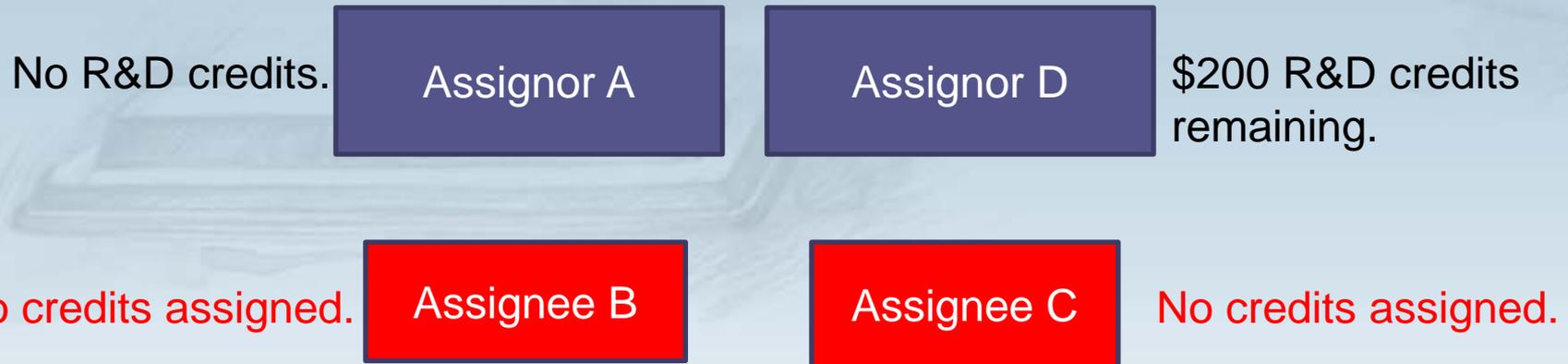
Second Example E

Wrong Assignor

The following assignments were made on the Assignor's 2010 tax return



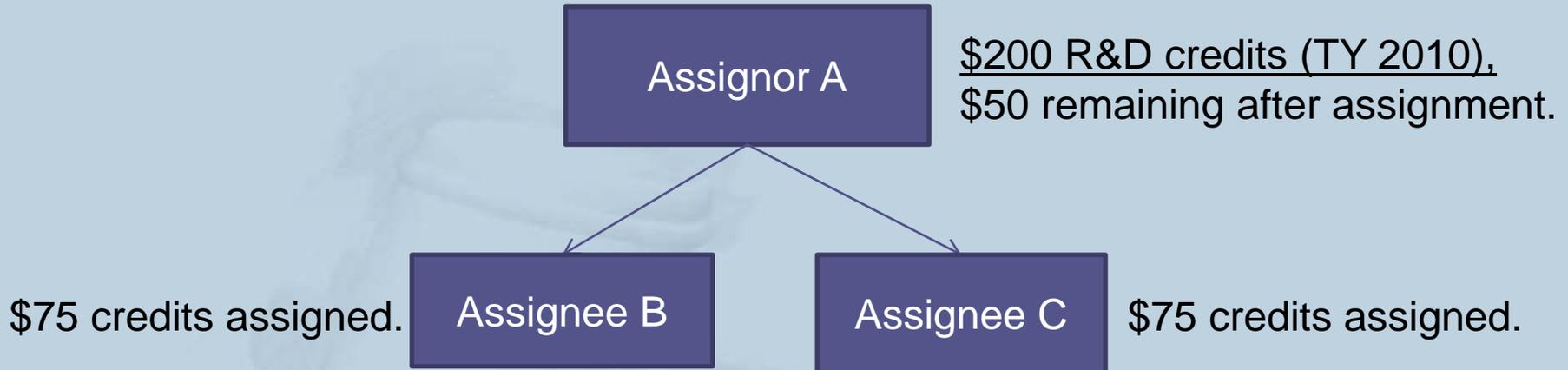
- A turns out to have no R&D credits.
- D has the \$200 R&D credits (TY 2010) and was the intended assignor.



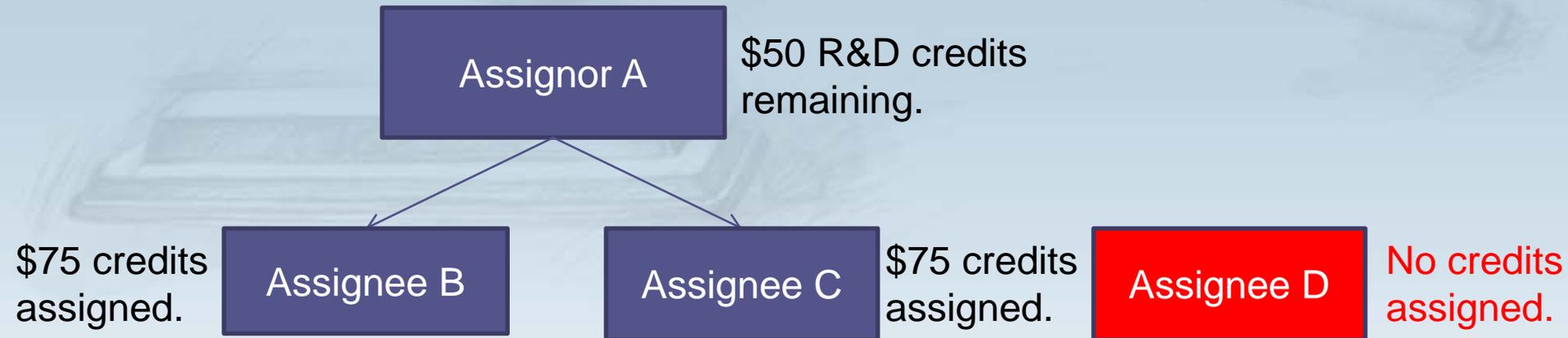
Third Example E

Wrong Assignee

The following assignments were made on the Assignor's 2010 tax return



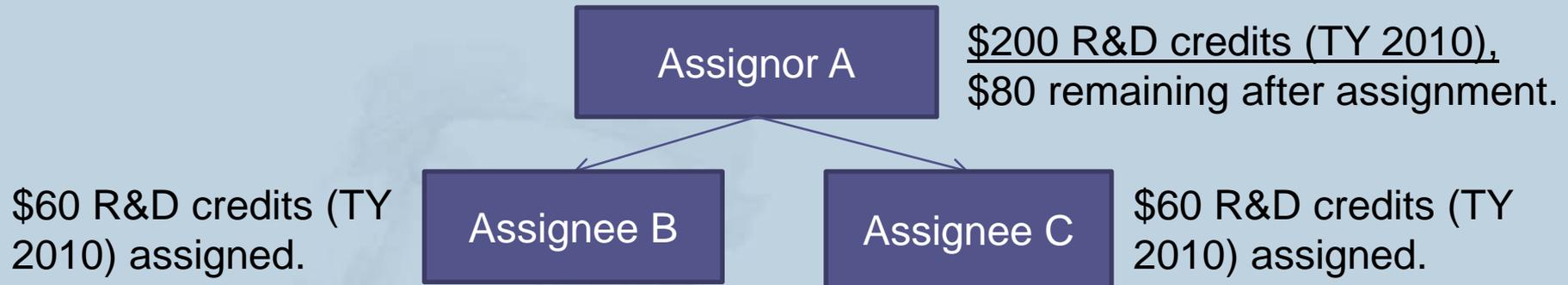
- Even though A can demonstrate that A meant to assign credits to D, instead of C.
- No credits are assigned to D.



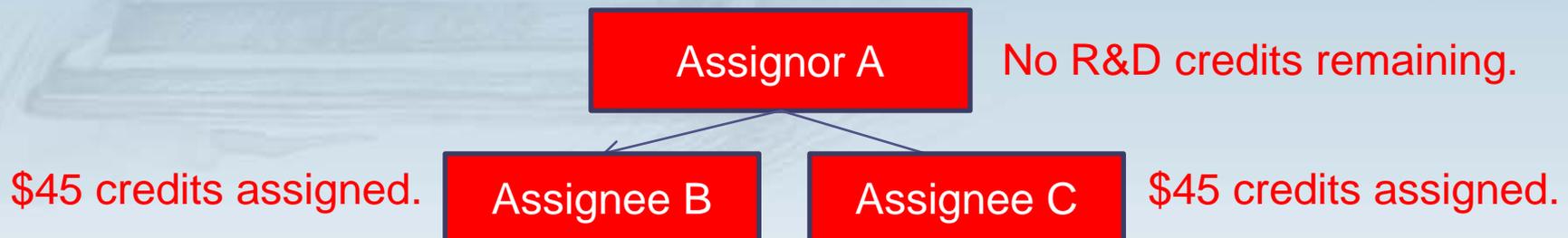
First Example F

Credits Cannot Be Reallocated

The following assignments were made on the Assignor's 2010 tax return



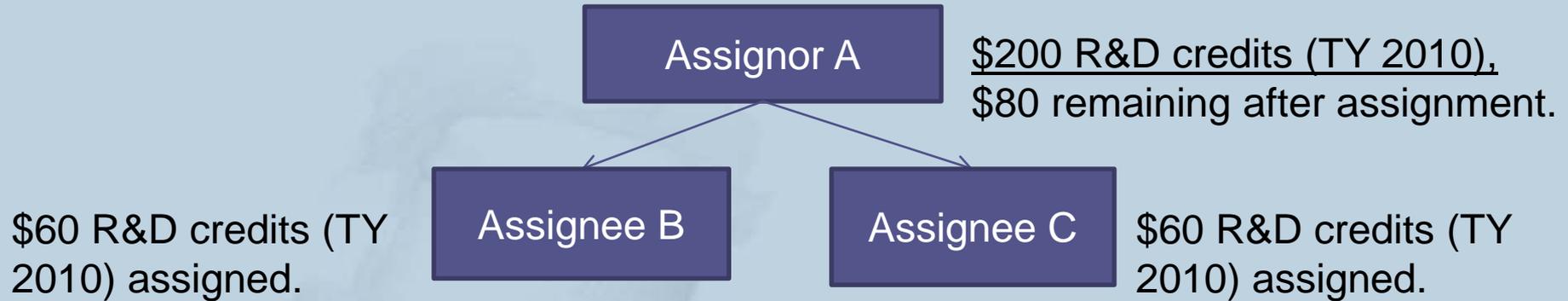
- A actually only has \$90 R&D credits (TY 2010).
- B has already claimed \$30 of the credits and those credits cannot be reallocated due to the statute of limitations having expired.
- First, \$30 credits are allocated to B.
- Next, \$30 credits are allocated to C to get back to its pro rata allocation.
- Next, the remaining \$30 credits are allocated amongst B and C pro rata.



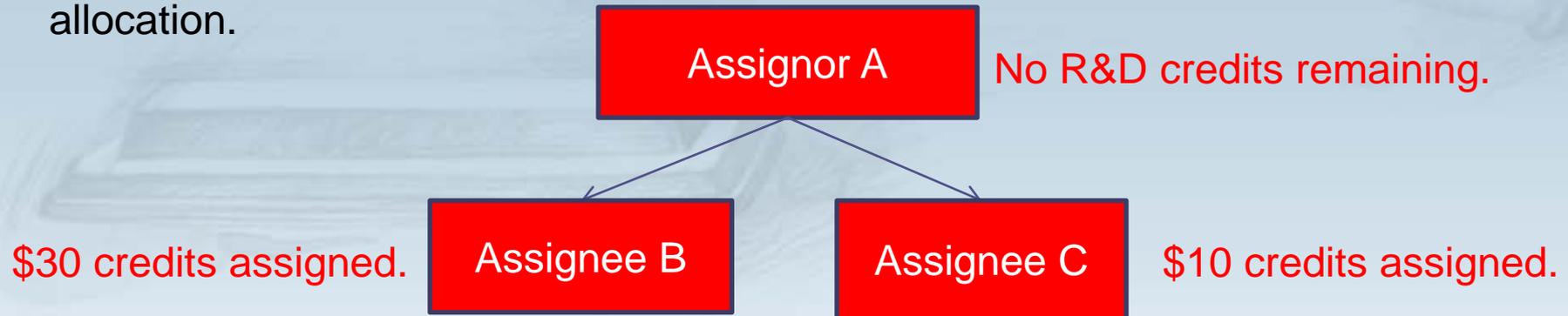
Second Example F

Credits Cannot Be Reallocated

The following assignments were made on the Assignor's 2010 tax return



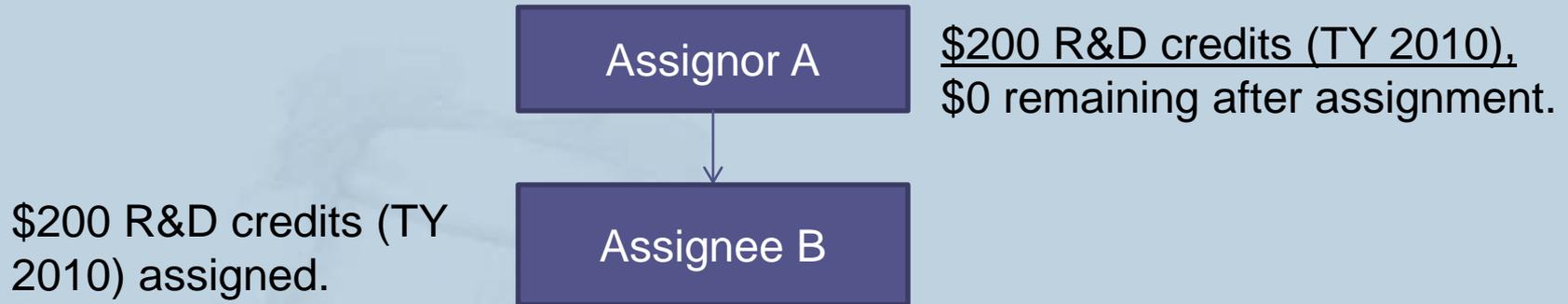
- A actually only has \$40 R&D credits (TY 2010).
- B has already claimed \$30 of the credits and those credits cannot be reallocated.
- First, \$30 credits are allocated to B.
- Next, the remaining \$10 credits are allocated to C to get back to C's pro rata allocation.



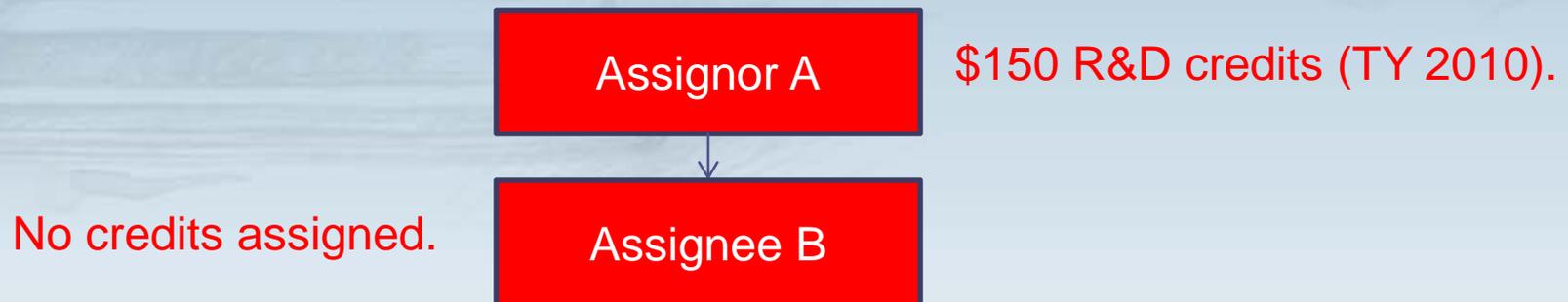
Example G

Credits Cannot Be Reallocated

The following assignments were made on the Assignor's 2010 tax return



- B turns out to not be an eligible assignee.
- B has already claimed \$50 of the R&D credits (TY 2010) and the statute of limitations has expired for the year in which the credits were claimed.
- Therefore, the \$200 credits A assigned to B are treated as having never been assigned. However, those \$200 credits are reduced to \$150.



Alternative Treatment

- If an assignor assigns more credits than it actually has available for assignment then an alternative allocation will be available if:
 - Reasonable and good faith in making assignment; and
 - Presumption against if request made for 2 tax years within a 5 year period.
 - The interests of the government are not prejudiced.

- Assignees who do not use the alternative receive their default allocation.

- Process of requesting:
 1. Assignor requests.
 2. Assignees may request together with assignor.
 3. FTB proposes a reasonable alternative allocation.
 4. Assignor / assignees may accept.

Correction of an Error

- If an assignment is defective due to an error made on the face of the assignment form, then the correction of the clerical error will be available if:
 - The form is fully completed;
 - Assignor acted reasonably and in good faith in making assignment;
 - Presumption against if request made for 2 tax years within a 5 year period.
 - The interests of the government are not prejudiced; and
 - Clear and convincing evidence on intended entry.
- Examples:
 - This rule would apply when the entity's name and FEIN do not match.
 - This rule would not apply when the assignor accidentally assigned the wrong amount of credits on the assignment form.
- An assignor may request the correction of a clerical error from FTB.