

A stylized map of New York State is centered on the slide. The map is filled with a dark blue color and has a thick black outline. It is set against a background of a lighter blue, textured pattern that resembles water or a sky.

# Combined Filing in New York State

*History and Recent Developments*

2007 FTA Revenue Estimation and Tax  
Research Conference  
The Games Corporations Play  
Tues. Sept. 18, 2007

- Overview of NY's combined filing structure
- History of combined filing in NYS
- The games corporations play: 2 examples
- 2007 Executive Budget bill
- Revenue estimation methodology

## NY's Combined Filing Structure

- New York is a separate reporting state
  - Every corporation files its own return
- Combined filing may be permitted or required if reporting separately distorts the activities, business, income, or capital of a taxpayer
- Combined filing is not a one-way street
  - Some taxpayers benefit by filing combined while some incur greater tax liability



Combined Filing in NYS - History and Recent Developments

## NY's Combined Filing Structure

- In order to file a combined return, 3 tests MUST be satisfied:
  1. Common ownership and control (80%)
  2. Unitary relationship among corporations
  3. Distortion
- ALL 3 tests must be met



Combined Filing in NYS - History and Recent Developments

## NY's Combined Filing Structure - Distortion

- If there are substantial intercorporate transactions among corporations, distortion is presumed
- Taxpayers can rebut this presumption by demonstrating that the substantial intercorporate transactions were conducted at arm's length



Combined Filing in NYS - History and Recent Developments

## NY's Combined Filing Structure - Distortion

- Important note:
  - substantial intercorporate transactions = distortion
  - BUT***
  - distortion  $\neq$  substantial intercorporate transactions
- That means there can be distortion without substantial intercorporate transactions



Combined Filing in NYS - History and Recent Developments

## NY's Combined Filing History

- Taxpayers and tax administrators have been skirmishing on the issues of entity isolation, transfer pricing, and combined filing in New York for over 60 years
- New York's current combination (originally referred to as consolidated filings) provisions were established in 1944
- Prior to that time, consolidated filings were permitted or required
- The purpose of the provisions has always been to properly reflect the activities, business, income, or capital in New York of the taxpayers



Combined Filing in NYS - History and Recent Developments

## The Games Corporations Play

- In Fashion Apparel Company
- The Carve-Out Cafe



Combined Filing in NYS - History and Recent Developments

# In Fashion Apparel Company

Executive	
Market Research	Product Design
Advertising	Distribution and Fulfillment
Buyers, QC, Showrooms, Accounting, & Purchasing	Call Center: credit scoring; credit card, Web site, & catalog customer service; collection of credit card receivables
IT Development & Maintenance	Store, Catalog, & Web Page Layout & Design
Credit Policy Development & Administration	Intangible Development: Logos, Trademarks, etc.



Combined Filing in NYS - History and Recent Developments

# In Fashion Apparel Company

IFAC as Parent	
Executive	
Advertising	Product Design
Market Research	IT Development & Maintenance
Store, Catalog, & Web Page Layout & Design	Buyers, QC, Showrooms, Accounting, & Purchasing
Intangible Development: Logos, Trademarks, etc.	Credit Policy Development & Administration

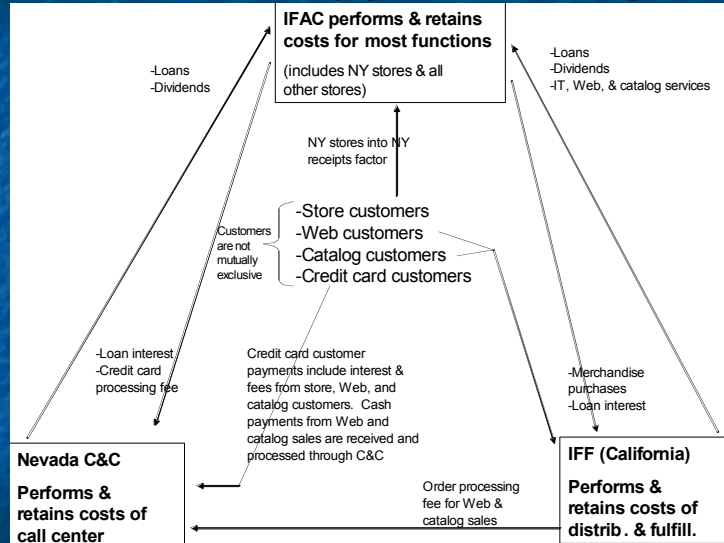
IFAC Fulfillment & Distribution (IFF)
Distribution and Fulfillment

Calls & Collections (C&C)	
Credit scoring	Customer Service:
Collection of credit card receivables	-credit cards -Web site -catalog



Combined Filing in NYS - History and Recent Developments

# In Fashion Apparel Company



Combined Filing in NYS - History and Recent Developments

# The Carve-Out Cafe

## Carve-Out Café Stores (COC)

- Retail restaurant and store operating as taxpayer with divisions;
- One location in New York in 1999

Combined Filing in NYS - History and Recent Developments

# The Carve-Out Cafe



Combined Filing in NYS - History and Recent Developments

# The Carve-Out Cafe

YEAR	FTI (as filed)	NYS Tax	FTI (as should have filed)	NYS Tax
1999	\$97.93m	\$415,720	na	na
2000	\$36.97m	\$242,976	\$90.12m	\$441,672

"Real" tax savings in 2000: \$172,744 or 41.6%

Tax difference with combination (1999-2000):  
+\$25,952 or +6.2%



Combined Filing in NYS - History and Recent Developments

## 2007 Executive Budget Bill

~~In the discretion of the commissioner, any~~ Any taxpayer, [*ownership test*] ~~may be required or permitted to make a report on a combined basis covering any such other corporations~~ (hereinafter referred to in this paragraph as "related corporations"), shall make a combined report covering any related corporations if there are substantial intercorporate transactions among the related corporations, regardless of the transfer price for such intercorporate transactions. It is not necessary that there be substantial intercorporate transactions between any one corporation and every other related corporation. It is necessary, however, that there be substantial intercorporate transactions between the taxpayer and a related corporation or collectively, a group of such related corporations...

In determining whether there are substantial intercorporate transactions, the commissioner shall consider and evaluate all activities and transactions of the taxpayer and its related corporations. Activities and transactions that will be considered include, but are not limited to: (i) manufacturing, acquiring goods or property, or performing services, for related corporations; (ii) selling goods acquired from related corporations; (iii) financing sales of related corporations; (iv) performing related customer services using common facilities and employees for related corporations; (v) incurring expenses that benefit, directly or indirectly, one or more related corporations, and (vi) transferring assets, including such assets as accounts receivable, patents or trademarks from one or more related corporations.



Combined Filing in NYS - History and Recent Developments

## 2007 Executive Budget Bill

Reasons for proposal:

1. Combat entity-isolation techniques
2. Reduce drain on Department resources
3. Provide certainty to taxpayers



Combined Filing in NYS - History and Recent Developments



## 2007 Executive Budget Bill

- If substantial intercorporate transactions are present, this constitutes *irrefutable* distortion
  - Taxpayers can no longer rebut the presumption of distortion arising from substantial intercorporate transactions
  - It does not matter if the transactions are at arm's length



Combined Filing in NYS - History and Recent Developments

## Revenue Estimation Methodology

- Review of audit combination cases
- Estimation of amount that would have been voluntarily reported had the taxpayers filed combined returns
- Adjustments for settlement terms
- Adjustment for revenue loss associated with movement to single factor apportionment



Combined Filing in NYS - History and Recent Developments

## For More Information

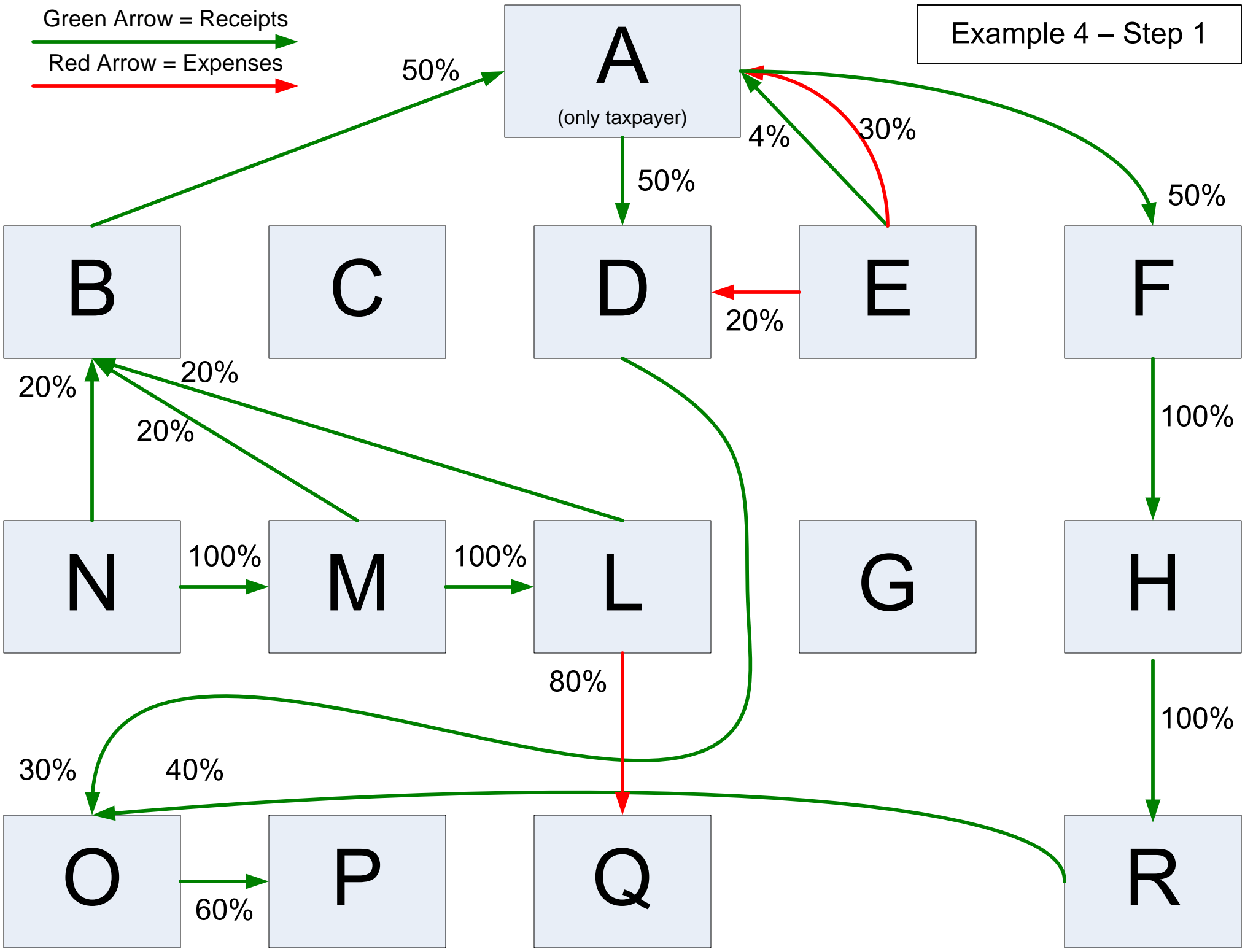
- [www.nystax.gov](http://www.nystax.gov)
- TSB-M-07(6)C: Combined Reporting for General Business Corporations



Combined Filing in NYS – History and Recent Developments

Example 4 – Step 1

Green Arrow = Receipts  
Red Arrow = Expenses



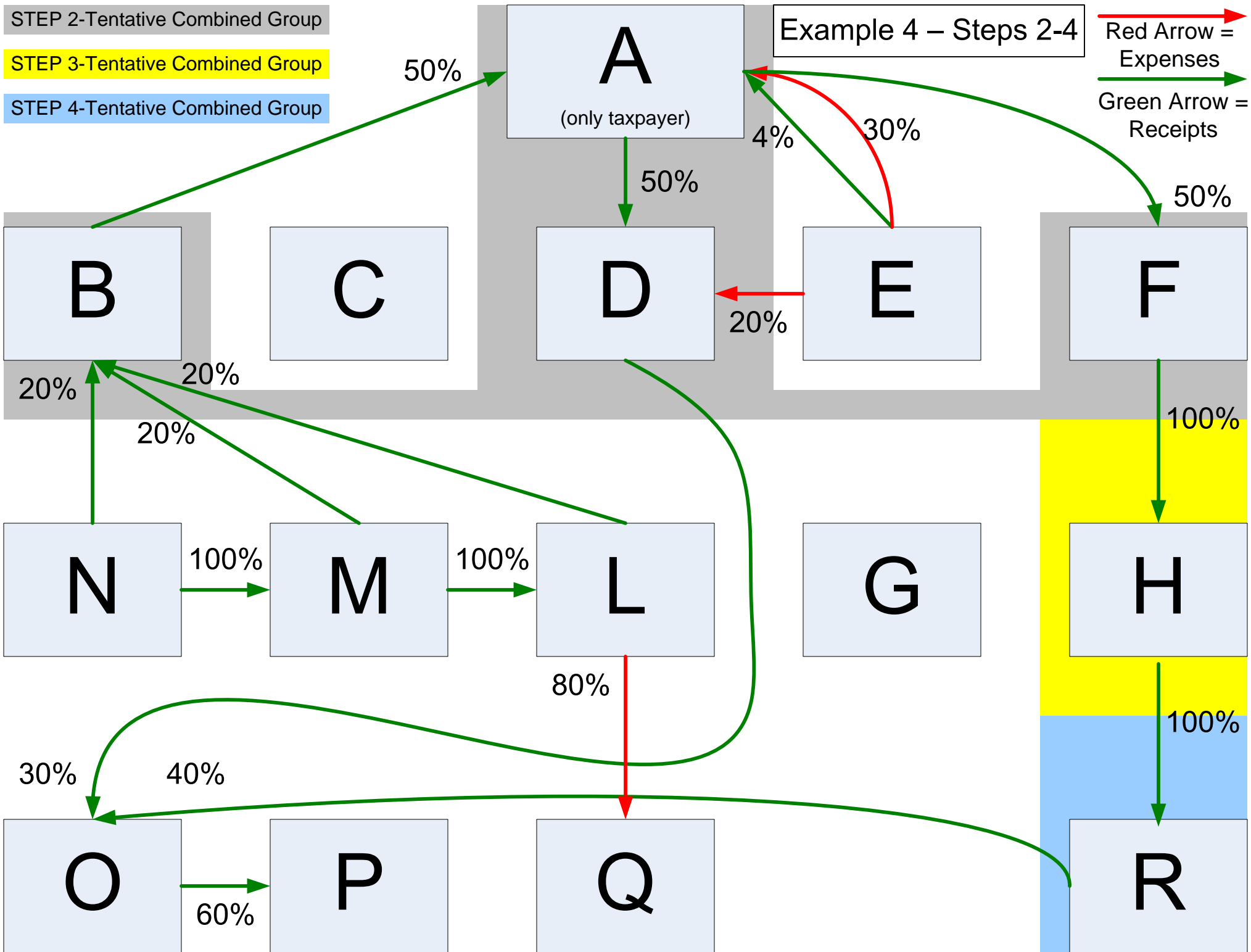
STEP 2-Tentative Combined Group

STEP 3-Tentative Combined Group

STEP 4-Tentative Combined Group

Example 4 – Steps 2-4

Red Arrow = Expenses  
Green Arrow = Receipts



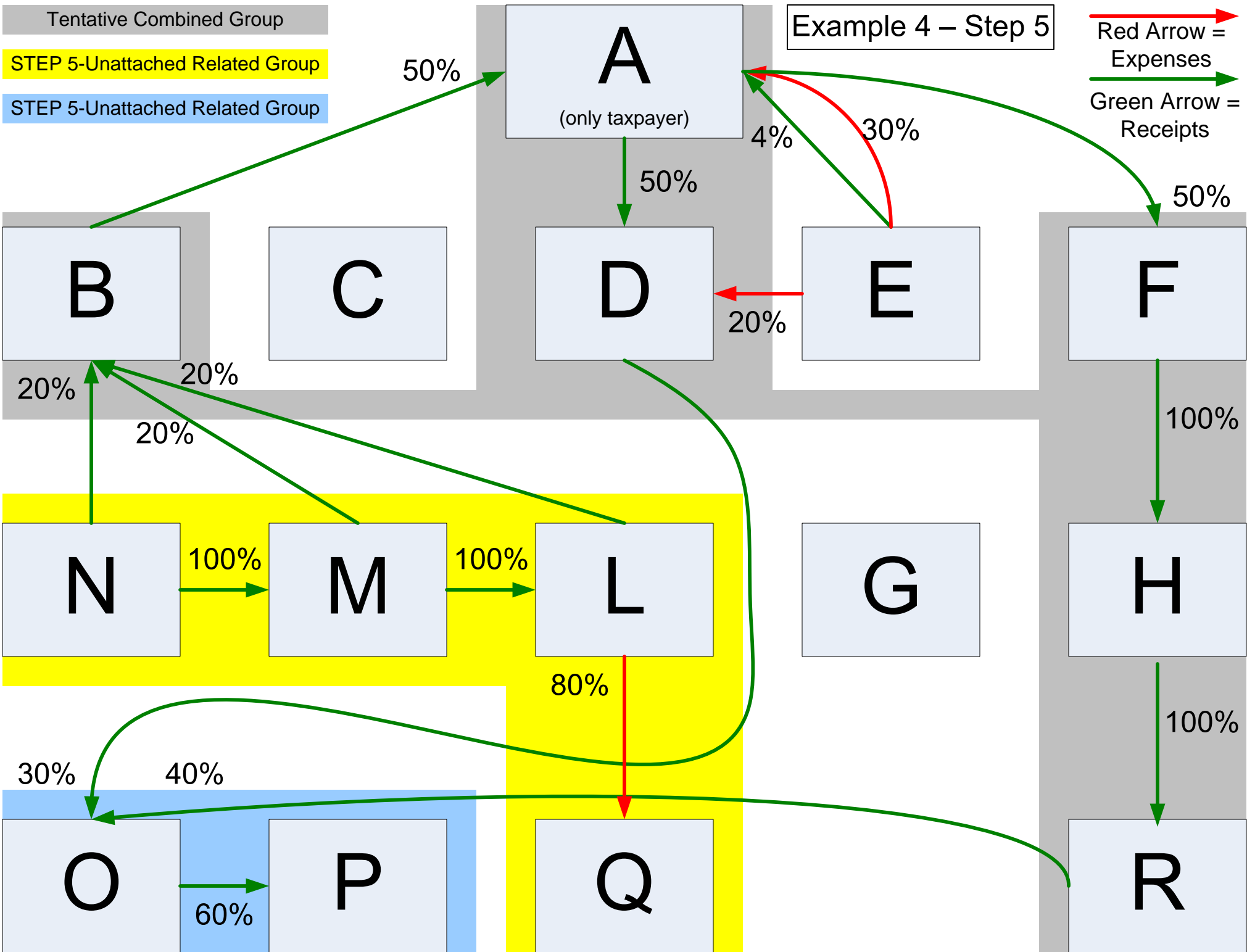
Tentative Combined Group

STEP 5-Unattached Related Group

STEP 5-Unattached Related Group

Example 4 – Step 5

Red Arrow = Expenses  
Green Arrow = Receipts

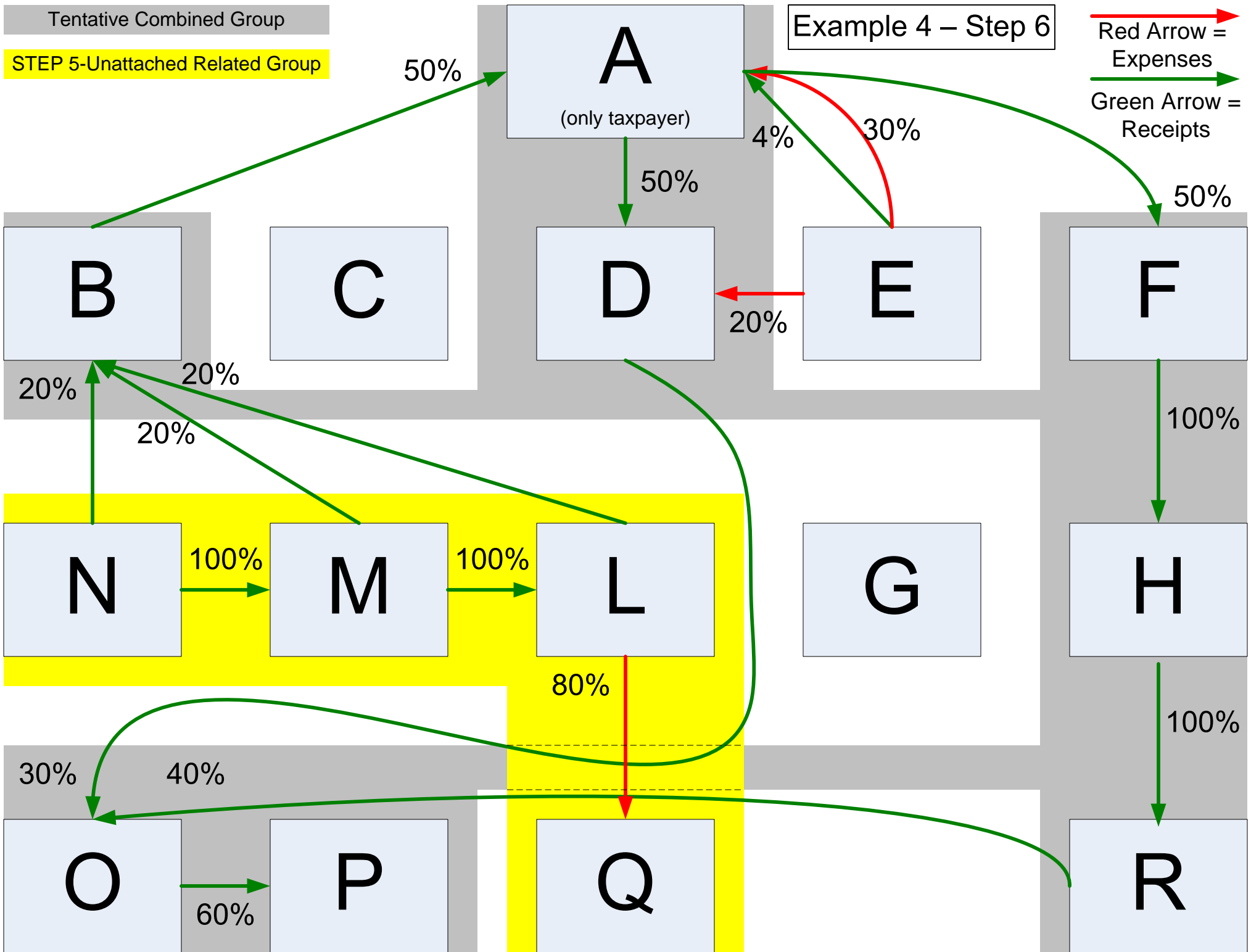


Tentative Combined Group

STEP 5-Unattached Related Group

Example 4 – Step 6

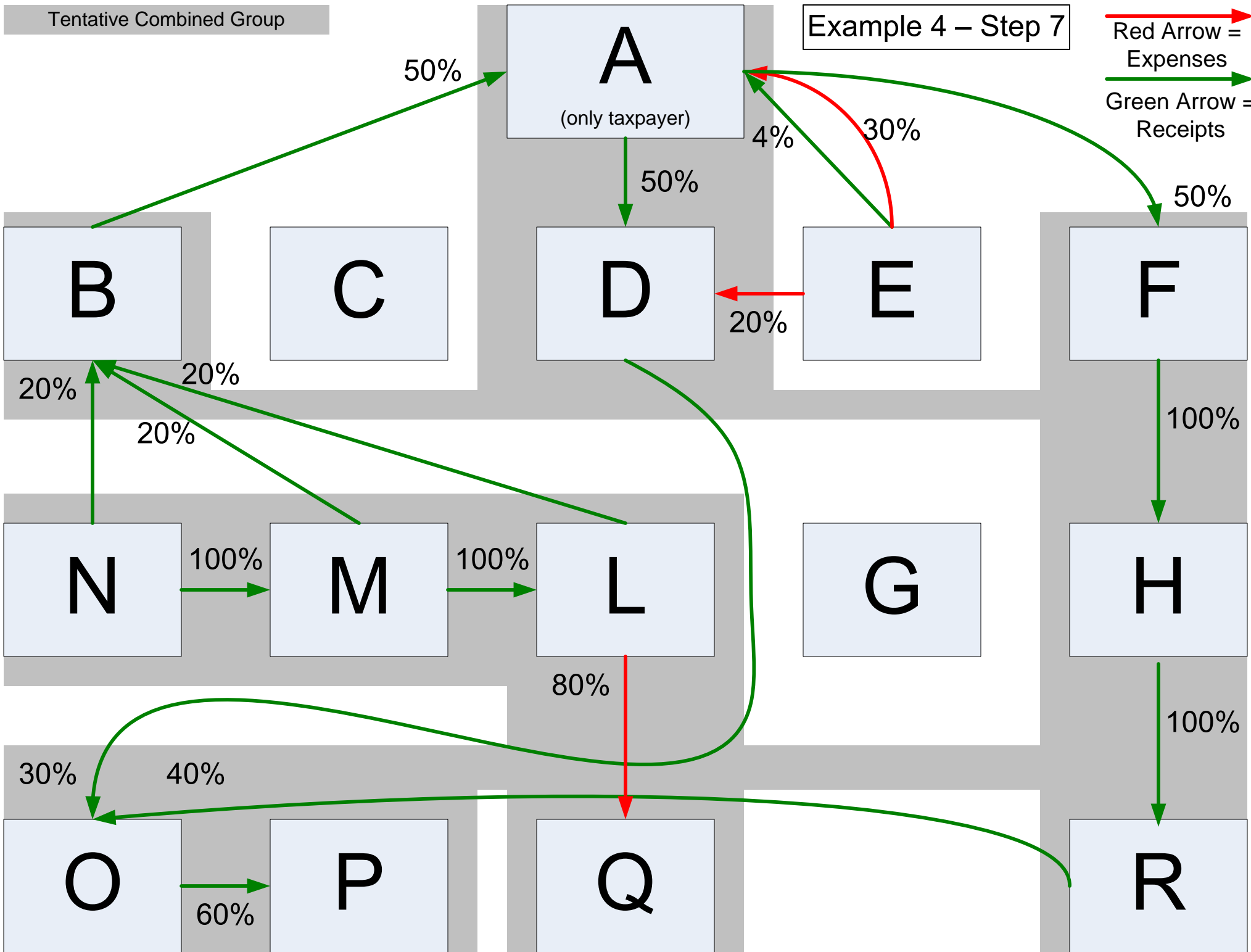
Red Arrow = Expenses  
Green Arrow = Receipts



Tentative Combined Group

Example 4 – Step 7

Red Arrow = Expenses  
Green Arrow = Receipts

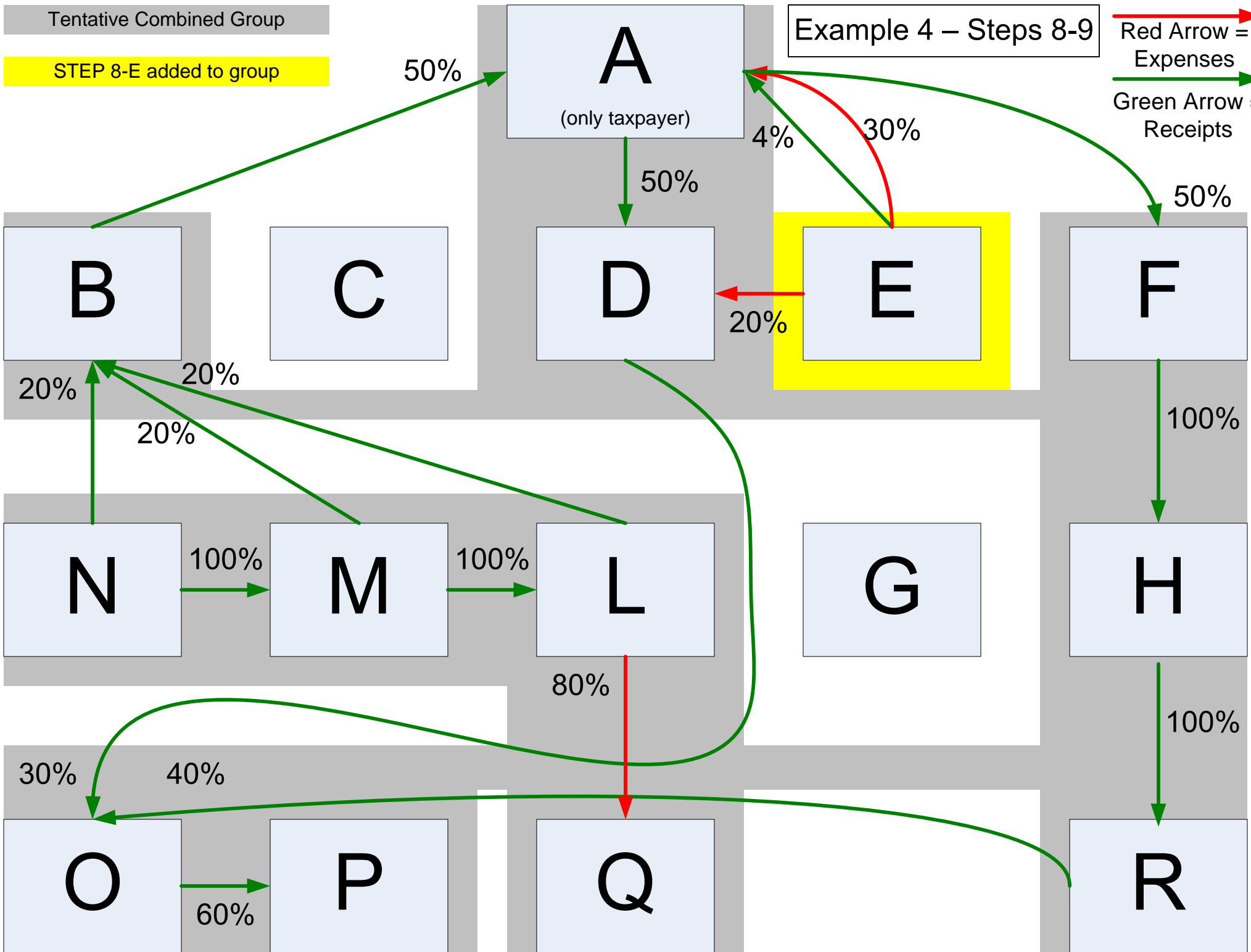


Tentative Combined Group

STEP 8-E added to group

Example 4 – Steps 8-9

Red Arrow = Expenses  
Green Arrow = Receipts





Final Combined Group

Example 4 – Step 10

Red Arrow = Expenses  
Green Arrow = Receipts

