

Section 199A Presentation



PRESENTED BY: NICK MILLAR, CPA & JAY WHITE, CPA

1

IRS Circular 230 Notice

- Any U.S. tax advice included in this written or electronic communication was not intended or written to be used, and it cannot be used by you or any taxpayer, for the purpose of avoiding any penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law provisions.

2



2



INTRODUCTIONS

Presenters

3



Nick Millar, CPA
Tax Senior Manager



Jay White, CPA
Tax Manager

BKD

3



ABOUT BKD

Our Firm

4



BKD, LLP is a national CPA and advisory firm with more than 2,600 CPAs, advisors & dedicated staff members working together to serve our clients. Our expertise goes well beyond the standard accounting services to include risk management, forensic & valuation services, technology & wealth management.

BKD

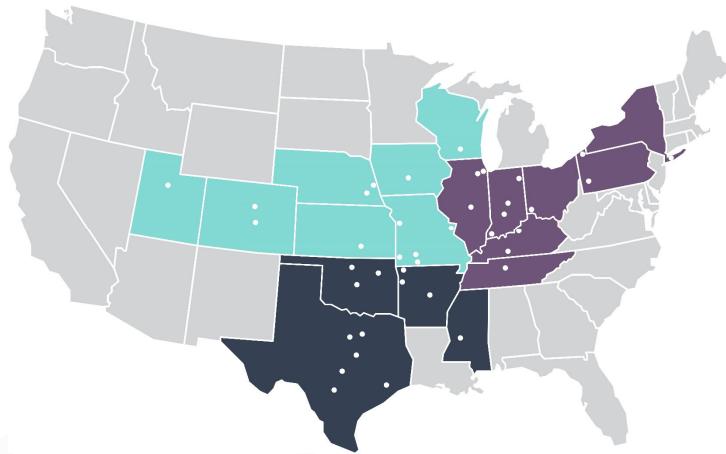
4



ABOUT BKD

Our Offices

5



BKD, LLP has 40 offices in 18 states including 6 offices in Texas: Austin, Dallas, Fort Worth, Houston, San Antonio, and Waco.

BKD

5



PRESENTATION AGENDA

What We Will Be Covering Today

6

- 1 Overview of Tax Reform
- 2 Overview of Section 199A
- 3 Glossary of Section 199A Terms
- 4 Qualified Business Income

BKD

6



PRESENTATION AGENDA

What We Will Be Covering Today (Cont'd)

7

- 5 W-2 Wages
- 6 Unadjusted Basis Immediately After Acquisition
- 7 Specified Service Trade or Business
- 8 Specified Agricultural or Horticultural Cooperative

BKD



PRESENTATION AGENDA

What We Will Be Covering Today (Cont'd)

8

- 9 Under Threshold Example
- 10 Non-SSTB Examples
- 11 SSTB Examples
- 12 Recordkeeping Rules

BKD



PRESENTATION

AGENDA

What We Will Be
Covering Today (Cont'd)

13 Aggregation Rules

14 Anti-abuse Rules

15 Other Rules

16 Planning Opportunities

9

BKD



PRESENTATION

AGENDA

What We Will Be
Covering Today (Cont'd)

17 New Amounts for 2019

18 New Forms for 2019

10

New Slide

BKD



OVERVIEW OF TAX REFORM

Tax Cuts and Jobs Act
("Tax Reform")

11

BKD

Tax Cuts and Jobs Act ("Tax Reform")

- The Tax Cuts and Jobs Act of 2017 ("Tax Reform") was enacted into federal law on December 22, 2017.
- Tax Reform included several large changes to the Internal Revenue Code ("IRC") for individuals and businesses (some of which expire and some of which are permanent).
- Final regulations have been released by the Internal Revenue Service ("IRS") for most of the areas of the IRC impacted by Tax Reform.
- State conformity with Tax Reform varies from jurisdiction to jurisdiction.

11



OVERVIEW OF TAX REFORM

Tax Reform for
Individuals

12

BKD

Tax Reform for Individuals

- The highest marginal tax rate on individuals was reduced from 39.6% to 37% until December 31, 2025.
- The personal exemption was repealed until December 31, 2025.
- The standard deduction was roughly doubled until December 31, 2025.
- Excess Business Losses ("EBL") were subjected to new limitations until December 31, 2025.
- The itemized deduction limitation was repealed until December 31, 2025.

12



OVERVIEW OF TAX REFORM

Tax Reform for
Individuals
(Cont'd)

13

- The child tax credit was increased from \$1,000 to \$2,000 (and taxable income phase-out roughly doubled) until December 31, 2025.
- The state and local tax deduction (non-business) was limited to \$10,000 until December 31, 2025.
- Miscellaneous itemized deductions (including tax preparation fees 😞) were repealed until December 31, 2025.
- The alternative minimum tax exemption was increased (and taxable income phase-out roughly quadrupled) until December 31, 2025.



13



OVERVIEW OF TAX REFORM

Tax Reform for
Businesses

14

Tax Reform for Businesses

- The highest marginal tax rate on corporations was reduced from 35% to a flat rate of 21%.
- The Alternative Minimum Tax (“AMT”) on corporations was repealed.
- Bonus depreciation was increased to 100% through 2022 (gradually falling in % in the years following.)
- The §179 deduction amount was roughly doubled (and threshold amount increased).
- The revenue threshold for use of the cash method of accounting was increased from \$5,000,000 to \$25,000,000.



14



OVERVIEW OF TAX REFORM

Tax Reform for
Businesses
(Cont'd)

15

- The revenue threshold for required use of §263A (“UNICAP”) rules was increased from \$10,000,000 to \$25,000,000.
- The rules regarding the taxation of foreign income were completely overhauled.
- The §163(j) interest limitation rules were expanded to apply to domestic interest amounts paid.
- The Domestic Production Activities Deduction (“DPAD”) was repealed.
- The Qualified Business Income Deduction (“QBI Deduction”) was created.



15



OVERVIEW OF SECTION 199A

Qualified Business
Income Deduction

16

Qualified Business Income Deduction

- The new QBI Deduction applies for individuals as well as some trusts and estates.
- Generally, the deduction is equal to 20% of “QBI”, but is subject to multiple limitations.
- The deduction is available for taxable years beginning after December 31, 2017 and ending on or before December 31, 2025.



16



OVERVIEW OF SECTION 199A

Qualified Business
Income Deduction
(Cont'd)

17

- Proposed regulations on Section 199A were issued on August 8, 2018 and final regulations were issued on February 8, 2019.
- Final regulations apply to taxable years ending after February 8, 2019, but may be relied upon for taxable years ending in calendar year 2018.
- Alternatively, proposed regulations may be relied upon for taxable years ending in calendar year 2018.



17



OVERVIEW OF SECTION 199A

Fun Tidbit from Final
Regulations

18

Fun Tidbit from Final Regulations

Annual Reporting Burden

Section 1.199A-4	700,000
Section 1.199A-6	24,200,000
Total Hours	24,900,000

Estimated Monetized Burden (\$ / Hour)

Section 1.199A-4	\$39 / Hour
Section 1.199A-6	\$53 / Hour

Estimated Monetized Burden (Total)

Section 1.199A-4	27,300,000
Section 1.199A-6	1,282,600,000
Total Amount	1,309,900,000



18



OVERVIEW OF SECTION 199A

Section 199A
Resources

19

Section 199A Resources

- [Internal Revenue Code](#)
- [Proposed Regulations](#)
- [Final Regulations](#)
- [Rev. Proc. 2019-11](#)
- [Notice 2019-07](#)
- [Publication 535](#)
- [BKD Thoughtware®](#) ☺



19



GLOSSARY OF SECTION 199A TERMS

Section 199A Terms

20

Qualified Business Income (“QBI”)

Generally, business income effectively connected with a U.S. trade or business and included (or allowed) in determining taxable income

W-2 Wages

Employee wages reported on a timely filed Form W-3 paid by (or allocable to) a U.S. trade or business

Unadjusted Basis Immediately After Acquisition (“UBIA”)

The tax basis of depreciable property (before depreciation) of a U.S. trade or business



20



GLOSSARY OF SECTION 199A TERMS

Section 199A Terms
(Cont'd)

21

BKD

Qualified REIT Dividends

Dividends from a real estate investment trust (“REIT”) (doesn’t include capital gain dividends or qualified dividend income) (excluded from QBI)

Qualified PTP Income

Income from a publicly traded partnership (“PTP”) (excluded from QBI)

Adjusted Taxable Income

Taxable income for the taxable year after subtracting the net capital gain (if any) for such year (and before the deduction under Section 199A)

21



GLOSSARY OF SECTION 199A TERMS

Section 199A Terms
(Cont'd)

22

BKD

Wage Limitation

Limitation equal to 50% of W-2 wages (used to calculate “QBI Component”)

Property Limitation

Limitation equal to 25% of W-2 wages ***plus*** 2.5% of UBIA (used to calculate “QBI Component”)

Taxable Income Limitation

Limitation equal to 20% of “Adjusted Taxable Income” (used to overall calculate “QBI Deduction”)

22



GLOSSARY OF SECTION 199A TERMS

Section 199A Terms
(Cont'd)

23

QBI Component

20% of QBI after applying the higher of Wage Limitation or Property Limitation

REIT / PTP Component

20% of sum of Qualified REIT Dividends and Qualified PTP Income

Specified Service Trade or Business

Trades or businesses to which additional rules and limitations apply (defined in §199A(d)(2) and regulations)

23



GLOSSARY OF SECTION 199A TERMS

Section 199A Terms
(Cont'd)

24

[New Slide](#)

Threshold Amount

Amount of taxable income over which “Wage Limitation”, “Property Limitation”, and limitation for “Specified Service Trades or Businesses” apply (indexed for inflation every year)

24



QUALIFIED BUSINESS INCOME

Qualified Business Income Defined

25

BKD

Qualified Business Income Defined

- §199A(c)(1) describes Qualified Business Income as,
“[T]he net amount of qualified items of income, gain, deduction, and loss with respect to any qualified trade or business of the taxpayer. Such term shall not include any qualified REIT dividends or qualified publicly traded partnership income.”
- §1.199A-3 further defines Qualified Business Income and provides clarification on six items identified by tax practitioners as having unclear treatment (included on the following slides).

QUALIFIED BUSINESS INCOME

Qualified Business Income Defined
(Cont'd)

26

BKD

Section 751 Gain

Section 751 gains (related to certain sales of partnership interests) are included in QBI

Guaranteed Payments for the Use of Capital

Income to partners from guaranteed payments are not included in QBI (though the deduction to the partnership is included in QBI)

Section 481 Adjustments

Section 481 adjustments (both positive and negative) that arise in taxable years ending after December 31, 2017 are included in QBI

26



QUALIFIED BUSINESS INCOME

Qualified Business Income Defined
(Cont'd)

27

Previously Disallowed Losses

Previously disallowed losses or deductions are included in QBI unless generated in taxable years ending before January 1, 2018

Net Operating Losses

Net operating loss deductions under §172 are generally not included in QBI (except to the extent they result from Excess Business Losses under §461(l) in a prior taxable year)

Other Deductions

Deductions attributable to a trade or business are generally included in QBI (deductible portion of SE tax, SE health insurance, etc.)



27



QUALIFIED BUSINESS INCOME

Netting of Income and Losses

28

Netting of Income and Losses

- §1.199A-1(d)(2)(iii)(A) provides that, “[i]f an individual's QBI from at least one trade or business... is less than zero, the individual must offset the QBI attributable to each trade or business... that produced net positive QBI with the QBI from each trade or business... that produced net negative QBI in proportion to the relative amounts of net QBI in the trades or businesses... with positive QBI.”
- The operational rules of §1.199A-1 indicate that the W-2 Wages and/or UBI from trades or businesses with negative QBI are not added to the W-2 Wages and/or UBI from trades or businesses with positive QBI.



28



QUALIFIED BUSINESS INCOME

Carryover of Losses

29

Carryover of Losses

- §199A(c)(2) provides that, “[i]f the net amount of qualified income, gain, deduction, and loss with respect to qualified trades or businesses of the taxpayer for any taxable year is less than zero, such amount shall be treated as a loss from a qualified trade or business in the succeeding taxable year.”
- The operational rules of §1.199A-1 require that both a “Negative Total QBI Amount” and “Negative Combined REIT Dividends/Qualified PTP Income” amount be carried forward to the succeeding year.

29



QUALIFIED BUSINESS INCOME

Carryover of Losses (Cont'd)

30

- The Negative Total QBI Amount is treated as negative QBI from a separate trade or business in the succeeding year and netted with QBI from other trades or businesses when calculating the QBI Component for the succeeding year.
- Likewise, the Negative Combined REIT Dividends/Qualified PTP Income is netted with Qualified REIT Dividends and Qualified PTP Income from the succeeding year when calculating the REIT / PTP Component in the succeeding year.
- Unfortunately, W-2 Wages and UBI are not also carried over to the succeeding year under §1.199A-1(d)(2)(iii).

30



QUALIFIED BUSINESS INCOME

Example of Netting and Carryover

31

Example of Netting and Carryover

- Example #11 from §1.199A-1(d)(4)(xi):

	Business X	Business Y	Business Z	Prior Year Negative	Total
Qualified Business Income	200,000	150,000	(120,000)	(150,000)	80,000
Proportion of Positive QBI (%)	57.14%	42.86%	0.00%	0.00%	100.00%

	Business X	Business Y	Business Z	Prior Year Negative	Total
Qualified Business Income	200,000	150,000	(120,000)	(150,000)	80,000
Allocation of Prior Year Negative QBI	(85,710)	(64,290)	-	150,000	-
Allocation of Current Year Negative QBI	(68,568)	(51,432)	120,000	-	-
Adjusted Qualified Business Income	45,722	34,278	-	-	80,000



31



QUALIFIED BUSINESS INCOME

Qualified Items of Income, Gain, Deduction, and Loss

32

Qualified Items of Income, Gain, Deduction, and Loss

- §199A(c)(3)(A) describes Qualified Items of Income, Gain, Deduction, and Loss broadly as, "...items of income, gain, deduction, and loss to the extent such items are... effectively connected with the conduct of a trade or business within the United States... and... included or allowed in determining taxable income for the taxable year."
- §199A(c)(3)(B) lists the items not taken into account in Qualified Items of Income, Gain, Deduction, and Loss and §1.199A-3(b)(2)(ii) clarifies each excluded item in further detail (included on the following slides).



32



QUALIFIED BUSINESS INCOME

Qualified Items of Income, Gain, Deduction, and Loss
(Cont'd)

33

Capital Gains and Losses

Capital gains and losses are excluded from Qualified Items of Income, Gain, Deduction, and Loss

Dividends

Dividends, income equivalent to dividends, and payments in lieu of dividends are excluded from Qualified Items of Income, Gain, Deduction, and Loss

Interest Income (Non-business)

Interest income not properly allocable to a trade or business is excluded from Qualified Items of Income, Gain, Deduction, and Loss



33



QUALIFIED BUSINESS INCOME

Qualified Items of Income, Gain, Deduction, and Loss
(Cont'd)

34

Certain Foreign-related Items

Certain transactions in commodities and excess foreign currency gains are excluded from Qualified Items of Income, Gain, Deduction, and Loss

Annuity Income (Non-business)

Annuity income not properly allocable to a trade or business is excluded from Qualified Items of Income, Gain, Deduction, and Loss

Allocable Deductions and Losses

Deductions and losses properly allocable to any of the excepted items above are also excluded from Qualified Items of Income, Gain, Deduction, and Loss



34



QUALIFIED BUSINESS INCOME

Qualified Items of Income, Gain, Deduction, and Loss (Cont'd)

35

Reasonable Compensation (Shareholders in S Corporations)

Reasonable compensation received by a shareholder is excluded from Qualified Items of Income, Gain, Deduction, and Loss (but the S corporation's deduction for the amount is generally included)

Guaranteed Payments (Partners in Partnerships)

Guaranteed payments received by a partner are excluded from Qualified Items of Income, Gain, Deduction, and Loss (but the partnership's deduction for the amount is generally included)



35



QUALIFIED BUSINESS INCOME

Qualified Trade or Business

36

Qualified Trade or Business

- §199A(d) defines Qualified Trade or Business through exception as, “...any trade or business other than... a specified trade or business, or the trade or business of performing services as an employee.”
- The definitions included in §1.199A-1(b)(13) defines “trade or business” through reference to §162 (while again excluding “the trade or business of performing services as an employee”) and includes a Rental Real Estate Safe Harbor for rental activities under common control that meet certain requirements.



36



QUALIFIED BUSINESS INCOME

Trade or Business
Defined

37

BKD

Trade or Business Defined

- The [Small Business and Self-Employed](#) section of the Internal Revenue Service website defines a “trade or business” in part as (emphasis added),

“...an activity carried on for a livelihood or in good faith to make a profit. The **facts and circumstances** of each case determine whether or not an activity is a trade or business.”
- A comprehensive analysis of what constitutes a “trade or business” under §162 and other areas of the Internal Revenue Code is beyond the scope of this presentation.

QUALIFIED BUSINESS INCOME

Rental Real Estate
Safe Harbor

38

BKD

Rental Real Estate Safe Harbor

- The Internal Revenue Service released Notice 2019-07 concurrently with the final regulations for Section 199A.
- Notice 2019-07 contains a “safe harbor” for rental real estate activities that would not otherwise rise to the level of a “trade or business” under §162.
- In order to qualify, the activity must include a signed election with their timely filed tax return and meet the other requirements in the Proposed Revenue Procedure included in the notice (included on the following slides).

38



QUALIFIED BUSINESS INCOME

Rental Real Estate
Safe Harbor
(Cont'd)

39

1. Maintain Separate Books and Records

Separate books and records must be maintained for the activity to qualify for the safe harbor

2. Perform 250 or More Hours of Rental Services

250 or more hours of “rental services,” as defined in the notice, must be performed by the owners (or by employees, agents, and/or independent contractors of the owners) during the taxable year for the activity to qualify for the safe harbor (or 250 hours in 3 of the last 5 years for taxable years beginning on or after December 31, 2022)

39



QUALIFIED BUSINESS INCOME

Rental Real Estate
Safe Harbor
(Cont'd)

40

3. Maintain Contemporaneous Records of Rental Services

Contemporaneous records of rental services performed (including names, dates, and descriptions) must be maintained to qualify for the safe harbor (applies to taxable years beginning on or after January 1, 2019)

4. Include Signed Election Statement with Tax Return

A signed election statement must be included with the tax return of the taxpayer (or Relevant Passthrough entity (“RPE”)) claiming the safe harbor that meets the requirements listed in the notice

40

20



W-2 WAGES

How to Calculate
W-2 Wages

41

Calculating W-2 Wages

- Revenue Procedure 2019-11 established three methods for taxpayers to calculate W-2 Wages:

1. Unmodified Box Method

W-2 Wages is equal to the sum of the total entries in Box 1 **or** Box 5 of all Forms W-2 filed with respect to employees of the trade or business

1 Wages, tips, other compensation	2 Federal income tax withheld
3 Social security wages	4 Social security tax withheld
5 Medicare wages and tips	6 Medicare tax withheld
7 Social security tips	8 Allocated tips

41



W-2 WAGES

How to Calculate
W-2 Wages
(Cont'd)

42

2. Modified Box 1 Method

W-2 Wages is equal to the sum of the total entries in Box 1 after subtracting amounts that are not wages for federal income tax withholding purposes and adding the amounts in Box 12 properly coded D, E, F, G, and S

D—Elective deferrals to a section 401(k) cash or deferred arrangement. Also includes deferrals under a SIMPLE retirement account that is part of a section 401(k) arrangement.

E—Elective deferrals under a section 403(b) salary reduction agreement

F—Elective deferrals under a section 408(k)(6) salary reduction SEP

G—Elective deferrals and employer contributions (including nonelective deferrals) to a section 457(b) deferred compensation plan

S—Employee salary reduction contributions under a section 408(p) SIMPLE plan (not included in box 1)

42



W-2 WAGES

How to Calculate
W-2 Wages
(Cont'd)

43

3. Tracking Wages Method

W-2 wages is equal to total wages subject to federal income tax withholding actually or constructively paid after adding or subtracting appropriate modifications from Box 12

W-2 WAGES

How to Allocate
W-2 Wages

44

Allocating W-2 Wages

- Under §1.199A-2 a taxpayer is required to:
 1. Calculate W-2 Wages
 2. Allocate calculated W-2 Wages among its various trades or businesses
 3. Allocate calculated W-2 Wages allocated to a trade or business between QBI and non-QBI

Allocation Among Trades or Businesses

- W-2 Wages must be allocated to the trade or business that generated the wages
- If allocable to more than one trade or business, W-2 Wages must be allocated using a “reasonable method based on all the facts and circumstances” under §1.199A-3(b)(5)

44



W-2 WAGES

How to Allocate
W-2 Wages
(Cont'd)

45

Allocation Between QBI and non-QBI

- W-2 Wages must be allocated to QBI and non-QBI after they are allocated to each trade or business
- W-2 Wages are allocable to QBI if their associated wage deduction was properly included when calculating QBI

UNADJUSTED BASIS IMMEDIATELY AFTER ACQUISITION

How to Calculate
UBIA

46

Unadjusted Basis Immediately After Acquisition of Qualified Property

- §1.199A-2(c)(1) defines “qualified property” as the tangible property of a trade or business of an individual or RPE subject to the allowance for depreciation under §167(a),
 - Which is held by, and available for use in, the trade or business at the close of the taxable year
 - Which is used at any point during the taxable year in the trade or business’s production of QBI
 - The “depreciable period” for which has not ended before the close of the individual’s or RPE’s taxable year

46

23



UNADJUSTED BASIS IMMEDIATELY AFTER ACQUISITION

How to Calculate
UBIA (Cont'd)

47

- The “depreciable period” is defined in §1.199A-2(c)(2) as beginning on the date the depreciable property first placed in service by the individual or RPE and ending on the later of,
 - A. The date that is 10 years after such date
 - B. The last day of the last full year in the applicable recovery period that would apply to the property under §168
- “Unadjusted basis immediately after acquisition” is defined in §1.199A-2(c)(3) generally as the basis of the placed in service date of the property
- Special rules apply to qualified property acquired in a like-kind exchange or acquired pursuant to an involuntary conversion



47



SPECIFIED SERVICE TRADE OR BUSINESS

Specified Service
Trade or Business
Defined

48

Specified Service Trade or Business Defined

- Section 199A created special rules that apply when a trade or business is considered a Specified Trade or Business (“SSTB”).
- Each trade or business type considered to be an “SSTB” is defined in §199A(d)(2) and further clarified in regulation §1.199A-5 (included on the following slides.)



48



SPECIFIED SERVICE TRADE OR BUSINESS

List of Specified Service
Trades or Businesses

49

List of Specified Service Trades or Businesses

- Health
- Law
- Accounting ☺
- Actuarial Science
- Performing Arts
- Consulting
- Athletics
- Financial Services



49



SPECIFIED SERVICE TRADE OR BUSINESS

List of Specified Service
Trades or Businesses
(Cont'd)

50

- Brokerage Services
- Investing and Investment Management
- Trading
- Dealing in Securities, Partnership
Interests, or Commodities
- “Any trade or business where the
principal asset of such trade or business
is the reputation or skill of one or more of
its employees or owners”



50



SPECIFIED SERVICE TRADE OR BUSINESS

Health

51

Health

- The regulations define “health” services in §1.199A-5(b)(2)(i) as, “...the provision of medical services by individuals such as physicians, pharmacists, nurses, dentists, veterinarians, physical therapists, psychologists, and other similar healthcare professionals performing services in their capacity as such.”

BKD

51



SPECIFIED SERVICE TRADE OR BUSINESS

Health
(Cont'd)

52

“...the performance of services in the field of health does not include the operation of health clubs or health spas that provide physical exercise or conditioning to their customers, payment processing, or the research, testing, and manufacture and/or sales of pharmaceuticals or medical devices.”

BKD

52



SPECIFIED SERVICE TRADE OR BUSINESS

Law

53

Law

- The regulations define “law” services in §1.199A-5(b)(2)(ii) as, “...the performance of legal services by individuals such as lawyers, paralegals, legal arbitrators, mediators, and similar professionals performing services in their capacity as such.”

BKD

53



SPECIFIED SERVICE TRADE OR BUSINESS

Law

(Cont'd)

54

“The performance of services in the field of law does not include the provision of services that do not require skills unique to the field of law; for example, the provision of services in the field of law does not include the provision of services by printers, delivery services, or stenography services.”

BKD

54



SPECIFIED SERVICE TRADE OR BUSINESS

Accounting

55

Accounting

- The regulations define “accounting” services in §1.199A-5(b)(2)(iii) as, “...the provision of services by individuals such as accountants, enrolled agents, return preparers, financial auditors, and similar professionals performing services in their capacity as such.”

BKD



SPECIFIED SERVICE TRADE OR BUSINESS

Actuarial Science

56

Actuarial Science

- The regulations define “actuarial science” services in §1.199A-5(b)(2)(iv) as, “...the provision of services by individuals such as actuaries and similar professionals performing services in their capacity as such.”

BKD

56



SPECIFIED SERVICE TRADE OR BUSINESS

Performing Arts

57

Performing Arts

- The regulations define “performing arts” services in §1.199A-5(b)(2)(v) as, “...the performance of services by individuals who participate in the creation of performing arts, such as actors, singers, musicians, entertainers, directors, and similar professionals performing services in their capacity as such.”

BKD

57



SPECIFIED SERVICE TRADE OR BUSINESS

Performing Arts
(Cont'd)

58

“The performance of services in the field of performing arts does not include the provision of services that do not require skills unique to the creation of performing arts, such as the maintenance and operation of equipment or facilities for use in the performing arts. Similarly, the performance of services in the field of the performing arts does not include the provision of services by persons who broadcast or otherwise disseminate video or audio of performing arts to the public.”

BKD

58



SPECIFIED SERVICE TRADE OR BUSINESS

Consulting

59

BKD

Consulting

- The regulations define “consulting” services in §1.199A-5(b)(2)(vi) as, “...the provision of professional advice and counsel to clients to assist the client in achieving goals and solving problems. [...] The performance of services in the field of consulting does not include the performance of services other than advice and counsel, such as sales... or the provision of training and educational courses.”



SPECIFIED SERVICE TRADE OR BUSINESS

Consulting
(Cont'd)

60

BKD

“Performance of services in the field of consulting does not include the performance of consulting services embedded in, or ancillary to, the sale of goods or performance of services on behalf of a trade or business that is otherwise not an SSTB (such as typical services provided by a building contractor) if there is no separate payment for the consulting services. Services within the fields of architecture and engineering are not treated as consulting services.”

60



SPECIFIED SERVICE TRADE OR BUSINESS

Athletics

61

Athletics

- The regulations define “athletics” services in §1.199A-5(b)(2)(vii) as, “the performance of services by individuals who participate in athletic competition such as athletes, coaches, and team managers in sports such as baseball, basketball, football, soccer, hockey, martial arts, boxing, bowling, tennis, golf, skiing, snowboarding, track and field, billiards, and racing.”



61



SPECIFIED SERVICE TRADE OR BUSINESS

Athletics
(Cont'd)

62

“The performance of services in the field of athletics does not include the provision of services that do not require skills unique to athletic competition, such as the maintenance and operation of equipment or facilities for use in athletic events. Similarly, the performance of services in the field of athletics does not include the provision of services by persons who broadcast or otherwise disseminate video or audio of athletic events to the public.”



62



SPECIFIED SERVICE TRADE OR BUSINESS

Financial Services

63

BKD

Financial Services

- The regulations define “financial” services in §1.199A-5(b)(2)(viii) as, “...the provision of financial services to clients including... advising clients with respect to finances... and other... services regarding valuations, mergers, acquisitions, dispositions, restructurings... and raising financial capital by underwriting, or acting as a client's agent in the issuance of securities and similar services.”



SPECIFIED SERVICE TRADE OR BUSINESS

Financial Services
(Cont'd)

64

BKD

“...the performance of services in the field of financial services does not include taking deposits or making loans, but does include arranging lending transactions between a lender and borrower.”

64



SPECIFIED SERVICE TRADE OR BUSINESS

Brokerage Services

65

Brokerage Services

- The regulations define “brokerage” services in §1.199A-5(b)(2)(ix) as, “...the performance of services in the field of brokerage services includes services in which a person arranges transactions between a buyer and a seller with respect to securities... for a commission or fee. This includes services provided by stock brokers and other similar professionals, but does not include services provided by real estate agents and brokers, or insurance agents and brokers.”



65



SPECIFIED SERVICE TRADE OR BUSINESS

Investing and Investment Management

66

Investing and Investment Management

- The regulations define “investing and investment management” services in §1.199A-5(b)(2)(x) as, “...the performance of services that consist of investing and investment management refers to a trade or business involving the receipt of fees for providing investing, asset management, or investment management services, including providing advice with respect to buying and selling investments.”



66



SPECIFIED SERVICE TRADE OR BUSINESS

Investing and Investment Management (Cont'd)

67

“The performance of services of investing and investment management does not include directly managing real property.”

BKD

67



SPECIFIED SERVICE TRADE OR BUSINESS

Trading

68

Trading

- The regulations define “trading” services in §1.199A-5(b)(2)(xi) as, “a trade or business of trading in securities (as defined in section 475(c)(2)), commodities (as defined in section 475(e)(2)), or partnership interests. Whether a person is a trader in securities, commodities, or partnership interests is determined by taking into account all relevant facts and circumstances...”

BKD

68



SPECIFIED SERVICE TRADE OR BUSINESS

Dealing in Securities,
Partnership Interests,
or Commodities

69

Dealing in Securities, Partnership Interests, or Commodities

- The regulations define “dealing in securities, partnership interests, or commodities” services in §1.199A-5(b)(2)(xii) as,
“regularly purchasing securities... commodities... [and] partnership interests... and selling to customers in the ordinary course of a trade or business...”



69



SPECIFIED SERVICE TRADE OR BUSINESS

“Reputation or Skill”

70

“Reputation or Skill”

- The regulations define “reputation or skill” services in §1.199A-5(b)(2)(xiii) as,
“...any of the following (or any combination thereof)... [receipt of] income for endorsing products or services, [receipt of] income for the use of an individual’s image, likeness... or any other symbols associated with the individual’s identity, or [receipt of] income for appearing at an event or on radio, television, or another media format.”



70



SPECIFIED SERVICE TRADE OR BUSINESS

“De Minimis” Rule

71

BKD

“De Minimis” Rule

- Under the “De Minimis Rule” of §1.199A-5(c)(1), a trade or business is ***not*** considered to be an SSTB if:

The trade or business has gross receipts of \$25 million or less and less than 10 percent of the gross receipts are attributable to (or incidental to) performance of services in a field described above

or

SPECIFIED SERVICE TRADE OR BUSINESS

“De Minimis” Rule
(Cont’d)

72

BKD

The trade or business has gross receipts greater than \$25 million and less than 5 percent of the gross receipts are attributable to (or incidental to) performance of services in a field described above

- According to the examples provided in the regulations, this rule is “all-or-nothing” such that if a trade or business has \$1 over the applicable gross receipts threshold attributable to an SSTB it is considered to be an SSTB in its entirety

72



SPECIFIED SERVICE TRADE OR BUSINESS

Services or Property
Provided to an SSTB

73

Services or Property Provided to an SSTB

- Under §1.199A-5(c)(2), if a trade or business provides property or services to an SSTB and there is 50 percent or more common ownership of the trades or businesses, that portion of the trade or business of providing property or services to the 50 percent or more commonly-owned SSTB will be treated as a separate SSTB with respect to the related parties.



73



SPECIFIED SERVICE TRADE OR BUSINESS

Services or Property
Provided to an SSTB
(Cont'd)

74

Example of Services or Property Provided to an SSTB

- Example #1 from §1.199A-5(c)(2)(iii):
 - a. Partnership 1 performs legal services to clients.
 - b. Partnership 2 owns the office building and rents the entire building to Partnership 1.
 - c. Partnership 3 employs the administrative staff and through a contract with Partnership 1 provides administrative services to Partnership 1 in exchange for fees.
 - d. All three of the partnerships are owned by the same people.
 - e. All three of the partnerships will be treated as an SSTB.



74



SPECIFIED SERVICE TRADE OR BUSINESS

Services or Property
Provided to an SSTB
(Cont'd)

75

Example of Services or Property Provided to an SSTB

- Example #2 from §1.199A-5(c)(2)(iii):

The same facts as Example #1 except:

- Partnership 2, which owns the office building, rents 50 percent of the building to Partnership 1 and the other 50 percent to various unrelated third party tenants.
- 50 percent of Partnership 2's leasing activity related to the lease of the building to Partnership 1 will be treated as a separate SSTB.
- The remaining 50 percent of Partnership 2's leasing activity will not be treated as an SSTB.



75



SPECIFIED AGRICULTURAL OR HORTICULTURAL COOPERATIVE

Special Rules

76

Special Rules

- Due to Tax Reform, the Domestic Production Activities Deduction ("DPAD") was repealed for most taxpayers.
- However, DPAD remains available for the patrons of trades or businesses classified as a "Specified Agricultural or Horticultural Cooperative" under §1.199-6(f).
- As a result, the QBI Deduction with respect to such trades or businesses is generally reduced or eliminated.



76



UNDER THRESHOLD EXAMPLE

Introduction

77

[New Slide](#)

“Under Threshold”

- Taxpayers with taxable income below the Threshold Amount must only calculate the QBI Component (without regard to the Wage Limitation or Property Limitation), REIT / PTP Component, and Taxable Income Limitation to determine their QBI Deduction

BKD

77



UNDER THRESHOLD EXAMPLE

Under Threshold
Example

78

Under Threshold Example

Facts

Qualified Business Income	250,000
Qualified REIT Dividends	2,500
Qualified PTP Income	10,000
Adjusted Taxable Income	315,000

Step #1: Calculate the QBI Component

The QBI Component is equal to:	
20% of Qualified Business Income	50,000
QBI Component	50,000

Step #2: Calculate the REIT / PTP Component

The REIT / PTP Component is equal to the sum of:	
20% of Qualified REIT Dividends	500
20% of Qualified PTP Income	2,000
REIT / PTP Component	2,500

BKD

78



UNDER THRESHOLD EXAMPLE

Under Threshold
Example
(Cont'd)

79

BKD

Step #3: Calculate the QBI Deduction

The QBI Deduction is equal to the lesser of:

<u>20% of Adjusted Taxable Income</u>	<u>63,000</u>
and the sum of:	
<u>QBI Component</u>	<u>50,000</u>
<u>REIT / PTP Component</u>	<u>2,500</u>
<u>QBI Deduction</u>	<u>52,500</u>

79

NON-SSTB EXAMPLES

Introduction

80

New Slide

BKD

“Above Threshold” (Non-SSTB)

- Taxpayers with taxable income above the Threshold Amount must calculate the QBI Component (constrained by the Wage Limitation and Property Limitation), REIT / PTP Component, and Taxable Income Limitation to determine their QBI Deduction

80



NON-SSTB EXAMPLES

Example #1:
No Limitation

81

Example #1: No Limitation

Facts

Qualified Business Income	1,000,000
W-2 Wages	500,000
UBIA	250,000
Qualified REIT Dividends	2,500
Qualified PTP Income	10,000
Adjusted Taxable Income	1,500,000

Step #1: Calculate the QBI Component

The QBI Component is equal to the lesser of:

20% of Qualified Business Income 200,000

and the higher of:

Wage Limitation (50% of W-2 Wages) 250,000

or

Property Limitation (25% of W-2 Wages plus 2.5% of UBI) 131,250

QBI Component 200,000



81



NON-SSTB EXAMPLES

Example #1:
No Limitation (Cont'd)

82

Step #2: Calculate the REIT / PTP Component

The REIT / PTP Component is equal to the sum of:

20% of Qualified REIT Dividends 500

20% of Qualified PTP Income 2,000

REIT / PTP Component 2,500

Step #3: Calculate the QBI Deduction

The QBI Deduction is equal to the lesser of:

20% of Adjusted Taxable Income 300,000

and the sum of:

QBI Component 200,000

REIT / PTP Component 2,500

QBI Deduction 202,500



82



NON-SSTB EXAMPLES

Example #2:
Wage Limitation

83

Example #2: Wage Limitation

Facts

Qualified Business Income	1,000,000
W-2 Wages	300,000
UBIA	250,000
Qualified REIT Dividends	2,500
Qualified PTP Income	10,000
Adjusted Taxable Income	1,500,000

Step #1: Calculate the QBI Component

The QBI Component is equal to the lesser of:

20% of Qualified Business Income 200,000

and the higher of:

Wage Limitation (50% of W-2 Wages) 150,000

or

Property Limitation (25% of W-2 Wages plus 2.5% of UBI) 81,250

QBI Component 150,000



83



NON-SSTB EXAMPLES

Example #2:
Wage Limitation
(Cont'd)

84

Step #2: Calculate the REIT / PTP Component

The REIT / PTP Component is equal to the sum of:

20% of Qualified REIT Dividends 500

20% of Qualified PTP Income 2,000

REIT / PTP Component 2,500

Step #3: Calculate the QBI Deduction

The QBI Deduction is equal to the lesser of:

20% of Adjusted Taxable Income 300,000

and the sum of:

QBI Component 150,000

REIT / PTP Component 2,500

QBI Deduction 152,500



84



NON-SSTB EXAMPLES

Example #3:
Property Limitation

85

Example #3: Property Limitation

Facts

Qualified Business Income	1,000,000
W-2 Wages	150,000
UBIA	2,000,000
Qualified REIT Dividends	2,500
Qualified PTP Income	10,000
Adjusted Taxable Income	1,500,000

Step #1: Calculate the QBI Component

The QBI Component is equal to the lesser of:

<i>20% of Qualified Business Income</i>	200,000
---	---------

and the higher of:

<i>Wage Limitation (50% of W-2 Wages)</i>	75,000
---	--------

or

<i>Property Limitation (25% of W-2 Wages plus 2.5% of UBI)</i>	87,500
--	--------

<i>QBI Component</i>	87,500
----------------------	--------



85



NON-SSTB EXAMPLES

Example #3:
Property Limitation
(Cont'd)

86

Step #2: Calculate the REIT / PTP Component

The REIT / PTP Component is equal to the sum of:

<i>20% of Qualified REIT Dividends</i>	500
<i>20% of Qualified PTP Income</i>	2,000
<i>REIT / PTP Component</i>	2,500

Step #3: Calculate the QBI Deduction

The QBI Deduction is equal to the lesser of:

<i>20% of Adjusted Taxable Income</i>	300,000
---------------------------------------	---------

and the sum of:

<i>QBI Component</i>	87,500
<i>REIT / PTP Component</i>	2,500
<i>QBI Deduction</i>	90,000



86



NON-SSTB EXAMPLES

Example #4:
Taxable Income
Limitation

87

Example #4: Taxable Income Limitation

Facts

Qualified Business Income	1,000,000
W-2 Wages	500,000
UBIA	250,000
Qualified REIT Dividends	2,500
Qualified PTP Income	10,000
Adjusted Taxable Income	500,000

Step #1: Calculate the QBI Component

The QBI Component is equal to the lesser of:

20% of Qualified Business Income	200,000
and the higher of:	
Wage Limitation (50% of W-2 Wages)	250,000
or	
Property Limitation (25% of W-2 Wages plus 2.5% of UBI)	131,250
QBI Component	200,000



87



NON-SSTB EXAMPLES

Example #4:
Taxable Income
Limitation
(Cont'd)

88

Step #2: Calculate the REIT / PTP Component

The REIT / PTP Component is equal to the sum of:

20% of Qualified REIT Dividends	500
20% of Qualified PTP Income	2,000
REIT / PTP Component	2,500

Step #3: Calculate the QBI Deduction

The QBI Deduction is equal to the lesser of:

20% of Adjusted Taxable Income	100,000
and the sum of:	
QBI Component	200,000
REIT / PTP Component	2,500
QBI Deduction	100,000



88



SSTB EXAMPLES

Introduction

89

[New Slide](#)

“Above Threshold” (SSTB)

- Taxpayers with taxable income above the Threshold Amount must also consider whether any Trade or Business in which they participate is a Specified Service Trade or Business
- A “SSTB Limitation” (in addition to the other limitations) applies when determining the portion of the QBI Component allowable (if any) from a Specified Service Trade or Business



89



SSTB EXAMPLES

Example #5:
No SSTB Limitation

90

Example #5: No SSTB Limitation

Facts

Qualified Business Income	200,000
W-2 Wages	100,000
UBIA	250,000
Qualified REIT Dividends	2,500
Qualified PTP Income	10,000
Adjusted Taxable Income	315,000
Threshold Amount	315,000

Step #1: Calculate the SSTB Limitation

The SSTB Limitation is equal to the ratio of the excess of adjusted taxable income over the threshold amount to \$100,000:

<i>Excess of Adjusted Taxable Income over Threshold Amount</i>	-
\$100,000	100,000
<i>SSTB Limitation (Ratio)</i>	0.00%



90



SSTB EXAMPLES

Example #5:
No SSTB Limitation
(Cont'd)

91

Step #2: Calculate the QBI Component

The QBI Component is equal to the lesser of:

<u>20% of Qualified Business Income Before SSTB Limitation</u>	<u>40,000</u>
and the higher of:	
<u>Wage Limitation (50% of W-2 Wages)</u>	<u>50,000</u>
<u>or</u>	
<u>Property Limitation (25% of W-2 Wages plus 2.5% of UBI)</u>	<u>31,250</u>
<u>QBI Component Before SSTB Limitation</u>	<u>40,000</u>
<u>SSTB Limitation (Amount)</u>	<u>-</u>
<u>QBI Component After SSTB Limitation</u>	<u>40,000</u>

Step #3: Calculate the REIT / PTP Component

The REIT / PTP Component is equal to the sum of:

<u>20% of Qualified REIT Dividends</u>	<u>500</u>
<u>20% of Qualified PTP Income</u>	<u>2,000</u>
<u>REIT / PTP Component</u>	<u>2,500</u>



91



SSTB EXAMPLES

Example #5:
No SSTB Limitation
(Cont'd)

92

Step #4: Calculate the QBI Deduction

The QBI Deduction is equal to the lesser of:

<u>20% of Adjusted Taxable Income</u>	<u>63,000</u>
and the sum of:	
<u>QBI Component</u>	<u>40,000</u>
<u>REIT / PTP Component</u>	<u>2,500</u>

QBI Deduction



92



SSTB EXAMPLES

Example #6:
Partial SSTB Limitation

93

Example #6: Partial SSTB Limitation

Facts

Qualified Business Income	200,000
W-2 Wages	100,000
UBIA	250,000
Qualified REIT Dividends	2,500
Qualified PTP Income	10,000
Adjusted Taxable Income	365,000
Threshold Amount	315,000

Step #1: Calculate the SSTB Limitation

The SSTB Limitation is equal to the ratio of the excess of adjusted taxable income over the threshold amount to \$100,000:

<i>Excess of Adjusted Taxable Income over Threshold Amount</i>	50,000
<i>\$100,000</i>	100,000
<i>SSTB Limitation (Ratio)</i>	50.00%



SSTB EXAMPLES

Example #6:
Partial SSTB Limitation
(Cont'd)

94

Step #2: Calculate the QBI Component

The QBI Component is equal to the lesser of:

<i>20% of Qualified Business Income Before SSTB Limitation</i>	40,000
<i>and the higher of:</i>	
<i>Wage Limitation (50% of W-2 Wages)</i>	50,000
<i>or</i>	
<i>Property Limitation (25% of W-2 Wages plus 2.5% of UBI)</i>	31,250
<i>QBI Component Before SSTB Limitation</i>	40,000
<i>SSTB Limitation (Amount)</i>	20,000
<i>QBI Component After SSTB Limitation</i>	20,000

Step #3: Calculate the REIT / PTP Component

The REIT / PTP Component is equal to the sum of:

<i>20% of Qualified REIT Dividends</i>	500
<i>20% of Qualified PTP Income</i>	2,000
<i>REIT / PTP Component</i>	2,500



94



SSTB EXAMPLES

Example #6:
Partial SSTB Limitation
(Cont'd)

95

BKD

Step #4: Calculate the QBI Deduction

The QBI Deduction is equal to the lesser of:

20% of Adjusted Taxable Income	73,000
and the sum of:	
QBI Component	20,000
REIT / PTP Component	2,500
QBI Deduction	22,500

95



SSTB EXAMPLES

Example #7:
Full SSTB Limitation

96

BKD

Example #7: Full SSTB Limitation

Facts

Qualified Business Income	200,000
W-2 Wages	100,000
UBIA	250,000
Qualified REIT Dividends	2,500
Qualified PTP Income	10,000
Adjusted Taxable Income	415,000
Threshold Amount	315,000

Step #1: Calculate the SSTB Limitation

The SSTB Limitation is equal to the ratio of the excess of adjusted taxable income over the threshold amount to \$100,000:

Excess of Adjusted Taxable Income over Threshold Amount	100,000
\$100,000	100,000
SSTB Limitation (Ratio)	100.00%

96



SSTB EXAMPLES

Example #7:
Full SSTB Limitation
(Cont'd)

97

Step #2: Calculate the QBI Component

The QBI Component is equal to the lesser of:

<u>20% of Qualified Business Income Before SSTB Limitation</u>	<u>40,000</u>
and the higher of:	
<u>Wage Limitation (50% of W-2 Wages)</u>	<u>50,000</u>
<u>or</u>	
<u>Property Limitation (25% of W-2 Wages plus 2.5% of UBI)</u>	<u>31,250</u>
<u>QBI Component Before SSTB Limitation</u>	<u>40,000</u>
<u>SSTB Limitation (Amount)</u>	<u>40,000</u>
<u>QBI Component After SSTB Limitation</u>	<u>-</u>

Step #3: Calculate the REIT / PTP Component

The REIT / PTP Component is equal to the sum of:

<u>20% of Qualified REIT Dividends</u>	<u>500</u>
<u>20% of Qualified PTP Income</u>	<u>2,000</u>
<u>REIT / PTP Component</u>	<u>2,500</u>



97



SSTB EXAMPLES

Example #7:
Full SSTB Limitation
(Cont'd)

98

Step #4: Calculate the QBI Deduction

The QBI Deduction is equal to the lesser of:

<u>20% of Adjusted Taxable Income</u>	<u>83,000</u>
and the sum of:	
<u>QBI Component</u>	<u>-</u>
<u>REIT / PTP Component</u>	<u>2,500</u>
<u>QBI Deduction</u>	<u>2,500</u>



98



RECORD-KEEPING RULES

Relevant Passthrough Entities

99

Relevant Passthrough Entities

- Under §1.199A-6(b), Relevant Passthrough Entities (“RPEs”) must adhere to the computational and reporting rules listed below.

Computational Rules

1. The RPE must determine if it is engaged in one or more trades or businesses (and whether any of its trades or businesses is an SSTB).
2. The RPE must determine QBI for each trade or business engaged in directly.
3. The RPE must determine W-2 Wages and UBI for each trade or business engaged in directly.
4. The RPE must determine whether it has any Qualified REIT Dividends or Qualified PTP Income either directly or through another RPE.



99



RECORD-KEEPING RULES

Relevant Passthrough Entities (Cont'd)

100

Reporting Rules

1. The RPE must separately identify and report to its owners for any trade or business each owner's allocable share of QBI, W-2 Wages, and UBI attributable to each such trade or business.
2. The RPE must also separately identify and report to its owners whether each such trade or business is an SSTB.
3. The RPE must also report any items reported to it from other RPEs in which the RPE owns an interest.
4. The RPE must also report each owner's allocated share of Qualified REIT Dividends and Qualified PTP Income (including through another RPE).
 - Amounts that are failed to be reported will be **presumed to be zero**.



100



RECORD-KEEPING RULES

Trusts and Estates

101

Trusts and Estates

- Depending upon the situation, a trust or estate may either compute the QBI Deduction at its level, allocate amounts of QBI, W-2 Wages, UBI, Qualified REIT Dividends, and Qualified PTP Income to its beneficiaries, or both.
- To the extent a trust or estate allocates amounts of QBI, W-2 Wages, UBI, Qualified REIT Dividends, and Qualified PTP Income to its beneficiaries, it is required to comply with the same Computational Rules and Reporting Rules as RPEs.
- Again, amounts that are failed to be reported are be **presumed to be zero**.



101



AGGREGATION RULES

Aggregation Rules

102

Aggregation Rules

- Under §1.199A-4(b), an individual or RPE may aggregate trades or businesses for purposes of calculating the QBI Deduction if they can demonstrate that:
 1. The same person or group of persons, directly or by attribution, owns 50 percent or more of each trade or business to be aggregated.
 2. The ownership described above exists for a majority of the taxable year, including the last day of the taxable year, in which the items attributable to each trade or business to be aggregated are included in income.
 3. All of the items attributable to each trade or business to be aggregated are reported on returns with the same taxable year, not taking into account short taxable years.



102



AGGREGATION RULES

Aggregation
Rules
(Cont'd)

103

4. None of the trades or businesses to be aggregated is an SSTB.
5. The trades or businesses to be aggregated satisfy at least two of the following factors (based on all of the facts and circumstances):
 - A) The trades or businesses provide products, property, or services that are customarily offered together.
 - B) The trades or businesses share facilities or share significant centralized business elements, such as personnel, accounting, legal, manufacturing, purchasing, human resources, or information technology resources.
 - C) The trades or businesses are operated in coordination with, or reliance upon, one or more of the businesses in the aggregated group (i.e. supply chain interdependencies).



103



AGGREGATION RULES

Operating Rules

104

Operating Rules

- Individuals may aggregate trades or businesses operated directly (i.e. disregarded entity) or through an RPE to the extent aggregation is not inconsistent with aggregation of an RPE.
- If an individual aggregates multiple trades or businesses, QBI, W-2 Wages, and UBIAB must be combined for the aggregated trades or businesses for purposes of calculating the Wage Limitation and Property Limitation.
- An individual may not subtract from the trades or businesses aggregated by an RPE but may generally aggregate additional trades or businesses with the RPE's aggregation.



104



AGGREGATION RULES

Operating Rules
(Cont'd)

105

- An RPE may aggregate trades or businesses operated directly or through a lower-tier RPE to the extent an aggregation is not inconsistent with the aggregation of a lower-tier RPE.
- If an RPE aggregates multiple trades or businesses, the RPE must compute and report QBI, W-2 Wages, and UBI for the aggregated trade or businesses under the Reporting Rules of §1.199A-6(b).
- An RPE may not subtract from the trades or businesses aggregated by a lower-tier RPE but may generally aggregate additional trades or businesses with a lower-tier RPE's aggregation.



105



AGGREGATION RULES

Reporting and
Consistency
Requirements

106

Reporting and Consistency Requirements

- Once an individual chooses to aggregate two or more trades or businesses, the individual must consistently report the aggregated trades or businesses in all subsequent taxable years.
- In a subsequent year, if there is a significant change in facts and circumstances such that an individual's prior aggregation of trades or businesses no longer qualifies for aggregation, then the trades or businesses will no longer be aggregated, and the individual must reapply the rules to determine a new permissible aggregation (if any).



106



AGGREGATION RULES

Reporting and Consistency Requirements (Cont'd)

107

- For each taxable year, individuals must attach a statement to their returns identifying each trade or business aggregated.
- The statement must contain:
 - A. A description of each trade or business;
 - B. The name and EIN of each entity in which a trade or business is operated;
 - C. Information identifying any trade or business that was formed, ceased operations, was acquired, or was disposed of during the taxable year;
 - D. Information identifying any aggregated trade or business of an RPE in which the individual holds an ownership interest; and
 - E. Such other information as the Commissioner may require in forms, instructions, or other published guidance.



107



AGGREGATION RULES

Reporting and Consistency Requirements (Cont'd)

108

- If an individual fails to attach the statement required, the IRS may disaggregate the individual's trades or businesses.
- The individual may not aggregate trades or businesses that are disaggregated by the IRS for the subsequent three taxable years.
- Likewise, RPEs are bound by similar requirements and must disclose annually the details of their aggregation (or the aggregation of a lower-tier RPE) of trades or businesses on each owner's Schedule K-1.



108



AGGREGATION RULES

Aggregation
Example #1

109

Aggregation Example #1

Facts

	TorB #1	TorB #2	Aggregated
Qualified Business Income	50,000	450,000	500,000
W-2 Wages	50,000	-	50,000
UBIA	-	1,000,000	1,000,000
Qualified REIT Dividends	-	-	-
Qualified PTP Income	-	-	-
Adjusted Taxable Income	1,000,000	1,000,000	1,000,000

Step #1: Calculate the QBI Component

The QBI Component is equal to the lesser of:

<i>20% of Qualified Business Income</i>	<i>10,000</i>	<i>90,000</i>	<i>100,000</i>
and the higher of:			
<i>Wage Limitation</i>	<i>25,000</i>	-	<i>25,000</i>
<i>or</i>			
<i>Property Limitation</i>	<i>12,500</i>	<i>25,000</i>	<i>37,500</i>
<i>QBI Component</i>	<i>10,000</i>	<i>25,000</i>	<i>37,500</i>



109



AGGREGATION RULES

Aggregation
Example #1
(Cont'd)

110

Step #2: Calculate the REIT / PTP Component

The REIT / PTP Component is equal to the sum of:

<i>20% of Qualified REIT Dividends</i>	-	-	-
<i>20% of Qualified PTP Income</i>	-	-	-
<i>REIT / PTP Component</i>	-	-	-

Step #3: Calculate the QBI Deduction

The QBI Deduction is equal to the lesser of:

<i>20% of Adjusted Taxable Income</i>	<i>200,000</i>	<i>200,000</i>	<i>200,000</i>
and the sum of:			
<i>QBI Component</i>	<i>10,000</i>	<i>25,000</i>	<i>37,500</i>
<i>REIT / PTP Component</i>	-	-	-
<i>QBI Deduction</i>	<i>10,000</i>	<i>25,000</i>	<i>37,500</i>

QBI Deduction without Aggregation	35,000
QBI Deduction with Aggregation	37,500
Benefit/(Detriment)	2,500



110



AGGREGATION RULES

Aggregation
Example #2

111

Aggregation Example #2

Facts

	TorB #1	TorB #2	Aggregated
Qualified Business Income	250,000	250,000	500,000
W-2 Wages	50,000	-	50,000
UBIA	-	1,000,000	1,000,000
Qualified REIT Dividends	-	-	-
Qualified PTP Income	-	-	-
Adjusted Taxable Income	1,000,000	1,000,000	1,000,000

Step #1: Calculate the QBI Component

The QBI Component is equal to the lesser of:

20% of Qualified Business Income	50,000	50,000	100,000
and the higher of:			
Wage Limitation	25,000	-	25,000
<i>or</i>			
Property Limitation	12,500	25,000	37,500
QBI Component	25,000	25,000	37,500



AGGREGATION RULES

Aggregation
Example #2
(Cont'd)

112

Step #2: Calculate the REIT / PTP Component

The REIT / PTP Component is equal to the sum of:

20% of Qualified REIT Dividends	-	-	-
20% of Qualified PTP Income	-	-	-
REIT / PTP Component	-	-	-

Step #3: Calculate the QBI Deduction

The QBI Deduction is equal to the lesser of:

20% of Adjusted Taxable Income	200,000	200,000	200,000
and the sum of:			
QBI Component	25,000	25,000	37,500
REIT / PTP Component	-	-	-
QBI Deduction	25,000	25,000	37,500

QBI Deduction without Aggregation	50,000
QBI Deduction with Aggregation	37,500
Benefit/(Detriment)	(12,500)



112



ANTI-ABUSE RULES

Treatment of Former
Employees

113

Treatment of Former Employees

- Under §1.199A-5(d)(3), an individual that was treated as an employee by the person to which he or she provided services and who is subsequently treated as other than an employee by such person with regard to the provision of substantially the same services directly or indirectly to the person (or a related person), is presumed, for three years after ceasing to be treated as an employee, to be in the trade or business of performing services as an employee with regard to such services.
- May be rebutted by providing evidence of status as a non-employee (i.e. promotion to partner).



113



ANTI-ABUSE RULES

W-2 Wages and UBI
A

114

W-2 Wages

- The amount of W-2 Wages of a trade or business used in determining the Wage Limitation does not include amounts reported on Form(s) W-3 (or W-3(c)) that were filed more than 60 days after the due date of such form(s).

UBIA

- Property acquired within 60 days of the end of the taxable year and disposed of within 120 days of acquisition (without first having been used in the trade or business for at least 45 days prior to disposition) are generally not includable in UBI.



114



OTHER RULES

Other Rules

115

65% Taxable Income Limitation on Percentage Depletion

- Under §613A(d)(1)(B), taxable income for purposes of the percentage depletion limitation is computed without regard to the QBI Deduction

Taxable Income Limitation on Section 179

- Publication 946 provides a step-by-step method for calculating the Section 179 deduction where multiple deductions are limited by taxable income

Alternative Minimum Tax

- Under §199A(f)(2), for purposes of determining AMTI, QBI is determined without regard to any AMT adjustments under §56 through §59

BKD

115



OTHER RULES

Other Rules (Cont'd)

116

[New Slide](#)

Previously Disallowed Losses

- Losses disallowed in tax years ending prior to January 1, 2018 are never included in Qualified Business Income
- Losses disallowed in tax years ending after January 1, 2018 are included in Qualified Business Income
- Per §199A-3(b)(1)(iv), previously disallowed losses are used in order from the oldest to the most recent (FIFO)
 - Important to review tax preparation software calculation to insure pre-2018 disallowed losses aren't reducing QBI

BKD

116



PLANNING OPPORTUNITIES

Aggregation Opportunities

117

Aggregation Opportunities

- Assuming all of the requirements under §1.199A-4(b) have been satisfied, a taxpayer may be able to increase their QBI Deduction by electing to aggregate multiple trades or businesses.
- Aggregation by an RPE (or a lower-tier RPE) may limit the ability of the individual owners of the RPE to aggregate.
- Care should be taken to consider any potential future consequences of the binding election to aggregate (i.e. anticipated changes in future year QBI, W-2 Wages, and UBIAs).



117



PLANNING OPPORTUNITIES

Restructuring Opportunities

118

Restructuring Opportunities

- Taxpayers may be able to tax advantage of the QBI Deduction by converting their C corporation into an S corporation.
- Additionally, the rules of §1.199A-5(c)(2) regarding provision of property or services to commonly controlled trades or businesses, may be avoided by selling all or part of a trade or business to a third-party.



118



PLANNING OPPORTUNITIES

Filing Status

119

Revisit Married Filing Separate

- Typically results in a higher combined tax bill than a joint return
- QBI threshold amount is 157,500 for both individual filers and married-filing-separate.
 - (200% of such amount for MFJ)
- Example:
 - John and Sarah are married
 - John earns 400,000 as W-2 employee
 - Sarah is a sole proprietor CPA with \$180,000 of net business profits
- If they file joint, John's salary wipes out any QBI deduction due to SSTB limitation threshold.



119



PLANNING OPPORTUNITIES

Filing Status

120

Revisit Married Filing Separate

2018	Case 1	Case 2
Filing Status	Separate	Separate
Ordinary Income	\$ 400,000	\$ 169,629
Net Short Term Gain	\$ -	\$ -
Net Long Term Gain	\$ -	\$ -
Adjusted Gross Income	\$ 400,000	\$ 169,629
Itemized Deductions	\$ -	\$ -
Standard Deduction	\$ 12,000	\$ 12,000
Qualified Income Deduction	\$ -	\$ 31,526
Taxable Income	\$ 388,000	\$ 126,103
Table Tax	\$ 113,250	\$ 24,554
SE or Other Tax	\$ 2,475	\$ 21,113
Net Federal Tax	\$ 115,725	\$ 45,667
		\$ 163,091

- MFS Tax: \$161,392 vs MFJ Tax: \$163,091



120



PLANNING OPPORTUNITIES

Contract vs W-2 Labor

121

BKD

Bring Contract Labor In-House

- Potentially beneficial for high-income business owners of non-SSTB
- Contract labor does not help QBI deduction
 - W-2 wages paid can increase deduction
- Example – Internal Contractors:
 - Michael has \$500,000 of net profit selling Mifflin Dunder paper
 - \$100,000 potential QBI deduction
 - Paid \$200,000 to internal contractors for sales commissions
 - Since no W-2 wages were paid, and no depreciable property there is no actual QBI deduction.

PLANNING OPPORTUNITIES

Contract vs W-2 Labor

122

BKD

Bring Contract Labor In-House

- Example – W-2 Wages:
 - Michael has \$500,000 of net profit selling Mifflin Dunder paper
 - \$100,000 potential QBI deduction
 - Sales brought in-house, \$200,000 of salary paid.
 - \$100,000 of actual QBI

122



PLANNING OPPORTUNITIES

Non Salary Entity to S Corporation

123

BKD

Non Salary Paying Entities to S Corp

- Before:

- Sole proprietor business owner has \$600,000 of profits selling rare Beanie Babies
- \$120,000 of potential QBI deduction
- No W-2 wages paid or depreciable property
- \$0 actual QBI Deduction

123



PLANNING OPPORTUNITIES

Non Salary Entity to S Corporation

124

BKD

Non Salary Paying Entities to S Corp

- After:

- S Corporation Established
- Business Owner pays a \$250,000 salary
 - 50% of \$250,000 = \$125,000
- \$350,000 of net profit to owner
- \$70,000 potential QBI deduction
- \$70,000 actual QBI deduction

124



PLANNING OPPORTUNITIES

Perfect Salary Percent

125

Determining the “Perfect” Salary

- Take owner's combined profit (before salary)
- Multiply by 28.5714%
- Results in the “perfect” salary

Yay Algebra
x = perfect salary

$$(1-(x))/5=.5*(x)$$

$$\begin{aligned} 1-x &= 2.5x \\ 1 &= 3.5x \\ x &= 0.285714285714286 \end{aligned}$$

- #theydidthemath



125



PLANNING OPPORTUNITIES

Perfect Salary Percent

126

Determining the “Perfect” Salary

- Sole proprietor business owner has \$600,000 of net profit
- S Corporation is established
 - Business owner pays themselves a \$171,429 (\$600,000 x 28.57%)
 - $50\% \times \$171,429 = \$85,714$
 - \$428,571 of net profit to owner
 - \$85,714 potential QBI deduction ($\$428,571 \times 20\%$)
 - \$85,714 actual QBI deduction



126



PLANNING OPPORTUNITIES

Retirement Plan

Deductions

127

Revisit Retirement Plans

- Goal of tax planning is to pay taxes at lowest rate possible
- Marginal rate (Federal) for income within QBI deduction phase-out range is 47.57%
- Retirement plan deduction can be very valuable for taxpayer in or just above phase-out range

BKD

127



PLANNING OPPORTUNITIES

Retirement Plan

Deductions

128

Revisit Retirement Plans

- Before:
 - Married couple filing joint return
 - \$439,000 gross income, all QBI from SSTB
 - \$24,000 standard deduction
 - No retirement account contributions
 - \$415,000 taxable income
 - \$0 QBI deduction
 - \$96,629 in Federal income tax (W/out SE tax)

BKD

128



PLANNING OPPORTUNITIES

Retirement Plan

Deductions

129

Revisit Retirement Plans

- After:
 - Married couple filing joint return
 - \$439,000 gross income, all QBI from SSTB
 - \$24,000 standard deduction
 - \$100,000 in cumulative 401(k) contributions
 - \$315,000 taxable income
 - \$63,000 QBI deduction
 - \$49,059 in Federal income tax (W/out SE tax)



129



NEW AMOUNTS FOR 2019

Threshold Amounts

130

[New Slide](#)

New Amounts for 2019

- Threshold Amounts for 2019:
 - Married Filing Jointly = \$321,400 (was \$315,000 for 2018)
 - Married Filing Separately = \$160,725 (was \$157,500 for 2018)
 - Single/Head of Household = \$160,700 (was \$157,500 for 2018)



130



**NEW FORMS
FOR 2019**

New 2019 Tax Forms

[New Slide](#)

New 2019 Tax Forms

- New IRS forms:
 - Form 8995 ([Current Draft](#))
 - Required for calculation of QBI Deduction for taxpayers with taxable income “Under Threshold”
 - Form 8995-A ([Current Draft](#))
 - Required for calculation of QBI Deduction for taxpayers with taxable income “Over Threshold” (and patrons in Specified Agricultural and Horticultural Cooperatives)
 - Both forms include prior year loss carryforwards in calculation
 - Will need to input separately if not “rolled forward” in tax preparation software correctly



131

Questions?

Nick Millar, CPA | nmillar@bkd.com

Jay White, CPA | jwhite@bkd.com



132

Thank You!

BKD

133

BKD Thoughtware®

- **Webinars, seminars & articles**
- Many are CPE-eligible
- <https://www.bkd.com/thoughtware>

134



134