

IRC §199A – QUALIFIED BUSINESS INCOME

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I. GLOSSARY

- A. Combined Qualified Business Income is the QBI deduction attributable to each trade or business carried on by the taxpayer plus 20% of the amount of Qualified REIT Dividends and Qualified PTP Income of the taxpayer.
- B. Phase-In Range
1. Married couples – between \$315,000 and \$415,000
 2. Others – between \$157,500 and \$207,500
- C. Qualified Business Income (“QBI”) is ordinary income from a sole proprietorship, “S” corporation or partnership which is a Qualified Trade or Business of the taxpayer. QBI does not include:
1. Wages earned as an employee or guaranteed payments;
 2. Short term capital gain or loss;
 3. Long term capital gain or losses;
 4. Dividend income; or
 5. Interest income.
- D. Qualified Property is the unadjusted basis of tangible property eligible for depreciation used by the qualified trade or business; must have been acquired within ten (10) years or not be fully depreciated.

- E. Qualified PTP Income is the net amount of such taxpayer's allocable share of each qualified item of income, gain, deduction and loss from a publicly traded partnership, plus any gain recognized by such taxpayer upon disposition of its interest in such partnership to the extent such gain is treated as an amount realized from the sale or exchange of property, other than a capital asset under §751(a).
- F. Qualified REIT Dividend is any dividend received from a real estate investment trust which is not a capital gain dividend and is not qualified dividend income.
- G. Qualified Trade or Business is a §162 trade or business other than the trade or business of performing services as an employee. (The business must be regular, continuous and substantial.)
- H. Specified Service Trades or Business ("SSTB") is any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or 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.
- I. Threshold Amounts (will be indexed for inflation beginning in 2019).
 - a. \$315,000 for married filing jointly; and
 - b. \$157,500 for others.
- J. W-2 Wages are the amounts paid to employees reported to the Social Security Administration.

II. WHO CAN TAKE ADVANTAGE OF §199A?

§199A is available to sole proprietors, owners and shareholders of pass-through entities.

III. WAGE LIMITATIONS

A. Equal to the lesser of 20% of the taxpayer's QBI; or

B. The greater of:

- i. 50% of the taxpayer's allocable share of the W-2 wages with respect to the business; or
- ii. 25% of the taxpayer's allocable share of W-2 wages with respect to the business plus 2.5% of the taxpayer's share of the unadjusted basis of all Qualified Property.

[NOTE: Income from REIT dividends and income from qualified PTP income has been ignored.]

IV. TAXABLE INCOME LIMITATIONS

A. If taxable income is less than the Threshold Amounts, then wage limitations are ignored even if taxable income is from an SSTB.

B. For SSTB's the deduction is phased out based on taxable income. If taxable income exceeds the Phase In Range there is no deduction.

C. For non-SSTB's the W-2 limitations are phased in over the next \$100,000 of taxable income.

V. MISCELLANEOUS

- A. For partnerships and “S” corporations, the deduction applies at the partner or shareholder level.
- B. Planning techniques:
 - 1. Favorable entity selection; and
 - 2. Managing income to eliminate or reduce the effect of limitations.

[S corporations are required to pay wages to any shareholder who is also an officer and provides significant services to the corporation.]

- C. Certain real estate activities will not meet the definition of a “trade or business,” e.g., a triple net lease where the owner has no regular involvement.
- D. The deduction is available whether the taxpayer itemizes or takes the standard deduction.

VI. CLARIFICATION PROVIDED BY PROPOSED REGULATIONS ISSUED AUGUST 8, 2018

- A. Additional operating rules for SSTBs: Owners of lending businesses and banks will generally be entitled to the §199A deduction, but not financial advisers.
- B. De minimis exceptions - a trade or business is not an SSTB if:
 - 1. Gross receipts <\$25M if less than 10% of gross receipts are attributable to services included in a SSTB profession.

2. Gross receipts >\$25M if less than 5% of gross receipts are attributable to services included in an SSTB profession.
- C. Anti-abuse - SSTBs will not generally be able to spin off non-SSTB functions into separate entities to benefit from the §199A deduction, i.e., no crack and pack.
- D. A trade or business is a §162 trade or business.
- E. Aggregation rules – the taxpayer can (but is not required to) aggregate multiple trades or businesses if the taxpayer can establish:
1. The same person or group of persons (including by family attribution) directly or indirectly, owns 50% or more of each trade or business to be aggregated for a majority of the taxable year in which the items attributable to each trade or business to be aggregated are included in income.
 2. 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.
 3. None of the trades or businesses to be aggregated are an SSTB.
 4. The trades or businesses to be aggregated satisfy at least two (2) of the following factors (based on all of the facts and circumstances):
 - a. The trades or businesses provide products and share services that are the same or are customarily offered together.

- b. The trades or businesses share facilities or 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 with reliance upon, one or more of the businesses in the aggregated group.
- d. The individual taxpayer must make an election to aggregate income from multiple businesses on his/her Form 1040 and continue to report such income on an aggregated basis in subsequent years.
- e. Aggregation will allow W-2 Wages and Qualified Property to be considered as paid for all of the entities, so that the deduction can be taken for an entity that has little or no W-2 Wages or Qualified Property if another entity has sufficient w W-2 Wages and Qualified Property for both its own income and the income of affiliates.