

The Section 199A Proposed Regulations – Helpful Tools & Lurking Traps

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Section 199A – 20% Passthrough Deduction

- In General
 - Individuals (including trusts and estates) are generally eligible to deduct 20% of their combined “qualified business income” (“**QBI**”) from passthroughs (i.e., Subchapter K partnerships, Subchapter S corporations, sole proprietorships and disregarded entities), for taxable years beginning after December 31, 2017 and before January 1, 2026.
 - This deduction of 20% of combined QBI is hereafter referred to as the “**199A Deduction.**”
 - The basic effect of the 199A Deduction is to reduce the maximum individual income tax rate on combined QBI from 37% to 29.6% (i.e., 37% X 80%).

Section 199A – 20% Passthrough Deduction

- In General
 - The amount of the 199A Deduction is generally an amount equal to the *lesser* of: I.R.C. §199A(a).
 - The amount of “Combined QBI” (defined on the following slide) from all of the taxpayer’s qualified trades or businesses (“**QTBS**”) for the tax year; or
 - An amount equal to 20% of the excess of: (i) the taxpayer’s taxable income; over (ii) any net capital gain.
 - Thus, the amount of the 199A deduction is basically equal to the taxpayer’s Combined QBI, provided, however, that the amount of the 199A Deduction cannot exceed 20% of the taxpayer’s taxable income (reduced by net capital gain) for the tax year (the “**Taxable Income Limitation**”).

Section 199A – 20% Passthrough Deduction

- In General
 - The “**Combined QBI**” amount for each tax year is an amount equal to the sum of: I.R.C. §199A(b)(1).
 - The “QBI Component” (defined on the following slide); plus
 - 20% of the aggregate amount of the qualified REIT dividends and qualified publicly traded partnership (“**PTP**”) income (the “**REIT/PTP Component**”).
 - This presentation focuses on the issues and authorities regarding calculation of the QBI Component of the 199A Deduction.
 - Guidance relating to the REIT/PTP Component may be found at:
 - Prop. Treas. Reg. § 1.199A-3(c) (qualified REIT dividends and qualified PTP income).
 - Prop. Treas. Reg. § 1.199A-1(c)(2)(ii), (d)(3) (negative combined qualified REIT dividends/qualified PTP income).

Section 199A – 20% Passthrough Deduction

- In General
 - The “**QBI Component**” is the *lesser* of: I.R.C. §199A(b)(2).
 - 20% of the taxpayer’s QBI with respect to the QTB; or
 - The *greater* of:
 - 50% of the “W-2 Wages” paid with respect to the QTB; or
 - The sum of: (i) 25% of the “W-2 Wages” paid with respect to the QTB; plus (ii) 2.5% of the unadjusted basis immediately after acquisition (the “**UBIA**”) of all qualified property.
 - Thus, the amount of the QBI Component may be limited by the amount of W-2 wages paid, and the UBIA of qualified property used, in connection with the QTB (the “**Wage Limitation**”).

Section 199A – 20% Passthrough Deduction

- General Income Tax Effect of the QBI Deduction. Joint Explanatory Statement of the Conference Committee Regarding the Tax Cuts and Jobs Act, page 224.
 - The 199A Deduction is not allowed in computing AGI and thus does not affect limitations based on the amount of AGI.
 - Instead, the 199A Deduction is allowed as a deduction reducing taxable income.
 - The 199A Deduction is therefore available to taxpayers who itemize deductions, as well as taxpayers who claim the standard deduction.

Section 199A – 20% Passthrough Deduction

- General Income Tax Effect of the QBI Deduction (cont'd)
 - I.R.C. 199A is applied at the partner, or S corp. shareholder level. The 199A Deduction has no effect on the adjusted basis of a partner's interest in the partnership. Prop. Treas. Reg. §1.199A-1(e)(1).
 - The 199A Deduction does not reduce net earnings from self-employment under I.R.C. §1402 or net investment income under I.R.C. §1411. Prop. Treas. Reg. §1.199A-1(e)(2).
 - The amount of the deduction allowed for purposes of the AMT is equal to the amount of the deduction allowed in determining taxable income for purposes of the regular income tax. Prop. Treas. Reg. §1.199A-1(e)(4).

Section 199A – 20% Passthrough Deduction

- General Income Tax Effect of the QBI Deduction (cont'd)
 - For taxpayers claiming the 199A Deduction, an understatement is “substantial” for purposes of the I.R.C. § 6662 accuracy-related penalty if it exceeds the greater of:
 - I.R.C. § 6662(d)(1)(C).
 - 5% of the amount of tax required to be shown on the return; or
 - \$5,000.
 - Generally, an understatement is not substantial unless it exceeds 10% of the amount of tax required to be shown on the return. I.R.C. § 6662(d)(1)(A).
 - Thus, claiming the 199A Deduction involves a heightened risk of imposition of the I.R.C. § 6662 accuracy-related penalty.

Section 199A – 20% Passthrough Deduction

- Analysis for Computing the QBI Component.
 - Does the taxpayer directly conduct, or own an interest in a passthrough entity that conducts, a QTB?
 - Does the activity qualify as a “trade or business?”
 - Is the activity a “specified service trade or business” (“SSTB”)?
 - What is the amount of the QBI Component?
 - What is the amount of the QBI from each QTB?
 - Does the Wage Limitation apply?
 - Has the taxpayer chosen to aggregate his/her trades or businesses?
 - For taxpayers with taxable income exceeding the Threshold Amount, is any netting of negative QBI required?
 - Is the taxpayer subject to the Taxable Income Limitation?

Section 199A – 20% Passthrough Deduction

- The Threshold and Phase-Out Amounts.
 - The “**Threshold Amount**” for 2018 is \$157,500 (\$315K for MFJ). I.R.C. §199A(e)(2)(A). The Threshold Amount is adjusted for inflation for tax years beginning after 2018. I.R.C. §199A(e)(2)(B).
 - The “**Phase-Out Amount**” is the sum of: (i) the Threshold Amount; plus (ii) \$50K (or \$100K for MFJ). I.R.C. §199A(b)(3)(B)(i)(I); I.R.C. §199A(d)(3).

Section 199A – 20% Passthrough Deduction

- Significance of the Threshold and Phase-Out Amounts for Taxpayers Who are Engaged in an SSTB. Prop. Treas. Reg. §1.199A-5(a)(2).
 - If the taxpayer's trade or business is an SSTB, that taxpayer is still eligible for the 199A Deduction, provided that the taxpayer's taxable income does not exceed the Threshold Amount.
 - If the taxpayer's trade or business is an SSTB, that taxpayer is no longer eligible for any portion of the 199A Deduction if that taxpayer has taxable income for the 2018 tax year that is equal to or more than the Phase-Out Amount. I.R.C. §199A(d)(3); Prop. Treas. Reg. §1.199A-1(d)(2)(i).
 - If the taxpayer's trade or business is an SSTB and that taxpayer's taxable income is above the "Threshold Amount" but less than the "Phaseout Amount," that taxpayer may still be eligible for a portion of the 199A Deduction, as discussed below on slide 106.

Section 199A – 20% Passthrough Deduction

- Significance of the Threshold and Phase-Out Amounts for Taxpayers Who are Not Engaged in an SSTB.
 - The Wage Limitation is inapplicable for taxpayers who have an amount of taxable income for the 2018 tax year that does not exceed the Threshold Amount. I.R.C. §199A(b)(3)(A).
 - The Wage Limitation is fully applicable to taxpayers who have taxable income for the 2018 tax year that is equal to or more than the Phase-Out Amount. I.R.C. §199A(b)(3)(B).
 - For taxpayers with taxable income in excess of the Threshold Amount but less than the Phase-Out Amount, the allowable amount of the 199A Deduction is subject to partial reduction as discussed below on slides 104-105. I.R.C. §199A(b)(3)(B); I.R.C. §199A(e)(2).

Section 199A – 20% Passthrough Deduction

- The proposed Regulations introduce a new phrase “Relevant Passthrough Entity” (“RPE”):
 - An RPE is a partnership (other than a PTP) or an S corporation that is owned, directly or indirectly, by at least one individual, estate or trust.
 - A trust is treated as a RPE to the extent that it passes through QBI, W-2 wages or UBIA of Qualified Property.

Section 199A – 20% Passthrough Deduction

- Under Prop. Reg §1.199A-6(a)(2) each RPE must determine and include on the K-1s of its owners information in order for the interest owners to calculate their 199A deduction including:
 - Whether it is engaged in one or more trade or business;
 - Whether any of the trades or businesses are SSTBs;
 - What is the QBI determined for each trade or business;
 - What are the W-2 wages and UBIA of Qualified Property with respect to each trade or business.
- If the RPE does not either separately identify or report the owners’ share (and the share of any upper-tier owner’s) of these items for each of the trades or businesses of the RPE, the owners’ shares of such items are presumed to be zero.

Section 199A – 20% Passthrough Deduction

- **Qualified Trade or Business**
 - A QTB is any trade or business, other than: I.R.C. §199A(d)(1).
 - An SSTB; or
 - The trade or business of being an employee.
 - A “trade or business” means an activity qualifying as a trade or business under I.R.C. §162, other than the trade or business of performing services as an employee. Prop. Treas. Reg. §1.199A-1(b)(13).
 - Thus, no items of income, gain, loss, and deduction from the trade or business of performing services as an employee constitute QBI. Prop. Treas. Reg. §1.199A-5(b)(3), (d)(1).
 - No taxpayer may claim a 199A Deduction for wage income, regardless of the amount of taxable income. Prop. Treas. Reg. § 1.199A-5(b)(3).

Section 199A – 20% Passthrough Deduction

- **Qualified Trade or Business**
 - The Preamble notes that the § 162 definition of trade or business is derived from a large body of existing case law and administrative guidance which interpret “trade or business” in the context of a broad range of industries.
 - Actually the case law does not contain a definition of “trade or business,” but rather set forth certain factual circumstances which were found to have constituted a trade or business.
 - Also, existing case law is not particularly helpful in determining when, and to what extent, multiple trades or businesses exist.

Section 199A – 20% Passthrough Deduction

- Qualified Trade or Business – Sampling of key cases on “trade or business”:
 - Whether a group of activities constitutes “carrying on a trade or business requires an examination of the facts of each case.” *Higgins v. Commissioner*, 312 U.S. 212 (1941).
 - The taxpayer must be engaged in an “activity with continuity and regularity” for which a primary purpose is earning income for profit. *Commissioner v. R.P. Groetzinger*, 480 U.S. 23 (1987).
 - There must be extensive and repeated activity over a substantial period of time. *Stanton v. Commissioner*, 399 F2d 326 (5th Cir., 1968) [Despite a hope of profit, inventor’s efforts lacked the degree of continuity and regularity essential for an activity to constitute a trade or business].

Section 199A – 20% Passthrough Deduction

- Qualified Trade or Business – Special Rule for Common Control Rentals
 - Rental or licensing of tangible or intangible property that does not rise to the level of a trade or business under I.R.C. §162 is nevertheless treated as a trade or business for purposes of I.R.C. §199A if the property is rented or licensed to a trade or business which is commonly controlled. Prop. Treas. Reg. §1.199A-1(b)(13).
 - Benefits net lease activities between commonly controlled entities.
 - “Common control” for this purpose means that the same person or group of persons, directly or indirectly, owns 50% or more of the issued and outstanding shares of the corporation or capital and profits interests in the partnership. Prop. Treas. Reg. §1.199A-4(b)(1)(i).

Section 199A – 20% Passthrough Deduction

- Qualified Trade or Business – Rental Activities Sampling of Authorities.
 - Rental of a single piece of property may constitute a trade or business. *Fegan v. Commissioner*, 71 T.C. 791 (1979) (rental of 100-room motel to majority owned corporation). But see T.D. 9644 (§1411 Regulations).
 - Systemic and continuous efforts to manage rental units, seeking new tenants, supplying furnishings and cleaning and preparing units were a trade or business. *Curphey v. Commissioner*, 73 T.C. 755 (1980).
 - Key factual elements that may be relevant with respect to a rental activity include, but are not limited to:
 - the type of property (commercial property vs. a residential condominium, vs personal property),
 - the number of properties rented, day-to-day involvement of owner or agent, and
 - type of rental (net lease versus traditional lease, short-term versus long term). T.D. 9644.

Section 199A – 20% Passthrough Deduction

- Qualified Trade or Business – Rental Activities Sampling of Authorities (Cont'd).
 - Committee Reports to the Revenue Act of 1980 stated that “in the case of rental activities, there must be significant furnishing of services incident to the rentals to constitute an active business (within the meaning of §162 rather than an investment. Committee Reports on Pub. L. No. 98-605 (Miscellaneous Revenue Act of 1980). See also Reg. §1.1362-2(c)(5)(ii)(B)(2) [rental activity is active trade or business only if significant services are provided or substantial costs are incurred by the S corporation].
 - For now, it would appear that in order to constitute a §162 trade or business the rental activity must be conducted on a regular, continuous and substantial basis, with an object of making a profit.

Section 199A – 20% Passthrough Deduction

- Calculating the amount of QBI – Identifying Different Trades or Businesses
 - Prop. Treas. Reg. §1.199A-4 provides that each trade or business is a separate trade or business except to the extent the new aggregation rules of the Proposed Regulations are applied.
 - Each activity of the taxpayer must meet the §162 trade or business requirements before it can elect to aggregate such trades or businesses.
 - Conversely, under §1411 a taxpayer is permitted to aggregate rental properties in determining whether a trade or business exists.
 - This creates a potential chicken and the egg dilemma where, for instance an individual who is a qualified real estate professional, has multiple rental properties, not within one entity, with significant rental income, and for which the taxpayer spends more than 500 hours, in the aggregate.
 - Perhaps a safe harbor should be incorporated in the final regulations for this situation similar to the safe harbor in Treas. Reg. §1.1411-4(g)(7)(i).

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of QBI
 - Allocation of Items Among Multiple Trades or Businesses. Prop. Treas. Reg. § 1.199A-3(b)(5).
 - If an individual or RPE directly conducts multiple trades or businesses and has items of QBI which are properly attributable to more than one trade or business, the individual or RPE must allocate those items among the several trades or businesses to which they are attributable using a reasonable method based on all the facts and circumstances.
 - The individual or RPE may use a different reasonable method for different items of income, gain, deduction, and loss.
 - Existing §162 authorities are not particularly helpful in differentiating between separate trades or businesses.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of the QBI Component.
 - Aggregation of Trades or Businesses – In General. Prop. Treas. Reg. § 1.199A-4(a).
 - Each trade or business conducted by an individual or RPE is generally treated as a separate trade or business for purposes of applying the limitations in calculating the QBI Component.
 - The Proposed Regulations, however, provide rules that permit individuals to aggregate trades or businesses and treat the aggregate as a single trade or business for purposes of applying the limitations in calculating the QBI Component.
 - Aggregation is not required. Instead, it is permitted to the extent allowed under the Proposed Regulations.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of the QBI Component.
 - Aggregation Requirements. Aggregation of trades or businesses is generally permitted only if an individual can demonstrate that the following five requirements (the “**Aggregation Requirements**”) are satisfied: Prop. Treas. Reg. § 1.199A-4(b)(1).
 1. The same person or group of persons owns, directly or indirectly, 50% or more of each trade or business to be aggregated, which for a partnership means ownership of 50% or more of the capital or profits in the partnership; or stock of an S corp.
 2. The aforementioned ownership exists for a majority of the tax 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 tax year, not taking into account short tax years;
 4. None of the trades or businesses to be aggregated is an SSTB; and

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of the QBI Component.
 5. The trades or businesses to be aggregated satisfy at least two of the following factors (based on all the facts and circumstances):
 - The trades or businesses provide products and services that are the same or customarily offered together (the “**Similarity Factor**”);
 - 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 (the “**Sharing Factor**”); or
 - The trades or businesses are operated in coordination with, or reliance upon, one or more of the businesses in the aggregated group (for example, supply chain interdependencies) (the “**Interdependency Factor**”).

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of the QBI Component.
 - Aggregation - Family Attribution. Prop. Treas. Reg. § 1.199A-4(b)(3).
 - For purposes of determining whether the same person or group of persons owns at least 50% of the trade or business, an individual is considered as owning the interest in each trade or business owned, directly or indirectly, by or for:
 - The individual’s spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance); and
 - The individual’s children, grandchildren and parents.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of the QBI Component.
 - Aggregation - Operating Rules. Prop. Treas. Reg. § 1.199A-4(b)(2).
 - Individuals may aggregate (i) trades or businesses operated directly and (ii) the individual's share of QBI, W-2 Wages and UBIA of qualified property from trades or businesses operated through partnerships or other passthroughs.
 - Multiple owners of a partnership need not aggregate in the same manner.
 - For trades or businesses directly operated by an individual, that individual computes QBI, W-2 Wages and UBIA for each trade or business before applying the aggregation rules.
 - If an individual aggregates multiple trades or businesses, that individual must combine the QBI, W-2 Wages and UBIA for all aggregated trades or businesses for purposes of applying the Wage Limitation.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of the QBI Component.
 - Aggregation – Consistent Reporting. Prop. Treas. Reg. § 1.199A-4(c)(1).
 - Once choose to aggregate must aggregate in all subsequent tax years.
 - An individual, however, may add a newly created or newly acquired (including through non-recognition transfers) trade or business to an existing aggregated trade or business if the Aggregation Requirements are satisfied.
 - In a subsequent year, if there is a change in facts and circumstances such that an individual's prior aggregation of trades or businesses no longer qualifies under the Aggregation Requirements, then the trades or businesses will no longer be aggregated for purposes of I.R.C. § 199A, and the individual must reapply the Aggregation Requirements to determine a new permissible aggregation (if any).

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of the QBI Component.
 - Aggregation – Individual Disclosure. Prop. Treas. Reg. § 1.199A-4(c)(2).
 - For each tax year, individuals must attach a statement to their returns identifying each trade or business aggregated for purposes of I.R.C. § 199A. The statement must contain:
 - A description of each trade or business;
 - The name and EIN of each entity in which a trade or business is operated;
 - Information identifying any trade or business that was formed, ceased operations, was acquired, or was disposed of during the tax year; and
 - Such other information as the IRS Commissioner may require in forms, instructions, or other published guidance.
 - If an individual fails to attach the aforementioned statement to his/her return, the IRS Commissioner may disaggregate the individual's trades or businesses.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of the QBI Component.
 - Partial Permitted Aggregation. Prop. Treas. Reg. § 1.199A-4(d), Example 6.
 - D owns 75% of the interests of P1, P2, and P3, each of which is taxed as a partnership.
 - Each partnership operates a grocery store in a separate state.
 - P1 and P2 share centralized purchasing functions to obtain volume discounts and a centralized accounting office that performs all of the bookkeeping, tracks and issues statements on all of the receivables, and prepares the payroll for each business.
 - P3 is operated independently from the other businesses.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of the QBI Component.
 - Partial Permitted Aggregation. Prop. Treas. Reg. § 1.199A-4(d), Example 6 (cont'd).
 - D owns more than 50% of the capital or profits of each partnership thereby satisfying the ownership requirement.
 - The grocery stores satisfy the Similarity Factor because they are in the same trade or business.
 - Only P1 and P2 satisfy the Sharing Factor because of their centralized purchasing and accounting offices.
 - D is only able to show that the Sharing Factor is satisfied for P1 and P2; therefore, D only may aggregate P1 and P2 into a single trade or business for purposes of I.R.C. § 199A.
 - D must report P3 as a separate trade or business for purposes of applying I.R.C. § 199A.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of the QBI Component.
 - No Permitted Aggregation. Prop. Treas. Reg. § 1.199A-4(d), Example 7.
 - As in the prior example, D owns 75% of the interests of P1, P2, and P3, each of which is taxed as a partnership, and each partnership operates a grocery store in a separate state.
 - In this example, however, each store is independently operated, and none of P1, P2 and P3 share centralized business elements.
 - Thus, only the Similarity Factor (and not the Sharing or Interdependency Factors) is satisfied.
 - As a result, D must report P1, P2 and P3 as separate trades or businesses for purposes of I.R.C. § 199A.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of the QBI Component.
 - Permitted Aggregation, Including Rental Activity. Prop. Treas. Reg. § 1.199A-4(d), Example 8.
 - G owns 80% of the stock in S1, an S corporation and 80% of the capital and profits in LLC1 and LLC2, each of which is a partnership for Federal tax purposes.
 - LLC1 manufactures and supplies all of the widgets sold by LLC2.
 - LLC2 operates a retail store that sells LLC1's widgets.
 - S1 owns the real property leased to LLC1 and LLC2 for use by the factory and retail store.
 - The entities share common advertising and management.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of the QBI Component.
 - Permitted Aggregation, Including Rental Activity. Prop. Treas. Reg. § 1.199A-4(d), Example 8 (cont'd).
 - G owns more than 50% of the stock of S1 and more than 50% of the capital and profits in LLC1 and LLC2 thus satisfying the ownership requirement for aggregation.
 - LLC1, LLC2, and S1 share significant centralized business elements and thus satisfy the Sharing Factor.
 - LLC1, LLC2 and S1 are operated in coordination with, or in reliance upon, one or more of the businesses in the aggregated group and thus satisfy the Interdependency Factor.
 - Thus, G can treat the business operations of LLC1 and LLC2 as a single trade or business for purposes of applying I.R.C. § 199A.
 - S1 is eligible to be included in the aggregated group because it leases property to a trade or business within the aggregated trade or business and thus qualifies as a trade or business for purposes of I.R.C. § 199A.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of the QBI Component.
 - Inconsistent Aggregation Among Partners. Prop. Treas. Reg. § 1.199A-4(d), Example 11.
 - H, J, K, and L own interests in PRS1 and PRS2, each a partnership, and S1 and S2, each an S corporation.
 - H, J, K and L also own interests in C, an entity taxable as a C corporation.
 - H owns 30%, J owns 20%, K owns 5%, L owns 45% of each of the five entities.
 - All of the entities satisfy 2 of the Similarity, Sharing and Interdependency Factors.
 - For purposes of I.R.C. § 199A the taxpayers report the following aggregated trades or businesses:
 - H aggregates PRS1 and S1 together and aggregates PRS2 and S2 together;
 - J aggregates PRS1, S1 and S2 together and reports PRS2 separately;
 - K aggregates PRS1 and PRS2 together and aggregates S1 and S2 together; and
 - L aggregates S1, S2, and PRS2 together and reports PRS1 separately.
 - C cannot be aggregated.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of the QBI Component.
 - Inconsistent Aggregation Among Partners. Prop. Treas. Reg. § 1.199A-4(d), Example 11 (cont'd).
 - Because H, J, and K together own a majority interest in PRS1, PRS2, S1, and S2, the ownership requirement is satisfied, and H, J, K, and L are therefore permitted to aggregate the businesses for purposes of I.R.C. § 199A.
 - Further, the aggregations reported by the taxpayers are permitted, but not required for each of H, J, K, and L.
 - C's income is not eligible for the I.R.C. § 199A deduction, and it cannot be aggregated for purposes of applying I.R.C. § 199A.
 - S1 is eligible to be included in the aggregated group because it leases property to a trade or business within the aggregated trade or business and thus qualifies as a trade or business for purposes of I.R.C. § 199A.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – No Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 7.
 - F, an unmarried individual, owns as a sole proprietor 100 percent of three trades or businesses, Business X, Business Y, and Business Z. None of the businesses hold qualified property.
 - F does not aggregate the trades or businesses under §1.199A-4.
 - For taxable year 2018, Business X generates \$1 million of QBI and pays \$500,000 of W-2 wages with respect to the business.
 - Business Y also generates \$1 million of QBI but pays no wages.
 - Business Z generates \$2,000 of QBI and pays \$500,000 of W-2 wages with respect to the business.
 - F also has \$750,000 of wage income from employment with an unrelated company.
 - After allowable deductions unrelated to the businesses, F's taxable income is \$2,722,000.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – No Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 7 (cont'd).
 - Because F's taxable income is above the threshold amount, the QBI component of F's section 199A deduction is subject to the Wage Limitation.
 - The Wage Limitation must be applied on a business-by-business basis.
 - None of the businesses hold qualified property, therefore only the 50% of W-2 Wages must be calculated.
 - Because QBI from each business is positive, F applies the Wage Limitation by determining the lesser of 20% of QBI and 50% of W-2 Wages for each business.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – No Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 7 (cont'd).
 - For Business X, the lesser of 20% of QBI ($\$1,000,000 \times 20\text{ percent} = \$200,000$) and 50% of Business X's W-2 wages ($\$500,000 \times 50\% = \$250,000$) is $\$200,000$.
 - Business Y pays no W-2 wages. The lesser of 20% of Business Y's QBI ($\$1,000,000 \times 20\% = \$200,000$) and 50% of its W-2 wages (zero) is zero.
 - For Business Z, the lesser of 20% of QBI ($\$2,000 \times 20\% = \400) and 50% of W-2 wages ($\$500,000 \times 50\% = \$250,000$) is $\$400$.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – No Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 7 (cont'd).
 - Next, F must then combine the amounts determined under the Wage Limitation and compare that sum to 20% of F's taxable income. The lesser of these two amounts equals F's 199A Deduction.
 - The total of the combined amounts under the Wage Limitation is $\$200,400$ ($\$200,000 + 0 + 400$).
 - Twenty percent of F's taxable income is $\$544,400$ ($\$2,722,000 \times 20\%$).
 - Thus, F's 199A Deduction for 2018 is $\$200,400$.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 8.
 - Assume the same facts as in the prior example, except that F aggregates Business X, Business Y, and Business Z under the rules of §1.199A-4.
 - Because F's taxable income is above the Threshold Amount, F's QBI Component is subject to the Wage Limitation.
 - Because the businesses are aggregated, the Wage Limitation is applied on an aggregated basis.
 - None of the businesses holds qualified property, therefore only 50% of the W-2 Wages must be calculated.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 8 (cont'd).
 - F applies the Wage Limitation by determining the lesser of:
 - 20% of the QBI from the aggregated businesses, which is \$400,400 ($\$2,002,000 \times 20\%$); and
 - 50% of W-2 Wages from the aggregated businesses, which is \$500,000 ($\$1,000,000 \times 50\%$).
 - F's 199A Deduction is equal to the lesser of \$400,400 and 20% of F's taxable income ($\$2,722,000 \times 20\% = \$544,400$).
 - Thus, F's 199A Deduction for 2018 is \$400,400 (as compared to \$200,400 under the prior example in which F did not aggregate the businesses).

Section 199A – 20% Passthrough Deduction

- Qualified Trade or Business
 - Income from the trade or business of performing services as an employee refers to all wages and other income earned in the capacity as an employee. Prop. Treas. Reg. § 1.199A-5(d)(1).
 - For purposes of determining whether wages are earned in a capacity as an employee, the misclassification of the worker for Federal employment tax purposes is immaterial. Thus, if a worker should be properly classified as an employee, it is of no consequence that the employee is treated as a non-employee by the employer for Federal employment tax purposes. Prop. Treas. Reg. §1.199A-5(d)(2).

Section 199A – 20% Passthrough Deduction

- Qualified Trade or Business
 - For purposes of the 199A Deduction, an individual is presumed to be an employee if: Prop. Treas. Reg. §1.199A-5(d)(3).
 - That individual was previously properly treated as an employee for Federal employment tax purposes by the service recipient; and
 - That individual is subsequently treated as other than an employee by such service recipient with regard to the provision of substantially the same services directly or indirectly to that service recipient (or a related person).
 - This presumption may be rebutted upon a showing that, under Federal tax law, regulations and principles (including common-law employee classification rules), the individual is performing services in a capacity other than as an employee. *Id.*
 - This presumption applies regardless of whether the individual provides services directly or indirectly through one or more entities. *Id.*

Section 199A – 20% Passthrough Deduction

- **Qualified Trade or Business**
 - **Presumption of Employment Status.** Prop. Treas. Reg. §1.199A-5(d)(2)(ii), Example 2.
 - C is an attorney employed as an associate in a law firm (Law Firm 1) and was treated as such for Federal employment tax purposes. C and the other associates in Law Firm 1 have taxable income below the threshold amount. Law Firm 1 terminates its employment relationship with C and its other associates. C and the other former associates form a new partnership, Law Firm 2, which contracts to perform legal services for Law Firm 1.
 - Therefore, in form, C is now a partner in Law Firm 2 which earns income from providing legal services to Law Firm 1. C continues to provide substantially the same legal services to Law Firm 1 and its clients.

Section 199A – 20% Passthrough Deduction

- **Qualified Trade or Business**
 - **Presumption of Employment Status.** Prop. Treas. Reg. §1.199A-5(d)(2)(ii), Example 2 Cont'd.
 - Because C was previously treated as an employee for services she provided to Law Firm 1, and now is no longer treated as an employee with regard to such services, C is presumed (solely for purposes of I.R.C. § 199A) to be in the trade or business of performing services as an employee with respect to the services C provides to Law Firm 1 indirectly through Law Firm 2.
 - Unless the presumption is rebutted with a showing that, under Federal tax law, regulations, and principles (including common-law employee classification rules), **[C is performing services for Law Firm 1 other than in a capacity as an employee]**, C's distributive share of Law Firm 2 income (including any guaranteed payments) will not be QBI for purposes of section 199A. The results in this example would not change if, instead of contracting with Law Firm 1, Law Firm 2 was instead admitted as a partner in Law Firm 1.

Section 199A – 20% Passthrough Deduction

- **Qualified Trade or Business**
 - Rebuttal of Presumption of Employment Status. Prop. Treas. Reg. §1.199A-5(d)(2)(ii), Example 3.
 - E is an engineer employed as a senior project engineer in an engineering firm, Engineering Firm. Engineering Firm is a partnership and structured such that after 10 years, senior project engineers are considered for partner if certain career milestones are met.
 - After 10 years, E meets those career milestones and is admitted as a partner in Engineering Firm. As a partner in Engineering Firm, E shares in the net profits of Engineering Firm, and otherwise satisfies the requirements under Federal tax law, regulations, and principles (including common-law employee classification rules) to be respected as a partner.
 - E is presumed (solely for purposes of I.R.C. §199A(d)(1)(B)) to be in the trade or business of performing services as an employee with respect to the services E provides to Engineering Firm.
 - However, E is able to rebut the presumption by showing that E became a partner in Engineering Firm as a career milestone, shares in the overall net profits in Engineering Firm, and otherwise satisfies the requirements under Federal tax law, regulations, and principles (including common-law employee classification rules) to be respected as a partner.

Section 199A – 20% Passthrough Deduction

- **Specified Service Trade or Business (“SSTB”)**
 - An SSTB involves the performance of services in the fields of: I.R.C. §199A(d)(2)(A).
 - Health;
 - Law;
 - Accounting;
 - Actuarial science;
 - Performing arts;
 - Consulting;
 - Athletics;
 - Financial Services; or
 - Brokerage services.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - An SSTB also involves the performance of services that consist of: I.R.C. §199A(d)(2)(B).
 - Investing and investment management;
 - Trading; and
 - Dealing in securities, partnership interests, or commodities.
 - An SSTB also includes any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its owners or employees. I.R.C. §199A(d)(1).
 - An SSTB does not involve the performance of services in the fields of engineering or architecture. I.R.C. §199A(d)(2)(A).

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - A direct or indirect owner of a trade or business engaged in the performance of a specified service is engaged in the performance of the specified service for purposes of I.R.C. § 199A, regardless of whether the owner is passive or participated in the specified service activity. Prop. Treas. Reg. § 1.199A-5(a)(2).
 - The Proposed Regulations provide additional rules regarding the types of services that constitute an SSTB. These rules, however, may not be taken into account for purposes of any provision of law or regulation other than I.R.C. § 199A and the regulations thereunder, except to the extent that other provision expressly refers to I.R.C. §199A(d) or Prop. Treas. Reg. §1.199A-5(b)(2). Prop. Treas. Reg. §1.199A-5(b)(2)(i).

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - “Health.” Prop. Treas. Reg. § 1.199A-5(b)(2)(ii).
 - The performance of services in the field of health means 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 who provide medical services directly to a patient (service recipient).
 - The performance of services in the field of health does not include the provision of services not directly related to a medical services field, even though the services provided may purportedly relate to the health of the services recipient.
 - For example, 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.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - “Law.” Prop. Treas. Reg. §1.199A-5(b)(2)(iii).
 - The performance of services in the field of law means the performance of services by individuals such as lawyers, paralegals, legal arbitrators, mediators, and similar professionals performing services in their capacity as such.
 - 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.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - “Accounting” – The performance of services in the field of accounting means 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. Prop. Treas. Reg. §1.199A-5(b)(2)(iv).
 - “Actuarial Science” – The performance of services in the field of actuarial science means the provision of services by individuals such as actuaries and similar professionals performing services in their capacity as such. Prop. Treas. Reg. §1.199A-5(b)(2)(v).

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - “Performing Arts.” Prop. Treas. Reg. §1.199A-5(b)(2)(vi).
 - The performance of services in the field of the performing arts means 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.
 - 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.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - “Consulting.” Prop. Treas. Reg. §1.199A-5(b)(2)(vii).
 - The performance of services in the field of the consulting means the provision of professional advice and counsel to clients to assist the client in achieving goals and solving problems.
 - Consulting includes providing advice and counsel regarding advocacy with the intention of influencing decisions made by a government or governmental agency and all attempts to influence legislators and other government officials on behalf of a client by lobbyists and other similar professionals performing services in their capacity as such.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - “Consulting” (cont’d). Prop. Treas. Reg. §1.199A-5(b)(2)(vii).
 - 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 economically similar services or the provision of training and educational courses. For purposes of the preceding sentence, the determination of whether a person's services are sales or economically similar services will be based on all the facts and circumstances of that person's business. Such facts and circumstances include, for example, the manner in which the taxpayer is compensated for the services provided.
 - 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.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - “Athletics.” Prop. Treas. Reg. §1.199A-5(b)(2)(viii).
 - The performance of services in the field of the athletics means 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.
 - 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.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - “Financial Services” - Prop. Treas. Reg. §1.199A-5(b)(2)(ix).
 - The performance of services in the field of financial services means the provision of financial services to clients including managing wealth, advising clients with respect to finances, developing retirement plans, developing wealth transition plans, the provision of advisory and other similar services regarding valuations, mergers, acquisitions, dispositions, restructurings (including in title 11 or similar cases), and raising financial capital by underwriting, or acting as a client's agent in the issuance of securities and similar services.
 - This includes services provided by financial advisors, investment bankers, wealth planners, and retirement advisors and other similar professionals performing services in their capacity as such.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - “Brokerage Services.” Prop. Treas. Reg. §1.199A-5(b)(2)(x).
 - 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 (as defined in I.R.C. § 475(c)(2)) 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.
 - “Investing and Investment Management.” Prop. Treas. Reg. §1.199A-5(b)(2)(xi).
 - 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. The performance of services of investing and investment management does not include directly managing real property.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - “Trading.” Prop. Treas. Reg. §1.199A-5(b)(2)(xii).
 - The performance of services that consist of trading means a trade or business of trading in securities (as defined in I.R.C. § 475(c)(2)), commodities (as defined in I.R.C. § 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, including the source and type of profit that is associated with engaging in the activity regardless of whether that person trades for the person's own account, for the account of others, or any combination thereof.
 - A taxpayer, such as a manufacturer or a farmer, who engages in hedging transactions as part of their trade or business of manufacturing or farming is not considered to be engaged in the trade or business of trading commodities.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - “Dealing in Securities.” Prop. Treas. Reg. §1.199A-5(b)(2)(xiii)(A).
 - The performance of services that consist of dealing in securities means regularly purchasing securities from and selling securities to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in securities with customers in the ordinary course of a trade or business. For purposes of the preceding sentence, however, a taxpayer that regularly originates loans in the ordinary course of a trade or business of making loans but engages in no more than negligible sales of the loans is not dealing in securities for purposes of I.R.C. §199A(d)(2).
 - “Dealing in Commodities.” Prop. Treas. Reg. §1.199A-5(b)(2)(xiii)(B).
 - The performance of services that consist of dealing in commodities means regularly purchasing commodities from and selling commodities to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in commodities with customers in the ordinary course of a trade or business.
 - “Dealing in Partnership Interests.” Prop. Treas. Reg. §1.199A-5(b)(2)(xiii)(C).
 - The performance of services that consist of dealing in partnership interests means regularly purchasing partnership interests from and selling partnership interests to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in partnership interests with customers in the ordinary course of a trade or business.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - “Principal Asset of Reputation or Skill”
 - 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 means any trade or business that consists of any of the following (or any combination thereof): Prop. Treas. Reg. §1.199A-5(b)(2)(iv).
 - A trade or business in which a person receives fees, compensation, or other income for endorsing products or services;
 - A trade or business in which a person licenses or receives fees, compensation or other income for the use of an individual's image, likeness, name, signature, voice, trademark, or any other symbols associated with the individual's identity; or
 - Receiving fees, compensation, or other income for appearing at an event or on radio, television, or another media format.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - “Principal Asset of Reputation or Skill”
 - For purposes of determining whether the principal asset of a trade or business is the reputation or skill of its owners or employees, a person is considered as “receiving fees, compensation, or other income” if that person receives a partnership interest and the corresponding allocable share of income, deduction, gain or loss from the partnership. Prop. Treas. Reg. §1.199A-5(b)(2)(iv)(D).

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - Consulting Services. Prop. Treas. Reg. §1.199A-5(b)(3), Example 3.
 - C is in the business of providing services that assist unrelated entities in making their personnel structures more efficient. C studies its client's organization and structure and compares it to peers in its industry. C then makes recommendations and provides advice to its client regarding possible changes in the client's personnel structure, including the use of temporary workers.
 - C is engaged in the performance of services in an SSTB in the field of consulting within the meaning of I.R.C. § 199A.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - Not Consulting Services. Prop. Treas. Reg. §1.199A-5(b)(3), Example 4.
 - D is in the business of licensing software to customers. D discusses and evaluates the customer's software needs with the customer. The taxpayer advises the customer on the particular software products it licenses. D is paid a flat price for the software license. After the customer licenses the software, D helps to implement the software.
 - D is engaged in the trade or business of licensing software and not engaged in an SSTB in the field of consulting within the meaning of I.R.C. § 199A.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - Reputation or Skill. Prop. Treas. Reg. §1.199A-5(b)(3), Example 7.
 - G owns 100% of Corp, an S corporation, which operates a bicycle sales and repair business. Corp has 8 employees, including G.
 - Half of Corp's net income is generated from sales of new and used bicycles and related goods, such as helmets, and bicycle-related equipment. The other half of Corp's net income is generated from bicycle repair services performed by G and Corp's other employees.
 - Corp's assets consist of inventory, fixtures, bicycle repair equipment, and a leasehold on its retail location.
 - Several of the employees and G have worked in the bicycle business for many years, and have acquired substantial skill and reputation in the field. Customers often consult with the employees on the best bicycle for purchase.
 - G is in the business of sales and repairs of bicycles and is not engaged in an SSTB within the meaning of I.R.C. § 199A.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - Reputation or Skill. Prop. Treas. Reg. §1.199A-5(b)(3), Example 8.
 - H is a well-known chef and the sole owner of multiple restaurants each of which is owned in a disregarded entity.
 - Due to H's skill and reputation as a chef, H receives an endorsement fee of \$500,000 for the use of H's name on a line of cooking utensils and cookware.
 - H is in the trade or business of being a chef and owning restaurants and such trade or business is not an SSTB.
 - However, H is also in the trade or business of receiving endorsement income. H's trade or business consisting of the receipt of the endorsement fee for H's skill and/or reputation is an SSTB within the meaning of I.R.C. § 199A.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - De Minimis Rules. Prop. Treas. Reg. §1.199A-5(c)(1).
 - If a trade or business has gross receipts of \$25M or less for the tax year, that trade or business is not an SSTB if less than 10% of the gross receipts of that trade or business are attributable to the performance of services in a field included within the types of an SSTB.
 - If a trade or business has gross receipts of greater than \$25M for the tax year, that trade or business is not an SSTB if less than 5% of the gross receipts of that trade or business are attributable to the performance of services in a field included within the types of an SSTB.
 - For purposes of determining whether the aforementioned 10% (or 5%) threshold is satisfied, the performance of any activity incident to the actual performance of services in the field is considered the performance of services in that field.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - Services Provided to an SSTB. Prop. Treas. Reg. §1.199A-5(c)(2).
 - An SSTB includes any trade or business that provides 80% or more of its property or services to an SSTB if there is 50% or more common ownership of the trades or businesses.
 - If a trade or business provides less than 80% of its property or services to an SSTB and there is 50% or more common ownership of the trades or businesses, that portion of the trade or business of providing property or services to the 50% or more commonly-owned SSTB is treated as part of the SSTB.
 - For this purpose, 50% or more common ownership includes direct or indirect ownership by related parties within the meaning of I.R.C. §§ 267(b) or 707(b).

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - “No Crack & Pack.” Prop. Treas. Reg. §1.199A-5(c)(2)(iv), Example.
 - Law Firm is a partnership that provides legal services to clients, owns its own office building, and employs its own administrative staff.
 - Law Firm divides into three partnerships. Partnership 1 performs legal services to clients. Partnership 2 owns the office building and rents the entire building to Partnership 1. Partnership 3 employs the administrative staff and through a contract with Partnership 1 provides administrative services to Partnership 1 in exchange for fees.
 - All three of the partnerships are owned by the same people (the original owners of Law Firm).
 - Because there is 50% or more common ownership of each of the three partnerships, Partnership 2 provides substantially all of its property to Partnership 1, and Partnership 3 provides substantially all of its services to Partnership 1, Partnerships 1, 2, and 3 will be treated as one SSTB for purposes of I.R.C. § 199A.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - Business That is Incidental to SSTB - A trade or business (that otherwise would not be an SSTB) is treated incidental to, and thus part of, an SSTB if: Prop. Treas. Reg. §1.199A-5(c)(3).
 - The trade or business has 50% or more common ownership with the SSTB, including related parties (within the meaning of I.R.C. §§267(b) or 707(b));
 - Has shared expenses with the SSTB, including shared wage or overhead expenses, and
 - The gross receipts of the trade or business represent no more than 5% of the total combined gross receipts of the trade or business and the SSTB in the tax year.

Section 199A – 20% Passthrough Deduction

- Specified Service Trade or Business (“SSTB”)
 - SSTB Incidental Business. Prop. Treas. Reg. §1.199A-5(c)(3)(ii), Example.
 - A, a dermatologist, provides medical services to patients on a regular basis through Dermatology LLC, a disregarded entity owned by A.
 - In addition to providing medical services, Dermatology LLC also sells skin care products to A's patients.
 - The same employees and office space are used for the medical services and sale of skin care products.
 - The gross receipts with respect to the skin care product sales do not exceed 5% of the gross receipts of Dermatology LLC.
 - Accordingly, the sale of the skin care products is treated as incidental to A's SSTB of performing services in the field of health and is treated as part of such SSTB.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of QBI
 - QBI means, for any tax year, the net amount of “qualified items of income, gain, deduction, and loss” with respect to any QTB of the taxpayer. I.R.C. §199A(c)(1).
 - “Qualified items of income, gain, deduction and loss” means items of income, gain, deduction, and loss with respect to a QTB of the taxpayer, to the extent those items are: I.R.C. § 199A(c)(3)(A).
 - Effectively connected with the conduct of a trade or business within the United States; and
 - Included or allowed in determining taxable income for the tax year.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of QBI
 - Section 751 Gain. With respect to a partnership, if I.R.C. § 751(a) or (b) applies, then gain or loss attributable to assets of the partnership giving rise to ordinary income under I.R.C. § 751 is considered attributable to the trades or businesses conducted by the partnership and is taken into account for purposes of computing QBI. Prop. Treas. Reg. § 1.199A-3(b)(1)(i).
 - Guaranteed Payments. Prop. Treas. Reg. § 1.199A-3(b)(1)(ii).
 - Income attributable to a guaranteed payment for the use of capital is not considered to be attributable to a trade or business and thus is not taken into account for purposes of computing QBI.
 - The partnership’s deduction associated with the guaranteed payment, however, will be taken into account for purposes of computing QBI if such deduction is properly allocable to the trade or business and is otherwise deductible for Federal income tax purposes.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of QBI
 - Section 481 Adjustments. I.R.C. § 481 adjustments (whether positive or negative) are taken into account for purposes of computing QBI to the extent that the requirements of I.R.C. § 199A are otherwise satisfied, but only if the adjustment arises in tax years ending after December 31, 2017. Prop. Treas. Reg. § 1.199A-3(b)(1)(iii).
 - Previously Disallowed Losses. Prop. Treas. Reg. § 1.199A-3(b)(1)(iv).
 - Generally, previously disallowed losses or deductions (including under I.R.C. §§ 465, 469, or 704(d)) allowed in the taxable year are taken into account for purposes of computing QBI.
 - Losses or deductions, however, that were disallowed, suspended, limited, or carried over from tax years ending before January 1, 2018 (including under I.R.C. §§ 465, 469, or 704(d)) are not taken into account in a later tax year for purposes of computing QBI.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of QBI
 - Net Operating Losses. Prop. Treas. Reg. § 1.199A-3(b)(1)(v).
 - Generally, a deduction under I.R.C. § 172 for a net operating loss is not considered with respect to a trade or business and therefore is not taken into account in computing QBI.
 - To the extent, however, that the net operating loss is disallowed under I.R.C. § 461(l) (applying to excess business losses of noncorporate taxpayers), the net operating loss is taken into account for purposes of computing QBI.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of QBI
 - QBI does not include: I.R.C. §199A(c)(3)(B).
 - Capital gains and losses;
 - Dividend income;
 - Interest income not allocable to a trade or business;
 - The excess of gain over loss from certain commodities transactions that are not a normal part of a trade or business;
 - The excess of certain foreign currency gains over foreign currency losses;
 - Net income from notional principal contracts other than hedge transactions taxable as ordinary income;
 - Annuities not received in connection with a trade or business; and
 - Deductions and losses allocable to the foregoing items.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of QBI
 - The Proposed Regulations make the following clarifications regarding items excluded from QBI.
 - Net gains under I.R.C. § 1231 are treated as capital gains and are therefore excluded from calculating QBI. Prop. Treas. Reg. § 1.199A-3(b)(2)(ii)(A).
 - Interest income attributable to an investment of working capital, reserves, or similar accounts is not properly allocable to a trade or business and is therefore excluded from calculating QBI. Prop. Treas. Reg. § 1.199A-3(b)(2)(ii)(C).

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of QBI
 - QBI also does not include: I.R.C. §199A(c)(4).
 - Reasonable compensation paid to the taxpayer by any QTBS of the taxpayer for services rendered to such QTBS;
 - Any I.R.C. §707(c) guaranteed payment paid to a partner for services rendered with respect to the trade or business; and
 - Any I.R.C. §707(a) payment to a partner not in his/her capacity as a partner, to the extent provided in Treasury Regulations.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of QBI
 - The partnership's deduction, however, for (i) an I.R.C. § 707(c) guaranteed payment; or (ii) an I.R.C. § 707(a) payment to a partner not in his/her capacity as a partner, will reduce QBI if such deduction is properly allocable to the trade or business and is otherwise deductible for Federal income tax purposes. Prop. Treas. Reg. § 1.199A-3(b)(2)(ii)(I) and (J).
 - Expenses for all wages paid (or incurred in the case of an accrual method taxpayer) must be taken into account in computing QBI (if the requirements of I.R.C. § 199A are satisfied) regardless of the application of the Wage Limitation.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of QBI
 - In addition, QBI does not include: I.R.C. §199A(c)(1); Prop. Treas. Reg. § 1.199A-3(b)(2)(ii)(G).
 - Any qualified REIT dividends; or
 - Any qualified publicly trade partnership income.
 - Combined QBI, however, includes 20% of the aggregate amount of the taxpayer's following items for the tax year: I.R.C. §199A(b)(1).
 - Qualified REIT dividends; and
 - Qualified publicly traded partnership income.
 - The inclusion of qualified REIT dividends and qualified PTP income in Combined QBI, instead of QBI, has the effect of exempting those types of income from the Wage Limitation.

Section 199A – 20% Passthrough Deduction

- The Wage Limitation - Effect.
 - The amount of the QBI Component is the *lesser* of: I.R.C. §199A(b)(2).
 - 20% of the taxpayer's QBI with respect to the QTB; or
 - The *greater* of:
 - 50% of the "W-2 Wages" (defined below) paid with respect to the QTB; or
 - The sum of: (i) 25% of the "W-2 Wages" paid with respect to the QTB; plus (ii) 2.5% of the unadjusted basis immediately after acquisition (the "UBIA") of all qualified property.

Section 199A – 20% Passthrough Deduction

- The Wage Limitation – Applicability for Taxpayers who are Not Engaged in an SSTB.
 - The Wage Limitation is inapplicable for taxpayers who have an amount of taxable income for the 2018 tax year that does not exceed the Threshold Amount. I.R.C. §199A(b)(3)(A).
 - The Wage Limitation is fully applicable to taxpayers who have taxable income for the 2018 tax year that is equal to or more than the Phase-Out Amount. I.R.C. §199A(b)(3)(B).
 - For taxpayers with taxable income in excess of the Threshold Amount but less than the Phase-Out Amount, the allowable amount of the QBI Deduction is subject to the phased-in Wage Limitation as discussed below on slides 77-78. I.R.C. §199A(b)(3)(B); I.R.C. §199A(e)(2).

Section 199A – 20% Passthrough Deduction

- The Wage Limitation – Applicability for Taxpayers who are Engaged in an SSTB.
 - The Wage Limitation is inapplicable for taxpayers engaged in an SSTB who have taxable income for the 2018 tax year that does not exceed the Threshold Amount. I.R.C. §199A(b)(3)(A).
 - No QBI Deduction is allowed for taxpayers engaged in an SSTB who have taxable income for the 2018 tax year that is equal to or more than the Phase-Out Amount; thus, the Wage Limitation is irrelevant in this situation. I.R.C. §199A(b)(3)(B).
 - For a taxpayer engaged in an SSTB with taxable income in excess of the Threshold Amount but less than the Phase-Out Amount, the “Applicable Percentage” of that taxpayer’s QBI, W-2 Wages and UBIA is taken into account in calculating the QBI Deduction, subject to the phased-in Wage Limitation as discussed below on slides 77-78. I.R.C. §199A(d)(3)(A).

Section 199A – 20% Passthrough Deduction

- The Wage Limitation – Applicability for Taxpayers who are Engaged in an SSTB.
 - The “Applicable Percentage” means, with respect to any tax year, 100% reduced (but not below zero) by the percentage equal to the ratio of: I.R.C. §199A(d)(3)(B).
 - The amount of the taxpayer’s taxable income for the tax year in excess of the Threshold Amount; divided by
 - \$50K (or \$100K for MFJ).

Section 199A – 20% Passthrough Deduction

- The Wage Limitation.
 - “**W-2 Wages**” for this purpose means wages subject to wage withholding, elective deferrals, and deferred compensation paid by the QTB with respect to employment of its employees. I.R.C. §199A(b)(4).
 - Thus, W-2 Wages do not include amounts paid to an independent contractor. *Id.*
 - W-2 Wages must have been properly included in a return filed with the Social Security Administration. I.R.C. §199A(b)(4)(C).
 - W-2 Wages must be properly allocable to QBI. I.R.C. §199A(b)(4)(B).

Section 199A – 20% Passthrough Deduction

- The Wage Limitation.
 - The determination of W-2 Wages must be made for each trade or business of an individual or partnership that directly conducts the trade or business before applying the aggregation rules. Prop. Treas. Reg. § 1.199A-2(a)(2).
 - A partnership paying W-2 Wages must determine and report W-2 Wages for each trade or business conducted by that partnership. *Id.*
 - A partner's allocable share of W-2 Wages will be determined in the same manner as that partner's allocable share of wage expenses. I.R.C. §199A(f)(1)(A)(iii).
 - W-2 Wages are presumed to be zero if not determined and reported for each trade or business. Prop. Treas. Reg. § 1.199A-2(a)(2).

Section 199A – 20% Passthrough Deduction

- The Wage Limitation.
 - The following process is used to determine the W-2 Wages that are properly allocable to QBI. Prop. Treas. Reg. § 1.199A-2(b)(1).
 - First, each individual or partnership must determine its total W-2 Wages paid for the tax year;
 - Second, each individual or partnership must allocate its W-2 Wages between or among one or more trades or businesses; and
 - Last, each individual or partnership must determine the amount of such W-2 Wages with respect to each trade or business that is allocable to the QBI of that trade or business.
 - Nonduplication of Wages. Prop. Treas. Reg. § 1.199A-2(b)(5).
 - Amounts that are treated as W-2 wages for a tax year under any method cannot be treated as W-2 wages for any other tax year.
 - An amount cannot be treated as W-2 wages for more than one trade or business.

Section 199A – 20% Passthrough Deduction

- The Wage Limitation.
 - Step 1 - Total W-2 Wages Paid for the Tax Year.
 - The aforementioned statutory standards defining W-2 Wages are repeated in the Proposed Regulations and relevant in determining the total W-2 Wages paid by the taxpayer for the tax year. Prop. Treas. Reg. §1.199A-2(b)(2)(i).
 - W-2 Wages do not include any amount that is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return. Prop. Treas. Reg. § 1.199A-2(b)(2)(iii).
 - The Proposed Regulations contain extensive rules discussing whether Forms W-2 and corrected Forms W-2 are timely filed and taken into account in determining W-2 Wages. Prop. Treas. Reg. § 1.199A-2(b)(2)(iii)(B) and (C).

Section 199A – 20% Passthrough Deduction

- The Wage Limitation.
 - Step 1 - Total W-2 Wages Paid for the Tax Year.
 - W-2 Wages may also include wages paid by someone other than the taxpayer. Prop. Treas. Reg. § 1.199A-2(b)(2)(ii).
 - In determining W-2 Wages, an individual or partnership may take into account any W-2 wages paid by another person and reported by that other person on Forms W-2 with the other person as employer listed in Box c of those Forms W-2, provided that the W-2 wages were paid to common law employees or officers of the individual or partnership for employment by the individual or partnership.
 - In this situation, the person paying the W-2 wages and reporting the W-2 wages on Forms W-2 is precluded from taking into account such wages for purposes of determining W-2 wages with respect to that person.
 - For this purpose, persons that pay and report W-2 wages on behalf of or with respect to others can include: certified professional employer organizations under I.R.C. § 7705; statutory employers under I.R.C. § 3401(d)(1); and agents under I.R.C. § 3504.

Section 199A – 20% Passthrough Deduction

- The Wage Limitation.
 - Step 1 - Total W-2 Wages Paid for the Tax Year.
 - Transfer of a Trade or Business. If a trade or business is transferred, with the result that multiple individuals or partnerships would be treated as the employer of the employees of that transferred trade or business during the calendar year, the W-2 wages are allocated between each individual or partnership based on the period during which the employees of the transferred trade or business were employed by that individual or partnership. Prop. Treas. Reg. § 1.199A-2(b)(2)(iv)(B).
 - Short Tax Year. If an individual or partnership has a short tax year, the W-2 Wages of the individual or partnership for the short year will only include: (i) those wages paid during the short year to employees of the individual or partnership; (ii) those elective deferrals (within the meaning of I.R.C. § 402(g)(3)) made during the short year by employees of the individual or partnership; and (iii) compensation actually deferred under I.R.C. § 457 during the short year with respect to employees of the individual or partnership. Prop. Treas. Reg. § 1.199A-2(b)(2)(iv)(C).

Section 199A – 20% Passthrough Deduction

- The Wage Limitation.
 - Step 2 – Allocation of Wages to Trades or Businesses. Prop. Treas. Reg. § 1.199A-2(b)(3).
 - After calculating total W-2 wages for a tax year, each individual or partnership that directly conducts more than one trade or business must allocate those wages among its various trades or businesses.
 - W-2 wages must be allocated to the trade or business that generated those wages.
 - In the case of W-2 wages that are allocable to more than one trade or business, the portion of the W-2 wages allocable to each trade or business is determined in the same manner as the expenses associated with those wages are allocated among the trade or businesses in calculating QBI.

Section 199A – 20% Passthrough Deduction

- The Wage Limitation.
 - Step 3 – Allocation of Wages to QBI. Prop. Treas. Reg. § 1.199A-2(b)(4).
 - Once W-2 wages for each trade or business have been determined, each individual or partnership must identify the amount of W-2 wages properly allocable to QBI for each trade or business.
 - W-2 wages are properly allocable to QBI if the associated wage expense is taken into account in computing QBI.
 - In the case of a partnership, the wage expense must be allocated and reported to its partners as required under Subchapter K, and the partnership must identify and report the associated W-2 wages to its partners.

Section 199A – 20% Passthrough Deduction

- The Wage Limitation.
 - The Wage Limitation may be increased by 2.5% of the UBIA of all qualified property. I.R.C. §199A(b)(2)(B)(ii).
 - “Qualified Property” for this purpose means tangible property that is depreciable under I.R.C. §167: I.R.C. §199A(b)(6)(A).
 - Which is held by, and available for use in, the QTB at the close of the tax year;
 - Which is used at any point during the tax year in the production of QBI; and
 - The “depreciable period” for which has not ended before the close of the tax year.
 - The “depreciable period” means the period beginning on the date the property was first placed in service by the taxpayer and ending on the later of: I.R.C. §199A(b)(6)(B).
 - The date that is 10 years after such date; or
 - The last day of the last full year in the applicable recovery period that would apply to the property under I.R.C. §168 (without regard to the alternative depreciation system in §168(g)).

Section 199A – 20% Passthrough Deduction

- The Wage Limitation.
 - Other Standards Affecting Qualified Property.
 - Improvements to Qualified Property. In the case of any addition to, or improvement of, qualified property that has already been placed in service by the individual or partnership, such addition or improvement is treated as separate qualified property first placed in service on the date such addition or improvement is placed in service. Prop. Treas. Reg. § 1.199A(c)(1)(ii).
 - Section 754 Election Adjustments. Basis adjustments under I.R.C. §§ 734(b) and 743(b) are not treated as qualified property. Prop. Treas. Reg. § 1.199A-2(c)(1)(iii).
 - Property Acquired at Year-End. Property is not qualified property if the property is acquired within 60 days of the end of the tax year and disposed of within 120 days without having been used in the trade or business for at least 45 days prior to disposition, unless the taxpayer demonstrates that the principal purpose of the acquisition and disposition was not increasing the 199A Deduction. Prop. Treas. Reg. § 1.199A-2(c)(iv).

Section 199A – 20% Passthrough Deduction

- The Wage Limitation.
 - Other Standards Affecting the Depreciable Period.
 - Bonus Depreciation. The additional first-year depreciation deduction allowable under I.R.C. § 168 (for example, under I.R.C. § 168(k) or (m)) does not affect the applicable recovery period for purposes of determining the “depreciable period” under I.R.C. § 199A. Prop. Treas. Reg. § 1.199A-2(c)(2)(ii).
 - Like-Kind Exchange Replacement Property. Prop. Treas. Reg. § 1.199A-2(c)(2)(iii).
 - Qualified property that is acquired in a like-kind exchange is treated as replacement MACRS property.
 - Unless otherwise elected by the individual or partnership, the date the exchanged basis in the replacement MACRS property was first placed in service by the trade or business is the date on which the relinquished property was first placed in service by the individual or partnership.
 - The date the excess basis in the replacement MACRS property was first placed in service by the trade or business is the date on which the replacement property was first placed in service by the individual or partnership.

Section 199A – 20% Passthrough Deduction

- The Wage Limitation.
 - Other Standards Affecting the Depreciable Period.
 - Qualified Property Acquired in Nonrecognition Transaction. If an individual or partnership acquires qualified property in a transaction described in I.R.C. § 168(i)(7) (pertaining to treatment of transferees in certain nonrecognition transactions, including I.R.C. § 721 contributions to a partnership), the individual or partnership must determine the date on which the qualified property was first placed in service as follows: Prop. Treas. Reg. § 1.199A-2(c)(2)(iv).
 - For the portion of the transferee's unadjusted basis in the qualified property that does not exceed the transferor's unadjusted basis in such property, the date such portion is considered as first placed in service by the transferee is the date on which the transferor first placed the qualified property in service; and
 - For the portion of the transferee's unadjusted basis in the qualified property that exceeds the transferor's unadjusted basis in such property, such portion is treated as separate qualified property that the transferee first placed in service on the date of the transfer.

Section 199A – 20% Passthrough Deduction

- The Wage Limitation.
 - UBIA. Prop. Treas. Reg. § 1.199A-2(c)(3).
 - UBIA means the basis on the placed in service date of the property as determined under I.R.C. § 1012 or other applicable sections of the Internal Revenue Code (including Subchapter K).
 - UBIA is determined without regard to any adjustments for depreciation or amortization under I.R.C. § 1016(a)(2) or (3).
 - UBIA is determined without regard to any adjustments for any portion of the basis for which the individual or partnership has elected to treat as an expense (e.g., under I.R.C. § 179).
 - UBIA, however, does reflect the reduction in basis for the percentage of the individual's or partnership's use of property for the tax year other than in the trade or business.

Section 199A – 20% Passthrough Deduction

- The Wage Limitation.
 - UBIA. Prop. Treas. Reg. § 1.199A-2(a)(3).
 - The determination of UBIA must be made for each trade or business by the individual or partnership that directly conducts the trade or business before applying the aggregation rules.
 - In the case of qualified property held by a partnership, each partner's share of the UBIA of qualified property is an amount which bears the same proportion to the partnership's total UBIA of qualified property as the partner's share of tax depreciation bears to the partnership's total tax depreciation with respect to the property for the year.
 - In the case of qualified property held by a partnership which does not produce tax depreciation during the year, each partner's share of UBIA of qualified property is based on how gain would be allocated (under I.R.C. § 704(b) and (c)) to the partners if the qualified property were sold in a hypothetical transaction for cash equal to the FMV of that property.

Section 199A – 20% Passthrough Deduction

- The Wage Limitation – UBIA Examples.
 - UBIA = Unadjusted Basis. Prop. Treas. Reg. § 1.199A-2(c)(4), Example 1.
 - On January 5, 2012, A purchased for \$1 million and placed in service Real Property X in A's trade or business. A's trade or business is not an SSTB.
 - A's basis in Real Property X under I.R.C. § 1012 is \$1 million. Real Property X is qualified property for purposes of I.R.C. § 199A(b)(6).
 - As of December 31, 2018, A's basis in Real Property X, as adjusted under I.R.C. § 1016(a)(2) for depreciation deductions under I.R.C. § 168, is \$821,550.
 - A's UBIA of Real Property X is its cost basis of \$1 million, regardless of any later depreciation deductions under I.R.C. § 168 and resulting basis adjustments under I.R.C. § 1016(a)(2).

Section 199A – 20% Passthrough Deduction

- The Wage Limitation – UBIA Examples.
 - UBIA in Like-Kind Exchange Replacement Property. Prop. Treas. Reg. § 1.199A-2(c)(4), Example 2.
 - On January 5, 2012, A purchased for \$1 million and placed in service Real Property X in A's trade or business. A's trade or business is not an SSTB.
 - A's basis in Real Property X under I.R.C. § 1012 is \$1 million. Real Property X is qualified property for purposes of I.R.C. § 199A(b)(6).
 - On January 15, 2019, A enters into a like-kind exchange under I.R.C. § 1031 in which A exchanges Real Property X for Real Property Y. Real Property Y has a value of \$1 million. No cash or other property is involved in the exchange.
 - As of January 15, 2019, A's basis in Real Property X, as adjusted under I.R.C. § 1016(a)(2) for depreciation deductions under I.R.C. § 168(a), is \$820,482.
 - A's UBIA in Real Property Y is \$820,482 as determined under I.R.C. § 1031(d) (A's adjusted basis in Real Property X carried over to Real Property Y).
 - Real Property Y is first placed in service by A on January 5, 2012, which is the date on which Property X was first placed in service by A.

Section 199A – 20% Passthrough Deduction

- The Wage Limitation – UBIA Examples.
 - UBIA in Property Received in Tax-Deferred Contribution. Prop. Treas. Reg. § 1.199A-2(c)(4), Example 3 (modified to address a partnership instead of an S corporation).
 - C operates a trade or business that is not an SSTB as a sole proprietorship. On January 5, 2011, C purchases for \$10,000 and places in service Machinery Y in C's trade or business. C's basis in Machinery Y under I.R.C. § 1012 is \$10,000. Machinery Y is qualified property within the meaning of I.R.C. § 199A(b)(6).
 - Assume that Machinery Y's recovery period under I.R.C. § 168(c) is 10 years, and C depreciates Machinery Y under the general depreciation system by using the straight-line depreciation method, a 10-year recovery period, and the half-year convention.
 - As of December 31, 2018, C's basis in Machinery Y, as adjusted under I.R.C. § 1016(a)(2) for depreciation deductions under I.R.C. § 168(a), is \$2,500.
 - On January 1, 2019, C contributes Machinery Y and all other assets of the sole proprietorship's trade or business to a partnership in a nonrecognition transaction under I.R.C. § 721. The partnership immediately places all the assets in service.

Section 199A – 20% Passthrough Deduction

- The Wage Limitation – UBIA Examples.
 - UBIA in Property Received in Tax-Deferred Contribution. Prop. Treas. Reg. § 1.199A-2(c)(4), Example 3 (cont'd) (modified to address a partnership instead of an S corporation).
 - For purposes of I.R.C. § 199A(b)(2)(B)(ii), C's UBIA of Machinery Y from 2011 through 2018 is its \$10,000 cost basis under I.R.C. § 1012, regardless of any later depreciation deductions under I.R.C. § 168(a) and resulting basis adjustments under I.R.C. § 1016(a)(2).
 - The partnership's UBIA of Machinery Y is determined under the applicable rules of Subchapter K as of date the partnership places it in service. Therefore, the partnership's UBIA of Machinery Y is \$2,500, the basis of the property under I.R.C. § 723 at the time the partnership places the property in service.
 - For purposes of determining the depreciable period of Machinery Y, the partnership's placed in service date will be the date C originally placed the property in service in 2011. Therefore, Machinery Y may be qualified property of the partnership (assuming it continues to be used in the business) for 2019 and 2020 and will not be qualified property of the partnership after 2020, because its depreciable period will have expired.

Section 199A – 20% Passthrough Deduction

- Phase-In of the Wage Limitation.
 - If (i) the taxpayer's taxable income is more than the Threshold Amount but less than the Phase-Out Amount and (ii) 20% of the taxpayer's QBI exceeds the amount allowable under the Wage Limitation, then the amount of that taxpayer's QBI Component without regard to the Wage Limitation will be reduced by the "Reduction Amount." I.R.C. §199A(b)(3)(B)(i).
 - The "**Reduction Amount**" is the amount which bears the same ratio to the "Excess Amount" as the amount by which the taxpayer's taxable income for the tax year exceeds the Threshold Amount bears to \$50K (or \$100K for MFJ). I.R.C. §199A(b)(3)(B)(ii).
 - The "**Excess Amount**" is the excess of: (i) 20% of the taxpayer's QBI; over (ii) the amount of the QBI Component allowed under the Wage Limitation. I.R.C. §199A(b)(3)(B)(iii).

Section 199A – 20% Passthrough Deduction

- Phase-In of the Wage Limitation.
 - The calculation of the Reduction Amount can be expressed as the following equation: Prop. Treas. Reg. § 1.199A-1(b)(8).

$$\text{Reduction Amount} = \text{Excess Amount} \times \left[\frac{\text{Taxable Income} - \text{Threshold Amount}}{\$50\text{K (or } \$100\text{K for MFJ)}} \right]$$

Section 199A – 20% Passthrough Deduction

- Additional Limitation Applying to an SSTB.
 - If a taxpayer engaged in an SSTB has taxable income for the tax year that is at least the Threshold Amount and less than the Phase-Out Amount, then only the “Applicable Percentage” of the taxpayer’s share of QBI, W-2 Wages and unadjusted basis immediately after the acquisition of qualified property will be taken into account in computing that taxpayer’s QBI Deduction. I.R.C. §199A(d)(3)(A); Prop. Treas. Reg. §1.199A-1(d)(2)(i).
 - The “Applicable Percentage” for any tax year is 100%, reduced (not below zero) by the percentage equal to the ratio of: I.R.C. §199A(d)(3)(B).
 - the taxpayer’s taxable income for the tax year in excess of the Threshold Amount; divided by
 - \$50K (or \$100K for MFJ).

Section 199A – 20% Passthrough Deduction

- Additional Limitation Applying to an SSTB.
 - After reducing the taxpayer's QBI, W-2 Wages and UBIA by the Applicable Percentage, the Wage Limitation is then applied to determine the amount of that taxpayer's QBI Component.
 - Thus, a taxpayer who has taxable income more than the Threshold Amount and less than the Phase-Out Amount and is engaged in an SSTB must first apply the "Applicable Percentage" reduction under §199A(d)(3) and then the Wage Limitation under I.R.C. §199A(b)(3) in determining the amount of that taxpayer's QBI Component.

Section 199A – 20% Passthrough Deduction

- Calculating the Amount of the QBI Component.
 - Netting. Prop. Treas. Reg. § 1.199A-1(d)(iii)(A).
 - The following netting principles apply in the context of a taxpayer who has taxable income above the Threshold Amount.
 - If 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.
 - Following the aforementioned netting, the resulting adjusted QBI is then used in calculating the QBI Component.
 - The W-2 Wages and QBIA from trades or businesses that produced net negative QBI are not taken into account for purposes of calculating the QBI Component and are not carried over to a subsequent year.

Section 199A – 20% Passthrough Deduction

- **Carryovers of Negative QBI and Negative Combined REIT/PTP Amounts.**
 - If the total amount of the taxpayer's QBI is less than zero for the tax year, the portion of the taxpayer's QBI Component is zero for that year. The negative QBI amount is treated as negative QBI from a separate trade or business in the succeeding tax year of the taxpayer for purposes of I.R.C. §199A. Prop. Treas. Reg. §1.199A-1(c)(2)(i).
 - If the combined amount of REIT dividends and qualified PTP income is less than zero, the portion of the taxpayer's QBI deduction relating to qualified REIT dividends and qualified PTP income is zero for the tax year. The negative combined amount must be carried forward and used to offset the combined amount of REIT dividends and qualified PTP income in the succeeding tax year of the taxpayer for purposes of I.R.C. §199A. Prop. Treas. Reg. §1.199A-1(c)(2)(ii).
 - The aforementioned carryovers do not affect the deductibility of the aforementioned losses for purposes of other provisions of the Code, aside from §199A.

Section 199A – 20% Passthrough Deduction

- **Taxable Income Limitation.**
 - The amount of the QBI Deduction for a tax year is equal to the lesser of: I.R.C. §199A(a).
 - The combined QBI amount of the taxpayer; or
 - An amount equal to 20% of the excess (if any) of:
 - The taxable income of the taxpayer for the tax year; over
 - The net capital gain of the taxpayer for such tax year.
 - Thus, if the taxpayer is still eligible for the QBI Deduction after applying the SSTB restrictions and Wage Limitation, the remaining allowable amount of the taxpayer's QBI Deduction may be further limited by the taxpayer's taxable income for the tax year.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Phase-In Range Without SSTB. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 5.
 - B and C are married and file a joint individual income tax return.
 - B is a shareholder in M, an entity taxed as an S corporation for Federal income tax purposes that conducts a single trade or business. M holds no qualified property.
 - B's share of the M's QBI is \$300,000 in 2018. B's share of the W-2 wages from M in 2018 is \$40,000.
 - C earns wage income from employment by an unrelated company.
 - After allowable deductions unrelated to M, B and C's taxable income for 2018 is \$375,000.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Phase-In Range Without SSTB. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 5 (cont'd).
 - B and C are within the phase-in range because their taxable income exceeds the Threshold Amount, \$315,000, but does not exceed the Phase-Out Amount.
 - Consequently, the QBI component of B and C's section 199A deduction may be limited by the W-2 wage and UBIA of qualified property limitations but the limitations will be phased in.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Phase-In Range Without SSTB. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 5 (cont'd).
 - The UBIA amount is zero because M does not hold qualified property.
 - B and C must apply the W-2 wage limitation by first determining 20% of B's share of M's QBI. Twenty percent of B's share of M's QBI of \$300,000 is \$60,000.
 - Next, B and C must determine 50% of B's share of M's W-2 wages. Fifty percent of B's share of M's W-2 wages of \$40,000 is \$20,000. Because 50% of B's share of M's W-2 wages (\$20,000) is less than 20% of B's share of M's QBI (\$60,000), B and C must determine the QBI Component by reducing 20% of B's share of M's QBI by the reduction amount.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Phase-In Range Without SSTB. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 5 (cont'd).
 - B and C are 60% through the phase-in range (that is, their taxable income exceeds the Threshold Amount by \$60,000 and their phase-in range is \$100,000).
 - B and C must determine the excess amount, which is the excess of 20% of B's share of M's QBI, or \$60,000, over 50% of B's share of M's W-2 wages, or \$20,000. Thus, the excess amount is \$40,000.
 - The reduction amount is equal to 60% of the excess amount, or \$24,000.
 - Thus, the QBI component of B and C's section 199A deduction is equal to \$36,000, 20% of B's \$300,000 share M's QBI (that is, \$60,000), reduced by \$24,000.
 - B and C's 199A Deduction is equal to the lesser of: (i) 20% of the QBI from the business as limited (\$36,000); or (ii) 20% of B and C's taxable income (\$375,000 x 20% = \$75,000).
 - Therefore, B and C's 199A Deduction is \$36,000 for 2018.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Phase-In Range with SSTB. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 6.
 - Assume the same facts as in the prior example, except that M was engaged in an SSTB.
 - Because B and C are within the phase-in range, B must reduce the QBI and W-2 Wages allocable to B from M to the applicable percentage of those items.
 - B and C's applicable percentage is 100% reduced by the percentage equal to the ratio that their taxable income for the taxable year (\$375,000) exceeds their Threshold Amount (\$315,000), or \$60,000, bears to \$100,000.
 - Thus, their applicable percentage is 40%.
 - The applicable percentage of B's QBI is \$120,000 (i.e., \$300,000 x 40%), and the applicable percentage of B's share of W-2 Wages is \$16,000 (i.e., (\$40,000 x 40%) . These reduced numbers must then be used to determine how B's 199A Deduction is limited.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Phase-In Range with SSTB. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 6 (cont'd).
 - B and C must apply the Wage Limitation by first determining 20% of B's share of M's QBI as limited by the applicable percentage. Twenty percent of B's adjusted share of M's QBI of \$120,000 is \$24,000.
 - Next, B and C must determine 50% of B's share of M's W-2 Wages as limited by the applicable percentage. Fifty percent of B's adjusted share of M's W-2 Wages of \$16,000 is \$8,000.
 - Because 50% of B's adjusted share of M's W-2 Wages (\$8,000) is less than 20% of B's adjusted share of M's QBI (\$24,000), B and C must determine their QBI Component by reducing 20% of B's adjusted share of M's QBI by the reduction amount.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Phase-In Range with SSTB. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 6 (cont'd).
 - B and C are 60% through the phase-in range (that is, their taxable income exceeds the Threshold Amount by \$60,000 and their phase-in range is \$100,000).
 - B and C must determine the excess amount, which is the excess of 20% of B's share of M's QBI, as adjusted by the applicable percentage, or \$24,000, over 50% of B's share of M's W-2 wages, as adjusted by the applicable percentage, or \$8,000. Thus, the excess amount is \$16,000.
 - The reduction amount is equal to 60% of the excess amount or \$9,600. Thus, B and C's QBI Component is equal to \$14,400 (i.e., 20% of B's adjusted share M's QBI of \$24,000, reduced by \$9,600).
 - B and C's 199A Deduction is equal to the lesser of: (i) 20% of the QBI from the business as limited (\$14,400); or (ii) 20% of B's and C's taxable income (\$375,000 x 20% = \$75,000). Therefore, B and C's 199A Deduction is \$14,400 for 2018.

Section 199A – 20% Passthrough Deduction

- Example – No Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 9.
 - F, an unmarried individual, owns as a sole proprietor 100 percent of three trades or businesses, Business X, Business Y, and Business Z. None of the businesses hold qualified property.
 - F does not aggregate the trades or businesses under §1.199A-4.
 - For taxable year 2018, Business X generates \$1 million of QBI and pays \$500,000 of W-2 wages with respect to the business.
 - Business Y also generates \$1 million of QBI but pays no wages.
 - Business Z generates a loss that results in (\$600,000) of negative QBI and pays \$500,000 of W-2 wages with respect to the business.
 - F also has \$750,000 of wage income from employment with an unrelated company.
 - After allowable deductions unrelated to the businesses, F's taxable income is \$2,120,000.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Netting, Without Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 9.
 - Because Business Z had negative QBI, F must offset the positive QBI from Business X and Business Y with the negative QBI from Business Z in proportion to the relative amounts of positive QBI from Business X and Business Y. Because Business X and Business Y produced the same amount of positive QBI, the negative QBI from Business Z is apportioned equally among Business X and Business Y.
 - Therefore, the adjusted QBI for each of Business X and Business Y is \$700,000 (\$1 million plus 50% of the negative QBI of \$600,000). The adjusted QBI in Business Z is \$0, because its negative QBI has been fully apportioned to Business X and Business Y.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Netting, Without Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 9 (cont'd).
 - Because F's taxable income is above the Threshold Amount, F's QBI Component is subject to the Wage Limitation. The Wage Limitation must be applied on a business-by-business basis.
 - None of the businesses hold qualified property, therefore only the 50% of W-2 Wages must be calculated.
 - For Business X, the lesser of 20% of QBI ($\$700,000 \times 20\% = \$140,000$) and 50% of W-2 Wages ($\$500,000 \times 50\% = \$250,000$) is \$140,000.
 - Business Y pays no W-2 wages. The lesser of 20% of Business Y's QBI ($\$700,000 \times 20\% = \$140,000$) and 50% of its W-2 Wages (zero) is zero.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Netting, Without Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 9 (cont'd).
 - F must combine the amounts determined under the Wage Limitation to determine F's QBI Component and then compare the amount of the QBI Component to 20% of F's taxable income. F's 199A Deduction equals the lesser of these two amounts.
 - The QBI Component following application of the Wage Limitation is \$140,000 (\$140,000 + \$0), and 20% of F's taxable income is \$424,000 (\$2,120,000 x 20%). Thus, F's 199A Deduction for 2018 is \$140,000.
 - There is no carryover of any loss into the following taxable year for purposes of I.R.C. § 199A.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Netting, With Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 10.
 - Assume the same facts as in the prior example, except that F aggregates Business X, Business Y, and Business Z under the rules of §1.199A-4.
 - Because F's taxable income is above the Threshold Amount, F's QBI Component is subject to the Wage Limitation.
 - Because the businesses are aggregated, the Wage Limitation is applied on an aggregated basis. None of the businesses holds qualified property; therefore, only 50% of the W-2 Wages must be calculated.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Netting, With Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 10 (cont'd).
 - F applies the Wage Limitation by determining the lesser of 20% of the QBI from the aggregated businesses ($\$1,400,000 \times 20\% = \$280,000$) and 50% of W-2 Wages from the aggregated businesses ($\$1,000,000 \times 50\% = \$500,000$), or $\$280,000$.
 - F's 199A Deduction is equal to the lesser of $\$280,000$ and 20% of F's taxable income ($\$2,120,000 \times 20\% = \$424,000$). Thus, F's 199A Deduction for 2018 is $\$280,000$.
 - There is no carryover of any loss into the following tax year for purposes of I.R.C. § 199A.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Negative QBI Carryover, Without Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 11.
 - F, an unmarried individual, owns as a sole proprietor 100 percent of three trades or businesses, Business X, Business Y, and Business Z. None of the businesses hold qualified property.
 - F does not aggregate the trades or businesses under §1.199A-4.
 - For taxable year 2018, Business X generates $\$1$ million of QBI and pays $\$500,000$ of W-2 wages with respect to the business.
 - Business Y also generates $\$1$ million of QBI but pays no wages.
 - Business Z generates a loss that results in $(\$2,150,000)$ of negative QBI and pays $\$500,000$ of W-2 wages with respect to the business in 2018.
 - F also has $\$750,000$ of wage income from employment with an unrelated company.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Negative QBI Carryover, Without Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 11 (cont'd).
 - Thus, F has a negative combined QBI of (\$150,000) when the QBI from all of the businesses are added together (\$1 million plus \$1 million minus the loss of (\$2,150,000)).
 - Because F has a negative combined QBI for 2018, F has no 199A Deduction with respect to any trade or business for 2018.
 - Instead, the negative combined QBI of (\$150,000) carries forward and will be treated as negative QBI from a separate trade or business for purposes of computing the 199A Deduction in the next tax year.
 - None of the W-2 Wages carry forward.
 - However, for income tax purposes, the \$150,000 loss may offset F's \$750,000 of wage income (assuming the loss is otherwise allowable under the Code).

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Negative QBI Carryover, Without Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 11 (cont'd).
 - In tax year 2019, Business X generates \$200,000 of net QBI and pays \$100,000 of W-2 Wages with respect to the business.
 - Business Y generates \$150,000 of net QBI but pays no wages.
 - Business Z generates a loss that results in (\$120,000) of negative QBI and pays \$500 of W-2 wages with respect to the, business.
 - F also has \$750,000 of wage income from employment with an unrelated company.
 - After allowable deductions unrelated to the businesses, F's taxable income is \$960,000.
 - The (\$150,000) of negative QBI from 2018 is treated as arising in 2019 from a separate trade or business.
 - Thus, F has overall net QBI of \$80,000 for tax year 2019 when all trades or businesses are taken together (\$200,000 plus \$150,000 minus \$120,000 minus the carryover loss of \$150,000).

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Negative QBI Carryover, Without Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 11 (cont'd).
 - Because Business Z had negative QBI and F also has a negative QBI carryover amount, F must offset the positive QBI from Business X and Business Y with the negative QBI from Business Z and the carryover amount in proportion to the relative amounts of positive QBI from Business X and Business Y.
 - Because Business X produced 57.14% of the total QBI from Business X and Business Y, 57.14% of the negative QBI from Business Z and the negative QBI carryforward must be apportioned to Business X, and the remaining 42.86% allocated to Business Y.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Negative QBI Carryover, Without Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 11 (cont'd).
 - Therefore, the adjusted QBI in Business X is \$45,722 (\$200,000 minus 57.14% of the loss from Business Z (\$68,568), minus 57.14% of the carryover loss (\$85,710).
 - The adjusted QBI in Business Y is \$34,278 (\$150,000, minus 42.86% of the loss from Business Z (\$51,432) minus 42.86% of the carryover loss (\$64,290)).
 - The adjusted QBI in Business Z is \$0, because its negative QBI has been apportioned to Business X and Business Y.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Negative QBI Carryover, Without Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 11 (cont'd).
 - Because F's taxable income is above the Threshold Amount, the QBI Component is subject to the Wage Limitation.
 - The Wage Limitation must be applied on a business-by-business basis.
 - None of the businesses hold qualified property, therefore only the 50% of W-2 Wages must be calculated.
 - For Business X, 20% of QBI is \$9,144 ($\$45,722 \times 20\%$) and 50% of W-2 Wages is \$50,000 ($\$100,000 \times 50\%$), so the lesser amount is \$9,144.
 - Business Y pays no W-2 Wages. Twenty percent of Business Y's QBI is \$6,856 ($\$34,278 \times 20\%$) and 50% of its W-2 Wages (zero) is zero, so the lesser amount is zero.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Negative QBI Carryover, Without Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 11 (cont'd).
 - F must then compare the amount of the QBI Component following application of the Wage Limitation to 20% of F's taxable income. The 199A Deduction equals the lesser of these amounts.
 - F's QBI Component is \$9,144 (\$9,144 plus zero) and 20% of F's taxable income is \$192,000 ($\$960,000 \times 20\%$). Thus, F's 199A Deduction for 2019 is \$9,144.
 - There is no carryover of any negative QBI into the following tax year for purposes of I.R.C. § 199A.

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Negative QBI Carryover, With Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 12.
 - Assume the same facts as in the prior example, except that F aggregates Business X, Business Y, and Business Z under the rules of §1.199A-4.
 - For 2018, F's QBI from the aggregated trade or business is (\$150,000).
 - Because F has a combined negative QBI for 2018, F has no 199A Deduction with respect to any trade or business for 2018.
 - Instead, the negative combined QBI of (\$150,000) carries forward and will be treated as negative QBI from a separate trade or business for purposes of computing the 199A Deduction in the next tax year.
 - However, for income tax purposes, the \$150,000 loss may offset taxpayer's \$750,000 of wage income (assuming the loss is otherwise allowable under the Code).

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Negative QBI Carryover, With Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 12 (cont'd).
 - In tax year 2019, F will have QBI of \$230,000 and W-2 wages of \$100,500 from the aggregated trade or business.
 - F also has \$750,000 of wage income from employment with an unrelated company.
 - After allowable deductions unrelated to the businesses, F's taxable income is \$960,000.
 - F must treat the negative QBI carryover loss (\$150,000) from 2018 as a loss from a separate trade or business for purposes of I.R.C. § 199A.
 - This loss will offset the positive QBI from the aggregated trade or business, resulting in an adjusted QBI of \$80,000 (\$230,000 - \$150,000).

Section 199A – 20% Passthrough Deduction

- Calculating the QBI Component of the 199A Deduction.
 - Example – Negative QBI Carryover, With Aggregation. Prop. Treas. Reg. § 1.199A-1(d)(4), Ex. 12 (cont'd).
 - Because F's taxable income is above the Threshold Amount, F's QBI Component is subject to the Wage Limitation.
 - The Wage Limitation must be applied on a business-by-business basis.
 - None of the businesses hold qualified property, therefore only the 50% of W-2 Wages must be calculated.
 - For the aggregated trade or business, the lesser of 20% of QBI ($\$80,000 \times 20\% = \$16,000$) and 50% of W-2 Wages ($\$100,500 \times 50\% = \$50,250$) is $\$16,000$.
 - F's 199A Deduction equals the lesser of these amounts ($\$16,000$) and 20% of F's taxable income ($\$960,000 \times 20\% = \$192,000$).
 - Thus, F's 199A Deduction for 2019 is $\$16,000$.
 - There is no carryover of any negative QBI into the following taxable year for purposes of I.R.C. § 199A.

Section 199A – 20% Passthrough Deduction

- Partnership Computational Rules. Prop. Treas. Reg. § 1.199A-6(b)(2).
 - A partnership must determine the items necessary for individuals who own interests in the partnership to calculate their 199A Deduction in accordance with the following rules:
 - First, the partnership must determine if it is engaged in one or more trades or businesses. The partnership must also determine whether any of its trades or businesses is an SSTB;
 - Second, the partnership must determine the QBI for each trade or business in which it engages directly;
 - Third, the partnership must determine its W-2 Wages and UBIA of qualified property for each trade or business in which it engages directly; and
 - Last, the partnership must determine whether it has any qualified REIT dividends and net amount of qualified PTP income earned directly by that partnership or indirectly through that partnership's investment in another entity.

Section 199A – 20% Passthrough Deduction

- Partnership Reporting Rules. Prop. Treas. Reg. § 1.199A-6(b)(3).
 - A partnership must separately identify and report on the Schedule K-1 issued to its owners for any trade or business engaged in directly by the partnership:
 - Each owner's allocable share of QBI, W-2 Wages, and UBIA of qualified property attributable to each such trade or business; and
 - Whether any of those trades or businesses is an SSTB.
 - A partnership must also report on an attachment to the Schedule K-1, any QBI, W-2 Wages, UBIA of qualified property, or SSTB determinations, reported to it by any pass-through entity in which the partnership owns a direct or indirect interest.

Section 199A – 20% Passthrough Deduction

- Partnership Reporting Rules. Prop. Treas. Reg. § 1.199A-6(b)(3).
 - If a partnership fails to separately identify or report on the Schedule K-1 (or any attachments thereto) issued to an owner any of the items required to be so reported, the owner's share (and the share of any upper-tier indirect owner) of positive QBI, W-2 Wages, and UBIA of qualified property attributable to trades or businesses engaged in by that partnership will be presumed to be zero.

Section 199A – 20% Passthrough Deduction

- **Anti-Abuse Rule for Use of Multiple Trusts.**
 - Trusts formed or funded with a significant purpose of receiving a 199A Deduction will not be respected for purposes of I.R.C. § 199A. Prop. Treas. Reg. § 1.199A-6(d)(3)(v).
 - Two or more trusts will be aggregated and treated as a single trust if: Prop. Treas. Reg. § 1.643(f)-1.
 - Such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries; and
 - A principal purpose for establishing such trusts or for contributing additional cash or other property to such trusts is the avoidance of Federal income tax.
 - A principal purpose for establishing or funding a trust will be presumed if it results in a significant income tax benefit unless there is a significant non-tax (or non-income tax) purpose that could not have been achieved without the creation of these separate trusts. *Id.*

Section 199A – 20% Passthrough Deduction

- **Anti-Abuse Rule for Use of Multiple Trusts – Example.** Prop. Treas. Reg. § 1.643(f)-1(c), Ex. 1.
 - A owns and operates a pizzeria and several gas stations.
 - A's annual income from these businesses and other sources exceeds the Threshold Amount, and the W-2 Wages properly allocable to these businesses are not sufficient for A to maximize the deduction allowable under I.R.C. § 199A.
 - A reads an article in a magazine that suggests that taxpayers can avoid the Wage Limitation by contributing portions of their family businesses to multiple identical trusts established for family members.

Section 199A – 20% Passthrough Deduction

- Anti-Abuse Rule for Use of Multiple Trusts – Example. Prop. Treas. Reg. § 1.643(f)-1(c), Ex. 1 (cont'd).
 - Based on this advice, in 2018, A establishes three irrevocable, non-grantor trusts:
 - Trust 1 for the benefit of A's sister, B, and A's brothers, C and D;
 - Trust 2 for the benefit of A's second sister, E, and for C and D; and
 - Trust 3 for the benefit of E.
 - Under each trust instrument, the trustee is given discretion to pay any current or accumulated income to any one or more of the beneficiaries. The trust agreements otherwise have nearly identical terms.
 - But for the enactment of I.R.C. § 199A and A's desire to avoid the Wage Limitation, A would not have created or funded such trusts.
 - A names A's oldest son, F, as the trustee for each trust.

Section 199A – 20% Passthrough Deduction

- Anti-Abuse Rule for Use of Multiple Trusts – Example. Prop. Treas. Reg. § 1.643(f)-1(c), Ex. 1 (cont'd).
 - A forms a family limited partnership, and contributes the ownership interests in the pizzeria and gas stations to the partnership in exchange for a 50-percent general partner interest and a 50-percent limited partner interest.
 - A later contributes to each trust a 15% limited partner interest.
 - Under the partnership agreement, the trustee does not have any power or discretion to manage the partnership or any of its businesses on behalf of the trusts, or to dispose of the limited partnership interests without the approval of the general partner.
 - Each of the trusts claims the 199A Deduction on its Form 1041 in full based on the amount of QBI allocable to that trust from the limited partnership, as if such trust was not subject to the Wage Limitation.
 - Under these facts, for purposes of I.R.C. § 199A, Trust 1, Trust 2, and Trust 3 would be aggregated and treated as a single trust.

Section 199A – 20% Passthrough Deduction

- **Anti-Abuse Rule for Use of Multiple Trusts – Example. Prop. Treas. Reg. § 1.643(f)-1(c), Ex. 2.**
 - X establishes two irrevocable trusts: one for the benefit of X's son, G, and the other for X's daughter, H.
 - G is the income beneficiary of the first trust and the trustee is required to apply all income currently to G for G's life.
 - H is the remainder beneficiary of the first trust. H is an income beneficiary of the second trust and the trust instrument permits the trustee to accumulate or to pay income, in its discretion, to H for H's education, support, and maintenance.
 - The trustee also may pay income or corpus for G's medical expenses. H is the remainder beneficiary of the second trust and will receive the trust corpus upon G's death.

Section 199A – 20% Passthrough Deduction

- **Anti-Abuse Rule for Use of Multiple Trusts – Example. Prop. Treas. Reg. § 1.643(f)-1(c), Ex. 2 (cont'd).**
 - Under these facts, there are significant non-tax differences between the substantive terms of the two trusts, so tax avoidance will not be presumed to be a principal purpose for the establishment or funding of the separate trusts.
 - Accordingly, in the absence of other facts or circumstances that would indicate that a principal purpose for creating the two separate trusts was income tax avoidance, the two trusts will not be aggregated and treated as a single trust for Federal income tax purposes under this section.

Section 199A – 20% Passthrough Deduction

- Termination of the QBI Deduction. I.R.C. §199A(i).
 - The QBI Deduction does not apply to tax years beginning after December 31, 2025.



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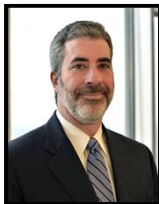
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