IRS

Tax Cuts and Jobs Act, Provision 11011 Section 199A - Qualified Business Income Deduction FAQs

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Basic questions and answers on new 20% deduction for pass-through businesses

Below are answers to some basic questions about the qualified business income deduction (QBID), also known as the section 199A deduction, that may be available to individuals, including many owners of sole proprietorships, partnerships and S corporations. Some trusts and estates may also be able to take the deduction. This deduction, created by the 2017 Tax Cuts and Jobs Act, allows non-corporate taxpayers to deduct up to 20% of their qualified business income (QBI), plus up to 20% of qualified real estate investment trust (REIT) dividends and qualified publicly traded partnership (PTP) income.

Income earned by a C corporation or by providing services as an employee is not eligible for the deduction.

Threshold and phase-in range amounts are adjusted annually for inflation.

For taxable year 2018 the amounts are as follows:

- **Married Filing Jointly** Threshold: $315,000, Phase-in Range: above $315,000 up to $415,000

- **All others** Threshold: $157,500, Phase-in Range: above $157,500 up to $207,500

For taxable year 2019 the amounts are as follows:

- **Married Filing Jointly** Threshold: $321,400, Phase-in Range: above $321,400 up to $421,400
- **Married Filing Separately*** Threshold: $160,725, Phase-in Range: above $160,725 up to $210,725
- **All others** Threshold: $160,700, Phase-in Range: above $160,700 up to $210,700

***Married filing separately includes married non-resident alien

For taxable year 2020 the amounts are as follows:

- **Married Filing Jointly** Threshold: $326,600, Phase-in Range: above $326,600 up to $426,600
- **All others** Threshold: $163,300, Phase-in Range: above $163,300 up to $213,300

Q1. What is the Qualified Business Income Deduction (QBID)?

A1. Section 199A of the Internal Revenue Code provides many owners of sole proprietorships, partnerships, S corporations and some trusts and estates, a deduction of income from a qualified trade or business. The deduction has two components.

1. **QBI Component**. This component of the deduction equals 20% of QBI from a domestic business operated as a sole proprietorship or through a partnership, S corporation, trust or estate. Depending on the taxpayer's taxable income, the QBI component is subject to multiple limitations including the type of trade or business, the amount of W-2 wages paid by the qualified trade or business and the unadjusted basis immediately after acquisition (UBIA) of qualified property held by the trade or business. It may also be reduced by the patron reduction if the taxpayer is a patron of an agricultural or horticultural cooperative. Income earned through a C corporation or by providing services as an employee is not eligible for the deduction.

2. **REIT/PTP Component**. This component of the deduction equals 20% of the combined qualified REIT dividends (including REIT dividends earned through a regulated investment company (RIC)) and qualified PTP income/(loss). This component is not limited by W-2 wages or the UBIA of qualified property. Depending on the taxpayer's income, the amount of PTP income that qualifies may be limited depending on the type of business engaged in by the PTP.

The deduction is limited to the lesser of the QBI component plus the REIT/PTP component or 20% of the taxpayer's taxable income minus the net capital gain*. For details on figuring the deduction, see Q&As 8 through 11 as well as the instructions to Form 8995 PDF or Form 8995-A PDF as applicable. The deduction is available for taxable years beginning after December 31, 2017 and ending before December 31, 2025. Most eligible taxpayers will be able to claim it for the first time when they file their 2018 federal income tax return in 2019. The deduction is available, regardless of whether an individual itemizes their deductions on Schedule A or takes the standard deduction.

***Note**: for purposes of IRC section 199A, net capital gain is net long-term capital gain over net short-term capital loss, as defined by IRC section 1222(11), plus any qualified dividend income, as defined in section 1(h)(11), for the taxable year. As such, net capital gain for purposes of IRC section 199A cannot, by definition, be negative.

Q2. Who may take the QBID?

A2. Individuals and some trusts and estates with QBI, qualified REIT dividends, or qualified PTP income may qualify for the deduction. In some cases, patrons of horticultural or agricultural cooperatives are required to reduce their deduction under section 199A(b)(7) (patron reduction).

Q3. How do S corporations and partnerships handle the deduction?

A3. S corporations and partnerships are generally not taxable and cannot take the deduction themselves. However, all S corporations and partnerships report each shareholder's or partner's share of QBI items, W-2 wages, UBIA of qualified property, qualified REIT dividends and qualified PTP income, and whether or not a trade or business is a specified service trade or business (SSTB) on a statement attached to the Schedule K-1 so the shareholders or partners may determine their deduction.

Q4. What is qualified business income?

A4. QBI is the net amount of qualified items of income, gain, deduction and loss from any qualified trade or business. Only items included in taxable income are counted. In addition, the items must be effectively connected with a U.S. trade or business. Items such as capital gains and losses, certain dividends, and interest income are excluded. W-2 income, amounts received as reasonable compensation from an S corporation, amounts received as guaranteed payments from a partnership, and payments received by a partner for services under section 707(a) are also not QBI.

Q5. What is a qualified trade or business?

A5. A qualified trade or business is any section 162 trade or business, with three exceptions:

1. A trade or business conducted by a C corporation.

2. The trade or business of performing services as an employee.

3. For taxpayers with taxable income that exceeds the threshold amount, specified service trades or businesses (SSTBs). An SSTB is a trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, investing and investment management, trading or dealing in certain assets, or any trade or business where the principal asset is the reputation or skill of one or more of its employees or owners. The principal asset of a trade or business is the reputation or skill of its employees or owners if the trade or business consists of the receipt of income from endorsing products or services, the use of an individual's image, likeness, voice, or other

symbols associated with the individual's identity, or appearances at events or on radio, television, or other media formats.

The SSTB exception does not apply for taxpayers with taxable income at or below the threshold amount and is phased in for taxpayers with taxable income within the phase-in range. For taxpayers with taxable income above the phase-in range, no deduction is permitted with respect to any SSTB.

Q6. What if a single trade or business has multiple sources of income, some from specified service activities and some from other activities?

A6. There is a de minimis rule for a single trade or business that has income from both specified service activities and other activities. The de minimis rule states that if a trade or business has gross receipts of $25 million or less and less than 10% of its gross receipts are attributable to specified service activities, or gross receipts of more than $25 million and less than 5% of its gross receipts are attributable to specified service activities, the trade or business as a whole is not an SSTB. If, however, the gross receipts from specified service activities exceed the percentage specified in the de minimis rule, the entire trade or business is treated as an SSTB.

Q7. What if my trade or business is not an SSTB but provides services or property to an SSTB?

A7. If a non-SSTB trade or business provides its property or services to an SSTB and there is at least 50% common ownership of the businesses, then that portion of the non-SSTB trade or business that provides property or services to the SSTB is treated as a separate SSTB, but only with respect to the common owners.

Q8. How is the deduction for qualified business income computed?

A8. If the SSTB limitation discussed in Q&A 5 does not apply because a taxpayer's taxable income (before the QBID) is at or below the threshold amount; the deduction is the lesser of:

1. 20% of the taxpayer's QBI (QBI Component), plus 20& of the taxpayer's qualified REIT dividends and qualified PTP income (REIT/PTP Component) or

2. 20% of the taxpayer's taxable income after subtracting any net capital gain.

If the taxpayer's taxable income (before the QBID) is above the threshold amount, the deduction may be limited based on whether the business is an SSTB, the W-2 wages paid by the business and the UBIA of qualified property used by the business. These limitations are phased in for taxpayers with taxable income (before the QBID) within the phase-in range and are fully applied to those whose taxable income exceeds the phase-in range.

Income earned by a C corporation or by providing services as an employee is not eligible for the deduction regardless of the taxpayer's taxable income. In some cases, patrons of agricultural or horticultural cooperatives are required to reduce their deduction under section 199A(b)(7) (patron reduction). See also Q&A 17 for more information on computation and available forms and instructions.

Q9. What are the W-2 wages for purposes of applying the W-2 wage limitation? Do W-2 wages paid to the officer of an S corporation qualify as QBI and towards the W-2 wage limitation?

A9. For purposes of the W-2 wage limitation, W-2 wages include the following amounts paid with respect to employment of employees: (1) the total amount of wages, as defined in IRC section 3401(a), and (2) certain deferred compensation paid under IRC sections 402 and 457, and must be properly included on any timely filed return to the Social Security Administration (SSA). Additionally, the W-2 wages must be properly allocable to QBI. W-2 wages are properly allocable to QBI if the associated wage expense is taken into account in computing QBI for the trade or business under section 1.199A-3.

Note: Any additional wages generated as a result of worker reclassifications, and/or additional employment tax return changes which do not result in timely reporting to the SSA will not be classified as additional W-2 wages for purposes of IRC section 199A.

The trade or business of performing services as an employee generally is not a qualified trade or business, so W-2 wages paid to an officer of an S corporation will generally not qualify as a source of QBI to the employee. Such wages, however, will generally be a qualified item of deduction and included in the QBI of the payor. Additionally, the W-2 wages paid to the officer of an S corporation properly allocable to QBI, which are timely filed and reported to the SSA, will qualify as W-2 wages attributable to a trade or business identified by the S corporation for purposes of applying the W-2 wage limitation.

Q10. What does the unadjusted basis immediately after acquisition (UBIA) of qualified property mean?

A10. "Qualified property" for purposes of section 199A is any tangible property held in connection with any identified trade or business subject to the allowance for depreciation under IRC section 167:

1. which is held by, and available for use in, the trade or business at the close of the taxable year,

2. which is used at any point during the taxable year in the production of QBI, and

3. the depreciable period for which has not ended before the close of the taxable year.

The depreciable period ends on the later of 10 years after the property is first placed in service by on the last day of the last full year in the applicable recovery period under section 168(c). Additional first-year depreciation under section 168 doesn't affect the applicable recovery period. Improvements to property that has already been placed in service are treated as separate qualified property.

UBIA means the basis, on the placed in service date, of the property as determined under section 1012 or other applicable provisions of chapter 1 of the Code, including subchapters O (relating to gain or loss on dispositions of property), C (relating to corporate distributions and adjustments, K (relating to partners and partnerships), and P (relating to capital gains and losses). The basis of depreciable property is most commonly determined

under section 1012 (with respect to purchased property), section 1014 (with respect to property acquired from a decedent), or section 1015 (with respect to property acquired by gift). A taxpayer's UBIA of qualified property is its basis in the qualified property prior to any adjustments under section 1016(a)(2) or (3), any adjustments for tax credits you (or the RPE) claimed, or any adjustments for any portion of the basis which you have (or the RPE) elected to treat as an expense. However, a taxpayer's UBIA of qualified property is adjusted to reflect the reduction in the basis for the percentage of your (or the RPE's) use of the property for the tax year other than in the trade or business. For more information on UBIA of qualified property, see Reg. section1.199A-2(c).

Q11. I have income from an SSTB. How does that affect my deduction?

A11. As discussed in Q&A 5, the SSTB limitation does not apply to any taxpayer whose taxable income (before the qualified business deduction) is at or below the threshold amounts. For taxpayers whose taxable income is within the phase-in range, the taxpayer's share of QBI, W-2 wages and UBIA of qualified property related to the SSTB will be limited. If the taxpayer's taxable income exceeds the phase-in range, no deduction is allowed with respect to any SSTB.

See also Q&A 17 for more information on computation and available forms and instructions.

Q12. I will report taxable income under the threshold. Do I have to determine if I am in an SSTB in order to take the deduction? Is there any limitation on my deduction?

A12. No, if your taxable income (before the QBID) is at or below the threshold amount, the SSTB limitations do not apply. You will generally be able to deduct the lesser of:

1. 20% of your QBI (QBI Component), plus 20% of your qualified REIT dividends and qualified PTP income (REIT/PTP Component), or

2. 20% of your taxable income after subtracting any net capital gain.

Income earned by a C corporation or by providing services as an employee is not eligible for the deduction regardless of the taxpayer's taxable income.

Q13. I will report taxable income within the phase-in range. I receive QBI. Does it matter if it is from an SSTB?

A13. Yes, because your taxable income is above the threshold amount, your QBI, W-2 wages, and UBIA of qualified property with respect to any SSTB will be limited. However, because you are within the phase-in range, some may be allowed. In addition, for taxpayers above the threshold amount, the QBI component of any trade or business, including an SSTB, may be limited by the amount of W-2 wages paid by the trade or business and the UBIA of qualified property held by the trade or business. Sections 1.199A-1 and 1.199A-2 of the regulations (PDF) provides additional information.

Q14. I will report taxable income over the threshold and phase-in range. My only income is from an SSTB. Am I entitled to the deduction with respect to the SSTB?

A14. No. QBI from your SSTB is fully excluded when taxable income is over the threshold and phase-in range.

Q15. I report taxable income over the threshold and phase-in range, however my income is NOT from an SSTB. Am I entitled to the deduction?

A15. You may be if you have QBI from a qualified trade or business, qualified REIT dividends or qualified PTP income. For eligible taxpayers with total taxable income over the threshold, the QBI component will be limited by the amount of W-2 wages paid by the qualified trade or business and the UBIA of qualified property held by the trade or business. The regulations provide additional information on these limitations. The IRS also issued Revenue Procedure 2019-11 PDF providing methods for determining W-2 wages for purposes of the limitation. Revenue Procedure 2021-11 PDF amended Revenue Procedure 2019-11 to update the method for determining W-2 wages for taxpayers with short taxable years.

Q16. Do cooperatives qualify for the qualified business income deduction?

A16. Cooperatives do not qualify for the QBID under section 199A(a) but may be eligible to take the section 199A(g) deduction. Section 199A(g) provides a deduction for Specified Agricultural or Horticultural Cooperatives (Specified Cooperatives) and their patrons similar to the deduction under former section 199, which was known as the domestic production activities deduction. The IRS issued guidance for cooperatives and their patrons that appears in regulations sections 1.199A-7 through 1.199A-12. The IRS also issued Revenue Procedure 2021-11 providing methods for determining W-2 wages for purposes of the W-2 wage limitation in section 199A(g) and Q&As 42 through 55 below address some common cooperative questions.

Q17. Is there a form for reporting the qualified business income deduction? And if so, where can I find it?

A17. For tax years 2019 and after, Form 8995, Qualified Business Income Deduction Simplified Computation, and Form 8995-A, Qualified Business Income Deduction, are used to compute and report the qualified business income deduction. Form 8995-A must be used if taxable income is over the threshold or if you or any of your trades or businesses are patrons of a specified cooperative. Form 8995 may be used in all other cases. Form 8995 or 8995-A, as applicable, must be attached to any return claiming a qualified business income deduction beginning in 2019. There was no form required in 2018, however worksheets were available in the Form 1040 Instructions (simple computation for taxpayers whose taxable income, before the QBID, was at or below their respective threshold and who were not patrons of a specified cooperative) and Publication 535 (complex computation for taxpayers whose taxable income, before the QBID, was above their respective threshold or were patrons of a specified cooperative) to assist with the calculations in 2018.

Q18. Does the deduction reduce earnings subject to self-employment tax?

A18. No. The QBID does not reduce net earnings from self-employment, under section 1402. Similarly, the deduction does not reduce net investment income under section 1411 (Form 8960, Net Investment Income Tax).

Q19. If I report taxable income under the threshold are there any limits to my deduction?

A19. If your taxable income (before the QBID) is at or below the threshold, then most of the limitations are not applicable.

The SSTB, W-2 wage, and UBIA of qualified property limitations do not apply to taxpayers whose taxable income is at or below these thresholds.

The deduction is limited to the lesser of 20% of QBI (QBI Component) plus 20% of qualified REIT dividends and qualified PTP income (REIT/PTP Component) or 20% of taxable income after subtracting net capital gain for all taxpayers, regardless of income. Also, if you are a patron in an agricultural or horticultural cooperative, the QBI component may be reduced by the patron reduction. Finally, income earned by a C corporation or by providing services as an employee is not eligible for the deduction regardless of the taxpayer's taxable income.

Q20. Do any limitations apply to the REIT/PTP Component?

A20. Yes. The REIT/PTP Component generally includes qualified REIT dividends (including REIT dividends earned through a RIC) and net PTP income as defined in section 199A and the regulations thereunder. For taxpayers above the threshold amount, qualified PTP income may be limited if the PTP operates an SSTB. As discussed in Q&A 5, the SSTB limitation does not apply to any taxpayer whose taxable income (before the qualified business deduction) is at or below the threshold amounts. For taxpayers whose taxable income is within the phase-in range, the taxpayer's PTP income from the SSTB may be limited. If the taxpayer's taxable income exceeds the phase-in range, no deduction is allowed with respect to any SSTB operated by a PTP. In all cases, the deduction is limited to the lesser of the QBI Component plus the REIT/PTP Component or 20% of taxable income after subtracting net capital gain.

Q21. If someone is a real estate professional, will their rental real estate qualify for the deduction?

A21. The deduction is not based on whether the taxpayer qualifies as a real estate professional under section 469. Rental real estate may constitute a trade or business for purposes of the QBID if

- The rental real estate rises to the level of a trade or business under section 162,
- Use of the safe harbor provided by Rev. Proc. 2019-38 PDF is chosen and the rental real estate enterprise satisfies the requirements for use, or

- The rental real estate meets the self-rental exception detailed in Treas. Reg. section 1.199A-1(b)(14) (i.e., the rental or licensing of property to a commonly controlled trade or business conducted by an individual or RPE).

Whether rental real estate rises to the level of a trade or business under section 162 depends on all the facts and circumstances. To be engaged in a trade or business under section 162, the taxpayer must be actively involved in the activity with continuity and regularity and the primary purpose for engaging in the activity must be for income or profit. The taxpayer does not, however, have to materially participate as defined by section 469. See Q&A 62 for more detail.

Q22. If I have net income from one qualified business and a net loss from another qualified business, is the loss from the second business carried forward and applied against that same business in the future or is it netted against the income from the first business when calculating the deduction? What if the losses are greater than the income, does this mean I will not get a deduction?

A22. A taxpayer must net their QBI, including losses, from multiple trades or businesses (including aggregated trades or businesses). So, qualified business losses from one business will offset QBI from other trades or businesses (including aggregated trades or businesses) in proportion to the net income of the trades or businesses with QBI.

If the total QBI from all trades or businesses is less than zero, the taxpayer's QBI Component will be zero and any negative amount is carried forward to the next taxable year. The carried forward negative QBI will be treated as negative QBI from a separate trade or business for purpose of determining the QBI Component in the next taxable year. Any negative QBI carried into the subsequent tax year as a qualified business net loss carryforward will be used in that subsequent year to determine the net qualified business income or loss in that year. If the net loss carryforward from the originating year is not fully absorbed in the subsequent year, the new net loss amount will become a qualified business net loss carryforward to be applied in the subsequent year.

Q23. Does a net QBI Component loss reduce the REIT/PTP Component?

A23. A net loss in the QBI Component does not impact the calculation of the deduction with respect to the REIT/PTP Component. However, if you have a net qualified PTP loss, it is netted against qualified REIT dividends in a separate netting calculation from the loss netting of the QBI Component. This could result in two separate loss carryforwards, one for the QBI Component and one for the REIT/PTP Component.

Q24. Do I have to materially participate in a business to qualify for the deduction?

A24. No. Material participation under section 469 is not required for the QBD. Eligible taxpayers with income from a trade or business may be entitled to the QBID (if they otherwise satisfy the requirements of section 199A) regardless of their involvement in the trade or business.

Q25. I file a joint return, my income is under the threshold amount, the only income I have is from W-2 wages and a domestic Schedule C business. Does my QBI equal the amount on Schedule C, line 31, Net profit or (loss)?

A25. Not necessarily. As discussed in Q&A 4, QBI is the net amount of qualified items of income, gain, deduction and loss from any qualified trade or business. In addition to any qualified profit or loss from Schedule C, QBI must be adjusted by any other items of gain, loss or deduction attributable to the trade or business, including but not limited to ordinary gains or losses from Form 4797, the deductible portion of self-employment tax, self-employed health insurance deductions, and self-employed SEP, SIMPLE, and qualified plan deductions. Amounts received as W-2 income, reasonable compensation from an S corporation, guaranteed payments from a partnership, and payments received by a partner for services under section 707(a) are not QBI to the recipient and are not eligible for the deduction.

Q26. I am a statutory employee and report my income on Schedule C. Does it qualify for the qualified business income deduction?

A26. Generally, yes. Payments made to statutory employees, as defined in section 3121(d)(3), are excluded from the definition of wages considered income from the trade or business of performing services as an employee under section 1.199A-5(d)(1). Items of income, gain, deduction, and loss from the performance of services as a statutory employee are considered QBI and are eligible for the QBID to the extent the requirements of section 199A are satisfied.

Q27. Can you explain in more detail how losses that are limited by basis, at-risk, or passive activity rules affect the deduction?

A27. Items not included in taxable income are not qualified items of income, gain, deduction, or loss and are not current year QBI. If a taxpayer has a suspended loss that is allowed against current year taxable income, whether the loss reduces QBI depends on whether the loss was limited for a taxable year ending before or after January 1, 2018.

If the loss was disallowed for a taxable year ending before 2018, the loss is never taken into account for purposes of computing QBI. This means the taxpayer must keep track of pre-2018 disallowed losses, so that they can be excluded from QBI in the year the loss is allowed.

If the loss was generated in 2018 or later, it is included in QBI if it is a qualified item of deduction or loss that would otherwise be included in QBI, but not until the year it is included/allowed in taxable income.

Disallowed, limited, or suspended losses must be used in order from the oldest to the most recent on a first-in, first-out (FIFO) basis.

See Treas. Reg. section 1.199A-3(b)(2)(i)(B) for more information.

Q28. What requirements must be met to make an election to aggregate multiple trades or businesses as one QTB and how does such aggregation election effect any election made to "group" activities for purposes of section 469?

A28. In order to aggregate multiple trades or businesses the following requirements must be met:

1. The same person or group of persons, directly or by attribution under section 267(b)or 707(b), own 50% or more of each trade or business for a majority of the taxable year, including the last day of the taxable year,

2. All of the items attributable to each trade or business are reported on returns with the same taxable year, without regard to short-tax years,

3. None of the trades or businesses is an SSTB, AND

4. Two of the following three factors are met:

    - The trades or businesses provide products, property, or services that are the same or customarily offered together,

    - 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, and/or

    - The trades or businesses are operated in coordination with, or reliance upon, one or more of the businesses in the aggregated group

Note: If an RPE makes an election to aggregate, partners/owners/beneficiaries must adhere to such aggregation election. The partner/owner/beneficiary must attach a copy of the RPE's aggregation election to their return. The partner/owner/beneficiary cannot remove trades or businesses from any RPE elected aggregation but may make their own aggregation election to include additional trades or businesses with the RPE elected aggregation.

Once an aggregation election is made, the aggregation must be consistently applied unless there has been a significant change to the facts and circumstances which would render the aggregation no longer appropriate. An election to aggregate under IRC section 199A has no effect on any election(s) to "group" under IRC section 469; the two provisions are independent of one another.

Q29. How do I satisfy the disclosure requirements if I choose to aggregate my trade or businesses?

A29. Schedule B (Form 8995-A), Aggregation of Business Operations PDF, or a substantially similar schedule must be attached to any return reporting an aggregated trade or business to satisfy the disclosure requirements.

Q30. Do I need to disclose my aggregated trades or businesses when I use the simplified worksheet in the Instructions for Form 1040 to calculate the QBID?

A30. Yes, taxpayers should disclose their aggregations regardless of which worksheet they use to compute the QBID. A failure to aggregate will not be treated as an aggregation for purposes of the consistency requirement. So, if the taxpayer is under the threshold in 2018 and does not need to aggregate, the taxpayer is not prevented from aggregating in a subsequent year when the taxpayer's taxable income exceeds the threshold amount.

Q31. I received a REIT dividend either directly or through a regulated investment company (RIC), reported as a section 199A dividend in box 5 of Form 1099-DIV. Is this amount eligible for the QBID?

A31. Box 5 of Form 1099-DIV is used by REITs and RICs to report amounts that may be eligible for the QBID, but some amounts reported in box 5 may be ineligible for the deduction.

Ineligible dividends include those for which the taxpayer did not meet holding period requirements for the REIT or RIC stock. The QBID may not be taken for any dividend reported in box 5 for dividends received on a share of REIT or RIC stock that is held for 45 days or less during the 91-day period beginning on the date that is 45 days before the date on which such share became ex-dividend with respect to the dividend. When counting the number of days that the stock is held, include the day the stock is disposed of but not the day the stock is acquired. Also, don't count days during which the risk of loss was diminished. Specifically, don't count any day during which any of the following conditions are met:

1. The taxpayer had an option to sell, was under a contractual obligation to sell, or entered into (and not closed) a short sale of substantially identical stock or securities.

2. The taxpayer was a grantor (writer) of an option to buy substantially identical stock or securities.

3. The taxpayer's risk of loss was diminished by holding one or more other positions in substantially similar or related property.

In addition, the deduction may not be taken for any dividend on shares of REIT or RIC stock reported in box 5 to the extent the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

Pass-through Entities

Q32. I am a partner in several partnerships, how do I know what qualifies for the deduction?

A32. Each partnership needs to provide partners with their share of QBI items, W-2 wages, UBIA of qualified property, whether a trade or business is an SSTB, and other information necessary for partners to compute their QBID. The same rules apply for S corporations.

If a partnership or S corporation fails to provide this information, the final regulations provide that each unreported item of positive QBI, W-2 wages, or UBIA of qualified property attributable to the entity's trades or businesses will be presumed to be zero. This means that a partner or shareholder may be unable to claim a QBID on the entity's income if the entity fails to report the information. It is recommended that taxpayer follow-up with a pass-through entity if it does not provide the necessary information.

Q33. Does QBID reduce the adjusted basis of a shareholder in a S corporation or the adjusted basis of a partner in a partnership?

A33. No. The QBID has no effect on an S corporation shareholder’s adjusted basis in its S corporation stock or a partner’s adjusted basis in its partnership interest.

Q34. If a pass-through entity has one business, is it only required to provide a single dollar amount for the QBI?

A34. The pass-through entity is required to provide the owners QBI information necessary for the owner to compute the deduction. If the entity only has ordinary income from a single trade or business, it may be appropriate to reflect one QBI amount. Some QBI items from a pass-through entity, such as section 1231 gain or loss, may need to be identified separately due to the potential of unique treatment on one or more owners' returns. Items not included in current year taxable income are not included in QBI. Therefore, additional details will also need to be provided for the owners. If for example, in addition to ordinary income the owner is allocated a section 179 deduction, since the 179 deduction may be limited, the detail would be required in order for the owner to properly determine the current year QBI. The instructions for pass-through entity filers include statements that pass-through entities can use when reporting items with respect to the QBID for tax years 2019 and forward.

Also note that the rules to separately state items from each activity for the application of the at-risk rules and passive activity loss limitation rules still apply even when a pass-through entity chooses to aggregate a trade or business for the purposes of section 199A.

Q35. My income is under the threshold amount and I only have income from W-2 wages and a partnership interest. Does my QBI equal the amount of partnership QBI reported on Schedule K-1?

A35. Maybe. As discussed in Q&A 4, QBI is the net amount of qualified items of income, gain, deduction and loss from any qualified trade or business. To determine the total amount of QBI, the taxpayer must consider deductions not reported on Schedule K-1 that are related to the trade or business. This could include unreimbursed partnership expenses, business interest expense, the deductible part of self-employment tax, the self-employment health insurance deduction, and self-employed SEP, SIMPLE, and qualified plan deductions in addition to other adjustments. Amounts received as guaranteed payments and payments received by a partner for services under section 707(a) are not QBI and are not eligible for the deduction.

Q36. What about fiscal-year pass-through entities? I have a partnership whose fiscal year ended on March 31, 2018. Do I get a qualified business income deduction for the income I earned?

A36. The QBID itself is available only to taxpayers whose tax years begin after December 31, 2017.

However, any QBI reported to a taxpayer from a related passthrough entity with a taxable year beginning in 2017 and ending in 2018 is treated as having been incurred in the owner's taxable year in which the passthrough entity's taxable year ends.

For example, a calendar year partner in a partnership with a fiscal year end of March 31, 2018, will be able to include the partnership's QBI for the entire fiscal year in determining the partner's 2018 QBID. The partner may also use the partnership's W-2 wages and UBIA of qualified property in computing the deduction, if applicable. Note that the pass-through entity's 2017 Schedule K-1 does not have the detail relating to the new QBID. The entity should still provide the necessary detail to the owners as an attachment to the Schedule K-1.

Q37. I received a Schedule K-1 allocating a PTP loss. The loss is not currently allowable due to the passive activity rules. Is it used in computing the REIT/PTP component?

A37. No. Since the loss is not included in taxable income, it is not used in computing the QBID in the current year. In a later taxable year, when the loss is allowable, the loss generated will be used in computing the REIT/PTP component.

Q38. I was told that I can rely on the rules in the proposed regulations under sections 1.199A-1 through 1.199A-6 to calculate qualified business income (QBI) for my 2018 tax return. Does this mean I do not have to include adjustments for items such as the deductible portion of self-employment tax, self-employed health insurance deduction, or the self-employed retirement deduction when calculating my QBI in 2018?

A38. Section 199A(c)(1) defines qualified business income as the net amount of qualified items of income, gain, deduction, and loss with respect to any qualified trade or business of the taxpayer. Proposed regulation section 1.199A-1(b)(4) followed this definition, providing that QBI is the net amount of qualified items of income, gain, deduction, and loss with respect to any trade or business as determined under the rules of section 1.199A-3(b). Section 1.199A-1(b)(5) of the final regulations retains this rule, also providing that QBI means the net amount of qualified items of income, gain, deduction, and loss with respect to any trade or business (or aggregated trade or business) as determined under the rules of section 1.199A-3(b).

Section 1.199A-3(b)(2) defines the term "qualified items of income, gain, deduction, and loss" as items of gross income, gain, deduction, and loss to the extent such items are effectively connected with the conduct of a trade or business within the United States (with certain modifications) and included or allowed in determining taxable income for the taxable year. The final regulations add additional clarity in section 1.199A-3(b)(1)(vi), which provides that generally deductions attributable to a trade or business are taken into account for purposes of computing QBI to the extent that the requirements of section 199A and section 1.199A-3 are satisfied. For purposes of section 199A only, deductions such as the deductible portion of the tax on self-employment income under section 164(f), the self-employed health insurance deduction under section 162(l), and the deduction for contributions to qualified retirement plans under section 404 are considered attributable to a trade or business to the extent that the individual's gross income from the trade or business is taken into account in calculating the allowable deduction, on a proportionate basis to the gross income received from the trade or business.

The above the line adjustments for self-employment tax, self-employed health insurance deduction, and the self-employed retirement deduction are examples of deductions attributable to a trade or business for purposes of section 199A. There is no inconsistency between the proposed and final regulations on this issue. QBI must be adjusted for these items in 2018.

Q39. Health insurance premiums paid by an S-Corporation for greater than 2% shareholders reduce qualified business income (QBI) at the entity level by reducing the ordinary income used to compute allocable QBI. If I take the self-employed health insurance deduction for these premiums on my individual tax return, do I have to also include this deduction when calculating my QBI from the S-Corporation?

A39. Generally, the self-employed health insurance deduction under section 162(l) is considered attributable to a trade or business for purposes of section 199A and will be a deduction in determining QBI. This may result in QBI being reduced at both the entity and the shareholder level.

Q40. Are charitable contributions attributable to a trade or business for purposes of determining QBI?

A40. For purposes of section 199A, QBI is not reduced by amounts that constitute charitable contributions under section 170.

Q41. When is a trust eligible to claim QBID? When must a trust report section 199A tax items as allocations to the beneficiary/ies?

A41. QBI items, W-2 wages, UBIA of qualified property, qualified REIT dividends, and qualified PTP income are allocated between the trust and each beneficiary based on the DNI that is retained by the trust, or which is distributed, or required to be distributed, to each beneficiary. If a trust has no DNI for any given tax year, QBI items, W-2 wages, UBIA of qualified property, qualified REIT dividends, and qualified PTP income are allocated entirely to the trust.

Patrons and Cooperatives

Q42. What is the purpose of the regulations in sections 1.199A-7 through 1.199A-12?

A42. The purpose of these regulations is (1) to provide guidance to patrons of cooperatives regarding the application of the QBID (See Q&A 1) including the reduction of the QBID that is required for patrons of Specified Agricultural and Horticultural Cooperatives (patron reduction) and (2) to provide guidance to Specified Agricultural and Horticultural Cooperatives (Specified Cooperatives) and their patrons on the computation and allowance of the deduction for income attributable to domestic production activities of Specified Cooperatives (section 199A(g) deduction). The final rules generally apply to taxable years beginning after January 19, 2021. However, taxpayers may choose to apply the final rules to taxable years beginning on or before January 19, 2021, provided, in each case, the taxpayers follow the rules in their entirety and in a consistent manner. Alternatively, taxpayers may rely on the proposed rules for taxable years beginning on or before January 19, 2021, provided, in each case, taxpayers follow the proposed rules in their entirety and in a consistent manner.

Q43. I am a farmer who is a patron of a Specified Cooperative. Could I be entitled to two deductions under section 199A?

A43. Yes. A farmer can have a qualified trade or business that generates a QBID and could be passed through a section 199A(g) deduction from the Specified Cooperative of which the farmer is a patron. Regardless of whether the section 199A(g) deduction was passed through, the farmer would have to determine whether their QBID is subject to the patron reduction under section 199A(b)(7). The farmer may take any section 199A(g) deduction passed through to the extent of their taxable income determined after their QBID.

Q44. What are Specified Cooperatives?

A44. They are agricultural or horticultural cooperatives to which Part I of subchapter T of the Internal Revenue Code applies that are engaged (i) in the manufacturing, production, growth, or extraction (MPGE) in whole or significant part of any agricultural or horticultural product, or (ii) in the marketing of any agricultural or horticultural product that their patrons have MPGE in whole or significant part. Specified Cooperatives include cooperatives that are considered nonexempt or exempt. Exempt cooperatives are those farmers' cooperatives that are qualified under section 521. An organization will not be considered exempt, even though it operates within the provisions of sections 521 and 1381 through 1388, unless it files IRS Form 1028, Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code or has previously received a ruling recognizing its exemption under section 521 of the Internal Revenue Code of 1986 or corresponding provisions of prior law.

Q45. How do cooperatives and their patrons handle the QBID?

A45. Cooperatives are C corporations for federal income tax purposes, and therefore are not eligible for the QBID. However, patrons that are individuals and certain trusts and estates may qualify for the deduction. See also Q&A 2.

Patrons of cooperatives that are individuals, trusts or estates and that have QBI, qualified REIT dividends or qualified PTP income may qualify for the QBID. The rules in sections 1.199A-1 through 1.199A-6 apply to all taxpayers, including patrons, eligible to take the QBID. See preceding Q&As for additional information on computing the QBID. To the extent a patron receives patronage dividends or similar payments from a cooperative, the patron must follow the additional special rules in section 1.199A-7 to calculate its QBID. Patronage dividends or similar payments from cooperatives may be included in the patron's QBI to the extent that (i) these payments are related to the patron's trade or business, (ii) are qualified income at the cooperative's trade or business level, (iii) are not income from a specified service trade or business (SSTB) at the cooperative's trade or business level (unless the patron has taxable income below the threshold amount; see Q&A 5), and (iv) provided the patron receives information from the cooperative regarding whether the payments are qualified items of income. Patrons that receive qualified payments from a Specified Cooperative are required to reduce their QBID as provided in section 199A(b)(7) (patron reduction). See Chapter 12 of Publication 535 for 2018 tax year PDF and Instructions for Form 8995-A for all subsequent years.

Q46. How is the patron reduction computed and what are qualified payments?

A46. Patrons that receive qualified payments must reduce their QBID by the lesser of 9% of the QBI properly allocable to the qualified payments, or 50% of the W-2 wages paid with respect to the QBI allocable to the qualified payments. This reduction is required whether the Specified Cooperative passes through all, some, or none of the Specified Cooperative's section 199A(g) deduction to the patrons in that taxable year.

Section 199A(g)(1)(E) and section 1.199A-8(d)(2)(ii) define qualified payments as any amount of a patronage dividend or per-unit retain allocation, as described in section 1385(a)(1) or (3) received by a patron from a Specified Cooperative that is attributable to the portion of the Specified Cooperative's qualified production activities income (QPAI), for which the cooperative is allowed a section 199A(g) deduction. For this purpose, patronage dividends include any advances on patronage and per-unit retain allocations include per-unit retains paid in money during the taxable year.

Q47. What information are Cooperatives required to determine and provide to patrons for computation of the QBID?

A47. Cooperatives must provide patrons with certain information for the patron to determine its QBID. The cooperative must determine whether its distributions of patronage dividends and similar payments from trades or businesses that are not SSTBs contain qualified items of income, gain, deduction, and loss. The cooperative must also determine the amount of SSTB income, gain, deduction, and loss included in its distributions that is qualified with respect to any SSTBs directly conducted by the cooperative. A Specified Cooperative must also report the amount of distributions that are qualified payments made to the eligible taxpayer. All of this information is reported to the patron on an attachment to or on the Form 1099-PATR, Taxable Distributions Received From Cooperatives, or any successor form, unless otherwise provided by the instructions to the Form.

The patron then determines if any of the distributions may be included in the patron's QBI depending on the patron's taxable income and the statutory phase-in and threshold amounts and whether the patron reduction applies.

Cooperatives should not allocate W-2 wages or unadjusted basis immediately after acquisition (UBIA) of qualified property to their patrons. For a patron’s QBID, a patron considers the W-2 wages and UBIA of qualified property from the patron’s trade or business from which the payments arise.

Q48. What is the section 199A(g) deduction?

A48. Section 199A(g) provides a deduction for Specified Cooperatives and their patrons similar to the deduction under former section 199, which was known as the domestic production activities deduction. Section 199A(g) allows a deduction for income attributable to domestic production activities of Specified Cooperatives. The deduction allowed is equal to 9% of the lesser of (i) QPAI or (ii) the taxable income of the Specified Cooperative for the taxable year. The deduction is further limited to 50% of the W-2 wages of the Specified Cooperative for the taxable year that are properly allocable. Calculating the deduction is further explained in Q&As below.

Q49. How do Specified Cooperatives and their patrons handle the section 199A(g) deduction?

A49. Only a Specified Cooperative may calculate the section 199A(g) deduction. A Specified Cooperative may pass all, some, or none of the section 199A(g) deduction to all patrons, but only eligible taxpayers may claim the section 199A(g) deduction that is passed through. An eligible taxpayer does not include a patron that is a C

corporation, unless that patron is a Specified Cooperative. Alternatively, if a Specified Cooperative does determine the eligibility status of its patrons, it has the discretion to retain the section 199A(g) deduction attributable to any ineligible taxpayer and pass out the remainder to eligible taxpayers. The Specified Cooperative will then reduce its deduction under section 1382 by the amount of the section 199A(g) deduction that was passed through.

If a Specified Cooperative passes any of the section 199A(g) deduction to a patron that is eligible, that patron is generally allowed to deduct the amount so long as the deduction does not exceed the patron's taxable income (after taking into account any QBID allowed to the patron).

Q50. How do nonexempt Specified Cooperatives compute the section 199A(g) deduction?

A50. Section 1.199A-8 sets forth four steps to determine the amount of a nonexempt Specified Cooperative's section 199A(g) deduction:

1. **Patronage/Nonpatronage Split** – Identify and separate the gross receipts and related deductions that are from patronage sources and from nonpatronage sources. Nonexempt Specified Cooperatives may use only patronage gross receipts and related deductions to calculate domestic production gross receipts (DPGR), QPAI, taxable income, and the W-2 wage limitation. A Specified Cooperative is allowed to treat all of its nonpatronage gross receipts as patronage non-DPGR for purposes of applying the 10% de minimis rule in section 1.199A-9(c)(3). The 10% de minimis rule allows a Specified Cooperative to treat all of its gross receipts as patronage DPGR if less than 10 percent of its total gross receipts are non-DPGR.

2. **Identify Patronage DPGR** – Nonexempt Specified Cooperatives only consider gross receipts from patronage sources when identifying DPGR from the disposition of agricultural or horticultural products. DPGR are gross receipts of the taxpayer that are derived from any lease, rental, license, sale, exchange, or other disposition of any agricultural or horticultural product which was MPGE by the taxpayer. Such term shall not include gross receipts which are derived from the disposition of land or services. Section 1.199A-9 contains additional information on DPGR.

3. **Calculating Patronage QPAI** – Nonexempt Specified Cooperatives must determine cost of goods sold (COGS) and other expenses, losses, or deductions that are allocable to patronage DPGR. Section 1.199A-10 contains additional information on making this determination.

4. **Calculating Patronage section 199A(g) Deduction** – A nonexempt Specified Cooperative's section 199A(g) deduction is equal to 9% of the lesser of QPAI or taxable income from patronage sources and is subject to a 50% W-2 wage limitation. A patronage section 199A(g) deduction may only be used to reduce patronage taxable income. Section 1.199A-11 contains additional information on the W-2 wage limitation.

Q51. How do exempt Specified Cooperatives compute the section 199A(g) deduction?

A51. Exempt Specified Cooperatives generally calculate two separate section 199A(g) deductions, one based on gross receipts and related deductions from patronage sources, and one based on gross receipts and related deductions from nonpatronage sources. An Exempt Specified Cooperative with only patronage gross receipts or that applies the de minimis rules explained in A48 to treat all of its gross receipts as patronage DPGR would calculate only one section 199A(g) deduction. Section 1.199A-8(c)(2) requires an exempt Specified Cooperative calculating two section 199A(g) deductions to perform steps two through four twice, first using only its patronage gross receipts and related deductions and second using only its nonpatronage gross receipts and related deductions. An exempt Specified Cooperative cannot combine, merge, or net patronage and nonpatronage items at any step in determining its patronage section 199A(g) deduction and its nonpatronage section 199A(g) deduction. Exempt Specified Cooperatives may only use the patronage section 199A(g) deduction to reduce patronage taxable income.

Q52. How does a Specified Cooperative pass through a section 199A(g) deduction to its patrons?

A52. Specified Cooperatives may pass through all, some, or none of their allowable section 199A(g) deduction to all patrons. However, only patrons who are eligible taxpayers (as defined in section 199A(g)(2)(D)), that is, (i) a patron, that is not a C corporation, or (ii) a patron that is a Specified Cooperative) may claim the deduction. A Specified Cooperative must notify each of its patrons of the amount of the section 199A(g) deduction being passed through to them in a written notice mailed to the patron during the payment period described in section 1382(d) and also include any amount passed through in such written notice on the Form 1099-PATR issued to its patrons. The amount of the section 199A(g) deduction that a Specified Cooperative can pass through to a patron is limited to the portion of the section 199A(g) deduction that is allowed with respect to the QPAI to which the qualified payments made to the patron are attributable. The Specified Cooperative will reduce its deduction under section 1382 by the amount of the section 199A(g) deduction that was passed through.

Eligible taxpayers that receive a written notice from a Specified Cooperative allocating a section 199A(g) deduction may take the deduction to the extent of their taxable income determined after their QBID. Beginning in 2019 tax years, the patron’s section 199A(g) deduction is reported on Form 8995-A, Part IV. A section 199A(g) deduction that can't be used in the year it is received is lost. A Specified Cooperative that receives a section 199A(g) deduction as an eligible taxpayer that relates to its patronage gross income and related deductions can take the deduction only against patronage gross income and related deductions or can pass on the deduction to its patrons. Only a patron that is an exempt Specified Cooperative may take a section 199A(g) deduction passed through from another Specified Cooperative if the deduction relates to the patron Specified Cooperative’s nonpatronage gross income and related deductions.

Q53. Can an exempt Specified Cooperative pass through its nonpatronage section 199A(g)

deduction?

A53. No. Exempt Specified Cooperatives are not allowed to pass through any of the section 199A(g) deduction attributable to nonpatronage activities because no QPAI is attributable to any qualified payments.

Q54. What if a Specified Cooperative is a partner in a partnership?

A54. The regulations provide that the partnership must separately identify and report on the Schedule K-1 to the Form 1065, U.S. Return of Partnership Income, issued to a Specified Cooperative partner the Specified Cooperative's allocable share of gross receipts and related deductions, COGS, and W-2 wages. This allows the Specified Cooperative partner to include the partnership items when applying the four steps in section 1.199A-8 required to calculate its section 199A(g) deduction (as described in Q&A 50). For example, when applying the four steps, a Specified Cooperative determines the amount of gross receipts from the partnership that are patronage and that qualify as DPGR from the disposition of agricultural or horticultural products.

Q55. What is the definition of patronage and nonpatronage?

A55. Section 1.1388-1(f) sets forth a definition of patronage and nonpatronage that is consistent with the current state of the law. Whether an item of income or deduction is patronage or nonpatronage sourced is determined by applying the directly related use test. The directly related use test provides that if the income or deduction is produced by a transaction that actually facilitates the accomplishment of the cooperative's marketing, purchasing, or services activities, the income or deduction is from patronage sources. However, if the transaction producing the income or deduction does not actually facilitate the accomplishment of these activities but merely enhances the overall profitability of the cooperative, being merely incidental to the association's cooperative operation, the income or deduction is from nonpatronage sources.

Rentals

Q56. When is rental real estate treated as a trade or business for purposes of determining the QBID?

A56. Rental real estate is treated as a trade or business for purposes of the QBID under section 199A if it meets any of the following three tests:

1. The rental real estate rises to the level of a section 162 trade or business.

2. The rental real estate is a rental real estate enterprise meeting the requirements of the safe harbor provided in Revenue Procedure 2019-38 (and the direct owner of the property chooses to rely on the safe harbor). See Q&A 57.

3. The rental or licensing of property is to a commonly controlled trade or business operated by an individual or a passthrough entity as described in Treas. Reg. section 1.199A-1(b)(14). This is often referred to as a self-rental.

Q57. When is a rental real estate enterprise eligible to rely upon the safe harbor provided in Revenue Procedure 2019-38 PDF?

A57. Revenue Procedure 2019-38 provides a safe harbor under which a rental real estate enterprise that meets certain requirements will be treated as a trade or business for purposes of section 199A. In order to rely upon the safe harbor, the enterprise must meet all requirements of the Revenue Procedure.

A rental real estate enterprise is defined as an interest in real property held for the production of rents and may consist of an interest in a single property or interests in multiple properties. The interest must be held directly or through a disregarded entity by the individual or relevant passthrough entity (RPE) relying on the safe harbor. Section 199A requires that RPEs make the trade or business determination at the entity level. Thus, if a partner/owner/beneficiary receives a Schedule K-1 which includes rental real estate owned by an RPE, the RPE has already made the determination as to whether that rental real estate was a qualified trade or business under section 199A. Whether that RPE relied upon the safe harbor to make that determination or not, the partners/owners/beneficiaries cannot include that rental real estate in their own rental real estate enterprise for purposes of relying on the safe harbor at their level since they do not own the property directly.
Multiple properties of the same category (residential or commercial) can be treated as a single enterprise if the individual or RPE also includes all other properties of the same category in the enterprise. Residential and commercial property cannot be combined into a single property except for mixed-use property as discussed in Q&A 59. To qualify under the safe harbor, the rental real estate enterprise must satisfy all of the following requirements:

1. Separate books and records are maintained to reflect income and expenses for each rental real estate enterprise. If a rental real estate enterprise contains more than one property, this requirement may be satisfied if income and expense information statements for each property are maintained and then consolidated;

2. For rental real estate enterprises that have been in existence less than four years, 250 or more hours of rental services are performed (as described in Revenue Procedure 2019-38) per year with respect to the rental real estate enterprise. For rental real estate enterprises that have been in existence for at least four years, in any three of the five consecutive taxable years that end with the taxable year, 250 or more hours of rental services are performed (as described in Revenue Procedure 2019-38) per year with respect to the rental real estate enterprise; and

3. The taxpayer maintains contemporaneous records, including time reports, logs, or similar documents, regarding the following: (i) hours of all services performed; (ii) description of all services performed; (iii) dates

on which such services were performed; and (iv) who performed the services. If services with respect to the rental real estate enterprise are performed by employees or independent contractors, the taxpayer may provide a description of the rental services performed by such employee or independent contractor, the amount of time such employee or independent contractor generally spends performing such services for the enterprise, and time, wage, or payment records for such employee or independent contractor. Such records are to be made available for inspection at the request of the IRS.

4. The taxpayer or RPE attaches a statement to a timely filed original return, including extensions, (or an amended return for the 2018 taxable year only) for each taxable year in which the taxpayer or RPE relies on the safe harbor. An individual or RPE with more than one rental real estate enterprise relying on this safe harbor may submit a single statement but the statement must list the required information separately for each rental real estate enterprise. The statement must include the following information:

    - A description (including the address and rental category) of all rental real estate properties that are included in each rental real estate enterprise;

    - A description (including the address and rental category) of rental real estate properties acquired and disposed of during the taxable year; and

    - A representation that the requirements of the revenue procedure have been satisfied.

    - Certain rental real estate arrangements are excluded from the safe harbor and may not be included in a rental real estate enterprise. These include real estate used by the taxpayer as a residence under section 280A; real estate rented under a triple net lease; real estate rented to a trade or business conducted by a taxpayer or an RPE which is commonly controlled under section 1.199A-4(b)(1)(i) and rental real estate where any portion of the property is treated as a specified service trade or business (SSTB).

Q58. How can I meet the records requirement of the safe harbor contained in Revenue Procedure 2019-38 and what happens if I don't meet it?

A58. Reliance upon the safe harbor requires the maintenance of contemporaneous records, including time reports, logs or similar documents, regarding the hours of all services performed, a description of services performed, dates on which such services were performed and who performed the services.

If an employee or independent contractor performed the services with respect to the rental real estate enterprise, the taxpayer may provide a description of the rental services performed, the amount of time the employee or independent contractor generally spent performing the services for the enterprise, and time, wage or payment records for the employee or independent contractor.

The safe harbor is not available to taxpayers that fail to meet the contemporaneous records requirement. However, the rental real estate may still be treated as a trade or business for purposes of the QBID if the rental real estate otherwise rises to the level of a section 162 trade or business or meets the self-rental rule. Whether rental real estate rises to the level of a trade or business under section 162 depends on all facts and circumstances.

The contemporaneous records requirement will not apply to taxable years beginning prior to January 1, 2020. However, taxpayers bear the burden of showing the right to any claimed deductions in all taxable years. INDOPCO, Inc. v. Comm'r, 503 U.S. 79, 84; 112 S.Ct. 1039, 1043) (1992); Interstate Transit Lines v. Comm'r, 319 U.S. 590, 593, 63 S.Ct. 1279, 1281 (1943). See also IRC section 6001; Treas. Reg. section 1.6001-1(a) and (e).

Q59. How does the safe harbor provided for in Revenue Procedure 2019-38 apply to mixed-use properties?

A59. Mixed-use property, as defined in Revenue Procedure 2019-38, is a single building that combines residential and commercial units. An interest in mixed-use property may be treated as a single rental real estate enterprise or may be split into separate residential and commercial properties. If treated as a single rental real estate enterprise, it may not be treated as part of the same enterprise as other residential, commercial, or mixed-use property.

For example, a taxpayer has three mixed-use buildings, and each includes a storefront and an apartment. For purposes of the safe harbor, the buildings can be included in a rental real estate enterprise in any of the following ways:

1. Each mixed-use building is treated as two separate interests in rental real estate, one commercial and one residential. The taxpayer treats these as six separate rental real estate enterprises, three commercial and three residential.

2. Each mixed-use building is treated as two separate interests in rental real estate, one commercial and one residential. The taxpayer treats the three commercial interests as a single rental real estate enterprise and also treats the three residential interests as a separate single rental real estate enterprise. The taxpayer has two rental real estate enterprises, one commercial and one residential.

3. Each mixed-use building is treated as two separate interests in rental real estate, one commercial and one residential. The taxpayer treats the three commercial interests as a single rental real estate enterprise but treats the residential interests as three separate single rental real estate enterprises. The taxpayer has four rental real estate enterprises, one commercial and three residential.

4. Each mixed-use building is treated as two separate interests in rental real estate, one commercial and one residential. The taxpayer treats the three residential interests as a single rental real estate enterprise but treats the commercial interests as three separate single rental real estate enterprises. The taxpayer has four

rental real estate enterprises, three commercial and one residential.

5. Each mixed-use property is treated as a stand-alone enterprise containing both residential and commercial properties. The taxpayer has three rental real estate enterprises, three mixed-use.

6. If other non-mixed-use properties are also owned or subsequently acquired, the similar properties rule under Revenue Procedure 2019-38 still applies. In other words, if the mixed-use properties are split into residential and commercial properties, the requirement to either treat all similar properties as their own enterprises or as a single enterprise will include these properties, as well. For example, if the taxpayer described in example 2 above acquires an additional commercial property, that new property must also be added to the existing commercial real estate enterprise. The taxpayer may not treat the newly acquired commercial property as its own enterprise.

Once an enterprise determination is made, the rules of the safe harbor are applied to each enterprise in the manner outlined in Revenue Procedure 2019-38.

Q60. If rental real estate is treated as a trade or business for purposes of the QBID (discussed in Q&A 56), do I report the rental real estate on Schedule C of my Form 1040, and is it subject to self-employment tax?

A60. In general, the answer to both questions is no. How rental real estate is reported on Form 1040 has **not** changed due to the QBID. Rental real estate is usually reported on Schedule E, Part I, and is not subject to self-employment tax.

Even if rental real estate rises to the level of a section 162 trade or business, it is generally reported on Schedule E, Part I, because rental real estate is generally excluded from self-employment taxable income under section 1402(a)(1).

However, some rental real estate is subject to self-employment tax (e.g., boarding house, hotel or motel, and bed and breakfast, where substantial services are rendered for the convenience of the occupants). Rental real estate subject to self-employment tax is reported on Schedule C.

Q61. Can rental real estate that is a trade or business for purposes of section 199A be aggregated using the rules in Treas. Reg. section 1.199A-4?

A61. Rental real estate that is a trade or business can be aggregated with other trades or businesses, including other rental real estate trades or businesses, if the rules of section 1.199A-4 of the Regulations are met. This includes rental real estate that rises to the level of a section 162 trade or business, rental real estate enterprises that meet the safe harbor requirements of Revenue Procedure 2019-38 and self-rentals as described in section 1.199A-1(b)(14).

Q62. Do I have to materially participate in rental real estate for it to qualify for the QBID?

A62. No. Section 199A does not have a material participation requirement. Eligible taxpayers with income from a qualified trade or business may be entitled to the QBID regardless of their level of involvement in the trade or business.

Q63. If my rental real estate generates a net loss that is limited by section 469, passive activity loss limitations, what do I do with those losses for QBI purposes?

A63. Any losses from a trade or business that are suspended and not available for use in computing taxable income in the year incurred are not included in QBI for that year. The suspended loss will be treated as a qualified business net loss carryforward from a separate trade or business in the year the loss is allowed for purposes of determining taxable income.

For example, Taxpayer A owns rental property that rises to the level of a section 162 trade or business. The rental property generates a $20,000 net loss in the current tax year. The loss would be includable in QBI in that year if it were not fully limited by section 469, passive activity loss limitations. The $20,000 loss is not included in the calculation of taxable income in the year generated, so it is not included in A's QBI for that year. However, if the loss is allowed for use in computing A's subsequent year's taxable income, the loss will be treated as a qualified business net loss carryforward from a separate trade or business and will be used to calculate A's subsequent year's QBID.

See Q&A 27 for more information on suspended losses.

Q64. Do I need to file information returns, such as Form 1099-MISC, if I take a QBID from income generated by my rental property?

A64. As provided in section 6041, persons engaged in a trade or business and making payment in the course of such trade or business to another person of $600 or more in any taxable year may be required to file an information return reflecting the details of such transactions. Application of section 199A and its rules do not change any existing requirement for information reporting as provided under section 6041.

Q65. Triple net leases do not qualify for the safe harbor of Revenue Procedure 2019-38. Does this mean that income, gains, deductions and losses from a triple net lease can never be included in QBI?

A65. No. As explained in Q&A 56, rental real estate is treated as a trade or business for purposes of the QBID if it rises to the level of a section 162 trade or business, is a self-rental as described in Treas. Reg. section 1.199A-1(b)(14) or is a rental real estate enterprise relying on the safe harbor described in Revenue Procedure 2019-38. Revenue Procedure 2019-38 only excludes triple net leases from being included in a rental real estate enterprise (and are therefore not eligible for the safe harbor).

A single triple net lease does not generally rise to the level of a section 162 trade or business. See Notice 2006-77. However, if rental real estate involving a triple net lease is otherwise treated as a trade or business under section 199A, then the income, gains, losses and deductions would be included in QBI.

Q66. If real estate is rented to a SSTB does that mean the rental real estate is also considered an SSTB?

A66. It depends. If real estate is rented to a commonly owned SSTB, meaning 50% or more common ownership including direct or indirect ownership by related parties within the meaning of section 267(b) or 707(b), the portion of real estate rented to the commonly owned SSTB is a separate SSTB with respect to the related parties, only. Any portions not rented to the commonly owned SSTB, as well as any interests held by an unrelated party, would not be a SSTB.

For example, Taxpayer A owns 100% of a commercial office building and leases the entire building to an S corporation, of which Taxpayer A is a 50% shareholder. The lease of the building is treated as a trade or business for purposes of section 199A under the self-rental rule. S corporation operates a medical practice which is an SSTB. The lease of the building to the S corporation is treated as a separate SSTB of Taxpayer A.

Q67. If real estate is rented to a C corporation, are the income, gain, deduction and losses from the rental QBI?

A67. It depends. Rentals to a C corporation can generate QBI if the rental real estate is conducted by an individual or a relevant passthrough entity (RPE) and is a section 162 trade or business or a rental real estate enterprise under Revenue Procedure 2019-38. The self-rental rule in Treas. Reg. section 1.199A-1(b)(14) does not apply to rentals to C corporations.

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