

QUALIFIED BUSINESS INCOME DEDUCTION: SPECIFIED SERVICE TRADES OR BUSINESSES

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LEARNING OBJECTIVES

After completing this session, participants should be able to do the following:

- ✓ Determine whether a trade or business is a specified service trade or business (SSTB)
- ✓ Understand how QBI items may be limited for an SSTB
- ✓ Calculate the QBI deduction for an SSTB owner with taxable income in the phase-in range
- ✓ Apply the de minimis rule to determine if a business is an SSTB
- ✓ Apply the antiabuse rule to determine what part of a business is an SSTB
- ✓ Know when a former employee is presumed to continue to be characterized as an employee
- ✓ Explain how to rebut the presumption that a former employee continues to be characterized as an employee

INTRODUCTION

The Tax Cuts and Jobs Act of 2017 (TCJA), Pub. L. No. 115-97, enacted I.R.C. § 199A, which applies to sole proprietorships, partnerships, S corporations, trusts, and estates. It also applies to dividends from real estate investment trusts (REITs), income from publicly traded partnerships (PTPs), and certain payments from cooperatives to their patrons. Section 199A allows a deduction for up to 20% of qualified business income (QBI). The QBI deduction applies to tax years after 2017 and before 2026.

The QBI deduction is limited to the lesser of 20% of QBI or 20% of the taxpayer's taxable income before the QBI deduction. It may be further limited by the W-2 wage and capital limit and the specified service trade or business (SSTB) limit. This chapter explains when a trade or business is an SSTB, and how the QBI deduction may be limited at certain income levels for an SSTB.

CROSS-REFERENCE

QBI Definitions

See the "Agricultural and Natural Resource Issues" chapter in the *2019 National Income Tax Workbook* for a complete discussion of the application of the section 199A deduction to cooperatives and their patrons. See the "Qualified Business Income Deduction: Non-Specified Service Trades or Businesses" chapter for a detailed explanation of the definition of QBI and the other limitations that may reduce the amount of the deduction.

DEFINITION OF A SPECIFIED SERVICE TRADE OR BUSINESS

Final Treasury regulations define when a trade or business is a specified service trade or business.

Treas. Reg. § 1.199A-1(b)(14) defines a trade or business with reference to I.R.C. § 162. Thus, a trade or business means a section 162 trade or business other than the trade or business of performing services as an employee. I.R.C. § 199A(d)(2) defines an SSTB as any trade or business involving the performance of services in the following fields:

- Health
- Law
- Accounting
- Actuarial science
- Performing arts
- Consulting
- Athletics
- Financial services
- Brokerage services
- 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

I.R.C. § 199A(d)(2)(B) adds investing and investment management, trading, and dealing in securities, partnership interests, or commodities

to the list of SSTBs. However, section 199A specifically excludes engineering and architecture from the definition of SSTBs.

Treas. Reg. § 1.199A-5(b) repeats this list of SSTBs, provides general guidance on the definition of an SSTB, and provides definitional guidance on the meaning of a trade or business involving the performance of services in each of the fields listed in section 199A(d)(2). The final regulations clarify that the rules for determining whether a business is an SSTB apply solely for purposes of section 199A and the section 199A regulations and are not applicable to any other law or regulation [unless that law or regulation specifically references the section 199A(d) rules or regulations] [Treas. Reg. § 1.199A-5(b)(2)]. The preamble to the final section 199A regulations also clarifies that a franchisor will not be an SSTB based solely on the selling of a franchise in a listed field of service.

PRACTITIONER NOTE

Threshold

If the taxpayer's taxable income is not above the threshold, the SSTB limit does not apply.

LAW CHANGE

Hedging Rule

The final regulations include a hedging rule that is applicable to any trade or business conducted by an individual or a relevant pass-through entity (RPE). The hedging rule provides that income, deduction, gain, or loss from a hedging transaction entered into in the normal course of a trade or business is included as income, deduction, gain, or loss from that trade or business. A *hedging transaction* for these purposes is defined in Treas. Reg. § 1.1221-2(b) and the timing rules of Treas. Reg. § 1.446-4 apply [Treas. Reg. § 1.199A-5(b)(2)].

I.R.C. § 448 Guidance

The preamble to the final section 199A regulations notes that the Tax Cuts and Jobs Act Conference Report references the definitions of SSTBs in Temp. Treas. Reg. § 1.448-1T(e)(4), but nothing in the language of the report limits the definitions of SSTBs for purposes of section 199A to those provided in section 1.448-1T(e)(4). The Treasury Department and the IRS believe it is appropriate to look to the SSTB definitions provided in the regulations under I.R.C. § 448 because guidance under I.R.C. § 1202 is limited. However, as stated in the preamble to the proposed regulations, the existing guidance under section 448 is not a substitute for guidance under section 199A because the intent of section 448 and the intent of section 199A are different.

Section 448 prohibits certain taxpayers from calculating taxable income under the cash receipts and disbursements method of accounting. Qualified personal services corporations are excluded from this prohibition. I.R.C. § 448(d)(2) defines the term *qualified personal service corporation* to include certain employee-owned corporations, substantially all the activities of which involve the performance of services in the fields of health, law, engineering architecture, accounting, actuarial sciences, performing arts, or consulting.

By contrast, section 199A provides a deduction based on QBI from a qualified trade or business. For taxpayers with taxable income above the phase-in range (discussed later), an SSTB is not a qualified trade or business. Section 199A,

through reference to I.R.C. § 1202, defines an SSTB as a trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners. The trade or business of investing and investment management, trading, or dealing in securities, partnership interests, or commodities is also defined as an SSTB for purposes of section 199A.

Further, section 199A looks to the trade or business of performing services involving one or more of the listed fields, and not the performance of services themselves in determining whether a trade or business is an SSTB. The designation of a trade or business as an SSTB applies to owners of the trade or business, regardless of whether the owner is passive or participated in any specified service activity. Accordingly, this chapter includes the definitions of the fields of services listed in Temp. Treas. Reg. § 1.448-1T(e)(4), but I.R.C. § 199A(d)(1) and (2) and Treas. Reg. § 1.199A-5 expand those definitions beyond those provided in the section 448 regulations.

Health

Under 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 health care professionals performing services in their capacity as such.

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 service recipient.

The performance of services in the field of health also 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, manufacture and/or sales of pharmaceuticals or medical devices.

OBSERVATION

Section 448 Definition of Health

The definition of health in Temp. Treas. Reg. § 1.448-1T(e)(4)(i)(A) is substantially the same as the definition under section 199A. Under the section 448 regulations, the performance of services in the field of health means the provision of medical services by physicians, nurses, dentists, and other similar health care professionals.

Health Care Facilities

The preamble to the final section 199A regulations notes that skilled nursing facilities and assisted living facilities provide services that are unrelated to health care, including housing, meals, laundry facilities, security, and socialization activities. The Treasury Department and the IRS agree that skilled nursing, assisted living, and similar facilities provide multifaceted services to their residents. Whether such a facility and its owners are in the trade or business of performing services in the field of health requires a facts-and-circumstances inquiry. The final regulations provide an additional example of one such facility that offers services that the Treasury Department and the IRS do not believe rise to the level of the performance of services in the field of health.

Example 2.1 Residential Care Facility

Shari Patel is the owner and operator of Green Acres, a residential facility that provides a variety of services to senior citizens who reside on the premises. For residents, Green Acres offers standard domestic services including housing management and maintenance, meals, laundry, entertainment, and other similar services.

In addition, Green Acres contracts with local professional health care organizations to offer residents a range of medical and health services provided at the facility, including skilled nursing

care, physical and occupational therapy, speech-language pathology services, medical social services, medications, medical supplies and equipment used in the facility, ambulance transportation to the nearest supplier of needed services, and dietary counseling.

Green Acres receives all its income from residents who pay for the costs associated with residing at the facility. Even though the professional health care services are provided at the facility, the health care providers bill the Green Acres residents directly for health and medical services. Green Acres does not perform services in the field of health [Treas. Reg. § 1.199A-5(b)(3), Example 2].

A commenter on the proposed section 199A regulations noted that when two separate activities would generally be viewed separately, particularly in the context of health care facilities such as emergency centers, urgent care centers, and surgical centers that provide improved real estate and equipment but do not directly provide treatment or diagnostic care to service recipients, I.R.C. § 469 provides a precedent for distinguishing between the provision of direct treatment and diagnostic care versus the business of providing services or facilities ancillary to direct care, even if the physicians own an interest in the entity owning the facilities. The commenter suggested that the final regulations provide examples or other clarification regarding when these and similar facilities will be treated as performing services in the field of health, particularly if one of the owners of a facility also performs medical services in the facility. The final regulations provide an additional example of an outpatient surgical center to demonstrate a fact pattern that the Treasury Department and the IRS do not believe is a trade or business providing services in the field of health.

Example 2.2 Surgical Centers

Meadow Lake Properties operates specialty surgical centers that provide outpatient medical procedures that do not require the patient to remain overnight for recovery or observation following the procedure. Meadow Lake is a private organization that owns several facilities throughout the country. For each facility, Meadow Lake ensures compliance with state and federal laws

for medical facilities, manages the facility's operations, and performs all administrative functions.

Meadow Lake does not employ physicians, nurses, and medical assistants, but enters into agreements with other professional medical organizations or directly with the medical professionals to perform the procedures and provide all medical care. Meadow Lake bills patients for the facility costs relating to their procedure, and the health care professional or their affiliated organization bill the patients for the actual costs of the procedure conducted by the physician and medical support team. Meadow Lake does not perform services in the field of health [Treas. Reg. § 1.199A-5(b)(3), Example 3].

Pharmacists

The preamble to the final section 199A regulations states that the Treasury Department and the IRS agree that the sale of pharmaceuticals and medical devices by a retail pharmacy is not by itself a trade or business of performing services in the field of health. As the commenters to the proposed section 199A regulations noted, however, some services provided by a retail pharmacy through a pharmacist are the performance of services in the field of health. The final regulations provide an additional example of a pharmacist performing services in the field of health.

Example 2.3 Pharmacist Services

Brett Benson is a board-certified pharmacist who contracts as an independent contractor with Rural Health Care, a small medical facility in a rural area. Rural Health Care employs one full-time pharmacist, but contracts with Brett when the medical facility's needs exceed the capacity of its full-time staff.

When engaged by the medical facility, Brett is responsible for receiving and reviewing orders from physicians providing medical care at the facility, making recommendations on dosing and alternatives to the ordering physician, performing inoculations, checking for drug interactions, and filling pharmaceutical orders for patients receiving care at the medical facility. Brett is engaged in the performance of services in the field of health [Treas. Reg. § 1.199A-5(b)(3), Example 1].

Another commenter to the proposed section 199A regulations argued that gene therapy and similar injectable products such as stem cell therapy and RNA-based therapies manufactured or produced from the patient's body itself should be treated in the same manner as pharmaceuticals. The commenter argued that their manufacture and production should not be treated as an SSTB, regardless of whether they take place in a hospital or in a separate production facility. The Treasury Department and the IRS declined to adopt this recommendation and the preamble to the final section 199A regulations states that whether such a business is an SSTB is a question of facts and circumstances.

Proximity to Patients

The preamble to the final section 199A regulations states that defining services in the field of health by proximity to patients could lead to arbitrary results. For example, a radiologist who acts as an expert consultant to a physician engages in the same exercise of medical skills and judgment as a physician who sees patients. The Treasury Department and the IRS agree that proximity to patients is not a necessary component of providing services in the field of health. Accordingly, the final regulations remove the requirement that medical services be provided directly to the patient.

A commenter on the proposed section 199A regulations suggested that technicians who operate medical equipment or test samples but are not required to exercise medical judgment should not be considered as performing services in the field of health. The final regulations do not adopt the suggestion that technicians who operate medical equipment or test samples are not considered to be performing services in the field of health. However, the final regulations include an additional example related to laboratory services.

Example 2.4 Laboratory Services

Zoya Development is the developer and the only provider of a patented test used to detect a certain medical condition. Zoya accepts test orders only from health care professionals (its clients), does not have contact with patients, and Zoya's employees do not diagnose, treat, or manage any aspect of patient care. Alexandra Adams, who manages Zoya's testing operations, is the only

employee with an advanced medical degree. All other employees are technical support staff and not health care professionals.

Zoya's workers are highly educated, but the skills the workers bring to the job are not often useful for Zoya's testing methods. To perform the duties required by the job, employees receive more than a year of specialized training for working with Zoya's test. That training is of no use to other employers.

Upon completion of an ordered test, Zoya analyzes the results and provides its clients a report summarizing the findings. Zoya does not discuss the report's results, or the patient's diagnosis or treatment, with any health care provider or the patient. The health care provider does not inform Zoya about the health care provider's diagnosis or treatment. Zoya is not providing services in the field of health. Also, the principal asset of Zoya's trade or business is not the reputation or skill of one or more of its employees [Treas. Reg. § 1.199A-5(b)(3), Example 4].

Law

Under Treas. Reg. § 1.199A-5(b)(2)(iii), the performance of services in the field of law means the performance of legal 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.

Accounting

Treas. Reg. § 1.199A-5(b)(2)(iv) defines the performance of services in the field of accounting as the provision of services by individuals such as

- accountants,
- enrolled agents,
- return preparers,
- financial auditors, and
- similar professionals performing services in their capacity as such.

The preamble to the proposed section 199A regulations explained that provision of services in the field of accounting is not limited to services requiring state licensure as a CPA, and the purpose of the definition is to capture the common understanding of accounting, which includes tax return and bookkeeping services, even though the provision of such services may not require the same education, training, or mastery of accounting principles as a CPA. The field of accounting does not include payment processing and billing analysis.

PRACTITIONER NOTE

Real Estate Settlement Agent

The preamble to the final section 199A regulations states that whether a real estate settlement agent is engaged in the performance of services in the field of accounting depends on the facts and circumstances including the specific services offered and performed by the trade or business.

Actuarial Science

Treas. Reg. § 1.199A-5(b)(2)(v) states that 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.

As stated in the preamble to the proposed section 199A regulations, the field of actuarial science does not include the provision of services by analysts, economists, mathematicians, and

statisticians not engaged in analyzing or assessing the financial cost of risk or uncertainty of events. The preamble to the final section 199A regulations further states that the mere employment of an actuary does not itself cause a trade or business to be treated as performing services in the field of actuarial science. Whether a trade or business is providing actuarial services is a question of fact and circumstance.

Performing Arts

Pursuant to 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.

Temp. Treas. Reg. § 1.448-1T(e)(4)(iii) defines the performance of services in the field of the performing arts as the provision of services by actors, actresses, singers, musicians, entertainers, and similar artists in their capacity as such. Under the section 448 regulations, the performance of services in the field of the performing arts does not include the provision of services by persons who themselves are not performing artists (e.g., persons who may manage or promote such artists, and other persons in a trade or business that relates to 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 the performances of such artists to members of the public (e.g., employees of a radio station that broadcasts the performances of musicians and singers). Finally, the performance of services in the field of the performing arts does not include the provision of services by athletes.

The preamble to the final section 199A regulations explains that the Treasury Department and the IRS decline to limit the definition of the performance of services in the field of performing arts to the definition in Temp. Treas. Reg. § 1.448-1T(e)(4)(iii). To the extent that a writer is paid for written material, such as a song or screenplay, that is integral to the creation of the performing arts, the writer is performing services in the field of performing arts.

Example 2.5 Singer Royalties

Ari Abraham, a singer and songwriter, writes and records a song. Ari is paid a mechanical royalty when the song is licensed or streamed. Ari is also paid a performance royalty when the recorded song is played publicly. Ari is engaged in the performance of services in the field of performing arts [Treas. Reg. § 1.199A-5(b)(3), Example 5].

Example 2.6 Movie Profits

Brenda Bates is a member in Movie, LLC, which is a limited liability company taxed as a partnership. Movie, LLC is a film production company that plans and coordinates film production. Movie, LLC shares in the profits of the films that it produces. Therefore, Movie, LLC is engaged in the performance of services in the field of performing arts.

Brenda is a passive owner in Movie, LLC and does not provide any services with respect to Movie, LLC. However, because Movie, LLC is engaged in the field of performing arts, Brenda is engaged in the field of performing arts [Treas. Reg. § 1.199A-5(b)(3), Example 6].

Consulting

Treas. Reg. § 1.199A-5(b)(2)(vii) defines the performance of services in the field of consulting as the provision of professional advice and counsel to clients to assist the client in achieving goals and solving problems. Consulting includes (1) providing advice and counsel regarding advocacy with the intention of influencing decisions made by a government or governmental agency and (2) 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.

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. 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, how 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. Services within the fields of architecture and engineering are not treated as consulting services.

Example 2.7 Ancillary Consulting Services

Microcomputers is a company that sells computers and related electronic products. The company employees provide customers with consulting services relating to the setup, operation, and repair of the computers. Those consulting services are ancillary to the sale of computers and are not separately purchased or billed. Microcomputers is not in the field of consulting.

Example 2.8 Personnel Consulting

Destinee Personnel is in the business of providing services that assist unrelated entities in making their personnel structures more efficient. Destinee studies each client's organization and structure and compares it to peers in its industry. Destinee then makes recommendations and provides advice to its client regarding possible changes in the client's personnel structure, including the use of temporary workers.

Destinee does not provide any temporary workers to its clients, and its compensation and fees are not affected by whether Destinee's clients used temporary workers. Destinee Personnel is engaged in the performance of services in the field of consulting [Treas. Reg. § 1.199A-5(b)(3), Example 8].

Example 2.9 Temporary Staffing Firm

Eva Gunderson is an individual who owns and operates a temporary worker staffing firm primarily focused on the software consulting industry. Business clients hire Eva to provide temporary workers that have the necessary technical skills and experience with a variety of business software and can provide consulting and advice regarding the proper selection and operation of software most appropriate for the business they are advising.

Eva does not have a technical software engineering background and does not provide software consulting advice herself. Eva reviews resumes and refers candidates to the client when the client indicates a need for temporary workers. Eva does not evaluate her clients' needs about whether the client needs workers and does not evaluate the clients' consulting contracts to determine the type of expertise needed. Rather, the client provides Eva with a job description indicating the required skills for the upcoming consulting project.

Eva is paid a fixed fee for each temporary worker hired by the client and receives a bonus if that worker is hired permanently within a year of referral. Eva's fee is not contingent on the profits of her clients. Eva is not engaged in the performance of services in the field of consulting [Treas. Reg. § 1.199A-5(b)(3), Example 9].

Example 2.10 Licensing Software

Felipe Gonzalez is in the business of licensing software to customers. Felipe discusses and evaluates the customer's software needs with the customer. Felipe advises the customer on the software products he licenses. Felipe is paid a flat price for the software license. After the customer licenses the software, Felipe helps to implement the software. Felipe is engaged in the trade or business of licensing software and not engaged in the field of consulting [Treas. Reg. § 1.199A-5(b)(3), Example 10].

A commenter to the section 199A proposed regulations suggested that final regulations clarify whether services provided by engineers and architects could be an SSTB if their services meet the definition of consulting services. The Treasury Department and the IRS adopted this comment. Treas. Reg. § 1.199A-5(b)(2)(vii) provides that services within the fields of architecture and engineering are not treated as consulting services for purposes of section 199A.

Treas. Reg. § 1.199A-5(b)(2)(vii) excludes the performance of services other than providing advice and counsel from the field of consulting. The preamble to the final section 199A regulations notes that this change addresses advice and counsel that is provided in the context of the provision of goods or services (that are not otherwise SSTBs). However, whether the consulting services are provided in conjunction with goods and services is a question of facts and circumstances. Consulting services that are separately billed are generally not considered to be provided in the context of the provision of goods or services.

Temp. Treas. Reg. § 1.448-1T(e)(4)(iv)(A) defines the performance of services in the field of consulting as the provision of advice and counsel. 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 brokerage services or economically similar services. The determination of whether a person's services are sales or brokerage services, or economically similar services, is 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 (e.g., whether the compensation for the services is contingent upon the consummation of the transaction that the services were intended to effect).

Example 2.11 Economic Analyses

Anna Kim is in the business of providing economic analyses and forecasts of business prospects for her clients. Based on these analyses and forecasts, Anna advises her clients on their business activities. For example, Anna may analyze the economic conditions and outlook for a certain industry that a client is considering entering. Anna then makes recommendations and advises the client on the prospects of entering the industry, as well as on other matters regarding the client's activities in the industry.

Anna provides similar services to other clients, involving, for example, economic analyses and evaluations of business prospects in different areas of the United States or in other countries, or economic analyses of overall economic trends and the provision of advice based on these analyses and evaluations. Anna is engaged in the performance of services in the field of consulting [Temp. Treas. Reg. § 1.448-1T(e)(4)(iv)(B), Example 1].

Example 2.12 Data Processing—Consulting

Erin Stephenson is in the business of providing services to determine a client's electronic data processing needs. Erin will study and examine the client's business, focusing on the types of data and information relevant to the client and the needs of the client's employees for access to this information. Erin then makes recommendations regarding the design and implementation of data processing systems intended to meet the needs of the client.

Erin does not provide the client with additional computer programming services distinct from the recommendations that she makes about the design and implementation of the client's data processing systems. Erin is engaged in the performance of services in the field of consulting [Temp. Treas. Reg. § 1.448-1T(e)(4)(iv)(B), Example 2].

Example 2.13 Business Management

Floyd Miller is in the business of providing services that determine a client's management and business structure needs. Floyd will study the client's organization, including, for example, the departments assigned to perform specific functions, lines of authority in the managerial hierarchy, personnel hiring, job responsibility, and personnel evaluations and compensation. Based on the study, Floyd advises the client on changes in the client's management and business structure, including, for example, the restructuring of the client's departmental systems or its lines of managerial authority. Floyd is engaged in the performance of services in the field of consulting [Temp. Treas. Reg. § 1.448-1T(e)(4)(iv)(B), Example 3].

Example 2.14 Financial Planning

Rodney McConnell is in the business of providing financial planning services. Rodney will study a client's financial situation, including, for example, the client's present income, savings, investments, and anticipated future economic and financial needs. Based on this study, Rodney assists the client in making decisions and plans regarding the client's financial activities. Such financial planning includes the design of a personal budget to assist the client in monitoring the client's financial situation, the adoption of investment strategies tailored to the client's needs, and other similar services. Rodney is engaged in the performance of services in the field of consulting [Temp. Treas. Reg. § 1.448-1T(e)(4)(iv)(B), Example 4]. Note that under section 199A, Rodney may also be engaged in the performance of services in the field of financial services [Treas. Reg. § 1.199A-5(b)(3), Example 11].

Example 2.15 Securities and Commodities Transactions

Sarah Fitzsimmons is in the business of executing transactions for customers involving various types of securities or commodities generally traded through organized exchanges or other similar networks. Sarah provides her clients with economic analyses and forecasts of conditions in various industries and businesses. Based on these

analyses, Sarah makes recommendations regarding transactions in securities and commodities.

Clients place orders with Sarah to trade securities or commodities based on Sarah's recommendations. Sarah's compensation for her services is typically based on the trade orders. Sarah is not considered to be engaged in the performance of services in the field of consulting. Sarah is engaged in brokerage services. Relevant to this determination is the fact that Sarah's compensation is contingent on the consummation of the transaction the services were intended to effect (i.e., the execution of trade orders for her clients) [Temp. Treas. Reg. § 1.448-1T(e)(4)(iv)(B), Example 5]. Note that under section 199A, Sarah may also be engaged in the performance of services in the field of trading.

**Example 2.16 Data Processing—
Not Consulting**

Jim Mitchell is in the business of studying a client's needs regarding its data processing facilities and making recommendations to the client regarding the design and implementation of data processing systems. The client will then order computers and other data processing equipment through Jim based on Jim's recommendations. Jim's compensation for his services is typically based on the equipment orders made by the clients.

Jim is not engaged in the performance of services in the field of consulting. He is engaged in the performance of sales services. Relevant to this determination is the fact that Jim's compensation for his services is contingent on the consummation of the transaction the services were intended to effect (i.e., the execution of equipment orders for his clients) [Temp. Treas. Reg. § 1.448-1T(e)(4)(iv)(B), Example 6].

**Example 2.17 Personnel—
Not Consulting**

Pierre Dubois is in the business of assisting businesses to meet their personnel requirements. He refers job applicants to employers with hiring needs in a certain area. Potential employers sometimes tell Pierre about their need for job applicants, or, alternatively, Pierre may become aware of the client's personnel requirements after

Pierre studies and examines the client's management and business structure.

Pierre's compensation for his services is typically based on the job applicants, referred by Pierre to the clients, who accept employment positions with the clients. Pierre is not engaged in the performance of services in the field of consulting. Relevant to this determination is the fact that Pierre's compensation for his services is contingent on the consummation of the transaction the services were intended to effect (i.e., the hiring of a job applicant by the client) [Temp. Treas. Reg. § 1.448-1T(e)(4)(iv)(B), Example 7].

Example 2.18 Personnel Recruiter—Consulting

The facts are the same as in Example 2.17, except that Pierre's clients are individuals who use Pierre's services to obtain employment positions. Pierre is typically compensated by his clients who obtain employment as a result of his services. For the reasons set forth in Example 2.17, Pierre is not engaged in the performance of services in the field of consulting [Temp. Treas. Reg. § 1.448-1T(e)(4)(iv)(B), Example 8].

Example 2.19 Advertising

Susan Lee is in the business of assisting clients to place advertisements for their goods and services. Susan analyzes the conditions and trends in the client's industry, and then makes recommendations to the client regarding the types of advertisements that the client should place and the various types of advertising media (e.g., radio, television, magazines, etc.) that the client should use. The client will then purchase, through Susan, advertisements in various media based on Susan's recommendations.

Susan's compensation for her services is typically based on the orders for advertisements that the client makes. Susan is not engaged in the performance of services in the field of consulting. Relevant to this determination is the fact that Susan's compensation for her services is contingent on the consummation of the transaction the services were intended to effect (i.e., the placing of advertisements by clients) [Temp. Treas. Reg. § 1.448-1T(e)(4)(iv)(B), Example 9].

Example 2.20 Insurance Products

David Goldstein is in the business of selling insurance (including life and casualty insurance), annuities, and other similar insurance products to various individual and business clients. David will study the client's financial situation, including, for example, the client's present income, savings and investments, business and personal insurance risks, and anticipated future economic and financial needs. Based on this study, David makes recommendations to the client regarding the desirability of various insurance products.

The client will then purchase these various insurance products through David. David's compensation for his services is typically based on the purchases made by the clients. David is not engaged in the performance of services in the field of consulting. Relevant to this determination is the fact that David's compensation for his services is contingent on the consummation of the transaction the services were intended to effect (i.e., the purchase of insurance products by his clients) [Temp. Treas. Reg. § 1.448-1T(e)(4)(iv)(B), Example 10]. Note that under section 199A, David may be engaged in the performance of services in the field of financial services.

Athletics

Treas. Reg. § 1.199A-5(b)(2)(viii) defines the performance of services in the field of athletics as the performance of services by individuals who participate in athletic competition, such as athletes, coaches, and team managers in sports such as

- baseball,
- basketball,
- football,
- soccer,
- hockey,
- martial arts,
- boxing,
- bowling,
- tennis,
- golf,
- skiing,
- snowboarding,

- track and field,
- billiards, and
- racing.

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.

The preamble to the final section 199A regulations states that while sports club and team owners are not performing athletic services directly, that is not a requirement of section 199A. Section 199A looks to whether there is income attributable to a trade or business involving the performance of services in a specified activity, not who performed the services.

A professional sports club may operate more than one trade or business. For example, a team may operate its concession services as a separate trade or business. The Treasury Department and the IRS agree that such concession services generally would not be a trade or business of performing services in the field of athletics. However, a professional sports club's operation of an athletic team is a trade or business of performing services in the field of athletics. Income from that trade or business, including income from ticket sales and broadcast rights, is income from a trade or business of performing services in the field of athletics.

Example 2.21 Professional Sports Team

Corey Chalmers is a partner in K&L Partnership, which solely owns and operates a professional sports team. K&L Partnership employs athletes and sells tickets and broadcast rights for games in which the sports team competes. K&L sells the broadcast rights to Broadcast, LLC, a separate trade or business. Broadcast, LLC solely broadcasts the games. K&L is engaged in the performance of services in the field of athletics. The tickets sales and the sale of the broadcast rights are both the performance of services in the field of athletics.

Corey is a passive owner in K&L Partnership, and Corey does not provide any services with respect to K&L Partnership or the sports team. However, because K&L is engaged in an SSTB in the field of athletics, Corey is engaged in the field of athletics..

Broadcast, LLC is not engaged in the performance of services in the field of athletics [Treas. Reg. § 1.199A-5(b)(3), Example 7].

Financial Services

Pursuant to 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 bankruptcy 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 advisers, investment bankers, wealth planners, retirement advisers, and other similar professionals performing services in their capacity as such. Solely for purposes of section 199A, the performance of services in the field of financial services does not include taking deposits or making loans, but it does include arranging lending transactions between a lender and borrower.

The preamble to the final section 199A regulations clarifies that the Treasury Department and the IRS believe that banking must be excluded from the definition of financial services for purposes of section 199A. Also, insurance cannot be considered a financial service for purposes of section 199A.

However, the Treasury Department and the IRS declined to categorically exclude services provided by insurance agents from the definition

of financial services because financial services include managing wealth, advising clients with respect to finances, and the provision of advisory and other similar services that can be provided by insurance agents. The preamble notes that the provision of these services, to the extent that they are ancillary to the commission-based sale of an insurance policy, will generally not be considered the provision of financial services for purposes of section 199A.

Example 2.22 Franchising

Hector Sanchez is in the business of franchising a brand of personal financial planning offices, which generally provide personal wealth management, retirement planning, and other financial advice services to customers for a fee. Hector does not provide financial planning services himself. Hector licenses the right to use the business tradename, other branding intellectual property, and a marketing plan to third-party financial planner franchisees that operate the franchised locations and provide all services to customers. In exchange, the franchisees compensate Hector based on a fee structure, which includes a one-time fee to acquire the franchise. Hector is not engaged in the performance of services in the field of financial services [Treas. Reg. § 1.199A-5(b)(3), Example 12].

Brokerage Services

Under 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.

I.R.C. § 475(c)(2) defines a *security* as any of the following:

1. A share of stock in a corporation
2. A partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust
3. A note, bond, debenture, or other evidence of indebtedness

4. An interest rate, currency, or equity notional principal contract
5. Evidence of an interest in, or a derivative financial instrument in, any security described in items 1, 2, 3, and 4, or any currency, including any option, forward contract, short position, and any similar financial instrument in such a security or currency [excepting any contract to which I.R.C. § 1256(a) applies]
6. A position that is not a security as described in items 1, 2, 3, 4, or 5; is a hedge with respect to such a security; and is clearly identified in the dealer's records as being described in this item 6 before the close of the day on which it was acquired or entered into (or such other time as the IRS may prescribe)

Example 2.23 Brokerage Services

Johan Anderson is in the business of executing transactions for customers involving various types of securities or commodities generally traded through organized exchanges or other similar networks. Customers place orders with Johan to trade securities or commodities based on the taxpayer's recommendations. Johan's compensation for his services typically is based on completion of the trade orders. Johan is engaged in the field of brokerage services [Treas. Reg. § 1.199A-5(b)(3), Example 13].

Investing

Treas. Reg. § 1.199A-5(b)(2)(xi) defines the performance of services that consist of investing and investment management as 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.

A commenter on the section 199A proposed regulations suggested that final regulations clarify that investing and investment management does not include the sale of life insurance products and that life insurance products are not investments for purposes of section 199A. The Treasury Department and the IRS declined to define

investment for purposes of section 199A but note that commission-based sales of insurance policies generally will not be considered the performance of services in the field of investing and investing management for purposes of section 199A.

The preamble to the final section 199A regulations clarifies that the SSTB limitations apply to direct and indirect owners of a trade or business that is an SSTB, regardless of whether the owner is passive or participated in any specified service activity. Accordingly, direct and indirect management of real property includes management through agents, employees, and independent contractors.

The preamble also explains that to the extent a bank operates a single trade or business that involves the performance of services listed as SSTBs outside of the de minimis exception, such as investing and investment management, the bank's single trade or business will be treated as an SSTB. However, an RPE, including a subchapter S bank, may operate more than one trade or business. Thus, a subchapter S bank could segregate specified service activities from an existing trade or business and operate such specified service activities as an SSTB separate from its remaining trade or business, either within the same legal entity or in a separate entity.

Trading

Under 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), discussed earlier], commodities [as defined in I.R.C. § 475(e)(2) discussed later], or partnership interests. Whether a person is a trader in securities, commodities, or partnership interests is determined by considering 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.

Securities

Pursuant to Treas. Reg. § 1.199A-5(b)(2)(xiii), the performance of services that consist of dealing in securities [as defined in section 475(c)(2)] 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. Solely for purposes of this definition, the performance of services to originate a loan is not treated as the purchase of a security from the borrower in determining whether the lender is dealing in securities.

Under the proposed regulations, 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 section 199A(d)(2). However, the preamble to the final section 199A regulations notes that the final regulations remove the reference to the negligible sales exception under Treas. Reg. § 1.475(c)-1(c)(2) and (4) from the definition of dealing in securities. Thus, if a taxpayer who originates loans also sells loans, the taxpayer may be considered a dealer even if the sales of loans are negligible.

Commodities

Treas. Reg. § 1.199A-5(b)(2)(xiii) defines *services that consist of dealing in commodities* [as defined in I.R.C. § 475(e)(2)] as 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. Solely for purposes of this definition, gains and losses from qualified active sales (defined later) are not taken into account in determining whether a person is engaged in the trade or business of dealing in commodities.

I.R.C. § 475(e)(2) defines *commodities* as the following:

1. Any commodity that is actively traded [within the meaning of I.R.C. § 1092(d)(1)]
2. Any notional principal contract with respect to any commodity described in item 1
3. Any evidence of an interest in, or a derivative instrument in, any commodity described in items 1 or 2, including any option, forward contract, futures contract, short position, and any similar instrument in such a commodity
4. Any position that is not a commodity described in items 1, 2, or 3; is a hedge with

respect to such a commodity; and is clearly identified in the taxpayer's records as being described in this item 4 before the close of the day on which it was acquired or entered into (or such other time as the IRS prescribes)

Qualified Active Sale

Under Treas. Reg. § 1.199A-5(b)(2)(xiii)(B)(1), the term *qualified active sale* means the sale of commodities in the active conduct of a commodities business as a producer, processor, merchant, or handler of commodities if the trade or business is as an active producer, processor, merchant, or handler of commodities. A hedging transaction described in Treas. Reg. § 1.199A-5(b)(2)(i)(B) is treated as a qualified active sale.

The sale of commodities held by a trade or business other than in its capacity as an active producer, processor, merchant, or handler of commodities is not a qualified active sale. For example, the sale by a trade or business of commodities that were held for investment or speculation would not be a qualified active sale.

Active Conduct of a Commodities Business

For purposes of Treas. Reg. § 1.199A-5(b)(2)(xiii)(B)(1), a trade or business is engaged in the active conduct of a commodities business as a producer, processor, merchant, or handler of commodities only with respect to commodities for which each of the conditions described in Treas. Reg. § 1.199A-5(b)(2)(xiii)(B)(3) through (5) (explained later) are satisfied.

Directly Holds Commodities as Inventory or Similar Property

Under Treas. Reg. § 1.199A-5 (b)(2)(xiii)(B)(3), the commodities trade or business must hold the commodities directly, and not through an agent or independent contractor, as inventory or similar property. The term *inventory or similar property* means property that is stock in trade of the trade or business or other property of a kind that would properly be included in the inventory of the trade or business if on hand at the close of the tax year, or property held by the trade or business primarily for sale to customers in the ordinary course of its trade or business.

Directly Incurs Substantial Expenses in the Ordinary Course

Under Treas. Reg. § 1.199A-5(b)(2)(xiii)(B)(4), the commodities trade or business incurs substantial expenses in the ordinary course of the commodities trade or business from engaging in one or more of the following activities directly, and not through an agent or independent contractor:

1. Substantial activities in the production of the commodities, including planting, tending or harvesting crops, raising or slaughtering live-stock, or extracting minerals
2. Substantial processing activities prior to the sale of the commodities, including the blending and drying of agricultural commodities, or the concentrating, refining, mixing, crushing, aerating, or milling of commodities
3. Significant activities as described next

Significant Activities

Under Treas. Reg. § 1.199A-5(b)(2)(xiii)(B)(5), significant activities for purposes of paragraph (b)(2)(xiii)(B)(4)(iii) are the following:

1. The physical movement, handling, and storage of the commodities, including preparation of contracts and invoices, arranging transportation, insurance and credit, arranging for receipt, transfer or negotiation of shipping documents, arranging storage or warehousing, and dealing with quality claims
2. Owning and operating facilities for storage or warehousing
3. Owning, chartering, or leasing vessels or vehicles for the transportation of the commodities

The preamble to the final section 199A regulations explains that the Treasury Department and the IRS agree that the definition of dealing in commodities for purposes of section 199A should be limited to a trade or business that is dealing in financial instruments or otherwise does not engage in substantial activities with respect to physical commodities. To distinguish a trade or business that performs substantial activities with respect to physical commodities from a trade or business that engages in a commodities trade or business by dealing or trading in financial instruments that are commodities or a trade or business that otherwise does not perform substantial activities with commodities, the final regulations adopt rules

similar to the rules that apply to qualified active sales of commodities in Treas. Reg. § 1.954-2(f)(2)(iii).

Those rules generally require a person to be engaged in the active conduct of a commodities business as a producer, processor, merchant, or handler of commodities and to perform certain activities with respect to those commodities. Accordingly, for purposes of section 199A, gains and losses from the sale of commodities in the active conduct of a commodities business as a producer, processor, merchant, or handler of commodities will be qualified active sales and gains and losses from qualified active sales are not taken into account in determining whether a person is engaged in the trade or business of dealing in commodities.

Similarly, income, deduction, gain, or loss from a hedging transaction [as defined in Treas. Reg. § 1.1221-2(b)] entered into in the normal course of a commodities business conducted by a producer, processor, merchant, or handler of commodities will be treated as gains and losses from qualified active sales that are part of that trade or business. Qualified active sales generally require a taxpayer to hold commodities as inventory or similar property and to satisfy specified conditions regarding substantial and significant activities described in the final regulations. A sale by a trade or business of commodities held for investment or speculation is not a qualified active sale.

Partnership Interests

Treas. Reg. § 1.199A-5(b)(2)(xiii)(C) states that 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.

Principal Asset Is Reputation or Skill

Under Treas. Reg. § 1.199A-5(b)(2)(xiv), 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):

1. A trade or business in which a person receives fees, compensation, or other income for endorsing products or services
2. 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
3. Receiving fees, compensation, or other income for appearing at an event or on radio, television, or another media format

The term *fees, compensation, or other income* includes the receipt of a partnership interest and the corresponding distributive share of income, deduction, gain, or loss from the partnership, or the receipt of stock of an S corporation and the corresponding income, deduction, gain, or loss from the S corporation stock.

Example 2.24 Skill and Reputation of Owners and Employees

Kalinda Devi owns 100% of Mountain Cyclery, an S corporation that operates a bicycle sales and repair business. The business has eight employees, including Kalinda. Half of the net income of the business is generated from sales of new and used bicycles and related goods, such as helmets, and bicycle-related equipment. The other half of the net income is generated from bicycle repair services performed by Kalinda and the other employees.

Mountain Cyclery's assets consist of inventory, fixtures, bicycle repair equipment, and a leasehold on its retail location. Several of the employees and Kalinda 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. Mountain Cyclery is in

the business of sales and repairs of bicycles and is not engaged in an SSTB [Treas. Reg. § 1.199A-5(b)(3), Example 14].

income. The trade or business consisting of the receipt of the endorsement fee for Lance's skill and/or reputation is an SSTB [Treas. Reg. § 1.199A-5(b)(3), Example 15].

Example 2.25 Endorsement Fee for Use of Name

Lance Middleton is a well-known chef and the sole owner of multiple restaurants, each of which is owned in a disregarded entity. Due to Lance's skill and reputation as a chef, Lance receives \$500,000 as an endorsement fee for the use of Lance's name on a line of cooking utensils and cookware.

Lance is in the trade or business of being a chef and owning restaurants and such trade or business is not an SSTB. However, Lance is also in the trade or business of receiving endorsement

Example 2.26 Partnership Compensation

Meryl Manning is a well-known actress. Meryl entered into a partnership with a shoe company, in which Meryl contributed her likeness and the use of her name to the partnership in exchange for a 50% interest in the partnership and a guaranteed payment. Meryl's trade or business—consisting of the receipt of the partnership interest and the corresponding distributive share with respect to the partnership interest for Meryl's likeness and the use of her name—is an SSTB [Treas. Reg. § 1.199A-5(b)(3), Example 16].



SPECIFIED SERVICE TRADE OR BUSINESS LIMITATION The SSTB limitation may reduce or eliminate the QBI deduction for an SSTB owner with taxable income above the threshold.

If a trade or business is an SSTB, no qualified business income (QBI), W-2 wages, or unadjusted basis immediately after acquisition (UBIA) of qualified property from the SSTB may be taken into account by any individual whose taxable income exceeds the phasein range, as defined in Treas. Reg. § 1.199A-1(b)(4) and shown in Figure 2.2 [Treas. Reg. § 1.199A-1(d)].

A phasein rule, provided in Treas. Reg. § 1.199A-1(d)(2), applies to individuals with taxable income within the phasein range. These

individuals can take into account an applicable percentage that limits the QBI, W-2 wages, and UBIA of qualified property from an SSTB that are used to calculate the individual's section 199A deduction.

The SSTB limit does not apply to individuals with taxable income at or below the threshold amount as defined in Treas. Reg. § 1.199A-1(b)(12). **Figure 2.1** shows the SSTB limit for the QBI deduction. **Figure 2.2** lists the threshold amounts and phasein ranges.

FIGURE 2.1 Effect of Being an SSTB on QBI Deduction

Taxable Income	Effect on QBI Deduction
Not above the threshold	No effect
Within the phasein range	SSTB limit partially applies
Above the phasein range	No amount of QBI, W-2 wages, or UBIA of qualified property can be used to calculate the QBI deduction

FIGURE 2.2 QBI Phasein Ranges for 2019

	Single and HoH	MFJ	MFS
Threshold	\$160,700	\$321,400	\$160,725
Phasein range	\$160,701–\$210,700	\$321,401–\$421,400	\$160,726–\$210,725
Fully phased in	> \$210,700	> \$421,400	> \$210,725

[Rev. Proc. 2018-57, 2018-49 I.R.B. 827]

If a trade or business conducted by a relevant pass-through entity (RPE) or PTP is an SSTB, the SSTB limit applies to any direct or indirect individual owners of the business, regardless of whether the owner is passive or participated in any specified service activity. The SSTB phasein rules also apply to income earned from a PTP.

Taxable Income below the Threshold

The SSTB limitation does not apply to a taxpayer with income equal to or less than the threshold amount (i.e., all SSTB income is QBI).

Example 2.27 Taxable Income below the Threshold

Lisa Chen is a single taxpayer who is a doctor. Lisa conducts her business as a single-member LLC that is taxed as a sole proprietorship. In 2019, the business generated \$170,000 QBI (after adding the 50% of SE tax deduction), it had no depreciable property, and it paid \$20,000 wages to Lisa's assistant. Lisa's taxable income was \$150,000. Lisa's business is an SSTB. However, Lisa's taxable income is below the threshold, and the W-2 wage and capital limit and SSTB limit do not apply. Lisa's \$34,000 ($\$170,000 \text{ QBI} \times 20\%$) QBI deduction is limited to \$30,000 ($\$150,000 \text{ taxable income} \times 20\%$). **Figure 2.3** shows Lisa's Form 8995, Qualified Business Income Deduction Simplified Calculation.

FIGURE 2.3 Lisa Chen's 2019 Form 8995

Form 8995		Qualified Business Income Deduction Simplified Computation		OMB No. XXXX-XXXX	
Department of the Treasury Internal Revenue Service		▶ Attach to your tax return. ▶ Go to www.irs.gov/Form8995 for instructions and the latest information.		2019 Attachment Sequence No. 55	
Name(s) shown on return Lisa Chen			Your taxpayer identification number 000-00-0000		
1	(a) Trade or business name	(b) Taxpayer identification number	(c) Qualified business income or (loss)		
i	Lisa Chen Physician Services	00-0000000	170,000		
ii					
iii					
iv					
v					
2	Total qualified business income or (loss). Combine lines 1i through 1v, column (c)	170,000			
3	Qualified business net (loss) carryforward from the prior year	(0)			
4	Total qualified business income. Combine lines 2 and 3. If zero or less, enter -0-	170,000			
5	Qualified business income component. Multiply line 4 by 20% (0.20)			34,000	
6	Qualified REIT dividends and publicly traded partnership (PTP) income or (loss) (see instructions)	0			
7	Qualified REIT dividends and qualified PTP (loss) carryforward from the prior year	(0)			
8	Total qualified REIT dividends and PTP income. Combine lines 6 and 7. If zero or less, enter -0-	0			
9	REIT and PTP component. Multiply line 8 by 20% (0.20)			0	
10	Qualified business income deduction before the income limitation. Add lines 5 and 9			34,000	
11	Taxable income before qualified business income deduction	150,000			
12	Net capital gain (see instructions)	0			
13	Subtract line 12 from line 11. If zero or less, enter -0-	150,000			
14	Income limitation. Multiply line 13 by 20% (0.20)			30,000	
15	Qualified business income deduction. Enter the lesser of line 10 or line 14. Also enter this amount on the applicable line of your return ▶			30,000	
16	Total qualified business (loss) carryforward. Combine lines 2 and 3. If greater than zero, enter -0-			(0)	
17	Total qualified REIT dividends and PTP (loss) carryforward. Combine lines 6 and 7. If greater than zero, enter -0-			(0)	

For Privacy Act and Paperwork Reduction Act Notice, see instructions.

Cat. No. 37806C

Form **8995** (2019)

Taxable Income in the Phasein Range

The SSTB limitation is phased in for a taxpayer with income within the phasein range (i.e., a portion of SSTB income is QBI). If a taxpayer's taxable income exceeds the threshold limit (for 2019, \$160,700 single and HoH, \$160,725 MFS, or \$321,400 MFJ) and is within the phasein range (for 2019, \$160,701 through \$210,700 single

and HoH, \$160,726 through \$210,725 MFS, or \$321,401 through \$421,400 MFJ), the taxpayer must reduce the SSTB QBI and W-2 wages to the applicable percentage of those items.

The applicable percentage is 100% reduced by the percentage equal to the ratio that taxable income in excess of the threshold amount bears to \$50,000 (\$100,000 MFJ). For example, a single taxpayer with \$170,700 taxable income is \$10,000 (\$170,700 – \$160,700) over the threshold. The applicable percentage is reduced by

20% (\$10,000 ÷ \$50,000). Thus, 80% (100% – 20%) of SSTB income is QBI. The taxpayer must apply the same percentage to reduce W-2 wages or qualified property of the SSTB [Treas. Reg. § 1.199A-1(d)(2)(i)].

The formulas to calculate the applicable percentage of QBI items are shown in **Figure 2.4**.

Wages for purposes of the W-2 wage and capital limitation include only wages paid by a qualified business. If the taxpayer’s income exceeds

FIGURE 2.4 Calculating the Applicable Percentage

Filing Status	Formula
MFJ	$[1 - \{(taxable\ income - \$321,400\ threshold\ for\ 2019) \div \$100,000\}]$
MFS	$[1 - \{(taxable\ income - \$160,725\ threshold\ for\ 2019) \div \$50,000\}]$
Single and HoH	$[1 - \{(taxable\ income - \$160,700\ threshold\ for\ 2019) \div \$50,000\}]$

the phasein range, income of an SSTB is not QBI, and wages paid by that business are not included. Similarly, only qualified property is included in the W-2 wage and capital limitation. If income of an SSTB is not QBI, property of that business is not included.

For a taxpayer whose income is within the phasein range, the SSTB limit disallows a portion of the QBI and also a portion of the W-2 wages and qualified property. I.R.C. § 199A(d)(3)(A)(ii) provides that only the applicable percentage of qualified items of income, gain, deduction, or loss, and the W-2 wages and the unadjusted basis immediately after acquisition (UBIA) of qualified property, of the taxpayer allocable to the SSTB shall be taken into account in computing the QBI, W-2 wages, and UBIA of qualified property. Similarly, only the applicable percentage of QBI, W-2 wages, and UBIA of qualified property for each SSTB is taken into account for purposes of the application of the netting and carryover rules described in Treas. Reg. § 1.199A(d)(2)(iii).

Example 2.28 Taxable Income in the Phasein Range—Not SSTB

Benjamin and Carla Gomez are married and file a joint individual income tax return. Benjamin is a shareholder in Mega Games, Inc. (MG), which publishes video games and is not an SSTB. MG is taxed as an S corporation for federal income tax purposes and conducts only a single trade or business. MG leases all its equipment and holds no qualified property.

Benjamin’s share of MG’s QBI was \$306,400 in 2019. Benjamin’s share of the W-2 wages from MG in 2019 was \$45,000. Carla earned wage income from employment by an unrelated company. After allowable deductions unrelated to MG, Benjamin and Carla’s taxable income

for 2019 was \$381,400. Benjamin and Carla are within the phasein range because their taxable income exceeds the applicable threshold amount (\$321,400) but does not exceed the threshold amount plus \$100,000 (\$421,400). Consequently, the QBI component of Benjamin and Carla’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.

Benjamin and Carla must first determine 20% of Benjamin’s share of MG’s QBI, which is \$61,280 [$\$306,400 \times 20\%$]. Because MG does not hold qualified property, Benjamin and Carla must calculate only the W-2 wage limitation. Fifty percent of Benjamin’s share of MG’s W-2 wages is \$22,500 [$\$45,000 \times 50\%$]. Because 50% of Benjamin’s share of MG’s W-2 wages (\$22,500) is less than 20% of Benjamin’s share of MG’s QBI (\$61,280), Benjamin and Carla must determine the QBI component of their section 199A deduction by reducing 20% of Benjamin’s share of MG’s QBI by the reduction amount.

Benjamin and Carla’s taxable income exceeds the threshold amount by \$60,000 [$\$381,400 - \$321,400$], and they are 60% ($\$60,000 \div \$100,000$) through the phasein range. Benjamin and Carla must determine the excess amount, which is the excess of 20% of Benjamin’s share of MG’s QBI over 50% of Benjamin’s share of MG’s W-2 wages. Thus, the excess amount is \$38,780 ($\$61,280 - \$22,500$). The reduction amount is equal to 60% of the excess amount, or \$23,268 ($\$38,780 \times 60\%$). Thus, the QBI component of Benjamin and Carla’s section 199A deduction is \$38,012 [20% of Benjamin’s \$306,400 share of MG’s QBI (that is, \$61,280), reduced by \$23,268 ($\$61,280 - \$23,268$)]. Benjamin and Carla’s section 199A deduction is equal to the lesser of 20% of the QBI from the business as limited (\$38,012) or 20% of

Benjamin and Carla's taxable income (\$381,400 × 20% = \$76,280). Therefore, Benjamin and Carla's section 199A deduction is \$38,012 for 2019.

Figure 2.5 shows Benjamin's 2019 Schedule K-1 (Form 1120S). Figure 2.5 uses the 2018 form because the 2019 form was not available at the time of this publication.

FIGURE 2.5 Benjamin's 2019 Schedule K-1 (Form 1120S)

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 Final K-1 Amended K-1 OMB No. 1545-0123

Schedule K-1 (Form 1120S)
 Department of the Treasury
 Internal Revenue Service

2018

For calendar year 2018, or tax year

beginning ending

Shareholder's Share of Income, Deductions, Credits, etc.
 ▶ See back of form and separate instructions.

Part III Shareholder's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss)	13	Credits
	306,400		
2	Net rental real estate income (loss)		
3	Other net rental income (loss)		
4	Interest income		
5a	Ordinary dividends		
5b	Qualified dividends	14	Foreign transactions
6	Royalties		
7	Net short-term capital gain (loss)		
8a	Net long-term capital gain (loss)		
8b	Collectibles (28%) gain (loss)		
8c	Unrecaptured section 1250 gain		
9	Net section 1231 gain (loss)		
10	Other income (loss)	15	Alternative minimum tax (AMT) items
11	Section 179 deduction	16	Items affecting shareholder basis
12	Other deductions		
		17	Other information
		V	306,400
		W	45,000
		X	0

* See attached statement for additional information.

Part I Information About the Corporation

A Corporation's employer identification number
00-0000000

B Corporation's name, address, city, state, and ZIP code
Mega Games, Inc.
100 Central Avenue
Whitefish, MT 59937

C IRS Center where corporation filed return
Ogden

Part II Information About the Shareholder

D Shareholder's identifying number
000-00-0000

E Shareholder's name, address, city, state, and ZIP code
Benjamin Gomez
310 Penney Lane
Columbia Falls, MT 59912

F Shareholder's percentage of stock ownership for tax year 10 %

For IRS Use Only

For Paperwork Reduction Act Notice, see the Instructions for Form 1120S. www.irs.gov/Form1120S Cat. No. 11520D Schedule K-1 (Form 1120S) 2018

The codes in box 17 of Schedule K-1 are as follows:

- V is the shareholder's share of QBI.
- W is the shareholder's share of W-2 wages from the trade or business.
- X is the shareholder's share of UBIA of qualified property.



Figure 2.6 shows Benjamin and Carla’s Form 8995-A, Qualified Business Income Deduction (Parts I, II, III, and IV).

FIGURE 2.6 Benjamin and Carla Gomez’s Form 8995-A

Form 8995-A Department of the Treasury Internal Revenue Service	Qualified Business Income Deduction ▶ Attach to your tax return. ▶ Go to www.irs.gov/Form8995A for instructions and the latest information.	OMB No. XXXX-XXXX <div style="text-align: center; font-size: 24pt; font-weight: bold;">2019</div> Attachment Sequence No. 55A
Name(s) shown on return Benjamin and Carla Gomez		Your taxpayer identification number 000-00-0000

Part I Trade, Business, or Aggregation Information					
Complete Schedule A, B, C, and/or D, as applicable, before starting Part I. Attach additional worksheets when needed. See instructions.					
1	(a) Trade, business, or aggregation name	(b) Check if specified service	(c) Check if aggregation	(d) Taxpayer identification number	(e) Check if patron
A	Mega Games, Inc.	<input type="checkbox"/>	<input type="checkbox"/>	00-0000000	<input type="checkbox"/>
B		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
C		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

Part II Determine Your Adjusted Qualified Business Income				
		A	B	C
2 Qualified business income from the trade, business, or aggregation. See instructions	2	306,400		
3 Multiply line 2 by 20% (0.20). If your taxable income is \$160,700 or less (\$160,725 if married filing separately; \$321,400 if married filing jointly), skip lines 4 through 12 and enter the amount from line 3 on line 13	3	61,280		
4 Allocable share of W-2 wages from the trade, business, or aggregation	4	45,000		
5 Multiply line 4 by 50% (0.50)	5	22,500		
6 Multiply line 4 by 25% (0.25)	6	11,250		
7 Allocable share of the unadjusted basis immediately after acquisition (UBIA) of all qualified property	7	0		
8 Multiply line 7 by 2.5% (0.025)	8	0		
9 Add lines 6 and 8	9	11,250		
10 Enter the greater of line 5 or line 9	10	22,500		
11 W-2 wage and qualified property limitation. Enter the smaller of line 3 or line 10	11	22,500		
12 Phased-in reduction. Enter amount from Part III, line 26, if any. See instructions	12	38,012		
13 Qualified business income deduction before patron reduction. Enter the greater of line 11 or line 12	13	38,012		
14 Patron reduction. Enter the amount from Schedule D, line 6, if any	14			
15 Qualified business income component. Subtract line 14 from line 13	15	38,012		
16 Total qualified business income component. Add all amounts reported on line 15 ▶	16	38,012		

FIGURE 2.6 Benjamin and Carla Gomez's Form 8995-A (continued)

Part III Phased-in Reduction

Complete Part III only if your taxable income is more than \$160,700 but not \$210,700 (\$160,725 and \$210,725 if married filing separately; \$321,400 and \$421,400 if married filing jointly) and line 10 is less than line 3. Otherwise, skip Part III.

		A	B	C
17	Enter amounts from line 3	17	61,280	
18	Enter the amounts from line 10	18	22,500	
19	Subtract line 18 from line 17	19	38,780	
20	Taxable income before qualified business income deduction	20	381,400	
21	Threshold. Enter \$160,700 (\$160,725 if married filing separately; \$321,400 if married filing jointly)	21	321,400	
22	Subtract line 21 from line 20	22	60,000	
23	Phase-in range. Enter \$50,000 (\$100,000 if married filing jointly)	23	100,000	
24	Phase-in percentage. Divide line 22 by line 23	24	60 %	
25	Total phase-in reduction. Multiply line 19 by line 24	25	23,268	
26	Qualified business income after phase-in reduction. Subtract line 25 from line 17. Enter this amount here and on page 1, Part II, line 12, for the corresponding trade or business	26	38,012	

Part IV Determine Your Qualified Business Income Deduction

27	Total qualified business income component from all qualified trades, businesses, or aggregations. Enter the amount from Part II, line 16	27	38,012	
28	Qualified REIT dividends and publicly traded partnership (PTP) income or (loss). See instructions	28		
29	Qualified REIT dividends and PTP (loss) carryforward from prior years	29	()	
30	Total qualified REIT dividends and PTP income. Combine lines 28 and 29. If less than zero, enter -0-	30		
31	REIT and PTP component. Multiply line 30 by 20% (0.20)	31		
32	Qualified business income deduction before the income limitation. Add lines 27 and 31	32		38,012
33	Taxable income before qualified business income deduction	33	381,400	
34	Net capital gain. See instructions	34	0	
35	Subtract line 34 from line 33. If zero or less, enter -0-	35		381,400
36	Income limitation. Multiply line 35 by 20% (0.20)	36		76,280
37	Qualified business income deduction before the domestic production activities deduction (DPAD) under section 199A(g). Enter the smaller of line 32 or line 36	37		38,012
38	DPAD under section 199A(g) allocated from an agricultural or horticultural cooperative. Don't enter more than line 33 minus line 37	38		
39	Total qualified business income deduction. Add lines 37 and 38	39		38,012
40	Total qualified REIT dividends and PTP (loss) carryforward. Combine lines 28 and 29. If zero or greater, enter -0-	40	(0)	



Example 2.29 Taxable Income in the Phasein Range—SSTB

The facts are the same as in Example 2.28, except that Mega Games, Inc. (MG) is engaged in an SSTB. Because Benjamin and Carla are within the phasein range, Benjamin must reduce the QBI and W-2 wages allocable to Benjamin from MG to the applicable percentage of those items. Benjamin and Carla's applicable percentage is 100% reduced by 60% [the percentage equal to the ratio that their taxable income for the tax year (\$381,400) exceeding their threshold amount (\$321,400)—that is, \$60,000 (\$381,400 – \$321,400)—bears to \$100,000].

Their applicable percentage is 40% [$1 - \{(\$381,000 - \$321,000) \div \$100,000\}$]. The applicable percentage of Benjamin's share of QBI is \$122,560 ($\$306,400 \times 40\%$), and the applicable percentage of Benjamin's share of W-2 wages is \$18,000 ($\$45,000 \times 40\%$). These reduced amounts must then be used to determine how Benjamin's section 199A deduction is limited.

Benjamin and Carla must first determine 20% of Benjamin's share of MG's QBI as limited by the SSTB limitation, which is \$24,512 [$\$122,560 \times 20\%$]. Fifty percent of Benjamin's share of MG's W-2 wages as limited by the SSTB limitation is \$9,000 ($\$18,000 \times 50\%$). Because 50% of Benjamin's share of MG's W-2 wages (\$9,000) is

less than 20% of Benjamin's share of MG's QBI (\$24,512), Benjamin and Carla must determine the QBI component of their section 199A deduction by reducing 20% of Benjamin's share of MG's QBI by the reduction amount.

Benjamin and Carla's taxable income exceeds the threshold amount by \$60,000 [$\$381,400 - \$321,400$], and they are 60% ($\$60,000 \div \$100,000$) through the phasein range. Benjamin and Carla must determine the excess amount, which is the excess of 20% of Benjamin's share of MG's QBI, as limited by the SSTB limitation over 50% of Benjamin's share of MG's W-2 wages, as limited. Thus, the excess amount is \$15,512 ($\$24,512 - \$9,000$).

The reduction amount is equal to 60% of the excess amount or \$9,307 ($\$15,512 \times 60\%$). Thus, the QBI component of Benjamin and Carla's section 199A deduction is equal to \$15,205, which is 20% of Benjamin's share of MG's QBI reduced by \$9,307 ($\$24,512 - \$9,307$). Benjamin and Carla's section 199A deduction is equal to the lesser of (1) 20% of the QBI from the business as limited (\$15,205) or (2) 20% of Benjamin and Carla's taxable income ($\$381,400 \times 20\% = \$76,280$). Therefore, Benjamin and Carla's section 199A deduction is \$15,205 for 2019.

Figure 2.7 shows Benjamin and Carla's Form 8995-A, Qualified Business Deduction (Parts I, II, III, IV; and Schedule A, Part 1).

FIGURE 2.7 Form 8995-A for SSTB with Taxable Income within the Phasein Range

Form **8995-A**

Qualified Business Income Deduction

OMB No. XXXX-XXXX

Department of the Treasury
Internal Revenue Service

▶ Attach to your tax return.

2019
Attachment
Sequence No. **55A**

▶ Go to www.irs.gov/Form8995A for instructions and the latest information.

Name(s) shown on return

Benjamin and Carla Gomez

Your taxpayer identification number

000-00-0000

Part I Trade, Business, or Aggregation Information

Complete Schedule A, B, C, and/or D, as applicable, before starting Part I. Attach additional worksheets when needed. See instructions.

1	(a) Trade, business, or aggregation name	(b) Check if specified service	(c) Check if aggregation	(d) Taxpayer identification number	(e) Check if patron
A	Mega Games, Inc.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	00-0000000	<input type="checkbox"/>
B		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
C		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

Part II Determine Your Adjusted Qualified Business Income

	A	B	C
2 Qualified business income from the trade, business, or aggregation. See instructions	2 122,560		
3 Multiply line 2 by 20% (0.20). If your taxable income is \$160,700 or less (\$160,725 if married filing separately; \$321,400 if married filing jointly), skip lines 4 through 12 and enter the amount from line 3 on line 13	3 24,512		
4 Allocable share of W-2 wages from the trade, business, or aggregation	4 18,000		
5 Multiply line 4 by 50% (0.50)	5 9,000		
6 Multiply line 4 by 25% (0.25)	6 4,500		
7 Allocable share of the unadjusted basis immediately after acquisition (UBIA) of all qualified property	7 0		
8 Multiply line 7 by 2.5% (0.025)	8 0		
9 Add lines 6 and 8	9 4,500		
10 Enter the greater of line 5 or line 9	10 9,000		
11 W-2 wage and qualified property limitation. Enter the smaller of line 3 or line 10	11 9,000		
12 Phased-in reduction. Enter amount from Part III, line 26, if any. See instructions	12 15,205		
13 Qualified business income deduction before patron reduction. Enter the greater of line 11 or line 12	13 15,205		
14 Patron reduction. Enter the amount from Schedule D, line 6, if any	14		
15 Qualified business income component. Subtract line 14 from line 13	15 15,205		
16 Total qualified business income component. Add all amounts reported on line 15 ▶	16 15,205		

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 71661B

Form **8995-A** (2019)

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FIGURE 2.7 Form 8995-A for SSTB with Taxable Income Within the Phase-in Range (continued)

Part III Phased-in Reduction

Complete Part III only if your taxable income is more than \$160,700 but not \$210,700 (\$160,725 and \$210,725 if married filing separately; \$321,400 and \$421,400 if married filing jointly) and line 10 is less than line 3. Otherwise, skip Part III.

		A	B	C
17	Enter amounts from line 3	17	24,512	
18	Enter the amounts from line 10	18	9,000	
19	Subtract line 18 from line 17	19	15,512	
20	Taxable income before qualified business income deduction	20	381,400	
21	Threshold. Enter \$160,700 (\$160,725 if married filing separately; \$321,400 if married filing jointly)	21	321,400	
22	Subtract line 21 from line 20	22	60,000	
23	Phase-in range. Enter \$50,000 (\$100,000 if married filing jointly)	23	100,000	
24	Phase-in percentage. Divide line 22 by line 23	24	60.00 %	
25	Total phase-in reduction. Multiply line 19 by line 24	25	9,307	
26	Qualified business income after phase-in reduction. Subtract line 25 from line 17. Enter this amount here and on page 1, Part II, line 12, for the corresponding trade or business	26	15,205	

Part IV Determine Your Qualified Business Income Deduction

27	Total qualified business income component from all qualified trades, businesses, or aggregations. Enter the amount from Part II, line 16	27	15,205	
28	Qualified REIT dividends and publicly traded partnership (PTP) income or (loss). See instructions	28	0	
29	Qualified REIT dividends and PTP (loss) carryforward from prior years	29	(0)	
30	Total qualified REIT dividends and PTP income. Combine lines 28 and 29. If less than zero, enter -0-	30	0	
31	REIT and PTP component. Multiply line 30 by 20% (0.20)	31	0	
32	Qualified business income deduction before the income limitation. Add lines 27 and 31	32		15,205
33	Taxable income before qualified business income deduction	33	381,400	
34	Net capital gain. See instructions	34	0	
35	Subtract line 34 from line 33. If zero or less, enter -0-	35		381,400
36	Income limitation. Multiply line 35 by 20% (0.20)	36		76,280
37	Qualified business income deduction before the domestic production activities deduction (DPAD) under section 199A(g). Enter the smaller of line 32 or line 36	37		15,205
38	DPAD under section 199A(g) allocated from an agricultural or horticultural cooperative. Don't enter more than line 33 minus line 37	38		0
39	Total qualified business income deduction. Add lines 37 and 38	39		15,205
40	Total qualified REIT dividends and PTP (loss) carryforward. Combine lines 28 and 29. If zero or greater, enter -0-	40	(0)	

FIGURE 2.7 Form 8995-A for SSTB with Taxable Income within the Phasein Range (continued)

Schedule A Specified Service Trades or Businesses

Complete Schedule A only if your trade or business is a specified service trade or business (see instructions) and your taxable income is more than \$160,700 but not \$210,700 (\$160,725 but not \$210,725 if married filing separately; \$321,400 and \$421,400 if married filing jointly). If your taxable income isn't more than \$160,700 (\$160,725 if married filing separately; \$321,400 if married filing jointly) and you're not a patron of an agricultural or horticultural cooperative, don't file this form; instead, file Form 8995, Qualified Business Income Deduction Simplified Computation. Otherwise, complete Schedule D before beginning Schedule A. If your taxable income is more than \$210,700 (\$210,725 if married filing separately; \$421,400 if married filing jointly), your specified service trade or business doesn't qualify for the deduction.

Part I Non-Publicly Traded Partnership

		SSTB 1	SSTB 2	SSTB 3
1a	Trade or business name	1a Mega Games, Inc		
b	Taxpayer identification number	1b 00-0000000		
2	Qualified business income or (loss) from the trade or business	2 306,400		
3	Allocable share of W-2 wages from the trade or business	3 45,000		
4	Allocable share of the UBI of all qualified property	4 0		
5	Taxable income before qualified business income deduction	5 381,400		
6	Threshold. Enter \$160,700 (\$160,725 if married filing separately; \$321,400 if married filing jointly)	6 321,400		
7	Subtract line 6 from line 5	7 60,000		
8	Phase-in range. Enter \$50,000 (\$100,000 if married filing jointly)	8 100,000		
9	Divide line 7 by line 8	9 0.6000		
10	Applicable percentage. Subtract line 9 from 100%	10 40.00 %		
11	Applicable percentage of qualified business income or (loss). Multiply line 2 by line 10. Enter this amount on Schedule C or on page 1, Part II, line 2, for the corresponding trade or business, as appropriate. See instructions	11 122,560		
12	Applicable percentage of W-2 wages. Multiply line 3 by line 10. Enter this amount on page 1, Part II, line 4, for the corresponding trade or business, as appropriate. See instructions	12 18,000		
13	Applicable percentage of the UBI of qualified property. Multiply line 4 by line 10. Enter this amount on page 1, Part II, line 7, for the corresponding trade or business, as appropriate. See instructions	13 0		

Part II Publicly Traded Partnership

		PTP SSTB 1	PTP SSTB 2	PTP SSTB 3
14	Trade or business name	14		
15	Taxpayer identification number	15		
16	Qualified PTP income or (loss)	16		
17	Total PTP SSTB income or (loss). Combine all amounts on line 16	17		
18	Taxable income before qualified business income deduction	18		
19	Threshold. Enter \$160,700 (\$160,725 if married filing separately; \$321,400 if married filing jointly)	19		
20	Subtract line 19 from line 18	20		
21	Phase-in range. Enter \$50,000 (\$100,000 if married filing jointly)	21		
22	Divide line 20 by line 21	22		
23	Applicable percentage. Subtract line 22 from 100%	23		%
24	Applicable percentage of qualified PTP income or (loss). Multiply line 17 by line 23. Include this amount on page 2, Part IV, line 28	24		



PRACTITIONER NOTE

Aggregation of Businesses

If an individual chooses to aggregate trades or businesses under the rules of Treas. Reg. § 1.199A-4, the individual must combine the QBI, W-2 wages, and UBIA of qualified property of each trade or business within an aggregated trade or business prior to applying the W-2 wages and UBIA of qualified property limitations [Treas. Reg. § 1.199A-1(d)(2)(ii)]. An SSTB cannot be aggregated [Treas. Reg. § 1.199A-4(b)(iv)]. A trade or business with gross receipts from a specified service activity below the de minimis thresholds described in Treas. Reg. § 1.199A-5(c)(1) is not treated as an SSTB and therefore may be aggregated under the rules described in § 1.199A-4. See the “Qualified Business Income: Non-Specified Service Trades or Businesses” chapter in this book for a discussion of the aggregation rules.

Above the Phasein

If an individual’s taxable income exceeds the phasein range and the trade or business is an SSTB, no QBI, W-2 wages, or UBIA of qualified property from the SSTB is included for purposes of determining the taxpayer’s QBI. Thus, for a taxpayer whose income exceeds the phasein range, the SSTB limitation results in a zero QBI deduction, and the W-2 wage limitation is inapplicable. For an SSTB conducted by an entity, such as a partnership or an S corporation, none of the income from that trade or business that passes through to an owner of the entity is QBI, regardless of whether the owner participates in the specified service activity. Therefore, a direct or indirect owner of a trade or business engaged in an SSTB is treated as engaged in the SSTB for purposes of section 199A, regardless of whether the owner is passive or participated in the SSTB. Similarly, none of the W-2 wages or UBIA of qualified property is included for purposes of section 199A.

Example 2.30 Pass-Through Entity SSTB

Capital Partnership owns the Atlanta Doves, which is a professional sports team. Capital Partnership has 500 partners, and none of the partners participate in the business. The business is an

SSTB. If the partners have taxable income above the threshold, their distributive shares of income from the partnership’s athletics trade or business are not QBI, regardless of whether the partners participate in the partnership’s trade or business.

PRACTITIONER NOTE

Schedule K-1 Reporting

An RPE conducting an SSTB may not know whether the taxable income of any of its owners is below the threshold amount. However, the reporting rules under Treas. Reg. § 1.199A-6(b)(3) (B) require each RPE to determine whether it conducts an SSTB and disclose that information to its partners, shareholders, or owners, regardless of their taxable income. The RPE must report on Schedule K-1 each owner’s allocable share of the entity’s QBI, W-2 wages, and UBIA of qualified property attributable to each trade or business. If an RPE fails to separately identify or report these items to an owner, the owner’s share (and the share of any upper-tier indirect owner) of each unreported item of positive QBI, W-2 wages, or UBIA of qualified property attributable to trades or businesses engaged in by that RPE will be presumed to be zero [Treas. Reg. § 1.199A-6(b)(3)].

De Minimis Rule

Treas. Reg. § 1.199A-5(c)(1) sets forth a de minimis rule under which a trade or business will not be an SSTB merely because it provides a small amount of services in a specified service activity. A trade or business with gross receipts of \$25,000,000 or less for the tax year is not an SSTB if less than 10% of the gross receipts of the trade or business are attributable to the performance of services in an SSTB. For purposes of determining whether this 10% test 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.

A trade or business with gross receipts of greater than \$25,000,000 for the tax year is not an SSTB if less than 5% of the gross receipts of the trade or business are attributable to the performance of services in an SSTB. For purposes of

determining whether this 5% test 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.

Example 2.31 Consulting Not De Minimis

Landscape, LLC sells lawn care and landscaping equipment and provides landscape design services for large office parks and residential buildings. The landscape design services include advice on the selection and placement of trees, shrubs, and flowers and are performance of services in the field of consulting.

Landscape, LLC separately invoices for its landscape design services and does not sell the trees, shrubs, or flowers it recommends for use in the landscape design. It maintains one set of books and records and treats the equipment sales and design services as a single trade or business for purposes of I.R.C. §§ 162 and 199A.

Landscape, LLC has gross receipts of \$2,000,000 that includes \$250,000 for landscape design services. Thus, 12.5% ($\$250,000 \div \$2,000,000$) of the gross receipts is attributable to the landscape design services, an SSTB. Because the gross receipts from the consulting services exceed 10% of Landscape, LLC's total gross receipts, the entirety of Landscape, LLC's trade or business is considered an SSTB [Treas. Reg. § 1.199A-5(c)(1)(iii), Example 1].

The final regulations retain the de minimis rule from the proposed regulations but add an example demonstrating the result when a trade or business has income from a specified service activity in excess of the de minimis threshold. The preamble to the final regulations notes that an RPE can have more than one trade or business for purposes of section 162 and thus for section 199A. However, each trade or business is required under section 199A to be separately tested to determine whether that trade or business is an SSTB.

The de minimis threshold is applied to each trade or business of an RPE separately, not in the aggregate to all the trades or businesses of the RPE. Thus, to the extent that an individual or RPE has more than one trade or business, the presence of specified service activity in one of those trades or business will not cause the individual's or RPE's other trades or businesses to be

considered SSTBs except to the extent that the rules in Treas. Reg. § 1.199A-5(c)(2) (services or property provided to an SSTB, discussed later) apply.

Example 2.32 Separate Trades or Businesses

Animal Care, LLC provides veterinarian services performed by licensed staff. It also develops and sells its own line of organic dog food at its veterinarian clinic and online. The veterinarian services are considered to be the performance of services in the field of health. Animal Care, LLC separately invoices for its veterinarian services and the sale of its organic dog food. It maintains separate books and records for its veterinarian clinic and its development and sale of its dog food. Animal Care, LLC also has separate employees who are unaffiliated with the veterinary clinic and who work only on the formulation, marketing, sales, and distribution of the organic dog food products.

Animal Care, LLC treats its veterinary practice and the dog food development and sales as separate trades or businesses for purposes of sections 162 and 199A. Animal Care, LLC has gross receipts of \$3,000,000. Of that total, \$1,000,000 is attributable to the veterinary services, an SSTB. Although the gross receipts from the services in the field of health exceed 10% of Animal Care, LLC's total gross receipts, the dog food development and sales business is not considered an SSTB because the veterinary practice and the dog food development and sales are separate trades or businesses under section 162 [Treas. Reg. § 1.199A-5(c)(1)(iii)(B), Example 2].

Services or Property Provided to SSTB

Treas. Reg. § 1.199A-5(c)(2) provides an antiabuse rule. The rule is meant to prevent an SSTB from splitting its trade or business into two businesses, with one providing services or leasing property to the other. The final regulations provide that if a trade or business provides 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 that provides property or services to the 50%-or-more-commonly-owned

SSTB will be treated as a separate SSTB with respect to the related parties. For purposes of this rule, 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).

Example 2.33 Leasing to an SSTB

Patterson Dental owns a building in which it conducts its dental practice. The dental practice is an SSTB. Patterson Dental splits the business into two trades or businesses. The first business operates the dental practice, and the second business owns the building and leases it to the dental practice. The income from leasing the building to the dental practice is also considered SSTB income.

The preamble to the final regulations explains that under the proposed regulations a trade or business that provides 80% or more of its property or services to an SSTB is treated as an SSTB if there is 50% or more common ownership of the trades or businesses. In cases in which a trade or business provides less than 80% of its property or services to a commonly owned SSTB, the portion of the trade or business providing property to the commonly owned SSTB is treated as part of the SSTB with respect to the related parties. The final regulations modify this antiabuse rule by removing the 80% threshold and allowing any portion that is not provided to an SSTB to be eligible for the section 199A deduction.

Example 2.34 Leasing to SSTB and Non-SSTB

The facts are the same as in Example 2.33 except that Patterson Dental’s leasing trade or business leased 90% of the building to the dental office and 10% to a coffee shop. The 10% is not an SSTB.

The final regulations also remove the rule that stated that if a trade or business (that would not otherwise be treated as an SSTB) has both 50%-or-more common ownership with an SSTB and shared expenses with an SSTB, then the trade or business is treated as incidental to and, therefore, part of the SSTB, if 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 a tax year.

This antiabuse rule was intended to limit the ability of taxpayers to separate their SSTB and non-SSTB income into two trades or businesses to receive the section 199A deduction on their non-SSTB income. In response to comments, the rule was removed from the final regulations because defining when two businesses have shared expenses is difficult to administer and could be overly inclusive. Also, there was a concern that start-up businesses could be excluded from the section 199A deduction if they shared expenses and ownership with a larger business that could be considered an SSTB.

Example 2.35 Provision of Property and Services to Related SSTB

Brown and Buckley (B&B) Law Firm is a partnership that provides legal services to clients, owns its own office building, and employs its own administrative staff. The firm divides into three partnerships. B&B Law performs legal services for clients. B&B Rentals owns the office building and rents the entire building to B&B Law. B&B Staffing employs the administrative staff and, through a contract with B&B Law, provides administrative services to B&B Law in exchange for fees.

All three of the partnerships are owned by the same people (the original owners of B&B Law Firm). Because B&B Rentals provides all its property to B&B Law, and B&B Staffing provides all its services to B&B Law, B&B Rentals, and B&B Staffing will each be treated as an SSTB [Treas. Reg. § 1.199A-5(c)(2)(iii), Example 1].

Example 2.36 Provision of Property and Services to Unrelated SSTB

The facts are the same as in in Example 2.35 except that B&B Rentals, which owns the office building, rents 50% of the building to B&B Law, which provides legal services; and the other 50% to various unrelated third-party tenants. Because B&B Rentals is owned by the same people as B&B Law, the portion of B&B Rentals’s leasing activity related to the lease of the building to B&B Law will be treated as a separate SSTB. The remaining 50% of the leasing activity will not be treated as an SSTB [Treas. Reg. § 1.199A-5(c)(2)(iii)(B), Example 2].

Performing Services as an Employee

Treas. Reg. § 1.199A-5(d)(1) states that the trade or business of performing services as an employee is not a trade or business for purposes of section 199A and the regulations thereunder. Therefore, no items of income, gain, deduction, or loss from the trade or business of performing services as an employee constitute QBI within the meaning of section 199A and section 1.199A-3, and no taxpayer can claim a section 199A deduction for wage income.

Wages Earned as an Employee

Income from the trade or business of performing services as an employee refers to all wages [within the meaning of I.R.C. § 3401(a)] and other income earned in a capacity as an employee.

Under section 3401(a), wages include all remuneration (other than fees paid to a public official) for services performed by an employee for his or her employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash. Wages do not include the following remuneration:

1. For active service performed in a month for which the employee is entitled to the benefits of I.R.C. § 112 (relating to certain combat zone compensation of members of the Armed Forces of the United States) to the extent remuneration for such service is excludable from gross income under that section
2. For agricultural labor [as defined in I.R.C. § 3121(g)] unless the remuneration paid for such labor is wages [as defined in I.R.C. § 3121(a)]
3. For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority
4. For service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service
5. For services by a citizen or resident of the United States for a foreign government or an international organization
6. For such services, performed by a nonresident alien individual, as may be designated by Treasury regulations
7. For services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States if, at the time of the payment of such remuneration, it is reasonable to believe that such remuneration will be excluded from gross income under I.R.C. § 911
8. For certain other services performed by a US citizen abroad or in a US possession
9. For services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order
10. For services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, or for certain services performed in the sale of newspapers or magazines to consumers
11. For services not in the course of the employer's trade or business, to the extent paid in any medium other than cash
12. To, or on behalf of, an employee or his or her beneficiary from certain I.R.C. § 401(a) trusts or I.R.C. § 403(a) annuity plans, payments excluded under I.R.C. § 402(h)(1) and (2), arrangements to which I.R.C. § 408(p) applies, or under an I.R.C. § 457(b) eligible deferred compensation plan
13. Pursuant to any provision of law other than section 5(c) or 6(1) of the Peace Corps Act, for service performed as a volunteer or volunteer leader within the meaning of that act
14. In the form of group-term life insurance on the life of an employee
15. To or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowed under I.R.C. § 217 [moving expenses] [determined without regard to section I.R.C. § 274(n)]

16. As tips in any medium other than cash or as cash tips to an employee in any calendar month in the course of his or her employment by an employer unless the amount of the cash tips is \$20 or more
17. For service described in I.R.C. § 3121(b)(20) [certain fishing boat crew members who work for shares of the boat's catch rather than for cash]
18. For any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 [educational assistance programs], 129 [dependent care assistance programs], 134(b)(4) [qualified military benefit for dependent care assistance program], or 134(b)(5) [qualified military travel benefits]
19. For any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c) [certain employee achievement awards], 108(f)(4) [discharge of indebtedness for student loans], 117 [qualified scholarships], or 132 [certain fringe benefits]
20. For any medical care reimbursement made to or for the benefit of an employee under a self-insured medical reimbursement plan [within the meaning of section 105(h)(6)]
21. For any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b) [contributions to Archer MSAs]
22. Any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d) [contributions to health savings accounts]
23. For any benefit or payment that is excludable from the gross income of the employee under section 139B(b) [denial of double benefits provided to a member of a qualified voluntary emergency response organization]

The term *wages* includes any amount includable in gross income of an employee under section 409A [deferred compensation under nonqualified deferred compensation plans], and payment of such amount is treated as having been made in the tax year in which the amount is includable.

Income from the trade or business of performing services as an employee also includes noncash payments described in Treas. Reg. § 1.6041-2(a)(1) (payments made in any medium other than cash) to an employee by his or her employer in the course of the trade or business of the employer that must be reported on Form W-2. It does not include certain payments to drivers, salespersons, and home workers described in I.R.C. § 3121(d)(3) and plan distributions under employees' trust, or plan described in Treas. Reg. § 1.6041-2(b)(1). A special rule applies to former employees (discussed later).

Federal Tax Treatment

For purposes of determining whether wages are earned in a capacity as an employee, the treatment of an employee by an employer as anything other than an employee 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 nonemployee by the employer for federal employment tax purposes [Treas. Reg. § 1.199A-5(d)(2)].

CROSS-REFERENCE

Independent Contractor

See pages 293–296 in the *2016 National Income Tax Workbook* for a discussion of when a worker should be classified as an employee, and when a worker should be classified as an independent contractor for federal tax purposes.

Presumed Employee

Solely for purposes of I.R.C. § 199A(d)(1)(B) and Treas. Reg. § 1.199A-(d)(1), if an individual was properly treated as an employee for federal employment tax purposes and the same or a related employer subsequently treats that individual as a nonemployee with regard to the provision of substantially the same services that he

or she provided as an employee, the individual is presumed to be in the trade or business of performing services as an employee with regard to such services. The presumption applies for 3 years after ceasing to be treated as an employee for federal employment tax purposes.

The presumption may be rebutted by showing that the individual, under federal tax law, regulations, and principles (including common-law employee classification rules), is performing services in a capacity other than as an employee. This presumption applies regardless of whether the individual provides services directly or indirectly through an entity or entities. Upon notice from the IRS, an individual can rebut the presumption that he or she is an employee by providing records, such as contracts or partnership agreements, that provide enough evidence to corroborate the individual's status as a nonemployee [Treas. Reg. § 1.199A-5(d)(3)].

The preamble to the final section 199A regulations explains that the Treasury Department and the IRS believe that the presumption is necessary to prevent misclassifications but agree that some clarification of the presumption is necessary. In accordance with commenters' suggestions, the final regulations provide a 3-year look-back rule for purposes of the presumption. The final regulations contain an additional example demonstrating the application of the presumption where an employee has materially modified his or her relationship with his or her employer and the employee can successfully rebut the presumption.

Example 2.37 Presumed Employee—Individual

Allen Archer is employed by PRS, a partnership for federal tax purposes, as a full-time employee and is treated as such for federal employment tax purposes. Allen quit his job with PRS and entered into a contract with PRS under which Allen provides substantially the same services that Allen previously provided to PRS in his capacity as an employee.

Because Allen was treated as an employee for services he provided to PRS, and now is no longer treated as an employee with regard to such services, Allen is presumed to be in the trade or business of performing services as an employee with regard to his services performed for PRS. Unless Allen rebuts the presumption by showing that,

under federal tax law, regulations, and principles (including the common-law employee classification rules), he is not an employee, any amounts paid by PRS to Allen with respect to such services will not be QBI for purposes of section 199A. The presumption would apply even if, instead of contracting directly with PRS, Allen formed a disregarded entity or a pass-through entity, and the entity entered into the contract with PRS [Treas. Reg. § 1.199A-5(d)(3)(iii)(A), Example 1].

Example 2.38 Presumed Employee—Entity

Coral Wang is an attorney employed as an associate in Upper Mountain Law Firm. Upper Mountain treated Coral as an employee for federal employment tax purposes. Coral and the other associates in Upper Mountain Law Firm have taxable income below the threshold amount. Upper Mountain terminated its employment relationship with Coral and its other associates. Coral and the other former associates formed a new partnership, Lower Mountain Law Firm, which contracts to perform legal services for Upper Mountain Law Firm.

Therefore, in form, Coral is now a partner in Lower Mountain Law Firm, which earns income from providing legal services to Upper Mountain Law Firm. Coral continues to provide substantially the same legal services to Upper Mountain and its clients. Because Coral was previously treated as an employee for services she provided to Upper Mountain, and now is no longer treated as an employee with regard to such services, Coral is presumed to be in the trade or business of performing services as an employee with respect to the services Coral provides to Upper Mountain Law Firm indirectly through Lower Mountain Law Firm.

Unless Coral rebuts that presumption, Coral is presumed to be in the trade or business of providing services as an employee, and her distributive share of Lower Mountain Law Firm 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 Upper Mountain Law Firm, Lower Mountain Law Firm was instead admitted as a partner in Upper Mountain Law Firm [Treas. Reg. § 1.199A-5(d)(3)(iii)(B), Example 2].

Example 2.39 Employee Presumption Rebutted—Promotion

Edward Loy is an engineer employed as a senior project engineer in Apex Engineering Firm. Apex is a partnership for federal tax purposes and structured such that after 10 years, senior project engineers are considered for partner if they meet certain career milestones. After 10 years, Edward meets those career milestones and is admitted as a partner in Apex Engineering. As a partner in Apex, Edward shares in the net profits of Apex, and otherwise satisfies the requirements under federal tax law, regulations, and principles (including common-law employee classification rules) to be respected as a partner.

Edward is presumed to be in the trade or business of performing services as an employee with respect to the services he provides to Apex. However, Edward can rebut the presumption by showing that he became a partner in Apex as a career milestone, shares in the overall net profits of the 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 [Treas. Reg. § 1.199A-5(d)(3)(iii)(C), Example 3].

Example 2.40 Employee Presumption Rebutted—Partner

Fatima Ahmad is a financial adviser employed by Firefly Financial Advisory Firm. Firefly is a partnership for federal tax purposes. Fatima is a full-time employee and is treated as such for federal employment tax purposes. She has taxable income below the threshold amount.

Firefly offers Fatima the opportunity to be admitted as a partner. Fatima elects to be admitted as a partner and is admitted as a partner in Firefly Financial Advisory Firm. As a partner, Fatima shares in the net profits of the firm, is obligated to the firm in ways that she was not previously obligated as an employee, is no longer entitled to certain benefits available only to employees, and has materially modified her relationship with Firefly. Fatima's share of net profits is not subject to a floor or capped at a dollar amount.

Fatima is presumed to be in the trade or business of performing services as an employee with respect to the services she provides to

Firefly Financial Advisory Firm. However, Fatima can rebut the presumption by showing that she became a partner by sharing in the profits of the firm; materially modifying her relationship with the firm; and otherwise satisfying the requirements under federal tax law, regulations, and principles (including common-law employee classification rules) to be respected as a partner [Treas. Reg. § 1.199A-5(d)(3)(iii)(D), Example 4].

Allocations

Under Treas. Reg. § 1.199A-3(b)(5), if an individual or an RPE directly conducts multiple trades or businesses, and has items of QBI that are properly attributable to more than one trade or business, the individual or RPE must allocate those items among the several trades or businesses using a reasonable method based on all the facts and circumstances. The individual or RPE may use a different reasonable method with respect to different items of income, gain, deduction, and loss. The chosen reasonable method for each item must be consistently applied from one tax year to another and must clearly reflect the income and expenses of each trade or business. The overall combination of methods must also be reasonable based on all facts and circumstances. The books and records maintained for a trade or business must be consistent with these allocations.

The preamble to the final section 199A regulations notes that whether direct tracing or allocations based on gross income are reasonable methods depends on the facts and circumstances of each trade or business. Different reasonable methods may be appropriate for different items. However, once a method is chosen for an item, it must be applied consistently with respect to that item. The Treasury Department and the IRS will continue to study this issue and request additional comments, including comments with respect to potential safe harbor allocation methods.

One commenter to the proposed section 199A regulations requested guidance on when or how a method can be changed from year to year if, for example, it is no longer reasonable or no longer clearly reflects income. The preamble to

the final regulations states that the regulations do not address this issue but clarify that if a method is no longer reasonable or no longer clearly reflects income, the method cannot continue to be used. The individual or RPE must choose a new method that is reasonable under the facts and circumstances and apply it consistently going forward.

PRACTITIONER NOTE

Books and Records

An entity can conduct more than one trade or business. Whether there are multiple trades or businesses is a factual determination, but the Treasury Department and the IRS believe that multiple trades or businesses generally will not exist within an entity unless different methods of accounting could be used for each trade or business under Treas. Reg. § 1.446-1(d)(1). Treas. Reg. § 1.446-1(d)(2) provides that no trade or business will be considered separate and distinct unless a complete separate set of books and records is kept for such trade or business.

Applicability Date

Generally, Treas. Reg. § 199A-5 applies to tax years ending after February 8, 2019. The provisions of Treas. Reg. § 1.199A-5(c)(2) regarding services or property provided to an SSTB and (d)(3) regarding the presumption that former employees are still employees apply to tax years ending after December 22, 2017. For purposes of determining QBI, W-2 wages, UBIA of qualified property, and the aggregate amount of qualified REIT dividends and qualified PTP income, if an individual receives any of these items from a non-calendar-year RPE with a tax year that began before January 1, 2018, and ended after December 31, 2017, such items are treated as having been incurred by the individual during the individual's tax year in which or with which the RPE tax year ends.

