



# Parity for Main Street Employers

March 19, 2018

The Honorable David J. Kautter  
Assistant Secretary for Tax Policy  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington DC, 20220

Mr. William M. Paul  
Principal Deputy Chief Counsel  
Internal Revenue Service  
Washington, DC 20224

*RE: Request for Rules Allowing for Aggregation or Grouping of Entities for Purposes of Calculating the Deduction under Section 199A*

Dear Messrs. Kautter and Paul:

As the Treasury Department and Internal Revenue Service drafts rules necessary to implement HR 1, the undersigned organizations request that you use your regulatory authority to adopt a reasonable method of calculating the new 20 percent pass-through deduction to ensure Main Street businesses are not penalized based on how they are organized for business purposes.

Specifically, we request guidance 1) allowing taxpayers to group activities conducted through S corporations and partnerships, as under Section 469, when they calculate qualified business income under Section 199A and 2) permitting businesses with existing groups under Section 469 to reorganize those groups to reflect the new tax law.

Allowing taxpayers to aggregate or “group” legal business entities together for purposes of calculating the pass-through deduction is vital to making the deduction fair and workable. Main Street businesses often utilize multiple legal entities for non-tax business reasons. For example, family businesses are often organized in a “brother-sister” structure, where their operations are housed in one entity and their real estate in another. Another common practice is for a business to place all its payroll, finances, and insurance in a “common paymaster” entity in order to streamline payroll operations, while housing actual production operations elsewhere.

Section 199A permits owners of pass-through businesses to deduct up to 20 percent of qualified business income. Certain services businesses are precluded from this deduction, however, while even eligible businesses are subject to two alternative limitations, one based on the businesses’ payroll and another on a combination of payroll and capital.

Absent aggregation, the application of these limitations would treat similar businesses differently depending on how they are organized. For example, a manufacturing business housed in a single S corporation may be eligible for the full deduction, while a similar business utilizing the common paymaster model described above may be eligible for none of it, despite having the same robust levels of payroll and investment.

Allowing aggregation or grouping will not open the new deduction to gaming opportunities because the wage and investment limitations provide a strict cap on the size of the deduction,



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regardless of how it is measured, while the new rules could ensure that income from excluded service activities is not taken into account for purposes of the calculation.

Failure to allow aggregation will force many affected businesses to reorganize, utilizing a different combination of pass-through structures or reorganizing as C corporations. Moving business activity from one form to another, particularly a form that is going to be taxed at just 21 percent, will not save the Treasury revenues, but it will impose significant transaction costs on these businesses. They will be forced to change not just their legal organization, but also how they operate and their ownership structure. The net result will be less investment and job creation.

As happened with the adoption of the Net Investment Income Tax, we recommend that taxpayers with existing groups under Section 469 be given the opportunity to regroup these activities in order to reflect the significant change made by HR 1 in the taxation for qualified trades or businesses.

We thank you for the opportunity to comment on these important matters and look forward to working with you and your staff to ensure that HR 1 is implemented in as rational and pro-growth manner as possible. We believe these recommendations will help you achieve those goals.

Sincerely,

Air Conditioning Contractors of America  
American Farm Bureau Federation  
American Foundry Society  
American Horticulture Industry Association (AmericanHort)  
American Institute of Certified Public Accountants (AICPA)  
American International Automobile Dealers Association  
American Supply Association  
Associated Builders and Contractors  
Associated Equipment Distributors  
Auto Care Association  
Financial Executives International  
Heating, Air-conditioning, and Refrigeration Distributors International  
Independent Community Bankers of America  
Independent Electrical Contractors  
Independent Insurance Agents and Brokers of America  
International Foodservice Distributors Association  
International Warehouse Logistics Association  
ISSA—the Worldwide Cleaning Industry Association  
Metals Service Center Institute (MSCI)  
National Apartment Association  
National Association of Convenience Stores  
National Association of Electrical Distributors  
National Association of Home Builders  
National Association of Wholesaler-Distributors



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National Automobile Dealers Association  
National Beer Wholesalers Association  
National Cattlemen's Beef Association  
National Electrical Contractors Association  
National Grocers Association  
National Lumber and Building Material Dealers Association  
National Marine Distributors Association  
National Marine Manufacturers Association (NMMA)  
National Multifamily Housing Council  
National Restaurant Association  
National Roofing Contractors Association  
National Small Business Association  
Outdoor Power Equipment and Engine Service Association (OPEESA)  
Pet Industry Distributors Association  
Policy and Taxation Group  
S Corporation Association  
Small Business & Entrepreneurship Council  
U.S. Chamber of Commerce  
Wine & Spirits Wholesalers of America