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OVERVIEW

Sec. 199A was enacted on Dec. 22, 2017, as part of the Tax Cuts and Jobs Act (TCJA), P.L. 115-97. Generally, it provides a deduction of up to 20% of income from a domestic trade or business operated as a sole proprietorship or through a partnership or S corporation, trust, or estate, for tax years beginning after Dec. 31, 2017, and ending before Jan. 1, 2026. The Sec. 199A deduction replaces the now-repealed Sec. 199 domestic production activities deduction.

The IRS issued proposed regulations on Aug. 8, 2018 (REG-107892-18); and also published "[Basic Questions and Answers on New 20-Percent Deduction for Pass-Through Businesses](#)" and Notice 2018-64, which provides methods for calculating W-2 wages for Sec. 199A purposes. In January 2019, the IRS issued final regulations (RIN 1545-BO71) and related guidance, implementing the new qualified business income (QBI) deduction (section 199A deduction).

The guidance includes:

- A set of [regulations](#), finalizing proposed regulations issued last summer,
- A new set of [proposed regulations](#) providing guidance on several aspects of the QBI deduction, including qualified REIT dividends received by regulated investment companies
- A [revenue procedure \(Rev. Proc. 2019-11\)](#) providing guidance on determining W-2 wages for QBI deduction purposes,
- A [notice \(Notice 2019-7\)](#) on a proposed revenue procedure providing a safe harbor for certain real estate enterprises that may be treated as a trade or business for purposes of the QBI deduction

The proposed revenue procedure, included in Notice 2019-07, allows individuals and entities who own rental real estate directly or through a disregarded entity to treat a rental real estate enterprise as a trade or business for purposes of the QBI deduction if certain requirements are met. Taxpayers can rely on this safe harbor until a final revenue procedure is issued.

The QBI deduction is generally available to eligible taxpayers with 2018 taxable income at or below \$315,000 for joint returns and \$157,500 for other filers. Those with incomes above these levels, are still eligible for the deduction but are subject to limitations, such as the type of trade or business, the amount of W-2 wages paid in the trade or business and the unadjusted basis immediately after acquisition of qualified property. These limitations are fully described in the final regulations.

The QBI deduction is not available for wage income or for business income earned by a C corporation.

IRC Section 199A

- **Section 1.199A-1** Operational rules.
- **Section 1.199A-2** Determination of W-2 wages and unadjusted basis immediately after acquisition of qualified property.
- **Section 1.199A-3** Qualified business income, qualified REIT dividends, and qualified PTP income.
- **Section 1.199A-4** Aggregation.
- **Section 199A-5** Specified service trades or businesses and the trade or business of performing services as an employee.
- **Section 1.199A-6** Relevant passthrough entities (RPEs), publicly traded partnerships (PTPs), trusts, and estates.
- **Section 1.643(f)-1** Anti-avoidance rules for multiple trusts.

THE QBI DEDUCTION

Sec. 199A allows taxpayers to deduction up to 20% of qualified business income (QBI) from a domestic business operated as a sole proprietorship or through a partnership, S corporation, trust, or estate. The Sec. 199A deduction can be taken by individuals and by some estates and trusts. The deduction is not available for wage income or for business income earned through a C corporation.

The basic QBI deduction

- Deduction equals 20% of qualified business income
- Generally available to owners of pass-through businesses (special notice for real estate)
- Limited for specified service trades or businesses (SSTB)
- Limited by the business owner's taxable income

Who is eligible

Owners of the following are eligible for the deduction:

- Sole proprietorships & LLCs (Schedule C)
- Sole owners (or TIC owners) of rental real estate (Schedule E)
- Trusts & estates (Form 1041)
- S corporation owners (Form 1120S)
- Partnership owners (Form 1065)

But, the computation of the deduction may differ for each!

The deduction is generally available to taxpayers whose 2018 taxable incomes fall below \$315,000 for joint returns and \$157,500 for other taxpayers. The deduction is generally equal to the lesser of 20% of the taxpayer's QBI plus 20% of the taxpayer's qualified real estate investment trust (REIT) dividends and qualified publicly traded partnership (PTP) income, or 20% of taxable income minus net capital gains. Deductions for taxpayers above the \$157,500/\$315,000 thresholds may be limited; the application of those limits is described in the regulations. These amounts are inflation-adjusted. (For more on the deduction, see "[Understanding the New Sec. 199A Business Income Deduction](#)," *The Tax Adviser*, April 2018).

THE FINAL REGULATIONS

What changed – What’s new

The IRS notes that the final regulations have been modified from the proposed Regs issued last August (REG-107892-18) as a result of comments it received and testimony at a public hearing it held. The final Regs apply to tax years ending after their publication in the *Federal Register*; however, taxpayers may rely on the proposed regulations for tax years ending in 2018.

It should be noted that while the final Regs allow taxpayers to choose to use the Proposed Regs or the final Regs for calendar year 2018 returns, there are many uncertainties surrounding this. For example, there are rules that are made clear in the final regs that are unspoken in the proposed Regs.

The actual language in the final Regs (on pages 2 & 117) states, as follows:

“However, taxpayers may rely on the rules set forth in §§1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under §§1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.”

The final regulations focus on determining the amount of Sec. 199A deduction. They also cover determining when to treat two or more trusts as a single trust for purposes of Subchapter J (governing estates, trusts, beneficiaries, and decedents).

Net capital gain

First, the IRS noted that it had not defined “net capital gain” in the proposed regulations and that a number of commenters had requested a definition. The final regulations, however, reject one comment suggesting that net capital gain exclude qualified dividends. Instead, the regulations define net capital gain for purposes of Sec. 199A as net capital gain under Sec. 1222(11) (the excess of net long-term capital gain for the tax year over the net short-term capital loss for that year) plus qualified dividend income as defined in Sec. 1(h)(11)(B).

Relevant passthrough entities

The proposed regulations define a relevant passthrough entity (RPE) as a partnership (other than a PTP) or an S corporation that is owned, directly or indirectly, by at least one individual, estate, or trust. A trust or estate is treated as an RPE to the extent it passes through QBI, W-2 wages, unadjusted basis immediately before acquisition (UBIA) of qualified property, qualified REIT dividends, or qualified PTP income.

The final regulations expand this definition by providing that other passthrough entities, including common trust funds described in Temp. Regs. Sec. 1.6032-T and religious or apostolic organizations described in Sec. 501(d), are also treated as relevant passthrough entities if the entity files a Form 1065, *U.S. Return of Partnership Income*, and is owned, directly or indirectly, by at least one individual, estate, or trust. It declined to treat RICs as RPEs, however, because they are C corporations.

Trade or business

After considering all relevant comments, the final regulations retain and slightly reword the proposed regulations' definition of a trade or business. Specifically, for purposes of Sec. 199A, Regs. Sec. 1.199A-1(b)(14) defines a trade or business as a trade or business under Sec. 162 other than the trade or business of performing services as an employee. The IRS again rejected suggestions that the IRS use the Sec. 469 passive activity rules, explaining that whether a trade or business exists is a different determination than that applied to the passive loss rules.



Under the rules, the rental or licensing of tangible or intangible property to a related trade or business is treated as a trade or business if the rental or licensing activity and the other trade or business are commonly controlled under Regs. Sec. 1.199A-4(b)(1)(i). This rule also allows taxpayers to aggregate their trades or businesses with the leasing or licensing of the associated rental or intangible property if all of the requirements of Regs. Sec. 1.199A-4 are met.

One commenter suggested the rule apply to situations in which the rental or licensing is to a commonly controlled C corporation. Another commenter suggested that the rule in the proposed regulations could allow passive leasing and licensing-type activities to benefit from Sec. 199A even if the counterparty is not an individual or an RPE. The commenter recommended that the exception be limited to scenarios in which the related party is an individual or an RPE and that the term related party be defined with reference to existing attribution rules under Sec. 267, 707, or 414. The final regulations clarify these rules by adopting these recommendations and limiting this special rule to situations in which the related party is an individual or an RPE.

Commenters also asked the IRS to provide safe harbors or factors for determining how to delineate separate trades or businesses conducted within one entity and when an entity's combined activities should constitute a single trade or business, but the IRS declined to provide this guidance.

The IRS warns that taxpayers should report items consistently. For example, the IRS says that taxpayers who treat a rental activity as a trade or business for purposes of Sec. 199A should also comply with the Form 1099 information-reporting requirements under Sec. 6041.

The final regulations also provide computational rules. The final regulations clarify the proposed regulations by providing that for taxpayers with taxable income within the phase-in range, QBI from a specified service trade or business (SSTB) must be reduced by the applicable percentage before the application of the netting and carryover rules described in Regs. Sec. 1.199A-1(d)(2)(iii)(A). The final regulations also clarify that the SSTB limitations also apply to qualified income received by an individual from a PTP.

Disregarded entities

The proposed regulations did not address the treatment of disregarded entities. The final regulations provide that an entity with a single owner that is treated as disregarded as an entity separate from its owner under Regs. Sec. 301.7701-3 is disregarded for Sec. 199A purposes. Accordingly, trades or businesses conducted by a disregarded entity are treated as conducted directly by the owner of the entity.

Share of UBIA property

The final regulations modify the proposed regulations with regard to the allocation to partners of the UBIA of qualified property. In the proposed regulations, in the case of a partnership with qualified property that does not produce tax depreciation during the year, each partner's share of the UBIA of qualified property would be based on how gain would be allocated to the partners pursuant to Secs. 704(b) and 704(c) if the qualified property were sold in a hypothetical transaction for cash equal to the fair market value of the qualified property.

The IRS adopted a commenter's suggestion that for partnerships, only Sec. 704(b), not Sec. 704(c), should apply to determine each partner's share of the UBIA of qualified property. Thus, the final regulations state that each partner's share of the UBIA of qualified property is determined in accordance with how depreciation would be allocated for Sec. 704(b) book purposes under Regs. Sec. 1.704-1(b)(2)(iv)(g) on the last day of the tax year.

Under the final regulations, for an S corporation's qualified property, each shareholder's share of UBIA of qualified property is a share of the unadjusted basis proportionate to the ratio of shares in the S corporation held by the shareholder on the last day of the tax year over the total issued and outstanding shares of the S corporation.

Basis for contributed property

Another change in response to comments was for a basis rule for property contributed to a partnership in a Sec. 721 transaction or to an S corporation in a Sec. 351 transaction that the property should retain its basis. Therefore, Regs. Sec. 1.199A-2(c)(3)(iv) provides that, solely for Sec. 199A purposes, if qualified property is acquired in a transaction described in Sec. 168(i)(7)(B), the transferee's UBIA in the qualified property is the same as the transferor's UBIA in the property, decreased by the amount of money received by the transferee in the transaction or increased by the amount of money paid by the transferee to acquire the property in the transaction.

Similarly, the final rules clarify how to determine the UBIA of replacement property under Sec. 1031 or 1033 in response to comments. They also explain how Sec. 743(b) basis adjustments for partnerships should be treated for UBIA but also request further comments on Sec. 743(b) adjustments.

Aggregating trades or businesses

The IRS declined to adopt most of the comments it received on aggregating trades or businesses, but it did permit an RPE to aggregate trades or businesses it operates directly or through lower-tier RPEs. The resulting aggregation must be reported by the RPE and by all owners of the RPE. An individual or upper-tier RPE may not separate the aggregated trade or business of a lower-tier RPE but instead must maintain the lower-tier RPE's aggregation. An individual or upper-tier RPE may aggregate additional trades or businesses with the lower-tier RPE's aggregation if the rules of Regs. Sec. 1.199A-4 are otherwise satisfied.



The IRS also chose to permit taxpayers who have not reported businesses as aggregated on a tax return to choose later to aggregate businesses on a future tax return. However, taxpayers cannot aggregate businesses on an amended return because that would permit taxpayers the benefit of hindsight. Because many taxpayers were not aware of the aggregation rule, though, for 2018, they may report an aggregation on an amended return.

Performing services as an employee



The final regulations, like the proposed regulations, include a presumption that an individual who was previously treated as an employee and is subsequently treated as an independent contractor while performing substantially the same services for the same employer or a related person will be presumed to still be in the trade or business of performing services as an employee for purposes of Sec. 199A.

- Provides a general rule that income from the trade or business of performing services as an employee refers to all wages.
- Former employees who provide substantially the same services to the former employer as an independent contractor are treated as an employee for the purposes of Section 199A.
- Of note, this provides further incentive for the service to re-classify independent contractors as employees.

However, in response to comments, the final regulations were modified to include a three-year lookback rule for this presumption.

- The presumption is rebuttable by showing records sufficient to corroborate the individual's status as a non-employee.
- The final regulations also include an additional example of a former employee that can rebut the presumption.

SPECIFIED SERVICE TRADES OR BUSINESSES (SSTBs)

A large part of the preamble to the final regulations was devoted to comments received on SSTBs. Apart from a few clarifications in the definitions, the final regulations did not adopt these comments.

The QBI deduction is disallowed or limited for specified service trades or businesses (SSTBs). For specified service businesses, the entire deduction is phased-out from \$321,400 - \$421,400 (MFJ 2019) of taxable income.

Specified Service Trades or Businesses (SSTB) include the following:

- Health
- Law
- Accounting
- Actuarial science
- Performing arts
- Consulting
- Athletics
- Financial services
- Brokerage services
- Investing and investment management
- Services in trading
- Services in dealing securities, commodities, and partnership interests
- Any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees or owners

A thorough analysis of all of the SSTB definitions is beyond the scope of this summary; but let's take a closer look at some of the key SSTB definitions.

Health

Final Section 1.199A-5 defines the “Health” SSTB



The provision of medical services by physicians, pharmacists, nurses, dentists, veterinarians, physical therapists, psychologists, and other similar healthcare professionals performing services in their capacity as such.

The preamble to the final regulations points out that, a radiologist for example might be never come into direct contact with the patient, but it remains health.

The preamble discussed comment regarding the difficulty in making the determination with a skilled nursing or assisted living facility

The Treasury and Service left this issue in general to a facts and circumstances inquiry, but provided an example in the regulations in which the facility did not rise to the level of the performance of services in the field of health

The final regulations provide an example of an outpatient surgical center which the Treasury and IRS do not believe is a trade or business providing services in the field of health. The medical professionals were separately billed and not provided by the surgery center.

The preamble to the final regulations explains that the sales of pharmaceuticals and medical devices by a retail pharmacy is not by itself a trade or business performing services in the field of health, however some services provided by the pharmacist are.

- The final regulations provide an example of a pharmacist performing services in the field of health.
- The preamble to the final regulations explains that the Treasury and Service declined commentator’s requests to exclude veterinary services from the SSTB definition.
- The preamble also explains that physical therapists are included in the SSTB definition.

Treasury Regulations under Section 448 provide that the performance of services in the field of health means the provision of medical services by physicians, nurses, dentists, and other similar healthcare professionals.

The preamble to the final regulations declines to opine on whether technicians who operate equipment or test samples are within the definition as it is a question of fact; however the examples include one related to laboratory services.

Law

Final Section 1.199A-5 defines the “Law” SSTB

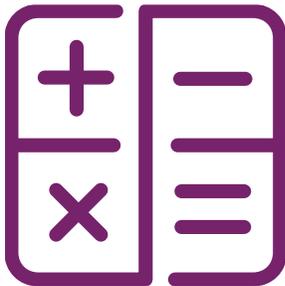


The provision of services by lawyers, paralegals, legal arbitrators, mediators, and similar professionals.

- Does not include the provision of services that do not require skills unique to the field of law (e.g. printers, delivery services, or stenography services).

Accounting

Final Section 1.199A-5 defines the “Accounting” SSTB



The provision of services by accountants, enrolled agents, return preparers, financial auditors, and similar professionals.

The preamble specifically indicates the “field of accounting is not limited to services requiring state licensure as a CPA.”

Accounting does not include payment processing and billing analysis.

Commentators asked the Treasury and Service to make the following changes:

- Exclude real estate settlement agents
- Limit the definition to “core” accounting services
- Exclude tax return advice and preparation
- Include bookkeeping services

The final regulations declined to adopt these suggestions

The preamble indicates the following:

- Real estate settlement agents are subject to facts and circumstances test
- Tax return advice and preparation and bookkeeping services are included in the SSTB definition

Consulting

Final Section 1.199A-5 defines the “Consulting” SSTB



“The provision of professional advice and counsel to clients to assist the client in achieving goals and solving problems... “includes providing advice and counsel regarding advocacy with the intention of influencing decisions made by a government or governmental agency and all attempts to influence legislators and other government officials on behalf of a client by lobbyists and other similar professionals;”

This is a facts and circumstances determination.

- If a “trade or business provides ancillary consulting services that are not separately purchased or billed, then such trades or businesses are not in a trade or business in the field of consulting.”

The final regulations clarify that a business that refers job applicants does not engage in consulting.

The final regulations also clarify that services provided by engineers and architects are not consulting.

- However, the final regulations decline to adopt comments that suggested making the definition more specific and narrower.

Financial services

Final Section 1.199A-5 defines the “Financial services” SSTB



The regulation provides that the field of financial services includes the provision of financial services to clients including managing wealth, advising clients with respect to finances, developing retirement plans, developing wealth transition plans, the provision of advisory and other similar services regarding valuations, mergers, acquisitions, dispositions, restructurings (including in title 11 or similar cases), and raising financial capital by underwriting, or acting as the client’s agent in the issuance of securities, and similar services.

- This includes services provided by financial advisors, investment bankers, wealth planners, and retirement advisors and other similar professionals

The final regulations clarify taking deposits or making loans is not included.

The preamble to the final regulations clarifies that insurance is not included.

- However, services provided by insurance agents such as managing wealth, advising clients with respect to finances, and the provision of advisory and other similar services are not categorically excluded.
- Nevertheless, 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.

The regulations define these as services in which a person arranges transactions between a buyer and a seller with respect to securities for a commission or fee.

- This includes services provided by stock brokers and other similar professionals but *does not include services provided by real estate agents and brokers, or insurance agents and brokers.*

Investing and investment management

Final Section 1.199A-5 defines the “Investing and investment management” SSTB

This is a new term to the Code added by Section 199A(d)(2)(B).

The regulations define “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

- This does not include directly managing real property.

The preamble to the final regulations restates that commission-based sales of insurance policies generally will not be considered the performance of services in the field of investing and investing management.

Banking

Final Section 1.199A-5 defines “Banking”

The preamble to the final regulations makes clear that a S-corporation bank that provides services listed as SSTBs outside of the *de minimis* exception will be treated as an SSTB.

- However, it also clarifies that since a RPE can operate more than one trade or business, the SSTB activities can be segregated.

Reputation or skill

Final Section 1.199A-5 defines “Reputation or skill”

The preamble to the proposed regulations specifically rejects

- a broad test that would exclude all service businesses above the threshold amount, and

- a balance sheet test which would compare the value of goodwill and work in place to the balance of the businesses value or any other mechanical testing.

The final regulations retain this approach.

Reputation or skill is defined as:

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

After IRC Section 199A was enacted, a number of commentators suggested that SSTBs could separate out the non-service components of the SSTB, like administrative functions, into another business and qualify income from the separated business for a 199A deduction. This is commonly referred to as "crack and pack."

Treas. Reg. Section 1.999A-5 effectively blocks this crack and pack strategy.

THE PROPOSED REGULATIONS

At the same time as it released the final regulations, the IRS also released *new* proposed regulations ([REG-134652-18](#)) treating certain issues not addressed in the proposed regulations issued in August 2018:

- 1) the treatment under Sec. 199A of previously suspended losses,
- 2) "Sec. 199A dividends" paid by a RIC, and
- 3) the treatment of amounts received from split-interest trusts and CRTs.

Previously suspended losses

The proposed regulations amend Prop. Regs. Sec. 1.199A-3(b)(1)(iv) to provide that previously disallowed, suspended, limited, or carried over losses (including under Secs. 465, 469, 704(b), and 1366(b) and only for disallowance, etc., years ending after Jan. 1, 2018) are taken into account for QBI purposes on a first-in, first-out basis and are treated as from a separate trade or business.

To the extent that losses relate to a PTP, they must be treated as losses from a separate PTP. In addition, the attributes of these losses with respect to Sec. 199A are determined according to the year incurred.

Sec. 199A dividends paid by RICs

In redesignated Prop. Regs. Sec. 1.199A-3(d), the IRS proposed that RICs under Sec. 852(b) may pay Sec. 199A dividends, defined as any dividend that a RIC pays to its shareholders and reports as such in written statements to its shareholders.

The rules under which a RIC would compute and report Sec. 199A dividends are based on the rules for capital gain dividends in Sec. 852(b)(3) and exempt interest dividends in Sec. 852(b)(5). The amount of a RIC's Sec. 199A dividends for a tax year would be limited to the excess of the RIC's qualified REIT dividends for the tax year over allocable expenses.

Split-interest trusts and CRTs

These proposed regulations redesignate Prop. Regs. Sec. 1.199A-6(d)(3)(iii) to state that a trust with substantially separate and independent shares and multiple beneficiaries is treated as a single trust for determining the application of the threshold amount under Sec. 199A(e)(2). In addition, new Prop. Regs. Sec. 1.199A-6(d)(v) provides that in the case of a CRT, any taxable recipient of a unitrust or annuity amount from a trust must determine and apply the recipient's own Sec. 199A threshold amount, taking into account any annuity or unitrust amounts received from the trust.

These recipients may take into account any included QBI, qualified REIT dividends, or qualified PTP income so distributed for purposes of determining their own QBI deduction.

PTPs

The IRS reserved for further study and comment the treatment of qualified PTP income in qualified Sec. 199A dividends distributed by RICs, noting several technical and administrative problems of their proper characterization with respect to recipients.

These proposed regulations are effective when adopted as final, but the IRS stated that taxpayers may rely on them in the interim.

CALCULATING W-2 WAGES

Rev. Proc. 2019-11

[Rev. Proc. 2019-11](#) provides guidance on how to calculate W-2 wages for purposes of Sec. 199A. Sec. 199A(b)(2) uses W-2 wages to limit the amount of a taxpayer's Sec. 199A deduction in certain situations.

Sec. 199A(b)(4) defines W-2 wages to mean amounts described in Secs. 6051(a)(3) (generally remuneration paid for services paid by an employee to an employer) and 6051(a)(8) (elective deferrals and deferred compensation) paid by a person claiming the deduction with respect to employment of employees by that person during the year.

"W-2 wages" does not include any amount that is not properly allocable to QBI under Sec. 199A(c)(1) or any amount not properly included in a return filed with the Social Security Administration (SSA) on or before the 60th day after the due date for the return.

The revenue procedure provides three methods for calculating W-2 wages:

1. the unmodified box method,
2. the modified box 1 method, and
3. the tracking changes method.

The IRS cautions that using one of these methods does not necessarily calculate the W-2 wages that are properly allocable to QBI and eligible for use in computing the Sec. 199A limitations.

After using the revenue procedure to calculate W-2 wages, the taxpayer must then determine the extent to which they are properly allocable to QBI. The IRS also cautions that the revenue procedure cannot be used for determining if amounts are wages for employment tax purposes.

The unmodified box method described in the revenue procedure involves taking, without modification, the lesser of (1) the total entries in box 1 (wages, tips, and other compensation) of all Forms W-2, *Wage and Tax Statement*, filed by the taxpayer with the SSA or (2) the total entries in box 5 (Medicare wages and tips) of all Forms W-2 filed by the taxpayer with the SSA.

The modified box 1 method involves making modifications to the total entries in box 1 of all Forms W-2 filed by the taxpayer with the SSA by subtracting amounts that are not wages for federal income tax withholding purposes (such as supplemental unemployment compensation benefits) and adding the total amounts of various elective deferrals that are reported in box 12.

Under the tracking wages method, the taxpayer tracks total wages subject to federal income tax withholding and elective deferrals reported in box 12.

Rental real estate activities

Many of the comments the IRS received regarding the proposed regulations dealt with the question of when rental activity qualifies as a trade or business. Therefore, in [Notice 2019-07](#), the IRS has issued a proposed revenue procedure that would provide a safe harbor for taxpayers.

Under the proposed safe harbor, a “rental real estate enterprise” (RREE) would be treated as a trade or business for purposes of Sec. 199A if at least 250 hours of services are performed each tax year with respect to the enterprise.

The IRS says this includes services performed by owners, employees, and independent contractors and time spent on maintenance, repairs, rent collection, payment of expenses, provision of services to tenants, and efforts to rent the property. However, hours spent in the owner’s capacity as an investor, such as arranging financing, procuring property, reviewing financial statements or reports on operations, and traveling to and from the real estate will not be considered hours of service with respect to the enterprise.

A rental real estate enterprise is defined, for purposes of the safe harbor, as an interest in real property held for the production of rents. A rental real estate enterprise may consist of multiple properties. The interest must be held directly or through a disregarded entity. Taxpayers either must treat each property held for the production of

rents as a separate enterprise or must treat all similar properties held for the production of rents as a single enterprise. Commercial and residential real estate cannot be combined in the same enterprise.

The proposed safe harbor would require that separate books and records and separate bank accounts be maintained for the rental real estate enterprise. Property leased under a triple net lease or used by the taxpayer (including an owner or beneficiary of a relevant passthrough entity) as a residence for any part of the year under Sec. 280A would not be eligible under the proposed safe harbor.

This Report is based on an article in the Journal of Accountancy, [Qualified business income deduction regs. and other guidance issued](#), by Sally Schreiber, J.D, and Paul Bonner, JofA senior editors and Alistair Nevius, J.D., JofA's editor-in-chief, tax.



FOR MORE INFORMATION

This Sec. 199A Report is a supplement to our Special Report on the TCJA (which includes topics that are beyond the scope of this Report). The complete Report can be download from our Supplements page at www.aicpa.org/CPESupplements.

Final Sec. 199A regs (released 1/18/19), can be found here: <https://www.irs.gov/pub/irs-drop/td-reg-107892-18.pdf>.

For additional details on the QBI deduction, including answers to frequently-asked questions, as well as information on other TCJA provisions, visit IRS.gov/taxreform.

Also, be sure to visit the AICPA [Tax Reform Resource Center](http://www.aicpa.org/taxreform) (<https://www.aicpa.org/taxreform>), your home for comprehensive coverage on tax reform. This page is your go-to for news, resources, videos, podcasts, learning, and AICPA advocacy positions.

Recent articles in The Tax Adviser:

[Sec. 199A: Questions and answers](https://www.thetaxadviser.com/news/2018/dec/sec-199a-business-income-deduction-qa.html) (<https://www.thetaxadviser.com/news/2018/dec/sec-199a-business-income-deduction-qa.html>)

Jeff Bilsky, CPA, senior practice leader for BDO's national partnership taxation group, sat down recently for a question-and-answer session on guidance that has been issued on the Sec. 199A qualified business income deduction.

[Claiming the QBI deduction for trusts](#)

The enactment of Sec. 199A provides one more reason to advise clients to create separate trusts for individual beneficiaries instead of a single trust.

[Converting from an S corp. to a C corp.](#)

This article discusses the many tax ramifications of converting.

[Service businesses that qualify for the 20% QBI deduction](#)

This article discusses the limitations that apply to specified service trades or businesses.

[The TCJA: A disruptive factor for the 2019 tax filing season](#)

CPAs can reassure an unsettled client base by confidently providing coherent explanations and advice relating to the many changes brought about by last year's tax reform legislation.

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[Tax Reform: Overview of Section 199A](#)

Get the latest on tax reform legislation by attending this two-hour webcast that covers the Section 199A Qualified Business Income (QBI) deduction.

[Tax Reform: A Case Study Approach to Section 199A](#)

Get the latest on tax reform legislation by attending this webcast on the Section 199A Qualified Business Income (QBI) deduction. You will learn about the detailed mechanics of the new code section and planning techniques.

IRS Resources:

New IRS Form 1040 (Final): <https://www.irs.gov/pub/irs-pdf/f1040.pdf>

About the new Form 1040: <https://www.irs.gov/forms-pubs/about-form-1040>

Schedules for Form 1040: <https://www.irs.gov/forms-pubs/schedules-for-form-1040>

Final IRC Section 199A Regulations: <https://www.irs.gov/pub/irs-drop/td-reg-107892-18.pdf>

[IRS Publication 535](#) (2018). Pub 535 is the “road map” for calculating the Sec. 199A deduction. For other up-to-date IRS Forms and Instructions, visit <https://www.irs.gov/forms-instructions>.

New Form 965-A: <https://www.irs.gov/pub/irs-pdf/f965a.pdf>.

New Schedule 4: <https://www.irs.gov/pub/irs-pdf/f1040s4.pdf>

Schedule 8812: <https://www.irs.gov/pub/irs-pdf/f1040s8.pdf>

[2018 Form 461: Limitation on Business Losses](#) - <https://www.irs.gov/pub/irs-pdf/f461.pdf>

All Draft IRS Forms are available here: <https://apps.irs.gov/app/picklist/list/draftTaxForms.html>

The Tax Cuts and Jobs Act

The tax reform bill, P.L. 115-97, An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, also known as the Tax Cuts and Jobs Act, can be accessed [here](#).

AICPA Journals and Newsletters

Journal of Accountancy - <https://www.journalofaccountancy.com/>.

The Tax Adviser - <https://www.thetaxadviser.com/>.

AICPA Tax Section

The Tax Adviser is available at a reduced subscription price to members of the Tax Section, which provides tools, technologies, and peer interaction to CPAs with tax practices. More than 23,000 CPAs are Tax Section members. The Section keeps members up to date on tax legislative and regulatory developments. Visit the Tax Center at aicpa.org/interestareas/tax. The current issue of *The Tax Adviser* is available at thetaxadviser.com.

[IRS Publication 535](#) (2018) is the “*road map*” for calculating the Sec. 199A deduction.

Pub. 535 includes Worksheet 12-A. Use Worksheet 12-A and its instructions if:

- You have QBI, qualified REIT dividends, or qualified PTP income, and
- Your 2018 taxable income before QBI deduction is more than \$157,500 (\$315,000 if married filing jointly); or
- You’re a patron in a specified agricultural or horticultural cooperative.

The following section covers the rules for determining the [qualified business income](#) (QBI) deduction, and is adapted from Chapter 12 of IRS [Publication 535](#). (available here: <https://www.irs.gov/pub/irs-pdf/p535.pdf>).

Qualified Business Income Deduction

Introduction

For tax years beginning after 2017, individual taxpayers and certain trusts and estates may be entitled to a deduction of up to 20% of their QBI from a trade or business, including income from a pass-through entity, but not from a C corporation, plus 20% of qualified real estate investment trust (REIT) dividends and qualified publicly traded partnership (PTP) income. The deduction is subject to multiple limitations, depending on the taxpayer’s taxable income, and may include the type of trade or business, the amount of W-2 wages paid by the trade or business, and the [unadjusted basis immediately after acquisition](#) (UBIA) of qualified property held by the trade or business. The deduction can be taken in addition to the standard or itemized deductions. For more information, see section 199A, the Regulations section 1.199A, Rev. Proc. 2019–11, and Notice 2019–07.

Topics

This section discusses:

- Taxpayers who may take a QBI deduction
- How to figure the deduction
- Coordination with other Code sections
- Special rules

Taxpayers Who May Take a Qualified Business Income Deduction

Individuals, estates, and trusts may take a QBI deduction.

S corporations and partnerships. S corporations and partnerships are not eligible for the deduction. Instead, S corporations and partnerships must pass through the necessary information to their shareholders or partners so they may figure their deduction.

S corporations and partnerships must report each shareholder's or partner's share of the following items for each qualified trade or business (or aggregated trade or business) on Schedule K-1, so the shareholder or partner may figure their deduction.

- Section 199A QBI.
- Section 199A W-2 wages.
- Section 199A UBIA.
- Section 199A Qualified REIT dividends.
- Section 199A Qualified PTP income.
- QBI allocable to qualified payments received from a specified cooperative.
- Passed-through domestic production activities deduction (DPAD) under section 199A(g) from a specified cooperative.
- Whether each trade or business is a specified service trade or business.
- Disclosure of information for aggregated trades or businesses.

For more information, see the Instructions for Form 1120S, U.S. Income Tax Return for an S Corporations, and Form 1065, U.S. Return of Partnership Income.

Estates and trusts. To the extent that a gran-tor or another person is treated as owning all or part of a trust or estate, the owner will compute its QBI with respect to the owned portion of the trust as if that QBI had been received directly by the owner. Generally, in the case of a non-gran-tor trust or estate, the trust or estate may either deduct or pass through information to their beneficiaries so that the beneficiaries may figure their deduction.

In determining the QBI deduction or the amount that must be passed through to beneficiaries, the estate or trust allocates QBI items based on the relative proportion of the estate's or trust's distributable net income (DNI) for the tax year that is distributed or required to be distributed to the beneficiary or retained by the estate or trust. If the estate or trust has no DNI for the tax year, QBI, W-2 wages, and UBIA are allocated entirely to the estate or trust.

Although estates and trusts may compute their own QBI deduction, they must reduce the amounts reported as QBI, W-2 wages, and UBIA to reflect the portion of those amounts that were allocated to beneficiaries.

For more information, see the Instructions for Form 1041, U.S. Income Tax Return for Estates and Trusts.

Agricultural and horticultural cooperatives. See the Instructions for Form 1120C, U.S. In-come Tax Return for Cooperative Associations, for rules applicable to agricultural and horticultural cooperatives.

How to Figure the Deduction

General Computation. In general, the amount of your QBI deduction equals your QBI Component plus your qualified REIT/PTP Component. However, the deduction is limited to the lesser of this amount or 20% of your taxable income minus your net capital gain.

Use one of two worksheets to help you figure your QBI deduction:

- 1. Use the Qualified Business Income Deduction—Simplified Worksheet in the Instructions for Form 1040 if:**
 - a. You have QBI, qualified REIT dividends, or qualified PTP income (de-fined later);
 - b. Your 2018 taxable income before QBI deduction isn't more than \$157,500 (\$315,000 if married filing jointly); and
 - c. You aren't a patron in a specified agricultural or horticultural cooperative.
- 2. Use Worksheet 12-A and its instructions in [Pub. 535](#) if:**
 - a. You have QBI, qualified REIT dividends, or qualified PTP income, and
 - b. Your 2018 taxable income before QBI deduction is more than \$157,500 (\$315,000 if married filing jointly); or
 - c. You're a patron in a specified agricultural or horticultural cooperative.

QBI Component. Your QBI Component is generally 20% of your QBI from your trades or businesses. However, if your taxable income (before the QBI deduction) exceeds the thresh-old your QBI for each of your trades or businesses may be partially or fully reduced to the greater of 50% of wages from the qualified trade or business, or 25% of wages plus 2.5% of the unadjusted basis on acquisition of qualified property from the qualified trade or business. The partial or full reduction to QBI is determined by your taxable income. If your tax-able income (before the QBI deduction) is:

- At or below the threshold, you don't need to reduce your QBI,
- Above the threshold but below the phase in range, the reduction is phased-in,
- Above the threshold and phase in range, the full reduction applies.

In addition, if you are a patron of an agricultural or horticultural cooperative you must re-duce your cooperative QBI by the lesser of:

- 9% of the QBI allocable to qualified payments, or
- 50% of W-2 wages from the trade or business allocable to the qualified payments.

Determining your qualified trades or businesses. Your qualified trades and businesses include your section 162 trades or businesses, other than trades or businesses conducted through a C corporation, W-2 wages earned as an employee, and specified service trades or businesses.

In general, to be engaged in a trade or business, you must be involved in the activity with continuity and regularity and your primary purpose for engaging in the activity must be for in-come or profit. If you own an interest in a pass-through entity, the trade or business de-termination is made at that entity's level.

The ownership and rental of real property may constitute a trade or business. Notice 2019-07 provides a safe harbor under which rental real estate enterprise will be treated as a trade or business for purposes of the QBI de-duction. For more information, on the safe harbor see Notice 2019-07. Rental real estate that does not meet the requirements of the safe harbor may still be treated as a trade or business for purposes of the QBI deduction if it is a section 162 trade or business.

In addition, the rental or licensing of property to a commonly controlled trade or business operated by an individual or a pass-through entity is considered a trade or business under section 199A.

Services performed as an employee excluded from qualified trades or businesses. The trade or business of performing services as an employee is not a trade or business for purposes of section 199A. Therefore, any amounts reported in box 1 of Form W-2, other than amounts reported in box 1 where the “Statutory Employee” box in box 13 is checked, are not QBI. If you were previously an employee of a business and continue to provide substantially the same services to that business after you are no longer treated as an employee, there is a presumption that you are providing services as an employee for purposes of section 199A for the 3-year period after ceasing to be an employee.

You may have to rebut this presumption upon notice from the IRS by providing records such as contracts or partnership agreements that corroborate your status as a non-employee. For more information on whether you are an employee or an independent contractor, see Pub. 15-A, Employer’s Supplemental Tax Guide, and Pub. 1779, Independent Contractor or Employee.

Specified service trade or business excluded from your qualified trades or businesses. Specified service trades or businesses generally are excluded from the definition of qualified trade or business income if the taxpayer's taxable income exceeds the threshold. Therefore, no QBI, W-2 wages, or UBIA of the qualified property from the specified trade or business are taken into account in figuring your QBI deduction. If the specified service trade or business is conducted by your pass-through entity, the same limitation applies to the pass-through items regardless of whether you are a passive owner or materially participate in the business.

Exception 1: If your taxable income before the QBI deduction isn’t more than \$157,500 (\$315,000 if married filing jointly), your specified service trade or business is a qualified trade or business, and thus may generate income eligible for the QBI deduction.

Exception 2: If your taxable income before the QBI deduction is more than \$157,500 but not \$207,500 (\$315,000 and \$415,000 if married filing jointly), an applicable percentage of your specified service trade or business is treated as a qualified trade or business. For more information on the applicable percentage and this exception, see the instructions for Schedule A in this publication.

A specified service trade or business is any trade or business providing services in the fields of:

- **Health**, including physicians, nurses, dentists, veterinarians, physical therapists, psychologists, and other similar healthcare professionals. However, it excludes services not directly related to a medical services field, such as the operation of health clubs or spas; payment processing; or the research, testing, manufacture, and sale of pharmaceuticals or medical devices;
- **Law**, including lawyers, paralegals, legal arbitrators, mediators, and similar professionals. However, it excludes services that do not require skills unique to the field of law such as services by printers, delivery services, or stenography services;
- **Accounting**, including accountants, enrolled agents, return preparers, financial auditors, and similar professionals;
- **Actuarial science**, including actuaries, and similar professionals;

- **Performing arts**, including actors, directors, singers, musicians, entertainers, and similar professionals. However, it excludes services that don't 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 or the provision of services by persons who broadcast video or audio of performing arts to the public;
- **Consulting**, including providing advice and counsel with the intention of influencing decisions made by a government or governmental agency and all attempts to influence legislators and other government officials on behalf of a client by lobbyists, and other similar professionals. However, it excludes the performance of services other than advice or counsel, such as sales, training or educational courses. It also excludes embedded or ancillary services that are otherwise not SSTBs, if there is no separate payment for the services;
- **Athletics**, including athletes, coaches, and managers in sports such as baseball, basketball, football, soccer, hockey, martial arts, boxing, bowling, tennis, golf, snow-boarding, track and field, billiards, racing, and other athletic performance. However, it excludes 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 or the provision of services by persons who broadcast video or audio of athletic events to the public;
- **Financial services**, 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, restructuring (including in title 11 or similar cases), and raising financial capital by underwriting, or acting as a client's agent in the issuance of securities, and similar services. This includes services provided by financial advisors, investment bankers, wealth planners, retirement advisors, and other similar professionals. However, it excludes taking deposits or making loans, but does include arrange lending transactions between a lender and borrower;
- **Brokerage services**, including services in which a person arranges transactions between a buyer and a seller with respect to securities for a commission or fee including services provided by stock brokers and other similar professionals. However, it excludes services provided by real estate agents and brokers, or insurance agents and brokers;
- **Investing and investment management**, in which a fee is received for providing investing, asset management, or investment management services, including providing advice with respect to buying and selling investments. However, it excludes the service of directly managing real property;
- **Trading**, including the trade or business of trading in securities (as defined in section 475(c)(2)), commodities (as defined in section 475(e)(2)), or partnership interests;
- **Dealing in securities**, including dealing in securities (as defined in section 475(c)(2)), commodities (as defined in section 475(e)(2)), or partnership interests;

- **Any trade or business where the principal asset is the reputation or skill of one or more of its employees**, as demonstrated by:
 - Receiving fees, compensation, or other income for endorsing products or services;
 - Licensing or receiving fees, compensation or other income for the use of an individual’s image, likeness, name, signature, voice, trademark, or any other symbols associated with the individual’s identity; or
 - Receiving fees, compensation, or other income for appearing at an event or on radio, television, or an-other media format.

De minimis rule 1—If your gross receipts from a trade or business are \$25 million or less and less than 10% of the gross receipts are from the performance of services in a specified service field, then your trade or business is not considered specified service trade or business, and thus may generate income eligible for the QBI deduction for the tax year.

De minimis rule 2—If your gross receipts from a trade or business are more than \$25 million and less than 5% of the gross receipts are from the performance of services, then your trade or business is not considered a specified service trade or business, and thus may generate income eligible for the QBI deduction for the tax year.

Service or property provided to an SSTB—If your trade or business provides services or property to an SSTB and there is 50% or more common ownership of the trades or businesses, that portion of the services or property provided to the SSTB is treated as a separate SSTB.

Determining your qualified business income. Your QBI includes items of income, gain, deduction, and loss from any trades or businesses (or aggregated trade or business) that are effectively connected with the conduct of a trade or business within the United State. This includes income from partnerships (other than PTPs), S corporations, sole proprietorships, and certain trusts that are included or allowed in determining your taxable income for the year. It also includes other deductions attributable to the trade or business including, but not limited to, deductible tax on self-employment income, self-employed health insurance, and contributions to qualified retirement plans.

Note. Your QBI *doesn’t* include any losses or deductions disallowed under the basis, at-risk, passive loss, or section 461(l) limitations, as they aren’t included or allowed in determining your taxable income for the year. Instead, these losses and deductions are taken into account in the tax year they are included in determining your taxable income. Loss and deduction items that were generated prior to 2018, that are included in income during the year, are not included in QBI.

QBI does *not* include any of the following.

- Items that aren’t properly includible in income.
- Investment items such as capital gains or losses, or dividends.
- Interest income, other than interest income properly allocable to a trade or business (interest income attributable to an investment of working capital, reserves, or similar accounts is not properly allocable to a trade or business).
- W-2 income. See *Services performed as an employee excluded from qualified trades or businesses*.

- Income that isn't effectively connected with the conduct of business within the United States. (For more information, go to *IRS.gov* and type in the key word "effectively connected income.")
- Commodities transaction or foreign currency gains or losses described in section 954(c)(1)(C) or (D).
- Income, loss, or deductions from notional principal contracts under section 954(c)(1)(F).
- Annuities (unless received in connection with the trade or business).
- Amounts received as reasonable compensation from an S corporation.
- Amounts received as guaranteed payments.
- Payments received by a partner for services under section 707(a).
- Qualified REIT dividends.
- Qualified PTP income.

W-2 wages. W-2 wages generally include amounts paid to employees for the performance of services, plus elective deferrals (for example, contributions to 401(k) plans), deferred compensation, and Roth IRA contributions. Amounts paid to statutory employees when the "Statutory Employee" box in box 13 is checked are not W-2 wages.

If you conduct more than one trade or business, the W-2 wages must be allocated among the various trades or businesses (or aggregated trades or businesses) to the business that generated the wage. In addition, only the W-2 wages properly allocable to QBI are includible. W-2 wages are properly allocable to QBI if the associated wage expense is taken into account in computing QBI.

Before allocating W-2 wages among various trades or businesses (or aggregated trades or businesses) and/or allocating W-2 wages to QBI, first determine the total amount of W-2 wages. There are three methods to figure your W-2 wages.

1. Unmodified box method.
2. Modified box 1 method.
3. Tracking wages method.

Unmodified box method. Under the unmodified box method, W-2 wages are the smaller of:

- The sum of the amounts reported in box 1 of the relevant Forms W-2, or
- The sum of the amounts reported in box 5 of the relevant Forms W-2.

Modified box 1 method. Under the modified box 1 method, W-2 wages are figured as follows.

1. Add the amounts reported in box 1 of the relevant Forms W-2.
2. Add all the amounts described below that have been included in box 1 of the relevant Forms W-2.
 - a. Amounts not considered wages for federal income tax withholding purposes.
 - b. Supplemental unemployment compensation benefits within the meaning of Rev. Rul. 90-72.
 - c. Sick pay or annuity payments.
3. Subtract (2) from (1).

4. Add together any amounts reported in box 12 of the relevant Forms W-2 that are properly coded D, E, F, G, or S.
5. Add (3) and (4).

Tracking wages method. Under the tracking wages method, W-2 wages are figured as follows.

1. Add the amounts that are wages for federal income tax withholding purposes and that are also reported in box 1 of the relevant Forms W-2.
2. Add together any amounts reported in box 12 of the relevant Forms W-2 that are properly coded D, E, F, G, or S.
3. Add (1) and (2).

To figure your W-2 wages using one of the three methods above, generally use the sum of the amounts you properly report for each employee on Form W-2, Wage and Tax Statement, for the calendar year ending with or within your tax year. However, don't use any amounts re-reported on a Form W-2 filed with the Social Security Administration more than 60 days after its due date (including extensions).

Short tax year. If you have a short tax year, you generally will use the sum of the amounts you properly report for each employee on Form W-2 for the calendar year ending with or within that short tax year. However, if you have a short tax year that doesn't include a calendar year ending within that short tax year, then wages you properly report on Form W-2 that you paid during the short tax year are treated as W-2 wages for that short tax year.

Acquisition or disposition of a trade or business. If you acquired or disposed of a trade or business that causes you and another employer to pay W-2 wages to employees of the acquired or disposed of trade or business during the calendar year, then the W-2 wages for the calendar year of the acquisition or disposition are allocated between each employer based on the period that the employees of the acquired or disposed of trade or business were employed by each employer. If you have a short tax year that doesn't include a calendar year ending within your short tax year, see *Short tax year*, earlier.

Non-duplication rule. Amounts that are treated as W-2 wages for a tax year under any method can't be treated as W-2 wages for any other tax year. Also, an amount can't be treated as W-2 wages by more than one taxpayer.

Unadjusted basis immediately after acquisition. For purposes of determining your UBIA for all qualified property, the unadjusted basis immediately after acquisition means the basis on the placed-in-service date. Qualified property includes all tangible property subject to depreciation under section 167 that is held and used by the trade or business (or aggregated trade or business) during and at the close of the tax year, for which the depreciable period hasn't ended. The depreciable period ends on the later of 10 years after the property is placed-in-service or the last day of the full year for the applicable recovery period under section 168. Additional first-year depreciation, such as bonus depreciation, doesn't affect the applicable recovery period.

Improvements to property are treated as a separate qualified property.

For like-kind exchange and involuntary conversion property, the depreciable period ends on the same date as the relinquished property. The UBIA is the same as the UBIA of the qualified property

exchanged, decreased by excess boot or increased by the amount of money paid or the fair market value of property received that is not of a like-kind or similar service/use. And the depreciable period of any excess basis of the replacement property is determined using the date on which the replacement property is first placed in service.

Generally, property received in a non-recognition transaction (for example, section 332, 351, 361, 721, or 731) retains the same unadjusted basis and placed-in-service date as that of the transferor. However, for the portion of the transferee's unadjusted basis that exceeds the transferor's unadjusted basis, the portion is treated as a separate qualified property placed in service on the date of the transfer.

Property acquired within 60 days of the year end that is disposed within 120 days without being used by the trade or business for at least 45 days generally isn't qualified property.

REIT/PTP Component. Your qualified REIT/PTP component equals 20% of your qualified REIT dividends and qualified PTP income or loss (including your share of REIT dividends and PTP income or loss from relevant pass-through entities (RPEs)).

Determining your qualified REIT dividends and qualified PTP income/(loss). Qualified REIT dividends include any dividend you received from a real estate investment trust held for more than 45 days and for which the payment is not obligated to someone else and that isn't a capital gain dividend under section 857(b)(3) and isn't a qualified dividend under section 1(h)(11). Plus your qualified REIT dividends received from a regulated investment company (RIC).

Qualified PTP income/(loss) includes your share of qualified items of income, gain, deduction, and loss from a PTP. It also may include gain or loss recognized on the disposition of your partnership interest that isn't treated as a capital gain or loss. It doesn't include any loss or deduction disallowed in determining your tax-able income for the year.

Note: PTP income generated by an SSTB may be limited to the applicable percentage if your taxable income is within the phase-in range or completely excluded from qualified PTP income if your taxable income is above the phase-in range. See Schedule A.

Taxable Income Limitation. Your total qualified business income deduction is limited to 20% of taxable income, calculated before the QBI deduction, less net capital gain.

IRS [Publication 535](https://www.irs.gov/pub/irs-pdf/p535.pdf). (available here: <https://www.irs.gov/pub/irs-pdf/p535.pdf>) includes **Worksheet 12-A** and Schedules A, B, C, and D, which can be used to calculate applicable QBI.

Use Worksheet 12-A and its instructions if:

- You have QBI, qualified REIT dividends, or qualified PTP income, and
- Your 2018 taxable income before QBI deduction is more than \$157,500 (\$315,000 if married filing jointly); or
- You're a patron in a specified agricultural or horticultural cooperative.

The Worksheet and Schedules are reproduced on the following pages.

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