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Please note. Corrections were made to this workbook through January of 2020. No subsequent modifications were made. For clarification about acronyms used throughout this chapter, see the Acronym Glossary at the end of the Index.

For your convenience, in-text website links are also provided as short URLs. Anywhere you see **uofi.tax/xxx**, the link points to the address immediately following in brackets.

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The Tax Cuts and Jobs Act of 2017 (TCJA) introduced the IRC §199A qualified business income deduction (QBID), which is available for tax years starting after December 31, 2017, and before January 1, 2026 (referred to as **TCJA period** in this text).[1]

> **Note.** This chapter builds on the QBID content presented in the 2018 *University of Illinois Federal Tax Workbook*, Volume B, Chapter 2: Small Business Issues. Therefore, the 2018 chapter is frequently referred to in this chapter.

After the 2018 *University of Illinois Federal Tax Workbook* was published, two important developments concerning the QBID occurred. The first was issuance of the final IRC §199A Treasury regulations effective February 8, 2019.[2] The second was experience gained during the first tax preparation season after the QBID became effective. Consequently, the content of this chapter is devoted mainly to concerns arising from the final §199A regulations and the exploration of QBID issues that arose in the 2019 tax preparation season. When possible, illustrative examples are included that are drawn from real-life scenarios.

> **Note.** Tax practitioners should note that on April 17, 2019, corrections to the final §199A regulations were published in the Federal Register. These corrections are generally typographical in nature.[3]

Tax practitioners should bear in mind that taxpayers could rely on either the **final §199A regulations in their entirety** or on the **proposed regulations** issued on August 16, 2018, **in their entirety,** for tax years **ending in calendar year 2018.** However, for tax years ending in 2019 and thereafter, taxpayers must rely on the **final regulations.**[4] When significant, differences between the proposed and final regulations are discussed. A timetable of significant dates related to §199A follows.

Significant §199A Dates

TCJA enacted	December 22, 2017
Consolidated Appropriation Act	March 23, 2018
Proposed Regulations §199A	August 8, 2018
Final Regulations §199A	January 18, 2019
IRS Notice 2019-07	January 18, 2019
QBID FAQs	April 17, 2019
Cooperative Regulations §199A-7	June 18, 2019

> **Caution.** Some continuing education providers and Internet research services are suggesting that, for 2018 tax returns, taxpayers may use the proposed regulations from August 2018 and choose not to reduce qualified business income (QBI) by certain adjustments to income effectively connected with a trade or business (e.g., half of self-employment tax, self-employed health insurance deduction, pension plan contributions) because the original law and the proposed regulations were silent as to these items. The IRS addresses this supposed omission in its FAQs on this subject at **uofi.tax/19b1x1** [www.irs.gov/newsroom/tax-cuts-and-jobs-act-provision-11011-section-199a-qualified-business-income-deduction-faqs].
>
> Specifically, FAQ #32 states the original law considered items of deduction effectively connected with a trade or business[5] as part of the QBI calculation. "There is no inconsistency between the proposed and final regulations on this issue. QBI must be adjusted for these items in 2018."[6]

1. PL 115-97, §11011; IRC §199A.
2. TD 9847, 2019-09 IRB 670.
3. 84 Fed. Reg. 15953 (Apr. 17, 2019).
4. TD 9847, 2019-09 IRB 670.
5. IRC §199A(c)(1).
6. *Tax Cuts and Jobs Act, Provision 11011 Section 199A—Qualified Business Income Deduction FAQs.* Jun. 18, 2019. IRS. [www.irs.gov/newsroom/tax-cuts-and-jobs-act-provision-11011-section-199a-qualified-business-income-deduction-faqs] Accessed on Jun. 20, 2019.

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Note. The QBID for agricultural/horticultural cooperatives and their patrons is covered in the 2019 *University of Illinois Federal Tax Workbook*, Volume A, Chapter 6: Agricultural Issues and Rural Investments.

Note. According to a recent report from the Treasury Inspector General for Tax Administration (TIGTA),[7] "the IRS estimates that almost 23.7 million taxpayers may be eligible to claim the deduction." The same report states that the Joint Committee on Taxation estimates tax savings from the QBID of $27.7 billion in fiscal year 2018 and $414.5 billion over the TCJA period.

QUALIFIED TRADE OR BUSINESS

The first QBID-related concern a tax preparer generally has is whether their client's activity is a qualified trade or business. Unfortunately, §199A is not particularly helpful in this regard, as it merely defines a qualified trade or business as **any** trade or business **other** than:[8]

1. A specified service trade or business (SSTB), or
2. The trade or business of performing services as an employee.

However, the SSTB exclusion does not apply to trades or businesses of taxpayers whose taxable income is less than the upper threshold (which **for 2019 is $421,400 for married filing jointly (MFJ) filers, $210,725 for married filing separately (MFS) filers, and $210,700 for other filers).**[9] Tax practitioners hoping for a clearer definition of a qualified trade or business in the final §199A regulations were disappointed. The only clarification provided there is that the term trade or business refers to a trade or business under IRC §162 (concerning trade or business expense deductions).[10]

Although the term "trade or business" is widely used in the statutes, it is not defined anywhere in the Code or regulations. Because of the lack of statutory guidance, the definition of what constitutes a trade or business is a litigated issue. For example, the Supreme Court decided that reaching the required §162 trade or business standard requires a taxpayer to be involved in the activity "with continuity and regularity and that the taxpayer's primary purpose for engaging in the activity must be for income or profit."[11] Ultimately, though, the determination of whether an activity is a trade or business depends on an analysis of pertinent facts and circumstances.[12]

Books and records are an important requirement for treating an activity as a trade or business. Taxpayers with multiple trades or businesses should note that, pursuant to Treasury regulations, a trade or business is only considered separate and distinct from another trade or business if it maintains a complete and separable set of books and records.[13] The final §199A regulations draw attention to this requirement in addition to the requirement that such activities comply with Form 1099 tax reporting rules.[14]

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7. *Tax Cuts and Jobs Act: Implementation of the Qualified Business Income Deduction*. Mar. 18, 2019. TIGTA. [www.treasury.gov/tigta/auditreports/2019reports/201944022fr.pdf] Accessed on Mar. 20, 2019.
8. IRC §199A(d)(1).
9. In accordance with Rev. Proc. 2018-57, 2018-49 IRB 827 and IRC §199A(d)(3).
10. Treas. Reg. §1.199A-1(b)(14).
11. *Comm'r v. Groetzinger,* 480 U.S. 23 (1987).
12. *Trade or Business Expenses Under IRC §162 and Related Sections*. 2013. IRS Taxpayer Advocate Service. [www.taxpayeradvocate.irs.gov/2013-annual-report/downloads/Trade-or-Business-Expenses-Under-IRC-162-a-and-Related-Code-Sections.pdf] Accessed on Mar. 5, 2019.
13. Treas. Reg. §1.446-1(d)(2).
14. TD 9847, 2019-09 IRB 670, 675; IRC §6041.

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Practitioner Planning Tip

To bolster the argument that an activity is a trade or business, tax practitioners should recommend that their affected clients:

- Maintain a separate bank account for income and expenses of the activity, and
- File Forms 1099-MISC, *Miscellaneous Income*, for vendor payments in excess of $600 and complete the pertinent questions at the top of Schedule E, *Supplemental Income and Loss*.[15]

Because facts and circumstances determine whether an activity is a trade or business, this determination may vary from one year to the next as facts and circumstances change. The following example illustrates how the change in classification of an activity as a trade or business potentially affects the QBID.

Example 1. Sam owns a duplex, which he has been renting out for several years. This is Sam's only potential source of QBI. In 2018, Sam reports $5,000 of net rental income from the duplex on his Schedule E. After reviewing all the facts and circumstances with Sue, his tax preparer, Sam and Sue decide that the duplex rental is a business activity.

On January 1, 2019, Sam takes the property off the market and, due to its dilapidated condition, carries out renovations before personally occupying the property for the remainder of the year. For 2019, Sam has $20,000 of expenses directly related to the property (excluding renovation costs) with zero offsetting income. Based on all the facts and circumstances, Sam and Sue decide that the activity was not a business activity in 2019.

In 2020, Sam resumes rental of the duplex and reports $7,000 of net rental income from the duplex on his 2020 Schedule E.

For 2018, when the property is treated as a §162 business activity, the net rental income of $5,000 is QBI for purposes of §199A. Because the duplex is **not** treated as a business activity in 2019, there is no 2019 qualified business loss (QBL) carryover from the duplex to net with QBI in 2020. Therefore, in 2020, Sam's entire $7,000 net income from the duplex qualifies for the QBID.

Note. Qualified business losses are discussed later in this chapter.

After the Treasury issued proposed §199A regulations, many tax professionals commented on the lack of guidance in determining what activities rise to the level of a trade or business and specifically how that requirement is applied to real estate activities.[16] The Treasury responded to these comments from the tax practitioner community by issuing a **proposed** trade or business safe harbor for rental real estate enterprises.[17]

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15. *Optimizing residential real estate deductions*. Hagy, Janet C. May 1, 2019. Journal of Accountancy. [www.journalofaccountancy.com/issues/2019/may/residential-real-estate-tax-deductions.html] Accessed on May 7, 2019.
16. TD 9847, 2019-09 IRB 670, 673.
17. IRS Notice 2019-07, 2019-09 IRB 740.

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PROPOSED RENTAL REAL ESTATE SAFE HARBOR[18]

> **Note.** The proposed rental real estate safe harbor is also discussed in the 2019 *University of Illinois Federal Tax Workbook*, Volume B, Chapter 4: Selected Real Estate Topics.

The Treasury indicated that the purpose of the **proposed** real estate safe harbor is to provide clarity on the circumstances when a rental real estate enterprise (RREE) **is treated** as a trade or business **only** for purposes of the QBID. However, depending on facts and circumstances, RREEs that fail the safe harbor may still qualify for the QBID.

The preamble to the final §199A regulations states that "A rental real estate enterprise that satisfies the proposed safe harbor may be treated as a trade or business solely for purposes of section 199A and such satisfaction does not necessarily determine whether the rental real estate activity is a section 162 trade or business. Likewise, failure to meet the proposed safe harbor would not necessarily preclude rental real estate activities from being a section 162 trade or business."[19]

This safe harbor applies to taxpayers (including relevant pass-through entities (RPEs)) with tax years ending **after** December 31, 2017.

Rental Real Estate Enterprise

For the purpose of the safe harbor, an RREE is defined as an interest in real property held for the production of rents. It may consist of an interest in multiple properties.

Taxpayers can hold an interest in an RREE either directly or through an RPE and must treat each RREE either as a separate enterprise or **combine** similar RREEs as a **single** enterprise, and taxpayers cannot vary this tax treatment from year-to-year absent a significant change in facts and circumstances. Commercial and residential real estate may **not** be part of the same RREE.

> **Note.** When a taxpayer combines similar RREEs into a single enterprise, this is solely for the purposes of §199A. This is true regardless of whether the taxpayer combines RREEs for purposes of making the determination that an activity rises to the level of the active conduct of a trade or business based on facts and circumstances or the taxpayer uses the rental real estate safe harbor rules. This process is unrelated to the grouping election of rental real estate for passive loss purposes under IRC §469.

18. Ibid.

19. TD 9847, 2019-09 IRB 670, 674.

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Safe Harbor Requirements

Each tax year, the following requirements must be met for the §199A safe harbor to apply to an RREE.

1. Separate books recording income and deductions of the RREE are maintained.
2. At least 250 hours of **rental services** are performed in the tax year with respect to the RREE (for tax years **ending** after December 31, 2017, and **beginning** prior to January 1, 2023). For tax years beginning after December 31, 2022, at least 250 hours of rental services are performed in any three of the five consecutive tax years that end with the tax year (or in each year for an RREE held less than five years).
3. The taxpayer maintains contemporaneous records regarding **all** services performed for the RREE. These records include time reports, logs, or similar documents regarding the following.
   - **a.** Hours of **all** services performed
   - **b.** Description of **all** services performed
   - **c.** Dates on which such services were performed
   - **d.** Who performed the services

   These records must be kept available for inspection at the request of the IRS. The contemporaneous records requirement does **not** apply to tax years beginning **before** January 1, 2019.

Note. While not defined in §199A, **contemporaneous** is defined elsewhere in the Code. For purposes of charitable contributions, a **contemporaneous** written acknowledgement is defined as one that is obtained by the taxpayer on or before the earlier of:[20]

1. *The date the taxpayer files the original return for the taxable year in which the contribution was made, or*
2. *The due date (including extensions) for filing the taxpayer's original return for that year."*

Under IRC §274, to meet the standard for adequate records, the taxpayer must maintain **at or near the time of the expenditure or use:**[21]

1. *An account book, diary, log, statement of expense, trip sheet, or similar record; and*
2. *Documentary evidence such as receipts or paid bills, which together provide each element of an expenditure.*

20. Treas. Reg §1.170A-13(f)(3).
21. Treas. Reg. §1.274-5.

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Practitioner Planning Tip

Taxpayers who choose to combine **similar** RREEs as a single enterprise only need to meet the above safe harbor requirements for the **combined** enterprise rather than for each RREE. Thus, there is a strong incentive to combine similar RREEs that do not otherwise meet the 250-hour rental services requirement individually.

Rental Services. The safe harbor defines rental services as including the following.

- Advertising to rent or lease the real estate
- Negotiating and executing leases
- Verifying information contained in prospective tenant applications
- Collection of rent
- Daily operation, maintenance, and repair of the property
- Management of the real estate
- Purchase of materials
- Supervision of employees and independent contractors

Such rental services may be performed by owners or by employees, agents, and/or independent contractors of the owners.

Example 2. Alan Johnson, a calendar-year taxpayer, is the sole owner of a rental property and actively participates in its management. During 2018, Alan spent 60 hours approving new tenants, deciding on rental terms, and approving expenditures. Contractors performed repairs and maintenance on the property, and they collectively spent 200 hours of their time. Alan recorded income and expenses related to the property on a spreadsheet, which he then used to prepare his 2018 Schedule E.

Alan met the first two safe harbor requirements because he maintained separate books recording income and deductions and exceeded the 250-hour rental services requirement. Both Alan's hours and the contractors' hours count for purposes of the 250-hour requirement. The contemporaneous-records requirement does not apply to the 2018 tax year. Consequently, Alan's rental property qualifies for the safe harbor in 2018.

To continue claiming the safe harbor in 2019 and subsequent years, Alan **also** needs to meet the contemporaneous recordkeeping requirement regarding all services performed for the rental property.

Excluded Services. The following activities are **not** considered rental services.

- Financial or investment management activities, such as arranging financing
- Procuring property
- Studying and reviewing financial statements or reports on operations
- Planning, managing, or constructing long-term capital improvements
- Time spent traveling to and from the real estate property

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Practitioner Planning Tip

It is recommended that practitioners advise their clients to clearly identify **excluded** services in their contemporaneous records of rental services.

Safe Harbor Exclusions

Personal Residence. Real estate **used** by the **taxpayer** (including the owner or the beneficiary of an RPE owning the property) as a residence for any part of the year is **excluded** from the safe harbor. For this purpose, **taxpayer use** is defined under IRC §280A(d). Thus, real estate is excluded from the safe harbor if, during the tax year, the taxpayer uses the property (or a portion thereof) for personal purposes for a number of days exceeding the **greater** of:

1. 14 days, or
2. 10% of the number of days during the year that the property is rented at a fair rental.

Triple Net Lease. Real estate rented or leased under a triple net lease is also **excluded** from the safe harbor. For this purpose, a triple net lease includes a lease agreement that requires the tenant or lessee to pay taxes, fees, and insurance and to be responsible for maintenance activities for the property in addition to rent and utilities.

> **Observation.** An RREE that requires at least 250 hours annually on rental services is likely to meet the §162 trade or business standard. Consequently, perhaps the most important contribution the safe harbor provides to taxpayers is the certainty that an RREE is a trade or business.[22]

Claiming the Safe Harbor

In order to use the safe harbor, the taxpayer or RPE must attach a statement to their tax return attesting that they satisfied the requirements of §3.03 of the revenue procedure contained in IRS Notice 2019-07.

The statement must include the following declaration signed by the taxpayer(s).

> *Under penalties of perjury, I (we) declare that I (we) have examined the statement, and, to the best of my (our) knowledge and belief, the statement contains all the relevant facts relating to the revenue procedure, and such facts are true, correct, and complete.*

If the taxpayer is an RPE, then the statement must be signed by its authorized representative. The signer of the statement must possess personal knowledge of the facts and circumstances related to the statement.

A sample tax return statement for claiming the safe harbor follows.

---

22. *Crop share lease: 5 important principles to follow*. Danehower, Chuck. Nov. 17, 2014. PrairieFarmer. [www.farmprogress. com/grains/crop-share-lease-5-important-principles-follow] Accessed on Mar. 5, 2019; IRS Pub. 225, *Farmer's Tax Guide*.

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Statement Attesting Compliance with the Real Estate Safe Harbor Requirements Specified in §3.03 of the Rev. Proc. Contained in IRS Notice 2019-07

Taxpayer Name(s): _____

Taxpayer Identification Number(s): _____

Tax Year: _____

Description and Address of Rental Real Estate Enterprise (RREE): _____

_____

_____

Pursuant to §3.03 of the Rev. Proc. contained in IRS Notice 2019-07, IRB 2019-09, the following requirements were met for the above stated RREE.

Requirement	Check
Separate books and records reflecting income and expenses of the RREE were maintained	
At least 250 hours of rental records were provided to the RREE	
Contemporaneous records were maintained regarding all services performed for the RREE (does not apply to tax years beginning before January 1, 2019)	

Under penalties of perjury, I (we) declare that I (we) have examined the statement, and, to the best of my (our) knowledge and belief, the statement contains all the relevant facts relating to the revenue procedure, and such facts are true, correct, and complete.

Taxpayer signature(s):_____

Date: _____

Practitioner Planning Tip

The contemporaneous-recordkeeping requirement that starts in 2019 means that tax practitioners need to act with due diligence and inform their affected clients of this safe harbor requirement as soon as possible.

It is particularly important to inform owners of RREEs about the safe harbor requirements if they provide rental services that exceed 250 hours in the year and are likely to get a tax benefit from the QBID. To get a tax benefit, the rental activity must generate net income (i.e., revenue less expenses including depreciation is a positive amount).

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In addition to the safe harbor, there is one further exception when an activity is treated as a trade or business for purposes of §199A regardless of the §162 trade or business standard. This exception applies to self-rentals to a **related** trade or business and is discussed next.

SELF-RENTALS[23]

The rental or licensing of tangible or intangible property to a related trade or business (i.e., a self-rental) is **treated as** a trade or business if the rental or licensing activity and the other trade or business are commonly controlled under Treas. Reg. §1.199A-4(b)(1)(i) (i.e., the same person or group of persons owns 50% or more of each trade or business).

Following feedback received from the tax practitioner community, the final §199A regulations provide two clarifications concerning this exception.

1. The related party must be an individual or an RPE.
2. The term **related party** is defined under the IRC §§267(b) or 707(b) attribution rules.

Under §267(b), related parties include C corporations. However, the preamble to the final regulations states that the "self-rental" exception to the §162 trade or business standard only applies in situations in which the related party is an individual or RPE. Rents from a related-party C corporation do not qualify for the self-rental exception and only qualify for QBI based on facts and circumstances or the safe harbor. This is also because C corporations do not qualify for the QBID.[24]

> **Observation.** Rents received from an S corporation to a related party that is an individual or RPE qualify as QBI under the self-rental rules. Rents from a C corporation do not qualify as QBI under the self-rental rules, but may qualify under the safe harbor or a facts-and-circumstances analysis.

As stated earlier, triple net lease arrangements are ineligible for the RREE safe harbor. Nevertheless, based on the preamble to the final §199A regulations, **triple net leases that are self-rentals** should be able to take advantage of the self-rental exception as illustrated in the following example.

> **Example 3.** Mary White runs a retail business that has a net profit of $100,000, which she reports on her 2019 Schedule C, *Profit or Loss From Business.* The building hosting the retail business is owned by MW Properties, an S corporation wholly owned by Mary. MW Properties' only activity is the rental of the building to Mary's retail business under a triple net lease arrangement. The ordinary business income reported on the corporation's 2019 Form 1120S, *U.S. Income Tax Return for an S Corporation,* is $20,000.
>
> Because MW Properties is an RPE related to Mary that she controls, MW Properties is **treated as a business** for purposes of the QBID.
>
> Therefore, Mary's QBI is $120,000 ($100,000 from the retail business plus $20,000 from the S corporation).

Taxpayers who self-rent personal property must determine where the self-rental is reported. A sole proprietor in the business of renting personal property to others uses Schedule C to report the personal property rental income and expenses, including depreciation. If the taxpayer is not in the business of renting personal property, the rental income is reported as other income on line 21 of Schedule 1 (2018 Form 1040), *Additional Income and Adjustments to Income,* with the acronym "PPR" entered next to line 21.[25] Personal property rental (PPR) expenses (not including depreciation or expenses in excess of the rental income) are entered as an adjustment to income on line 36 of Schedule 1 (2018 Form 1040) with "PPR" entered next to line 36.[26]

23. Treas. Regs. §§1.199A-1(b)(14) and 1.199A-4(b)(1)(i).
24. IRC §199A(a).
25. IRS Pub. 525, *Taxable and Nontaxable Income.*
26. Ibid.

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A personal property self-rental that does **not** rise to the level of a §162 trade or business is nevertheless treated as a trade or business for purposes of the QBID provided that the self-rental and the related business are under common control. However, this treatment is **only** for QBID purposes.

The following example illustrates the QBID treatment of a self-rental of personal property.

> **Example 4.** Bill Tailgater is the sole shareholder of Tailgater Catering, Inc., an S corporation. Bill personally owns a pickup truck that he leases to the S corporation. Bill is not in the business of renting personal property and therefore reports the self-rental as PPR on Schedule 1 (2018 Form 1040), line 21. The S corporation pays Bill $5,000 rent per year for the truck, which it deducts as an ordinary expense on Form 1120S. All other expenses for the truck such as fuel, insurance, and repairs are paid by Tailgater Catering, Inc., leaving Bill with no expenses to report on line 36 of Schedule 1 (2018 Form 1040).
>
> Therefore, under the self-rental rule, Bill's $5,000 of rental income is treated as QBI. However, Tailgater Catering's net profit is reduced by $5,000, which lowers its QBI by the same amount.

Observation. This example shows there was no direct income tax benefit to Bill for this arrangement, because corporate profits were reduced but Bill has to claim the same amount as personal income. The taxation of the S corporation profit as ordinary income is the same as the tax treatment of the PPR (i.e., neither constitute self-employment income), assuming the facts and circumstances support that Bill is not in the business of renting personal property.

However, the arrangement could nevertheless be useful for other reasons. For example, provided that it is a bona fide arrangement, it should be possible to demonstrate that the self-rental is a legitimate corporate expense, thus avoiding potential IRS reclassification of the transaction as shareholder compensation.

In addition, Bill retains personal ownership of the truck rather than transferring it to the corporation. Therefore, if Bill terminates the business, there will be no taxable distribution of the truck from the corporation to Bill.

LEASE OF LAND[27]

Prop. Treas. Reg. §1.199A-1(d)(4) provided that all the businesses described in the examples included with the regulation were **assumed** to be trades or business for purposes of IRC §199A. Consequently, some commenters questioned whether the first two examples in the proposed regulations were intended to imply that the lease of unimproved land is a trade or business for purposes of §199A.

In the first example, a taxpayer owned parcels of land that he leased to airports to use as parking lots. The business paid no wages and did not hold any qualified property because the land was not depreciable. The taxpayer's total taxable income was over the income threshold for the QBID. As a result, he was not eligible for the QBID because the business paid no wages and held no qualified property.

In the second example, the facts were the same except the business expended money to build depreciable parking structures on the parcels. The taxpayer leased the parking structures and the land to the airports. In this example, the taxpayer was eligible for the QBID because, although the taxpayer's income was over the threshold, the business had qualified property. Accordingly, the taxpayer's QBID was limited to 2.5% of the unadjusted basis immediately after acquisition (UBIA) of the qualified property.

27. Ibid.

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The first example illustrated how the QBID calculation would work if a taxpayer did not have W-2 wages or qualified property. The second example added qualified property to the fact pattern. The final regulations clarified that these examples were not intended to imply that the lease of the land is, or is not, a trade or business for purposes of §199A. To avoid confusion, the final regulations removed the references to land in both examples.

Consequently, the rental of unimproved land like any other RREE must either meet the general §162 trade or business standard or the safe harbor, or be a qualifying self-rental to be treated as a qualified activity for purposes of §199A.

QUALIFIED BUSINESS INCOME

Note. The 2018 *University of Illinois Federal Tax Workbook*, Volume B, Chapter 2: Small Business Issues covers the definition of QBI, entities qualifying for the QBID, the reporting of QBI from RPEs, qualified real estate investment trust (REIT) dividends, qualified publicly traded partnership (PTP) income, investment income exclusions, QBLs, and income from business asset sales. This section expands on that content, drawing from the final §199A regulations and other material.

EFFECTIVELY CONNECTED WITH A U.S. TRADE OR BUSINESS[28]

The statute indicates that the QBID is only available for income, gain, deduction, and loss effectively connected with the conduct of a trade or business within the United States.[29] However, the term "United States" includes Puerto Rico for taxpayers whose Puerto Rico-source QBI is all subject to U.S. tax.[30] The final §199A regulations reiterate this extension of the QBID to taxpayers with QBI from Puerto Rico.[31]

In defining "effectively connected to a trade or business within the United States," IRC §199A refers to IRC §864(c).[32] Although this Code section is aimed primarily at nonresident aliens and foreign corporations engaged in a trade or business within the United States, it states that effectively connected income (ECI) does **not** include income, gain, or loss from foreign sources.[33] Therefore, a U.S. citizen or resident engaged in a qualified trade or business that has foreign-source income **must exclude this income** in determining their QBI. IRC §§861 through 865 along with associated regulations provide the rules for determining U.S. and foreign-source income. For compensation, the physical location where the services are performed is determinative.[34] The compensation is allocated between U.S. and foreign sources based on the number of associated business days in the U.S. and overseas.[35] The following example illustrates this methodology.

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28. *Application of Section 199A to Domestic Taxpayers Engaged in U.S. and Foreign Business Operations*. August, Casey S.; and August, Jordan D. 2018. Carlton Fields. [www.carltonfields.com/getmedia/7148303e-c063-4e1d-b97e-89e03bc70d63/Application-of-Section-199A-to-Domestic-Taxpayers] Accessed on Mar. 14, 2019; *The Proposed Sec. 199A Regs Are Here! Part Three.* Vlahos, Lou. Sep. 6, 2018. Farrell Fritz, P.C. [www.taxlawforchb.com/2018/09/the-proposed-sec-199a-regs-are-here-part-three] Accessed on Mar. 14, 2019.

29. IRC §199A(c)(3)(A)(i).

30. IRC §199A(f)(1)(C)(i).

31. Treas. Reg. §1.199A-1(e)(4).

32. IRC §199A(c)(3)(A)(i).

33. IRC §864(c)(4)(A).

34. IRC §§861(a)(3) and 862(a)(3).

35. Treas. Reg. §1.861-4(b)(2)(ii)(E).

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Example 5. Julia, a U.S. citizen, is a designer based in the United States who reports her business activity on Schedule C. She has clients in both the United States and Germany. In 2019, Julia had net Schedule C income of $250,000, and 70% of this income came from her German clients. During 2019, Julia worked 250 total business days, including 50 days overseas.

Julia's QBI from her business activity is $200,000 for 2019, calculated as follows.

2019 net Schedule C income	$250,000
Less: foreign income excluded from QBI	
($250,000 income × (50 foreign business days ÷ 250 total business days))	(50,000)
QBI (that is ECI)	$200,000

The fact that 70% of Julia's compensation comes from foreign clients is irrelevant because it is the physical location where the services are performed that determines its source, **not** the client's location.

RELEVANT PASS-THROUGH ENTITIES

The final §199A regulations provide further clarification regarding guaranteed payments for the use of capital, as discussed next. Ordinary income from the sale of business assets is discussed later in the section "Business Gains and Losses." RPE reporting is also addressed later.

Guaranteed Payments

According to IRC §199A(c)(4)(B), the following guaranteed payments for **services** rendered by a partner are **not** QBI.

1. Guaranteed payments for services or the use of capital which are determined without regard to the income of the partnership[36]
2. Payments by a partnership to a partner not acting in their capacity as a partner to the extent provided in IRC §707(a)[37]

Practitioner Planning Tip

Tax preparers should advise partners to review partnership agreements to ensure that they are effectively using §199A (i.e., converting guaranteed payments to distributions).

36. IRC §707(c).
37. IRC §707(a).

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Guaranteed Payments for the Use of Capital. The proposed §199A regulations[38] clarified that guaranteed payments for the use of capital that are determined without regard to the income of the partnership are **not** considered attributable to a trade or business. Therefore, such payments are **not** QBI. However, the partnership's related expense for the guaranteed payments may be taken into account for purposes of calculating QBI.

In response to the proposed §199A regulations, various commenters argued that guaranteed payments for the use of capital could be QBI if they rely upon the partnership's success. However, in the preamble to the final §199A regulations, the IRS reiterated their position in the proposed regulations that "guaranteed payments for the use of capital are not attributable to the trade or business of the partnership because they are determined without regard to the partnership's income."[39] Moreover, the IRS likened guaranteed payments for the use of capital to interest income, which is specifically excluded as QBI by §199A(c)(3)(B)(iii), except for interest income properly allocated to a trade or business.[40] However, the final regulations **modify** the proposed regulations by allowing guaranteed payments for the use of capital to be QBI to the extent properly allocable to a trade or business of the partnership.[41] Thus, although the IRS made this concession, it only applies in this "unlikely" situation (according to the IRS's comment in the preamble to the final §199A regulations).[42]

EMPLOYEE VS. INDEPENDENT CONTRACTOR

Because the trade or business of performing services as an employee is generally not considered a qualified trade or business for purposes of the QBID,[43] there is an incentive for an employee to change their classification to self-employed. Recognizing this potential for abuse, the proposed §199A regulations provided that an employee who subsequently becomes a nonemployee while performing substantially the same services to the same person (or a related person) will be presumed to be in the trade or business of performing services as an employee for purposes of §199A.[44] However, such nonemployees could then rebut this presumption when supported by federal tax law, regulations, and principles (including common-law employee classification rules).[45] A commenter on the proposed regulations asked how far back the IRS would look at prior employees. In response to this comment, the IRS introduced a 3-year lookback rule in the final regulations.

> **Caution.** Tax practitioners should also be on the lookout for workers who are erroneously classified as nonemployees by their employers because they will nevertheless be considered employees for §199A purposes.[46]

38. Prop. Treas. Regs. §§1.199A-2(a)(3) and 1.199A-3(b)(1)(i).
39. TD 9847, 2019-09 IRB 670, 682.
40. Ibid.
41. Treas. Reg. §1.199A-3(b)(1)(ii).
42. TD 9847, 2019-09 IRB 670, 682.
43. IRC §199A(d)(1)(B).
44. Prop. Treas. Reg. §1.199A-5(d)(3).
45. Ibid.
46. Treas. Reg. §1.199A-5(d)(2).

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3-Year Lookback Rule[47]

The revised rule similarly concerns an employee who subsequently becomes a nonemployee while performing substantially the same services for the same person (or a related person). However, unlike the proposed regulations, the presumption that the individual is in the trade or business of performing services as an employee for purposes of §199A **only applies for three years after ceasing to be treated as an employee for federal employment tax purposes.** Again, this presumption can be rebutted when supported by federal tax law, regulations, and principles (including common-law employee classification rules). The individual may be required by the IRS to provide records (e.g., contracts or partnership agreements) to support the rebuttal.

The following example is based on Example 3 in Treas. Reg. §1.199A-5(d)(3)(iii)(C).

> **Example 6.** Ellen is an employee of Creston Tax LLP, a CPA firm that provides tax and accounting services. Ellen was hired as a tax accountant after she left college. Normal career progress at Creston Tax is promotion to senior tax accountant, tax manager, and senior tax manager at 3-year intervals. These promotions take place if the employee meets certain career milestones. After three years as a senior tax manager, it is firm policy to consider employees for admission to the partnership. In 2019, Ellen is a senior tax manager with Creston Tax and, after 12 years with Creston Tax, is admitted to the firm's partnership effective July 1, 2019. Following her admission as a partner, Ellen shares in the net profits of Creston Tax and otherwise meets the requirements under federal tax law, regulations, and principles (including common-law employee classification rules) to be considered a partner in the firm.
>
> Ellen is presumed to be in the trade or business of performing services as an employee of Creston Tax for purposes of §199A even after her admission to the partnership. However, Ellen can rebut this presumption by showing that her admission to the Creston Tax partnership was a career milestone. Moreover, Ellen can bolster her rebuttal by showing that she shares in the overall net profits of Creston Tax and otherwise satisfies the requirements under federal tax law, regulations, and principles (including common-law employee classification rules) to be considered a partner of the firm. Consequently, Ellen's proportionate share of the profits as a partner in Creston Tax LLP would be considered QBI.
>
> **Example 7.** Tom Trucker worked as an employee for Lickety Split Trucking, Inc. As an over-the-road trucker, he spends 260 days away from home overnight, resulting in meal expenses. He also incurs other miscellaneous expenses. Prior to 2018, these expenses were deducted as employee business expenses on Form 2106, *Employee Business Expenses.* The TCJA eliminated the ability to deduct these expenses. In 2018, Tom became a nonemployee and received a Form 1099-MISC from Lickety Split Trucking, Inc. He filed a Schedule C to report his trucking income and related expenses. Because Tom is performing substantially the same services to Lickety Split Trucking, it would be difficult for him to rebut the presumption that he is in the trade or business of performing services as an employee under the 3-year lookback rule.

STATUTORY EMPLOYEES[48]

The following individuals are considered statutory employees.[49]

1. Certain food and laundry delivery drivers
2. Full-time life insurance salespersons
3. Certain home workers
4. Certain traveling or city salespersons

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47. TD 9847, 2019-09 IRB 670, 699.
48. IRS Notice 2018-64, 2018-35 IRB 347; *Statutory employees and the QBI deduction*. Dingman, Brian M. Jan. 1, 2019. Journal of Accountancy. [www.journalofaccountancy.com/issues/2019/jan/qbi-deduction-for-statutory-employees.html] Accessed on Mar. 12, 2019.
49. IRC §3121(d)(3).

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The term statutory employee refers to the fact that although these individuals typically receive a Form W-2 from their employer, it is only issued for the purposes of FICA/Medicare tax reporting and withholding. Consequently, no federal income tax is withheld from the wages reported on the Form W-2.[50] Instead, statutory employees who are treated as self-employed individuals report their income and related expenses on Schedule C.

> **Note.** For more information on statutory employees, see the 2017 *University of Illinois Federal Tax Workbook*, Volume A, Chapter 2: Employment Issues. This can be found at **uofi.tax/arc** [taxschool.illinois.edu/taxbookarchive].

Generally, the trade or business of performing services as an employee is specifically excluded from QBI.[51] However, this restriction may not apply to statutory employees. In fact, the final §199A regulations specifically exclude payments to statutory employees as wages for this purpose.[52] Furthermore, wages paid to statutory employees do not constitute wages for the purposes of the W-2 wages/qualified property (QP) limitation.[53] This exclusion is reiterated in IRS Notice 2018-64, §3.01 which states that Forms W-2 provided to statutory employees are **not** included in calculating W-2 wages for purposes of the W-2 wages/QP limitation.[54]

Therefore, provided that the net profit of a statutory employee otherwise meets §199A requirements, this income should be considered QBI absent any future IRS pronouncement or court decision to the contrary.

Finally, there is the issue of whether the activity of a life insurance salesperson could be considered an SSTB. Although the final §199A regulations do not directly address this question, in the preamble to these regulations, the IRS notes that "the commission-based sale of an insurance policy will generally not be considered the provision of financial services for purposes of section 199A."[55]

MIXED ACTIVITIES[56]

In theory, a trade or business can have profit or loss in the following categories.

1. Not connected to a U.S. trade or business
2. Not qualifying for the QBID (discussed earlier)
3. QBI from general trade or business activity (discussed earlier)
4. QBI from an SSTB

Therefore, the tax practitioner must first determine the amount of the trade or business profit or loss that belongs to each of these categories and separately enter these items in their tax preparation software so that the initial QBID for that business is calculated correctly.

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50. IRS Pub. 15-A, *Employer's Supplemental Tax Guide*.
51. IRC §199A(d)(1)(B).
52. Treas. Reg. §1.199A-5(d).
53. Treas. Reg. §1.199A-2(b).
54. IRC §199A(b)(2)(B).
55. TD 9847, 2019-09 IRB 670, 694.
56. *The Games They Will Play: Tax Games, Roadblocks, and Glitches Under the 2017 Tax Legislation.* Kamin, D; Gamage, D; Glogower, A; Kysar, R; Shanske, D; Avi-Yonah, R; Batchelder, L; Fleming, J; Hemel, D; Kane, M; Miller, D; Shaviro, D; and Viswanathan, M. May 7, 2019. Minnesota Law Review. [papers.ssrn.com/sol3/papers.cfm?abstract_id=3089423##] Accessed on Mar. 13, 2019.

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Not Connected to a U.S. Trade or Business[57]

As discussed earlier, profit/loss that is not ECI is not QBI.[58] Therefore, the tax practitioner must determine how much of the profit/loss is from a foreign source. This is done by allocating the profit/loss between U.S. and foreign sources, based on respective business days, as illustrated in **Example 5.**[59]

SSTB Allocation of QBI

The SSTB allocation is particularly relevant for taxpayers with taxable income above the phase-in threshold (which **for 2019 is $321,400 for MFJ taxpayers, $160,725 for MFS taxpayers, and $160,700 for other taxpayers).**[60] However, it is not necessary to do this allocation when the de minimis rule applies because the activity is not considered an SSTB (see the explanation at "De Minimis SSTB Receipts," which follows).[61]

Following passage of the TCJA, "cracking" and "packing" strategies were proposed to minimize the amount of SSTB income. The idea behind the "cracking" strategy is to separate revenue streams to minimize SSTB income. For example, an SSTB divides real estate and administrative (non-SSTB) services into separate companies that invoice the SSTB for their services. By contrast, in the "packing" strategy, the SSTB adds other qualifying businesses to the SSTB so that the SSTB revenue of the combined business is diluted to the point that the combined business is no longer considered an SSTB. The "common ownership" provisions in the §199A regulations have significantly impacted the effectiveness of these strategies. These provisions are reviewed later in the "Common Ownership" section.

De Minimis SSTB Receipts.[62] A trade or business is not an SSTB if it has de minimis receipts attributable to the performance of services in an SSTB. For this purpose, de minimis receipts from SSTB services are determined using the following percentage test.

1. Trades or businesses with gross receipts of **$25 million or less** in a tax year with less than **10%** of gross revenue from SSTB services
2. Trades or businesses with gross receipts of **more than $25 million** in a tax year and less than **5%** of gross revenue from SSTB services

In determining whether the percentage test is satisfied, the performance of any activity **incident** to the actual performance of services in the SSTB field is considered the performance of services in that SSTB field.

Nevertheless, even when SSTB services exceed the de minimis amount, it may still be possible to prevent the entire trade or business from being treated as an SSTB, as illustrated in the following example, which is based on Example 2 in Treas. Reg. §1.199A-5(c)(1)(iii)(B).

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57. *Application of Section 199A to Domestic Taxpayers Engaged in U.S. and Foreign Business Operations*. August, Casey S.; and August, Jordan D. 2018. Carlton Fields. [www.carltonfields.com/getmedia/7148303e-c063-4e1d-b97e-89e03bc70d63/Application-of-Section-199A-to-Domestic-Taxpayers] Accessed on Mar. 14, 2019.
58. IRC §864(c)(4)(A).
59. Treas. Reg. §1.861-4(b)(2)(ii)(E).
60. In accordance with Rev. Proc. 2018-57, 2018-49 IRB 827 and IRC §199A(e)(2)(A).
61. Treas. Reg. §1.199A-5(c)(1).
62. Ibid.

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Example 8. Pet Welfare LLC, taxed as a partnership, provides both pet grooming and veterinarian services. Its business facility has a shared reception area and separate rooms for pet grooming and veterinary visits. The veterinary services are provided by licensed professionals and, pursuant to §199A, are treated as SSTB services.[63] Grooming services are performed by other staff. Pet Welfare LLC invoices its veterinarian services separately from its grooming services and maintains separate books and records for each activity. In 2019, Pet Welfare LLC has $1 million in gross receipts, of which $750,000 pertains to veterinary services and $250,000 relates to grooming services.

Although revenue from veterinary services exceeded 10% of Pet Welfare LLC's gross receipts, the pet grooming activity is not considered an SSTB because Pet Welfare LLC treats each activity as a separate trade or business for purposes of IRC §§162 and 199A.

Common Ownership.[64] To reduce the potential for abuse, the §199A regulations include a common ownership rule so that the **portion** of a trade or business providing property or services to a **50% or more** commonly owned SSTB is treated as **a separate SSTB** by the related parties. Common ownership for this purpose includes direct or indirect ownership by related parties within the meaning of IRC §§267(b) or 707(b).

Originally, the proposed regulations treated any trade or business as an SSTB if it provides 80% or more of its property or services to a commonly owned SSTB. However, various commenters pointed out that "there are no abuse concerns regarding the portions of goods or services provided to a third party." **Accordingly, the IRS removed the 80% rule from the final regulations.**[65]

The following example illustrating the application of the common ownership rule is based on Example 1 in Treas. Reg. §1.199A-5(c)(2)(iii)(A).

Example 9. Creston Tax LLP, the tax and accounting firm in **Example 6,** owns a large office building. The firm occupies 80% of the building with the remainder rented to tenants unrelated to the firm. Besides professional staff, the firm also employs staff who handle the firm's administrative needs. Following passage of the TCJA, Creston Tax LLP spins off its administrative personnel into Creston Admin LLP and the office building into Creston Properties LLP. The three partnerships are owned by the same people (the original owners of Creston Tax LLP).

Although Creston Admin LLP does not provide specified services, it is nevertheless treated as an SSTB because it provides services to a commonly owned SSTB. Because all the services of Creston Admin LLP are provided to an SSTB, the associated revenue is SSTB income. Similarly, the revenue received by Creston Properties LLP from the rental of 80% of the office building to Creston Tax LLP is SSTB income due to the common ownership rule. However, the revenue received by Creston Properties LLP from the rental of the remaining 20% of the office building is unaffected by the common ownership rule and therefore is not SSTB income. This result differs from the result that would have applied under the proposed §199A regulations when all Creston Properties' income would have been SSTB income.

The proposed §199A regulations contained a rule whereby a commonly owned trade or business could be treated as incidental to and, therefore, part of an SSTB pursuant to a gross receipts test.[66] Due to comments received regarding the administrative difficulties of applying this rule, **the IRS removed the rule from the final §199A regulations.**

63. IRC §§199A(d)(2) and 1202(e)(3)(A).

64. Treas. Reg. §1.199A-5(c)(2).

65. TD 9847, 2019-09 IRB 670, 698.

66. Prop. Treas. Reg. §1.199A-5(c)(3).

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Allocation of Income, Deduction, and Other Items Between Activities

Another issue that concerns mixed activities is the need to reasonably allocate income, deductions, and any other items among the various activities. Reasonable methods for making such allocations are addressed in the §199A regulations.[67] Generally, acceptable allocation methods are those that are reasonable under the applicable facts and circumstances and clearly reflect income.[68] See **Example 15** for more information on allocating deductions between multiple trades or businesses.

REIT DIVIDENDS

Regulated Investment Companies[69]

In January 2019, the IRS issued proposed regulations providing rules whereby a regulated investment company (RIC) that receives qualified REIT dividends may pay §199A dividends to noncorporate shareholders who can treat them as qualified REIT dividends under §199A(e)(3).[70] Generally, a §199A dividend is any dividend or part of such a dividend that an RIC pays to its shareholders and reports as a §199A dividend in written statements furnished to them.[71] These rules apply to RICs subject to tax under IRC §852(b).

To treat a §199A dividend from an RIC as a qualified REIT dividend, the noncorporate shareholder's RIC shares must meet the following conditions.

1. The share is held by the shareholder for more than 45 days (taking into account the principles of IRC §§246(c)(3) and (4)) during the 91-day period beginning on the date that is 45 days before the date on which the share becomes ex-dividend with respect to such dividend, and
2. The shareholder must not be under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

The following example illustrating the application of these rules is derived from the example in Prop. Treas. Reg. §1.199A-3(d)(5).

> **Example 10.** On December 31, 2019, Elena Allen, a U.S. citizen, receives a $1,000 dividend from Elburn Corporation, which elected to be an RIC. Elburn Corporation reports $250 of this dividend as a §199A dividend. If Elena's share in Elburn Corporation meets the two previously stated conditions, then Elena can treat $250 of her dividend from Elburn Corporation as a qualified 2019 REIT dividend for purposes of the QBID.

Tax Reporting

Taxpayers with brokerage investments that include REITs should receive a Form 1099-DIV, *Dividends and Distributions*, with dividends from REITs reported in box 5 (as "section 199A dividends").

PTP INCOME FROM REGULATED INVESTMENT COMPANIES[72]

Presently, the §199A regulations do not provide for passing through qualified PTP income by RICs. However, the issue remains under consideration by the IRS.

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67. Treas. Reg. §1.199A-3(b)(5).
68. TD 9847, 2019-09 IRB 670, 685.
69. Prop. Treas. Reg. §1.199A-3(d).
70. REG-134652-18 (Jan. 18, 2019).
71. Prop. Treas. Reg. §1.199A-3(d)(2).
72. TD 9847, 2019-09 IRB 670, 685; REG-134652-18 (Jan. 18, 2019).

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INVESTMENT INCOME EXCLUSION

QBI **excludes** the following investment income, gains, losses, and deductions.[73]

- Capital gains and losses (whether short- or long-term)
- Most dividends (including qualifying dividends, capital gain dividends, income equivalent to a dividend, and payments in lieu of dividends)
- Any interest income other than interest income properly allocable to a trade or business
- Gains and losses from commodities and foreign currency transactions
- Certain income, gain, deduction, or loss from notional principal contracts
- Annuity income not received in connection with the trade or business
- Any deduction or loss attributable to the preceding categories

Business Gains and Losses[74]

According to the general rule provided in the final §199A regulations, QBI does **not** include "Any item of short-term capital gain, short-term capital loss, long-term capital gain, or long-term capital loss, including any item treated as one of such items under any other provision of the Code."[75] However, in response to commenters on the proposed §199A regulations, the IRS provides guidance in the preamble to the final §199A regulations concerning the application of this rule to business gains and losses.

IRC §1231 Gains and Losses. According to IRS guidance, a net §1231 **loss** (after netting §1231 gains and losses) is characterized as ordinary and, therefore, is **included** in QBI. By contrast, a net §1231 **gain** is treated as a capital gain and, therefore, is **excluded** from QBI.

Other Business Gains and Losses. In response to comments received on the proposed §199A regulations concerning §§475, 1245, and 1250 gains, the IRS reiterates that to the extent an item is treated as a capital gain or loss under **any** other provision of the Code, it is **not** QBI.

Foreign Currency Transactions and Notional Principal Contracts

Commenters on the proposed §199A regulations asked if **ordinary income** from foreign currency transactions and notional principal contracts is also excluded from QBI. In response, the IRS stated in the preamble to the final §199A regulations that even when ordinary income results from these transactions, it must be **excluded** from QBI.

PREVIOUSLY DISALLOWED LOSSES[76]

Various commenters on the proposed §199A regulations observed that while previously disallowed losses from tax years beginning after December 31, 2017, must be taken into account in computing QBI,[77] there are no ordering rules for utilization of these losses. The IRS responded by including a first-in, first-out (FIFO) rule in the final regulations applicable to losses or deductions (including those under §§465, 469, 704(d), and 1366(d)) that were disallowed, suspended, limited, or carried over from prior years. However, these rules do **not** apply to losses or deductions from tax years ending **before** January 1, 2018.[78]

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73. IRC §199A(c)(3)(B).
74. TD 9847, 2019-09 IRB 670, 684.
75. Treas. Reg. §1.199A-3(b)(2)(ii)(A).
76. TD 9847, 2019-09 IRB 670, 680.
77. Prop. Treas. Reg. §1.199A-3(b)(1)(iv).
78. Treas. Reg. §1.199A-3(b)(1)(iv).

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Another commenter on the proposed §199A regulations expressed concern regarding mismatches between IRC §§469 and 199A activity aggregations and how passive loss carryovers should be applied in these circumstances. The IRS responded by issuing a proposed regulation modifying Treas. Reg. §1.199A-3(b)(1)(iv).[79] The relevant part of the proposed regulation follows, with the modifications bolded.[80]

> *Previously disallowed losses or deductions (including losses disallowed under sections 465, 469, 704(d), and 1366(d)) allowed in the taxable year generally are taken into account for purposes of computing QBI* ***to the extent the disallowed loss or deduction is otherwise allowed by section 199A and this section.*** *These losses shall be used, for purposes of section 199A and these regulations, in order from the oldest to the most recent on a first-in, first-out (FIFO) basis* ***and shall be treated as losses from a separate trade or business. To the extent such losses relate to a PTP, they must be treated as a loss from a separate PTP in the taxable year the losses are taken into account.***

The requirement to treat these losses as from a separate trade or business is like the requirement to treat a QBL carryover as a loss from a separate trade or business in a succeeding tax year.[81]

NET OPERATING AND EXCESS BUSINESS LOSSES[82]

Generally, net operating losses (NOLs) are **not** taken into account in determining QBI because they are not specific to a trade or business. However, an IRC §461(l) excess business loss treated as an NOL carryover to the following tax year **is** taken into account in determining QBI for that subsequent year.

> **Note.** Although NOLs generally do not affect QBI, they nevertheless reduce adjusted gross income and therefore affect the overall taxable income limitation (discussed later) used in determining the final QBID.

QUALIFIED BUSINESS LOSSES

Qualified business income/qualified business loss (QBI/QBL) netting rules are provided by Treas. Reg. §1.199A-1(d)(2)(iii). These rules apply when a taxpayer's QBI from at least one trade or business is less than zero, giving rise to a qualified business loss (QBL). In this situation, the QBI from each trade or business with QBI must be offset with QBLs from other trades or businesses in proportion to the relative amounts of net QBI in the trades or businesses with positive QBI. The resulting **adjusted QBI** is then used to determine that trade or business's initial QBID under Treas. Reg. §1.199A-1(d)(2)(iv).

However, if after the netting rules are applied there is an overall QBL, then the taxpayer has zero QBI for purposes of the QBID in the current year.[83] The overall QBL is carried over to the succeeding tax year. It is treated as a QBL from a separate trade or business for purposes of the netting rules in the subsequent year.[84]

> **Note.** For more information about the QBI/QBL rules and their application, see the 2018 *University of Illinois Federal Tax Workbook,* Volume B, Chapter 2: Small Business Issues.

> **Note.** See the "Calculating the QBID" section of this chapter for information about the tax reporting of QBL carryovers.

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79. REG-134652-18 (Jan. 18, 2019).
80. Prop. Treas. Reg. §1.199A-3(b)(1)(iv).
81. Treas. Reg. §1.199A-1(c)(2).
82. Treas. Reg. §1.199A-3(b)(1)(v).
83. Treas. Reg. §1.199A-1(c)(2)(i).
84. Ibid.

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As written, these netting rules do not distinguish between SSTBs and other qualified trades or businesses. Accordingly, a commenter to the proposed regulations asked for clarification regarding the appropriate QBI amount to consider for an SSTB of a taxpayer whose taxable income falls within the phase-in range. In response to the comment, the IRS referred to the statute, which states that **only the applicable percentage** of qualified items of income, gain, deduction, or loss, etc. allocable to SSTBs should be taken into account in computing QBI of the SSTB.[85]

> **Note.** For more information about how to determine the applicable percentage, see the 2018 *University of Illinois Federal Tax Workbook,* Volume B, Chapter 2: Small Business Issues.

Consequently, the final regulations modify the proposed regulations to clarify that the applicable percentage of an SSTB's QBI/QBL also applies in the application of the QBI/QBL netting rules.[86]

A similar modification was made regarding PTP income generated by an SSTB. Again, only the applicable percentage of the PTP income is taken into account when determining the combined amount of qualified REIT dividends and qualified PTP income.[87]

An example illustrating the modified QBI/QBL netting rules is provided in the "Calculating the QBID" section.

Practitioner Planning Tip

When preparing 2019 and future year returns for a new client, tax practitioners must remember to check their prior year return for a QBL carryover. Because QBID-specific tax forms did not exist for the 2018 tax year, the practitioner wi1ll need to locate the relevant QBID worksheets for this information.

IRC §481 ADJUSTMENTS (CHANGE OF ACCOUNTING METHOD)

IRC §481 adjustments (positive or negative) arising from a change of accounting methods in tax years ending after December 31, 2017, are taken into account in determining QBI.[88] The IRS has requested additional comments on this issue.[89]

85. IRC §199A(d)(3)(A)(ii).
86. Treas. Reg. §1.199A-1(d)(2)(i).
87. Treas. Reg. §1.199A-1(d)(3)(ii).
88. Treas. Reg. §1.199A-3(b)(1)(iii).
89. TD 9847, 2019-09 IRB 670, 680.

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SPECIFIED SERVICE TRADE OR BUSINESS[90]

An SSTB includes any trade or business in the following fields.

- Health
- Law
- Accounting
- Actuarial science
- Performing arts
- Consulting
- Athletics
- Financial advice
- Brokerage services
- Investing and investment management
- Trading in securities, commodities, and/or partnership interests
- Dealing in securities, commodities, and/or partnership interests
- Principal asset is reputation or skill of employee or owner

Note. Engineers and architects are excluded from the SSTB definition.[91]

SSTB GENERAL GUIDANCE

The final §199A regulations retained the classification of SSTB services contained in the proposed regulations. In addition, the final regulations contain several clarifications regarding SSTBs.[92] There are two clarifications of a general nature, which follow.[93]

1. The rules for determining whether a business is an SSTB apply **solely** for purposes of §199A.
2. Income, deduction, gain, or loss from a hedging transaction[94] that is part of the normal course of a trade or business is included as income, deduction, gain, or loss from that trade or business.

The final regulations also clarify that a franchisor is **not** an SSTB **based solely** on the selling of a franchise in one of the previously listed fields and add an example illustrating this clarification.[95]

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90. IRC §§199A(d)(2) and 1202(e)(3)(A).
91. IRC §199A(d)(2)(A).
92. TD 9847, 2019-09 IRB 670, 689.
93. Treas. Reg. §1.199A-5(b)(2)(i).
94. Treas. Regs. §§1.1221-2(b) and 1.446-4.
95. Treas. Reg. §1.199A-5(b)(3)(xii).

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SSTB SPECIFIC GUIDANCE

Many commenters sought clarification from the IRS regarding trades or businesses in the previously mentioned specialized fields. Specifically, commenters wanted to know whether certain services/occupations in those fields are considered SSTBs. In response, the IRS provided clarifications in the final §199A regulations for specific fields.

The remainder of this section includes an explanation of the various SSTB fields from the proposed regulations. Clarifications from the final regulations are described when applicable.

Health[96]

Included Services. Medical services provided by physicians, pharmacists, nurses, dentists, veterinarians, physical therapists, psychologists, and other similar healthcare professionals are SSTB activities.

Excluded Services. Services not directly related to a medical services field are **not** SSTB activities. This is true even though the services provided may purportedly relate to the health of the service recipient. Examples of excluded services are health clubs or health spas that provide physical exercise or conditioning to their customers, payment processing, or the research, testing, and manufacture and/or sales of pharmaceuticals or medical devices.

Clarification from Final Regulations.[97] The IRS declined to state whether certain skilled nursing, assisted living, and similar facilities are in the trade or business of performing services in the field of health, arguing that it required a facts-and-circumstances determination and, therefore, is beyond the scope of the regulations. However, the following example, which is based on an example added to the final §199A regulations, indicates when a senior citizen assisted living facility is **not** an SSTB.[98]

> **Example 11.** Twilight LLC operates an assisted living facility for senior citizens. Services provided by Twilight to residents include housing management, maintenance, meals, laundry, entertainment, and other similar services. In addition, Twilight contracts with local professional healthcare organizations that offer facility residents a range of medical and health services provided at the facility. However, all health and medical services are billed directly to the residents by the healthcare providers.
>
> In this situation, Twilight's activity is **not** considered to be that of an SSTB in the field of health under §199A(d)(2).

In response to comments received regarding outpatient surgical centers, the IRS added an example to the final §199A regulations indicating when an outpatient surgical center is **not** considered to be an SSTB in the field of health, as illustrated next.[99]

> **Example 12.** Swift Surgery LLC operates several outpatient surgical centers. At these centers, patients undergo same-day medical procedures that do not require them to remain overnight for subsequent observation. Swift Surgery manages facility operations, performs associated administration, and ensures compliance with state and federal laws for medical facilities. **No medical personnel are employed by Swift Surgery.** Instead, all medical services are provided by medical personnel and organizations who have agreements with Swift Surgery to provide these services at their facilities. Patients receive separate invoices from Swift Surgery for facility costs and from healthcare professionals for their medical care.
>
> In this situation, Swift Surgery's activity is **not** considered to be that of an SSTB in the field of health under §199A(d)(2).

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96. Prop. Treas. Reg. §1.199A-5(b)(2)(ii).
97. TD 9847, 2019-09 IRB 670, 690.
98. Treas. Reg. §1.199A-5(b)(3)(ii).
99. Treas. Reg. §1.199A-5(b)(3)(iii).

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The IRS clarifies that the **sale** of pharmaceuticals and medical devices by a retail pharmacy is **not** an SSTB in the field of health. However, **certain pharmacist services constitute SSTB services** in the field of health as illustrated in the next example, which is based on an example in the final §199A regulations.[100]

Example 13. Jason is a self-employed board-certified pharmacist who contracts out his services. When a medical facility requires a pharmacist for a temporary period, they contact Jason. When temporarily engaged at a medical facility, Jason provides the following services.

- Receives and reviews orders from physicians providing medical care at the facility
- Makes recommendations on dosing and alternatives to the ordering physician
- Performs inoculations
- Checks for drug interactions
- Fills pharmaceutical orders for patients receiving care at the facility

Jason **is** engaged in the performance of services in the field of health under §199A(d)(2).

Despite requests from commenters on the proposed §199A regulations, the IRS **declined** to reconsider the inclusion of veterinary services in the field of health.

In agreeing with commenters that proximity to patients is not a necessary component of providing services in the field of health, the IRS removed this requirement from the final §199A regulations.[101] The IRS's position is that it is a question of fact as to whether technicians who operate medical equipment or test samples are performing services in the field of health. However, the IRS added an example to the final §199A regulations indicating when laboratory services are **not** considered services in the field of health.[102] This exception is illustrated in the following example.

Example 14. HypoVent Corporation is the developer and only provider of a patented test for detecting sleep apnea. HypoVent only accepts test orders from healthcare professionals (its clients). Neither HypoVent nor its employees have contact with patients. Testing operations at HypoVent are supervised by Terri, their sole employee who has an advanced medical degree. Although HypoVent's other employees are highly educated, they are not healthcare professionals and their skills are not often useful for HypoVent's testing methods. These employees receive over a year of specialized training for conducting the corporation's sleep apnea test, which is of no use to other employers.

After completing a test ordered by a client, HypoVent provides the client with a summary report of its findings. HypoVent does not discuss the report's findings with anyone other than the client and is not involved in, or in any way aware of, any aspect of the patient's diagnosis or treatment.

In this situation, HypoVent's business activity is not considered to be that of an SSTB in the field of health under §199A(d)(2) nor is it an SSTB activity whose principal asset is the reputation or skill of one or more of its employees under Treas. Reg. §§1.199A-5(b)(1)(xiii) and (b)(2)(xiv).

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100. Treas. Reg. §1.199A-5(b)(3)(i).

101. Treas. Reg. §1.199A-5(b)(2)(ii).

102. Treas. Reg. §1.199A-5(b)(3)(iv).

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Law[103]

Included Services. Legal services provided by lawyers, paralegals, legal arbitrators, mediators, and similar professionals are SSTB activities.

Excluded Services. Services not requiring skills unique to the field of law are **not** SSTB activities (e.g., printing, delivery, and stenography services).

Accounting[104]

Included Services. Tax and accounting services by accountants, enrolled agents, return preparers, financial auditors, and similar professionals are SSTB activities.

Clarification from Final Regulations.[105] The IRS declined to adopt commenters' suggestions for defining the scope of services in the field of accounting which, as noted in the proposed §199A regulations, are not limited to services requiring state licensure. Instead, the IRS based their definition of these services on a common understanding of accounting that includes tax return and bookkeeping services. Thus, whether a trade or business is engaged in the field of accounting depends on the facts and circumstances (e.g., whether a real estate settlement agent is engaged in the field of accounting is determined based on the specific services that they offer).

Actuarial Science[106]

Included Services. Services by actuaries and similar professionals are SSTB activities.

Clarification from Final Regulations.[107] Facts and circumstances must be considered when establishing whether a trade or business is providing actuarial services. Employment of an actuary does not necessarily cause a trade or business to be treated as performing services in the field of actuarial science. This determination depends on whether the trade or business is engaged in analyzing or assessing the financial cost of risk or uncertainty of events.

Performing Arts[108]

Included Services. Services by individuals who participate in the creation of performing arts, such as actors, singers, musicians, entertainers, directors, and similar professionals are SSTB activities.

Excluded Services. Services that do not require skills unique to the creation of performing arts are **not** SSTB activities (e.g., the maintenance and operation of equipment or facilities for use in the performing arts and the video/audio broadcasting of performing arts to the public).

Clarification from Final Regulations.[109] In response to comments received, the IRS clarifies in the preamble to the §199A regulations that services in the field of performing arts include participation in the creation of the performing arts and the writing of material, such as a song or screenplay, that is integral to the creation of the performing arts.

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103. Prop. Treas. Reg. §1.199A-5(b)(2)(iii).
104. Prop. Treas. Reg. §1.199A-5(b)(2)(iv).
105. TD 9847, 2019-09 IRB 670, 692.
106. Prop. Treas. Reg. §1.199A-5(b)(2)(v).
107. TD 9847, 2019-09 IRB 670, 692.
108. Prop. Treas. Reg. §1.199A-5(b)(2)(vi).
109. TD 9847, 2019-09 IRB 670, 692.

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Consulting[110]

Included Services. Consulting is professional advice and counsel to clients to assist them in achieving goals and solving problems. Consulting also includes advice, counsel regarding advocacy to influence governmental decisions, and all attempts to influence legislators and other government officials on behalf of a client by lobbyists and other similar professionals. All these services are SSTB activities.

Excluded Services. Services other than advice and counsel, such as sales or economically similar services or the provision of training and educational courses, are **not** SSTB activities. The determination of whether a person's services are sales or economically similar services will be based on the facts and circumstances of that person's business (e.g., the way the taxpayer is compensated for the services provided).

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) are also excluded if not billed separately.

Clarification from Final Regulations.[111] According to the §199A regulations, the field of consulting concerns the provision of professional advice and counsel to clients to assist them in achieving goals and solving problems.[112] Consulting services do **not** include 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, if they are **not** separately billed.[113] Moreover, consulting does **not** include sales or economically similar services, training, and educational courses. Political lobbying is the **only** service specifically defined as consulting in the §199A regulations.[114]

A commenter on the proposed §199A regulations suggested rewording Example 3 in the proposed §199A regulations to avoid it being interpreted as treating any recommendation for a business to use temporary workers as consulting services.[115] The IRS accepted the recommendation and reworded the example accordingly.[116]

The commenter also recommended inclusion of an example regarding a business that assists other businesses in meeting their personnel needs by referring job applicants to them. The purpose of the example was to confirm that **generally** such a business is not providing services in the field of consulting when income of the business is based on whether those job applicants accept the offered employment. The IRS agreed with this recommendation and added Example 9 in the final §199A regulations illustrating this exception.[117]

In response to a commenter who asked if services provided by engineers and architects could be considered consulting services, the final §199A regulations clarify that services within the fields of architecture and engineering are **not** treated as consulting services.[118]

Another commenter recommended the use of relevant North American Industry Classification Systems (NAICS) codes to better define the consulting field. However, the IRS declined to follow this recommendation.

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110. Prop. Treas. Reg. §1.199A-5(b)(2)(vii).
111. TD 9847, 2019-09 IRB 670, 692.
112. Treas. Reg. §1.199A-5(b)(2)(vii).
113. Ibid.
114. Ibid.
115. Prop. Treas. Reg. §1.199A-5(b)(3), Example 3.
116. Treas. Reg. §1.199A-5(b)(3)(viii).
117. Treas. Reg. §1.199A-5(b)(3)(ix).
118. Treas. Reg. §1.199A-5(b)(2)(vii).

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The following example, based on a real-life client scenario, illustrates problems that the broad-based definition of the consulting field potentially causes.

Example 15. MedSoft Corporation has developed a software application for patient care records, which it licenses to medical professionals. Additionally, MedSoft provides implementation assistance and software customization for clients requiring this. Generally, these services are billed separately. MedSoft is an S corporation wholly owned by Ron, who has an undergraduate degree in computing and a master's degree in software engineering.

Objective. The tax preparer of MedSoft's 2018 S corporation return must decide if MedSoft is engaged in one or more trades or businesses and whether any of those activities is an SSTB for Schedule K-1 reporting purposes.[119]

Analysis. Potentially, MedSoft has three distinct business activities (software licensing, implementation, and customization).

In the final §199A regulations, an example[120] concerns the case of a taxpayer in the business of licensing software to customers and concludes that the business of licensing software is **not** an SSTB in the field of consulting.

Implementation and customization services may be considered the provision of professional advice and counsel to clients to assist them in achieving goals and solving problems (the broad definition of consulting). Alternatively, if these services fall within the field of engineering, then the IRS regulations state that they are not treated as consulting services. Furthermore, the statute specifically excludes engineering as a specified service.[121]

Unfortunately, the term **engineering** is not defined in §199A or the accompanying regulations. Before 2018, the domestic production activities deduction (DPAD) was available for certain activities including the sale of computer software and engineering services. Treas. Reg. §1.199-3(n) uses the example of NAICS code 541330 in the context of engineering services. However, this NAICS code does not specifically mention software engineering.[122] Instead, custom computer programming services comes under NAICS code 541511,[123] and this includes writing, modifying, testing, and supporting software to meet the needs of a customer. None of the multiple index entries listed for NAICS code 541511 include the term "engineering."

Techopedia defines software engineering as "the process of analyzing user needs and designing, constructing, and testing end user applications that will satisfy these needs through the use of software programming languages."[124] Generally, "software engineering is used for larger and more complex software systems, which are used as critical systems for businesses and organizations." It also includes software modification to meet customer needs.

Recommendations. The tax preparer should separately report QBI items for each of MedSoft's three business activities (i.e., software licensing, customization, and implementation).

Example 10 in the final §199A regulations should be sufficient basis to treat the software licensing activity as a §199A qualifying business that is not an SSTB.

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119. Treas. Reg. §1.199A-6(b)(2)(i).

120. Treas. Reg. §1.199A-5(b)(3)(x), Example 10.

121. IRC §199A(d)(2).

122. *2017 NAICS definition of code 541330, Engineering Services.* [www.census.gov/cgi-bin/sssd/naics/naicsrch?input=541330&search=2017+NAICS+ Search&search=2017] Accessed on Jul. 31, 2019.

123. *2017 NAICS definition of code 541511, Custom Computer Programming Services.* [www.census.gov/cgi-bin/sssd/naics/naicsrch?input=541511&search=2017+NAICS+Search&search=2017] Accessed on Jul. 31, 2019.

124. See *Software Engineering.* Techopedia. [www.techopedia.com/definition/13296/software-engineering] Accessed on Jun. 21, 2019.

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Even though the §199A regulations do not specifically indicate that software implementation and customization are consulting services, the IRS could nevertheless argue that they come under the broad definition of consulting.

By contrast, because neither §199A nor the accompanying regulations define engineering, MedSoft could argue that software implementation and customization is engineering, which is not an SSTB. To document a reasonable basis for this position, MedSoft should include a Form 8275, *Disclosure Statement*, with their Form 1120S.

Athletics[125]

Included Services. SSTB activities include 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.

Excluded Services. 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.

Clarification from Final Regulations.[126] Several commenters on the proposed §199A regulations stated that the trade or business of owning a professional sports team should not be considered an SSTB. In response, the IRS observed that the key issue here is whether a trade or business has income attributable to a specified activity, not who performed the services. Therefore, a professional sports team is an SSTB regardless of whether the owners of the team are themselves engaged in an athletic activity.

Nevertheless, the IRS observed that concession services operated as a separate business generally would not be considered a trade or business of performing services in the field of athletics.

Financial Services[127]

Included Services. Managing wealth, advising clients with respect to finances, developing retirement plans, and developing wealth transition plans are SSTB activities. The financial advisory category also includes the provision of advisory and other similar services on valuations, mergers, acquisitions, dispositions, restructurings (including bankruptcy), and raising financial capital by underwriting, or acting as a client's agent in the issuance of securities and similar services. These services can be provided by financial advisors, investment bankers, wealth planners, and retirement advisors and other similar professionals.

Clarification from Final Regulations.[128] The preamble to the proposed §199A regulations stated that the provision of financial services does not include taking deposits or making loans. In response to comments received, this **exclusion** is specifically stated in the final regulations.[129] However, this exclusion does not apply to arranging lending transactions between a lender and borrower, which are considered a financial services SSTB.[130]

In confirming that insurance is **excluded** from the definition of financial services, the IRS noted in the preamble to the final regulations that financial services provided by an insurance agent that are ancillary to the commission-based sale of an insurance policy are generally excludable from financial services.

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125. Prop. Treas. Reg. §1.199A-5(b)(2)(viii).

126. TD 9847, 2019-09 IRB 670, 693.

127. Prop. Treas. Reg. §1.199A-5(b)(2)(ix).

128. TD 9847, 2019-09 IRB 670, 693.

129. Treas. Reg. §1.199A-5(b)(2)(ix).

130. Ibid.

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Brokerage[131]

Included Services. Arrangement of transactions between a buyer and a seller with respect to securities (as defined in IRC §475(c)(2)) for a commission or fee are SSTB activities. This includes services provided by stockbrokers and other similar professionals.

Excluded Services. Services provided by real estate agents and brokers, or insurance agents and brokers are not SSTB activities.

Investing and Investment Management[132]

Included Services. The receipt of fees for providing investing, asset management, or investment management services, including providing advice with respect to buying and selling investments, are SSTB activities.

Excluded Services. The performance of services for investing and investment management does not include directly managing real property.

Clarification from Final Regulations.[133] In response to a commenter requesting clarification on life insurance products, the IRS notes in the preamble to the final §199A regulations that commission-based sales of insurance policies generally is not considered the performance of services in the field of investing and investing management.

Both the proposed and final §199A regulations state that the performance of services of investing and investment management does not include directly managing real property.[134] In the preamble to the final §199A regulations, the IRS clarifies that 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. Thus, direct and indirect management of real property includes management through agents, employees, and independent contractors.

Trading in Securities, Commodities, and/or Partnership Interests[135]

Included Services. Services provided by traders are SSTB activities. A trader for this purpose means a trade or business of trading in securities (as defined in IRC §475(c)(2)), commodities (as defined in §475(e)(2)), or partnership interests. All relevant facts and circumstances, including the source and type of profit that is associated with engaging in the activity are taken into account in determining whether a person is a trader in securities, commodities, or partnership interests. However, whether that person trades for their own account, for the account of others, or any combination thereof is irrelevant to this determination.

Excluded Services. A taxpayer, such as a manufacturer or a farmer, who engages in hedging transactions as part of their trade or business of manufacturing or farming is **not** considered engaged in the trade or business of trading commodities.

Dealing in Securities, Commodities, and/or Partnership Interests[136]

Included Services. Services provided by a dealer in securities, commodities, and/or partnership interests are SSTB activities. Performing services as a dealer in securities means regularly purchasing securities from and selling securities to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.[137]

Performing services as a dealer in commodities means regularly purchasing commodities from and selling commodities to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in commodities with customers in the ordinary course of a trade or business.

131. Prop. Treas. Reg. §1.199A-5(b)(2)(x).

132. Prop. Treas. Reg. §1.199A-5(b)(2)(xi).

133. TD 9847, 2019-09 IRB 670, 694.

134. Treas. Reg. §1.199A-5(b)(2)(xi).

135. Prop. Treas. Reg. §1.199A-5(b)(2)(xii).

136. Prop. Treas. Reg. §1.199A-5(b)(2)(xiii).

137. IRC §475(c)(1).

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Performing services as a dealer 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.

Excluded Services. A dealer in securities does not include taxpayers who regularly originate loans in the ordinary course of a trade or business of making loans but engage in no more than **negligible** sales of the loans.[138]

Clarification from Final Regulations.[139] The final §199A regulations include two modifications to the proposed regulations. First, in determining if a lender is dealing in securities, the performance of services to originate a loan is not treated as the purchase of a security from the borrower. Second, the final regulations remove the reference to negligible sales contained in the proposed regulations.

Consequently, dealing in securities **now** 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.[140]

Banking. In the preamble to the final §199A regulations, the IRS states that there is **no** broad exemption of banks as SSTBs. Therefore, activities performed by a bank that constitute specified services (e.g., investing and investment management) is generally considered an SSTB. However, an RPE, including a subchapter S bank, can segregate specified service activities from an existing trade or business and operate them as an SSTB separate from its remaining trade or business, either within the same legal entity or in a separate entity.

Commodities.[141] Dealing in commodities means regularly purchasing commodities from and selling commodities to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in commodities with customers in the ordinary course of a trade or business. This general definition is the same in both the proposed and final §199A regulations. However, in response to comments received on the proposed regulations, the final regulations clarify that this definition of dealing in commodities **only applies** to a trade or business that is dealing in **financial instruments.** It does **not** apply to a trade or business that engages in substantial activities with respect to **physical commodities.**

Principal Asset is Reputation or Skill of Employee or Owner[142]

Included Services. An SSTB includes any trade or business in which the principal asset is the reputation or skill of one or more of its employees or owners. This applies to any trade or business in which a person does one or more of the following.

1. Receives fees, compensation, or other income for endorsing products or services
2. 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. Receives fees, compensation, or other income for appearing at an event or on radio, television, or another media format

The calculation of the **initial QBID** of an SSTB depends on the taxpayer's taxable income and, in some instances, differs from the **initial QBID** calculation for a general trade or business, as discussed in the section "Taxable Income Limitations."

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138. See Treas. Reg. §§1.475(c)-1(c)(2) and (4) for definition of negligible sales.
139. TD 9847, 2019-09 IRB 670, 694.
140. Treas. Reg. §1.199A-5(b)(2)(xiii)(A).
141. Treas. Reg. §1.199A-5(b)(2)(xiii)(B).
142. Prop. Treas. Reg. §1.199A-5(b)(2)(xiv).

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CALCULATING THE QBID

On April 15, 2019, the IRS issued two draft forms for calculating the QBID. The first of these forms is Form 8995, *Qualified Business Income Deduction Simplified Computation*, a 1-page form for calculating the final QBID. This form is virtually identical to the 2018 Qualified Business Income Deduction–Simplified Worksheet contained in the 2018 Form 1040 instructions.

Form **8995**

Department of the Treasury
Internal Revenue Service

Qualified Business Income Deduction
Simplified Computation

▶ **Attach to your tax return.**
▶ **Go to *www.irs.gov/Form8995* for instructions and the latest information.**

OMB No. XXXX-XXXX

2019

Attachment Sequence No. **55**

Name(s) shown on return | **Your taxpayer identification number**

DRAFT AS OF July 25, 2019 DO NOT FILE

1		**(a)** Trade, business, or aggregation name	**(b)** Taxpayer identification number	**(c)** Qualified business income or (loss)
	i			
	ii			
	iii			
	iv			
	v			

2	Total qualified business income or (loss). Combine lines 1i through 1v, column (c)	2		
3	Qualified business net (loss) carryforward from the prior year	3	( )	
4	Total qualified business income. Combine lines 2 and 3. If zero or less, enter -0-	4		
5	Qualified business income component. Multiply line 4 by 20% (0.20)			5
6	Qualified REIT dividends and publicly traded partnership (PTP) income or (loss) (see instructions)	6		
7	Qualified REIT dividends and qualified PTP (loss) carryforward from the prior year	7	( )	
8	Total qualified REIT dividends and PTP income. Combine lines 6 and 7. If zero or less, enter -0-	8		
9	REIT and PTP component. Multiply line 8 by 20% (0.20)			9
10	Qualified business income deduction before the income limitation. Add lines 5 and 9			10
11	Taxable income before qualified business income deduction	11		
12	Net capital gain (see instructions)	12		
13	Subtract line 12 from line 11. If zero or less, enter -0-	13		
14	Income limitation. Multiply line 13 by 20% (0.20)			14
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 ▶			15
16	Total qualified business (loss) carryforward. Combine lines 2 and 3. If greater than zero, enter -0-			16 ( )
17	Total qualified REIT dividends and PTP (loss) carryforward. Combine lines 6 and 7. If greater than zero, enter -0-			17 ( )

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 37806C Form **8995** (2019)

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The second draft form is Form 8995-A, *Qualified Business Income Deduction*, which covers initial QBID, reduced QBID, SSTBs, REIT and PTP QBID, aggregation elections, QBLs, and the QBID for patrons of agricultural or horticultural cooperatives. This form and related schedules are reproduced in the appendix to this chapter.

> **Note.** Chapter 12 of IRS Pub. 535, *Business Expenses,* is a useful supplementary source of information for tax practitioners on the QBID calculation. The calculation worksheets included there are very similar to the draft Form 8995-A schedules.

The remainder of this section contains a refresher on calculating the **final QBID,** updated for the final §199A regulations. When appropriate, line references to draft Forms 8995 and 8995-A are provided. Subsequently, there are discussions of other pertinent changes in the final §199A regulations (e.g., deductions attributable to QBI, application of the QBI/QBL netting rules, and the net capital gain definition for purposes of the overall taxable income limitation).

Under §199A, the **final QBID** (draft Form 8995, line 15) is the **lesser** of:[143]

1. The taxpayer's combined QBID (draft Form 8995, line 10), or
2. An amount equal to 20% of the excess (if any) of:
   a. The taxpayer's taxable income, over
   b. The taxpayer's **net capital gain** (as defined in IRC §1(h)).

The second element of this formula is known as the **overall taxable income limitation (OTI),** which equates to line 14 of the draft Form 8995.

> **Note.** For more information on the OTI for the QBID and on calculating the QBID in general, see the 2018 *University of Illinois Federal Tax Workbook,* Volume B, Chapter 2: Small Business Issues.

COMBINED QBID

A taxpayer's **combined QBID** (the first item in the preceding formula) is composed of the following.

1. The sum of the **initial QBIDs** (defined later under "Taxable Income Limitations") for each of the taxpayer's qualified businesses (draft Form 8995, line 5), **plus**
2. 20% of the aggregate amount of the taxpayer's qualified REIT dividends and qualified PTP income for the tax year (draft Form 8995, line 9).

However, this rule **only results in combined QBID** if the taxpayer has net positive aggregate QBI from qualified businesses **and/or positive** aggregate income from REITs and PTPs.

143. IRC §199A(a).

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Combining Initial QBIDs

When the net QBI from all qualified businesses is less than zero, the **initial QBID** from qualified businesses is zero (draft Form 8995, line 4). The resulting QBL is then treated as **negative QBI** from a separate trade or business in the taxpayer's succeeding tax years (draft Form 8995, line 16). This requirement does not affect the deductibility of the loss under other Code sections.[144]

> **Observation.** An overall QBL for a year is reported on Form 8995 (currently line 16 of the draft form) **or** draft Form 8995-A, Schedule C, line 6. If, in the subsequent year, the taxpayer has no QBI, then the QBL carries over to subsequent years in the TCJA period until there is QBI to net it with.

It is the taxpayer's responsibility to track QBL carryovers to ensure the correct application of these rules.

The netting of QBI income and losses (including any QBL carryover from the prior year reported on draft Form 8995, line 3) occurs **before** application of the qualified business's W-2 wages/QP limit. When a taxpayer has one or more businesses with QBLs but net positive overall QBI, the taxpayer must apportion these QBLs among the businesses with positive QBI in proportion to the relative amounts of their positive QBI. The business's QBI less its allocation of losses from other businesses is its **adjusted QBI,** which becomes its QBI for the purposes of the initial QBID calculation.[145] (See the draft Form 8995-A, Schedule C, *Loss Netting and Carryforward*, and **Example 18** later in this chapter.)

When combining QBI from all of a taxpayer's qualified businesses, only the applicable percentage of a QBL from an SSTB is taken into account (see **Example 18** for an illustration of this calculation[146]). This percentage is reduced to zero when the taxpayer's taxable income exceeds the upper income threshold.[147]

Taxpayers who make the Treas. Reg. §1.199A-4(b)(1) business aggregation election (see the section "QBI from Relevant Pass-through Entities") must combine QBI from aggregated trades or businesses before applying these netting and QBL carryover rules.[148]

REIT Dividends and Qualified PTP Income

Step 2 of the combined QBID formula (shown earlier) is 20% of the aggregate amount of the taxpayer's current year qualified REIT dividends and PTP income and any REIT/PTP loss from the prior year (draft Form 8995, lines 8 and 9). When this aggregate amount (draft Form 8995, line 8) is **negative,** then it is assumed to be zero for the purposes of the current year's QBID calculation and carried forward to offset qualified REIT dividends and PTP income in succeeding tax years (draft Form 8995, line 17).[149] This carryover rule does not affect the deductibility of the loss for other purposes of the Code.[150]

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144. Treas. Reg. §1.199A-1(c)(2).

145. Treas. Reg. §1.199A-1(d)(2)(iii).

146. Treas. Reg. §1.199A-1(d)(2)(i).

147. Ibid.

148. Treas. Reg. §1.199A-1(d)(2)(ii).

149. Treas. Reg. §1.199A-1(c)(2)(ii).

150. Ibid.

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As previously mentioned, only the applicable percentage of the PTP income generated by an SSTB is taken into account when determining the aggregate amount of qualified REIT dividends and qualified PTP income (see draft Form 8995-A, Schedule A, Part II).[151]

Note. The 2018 *University of Illinois Federal Tax Workbook*, Volume B, Chapter 2: Small Business Issues, provides more detailed explanations of the rules for calculating the QBID along with many illustrative examples. However, the final §199A regulations had not been issued when the 2018 material was written.

Note. The University of Illinois Tax School QBID calculator is available at **uofi.tax/qbid** [taxschool.illinois.edu/QBI.html]. This calculator has been updated to reflect the final §199A regulations.

DEDUCTIONS ATTRIBUTABLE TO QBI[152]

Because QBI includes deductions,[153] several commenters on the proposed §199A regulations requested clarification on what deductions should be included. In response, the IRS observed that "whether a deduction is attributable to a trade or business must be determined under the section of the Code governing the deduction." Moreover, it is the IRS's position that generally **all** deductions attributable to a trade or business should be taken into account when computing QBI, although the final §199A regulations only specify that the following deductions are considered attributable to a trade or business.[154]

1. The deduction for 50% of self-employment (SE) tax under IRC §164(f)
2. The self-employed health insurance deduction under IRC §162(l)
3. The deduction for contributions to qualified retirement plans under IRC §404

Practitioner Planning Tip

On August 29, 2019, the IRS issued draft instructions for Form 8995. In addition to the deductions listed above, these instructions indicate that, when calculating QBI, the taxpayer must consider **all** items that are related to the trade or business, including charitable contributions, unreimbursed partnership expenses, and business interest expense for the purchase of an interest/stock in the RPE.

Observation. Currently there is no place on draft Form 8995-A for determining a trade or business's QBI **net** of specifically allocable deductions. Therefore, pending further clarification, tax practitioners will need to calculate and enter **net QBI** as the QBI of the trade or business when this is requested on the form.

151. Treas. Reg. §1.199A-1(d)(3)(ii).

152. TD 9847, 2019-09 IRB 670, 681.

153. IRC §199A(c)(1).

154. Treas. Reg. §1.199A-3(b)(1)(vi).

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Deductions for Contributions to Qualified Retirement Plans[155]

Employer contributions to qualified retirement plans including stock bonus, pension, profit-sharing, or annuity plans are deductible to the extent provided in IRC §404.[156] An unfortunate consequence of the requirement to reduce QBI by attributable deductions is the **"deduction-reduction problem"**[157] affecting not only S corporations but also partners and sole proprietors. Now, taxpayers with qualifying §199A trades or businesses get a reduced tax deduction for retirement plan contributions. This is because, at the same income level, the marginal tax rate applicable to these contributions is less than the tax rate applicable to retirement plan distributions. The following example illustrates the problem.

Example 16. Tina Smith, a single taxpayer, runs a hair-styling salon organized as a sole proprietorship that qualifies for the QBID. In 2018, Tina's only income is $100,000 reported on her Schedule C. Tina would like to make a $15,000 contribution to her simplified employee pension (SEP) plan for 2018 and would like to know how much federal tax this would save.

Tina's 2018 federal income tax liability calculated with and without the $15,000 SEP contribution is as follows.

	With SEP	Without SEP
Schedule C profit	$100,000	$100,000
Less: 50% SE tax deduction ($14,130 × 50%)	(7,065)	(7,065)
Less: SEP contribution	(15,000)	0
Adjusted gross income	$ 77,935	$ 92,935
Less: standard deduction	(12,000)	(12,000)
Taxable income	$ 65,935	$ 80,935
Less: QBID, which is the **lesser of:**		
• $15,587 ($100,000 Sch. C profit − $7,065 SE tax deduction − $15,000 SEP contribution) × 20%, **or**		
• $13,187 ($65,935 taxable income × 20%)	(13,187)	
Less: QBID, which is the **lesser of:**		
• $18,587 ($100,000 − $7,065) × 20%), **or**		
• $16,187 ($80,935 taxable income × 20%)		(16,187)
Taxable income net of the QBID	$ 52,748	$ 64,748
Federal tax (from tax rate schedule)	$ 7,544	$ 10,184
SE tax ($100,000 × 92.35%× 15.3%)	14,130	14,130
Total 2018 tax	$ 21,674	$ 24,314

155. *How The New QBI Deduction-Reduction Ruins The Value Of Pre-Tax Retirement Plans For Small Business Owners*. Levine, Jeffrey. Feb. 6, 2019. Nerd's Eye View. [www.kitces.com/blog/199a-qbi-deduction-reduction-small-business-owner-retirement-plan-contributions-roth/] Accessed on Feb. 11, 2019.

156. IRC §404(a).

157. The term "deduction-reduction problem" is from the article by Jeffrey Levine previously cited and is used throughout this section. See *How The New QBI Deduction-Reduction Ruins The Value Of Pre-Tax Retirement Plans For Small Business Owners*. Levine, Jeffrey. Feb. 6, 2019. Nerd's Eye View. [www.kitces.com/blog/199a-qbi-deduction-reduction-small-business-owner-retirement-plan-contributions-roth/] Accessed on Feb. 11, 2019.

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Consequently, the tax benefit of Tina's $15,000 SEP contribution is $2,640 ($24,314 – $21,674). This is an effective rate of 17.6% on Tina's 2018 SEP contribution (which is Tina's 22% marginal tax rate reduced by the 20% QBID). If Tina remains in the 22% marginal tax bracket when she retires, her tax rate on distributions will be higher (22%) than her tax rate on the contribution (17.6%) (i.e., "the deduction-reduction problem"). Thus, the QBID's effect acts as a disincentive to make tax-deductible retirement plan contributions particularly for taxpayers with stable income.

Practitioner Planning Tip

The deduction-reduction problem adds to other retirement plan disincentives, such as the following.

- Retirement plan distributions pertaining to qualified dividends and long-term capital gains are subject to ordinary tax rates[158] rather than the preferential rates that would otherwise apply to after-tax investments.
- Beneficiaries must pay tax on inherited retirement accounts as opposed to receiving a step-up in basis of after-tax investments that are inherited.[159]

Allocating QBI Deductions Between Multiple Trades or Businesses

As mentioned earlier, a trade or business's QBI is the net amount of qualified items of income, gain, deduction, and loss with respect to that trade or business.[160] Deductions are considered attributable to a trade or business in computing QBI **to the extent that the individual's gross income from the trade or business is taken into account in calculating the allowable deduction, on a proportionate basis to the gross income received from the trade or business.**[161]

> **Note.** Although Treas. Reg. §1.199A-3(b)(1)(vi) uses the term "Gross income," allocating deductions between multiple business according to their net income should constitute a reasonable method if it is applied consistently.[162]

158. IRC §402(a).

159. *Retirement Topics – Beneficiary*. Feb. 26, 2019. IRS. [www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-beneficiary] Accessed on May 24, 2019; *Gifts & Inheritances*. Mar. 8, 2019. IRS. [www.irs.gov/faqs/interest-dividends-other-types-of-income/gifts-inheritances/gifts-inheritances] Accessed on May 24, 2019.

160. IRC §199A(c)(1).

161. Treas. Reg. §1.199A-3(b)(1)(vi).

162. TD 9847, 2019-09 IRB 670, 685.

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The following example illustrates how this rule applies to different deductions.

Example 17. In 2019, Bob Bowen has two independent businesses reported as single-member LLCs on separate Schedules C. Cambrian Apparel reports net income of $50,000 and Ordovician Accounting reports net income of $75,000. Bob's 2019 self-employed health insurance premium payment is $12,000 for a policy in the name of Cambrian Apparel.

Bob's 2019 SE tax is $17,662 (($50,000 + $75,000) × 0.9235 × 0.153) and the deduction for 50% of SE tax is $8,831 ($17,662 × 50%).

The net QBI from each of Bob's businesses is determined as follows.

	Cambrian Apparel	Ordovician Accounting
Schedule C net income	$50,000	$75,000
Less: SE health insurance premium	(12,000)	
Less: 50% SE tax deduction ($125,000 × 92.35% × 15.3% × 40%)	(3,532)	
Less: 50% SE tax deduction ($125,000 × 92.35% × 15.3% × 60%)		(5,299)
Net QBI	$34,468	$69,701

The SE health insurance premium is an example of a QBI deduction that is specifically allocated, and the 50% SE tax deduction is an example of a QBI deduction that is proportionately allocated. The specific allocation of the SE health insurance premium potentially reduces the initial QBID for Cambrian Apparel more than if this deduction had been proportionately allocated between the two businesses. However, whether this affects Bob's final QBID depends on his taxable income level and the applicability of the W-2 wages/QP limit to Cambrian Apparel's initial QBID.

APPLICATION OF THE QBI/QBL NETTING RULES

As stated earlier, the final §199A regulations modify the proposed regulations to clarify that the applicable percentage of an SSTB's QBI/QBL also applies in the application of the QBI/QBL netting rules.[163]

The following example illustrates the different results that are obtained if only the applicable percentage of an SSTB's QBL is taken into account, rather than the entire QBL.

Example 18. In 2019, Adam Smith has three qualifying businesses, files jointly, and has taxable income of $371,400 before the QBID. Business A is an SSTB with a QBL, and businesses B and C (which are not SSTBs) have positive QBI. All three businesses have a zero W-2 wages/QP limit. Adam's applicable percentage for the QBID phase-in is 50%. Scenarios A and B illustrate the calculations of adjusted QBI using the entire QBL and only the applicable percentage of the QBL, respectively.

[163] Treas. Reg. §1.199A-1(d)(2)(i).

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Scenario A (Proposed Regulations)
QBI/QBL Netting Considering the Entire SSTB QBL

	QBL	QBI	Adjusted QBI
Business A (SSTB) QBL	($200,000)		$ 0
Business B QBI		$150,000	
Less: allocable portion of Business A's $200,000 QBL ($150,000 Business B QBI ÷ $600,000 gross QBI from B and C × $200,000 Business A QBL)		(50,000)	
Business B adjusted QBI		$100,000	$100,000
Business C QBI		$450,000	
Less: allocable portion of Business A's $200,000 QBL ($450,000 Business C QBI ÷ $600,000 gross QBI from B and C × $200,000 Business A QBL)		(150,000)	
Business C adjusted QBI		$300,000	$300,000
Total adjusted QBI			$400,000

Scenario B (Final Regulations)
QBI/QBL Netting Considering Only the Applicable 50% of the SSTB QBL

	QBL	Applicable % of QBL	QBI	Adjusted QBI
Business A (SSTB) QBL	($200,000)	($100,000)		$ 0
Business B QBI			$150,000	
Less: allocable portion of Business A's $100,000 QBL ($150,000 Business B QBI ÷ $600,000 gross QBI from B and C × $100,000 Business A QBL)			(25,000)	
Business B adjusted QBI			$125,000	$125,000
Business C QBI			$450,000	
Less: allocable portion of Business A's $100,000 QBL ($450,000 Business C QBI ÷ $600,000 gross QBI from B and C × $100,000 Business A QBL)			(75,000)	
Business C adjusted QBI			$375,000	$375,000
Total adjusted QBI				$500,000

Because of the modification in the final regulations,[164] it is now clear that Adam has additional QBI of $100,000 as compared to the situation under the proposed regulations (i.e., $500,000 – $400,000).

Pending specific instructions from the IRS to the contrary, it is likely that Scenario B would be reported on Form 8995-A, Schedule A, Part I and Form 8995-A, Schedule C, as follows.

164. Treas. Reg. §1.199A-1(d)(2)(i).

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For Example 18

SCHEDULE A (Form 8995-A)
Department of the Treasury
Internal Revenue Service

Specified Service Trades or Businesses

► Attach to Form 8995-A.
► Go to *www.irs.gov/Form8995A* for instructions and the latest information.

OMB No. XXXX-XXXX
2019
Attachment Sequence No. 55B

Name(s) shown on return: **Adam Smith**
Your taxpayer identification number: **111-11-1111**

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 (Form 8995-A) 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. If you have more than three trades or businesses, attach as many Schedules A as needed. See instructions.

Part I Other Than Publicly Traded Partnerships (PTP)

				A	B	C
				Business A		
1a	Trade or business name		1a			
b	Taxpayer identification number		1b	111-11-1111		
2	Qualified business income or (loss) from the trade or business		2	(200,000)		
3	Allocable share of W-2 wages from the trade or business		3	0		
4	Allocable share of the unadjusted basis immediately after acquisition (UBIA) of all qualified property		4	0		
5	Taxable income before qualified business income deduction	371,400				
6	Threshold. Enter $160,700 ($160,725 if married filing separately; $321,400 if married filing jointly)	321,400				
7	Subtract line 6 from line 5	50,000				
8	Phase-in range. Enter $50,000 ($100,000 if married filing jointly)	100,000				
9	Divide line 7 by line 8	50%				
10	Applicable percentage. Subtract line 9 from 100%	50 %				
11	Applicable percentage of qualified business income or (loss). Multiply line 2 by line 10. Enter this amount on Schedule C (Form 8995-A) or on Form 8995-A, line 2, for the corresponding trade or business, as appropriate. See instructions		11	(100,000)		
12	Applicable percentage of W-2 wages. Multiply line 3 by line 10. Enter this amount on Form 8995-A, line 4, for the corresponding trade or business, as appropriate. See instructions		12	0		
13	Applicable percentage of the UBIA of qualified property. Multiply line 4 by line 10. Enter this amount on Form 8995-A, line 7, for the corresponding trade or business, as appropriate. See instructions		13	0		

Part II Publicly Traded Partnership

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For Example 18

SCHEDULE C (Form 8995-A)
Department of the Treasury
Internal Revenue Service

Loss Netting and Carryforward

► Attach to Form 8995-A.
► Go to *www.irs.gov/Form8995A* for instructions and the latest information.

OMB No. XXXX-XXXX
2019
Attachment Sequence No. 55D

Name(s) shown on return: **Adam Smith**

Your taxpayer identification number: 111-11-1111

If you have more than three trades, businesses, or aggregations, complete and attach as many Schedules C as needed. See instructions.

DRAFT AS OF July 26, 2019 DO NOT FILE

1 Trade, business, or aggregation name	(a) Qualified business income/(loss)	(b) Reduction for loss netting (see instructions)	(c) Adjusted qualified business income (Combine (a) and (b). If zero or less, enter -0-.)
Business A	(100,000)		
Business B	150,000	(25,000)	125,000
Business C	450,000	(75,000)	375,000

2	Qualified business net (loss) carryforward from prior years. See instructions	2	(0)
3	Total of the trades, businesses, or aggregations losses. Combine the negative amounts on lines 1, column (a), and 2 for all trades, businesses, or aggregations	3	(100,000)
4	Total of the trades, businesses, or aggregations income. Add the positive amounts on line 1, column (a), for all trades, businesses, or aggregations	4	600,000
5	Losses netted with income of other trades, businesses, or aggregations. Enter in the parentheses on line 5, the smaller of the absolute value of line 3 or line 4. Allocate this amount to each of the trades, businesses, or aggregations on line 1, column (b). See instructions	5	(100,000)
6	Qualified business net (loss) carryforward. Subtract line 5 from line 3. If zero or more, enter -0-	6	(0)

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 72684K **Schedule C (Form 8995-A) 2019**

> **Note.** See the later section "Taxable Income Limitations" for a discussion of the taxable income thresholds applicable in 2019.

Effectively, this modification of the QBI/QBL netting rules only affects situations in which there are one or more SSTBs with a QBL. By contrast, the **entire** QBL of **general** trades or businesses is considered in the netting process. Therefore, if business A in **Example 18** was a **general** trade or business rather than an SSTB, then the scenario A result would apply.

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NET CAPITAL GAIN DEFINITION[165]

IRC §1(h) sets forth the capital gains rates imposed on taxpayers that have a net capital gain and provides that net capital gain includes qualified dividend income. IRC §1222(11) defines **net capital gain** as the excess of net long-term capital gain for the tax year over the net short-term capital loss for the year. Accordingly, the final regulations define net capital gain for purposes of the OTI as **net capital gain within the meaning of §1222(11) plus qualified dividend income.**[166]

> **Note.** Qualified dividends that a taxpayer elects to treat as investment income under IRC §163(d)(4) for purposes of the investment interest expense limitation do not qualify for the preferential tax rates applicable to long-term capital gains.
>
> Treas. Reg. §1.199A-1(b)(3) refers to IRC §1(h)(11)(B), where qualified dividend income is defined as dividends from domestic corporations and qualified foreign corporations. However, both the statute and regulations under §199A are silent on whether qualified dividends exclude those dividends treated as investment income for purposes of the investment interest expense limitation.

The following example illustrates the application of the new rules in the final §199A regulations concerning deductions attributable to QBI and the OTI limitation.

Example 19. Deborah Dixon, a single filer using the standard deduction, is the sole owner of a Schedule C retail business. In 2019, the business has QBI of $100,000 and Deborah makes a $6,000 SEP IRA contribution and pays a $10,000 SE health insurance premium. Deborah's other 2019 income consists of $1,000 of qualified dividends, $1,500 of capital gain distributions, $5,000 of net short-term loss, and an $8,000 net long-term capital gain. Deborah had no QBL or REIT/PTP carryover from 2018.

Deborah's net QBI and taxable income before the QBID are determined as follows.

QBI (from retail business)	$100,000
Less: deductions attributable to the retail business	
SEP IRA contribution	(6,000)
SE health insurance premium	(10,000)
50% SE tax deduction ($100,000 × 92.35% × 15.3% × 50%)	(7,065)
Net QBI	$ 76,935
Plus: net capital gain	
Qualified dividends	1,000
Capital gain distributions	1,500
Net capital gains ($8,000 net long-term capital gain – $5,000 net short-term loss)	3,000
Less: standard deduction	(12,200)
Taxable income before QBID	$ 70,235

Using Form 8995, Deborah's $12,947 final QBID for 2019 is determined as follows.

165. TD 9847, 2019-09 IRB 670, 672.

166. Treas. Reg. §1.199A-1(b)(3).

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For Example 19

Form **8995**

Department of the Treasury
Internal Revenue Service

Qualified Business Income Deduction Simplified Computation

▶ Attach to your tax return.
▶ Go to *www.irs.gov/Form8995* for instructions and the latest information.

OMB No. XXXX-XXXX

2019

Attachment Sequence No. **55**

Name(s) shown on return: **Deborah Dixon**

Your taxpayer identification number: **111-22-3333**

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	(a) Trade, business, or aggregation name	(b) Taxpayer identification number	(c) Qualified business income or (loss)
i	Retail Business	111-22-3333	76,935
ii			
iii			
iv			
v			

2	Total qualified business income or (loss). Combine lines 1i through 1v, column (c)	2	76,935		
3	Qualified business net (loss) carryforward from the prior year	3	(0)		
4	Total qualified business income. Combine lines 2 and 3. If zero or less, enter -0-	4	76,935		
5	Qualified business income component. Multiply line 4 by 20% (0.20)			5	15,387
6	Qualified REIT dividends and publicly traded partnership (PTP) income or (loss) (see instructions)	6	0		
7	Qualified REIT dividends and qualified PTP (loss) carryforward from the prior year	7	(0)		
8	Total qualified REIT dividends and PTP income. Combine lines 6 and 7. If zero or less, enter -0-	8	0		
9	REIT and PTP component. Multiply line 8 by 20% (0.20)			9	0
10	Qualified business income deduction before the income limitation. Add lines 5 and 9			10	15,387
11	Taxable income before qualified business income deduction	11	70,235		
12	Net capital gain (see instructions)	12	5,500		
13	Subtract line 12 from line 11. If zero or less, enter -0-	13	64,735		
14	Income limitation. Multiply line 13 by 20% (0.20)			14	12,947
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 ▶			15	12,947
16	Total qualified business (loss) carryforward. Combine lines 2 and 3. If greater than zero, enter -0-			16	(0)
17	Total qualified REIT dividends and PTP (loss) carryforward. Combine lines 6 and 7. If greater than zero, enter -0-			17	(0)

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TAXABLE INCOME LIMITATIONS

A taxpayer calculates an **initial QBID** for each qualifying trade or business.[167] The rules for these calculations depend on the taxpayer's taxable income as discussed next. Additional rules apply to trades or businesses that are considered SSTBs. These rules are discussed separately.

GENERAL TRADE OR BUSINESS TAXABLE INCOME LIMITATIONS

Calculation of the initial QBID from general trades or businesses depends on the taxpayer's taxable income. The following table summarizes the formulas for calculating the initial QBID for taxpayers at various taxable income levels for the 2019 tax year. These calculations are subsequently explored in more detail.

2019 Taxable Income Range	Initial/Reduced QBID Calculation
Equal to or below: • $321,400 (MFJ) • $160,725 (MFS) • $160,700 (Other)	Initial QBID = Net QBI × 20%
• Above $321,400 but below $421,400 (MFJ) • Above $160,725 but below $210,725 (MFS) • Above $160,700 but below $210,700 (Other)	Initial QBID is the **lesser of:** • 20% of the QBI with respect to each qualified business, **or** • The W-2 wages/QP limit (defined later). When the former is greater than the latter, the difference between the two is gradually phased in, resulting in a **reduced QBID.**
Equal to or above: • $421,400 (MFJ) • $210,725 (MFS) • $210,700 (Other)	Initial QBID is the **lesser of:** • 20% of the QBI with respect to each qualified business, **or** • The W-2 wages/QP limit (defined later).

Taxable Income Equal to or Below Threshold

The initial QBID for a trade or business (whether a general trade/business **or** an SSTB) is simply 20% of its net QBI (draft Form 8995-A, part II, line 3).[168] For 2018, the amount of the taxable income threshold is $315,000 for MFJ taxpayers and $157,500 for all other filing statuses.[169] These thresholds are adjusted for inflation for post-2018 tax years.[170] The 2019 thresholds are $321,400 for MFJ taxpayers, $160,725 for MFS taxpayers, and $160,700 for all other filing statuses.[171]

> **Observation.** Due to the inflation adjustment, the 2019 taxable income thresholds for MFS taxpayers ($160,725) and other filing statuses ($160,700) are different as compared to 2018, when they were identical ($157,500).

167. IRC §199A(b)(2).

168. IRC §§199A(b)(2) and (3) and 199A(d)(3).

169. IRC §199A(e)(2)(A).

170. IRC §199A(e)(2)(B).

171. In accordance with Rev. Proc. 2018-57, 2018-49 IRB 827 and IRC §199A(e)(2).

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Taxable Income Between Threshold and Upper Threshold

Once a taxpayer's taxable income exceeds the applicable threshold, the **initial QBID** for a qualified business is the **lesser** of:

1. 20% of the QBI with respect to each qualified business, **or**
2. The **W-2 wages/QP limit** (as defined later).

If this formula was immediately applied to a taxpayer whose taxable income exceeded the threshold by just one dollar then they would have a **zero** initial QBID if the W-2 wages/QP limit was **zero** for a given trade or business. To prevent such a precipitous result, Congress acted to gradually phase in this **difference** (i.e., 20% of the QBI and the W-2 wages/QP limit) between the threshold and upper threshold.[172] For MFJ taxpayers, the phase-in range is $100,000. For all other filing statuses, the phase-in range is $50,000. This yields upper thresholds of $421,400 for MFJ taxpayers, $210,725 for MFS taxpayers, and $210,700 for all other filing statuses for tax year 2019 (see the draft Form 8995-A).

The W-2 wages/QP limit is phased in via an **applicable percentage** determined using the following formula.[173]

$$\textbf{Applicable percentage} = 1 - \frac{\textbf{Taxable income} - \textbf{Income threshold}}{\textbf{Phasein range}}$$

Consequently, the formula for the **reduced QBID** that applies in this situation is as follows.

$$\textbf{Reduced QBID} = \textbf{W-2 wages/QP limit} + (\textbf{QBI} \times 20\% - \textbf{W-2 wages/QP limit}) \times \textbf{applicable percentage}$$

> **Note.** See Example 4 in the 2018 *University of Illinois Federal Tax Workbook,* Volume B, Chapter 2: Small Business Issues, for an illustration of the **reduced QBID** calculation.

When a trade or business's W-2 wages/QP limit **equals or exceeds** 20% of its QBI, the **reduced QBID** does not apply because its initial QBID is 20% of its QBI.

These rules apply to general trades or businesses that qualify for the QBID. For SSTBs, these rules are modified, as discussed later.

Taxable Income Equal to or Above Upper Threshold

When taxable income equals or exceeds the upper threshold, the **reduced QBID** formula no longer applies and the **initial QBID** is simply the lesser of 20% of QBI and the trade/business's W-2 wages/QP limit (draft Form 8995-A, part II, line 11). Therefore, if the trade/business does not have any W-2 wages and/or QP, the **initial QBID** is zero.

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172. IRC §199A(b)(3)(B)(i)(I).

173. Ibid.

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SSTB TAXABLE INCOME LIMITATIONS

Taxable Income Equal to or Below Threshold

As stated earlier, the 2019 taxable income threshold is $321,400 for MFJ taxpayers, $160,725 for MFS taxpayers, and $160,700 for all other filing statuses (draft Form 8995-A, part III). The initial QBID is simply 20% of the SSTB's net QBI (draft Form 8995-A, part II, line 3).[174]

Taxable Income Between Threshold and Upper Threshold

An SSTB is a qualified trade or business of a taxpayer **if** the taxpayer's taxable income is less than the upper threshold, which for 2019 is $421,400 for MFJ taxpayers, $210,725 for MFS taxpayers, and $210,700 for all other filing statuses.[175]

The reduced QBID for an SSTB of a taxpayer whose taxable income falls between the threshold and upper threshold is determined using the following formula.

SSTB reduced QBID = (W-2 wages/QP limit × applicable percentage) +
((QBI × 20% × applicable percentage) –
(W-2 wages/QP limit × applicable percentage)) × applicable percentage

> **Note.** Draft Form 8995-A, Schedule A, part I is used to calculate the reduced QBID for SSTBs.

The difference between the SSTB formula and that used for a general trade or business is that the **applicable percentage** must be applied to each element of the formula in order to determine the reduced QBID for an SSTB.[176]

> **Note.** See **Example 9** in the 2018 *University of Illinois Federal Tax Workbook,* Volume B, Chapter 2: Small Business Issues, for an illustration of the SSTB **reduced QBID** calculation.

Taxable Income Equal to or Above Upper Threshold

The **initial QBID** is zero for an SSTB of a taxpayer with taxable income equal to or above the upper threshold. In these circumstances, an SSTB is **not** a qualified trade or business.[177]

W-2 WAGES/QP LIMIT

The W-2 wages/QP limit is defined in the Code as the **greater** of:[178]

1. 50% of the **W-2 wages** with respect to the qualified business, **or**
2. The sum of 25% of the W-2 wages with respect to the qualified business, plus 2.5% of the **unadjusted basis** immediately after acquisition of all **QP.**

> **Note.** This limit is calculated on draft Form 8995-A, part II, lines 5 through 10.

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174. IRC §§199A(b)(2) and (3) and199A(d)(3).
175. IRC §199A(d)(3); Rev. Proc. 2018-57, 2018-49 IRB 827.
176. IRC §199A(d)(3)(A)(ii).
177. IRC §§199A(d)(1) and (2).
178. IRC §199A(b)(2)(B).

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W-2 Wages Definition[179]

Generally, the term **W-2 wages** refers to compensation paid to common-law employees of an individual or RPE and to officers of an S corporation. W-2 wages are generally defined in the Code as the sum of:[180]

1. All remuneration paid by an employer to an employee (including benefits), **plus**
2. Certain elective deferrals to retirement plans.

> **Note.** More information about the definition of W-2 wages for purposes of the W-2 wages/QP limit is available in the 2018 *University of Illinois Federal Tax Workbook,* Volume B, Chapter 2: Small Business Issues.

In the preamble to the final §199A regulations, the IRS provides the following clarifications to comments on the proposed §199A regulations concerning the definition of W-2 wages for purposes of the W-2 wages/QP limit.

S Corporation Shareholders. Although W-2 wages paid to an S corporation shareholder are not included in the recipient's QBI, they are nevertheless W-2 wages for purposes of the W-2 wages/QP limit to the extent that Treas. Reg. §1.199A-2 requirements are otherwise satisfied.

Elective Deferrals to Retirement Plans. In response to a commenter requesting clarification on whether W-2 wages for purposes of the W-2 wages/QP limit include elective deferrals to a SEP plan, savings incentive match plan for employees (SIMPLE), and other qualified plans, the IRS referred to Rev. Proc. 2019-11.[181] Here, the elective deferrals in the second component of the preceding formula (i.e., elective deferrals to retirement plans) are determined by reference to items reported in box 12 of Form W-2. The respective codes for each of these elective retirement plan deferrals are summarized in the following table.

Form W-2, Box 12 Code	Elective Deferral Description
D	IRC §401(k) cash or deferred arrangement plan (including a SIMPLE §401(k) arrangement)
E	IRC §403(b) salary reduction agreement
F	IRC §408(k)(6) salary reduction SEP
G	Elective deferrals and employer contributions (including nonelective deferrals) to any governmental or nongovernmental IRC §457(b) deferred compensation plan
AA	Designated Roth contributions (as defined in IRC §402A) under an IRC §401(k) plan
BB	Designated Roth contributions (as defined in IRC §402A) under an IRC §403(b) salary reduction agreement (Designated Roth contributions are also reported in box 1, and are subject to income tax withholding.)

179. TD 9847, 2019-09 IRB 670, 676.

180. IRC §§199A(b)(4), 6051(a)(3) and (8), 3401(a), 402(g)(3), 457, and 402A.

181. Rev. Proc. 2019-11, 2019-09 IRB 742.

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Rev. Proc. 2019-11 also does not change the three alternative methods for calculating W-2 wages for purposes of the W-2 wages/QP limit originally provided in IRS Notice 2018-64.

> **Note.** These methods (unmodified box, modified box 1, and tracking wages) are described in detail in the 2019 *University of Illinois Federal Tax Workbook*, Volume B, Chapter 5: S Corporation Issues and 2018 *University of Illinois Federal Tax Workbook*, Volume B, Chapter 2: Small Business Issues.

Short Tax Year.[182] For taxpayers with short tax years, W-2 wages includes the following wage items paid or otherwise disbursed during the short tax year.

- Wages paid
- IRC §402(g)(3) elective deferrals made
- Compensation actually deferred under IRC §457

The tracking wages method for calculating W-2 wages is **mandatory** for taxpayers with short tax years. Specific instructions for its application are provided in Rev. Proc. 2019-11.

Qualified Property Definition[183]

QP is defined in the Code as the UBIA of tangible depreciable property that meets **all** the following requirements.

- It is subject to the allowance for depreciation under IRC §167.
- It is held by and available for use in the qualified trade or business at the **close** of the tax year.
- It is used at any point during the tax year in the production of QBI.
- The property's depreciable period has **not ended** before the close of the tax year.

The **depreciable period** refers to the date the property was first placed in service by the taxpayer and ends on the **later** of the following.

- The date that is 10 years after the placed-in-service date
- The last day of the last full year in the applicable recovery period that would apply to the property under IRC §168 (excluding property required to be depreciated under the alternative depreciation system)

> **Note.** See the 2018 *University of Illinois Federal Tax Workbook*, Volume B, Chapter 2: Small Business Issues for more information on the §199A depreciable periods for different property classes.

Under the final §199A regulations, the term UBIA, for purposes of the W-2 wages/QP limit, refers to the basis of the QP on its placed-in-service date before **any** adjustments.[184] These regulations provide the following clarifications regarding QP.

QP Held by a Trade or Business at the Close of the Tax Year.[185] The UBIA of QP is measured at the trade or business level. For QP held by an RPE, the applicable tax year is the tax year of the RPE, **not** the tax year of the taxpayer holding an interest in the RPE. A taxpayer with an interest in an RPE who transfers that interest is not entitled to a share of UBIA from the RPE for that year.

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182. Rev. Proc. 2019-11, 2019-09 IRB 742; Treas. Reg. §1.199A-2(b)(2)(iv)(C).

183. IRC §199A(b)(6).

184. Treas. Reg. §1.199A-2(c)(3).

185. TD 9847, 2019-09 IRB 670, 680.

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Anti-Abuse Rules for Transfers of QP.[186] Under the proposed §199A regulations, property acquired within 60 days of the end of the tax year that is disposed of within 120 days of acquisition must have been used for at least 45 days in the trade or business. Otherwise, the property is not qualified property unless the taxpayer demonstrates that the principal purpose of the acquisition and disposition was not to increase the §199A deduction. This rule is retained in the final regulations with the added clarification that the 120-day period begins with the acquisition of the property.

QP Acquired from a Decedent.[187] The preamble to the proposed §199A regulations stated that the UBIA of QP acquired from a decedent and immediately placed in service is generally its fair market value (FMV) at the date of the decedent's death under IRC §1014. In response to a comment received, the IRS formalized this rule in the final regulations. Additionally, the final regulations clarify that a new depreciable period begins on the date of the decedent's death.

QP of an RPE (General Rule).[188] Due to criticism regarding the methodology proposed for allocating an RPE's UBIA of QP between partners/shareholders, the final §199A regulations modify the rules in the proposed regulations. Originally, the general rule based the allocation on the partner's/shareholder's share of tax depreciation. However, for QP of a partnership not producing tax depreciation during the year, another rule was needed. Thus, it was proposed that UBIA of QP be allocated to partners based on their share of IRC §§704(b) or 704(c) gain resulting if the QP was sold in a hypothetical transaction for cash equal to its FMV. The modified rules for allocating UBIA of QP contained in the final §199A regulations are discussed next for partnerships and S corporations.

S Corporations. A shareholder's allocation of UBIA is based on the ratio of their shares on the last day of the tax year over the total issued and outstanding shares of the corporation.

Partnerships. Each partner's UBIA allocation is based on how §704(b) book depreciation is allocated on the last day of the tax year under Treas. Reg. §1.704-1(b)(2)(iv)(g). For partners with both ordinary and rental real estate deductions for depreciation, UBIA should be similarly allocated. The IRS requested comments on the need for a new regime for partnerships with QP that does not produce tax depreciation during the tax year.

QP of a Partnership RPE (IRC §§743(b) and 734(b) Basis Adjustments).[189] Under the proposed §199A regulations, §§743(b) and 734(b) partnership property basis adjustments are not QP.[190] Various commenters on the proposed regulations disagreed with this treatment, arguing that these special basis adjustments should be QP to the extent that the **FMV** of the respective QP **exceeds** its UBIA before these special basis adjustments. The IRS generally agreed to adopt this approach in the final regulations for §743(b) adjustments. However, they did **not** implement a change for §734(b) adjustments, which remain ineligible property.

Therefore, an **excess basis adjustment** to partnership property resulting from a transfer of a partnership interest through a sale, exchange, or upon the death of a partner generates UBIA. For this purpose, a partner's **excess basis adjustment** is determined for each item of QP. It is an amount that would represent the partner's §743(b) basis adjustment with respect to the same item of QP (determined under Treas. Regs. §§1.743-1(b) and 1.755-1) but calculated as if the adjusted basis of **all** the partnership's property was equal to the UBIA of such property. Finally, the absolute value of the excess basis adjustment cannot exceed the absolute value of the total §743(b) basis adjustment with respect to QP.

The final regulations explain how a partner's share of UBIA is calculated when there is an excess §743(b) basis adjustment. First, the partnership computes its UBIA of QP and the amount allocable to each partner. If the sum of the excess §743(b) basis adjustment for **all** items of QP is a negative number, that amount reduces the partner's UBIA allocation but not below zero. Excess §743(b) basis adjustments include those made for §743(d) substantial built-in losses.

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186. Treas. Reg. §1.199A-2(c)(1)(iv).

187. TD 9847, 2019-09 IRB 670, 680; Treas. Reg. §1.199A-2(c)(3)(v).

188. TD 9847, 2019-09 IRB 670, 677; Treas. Reg. §§1.199A-2(a)(3)(iii) and (iv).

189. TD 9847, 2019-09 IRB 670, 679; Treas. Reg. §1.199A-2(a)(3)(iv).

190. Prop. Treas. Reg. §1.199A-2(c)(1)(iii).

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The following illustrative example is based on Example 1 in the final regulations.[191]

> **Example 20.** Adam, Bill, and Carol are equal partners in Dupo Partners LLP, which has a business activity generating QBI. The partnership has no liabilities and one item of QP with a UBIA of $300,000. Therefore, each partner's share of the UBIA is $100,000.
>
> Carol sells her entire one-third interest in Dupo Partners to Deb for $125,000 when an IRC §754 election is in effect. The tax basis of the partnership's QP is $240,000 at the time of sale. The amount of gain that would be allocated to Deb from a hypothetical transaction under Treas. Reg. §1.743-1(d)(2) is $45,000 ($125,000 sales proceeds – $80,000 (Deb's one-third share of the QP's tax basis)).
>
> Deb's interest in Dupo Partners' previously taxed capital is $80,000 ($125,000 cash Deb would receive if Dupo Partners liquidated immediately after the hypothetical transaction – $45,000 Deb's share of gain from the hypothetical transaction). The amount of Deb's §743(b) basis adjustment to Dupo Partners' QP is $45,000 ($125,000 cost basis – $80,000 Deb's share of tax basis of the partnership's QP).
>
> Deb's excess §743(b) basis adjustment is $25,000 ($125,000 Deb's cost basis for her interest – $100,000 Deb's one-third share of Dupo Partners' UBIA of QP).
>
> Therefore, Deb's UBIA amount applicable to her share of Dupo Partners' QBI is $125,000 ($100,000 one-third share of the partnership's UBIA of QP + $25,000 excess §743(b) basis adjustment).

An excess §743(b) basis adjustment that is QP is considered placed in service when the transfer of the partnership interest occurred. The applicable recovery period is determined under Treas. Reg. §1.743-1(j)(4)(i)(B) for **positive** basis adjustments and under Treas. Reg. §1.743-1(j)(4)(ii)(B) for **negative** basis adjustments.[192]

QP of an RPE (Nonrecognition Transfer).[193] The proposed regulations stated that UBIA of property is its basis on its placed-in-service date. When QP placed in service by its owner is subsequently contributed to a partnership or S corporation, its UBIA in the hands of the RPE is its **original owner's adjusted basis** (i.e., original owner's UBIA less accumulated depreciation). Several commenters on the proposed §199A regulations pointed out that this could potentially result in a step-down in the UBIA of the QP. In response to these comments, the final regulations modify the proposed regulations so that UBIA of contributed QP is now its **UBIA when placed in service by its original owner.** However, the recipient RPE must then **decrease** this original UBIA by any cash it received in the transaction or **increase** the original UBIA by any cash paid to the transferor of the QP. The application of this new rule is illustrated in the following example.

> **Example 21.** In 2019, Jim contributes a used truck to ABC Holdings (an S corporation) in which he is a shareholder. Jim bought the truck when it was new for $40,000 (Jim's UBIA) in 2016 and its adjusted basis in Jim's hands is zero (due to depreciation deductions). In return for the contribution of the truck, Jim received $20,000 of corporate stock and $5,000 cash from ABC Holdings.
>
> Under the proposed regulations, ABC Holdings' UBIA in the truck would have been **zero** (i.e., Jim's unadjusted basis). However, under the final regulations, ABC Holdings' UBIA in the truck is **$45,000** ($40,000 original UBIA + $5,000 cash paid by ABC Holdings to Jim).

> **Observation.** Treas. Reg. §1.199A-2(c)(3)(iv) states that "…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 transferor in the transaction or increased by the amount of money paid by the transferee to acquire the property in the transaction."
>
> A literal reading of this regulation could lead a tax practitioner to conclude that the UBIA in the hands of ABC Holdings is $40,000. A revision may be necessary to clarify this.

191. Treas. Reg. §1.199A-2(a)(3)(iv)(D).

192. Treas. Reg. §1.199A-2(c)(2)(v).

193. TD 9847, 2019-09 IRB 670, 677; Treas. Reg. §1.199A-2(c)(3)(iv).

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QP Received in a Tax-Free Exchange or Conversion.[194] Under the proposed §199A regulations, the UBIA of replacement property would have been the same as the transferor's **adjusted basis** in the relinquished property.[195] Several commenters on these proposed regulations observed that this rule would discourage taxpayers from conducting like-kind exchanges because the UBIA of the replacement property would be less than the UBIA of the relinquished property by the amount of IRC §168 depreciation deductions taken. Consequently, the IRS modified the rule in the proposed regulations.

Under the final regulations, the UBIA of qualified like-kind property that a taxpayer receives in an IRC §1031 like-kind exchange or an IRC §1033 involuntary conversion is generally the **UBIA of the relinquished property.** When the exchange also involves cash or other property, the UBIA is:

1. Decreased by excess boot, or
2. Increased by the cash or the FMV of other property paid by the acquiring taxpayer.

Excess boot for this purpose is the cash or FMV of other property received by the taxpayer in the exchange over the amount of appreciation in the relinquished property. **Appreciation** means the excess of the FMV of the relinquished property on the date of the exchange over its FMV when acquired by the taxpayer. **Other property** is defined as property that is not of a like kind to the relinquished property.

If the replacement property in a §1031 like-kind exchange or a §1033 involuntary conversion consists of multiple items of QP that is of a like kind to the relinquished property, UBIA is apportioned between or among the replacement properties in proportion to their relative FMVs. Any other property received by the taxpayer in the transaction that is QP has a UBIA equal to its FMV.

The placed-in-service date of replacement property is the same as the relinquished property's placed-in-service date.

The following illustrative example is based on examples in the final regulations.[196]

> **Example 22.** Jane is the sole owner of Jane's Transport, a transportation and distribution business, which is organized as a single-member LLC. On January 16, 2014, Jane's Transport purchased and placed in service a warehouse for $500,000. In 2018, for purposes of the QBID, the UBIA of the warehouse is $500,000 (its original cost basis under IRC §1012) regardless of allowable depreciation.
>
> On June 30, 2019, due to business expansion, Jane's Transport exchanged its existing warehouse in a business park owned by the city for a larger facility in the same business park (utilizing the §1031 like-kind exchange rules). It is placed in service on the same date. At that time, the original warehouse had an FMV of $700,000 and the replacement warehouse had an FMV of $1 million. Jane's Transport also contributed cash of $300,000 (the difference between the FMVs of the two properties) in the exchange.
>
> Jane's Transport's UBIA in the replacement property is $800,000 ($500,000 original UBIA + $300,000 cash payment).
>
> Because the UBIA of the replacement warehouse exceeds the UBIA of the relinquished warehouse, the replacement warehouse is treated as two separate pieces of QP. The first piece of QP has a UBIA of $500,000 and a placed-in-service date of January 16, 2014 (same as the original warehouse). The second piece of QP has a UBIA of $300,000 (i.e., $800,000 – $500,000) and a placed-in-service date of June 30, 2019 (the date that the replacement warehouse was placed in service).

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194. TD 9847, 2019-09 IRB 670, 677; Treas. Reg. §1.199A-2(c)(3).

195. Prop. Treas. Reg. §1.199A-2(c)(4), Example 2.

196. Treas. Reg. §1.199A-2(c)(4), Examples 1 and 4.

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Anti-Abuse Provision. If QP is acquired in a nonrecognition transaction (under IRC §§1031, 1033, or 168(i)(7)) when the principal purpose of the transaction is to increase the UBIA of the QP, the UBIA of the replacement property is its basis as determined under relevant Code sections and not under Treas. Reg. §1.199A-2(c)(3). Therefore, for example, in the case of a like-kind exchange specifically undertaken to increase the UBIA of the replacement property, its basis is determined under §1031(d).

QBI FROM RELEVANT PASS-THROUGH ENTITIES

An individual who receives QBI, W-2 wages, UBIA of QP, qualified REIT dividends, or qualified PTP income from an RPE with a tax year that begins before January 1, 2018, and ends after December 31, 2017, reports them in the individual's tax year during which the RPE's tax year ends.[197]

The QBID reporting of an RPE that has multiple business activities is affected by the RPE's election to aggregate trade or business activities. Therefore, the appropriateness of this election should be considered first, as discussed next.

Practitioner Planning Tip

Why and when should aggregation be recommended? A significant increase in the QBID is possible when aggregating businesses with QBI with businesses with minimal QBI but significant W-2 wages and/or QP. However, only taxpayers with taxable income higher than the applicable taxable income threshold can potentially increase their QBID by making the aggregation election.

AGGREGATION OF TRADES OR BUSINESSES[198]

The final regulations include rules pertaining to the aggregation of trades or businesses for purposes of applying the W-2 wage/QP limit described in Treas. Reg. §1.199A-1(d)(2)(iv). Only activities that rise to the level of a §162 trade or business can be aggregated. Trades or businesses can be aggregated only if an individual or RPE meets the following conditions.

1. The same person or group of persons owns 50% or more of each trade or business to be aggregated. The ownership taken into account can be either direct or by attribution under IRC §§267(b) or 707(b).
    a. The ownership described in item 1 exists for a majority of the tax year, including the last day of the tax year, in which the items attributable to the trades or businesses to be aggregated are included in income.
2. Each trade or business to be aggregated has the same tax year.
3. None of the trades or businesses to be aggregated is an SSTB.
4. The trades or businesses to be aggregated satisfy at least two of the following factors.
    a. The trades or businesses provide products, property, or services that are the same or customarily offered together.
    b. The trades or businesses share facilities or significant centralized business elements (e.g., common personnel, accounting, legal, manufacturing, purchasing, human resources, or information technology resources).
    c. The trades or businesses are operated in coordination with, or in reliance on, one or more of the businesses in the aggregated group (e.g., supply chain interdependencies).

197. TD 9847, 2019-09 IRB 670, 702.

198. TD 9847, 2019-09 IRB 670, 727.

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Reporting and Consistency Requirements[199]

The aggregation rules in the final §199A regulations permit **either the RPE or an individual operating through an RPE** to elect aggregation of trades or businesses of the RPE.

> **Note.** If the RPE has more than one trade or business or aggregation, then the RPE must enter an asterisk adjacent to the applicable Schedule K-1 reporting code for QBI (V for an S corporation and Z for a partnership) and enter "STMT" in the column to the right.[200] The respective QBI amounts for each trade or business and aggregation should be reported on an attached statement. In this situation, the QBI amounts from multiple sources should not be summed into a single number for Schedule K-1 reporting purposes.

If the RPE makes an aggregation election, then the individual owner may **not subtract** trades or businesses from the aggregation election but may **add** trades or businesses to the aggregation.

Practitioner Planning Tip

RPEs may prefer not to make the aggregation election, leaving the decision to individual owners of the RPE. The RPEs will nevertheless need to report to individual owners the necessary information for each trade or business.

Because preparers of entity returns may not know the taxable income of the partners/shareholders, this election may or may not affect the partners/shareholders.

Annual Disclosure.[201] Annual disclosure requirements apply to RPEs making an aggregation election and to individuals with ownership interests. RPEs satisfy this annual reporting requirement by attaching a statement to each owner's Schedule K-1 identifying each trade or business aggregated under Treas. Reg. §1.199A-4(b)(1). Individuals with ownership interests satisfy the reporting requirement by attaching a statement to their tax returns identifying the aggregated trades or businesses. In both cases, the statement must contain the following information.

1. A description of each trade or business
2. The name and employer identification number of each entity in which a trade or business is operated
3. Information identifying any trade or business that was formed, ceased operations, was acquired, or was disposed of during the tax year
4. Information identifying any aggregated trade or business of an RPE in which the individual/RPE holds an ownership interest
5. Any other information required by the IRS (e.g., in forms, instructions, or other published guidance)

> **Observation.** Taxpayers can report an aggregation election on draft Form 8995-A, Schedule B. Under item 1 of draft Form 8995-A, Schedule B, an explanation of the factors that allow the aggregation **must** be provided.

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199. TD 9847, 2019-09 IRB 670, 727-728; Treas. Reg. §1.199A-4(b)(2).

200. Instructions for Form 1120S and Instructions for Form 1065.

201. Treas. Reg. §1.199A-4(c).

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Consistency Requirements.[202] After an RPE or individual chooses to aggregate trades or businesses, the RPE or individual must **consistently report** the aggregated trades or businesses in **all** subsequent tax years. An RPE or individual who fails to aggregate generally may **not** aggregate the trades or businesses on an amended return. A taxpayer who does not aggregate in the first year can still choose to aggregate in the second year or other future years, but generally cannot amend returns to choose to aggregate in the first year. **However, for the 2018 tax year only, an RPE or individual can choose to aggregate trades or businesses by filing an amended return.**

If there is a significant change in facts and circumstances that results in a prior aggregation of trades or businesses no longer qualifying for aggregation, the trades or businesses can no longer be aggregated. Accordingly, the RPE or individual must determine a new permissible aggregation (if any). In addition, an RPE or individual can add a newly created or newly acquired trade or business to an existing aggregated trade or business if the aggregation requirements are otherwise satisfied.

If the RPE or individual fails to attach the required statement, the IRS can disaggregate the RPE's trades or businesses. If this occurs, the RPE or individual cannot aggregate the trades or businesses that are disaggregated by the IRS for the subsequent three tax years.

Illustrative Examples. The following example illustrates when a taxpayer can gain a significant benefit from the aggregation election.

Example 23. In 2019, Ken, a single taxpayer, owns three single-member LLCs that are all qualified trades or businesses for the purposes of the QBID and meet **all** the requirements for an aggregation election. Ken's 2019 taxable income before consideration of the QBI is $500,000. QBI items for each of Ken's three businesses are summarized in the following table.

QBI Item	Business A	Business B	Business C	Combined
QBI	$300,000	$ 1,000	$ 0	$ 301,000
W-2 wages	0	50,000	0	50,000
UBIA of QP	0	0	1,500,000	1,500,000

Absent an aggregation election, Ken has a $200 **initial QBID,** determined as follows.

QBI Item	QBI × 20%	W-2 Wages/QP Limit [a]	Initial QBID [b]
Business A	$60,000	$ 0	$ 0
Business B	200	25,000	200
Business C	0	37,500	0

[a] Greater of 50% of W-2 wages, or sum of 25% of W-2 wages + 2.5% of UBIA of QP.

[b] Lesser of QBI × 20% or the W-2 wages/QP limit.

If, however, Ken makes an aggregation election, then QBI items are combined for the three businesses and Ken's initial QBID **increases** to $50,000, calculated as the **lesser of:**

- $60,200 ($301,000 QBI × 20%), **or**
- $50,000 W-2 wages/QP limit, which is the **greater of:**
  - $25,000 ($50,000 W-2 wages × 50%), **or**
  - $50,000 ($50,000 W-2 wages × 25% + 2.5% × $1,500,000 UBIA)

Therefore, Ken's **final QBID** with the aggregation election is $50,000 (the lesser of the $50,000 initial QBID and Ken's $100,000 OTI limit ($500,000 taxable income × 20%). This contrasts with the $200 **final QBID** allowable without the aggregation election.

202. Ibid.

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In the following example, an S corporation leaves the decision on whether to aggregate multiple businesses to the shareholders. Practical issues stemming from this decision are addressed.

Example 24. Quincey Enterprises is an S corporation that owns two activities. One is a retail business and the other is a distribution center that the corporation owns and manages. Rather than make a Treas. Reg. §1.199A-4(c) business aggregation election, Quincey Enterprises prefers to leave that decision to its shareholders.

Quincey Enterprises attaches a statement to the Schedules K-1 provided to its shareholders that informs them of the corporation's decision to leave the business aggregation election to them.

Schedule K-1, line 17, codes V (§199A income), W (§199A W-2 wages), and X (§199A unadjusted basis) are marked with an asterisk, with "STMT" written to the right. The respective amounts for each activity are reported on a separate statement. When reporting these amounts, Quincey Enterprises is communicating to its shareholders that each activity is an eligible trade or business for the QBID. Therefore, Quincey Enterprises should have adequate documentation in its files in support of this determination. However, this information alone is insufficient for shareholders to make aggregation elections, because the corporation ideally should also provide them with the necessary information (previously described), including an explanation of the factors that permit the aggregation.

SCHEDULE K-1 QBID REPORTING[203]

The **proposed regulations** provided that an RPE must determine and separately report the following items for **each** of the RPE's trades or businesses.[204]

1. QBI
2. W-2 wages
3. UBIA of qualified property
4. Whether the trade or business is an SSTB

The RPE must also report each owner's allocated share of any qualified REIT dividends received by the RPE (including through another RPE) as well as any qualified PTP income or loss received by the RPE for each PTP in which the RPE holds an interest (including through another RPE).

An RPE is defined as a partnership (other than a PTP) or 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, UBIA, qualified REIT dividends, or qualified PTP income.[205] The **final regulations** extend the RPE definition to include common trust funds (described in Temp. Treas. Reg. §1.6032-1T) and religious or apostolic organizations (described in IRC §501(d)) 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.[206]

As previously discussed, the **final regulations** permit an RPE to aggregate its trades or businesses provided it meets the rules of Treas. Reg. §1.199A-4. An RPE that chooses to aggregate must compute and report the QBI, W-2 wages, and UBIA of the aggregation under the rules described in Treas. Reg. §1.199A-6(b).[207] Under these rules, the RPE may determine and report required QBI items for the aggregated trade or business.[208]

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203. TD 9847, 2019-09 IRB 670, 736.

204. Prop. Treas. Reg. §1.199A-6(b)(3).

205. Prop. Treas. Reg. §1.199A-1(b)(10).

206. Treas. Reg. §1.199A-1(b)(10).

207. Treas. Reg. §1.199A-4(b)(2)(ii).

208. Treas. Reg. §1.199A-6(b)(2).

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The **proposed regulations** provided that if an RPE fails to separately identify or report **any** of the four required items (listed previously), then the owner's share of **all** QBI items (i.e., QBI, W-2 wages, and UBIA of qualified property) for that trade or business is presumed to be zero.

However, the **final regulations** revise the presumption such that if an RPE fails to separately identify or report an item of QBI, W-2 wages, or UBIA of qualified property, then **only** the owner's share of **each unreported item** of QBI, W-2 wages, or UBIA attributable to trades or businesses engaged in by that RPE **is presumed to be zero.**[209] The applicable information should be reported on the Schedule K-1 (or as an attachment to the Schedule K-1) issued to an owner. In addition, the RPE can report the relevant information on an amended or late-filed tax return if the statute of limitations remains open.[210]

Practitioner Planning Tip

If the RPE does not report applicable items, the amount of QBI available to the recipient is zero. If a practitioner believes this to be in error, the issuer of the Schedule K-1 should be contacted to determine why §199A information was omitted.

PTP Reporting Rules[211]

Generally, PTPs are subject to the same QBID reporting rules that apply to RPEs except that a PTP is not required to determine or report W-2 wages or the UBIA of qualified property attributable to trades or businesses it is directly engaged in.

Effect of RPE §179 Election on QBI

When an S corporation makes an IRC §179 expensing election, the shareholder's portion of the §179 expense must be stated separately from ordinary income reported on Schedule K-1, line 1.[212] Similarly, a partner's share of a partnership's §179 expense must be separately stated.[213]

A partner or S corporation shareholder can only currently deduct their share of the RPE's §179 deduction to the extent that they have taxable income from the active conduct of a trade or business during the year.[214] Any §179 deduction disallowed under this rule is carried forward indefinitely until there is taxable income from the active conduct of a trade or business against which it can be offset.[215] Therefore, because the RPE does not necessarily have information about whether the partner/shareholder can currently deduct their share of the RPE's §179 expense, the question arises as to whether the RPE should reduce the partner/shareholder's QBI by their respective share of the §179 expense.

Pursuant to Treas. Reg. §1.199A-3(b)(2)(i), the term qualified items of income, gain, deduction, and loss means items of gross income, gain, deduction, and loss to the extent they are **included** or **allowed** in determining taxable income for the tax year.

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209. Treas. Reg. §1.199A-6(b)(3).
210. Ibid.
211. Treas. Reg. §1.199A-6(c).
212. Treas. Reg. §1.1366-1(a)(2)(vi).
213. Treas. Reg. §1.179-2.
214. Treas. Reg. §1.179-2(c).
215. Treas. Reg. §1.179-3.

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An S corporation reports a shareholder's portion of QBI on Schedule K-1, line 17, with code V, whereas a partnership reports a partner's portion of QBI on Schedule K-1, line 20, with code Z. Both the IRS instructions to Form 1120S and Form 1065 are silent on whether QBI should be reduced by the shareholder/partner's portion of §179 expense. Therefore, it is important that the preparer of the RPE's return effectively communicate to the partner/shareholder whether their share of the QBI reported on the Schedule K-1 is reduced by their respective share of the §179 expense. This can be achieved by attaching an appropriate explanatory statement to the Schedule K-1.

Note. Losses or deductions that were disallowed, suspended, limited, or carried over from tax years ending before January 1, 2018, are **not** taken into account in a later tax year for purposes of computing QBI.[216] By contrast, loss or deduction carryovers from years in the TCJA period **are** taken into account in determining QBI. The §199A regulations require use of a FIFO basis for such losses. It seems reasonable to assume that these rules apply to §179 carryovers.

QUALIFIED BUSINESS LOSSES AND THE SHAREHOLDER LOSS ORDERING RULES

Under the loss ordering rules, the following limitations apply to ordinary losses reported on Schedule K-1 of S corporation shareholders in the order listed.[217]

1. Stock and debt basis limitations (IRC §1366(d))
2. At-risk limitations (IRC §465)
3. Passive activity loss limitations (IRC §469)

Note. For information about the three loss limitations for an S corporation, see the 2019 *University of Illinois Federal Tax Workbook,* Volume A, Chapter 3: Schedule K-1.

Currently allowed losses or deductions pertaining to the TCJA period that were previously disallowed (due to the above limitations) are generally taken into account in computing QBI to the extent the disallowed loss or deduction is otherwise allowed by §199A. When determining QBI, these losses are treated as being from a separate trade or business (like a QBL carryover)[218] and are utilized on a FIFO basis.[219] Then, it is a matter of applying the QBI/QBL netting rules (see the earlier section "Application of the QBI/QBL netting rules").[220]

The following example illustrates the application of these rules in the determination of QBI when the taxpayer has a previously disallowed loss and a QBL carryover from a previous year.

Example 25. Anne Clayton, a single taxpayer, is a shareholder in Corporation A (an S corporation) in 2018. The Schedule K-1 she receives from the entity reflects an operating loss of $24,000. On line 17, code V of Schedule K-1, an entry of negative $24,000 reflects QBI for 2018. Anne's 2018 taxable income is $10,000, taking into account her other income and deductions.

Anne has a $9,000 basis in her Corporation A stock. On her 2018 tax return, she completes a basis worksheet reducing her basis to zero and enters a $9,000 loss on Schedule 1 of her 2018 Form 1040. She has a suspended loss under IRC §1366(d) of $15,000 ($9,000 basis – $24,000 operating loss from Corporation A). Because Anne has no other QBI for 2018, she has a $9,000 QBL for purposes of IRC §199A.

Anne's stock basis is zero on December 31, 2018, and her $9,000 QBL carries forward to subsequent years, as shown on the following worksheets.

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216. Treas. Reg. §1.199A-3(b)(1)(iv).

217. *S Corporation Stock and Debt Basis*. Mar. 2, 2019. IRS. [www.irs.gov/businesses/small-businesses-self-employed/s-corporation-stock-and-debt-basis] Accessed on May 7, 2019.

218. Treas. Reg. §1.199A-1(c)(2).

219. REG-134652-18 (Jan. 18, 2019); Prop. Treas. Reg. §1.199A-3(b)(1)(iv).

220. Treas. Reg. §1.199A-1(d)(2)(i).

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For Example 25

2018 Qualified Business Income Deduction—Simplified Worksheet

Keep for Your Records

Before you begin: This worksheet is for taxpayers who:

- √ Have qualified business income, REIT dividends, or PTP income.
- √ Are not a patron in a specified agricultural or horticultural cooperative.
- √ Have taxable income of $157,500 or less ($315,000 or less if married filing jointly).

1.

	(a) Trade or business name	(b) Employer identification number	(c) Qualified business income or (loss)
i.	Corporation A	999-99-9999	(9,000)
ii.			
iii.			
iv.			

2. Total qualified business income or (loss). Add the amounts in 1i through 1iv, column 1(c) 2. (9,000)

Note. If reporting qualified business income or (loss) from more than four trades or businesses, see the instructions for line 2 of this worksheet.

3. Qualified business loss carryforward from the prior year . . . . . 3.

4. Total qualified business income. Combine lines 2 and 3. If zero or less, enter -0- 4. 0

5. Qualified business income component. Multiply line 4 by 20% (0.20) 5. 0

6. Qualified REIT dividends and PTP income or (loss) . . . . . 6.

7. Qualified REIT dividends and PTP loss carryforward from the prior year . . . . . 7. ( )

8. Total qualified REIT dividends and PTP income. Add lines 6 and 7. If zero or less, enter -0- . . . . . 8.

9. REIT and PTP component. Multiply line 8 by 20% (0.20) . . . . . 9.

10. Qualified business income deduction before the income limitation. Add lines 5 and 9 . . . . . 10. 0

11. Taxable income before qualified business income deduction 11. 10,000

12. Net capital gain (see instructions) 12. 0

13. Subtract line 12 from line 11. If zero or less, enter -0- 13. 10,000

14. Income limitation. Multiply line 13 by 20% (0.20) 14. 2,000

15. Qualified business income deduction. Enter the smaller of line 10 or line 14 . . . . . 15. 0

16. Total qualified business loss carryforward. Add lines 2 and 3. If more than zero, enter -0- 16. (9,000)

17. Total qualified REIT dividends and PTP loss carryforward. Add lines 6 and 7. If more than zero, enter -0- . . . . . 17. ( )

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For Example 25

Worksheet for Figuring a Shareholder's Stock and Debt Basis

Part I—Shareholder Stock Basis

1.	Stock basis at the beginning of the corporation's tax year		1.	9,000
2.	Basis from any capital contributions made or additional stock acquired during the tax year		2.	
3a.	Ordinary business income (losses go on Part III)	3a.		
b.	Net rental real estate income (losses go on Part III)	3b.		
c.	Other net rental income (losses go on Part III)	3c.		
d.	Interest income	3d.		
e.	Ordinary dividends	3e.		
f.	Royalties	3f.		
g.	Net capital gains (losses go on Part III)	3g.		
h.	Net section 1231 gain (losses go on Part III)	3h.		
i.	Other income (losses go on Part III)	3i.		
j.	Excess depletion adjustment	3j.		
k.	Tax-exempt income	3k.		
l.	Recapture of business credits	3l.		
m.	Other items that increase stock basis	3m.		
4.	Add lines 3a through 3m		4.	0
5.	Stock basis before distributions. Add lines 1, 2, and 4		5.	9,000
6.	Distributions (excluding dividend distributions)		6.	
	Note. If line 6 is larger than line 5, subtract line 5 from line 6 and report the result as a capital gain on Form 8949 and Schedule D. See instructions.			
7.	Stock basis after distributions. Subtract line 6 from line 5. If the result is zero or less, enter -0-, skip lines 8 through 14, and enter -0- on line 15		7.	9,000
8a.	Nondeductible expenses	8a.		
b.	Depletion for oil and gas	8b.		
9.	Add lines 8a and 8b		9.	
10.	Stock basis before loss and deduction items. Subtract line 9 from line 7. If the result is zero or less, enter -0-, skip lines 11 through 14, and enter -0- on line 15		10.	9,000
11.	Allowable loss and deduction items. Enter the amount from Part III, line 13, column (c)		11.	9,000
12.	Debt basis restoration (see net increase in instructions for Part II, line 8)		12.	
13.	Other items that decrease stock basis		13.	
14.	Add lines 11, 12, and 13		14.	9,000
15.	**Stock basis at the end of the corporation's tax year.** Subtract line 14 from line 10. If the result is zero or less, enter -0-		15.	0

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In 2019, Anne receives a Schedule K-1 from Corporation A with a $50,000 profit in box 1. Line 17, code V of Schedule K-1 reflects $50,000 of QBI. After reducing the $50,000 profit by the $15,000 suspended loss carried forward from 2018, Anne reports $35,000 as income from this activity on Schedule 1 of Form 1040. On her Form 8995, she reports $35,000 of QBI on lines 1 and 2 and her $9,000 QBL from 2018 on line 3. Anne's 2019 taxable income before the QBID is $40,000, taking into account her other income and deductions.

A copy of Anne's Form 8995 (based on the July 25, 2019 draft version of the form) follows.

Form **8995**

Department of the Treasury
Internal Revenue Service

Qualified Business Income Deduction
Simplified Computation

► Attach to your tax return.
► Go to *www.irs.gov/Form8995* for instructions and the latest information.

OMB No. XXXX-XXXX

2019

Attachment Sequence No. **55**

Name(s) shown on return: **Anne Clayton**

Your taxpayer identification number: **111-22-3333**

DRAFT AS OF July 25, 2019 DO NOT FILE

	(a) Trade, business, or aggregation name	(b) Taxpayer identification number	(c) Qualified business income or (loss)
1			
i	Corporation A	33-4567890	35,000
ii			
iii			
iv			
v			

2	Total qualified business income or (loss). Combine lines 1i through 1v, column (c)	2	35,000		
3	Qualified business net (loss) carryforward from the prior year	3	(9,000)		
4	Total qualified business income. Combine lines 2 and 3. If zero or less, enter -0-	4	26,000		
5	Qualified business income component. Multiply line 4 by 20% (0.20)			5	5,200
6	Qualified REIT dividends and publicly traded partnership (PTP) income or (loss) (see instructions)	6	0		
7	Qualified REIT dividends and qualified PTP (loss) carryforward from the prior year	7	(0)		
8	Total qualified REIT dividends and PTP income. Combine lines 6 and 7. If zero or less, enter -0-	8	0		
9	REIT and PTP component. Multiply line 8 by 20% (0.20)			9	0
10	Qualified business income deduction before the income limitation. Add lines 5 and 9			10	5,200
11	Taxable income before qualified business income deduction	11	40,000		
12	Net capital gain (see instructions)	12	0		
13	Subtract line 12 from line 11. If zero or less, enter -0-	13	40,000		
14	Income limitation. Multiply line 13 by 20% (0.20)			14	8,000
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 ►			15	5,200
16	Total qualified business (loss) carryforward. Combine lines 2 and 3. If greater than zero, enter -0-			16	(0)
17	Total qualified REIT dividends and PTP (loss) carryforward. Combine lines 6 and 7. If greater than zero, enter -0-			17	(0)

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 37806C Form **8995** (2019)

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Practitioner Planning Tip

Tax preparers should exercise due diligence by obtaining the basis and QBI worksheets for 2018 when engaging a new tax client.

Although IRS regulations provide a FIFO rule for previously disallowed losses generated in the TCJA period, they are silent on the precedence of these losses and pre-TCJA-period losses.[221] As Tony Nitti points out in a recent article,[222] this can have a major impact on the calculation of QBI, as illustrated in the next example.

Example 26. Ted is the sole shareholder of Bear Industries (an S corporation), which is his sole source of QBI. Ted has suspended losses from Bear Industries of $70,000 in 2017 and $50,000 in 2018. In 2019, Ted has $80,000 of ordinary income from Bear Industries, which is also QBI.

If the 2017 loss is utilized first, then Ted has 2019 adjusted QBI of **$70,000** because the 2017 suspended loss reduces 2019 ordinary income but not QBI. Therefore, only the remaining 2019 ordinary income of $10,000 ($80,000 – $70,000 suspended loss from 2017) is offset by $10,000 of the 2018 suspended loss. The $10,000 of the 2018 suspended loss that offsets $10,000 of 2019 ordinary income also reduces QBI by the same amount. Therefore, his 2019 adjusted QBI is $70,000 ($80,000 – $10,000). The remaining $40,000 suspended loss from 2018 ($50,000 – $10,000 utilized in 2019) carries forward to 2020.

If, instead, the 2018 loss is used first, then Ted has 2019 adjusted QBI of **$30,000** ($80,000 – $50,000 suspended loss from 2018). However, Ted also uses $30,000 of the $70,000 suspended loss for 2017 to reduce his 2019 ordinary income to zero, though this does not impact his QBI, which remains at $30,000. The remaining $40,000 suspended loss from 2017 ($70,000 – $30,000 utilized in 2019) carries forward to 2020.

Practitioner Planning Tip

Absent clarification from the IRS to the contrary, taxpayers may prefer to use pre-TCJA period suspended losses before TCJA period losses because of the increased adjusted QBI that can result. However, it is recommended that the taxpayer disclose this position on Form 8275 to reduce exposure to accuracy-related penalties.

221. REG-134652-18 (Jan. 18, 2019); Prop. Treas. Reg. §1.199A-3(b)(1)(iv).

222. *INSIGHT: Proposed Section 199A Rules Fill in Framework of Statute*. Nitti, Tony. Sep. 21, 2018. Bloomberg Daily Tax Report. [www.bna.com/insight-proposed-section-n73014482751/] Accessed on May 7, 2019.

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ESTATE AND TRUST ISSUES EMERGING FROM THE FINAL REGULATIONS

Inclusion of Trust Distributions in Taxable Income[223]

The final §199A regulations remove the provision in the proposed regulations that excluded IRC §§651 or 661 distributions from taxable income for determining whether taxable income of a trust or estate exceeds the income threshold amount specified in §199A(e)(2)(A), which is $160,700 for 2019.[224] Accordingly, a trust or estate's taxable income is determined **after** taking into account any distribution deduction for purposes of determining whether its taxable income exceeds the threshold amount.

Allocation between Trust or Estate and Beneficiaries[225]

A trust or estate must allocate QBI amounts to its beneficiaries based on the relative portions of distributable net income (DNI) distributed to its beneficiaries or retained by the trust or estate. For this purpose, QBI amounts include QBI, W-2 wages, UBIA of QP, qualified REIT dividends, and qualified PTP income, regardless of whether they are positive or negative numbers.

The final regulations also clarify that applicable depletion, depreciation, and amortization deductions (described in IRC §§642(e) and (f)) "are included in the computation of QBI of the trust or estate, regardless of how those deductions may otherwise be allocated between the trust or estate and its beneficiaries for other purposes of the Code."

Charitable Remainder Trust Beneficiary's QBID Eligibility[226]

The IRS's position stated in the proposed §199A regulations (published February 25, 2019) is that an IRC §664 charitable remainder trust is ineligible for the QBID. Nevertheless, a taxable recipient of a unitrust or annuity amount from a charitable remainder trust may take into account QBI, qualified REIT dividends, and qualified PTP income in determining their QBID to the extent that the unitrust or annuity distribution consists of such §199A items (see Treas. Reg. §1.664-1(d)). The proposed regulations provide detailed guidance regarding the ordering of distributions and the allocation of QBI items among different classes of income. Additionally, the proposed regulations address the QBID eligibility of taxable beneficiaries of other split-interest trusts.

Electing Small Business Trust (ESBT)[227]

An ESBT is composed of two trusts.[228] One trust contains the stock of one or more S corporations. A second trust holds the remaining assets.

The S portion of the ESBT takes into account QBI items from any S corporation owned by the ESBT, while the other trust takes into account QBI items from the remaining assets. However, the ESBT is considered a **single** trust when determining if the ESBT's taxable income exceeds the §199A(e)(2)(A) threshold amount.

Tax-Exempt Trusts (Unrelated Business Income)[229]

In the preamble to the final §199A regulations, the IRS declined to respond to a questioner asking if "exempt trust organizations" (under IRC §501(a)) are entitled to the QBID on their unrelated business taxable income (UBTI), stating that it is studying the issue.

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223. Treas. Reg. §1.199A-6(d)(3)(iv).

224. In accordance with Rev. Proc. 2018-57, 2018-49 IRB 827.

225. Treas. Reg. §§1.199A-6(d)(3)(i) and (ii); TD 9847, 2019-09 IRB 670, 701.

226. REG-134652-18, 2019-09 IRB 747, 751.

227. Treas. Reg. §1.199A-6(d)(3)(vi).

228. Treas. Reg. §1.641(c)-1.

229. TD 9847, 2019-09 IRB 670, 700; *Trust-Qualified Business Income (QBI) Deduction under section 199A*. Apr. 26, 2019. IRS. [www.irs.gov/forms-pubs/trust-qualified-business-income-qbi-deduction-under-section-199a] Accessed on May 24, 2019.

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Nevertheless, advice on the IRS's website suggests that the QBID may be claimed on the UBTI of tax-exempt trusts when their unrelated trades or businesses otherwise meet the requirements of §199A. In such case, the OTI for the exempt trust is its UBTI after the IRC §512(b)(12) specific deduction (i.e., Form 990-T, *Exempt Organization Business Income Tax Return*, line 38). Furthermore, the IRS indicated that QBLs from unrelated businesses are carried forward and offset the trust's QBI has from unrelated trades or businesses in future years.

W-2 wages and UBIA of QP from unrelated trades or businesses generating losses for the current tax year are not used in calculating the limitation on QBI for taxpayers over the taxable income threshold.

Reporting the QBID. The QBID is added to the specific deduction, and the combined amount is reported on Form 990-T, line 37. Taxpayers should also attach a statement to Form 990-T identifying the amount of the QBID included on line 37.

Trust Aggregation (Anti-Abuse Rule)[230]

The proposed §199A regulations contained an anti-abuse rule whereby two or more trusts are aggregated and treated as a single trust if they were formed for the principal purpose of federal tax avoidance. This rule affects trusts that have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries. It also applies to additional contributions of cash or other property to existing trusts if federal tax avoidance was the principal purpose. The proposed regulations went on to define **principal purpose** and provide illustrative examples of the application of this rule.

Due to comments received, the IRS made various modifications to this rule in the final §199A regulations.

1. The rule is modified to clarify that it applies even if **only one** of the trusts in question was organized for the principal purpose of federal tax avoidance.
2. The IRS removed the definition of "principal purpose" and the examples illustrating the rule. The IRS will continue to study application of IRC §643(f), including definition of the terms "principal purpose" and "substantially identical grantors and beneficiaries."

230. TD 9847, 2019-09 IRB 670, 701; Treas. Reg. §1.643(f)-1.

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APPENDIX (FORMS 8995 AND 8995-A)

Form **8995**

Department of the Treasury
Internal Revenue Service

Qualified Business Income Deduction
Simplified Computation

► Attach to your tax return.
► Go to *www.irs.gov/Form8995* for instructions and the latest information.

OMB No. XXXX-XXXX

2019

Attachment Sequence No. **55**

Name(s) shown on return | **Your taxpayer identification number**

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	(a) Trade, business, or aggregation name	(b) Taxpayer identification number	(c) Qualified business income or (loss)
1			
i			
ii			
iii			
iv			
v			

2	Total qualified business income or (loss). Combine lines 1i through 1v, column (c)	2		
3	Qualified business net (loss) carryforward from the prior year	3	( )	
4	Total qualified business income. Combine lines 2 and 3. If zero or less, enter -0-	4		
5	Qualified business income component. Multiply line 4 by 20% (0.20)			5
6	Qualified REIT dividends and publicly traded partnership (PTP) income or (loss) (see instructions)	6		
7	Qualified REIT dividends and qualified PTP (loss) carryforward from the prior year	7	( )	
8	Total qualified REIT dividends and PTP income. Combine lines 6 and 7. If zero or less, enter -0-	8		
9	REIT and PTP component. Multiply line 8 by 20% (0.20)			9
10	Qualified business income deduction before the income limitation. Add lines 5 and 9			10
11	Taxable income before qualified business income deduction	11		
12	Net capital gain (see instructions)	12		
13	Subtract line 12 from line 11. If zero or less, enter -0-	13		
14	Income limitation. Multiply line 13 by 20% (0.20)			14
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 ►			15
16	Total qualified business (loss) carryforward. Combine lines 2 and 3. If greater than zero, enter -0-			16 ( )
17	Total qualified REIT dividends and PTP (loss) carryforward. Combine lines 6 and 7. If greater than zero, enter -0-			17 ( )

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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

2019

Attachment Sequence No. **55A**

Name(s) shown on return

Your taxpayer identification number

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Part I Trade, Business, or Aggregation Information

Complete the schedules for Form 8995-A, (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		☐	☐		☐
B		☐	☐		☐
C		☐	☐		☐

Part II Determine Your Adjusted Qualified Business Income

			A	B	C
2	Qualified business income from the trade, business, or aggregation. See instructions	2			
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			
4	Allocable share of W-2 wages from the trade, business, or aggregation	4			
5	Multiply line 4 by 50% (0.50)	5			
6	Multiply line 4 by 25% (0.25)	6			
7	Allocable share of the unadjusted basis immediately after acquisition (UBIA) of all qualified property	7			
8	Multiply line 7 by 2.5% (0.025)	8			
9	Add lines 6 and 8	9			
10	Enter the greater of line 5 or line 9	10			
11	W-2 wage and qualified property limitation. Enter the smaller of line 3 or line 10	11			
12	Phased-in reduction. Enter amount from line 26, if any. See instructions	12			
13	Qualified business income deduction before patron reduction. Enter the greater of line 11 or line 12	13			
14	Patron reduction. Enter the amount from Schedule D (Form 8995-A), line 6, if any	14			
15	Qualified business income component. Subtract line 14 from line 13	15			
16	Total qualified business income component. Add all amounts reported on line 15 ▶	16			

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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			
18	Enter the amounts from line 10		18			
19	Subtract line 18 from line 17		19			
20	Taxable income before qualified business income deduction	20				
21	Threshold. Enter $160,700 ($160,725 if married filing separately; $321,400 if married filing jointly)	21				
22	Subtract line 21 from line 20	22				
23	Phase-in range. Enter $50,000 ($100,000 if married filing jointly)	23				
24	Phase-in percentage. Divide line 22 by line 23	24	%			
25	Total phase-in reduction. Multiply line 19 by line 24		25			
26	Qualified business income after phase-in reduction. Subtract line 25 from line 17. Enter this amount here and on line 12, for the corresponding trade or business		26			

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 line 16	27			
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	
33	Taxable income before qualified business income deduction	33			
34	Net capital gain. See instructions	34			
35	Subtract line 34 from line 33. If zero or less, enter -0-			35	
36	Income limitation. Multiply line 35 by 20% (0.20)			36	
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	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	
40	Total qualified REIT dividends and PTP (loss) carryforward. Combine lines 28 and 29. If zero or greater, enter -0-			40	( )

Form **8995-A** (2019)

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SCHEDULE A (Form 8995-A)

Department of the Treasury
Internal Revenue Service

Specified Service Trades or Businesses

▶ Attach to Form 8995-A.
▶ Go to *www.irs.gov/Form8995A* for instructions and the latest information.

OMB No. XXXX-XXXX

2019

Attachment Sequence No. **55B**

Name(s) shown on return | **Your taxpayer identification number**

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 (Form 8995-A) 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. If you have more than three trades or businesses, attach as many Schedules A as needed. See instructions.

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Part I Other Than Publicly Traded Partnerships (PTP)

			A	B	C
1a	Trade or business name	1a			
b	Taxpayer identification number	1b			
2	Qualified business income or (loss) from the trade or business	2			
3	Allocable share of W-2 wages from the trade or business	3			
4	Allocable share of the unadjusted basis immediately after acquisition (UBIA) of all qualified property	4			
5	Taxable income before qualified business income deduction	5			
6	Threshold. Enter $160,700 ($160,725 if married filing separately; $321,400 if married filing jointly)	6			
7	Subtract line 6 from line 5	7			
8	Phase-in range. Enter $50,000 ($100,000 if married filing jointly)	8			
9	Divide line 7 by line 8	9			
10	Applicable percentage. Subtract line 9 from 100%	10	%		
11	Applicable percentage of qualified business income or (loss). Multiply line 2 by line 10. Enter this amount on Schedule C (Form 8995-A) or on Form 8995-A, line 2, for the corresponding trade or business, as appropriate. See instructions	11			
12	Applicable percentage of W-2 wages. Multiply line 3 by line 10. Enter this amount on Form 8995-A, line 4, for the corresponding trade or business, as appropriate. See instructions	12			
13	Applicable percentage of the UBIA of qualified property. Multiply line 4 by line 10. Enter this amount on Form 8995-A, line 7, for the corresponding trade or business, as appropriate. See instructions	13			

Part II Publicly Traded Partnership

			A	B	C
14	Trade or business name	14			
15	Taxpayer identification number	15			
16	Qualified PTP income or (loss)	16			
17	Total PTP specified service trade or business (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 Form 8995-A, line 28	24			

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SCHEDULE B (Form 8995-A)

Department of the Treasury
Internal Revenue Service

Aggregation of Business Operations

▶ Attach to Form 8995-A.
▶ Go to *www.irs.gov/Form8995A* for instructions and the latest information.

OMB No. XXXX-XXXX

2019

Attachment Sequence No. **55C**

Name(s) shown on return | **Your taxpayer identification number**

If you have more than one aggregated group, complete and attach as many Schedules B as needed. Number the first aggregation "1" and any additional aggregations in numerical order (2, 3, 4, etc.). See instructions.

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Aggregation No.: _____

1 Provide a description of the aggregated trade or business and an explanation of the factors met that allow the aggregation in accordance with Regulations section 1.199A-4. In addition, if you hold a direct or indirect interest in a relevant pass-through entity (RPE) that aggregates multiple trades or businesses, you must attach a copy of the RPE's aggregations.

2 Has this trade or business aggregation changed from the prior year? This includes changes in the aggregation due to a trade or business being formed, acquired, disposed of, or ceasing operations. If "Yes," explain. If "No," skip line 2 and go to line 3.

3	**(a)** Name of trade or business	**(b)** Taxpayer identification number	**(c)** Qualified business income/(loss)	**(d)** W-2 wages	**(e)** Unadjusted basis immediately after acquisition
4	**Totals.** Total columns (c), (d), and (e). Enter the total amounts on Schedule C (Form 8995-A) or on Form 8995-A, Part II, for the corresponding aggregation, as appropriate. See instructions				

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SCHEDULE C (Form 8995-A)

Department of the Treasury
Internal Revenue Service

Loss Netting and Carryforward

▶ Attach to Form 8995-A.
▶ Go to *www.irs.gov/Form8995A* for instructions and the latest information.

OMB No. XXXX-XXXX
2019
Attachment Sequence No. **55D**

Name(s) shown on return | **Your taxpayer identification number**

If you have more than three trades, businesses, or aggregations, complete and attach as many Schedules C as needed. See instructions.

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1 Trade, business, or aggregation name	(a) Qualified business income/(loss)	(b) Reduction for loss netting (see instructions)	(c) Adjusted qualified business income (Combine (a) and (b). If zero or less, enter -0-.)

2	Qualified business net (loss) carryforward from prior years. See instructions	2	( )
3	Total of the trades, businesses, or aggregations losses. Combine the negative amounts on lines 1, column (a), and 2 for all trades, businesses, or aggregations	3	( )
4	Total of the trades, businesses, or aggregations income. Add the positive amounts on line 1, column (a), for all trades, businesses, or aggregations	4	
5	Losses netted with income of other trades, businesses, or aggregations. Enter in the parentheses on line 5, the smaller of the absolute value of line 3 or line 4. Allocate this amount to each of the trades, businesses, or aggregations on line 1, column (b). See instructions	5	( )
6	Qualified business net (loss) carryforward. Subtract line 5 from line 3. If zero or more, enter -0-	6	( )

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 72684K **Schedule C (Form 8995-A) 2019**

SCHEDULE D (Form 8995-A)

Department of the Treasury
Internal Revenue Service

Special Rules for Patrons of Agricultural or Horticultural Cooperatives

▶ Attach to Form 8995-A.
▶ Go to *www.irs.gov/Form8995A* for instructions and the latest information.

OMB No. XXXX-XXXX
2019
Attachment Sequence No. **55E**

Name(s) shown on return | **Your taxpayer identification number**

Complete Schedule D only if you're a patron of an agricultural or horticultural cooperative. If you have more than three trades, businesses, or aggregations, attach as many Schedules D as needed. See instructions.

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			A	B	C
1a	Trade, business, or aggregation name	1a			
b	Taxpayer identification number	1b			
2	Qualified business income allocable to qualified payments received from cooperative. See instructions	2			
3	Multiply line 2 by 9% (0.09)	3			
4	W-2 wages from trade or business allocable to the qualified payments	4			
5	Multiply line 4 by 50% (0.50)	5			
6	Patron reduction. Enter the smaller of line 3 or line 5. Enter this amount on Form 8995-A, line 14, for the corresponding trade, business, or aggregation	6			

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