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*Presenting a live 90-minute webinar with interactive Q&A*

## **Section 199A Implementation and IRS Examination Issues: Critical QBI Issues for Individual and Business Taxpayers**

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TUESDAY, FEBRUARY 11, 2020

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

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Today's faculty features:

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Steven Toscher, Principal, **Hochman Salkin Toscher Perez**, Beverly Hills, Calif.

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## Instructions for Form 8995 (2019)

### Qualified Business Income Deduction Simplified Computation

Section references are to the Internal Revenue Code unless otherwise noted.  
2019

### Instructions for Form 8995 - Introductory Material

#### Future Developments

For the latest information about developments related to Form 8995 and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form8995](https://www.irs.gov/Form8995).

#### General Instructions

##### Purpose of Form

Use Form 8995 to figure your qualified business income (QBI) deduction. Individual taxpayers and some trusts and estates may be entitled to a deduction of up to 20% of their net QBI from a trade or business, including income from a pass-through entity, but not from a C corporation, plus 20% of qualified real estate investment trust (REIT) dividends and qualified publicly traded partnership (PTP) income. However, your total QBI deduction is limited to 20% of your taxable income, calculated before the QBI deduction, minus net capital gain.

##### Who Can Take the Deduction

- qualified trades or businesses.
- SSTBs excluded from your qualified trades or businesses.
  - Aggregation.
- Determining Your Qualified Business Income
- Determining if items included on Schedule K-1 are included in QBI.
  - Determining if information reported on your Form 1099-PATR is included in QBI.
  - Determining if items on Schedule C (Form 1040 or 1040-SR) are included in QBI.
- Determining Your Qualified
- Individuals and eligible estates and trusts that have QBI use Form 8995 to figure the QBI deduction if:
- You have QBI, qualified REIT dividends, or qualified PTP income or loss (all defined later),
  - Your 2019 taxable income before your QBI deduction is less than or equal to \$160,700 (\$160,725 if married filing separately or a married nonresident alien; \$321,400 if married filing jointly), and
  - You aren't a patron in a specified agricultural or horticultural cooperative.
- Otherwise, use Form 8995-A, Qualified Business Income Deduction, to figure your QBI deduction.
- S corporations and partnerships.** S corporations and partnerships aren't eligible for the deduction, but must pass through to their shareholders or partners the necessary information on an attachment to Schedule K-1 to help them figure their deduction. See the Instructions for Form 1120-S, U.S. Income Tax Return for an S Corporation, and Form 1065, U.S. Return of Partnership Income.
- Cooperatives.** Cooperatives aren't eligible for the deduction. Instead, cooperatives must provide the necessary information to their patrons on Form 1099-PATR or an attachment to help eligible patrons figure their deduction. See the Instructions for Form 1120-C, U.S. Income Tax Return for Cooperative Associations, for rules applicable to agricultural and horticultural cooperatives.
- Estates and trusts.** To the extent that a grantor or another person is treated as owning all or part of a trust or estate, the owner will compute its QBI for the owned part of the trust as if that QBI had been received directly by the owner. Generally, a non-grantor trust or estate may either claim the QBI deduction or provide information to their beneficiaries to help the beneficiaries figure their deduction. In determining the QBI deduction or the information that must be provided to beneficiaries, the estate or trust allocates QBI items based on the relative proportion of the estate's or trust's distributable net income (DNI) for the tax year distributed (or required to be distributed) to the beneficiary or retained by the estate or trust. If the estate or trust has no DNI for the tax year, QBI, W-2 wages, and unadjusted basis immediately after acquisition (UBIA) of qualified property are allocated entirely to the estate or trust.

- REIT
- Dividends and Qualified PTP
- Income/Loss
- Specific Instructions
  - Line 1
  - Line 2
  - Line 3
  - Line 4
  - Line 6
  - Line 8
  - Line 11
  - Line 12
  - Line 15
  - Line 16
  - Line 17
- Paperwork Reduction Act Notice

Although estates and trusts may compute their own QBI deduction, to the extent QBI, W-2 wages, and UBIA of qualified property is allocable to the trust, QBI, W-2 wages, and UBIA of qualified property allocated to beneficiaries aren't includible in the estate's or trust's QBI computation. See the Instructions for Form 1041, U.S. Income Tax Return for Estates and Trusts.

**Electing Small Business Trusts (ESBT).** An ESBT must compute the QBI deduction separately for the S and non-S portions of the trust. Form 8995 used to compute the S portion's QBI deduction must be attached as a PDF to the ESBT tax worksheet filed with Form 1041. When attached to the ESBT tax worksheet, the trust must show that the information is applicable to the S portion only, by writing "ESBT" in the top margin of the Form 8995. See the Instructions for Form 1041.

### Determining Your Qualified Trades or Businesses

Your qualified trades and businesses include your trades or businesses for which you're allowed a deduction for ordinary and necessary business expenses under section 162. However, trades or businesses conducted by corporations and the performance of services as an employee aren't qualified trades or businesses. Generally, specified service trades or businesses (SSTBs) aren't qualified trades or businesses. However, all or a part of the SSTB may be qualified trade or business if your taxable income is at or below the threshold or within the phase-in range.

An activity qualifies as a trade or business if your primary purpose for engaging in the activity is for income or profit and you're involved in the activity with continuity and regularity. If you own an interest in a pass-through entity, the trade or business determination is made at that entity's level. Material participation under section 469 isn't required for the QBI deduction. Eligible taxpayers with income from a trade or business may be entitled to the QBI deduction if they otherwise satisfy the requirements of section 199A.

The ownership and rental of real property may constitute a trade or business if it meets the standard described above. Also, Revenue Procedure 2019-38 provides a safe harbor under which a rental real estate enterprise will be treated as a trade or business for purposes of the QBI deduction. Rental real estate that doesn't meet the requirements of the safe harbor may still be treated as a trade or business for purposes of the QBI deduction if it's a section 162 trade or business.

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

**Services performed as an employee excluded from qualified trades or businesses.** The trade or business of performing services as an employee isn't a trade or business for purposes of section 199A. Therefore, any amounts reported on Form W-2, box 1, other than amounts reported in box 1 if "Statutory Employee" on Form W-2, box 13, is checked, aren't QBI. If you were previously an employee of a business and continue to provide substantially the same services to that business after you're no longer treated as an employee, there is a presumption that you're providing services as an employee for purposes of section 199A for the 3-year period after ceasing to be an employee. You may rebut this presumption on notice from the IRS by providing records such as contracts or partnership agreements that corroborate your status as a non-employee.

For more information on if you're an employee or an independent contractor, see Pub. 15-A, Employer's Supplemental Tax Guide, and Pub. 1779, Independent Contractor or Employee.

**SSTBs excluded from your qualified trades or businesses.** A SSTB is generally excluded from the definition of qualified trade or business.

An SSTB is any trade or business providing services in the fields of:

- Health;
- Law;
- Accounting;
- Actuarial science;
- Performing arts;
- Consulting;
- Athletics;
- Financial services;
- Brokerage services;
- Investing and investment management;
- Trading or dealing in securities;
- Partnership interests;
- Commodities;

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

**Exception 1:** If your 2019 taxable income before the QBI deduction is less than or equal to \$160,700 (\$160,725 if married filing separately or a married nonresident alien; \$321,400 if married filing jointly), your SSTB is treated as a qualified trade or business.

**Exception 2:** If your taxable income before the QBI deduction is more than \$160,700 but not \$210,700 (\$160,725 and \$210,725 if married filing separately or a married nonresident alien; \$321,400 and \$421,400 if married filing jointly), an applicable percentage of your SSTB is treated as a qualified trade or business.

**Aggregation.** If you’re engaged in more than one trade or business, each trade or business is a separate trade or business for purposes of section 199A. However, you may choose to aggregate multiple trades or businesses into a single trade or business for purposes of figuring deduction, if you meet the following requirements.

1. You or a group of persons directly or indirectly own 50% or more of each trade or business for majority of the tax year, including the last day of the tax year, and all trades or businesses use the same tax year end,
2. None of the trades or businesses are an SSTB, and
3. The trades or businesses meet at least two of the following factors.
  - a. They provide products, property, or services that are the same or that are customarily offered together.

- b. They share facilities or share significant centralized business elements such as personnel, accounting, legal, manufacturing, purchasing, human resources, or information technology resources.
- c. They are operated in coordination with, or reliance on, one or more of the businesses in the aggregated group.

If a relevant pass-through entity (RPE) aggregates multiple trades or businesses, you must attach the RPE's aggregations to your return. You may not separate the trades or businesses aggregated by the RPE, but you may add additional trades or businesses to the aggregation, assuming the rules above are met.

If you choose to aggregate multiple trades or businesses, a statement similar to Schedule B (Form 8995-A) must be completed each year to show your trade or business aggregations and must include any aggregation of an RPE in which you hold a direct or indirect interest. Failure to disclose these aggregations may cause them to be disaggregated.

Your aggregations must be reported consistently for all subsequent years, unless there is a significant change in facts and circumstances that disqualify the aggregation.

**Note.**

You must combine the QBI, W-2 wages, and UBIA of qualified property for all aggregated trades or businesses, for purposes of applying the W-2 wages and UBIA of qualified property limits. However, these limits won't apply until your income, before the QBI deduction, is more than the threshold. If your income is more than the threshold, you must use Form 8995-A.

**Determining Your Qualified Business Income**

Your QBI includes items of income, gain, deduction, and loss from your trades or businesses that are effectively connected with the conduct of a trade or business in the United States. This includes income from partnerships (other than PTPs), S corporations, sole proprietorships, certain estates and trusts that are included or allowed in figuring your taxable income for the year. To figure the total amount of QBI, you must consider all items that are related to the trade or business. This includes, but isn't limited to, charitable contributions, unreimbursed partnership expenses, business interest

expense, deductible part of self-employment tax, self-employment health insurance deduction, and contributions to qualified retirement plans. QBI doesn't include any of the following.

- Items that aren't properly included in income.
- Income that isn't effectively connected with the conduct of a trade or business within the United States (go to [IRS.gov/ECI](https://www.irs.gov/ECI)).
- Wage income (except "Statutory Employees" where Form W-2, box 13 is checked).
- Amounts received as reasonable compensation from an S corporation.
- Amounts received as guaranteed payments.
- Amounts received as payments by a partner for services other than in a capacity as a partner.
- Items treated as capital gains or losses under any provision of the Internal Revenue Code (Code).
- Dividends and dividend equivalents.
- Interest income not properly allocable to a trade or business.
- Commodities transactions or foreign currency gains or losses.
- Income, loss, or deductions from notional principal contracts.
- Annuities (unless received in connection with the trade or business).
- Qualified REIT dividends.
- Qualified PTP income.

See the *QBI Flow Chart*, later to figure if an item of income, gain, deduction, or loss is included in QBI.

**Note.**

Your QBI doesn't include any losses or deductions that are limited or suspended and not included or allowed in determining your taxable income for the year. Examples include, but aren't limited to, section 179 deduction limitations and losses limited by basis, at-risk, passive loss, or section 461(l), and excess business loss limitations. Instead, these losses and deductions are

taken into account in the tax year they're included in determining your taxable income. Loss and deduction items that were generated prior to 2018, that are included in income during the year, aren't included in QBI.

When losses or deductions from a trade or business are suspended under any provision of the Code and not available for use in calculating taxable income in the year generated, you must determine the portion of the losses includible in QBI in subsequent years. If your trade or business is an SSTB, the determination of whether it's a qualified trade or business based on your taxable income is made in the year the loss is incurred. If your income is within the phase-in range in that year, you must determine the applicable percentage of suspended losses or deductions includible in QBI. The losses continue their status as either items of QBI or non-QBI for all subsequent years. Therefore, you must track each category of loss or deduction (for example, section 465, 469, 1366, etc.) from year to year until the loss is included in taxable income. Each category's portion of loss allowed in calculating taxable income is treated as qualified business net loss carryforward (Form 8995, line 3, or Schedule C (Form 8995-A), line 2) in calculating the current year's QBI deduction.

Any suspended qualified business loss carryforward from an SSTB, when allowed in subsequent years, won't be included on the Schedule A (Form 8995-A).

**Determining if items included on Schedule K-1 are included in QBI.** The amounts reported on your Schedule K-1 as "QBI/Qualified PTP Items Subject to Taxpayer-Specific Determinations" from a partnership, S corporation, estate, or trust aren't automatically included in your QBI. To figure if the item of income, gain, deduction, or loss is included in QBI, you must look to how it's reported on your federal income tax return. For example, ordinary business income or loss is generally included in QBI if it was used in computing your taxable income, not excluded, suspended, or disallowed under any other section of the Code. Also, a section 1231 gain or loss is only includible in QBI if it isn't capital gain or loss. See the *QBI Flow Chart*, below to figure if an item of income, gain, deduction, or loss is included in QBI.

**Determining if information reported on your Form 1099-PATR is included in QBI.** The amounts reported to you as your share of patronage dividends and similar payments on Form 1099-PATR aren't automatically included in your QBI. Payments may be included in QBI to the extent they are (1) related to your trade or business, (2) reported to you by the cooperative as qualified income items on an attachment to Form 1099-PATR, and (3) not payments reported as from an SSTB, unless your taxable income is at or below the threshold, in which case payments from SSTBs are included in your QBI.

If you received qualified payments reported to you on Form 1099-PATR from a specified agricultural or horticultural cooperative, you must reduce your QBI by the patron reduction and use Form 8995-A to compute your QBI deduction.

**Determining if items on Schedule C (Form 1040 or 1040-SR) are included in QBI.** The net gain or loss reported on your Schedule C (Form 1040 or 1040-SR) isn't automatically included in your QBI. See the *QBI Flow Chart*, later to figure if an item of income, gain, deduction, or loss is included in QBI.

### **Determining Your Qualified REIT Dividends and Qualified PTP Income/Loss**

Qualified REIT dividends include any dividends you received from a REIT held for more than 45 days and for which the payment isn't obligated to someone else and that isn't a capital gain dividend or qualified dividend, plus your qualified REIT dividends received from a regulated investment company (RIC). This amount is reported to you on Form 1099-DIV, line 5.

Qualified PTP income or loss includes your share of qualified items of income, gain, deduction, and loss from a PTP. It also may include gain or loss recognized on the disposition of your partnership interest that isn't treated as a capital gain or loss.

#### **Note.**

PTP income generated by an SSTB may be limited to the applicable percentage or excluded if your taxable income exceeds the threshold, in which case you may need to complete Part II of Schedule A (Form 8995-A). See the instructions for Form 8995-A for more information.

### **Specific Instructions**

#### **Line 1**

If you aggregated multiple trades or businesses into a single business, enter the aggregation group name. For example, Aggregation 1, 2, 3, etc., instead of entering the business name, and leave line 1(b) blank.

#### **Note.**

If you aggregated trades or businesses, you must attach Schedule B (Form 8995-A) or similar schedule.

If you are relying on the safe harbor contained in Revenue Procedure 2019-38, enter each enterprise as identified on the statement required for use on the safe harbor. For example, Enterprise 1, 2, 3, etc.

Enter on line 1(b) the employer identification number (EIN). If you don't have an EIN, enter your social security number (SSN) or individual taxpayer identification number (ITIN). If you're the sole owner of an LLC that isn't treated as a separate entity for federal income tax purposes, enter the EIN given to the LLC. If you don't have an EIN, enter the owner's name, and tax identification number.

### **Line 2**

If you have more than five trades or businesses, attach a statement with the name and taxpayer identification number of the trade(s) or business(es) and include the income and loss from those trade(s) or business(es) in the total for line 2.

### **Line 3**

Include prior year qualified loss carryforwards even if the loss was unreported or the trade or business that generated the loss is no longer in existence. Also, include the QBI portion of losses or deductions suspended from use in calculating taxable income in the year generated that are included in taxable income in the current year. See *Determining Your Qualified Business Income*, earlier.

### **Line 4**

If you have a qualified business net loss for the year, you don't qualify for the QBI deduction unless you have qualified REIT dividends or PTP income. The loss will be carried forward to next year. This carryforward doesn't affect the deductibility of the loss for purposes of any other provisions of the Code.

### **Line 6**

Enter income as a positive number and losses as a negative number.

**Line 8**

Any negative amount will be carried forward to the next year. This carryforward doesn't affect the deductibility of the loss for purposes of any other provisions of the Code.

**Line 11**

Enter your taxable income figured before any QBI deduction, computed as follows.

- Form 1040 or 1040-SR filers: Form 1040 or 1040-SR, line 8b, minus Form 1040 or 1040-SR, line 9.
- Form 1040-NR filers: Form 1040-NR, line 35, minus Form 1040-NR, line 37.
- Form 1041 filers: Form 1041, line 23, plus Form 1041, line 20.
- Form 1041-N filers: Form 1041-N, line 13, plus qualified income deduction reported on Form 1041-N, line 9.
- Form 990-T filers: Form 990-T, line 39, plus qualified business income deduction reported on Form 990-T, line 38.
- S-corporation portion of an ESBT filers: ESBT Tax Worksheet, line 13, plus ESBT Tax Worksheet, line 11.

**Line 12**

Enter the amount from your tax return as follows.

- Form 1040 or 1040-SR, line 3a, plus your net capital gain. If you're not required to file Schedule D (Form 1040 or 1040-SR), your net capital gain is the amount reported on Form 1040 or 1040-SR, line 6. If you file Schedule D (Form 1040 or 1040-SR), your net capital gain is the smaller of Schedule D (Form 1040 or 1040-SR), line 15 or 16, unless line 15 or 16 is zero or less, in which case nothing is added to the qualified dividends.
- Form 1040-NR, line 10b, plus your net capital gain. If you're not required to file Schedule D (Form 1040 or 1040-SR), your net capital gain is the amount reported on Form 1040-NR, line 14. If you file Schedule D (Form

1040 or 1040-SR), your net capital gain is the smaller of Schedule D (Form 1040 or 1040-SR), line 15 or 16, unless line 15 or 16 is zero or less, in which case nothing is added to the qualified dividends.

- Form 1041, line 2b(2), plus your net capital gain. For estates or trusts required to file Schedule D (Form 1041), add the qualified dividends to the smaller of Schedule D (Form 1041), line 18a(2), or line 19(2), unless either line 18a(2) or 19(2) is zero or less, in which case nothing is added to the qualified dividends.
- Form 1041-N, line 2b, plus the smaller of Form 1041-N, Schedule D, line 10 or 11, unless line 10 or 11 is zero or less, in which case nothing is added to the qualified dividends.
- Form 990-T filers who are trusts, Schedule D (Form 1041), the smaller of line 18(a)(2) or 19(2), unless either line 18(a)(2) or 19(2) is zero or less, in which case the net capital gain for purposes of section 199A is zero.
- S-corporation portion of an ESBT, your ESBT Tax Worksheet, line 2b, plus the smaller of your ESBT's Schedule D (Form 1041), line 18a(2) or 19(2) is zero or less, in which case nothing is added to your qualified dividends.

### **Line 15**

Enter this amount on your Form 1040 or 1040-SR, line 10; Form 1040-NR, line 38; Form 1041, line 20; Form 1041-N, line 9; Form 990-T, line 39; S-corporation portion of an ESBT, line 11.

### **Line 16**

This is the amount to be carried forward to the next year. This amount will offset QBI in later tax years regardless of whether it's reported and the trade or business that generated the loss is still in existence. This carryforward doesn't affect the deductibility of the loss for purposes of any other provisions of the Code.

### **Line 17**

If the amount is more than zero, the loss must be carried forward to next year. This amount will offset REIT/PTP income in later tax years regardless of whether it's reported and the trade or business that generated the loss is still in existence. This carryforward doesn't affect the deductibility of the loss for purposes of any other provisions of the Code.

### QBI Flow Chart

Please click here for the text description of the image.

### QBI Flow Chart (continued)

Please click here for the text description of the image.

### **Paperwork Reduction Act Notice**

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for business taxpayers filing this form is approved under OMB control number 1545-0123 and is included in the estimates shown in the instructions for their business income tax return.

*Page Last Reviewed or Updated: 27-Jan-2020*

**Note:** *The draft you are looking for begins on the next page.*



## **Caution: *DRAFT—NOT FOR FILING***

This is an early release draft of an IRS tax form, instructions, or publication, which the IRS is providing for your information. **Do not file draft forms** and do **not** rely on draft forms, instructions, and publications for filing. We do **not** release draft forms until we believe we have incorporated all changes (except when explicitly stated on this coversheet). However, unexpected issues occasionally arise, or legislation is passed—in this case, we will post a new draft of the form to alert users that changes were made to the previously posted draft. Thus, there are never any changes to the last posted draft of a form and the final revision of the form. Forms and instructions generally are subject to OMB approval before they can be officially released, so we post only drafts of them until they are approved. Drafts of instructions and publications usually have some changes before their final release.

Early release drafts are at [IRS.gov/DraftForms](https://www.irs.gov/DraftForms) and remain there after the final release is posted at [IRS.gov/LatestForms](https://www.irs.gov/LatestForms). All information about all forms, instructions, and pubs is at [IRS.gov/Forms](https://www.irs.gov/Forms).

Almost every form and publication has a page on IRS.gov with a friendly shortcut. For example, the Form 1040 page is at [IRS.gov/Form1040](https://www.irs.gov/Form1040); the Pub. 501 page is at [IRS.gov/Pub501](https://www.irs.gov/Pub501); the Form W-4 page is at [IRS.gov/W4](https://www.irs.gov/W4); and the Schedule A (Form 1040/SR) page is at [IRS.gov/ScheduleA](https://www.irs.gov/ScheduleA). If typing in a link above instead of clicking on it, be sure to type the link into the address bar of your browser, not a Search box.

If you wish, you can submit comments to the IRS about draft or final forms, instructions, or publications at [IRS.gov/FormsComments](https://www.irs.gov/FormsComments). We cannot respond to all comments due to the high volume we receive and may not be able to consider many suggestions until the subsequent revision of the product.

If you have comments on reducing paperwork and respondent (filer) burden, with respect to draft or final forms, please respond to the relevant information collection through the Federal Register process; for more info, click [here](#).

**Qualified Business Income Deduction  
Simplified Computation**

Department of the Treasury  
Internal Revenue Service

▶ **Attach to your tax return.**

Attachment  
Sequence No. **55**

▶ **Go to [www.irs.gov/Form8995](http://www.irs.gov/Form8995) for instructions and the latest information.**

Name(s) shown on return

Your taxpayer identification number

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 ( )

**Note:** *The draft you are looking for begins on the next page.*



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# Instructions for Form 8995-A

## Deduction for Qualified Business Income

Section references are to the Internal Revenue Code unless otherwise noted.

### Future Developments

For the latest information about developments related to Form 8995-A and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form8995A](https://www.irs.gov/Form8995A).

## General Instructions

### Purpose of Form

Use Form 8995-A to figure your qualified business income (QBI) deduction. Include the following schedules (their specific instructions are shown later), as appropriate:

- Schedule A (Form 8995-A), Specified Service Trades or Businesses (SSTB);
- Schedule B (Form 8995-A), Aggregation of Business Operations;
- Schedule C (Form 8995-A), Loss Netting and Carryforward;
- Schedule D (Form 8995-A), Special Rules for Patrons of Agricultural or Horticultural Cooperatives.

In general, the amount of your QBI deduction equals your QBI component plus your qualified real estate investment trust (REIT) and qualified publicly traded partnership (PTP) component (REIT/PTP component). However, the deduction is limited to the lesser of this amount or 20% of your taxable income, calculated before the QBI deduction, minus your net capital gain. Depending on your taxable income, your QBI component may also be limited based on the type of trade or business, W-2 wages paid by that business, and unadjusted basis immediately after acquisition (UBIA) of qualified property held by the business.

### Who Can Take the Deduction

Individuals and eligible estates and trusts use Form 8995-A to figure the QBI deduction if:

- You have QBI, qualified REIT dividends, or qualified PTP income or loss; and
- Your 2019 taxable income before your QBI deduction is more than \$160,700 (\$160,725 if married filing separately or a married nonresident alien; \$321,400 if married filing jointly); or
- You're a patron in a specified agricultural or horticultural cooperative.

Otherwise use Form 8995, Qualified Business Income Deduction Simplified Computation, to figure your QBI deduction.

**S corporations and partnerships.** S corporations and partnerships don't file Form

8995-A because they're not eligible for the deduction. Instead S corporation and partnerships must pass through to their shareholders or partners the necessary information on an attachment to Schedule K-1 to help them figure their deduction.

See the Instructions for Form 1120-S, U.S. Income Tax Return, for an S Corporation, and Form 1065, U.S. Return of Partnership Income.

**Cooperatives.** Cooperatives don't file Form 8995-A because they're not eligible for the deduction. Instead, cooperatives must provide the necessary information to their patrons on Form 1099-PATR or an attachment to help eligible patrons figure their deduction.

See the Instructions for Form 1120-C, U.S. Income Tax Return for Cooperative Associations.

**Estates and trusts.** To the extent that a grantor or another person is treated as owning all or part of a trust or estate, the owner will compute its QBI for the owned portion of the trust as if that QBI had been received directly by the owner. Generally, in the case of a non-grantor trust or estate, the trust or estate may either claim the QBI deduction or provide information to their beneficiaries to help beneficiaries figure their deduction. In determining the QBI deduction or the information that must be provided to beneficiaries, the estate or trust allocates QBI items based on the relative proportion of the estate's or trust's distributable net income (DNI) for the tax year that is distributed (or required to be distributed) to the beneficiary or retained by the estate or trust. If the estate or trust has no DNI for the tax year, QBI, W-2 wages, and UBIA of qualified property are allocated entirely to the estate or trust.

Estates and trusts may compute their own QBI deduction to the extent QBI, W-2 wages, and UBIA of qualified property is allocated to the trust. However, QBI, W-2 wages, and UBIA of qualified property allocated to beneficiaries aren't includable in the estate or trust's QBI computation. See the Instructions for Form 1041, U.S. Income Tax Return for Estates and Trusts.

**Electing Small Business Trusts (ESBT).** An ESBT is required to compute the QBI deduction separately for the S and non-S portions of the trust. If applicable, the Form 8995-A used to compute the S portion's QBI deduction must be attached as a PDF to the ESBT tax worksheet filed with Form 1041. When attached to the ESBT tax worksheet, the trust must indicate that the information is applicable to the S portion only, by writing

"ESBT" in the top margin of the Form 8995-A. See the instructions for Form 1041.

### Determining Your QBI Deduction

**Determine your QBI component.** To figure your QBI deduction you must first determine your QBI component. Your QBI component is generally 20% of your QBI from your trades or businesses. However, if your taxable income (before the QBI deduction) exceeds the threshold (\$160,725 if married filing separately or a married nonresident alien; \$321,400 if married filing jointly; \$160,700 for all others) your QBI for each of your trades or businesses may be partially or fully reduced to the greater of 50% of W-2 wages paid by the qualified trade or business, or 25% of W-2 wages plus 2.5% of the UBIA of qualified property from the qualified trade or business. The partial or full reduction to QBI is determined by your taxable income. If your taxable income (before the QBI deduction) is:

- At or below the threshold, you don't need to reduce your QBI;
- Above the threshold but below the phase-in range (more than \$160,725 but not \$210,725 if married filing separately or a married nonresident alien; \$321,400 and \$421,400 if married filing jointly; \$160,700 and \$210,700 for all others), the reduction is phased in; or
- Above the threshold and phase-in range, the full reduction applies.

Also, if you're a patron of an agricultural or horticultural cooperative you must reduce your cooperative QBI by the lesser of:

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

**Determining your qualified trades or business.** Your qualified trades and businesses generally include your trades or businesses for which you're allowed a deduction for ordinary and necessary business expenses under section 162. However, trades or businesses conducted by corporations and the performance of services as an employee are never qualified trades or businesses. Specified service trades or businesses (SSTB) aren't qualified trades or businesses for taxpayers with taxable income, before the QBI deduction, above the threshold and phased-in range.

An activity qualified as a trade or business if your primary purpose for engaging in the activity is for income or profit and you're involved in the activity with continuity and regularity. If you own an

interest in a pass-through entity, the trade or business determination is made at that entity's level. Material participation under section 469 isn't required for the QBI deduction. Eligible taxpayers with income from a trade or business may be entitled to the QBI deduction if they otherwise satisfy the requirements of section 199A.

The ownership and rental of real property may constitute a trade or business if it meets the standard described above. Also, [Revenue Procedure 2019-38](#) provides a safe harbor under which a rental real estate enterprise will be treated as a trade or business for purposes of the QBI deduction. Rental real estate that doesn't meet the requirements of the safe harbor may still be treated as a trade or business for purposes of the QBI deduction if it is a section 162 trade or business.

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

**Services performed as an employee excluded from qualified trades or businesses.** The trade or business of performing services as an employee isn't a trade or business for purposes of section 199A. Therefore, any amounts reported on Form W-2, box 1, other than amounts reported in box 1 where the "Statutory Employee" box in box 13 is checked, aren't QBI. If you were previously an employee of a business and continue to provide substantially the same services to that business after you're no longer treated as an employee, there is a presumption that you're providing services as an employee for purposes of section 199A for the 3-year period after ceasing to be an employee. You may rebut this presumption on notice from the IRS by providing records such as contracts or partnership agreements that corroborate your status as a non-employee. See Pub. 15-A, Employer's Supplemental Tax Guide, and Pub. 1779, Independent Contractor or Employee.

**SSTBs excluded from your qualified trades or businesses.** SSTBs generally are excluded from the definition of a qualified trade or business if the taxpayer's taxable income exceeds the threshold plus the phase-in range. Therefore, no QBI, W-2 wages, or UBIA of qualified property from the specified service trade or business are taken into account in figuring your QBI deduction. If the SSTB is conducted by your pass-through entity, the same limitation applies to the pass-through items.

**Exception 1:** If your taxable income before the QBI deduction isn't more than \$160,700 (\$160,725 if married filing separately or a married nonresident alien; \$321,400 if married filing jointly), your SSTB is treated as a qualified trade or business, and thus may generate income eligible for the QBI deduction.

**Exception 2:** If your taxable income before the QBI deduction is more than

\$160,700 but not \$210,700 (\$160,725 and \$210,725 if married filing separately or a married nonresident alien; \$321,400 and \$421,400 if married filing jointly), an applicable percentage of your SSTB is treated as a qualified trade or business.

An SSTB is any trade or business providing services in the fields of:

- Health, including physicians, pharmacists, nurses, dentists, veterinarians, physical therapists, psychologists, and other similar healthcare professionals. However, it excludes services not directly related to a medical services field, such as the operation of health clubs or spas; payment processing; or the research, testing, manufacture, and sale of pharmaceuticals or medical devices;
- Law, including lawyers, paralegals, legal arbitrators, mediators, and similar professionals. However, it excludes services that don't require skills unique to the field of law such as services by printers, delivery services, or stenography services;
- Accounting, including accountants, enrolled agents, return preparers, financial auditors, and similar professionals;
- Actuarial science, including actuaries, and similar professionals;
- Performing arts, including actors, singers, musicians, entertainers, directors, and similar professionals. However, it excludes services that don't require skills unique to the creation of performing arts, such as the maintenance and operation of equipment or facilities for use in the performing arts or the provision of services by persons who broadcast video or audio of performing arts to the public;
- Consulting, including persons providing clients with professional advice and counsel to assist in achieving goals and solving problems, and persons providing advice and counsel regarding advocacy with the intention of influencing decisions made by a government or governmental agency, and lobbyists attempting to influence legislators and other government officials on behalf of a client, and other similar professionals. However, it excludes the performance of services other than advice or counsel, such as sales or the provision of training and educational courses. It also excludes consulting services embedded in or ancillary to the activities of a trade or business that isn't an SSTB, if there is no separate payment for the consulting services;
- Athletics, including athletes, coaches, and team managers in sports such as baseball, basketball, football, soccer, hockey, martial arts, boxing, bowling, tennis, golf, skiing, snow-boarding, track and field, billiards, racing, and other forms of athletic competition. However, it excludes services that don't require skills unique to athletic competition, such as the maintenance and operation of equipment or facilities for use in athletic events or the provision of services by persons who broadcast video or audio of athletic events to the public;
- Financial services, including persons managing clients' wealth, advising clients on finances, developing retirement plans, developing wealth transition plans, providing

advisory and other similar services regarding valuations, mergers, acquisitions, dispositions, restructurings (including in title 11 or similar cases), and raising financial capital by underwriting, or acting as a client's agent in the issuance of securities and similar services. This includes services provided by financial advisors, investment bankers, wealth planners, retirement advisors, and other similar professionals. However, it excludes taking deposits or making loans, but does include arranging lending transactions between a lender and borrower;

- Brokerage services, including persons who arrange transactions between a buyer and a seller of securities for a commission or fee such as stock brokers and other similar professionals. However, it excludes services provided by real estate agents and brokers, or insurance agents and brokers;
- Investing and investment management, including persons providing, for a fee, investing, asset management, or investment management services, including providing advice on buying and selling investments. However, it excludes the service of directly managing real property;
- Trading, including persons who trade in securities (as defined in section 475(c)(2)), commodities (as defined in section 475(e)(2)), or partnership interests;
- Dealing securities (as defined in section 475(c)(2)), commodities (as defined in section 475(e)(2)), or partnership interests; and
- Any trade or business where the principal asset is the reputation or skill of one or more of its employees or owners, as demonstrated by:

- Receiving fees, compensation, or other income for endorsing products or services;
- Licensing or receiving fees, compensation or other income for the use of an individual's image, likeness, name, signature, voice, trademark, or any other symbols associated with the individual's identity; or
- Receiving fees, compensation, or other income for appearing at an event or on radio, television, or another media format.

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

**De minimis rule 2.** If your gross receipts from the trade or business are more than \$25 million and less than 5% of the gross receipts are from the performance of services, then your trade or business isn't considered an SSTB, and thus may generate income eligible for the QBI deduction for the tax year, regardless of your taxable income.

**De minimis rule 3.** If your trade or business provides services or property to an

SSTB and there is 50% or more common ownership of the trades or businesses, that portion of the business that provides services or property to the SSTB is treated as a separate SSTB concerning the common owners.

**Aggregation.** If you're engaged in more than one trade or business, each trade or business is a separate trade or business for purposes of applying the W-2 wage limitation or UBIA of qualified property limitation, discussed later. However, you may choose to aggregate multiple trades or businesses into a single trade or business for purposes of applying the limitations if you meet the following requirements.

1. You or a group of persons directly or indirectly own 50% or more of each trade or business for a majority of the tax year, including the last day of the tax year, and all trades or businesses use the same tax year end;

2. None of the trades or businesses are an SSTB; and

3. The trades or businesses meet at least two of the following factors.

a. They provide products, property, or services that are the same or that are customarily offered together.

b. They share facilities or share significant centralized business elements such as personnel, accounting, legal, manufacturing, purchasing, human resources, or information technology resources.

c. They are operated in coordination with, or reliance upon, one or more of the businesses in the aggregated group.

If a relevant pass-through entity (RPE) aggregates multiple trades or businesses, you must attach the RPE's aggregations to your Schedule B (Form 8995-A). You may not separate the trades or businesses aggregated by the RPE, but you may add additional trades or businesses to the aggregation, assuming the rules above are met. If you choose to aggregate multiple trades or businesses, complete Schedule B (Form 8995-A) before starting Part I of Form 8995-A.

Your aggregations must be reported consistently for all subsequent years, unless there is a significant change in facts and circumstances that disqualify the aggregation. Schedule B (Form 8995-A) must be completed each year to show your trade or business aggregation(s) and must include any aggregation of an RPE in which you hold a direct or indirect interest. Failure to disclose such aggregated trades or businesses may cause them to be disaggregated.

**Note.** You must combine the QBI, W-2 wages, and UBIA of qualified property for all aggregated trades or businesses, for purposes of applying the W-2 wage and UBIA of qualified property limitations.

**Determining your qualified business income.** Your QBI includes items of income, gain, deduction, and loss from all of your qualified trades or businesses (or aggregated trades or businesses) that are effectively connected with the conduct of a trade or business within the United States. This includes income from partnerships (other than PTPs), S corporations, sole proprietorships, and certain trusts and estates that are included or allowed in determining your taxable income for the year. To determine the total amount of QBI, the taxpayer must consider all items that are related to the trade or business including, but not limited to, charitable contributions, unreimbursed partnership expenses, business interest expense, deductible part of self-employment tax, self-employment health insurance deduction, and self-employed SEP, SIMPLE, and qualified plan deductions.

**Note.** Your QBI doesn't include any losses or deductions disallowed for use in calculating taxable income in the current year, including, but not limited to, section 179 deduction limitations and losses limited by basis, at-risk, passive loss or section 461(l) excess business loss limitations, as losses limited or suspended under these rules aren't included or allowed in determining your taxable income for the year. Instead, these losses and deductions are taken into account in the tax year they're included in determining your taxable income. Loss and deduction items that were generated prior to 2018, that are included in income during the year, are not included in QBI.

When losses or deductions from a trade or business are suspended under any provision of the Code and not available for use in calculating taxable income in the year generated, you must determine the portion of the losses includible in QBI in subsequent years. If your trade or business is an SSTB, the determination of whether it's a qualified trade or business based on your taxable income is made in the year the loss is incurred. If your income is within the phase-in range in that year, you must determine the applicable percentage of suspended losses or deductions includible in QBI. The losses continue their status as either items of QBI or non-QBI for all subsequent years. Therefore, you must track each category of loss or deduction (for example, section 465, 469, 1366, etc.) from year to year until the loss is included in taxable income. Each category's portion of loss allowed in calculating taxable income is treated as qualified business net loss carryforward (Form 8995, line 3; Schedule C (Form 8995-A), line 2) in calculating the current year's QBI deduction.

**Note.** Any suspended qualified business loss carried forward from an SSTB, when allowed in subsequent years, will not be included on Schedule A (Form 8995-A).

QBI doesn't include any of the following.

- Items that aren't properly includible in income.

- Income that isn't effectively connected with the conduct of a trade or business within the United States (go to [IRS.gov/ECF](https://www.irs.gov/efc/)).

- Wage income (except "Statutory Employees" where Form W-2, box 13, is checked).

- Amounts received as reasonable compensation from an S corporation.

- Amounts received as guaranteed payments.

- Amounts received as payments by a partner for services other than in a capacity as a partner.

- Items treated as capital gains or losses under any provision of the Code.

- Dividends and dividend equivalents.

- Interest income, other than interest income properly allocable to a trade or business.

**Note.** Interest income attributable to an investment of working capital, reserves, or similar accounts isn't properly allocable to a trade or business.

- Commodities transactions or foreign currency gains or losses described in section 954(c)(1)(C) or (D).

- Income, loss, or deductions from notional principal contracts under section 954(c)(1)(F).

- Annuities (unless received in connection with the trade or business).

- Qualified REIT dividends.

- Qualified PTP income.

**Determining whether items included on Schedule K-1 are includible in QBI.** The amounts reported on your Schedule K-1 as "QBI/Qualified PTP Items Subject to Taxpayer-Specific Determinations" from a partnership, S corporation, estate, or trust aren't automatically includible in your QBI.

To determine if the item of income, gain, deduction, or loss is includible in QBI you must look to how it is reported on your federal income tax return. For example, ordinary business income or loss is generally included in QBI if it was used in computing your taxable income and not excluded, suspended, or disallowed under any other Code section. Also, a section 1231 gain or loss is only includible in QBI if it isn't capital gain or loss. See the [QBI Flow Chart](#) below to determine if an item of income, gain, deduction, or loss is includible in QBI.

**Determining whether information reported on your Form 1099-PATR is includible in QBI.** The amounts reported to you as your share of patronage dividends and similar payments on Form 1099-PATR aren't automatically includible in your QBI.

Payments may be included in QBI to the extent they are (1) related to your trade or business, (2) reported to you by the cooperative as qualified items of income on an attachment to Form 1099-PATR, and (3) not payments reported as from an SSTB, unless your taxable income is below the threshold, in which case payments from SSTBs are includible in your QBI.

If you received Qualified Payments reported to you on Form 1099-PATR from a specified agricultural or horticultural cooperative, you're required to reduce your

QBI by the patron reduction. See [Schedule D \(Form 8995-A\)—Special Rules for Patrons of Agricultural or Horticultural Cooperatives](#), below.

**Determining whether items included on Schedule C (Form 1040 or 1040-SR) are includible in QBI.** The net gain or loss as reported on your Schedule C (Form 1040 or 1040-SR) is not automatically includible in your QBI. See the [QBI Flow Chart](#), below to determine if an item of income, gain, deduction, or loss is includible in QBI.

**QBI flow chart.** Use the flow chart to determine if an item of income, gain, deduction, or loss is includible in QBI. See [QBI Flow Chart](#), below.

**Determining your W-2 wages for limitation purposes.** W-2 wages generally include amounts paid to employees for the performance of services, plus elective deferrals (for example, contributions to 401(k) plans, deferred compensation, and Roth IRA contributions). Amounts paid to statutory employees aren't W-2 wages when the "Statutory Employee" box on Form W-2, box 13, is checked.

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

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

- Unmodified box method.
- Modified box 1 method.
- Tracking wages method.

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

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

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

1. Add the amounts reported in box 1 of the relevant Forms W-2.
2. Add all amounts not considered wages for federal income tax withholding purposes including, but not limited to:
  - a. Supplemental unemployment compensation benefits within the meaning of Rev. Rul. 90-72, and
  - b. Sick pay or annuity payments.
3. Subtract (2) from (1).

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

5. Add (3) and (4).

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

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

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

**Note.** For purposes of determining W-2 wages for limitation purposes, fiscal year end trades or businesses include qualified amounts paid to employees for the calendar year ended with or within the business's taxable year.

**Short tax year.** If you have a short tax year, you must use the tracking wages method and do the following.

- Add the amounts that are wages for federal income tax withholding purposes, that are also reported on Form W-2, box 1, for the calendar year ending with or within that short tax year, and that are actually paid during the short tax year; plus
- Any amounts reported in box 12 of the relevant Forms W-2 that are properly coded D, E, F, G, or S for the calendar year ending with or within that short tax year that are actually deferred or contributed during the short tax year.

However, if you have a short tax year that doesn't include a calendar year ending within that short tax year, the following wages are treated as W-2 wages for a short year.

- Wages you properly report on Form W-2 that you actually paid during the tax year, and
- Amounts reported on Forms W-2, box 12, that are properly coded D, E, F, G, or S that are actually deferred or contributed during the short tax year.

**Acquisition or disposition of a trade or business.** If you acquired or disposed of a trade or business that causes you and another employer to pay W-2 wages to employees of the acquired or disposed of trade or business during the calendar year, then the W-2 wages for the calendar year of the acquisition or disposition are allocated between each employer based on the period that the employees of the acquired or disposed of trade or business were

employed by each employer. If you have a short tax year that doesn't include a calendar year ending within your short tax year, see [Short tax year](#), earlier.

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

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

Improvements to property that has already been placed in service are treated as separate qualified property.

For qualified replacement property acquired in a section 1031 exchange that is of a like-kind to the qualified relinquished property, or for qualified replacement property acquired in a section 1033 involuntary conversion that is similar or related in service or use to the qualified converted property, the UBIA of the qualified replacement property is the same as the UBIA of the qualified property exchanged, converted, decreased by excess boot or increased by the amount of money paid or the fair market value of property transferred by the taxpayer that isn't of a like-kind or similar or related in service or use.

Generally, replacement property retains the same placed-in-service date as that of the relinquished property. However, for the portion of the replacement property's UBIA that exceeds the relinquished property's UBIA, that portion is treated as separate qualified property placed in service on the date on which the replacement property is first placed in service.

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

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

## Determining Your REIT/PTP Component

Your qualified REIT/PTP component equals 20% of your qualified REIT dividends and qualified PTP income or loss (including your share of qualified REIT dividends and qualified PTP income or loss from RPEs).

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

Qualified PTP income/(loss) includes your share of qualified items of income, gain, deduction, and loss from a PTP. It may also include gain or loss recognized on the disposition of your PTP interest that isn't treated as a capital gain or loss. It doesn't include any loss or deduction disallowed in determining your taxable income for the year. Qualified REIT dividends are reported to you on Form 1099-DIV, Dividends and Distributions, box 5, Section 199A dividends.

**Note.** PTP income generated by an SSTB may be limited to the applicable percentage if your taxable income is within the phase-in range or completely excluded from qualified PTP income if your taxable income is above the phase-in range. See [Schedule A \(Form 8995-A\)—Specified Service Trades or Businesses \(SSTB\)](#), below.

## Coordination With Other Code Sections

**A net operating loss** under section 172 is generally figured without the QBI deduction, meaning the QBI deduction can't create or increase the net operating loss. However, an excess business loss under section 461(l) is treated as a net operating loss carryforward to the following tax year and is taken into account for purposes of computing QBI in the subsequent tax year in which it is deducted.

**Alternative minimum tax.** The QBI deduction that is used to determine regular tax is also used to determine alternative minimum taxable income.

**Net earnings from self-employment** aren't reduced by the QBI deduction when computing self-employment tax.

**Net investment income** isn't reduced by the QBI deduction when computing net investment income tax.

**Puerto Rico.** For purposes of determining QBI, the United States includes Puerto Rico for taxpayers who have taxable income from sources within Puerto Rico that are subject to tax under section 1. Further, W-2 wages are figured by including W-2 wages paid for services performed in Puerto Rico without regard to section 3401(a)(8).

## Specific Instructions

You may need to complete Schedule A, B, C, and/or D, as applicable, prior to starting Part I of the form.

**Taxable income before qualified business income deduction.** Form 8995-A, Part III, Part IV, and Schedule A (Form 8995-A) each ask for your taxable income figured without regard to the QBI deduction.

Enter your taxable income figured before any QBI deduction, computed as follows.

- Form 1040 or 1040-SR filers: Form 1040 or 1040-SR, line 8b, minus Form 1040 or 1040-SR, line 9.
- Form 1040-NR filers: Form 1040-NR, line 35, minus Form 1040-NR, line 37.
- Form 1041 filers: Form 1041, line 23, plus Form 1041, line 20.

## Schedule A (Form 8995-A)—Specified Service Trades or Businesses (SSTB)

Complete Schedule A if your trade or business is an SSTB and your taxable income is more than \$160,700 but below \$210,700 (\$160,725 and \$210,725 if married filing separately or a married nonresident alien; \$321,400 and \$421,400 if married filing jointly).

Don't complete Schedule A if your taxable income is \$160,700 or less (\$160,725 if married filing separately or a married nonresident alien; \$321,400 if married filing jointly). The SSTB exclusion doesn't apply to you.

Don't complete Schedule A if your taxable income is \$210,700 or greater (\$210,725 if married filing separately or a married nonresident alien; \$421,400 if married filing jointly). Your SSTB isn't a qualified trade or business and doesn't qualify for the QBI deduction.

Schedule A (Form 8995-A), Part II, should be used for SSTBs that are PTPs, and Part I should be used for all other SSTBs.

See [SSTB excluded from your qualified trades or businesses](#), earlier.

**Lines 2 and 16.** Enter your QBI or Qualified PTP income for each SSTB, as applicable.

**Lines 5 and 18.** See [Taxable income before qualified business income deduction](#), earlier.

## Schedule B (Form 8995-A)—Aggregation of Business Operations

If you qualify and choose to aggregate multiple trades or businesses into a single trade or business, you must complete Schedule B before starting Part I.

**Line 3(c).** Enter your QBI for each separate trade or business.

**Line 4.** If any of your aggregations have a qualified business loss for the current year or you have a qualified business net loss carryforward from prior years, you must

complete Schedule C (Form 8995-A) before starting Part I.

If none of your aggregations have a qualified business loss in the current year and you don't have a qualified business loss carryforward from prior years, enter the total amounts on the appropriate lines of Form 8995-A, Part II.

## Schedule C (Form 8995-A)—Loss Netting and Carryforward

If any of your trades, businesses, or aggregations have a qualified business loss for the current year or you have a qualified business net loss carryforward from prior years, you must complete Schedule C (Form 8995-A) before starting Part I. This includes prior year loss carryforwards even if the loss was unreported or the trade or business that generated the loss is no longer in existence.

Schedule C (Form 8995-A) offsets your trade or business that generated a qualified business loss against the QBI from your other trades or businesses. The qualified business loss must be apportioned among all your trades or businesses with QBI in proportion to their QBI.

**Note.** The line items for this schedule are computed out of order: first figure line 1, column (a); then skip to lines 2 through 5; and come back to line 1, columns (b) and (c).

**Line 1, column (a).** If you aggregated multiple trades or businesses into a single business on Schedule B (Form 8995-A), enter the aggregation group name, that is Aggregation 1, 2, 3, etc., instead of entering the business name along with the aggregated trade's or business's qualified business income.

**Line 2.** This includes the amount reported in the prior year on Schedule C (Form 8995-A), line 6, or if the simplified worksheet was previously used, Form 8995, line 16, including prior year loss carryforwards even if the loss was unreported or the trade or business that generated the loss is no longer in existence. This also includes the QBI portion of losses or deductions suspended from use in calculating taxable income in the year generated that are included in taxable income in the current year. See [Determining your qualified business income](#), earlier.

**Line 1, column (b).** Apportion the amount from line 5 among all your trades or businesses with QBI, but not loss, in proportion to their QBI.

**Line 1, column (c).** Enter this amount on the corresponding line on Form 8995-A, Part II.

**Note.** If the adjusted QBI from the trade or business is zero or less after the reduction for loss netting, then the amount reported for W-2 wages and UBIA of qualified property must be zero for that trade or business, as the W-2 wages and UBIA of qualified property from that trade or business aren't

allowed in computing your qualified business income limitations.

**Line 6.** The amount reported on this line must be reported in the next tax year on Schedule C (Form 8995-A), line 2, or Form 8995, Line 3, Qualified business net (loss) carryforward from prior years, as applicable. This amount will offset QBI in subsequent tax years regardless of whether it is reported and whether the trade or business that generated the loss is still in existence. This carryforward doesn't affect the deductibility of the loss for purposes of any other provisions of the Code.

**Note.** If you have an overall qualified business net loss carryforward for the year, you don't qualify for a QBI deduction in the current year unless you have qualified REIT dividends or qualified PTP income.

## Schedule D (Form 8995-A)—Special Rules for Patrons of Agricultural or Horticultural Cooperatives

You must complete Schedule D (Form 8995-A) if you're a patron in a specified agricultural or horticultural cooperative and are claiming a QBI deduction in relation to your trade or business conducted with the cooperative. A specified agricultural or horticultural cooperative is a cooperative that markets or is engaged in the manufacturing, production, growth, or extraction of any agricultural or horticultural products to which Part I of Subchapter T applies. See section 199A(g)(3).

**Line 2.** Begin with the amount reported on Form 8995-A, line 13, and determine the portion which is allocable to qualified payments received by the trade or business from the cooperative. Qualified payments include patronage dividends and per-unit retains allocations.

**Line 4.** Enter the portion of W-2 wages from Form 8995-A, line 4, that are allocable to the qualified payments.

## Part I—Trade, Business, and Aggregation Information

You must complete Part I if you have QBI from a qualified trade, business, or aggregation. If you don't have QBI, and only have REIT, PTP and/or a domestic production activities deduction (DPAD), skip Parts I through III and complete Part IV. Before you begin completing Part I, determine if you need to complete Schedule A, B, or C by answering the following questions.

1. Do you have an SSBT? If yes, see [Schedule A \(Form 8995-A\)—Specified Service Trades or Businesses \(SSTB\)](#), earlier.

2. Are you choosing to aggregate multiple trades or businesses into a single trade or business? If yes, complete Schedule B (Form 8995-A) before starting Part I.

3. Did any of your trades, businesses, or aggregations have QBI for the year or do you have a qualified business loss carryforward from prior years? If yes, complete Schedule C (Form 8995-A) before starting Part I.

**Line 1.** If you aggregated multiple trades or businesses into a single business on Schedule B (Form 8995-A), enter the aggregation group name. For example, Aggregation 1, 2, 3, etc., instead of entering the business name, check the box under 1(c), and leave line 1(d) blank.

Enter on line 1(d) the employer identification number (EIN). If you don't have an EIN, enter your social security number (SSN) or individual taxpayer identification number (ITIN). If you're the sole owner of an LLC that isn't treated as a separate entity for federal income tax purposes, enter the EIN given to the LLC. If you don't have such an EIN, enter the owner's name, and tax identification number.

## Part II—Determine Your Adjusted Qualified Business Income

You must complete Part II if you have QBI from a qualified trade, business or aggregation.

**Line 2.** If you have four or more trades or businesses, attach a statement with the information for Parts I, II, and III as applicable. See [Schedule C \(Form 8995-A\)—Loss Netting and Carryforward](#), earlier.

**Line 4.** Enter your W-2 wages from the trade, business, or aggregation.

**Note.** If the QBI on line 2, for the trade, business, or aggregation, is zero, then the amount reported on line 4, for that trade or business, must also be zero.

**Line 7.** Enter your share of the UBI for all qualified property for the trade or business.

**Note.** If the QBI on line 2, for the trade, business, or aggregation, is zero, then the amount reported on line 7, for that trade or business, must also be zero.

**Line 14.** Report the amount from Schedule D (Form 8995-A), line 6, if any. Patrons of agricultural or horticultural cooperatives are required to reduce their QBI component by the lesser of:

- 9% of QBI allocable to qualified payments from a specified cooperative, or
- 50% of W-2 wages allocable to qualified payments.

If you're a patron of an agricultural or horticultural cooperative complete Schedule D (Form 8995-A). See [Schedule D \(Form 8995-A\)—Special Rules for Patrons of Agricultural or Horticultural Cooperatives](#), earlier.

**Line 16.** Add all amounts reported on line 15. If there are four or more trades or businesses, include line 15 amounts from all trades or businesses and complete line 16

only on the first page. Leave line 16 blank on the attached statements described in the line 2 instructions.

## Part III—Phased-in Reduction

Complete Part III if your taxable income is more than \$160,700 but below \$210,700 (\$160,725 and \$210,725 if married filing separately or a married nonresident alien; \$321,400 and \$421,400 if married filing jointly), and line 10, is smaller than line 3. Otherwise, skip Part III.

**Line 20.** See [Taxable income before qualified business income deduction](#), earlier.

## Part IV—Determine Your Qualified Business Income Deduction

If you're claiming a QBI deduction, you must complete Part IV.

**Line 28.** If the net amount is a loss, enter as a negative number.

Any negative amount will be carried forward to the next year. This carryforward doesn't affect the deductibility of the loss for purposes of any other provisions of the Code.

**Line 33.** See [Taxable income before qualified business income deduction](#), earlier.

**Line 34.** Enter the amount from your tax return as follows.

- Form 1040 or 1040-SR filers, your qualified dividends on line 3a, plus your net capital gain. If you're not required to file Schedule D (Form 1040 or 1040-SR), your net capital gain is the amount reported on Form 1040 or 1040-SR, line 6. If you file Schedule D (Form 1040 or 1040-SR), your net capital gain is the smaller of Schedule D (Form 1040 or 1040-SR), line 15 or 16, unless line 15 or 16 is zero or less, in which case nothing is added to your qualified dividends.

- For Form 1040-NR filers, your qualified dividends on line 10b, plus your net capital gain. If you're not required to file Schedule D (Form 1040 or 1040-SR), your net capital gain is the amount reported on Form 1040-NR, line 14. If you file Schedule D (Form 1040 or 1040-SR), your net capital gain is the smaller of Schedule D (Form 1040 or 1040-SR), line 15 or 16, unless line 15 or 16 is zero or less, in which case nothing is added to your qualified dividends.

- Form 1041 filers, your qualified dividends allocable to estates and trusts on line 2b(2). For estates or trusts required to file Schedule D (Form 1041), add the qualified dividends to the smaller of Schedule D (Form 1041), line 18a(2), or line 19(2), unless either line 18a(2) or 19(2) is zero or less, in which case nothing is added to your qualified dividends.

- Form 1041-N filers, your qualified dividends line 2b, plus the smaller of Form 1041-N, Schedule D, lines 10 or 11, unless line 10 or 11 is zero or less, in which case nothing is added to your qualified dividends.
- Form 990-T filers who are trusts, Schedule D (Form 1041), the smaller of

line 18(a)(2) or 19(2), unless either line 18(a)(2) or 19(2) is zero or less, in which case the net capital gain for purposes of section 199A is zero.

- S-corporation portion of an ESBT, your ESBT Tax Worksheet, line 2b, plus the smaller of your ESBT's Schedule D (Form

1041), line 18(a)(2), or line 19(2), is zero or less, in which case nothing is added to your qualified dividends.

**Line 39.** Enter the amount from line 39 on Form 1040 or 1040-SR, line 10; Form 1040-NR, line 38; Form 1041, line 20; Form

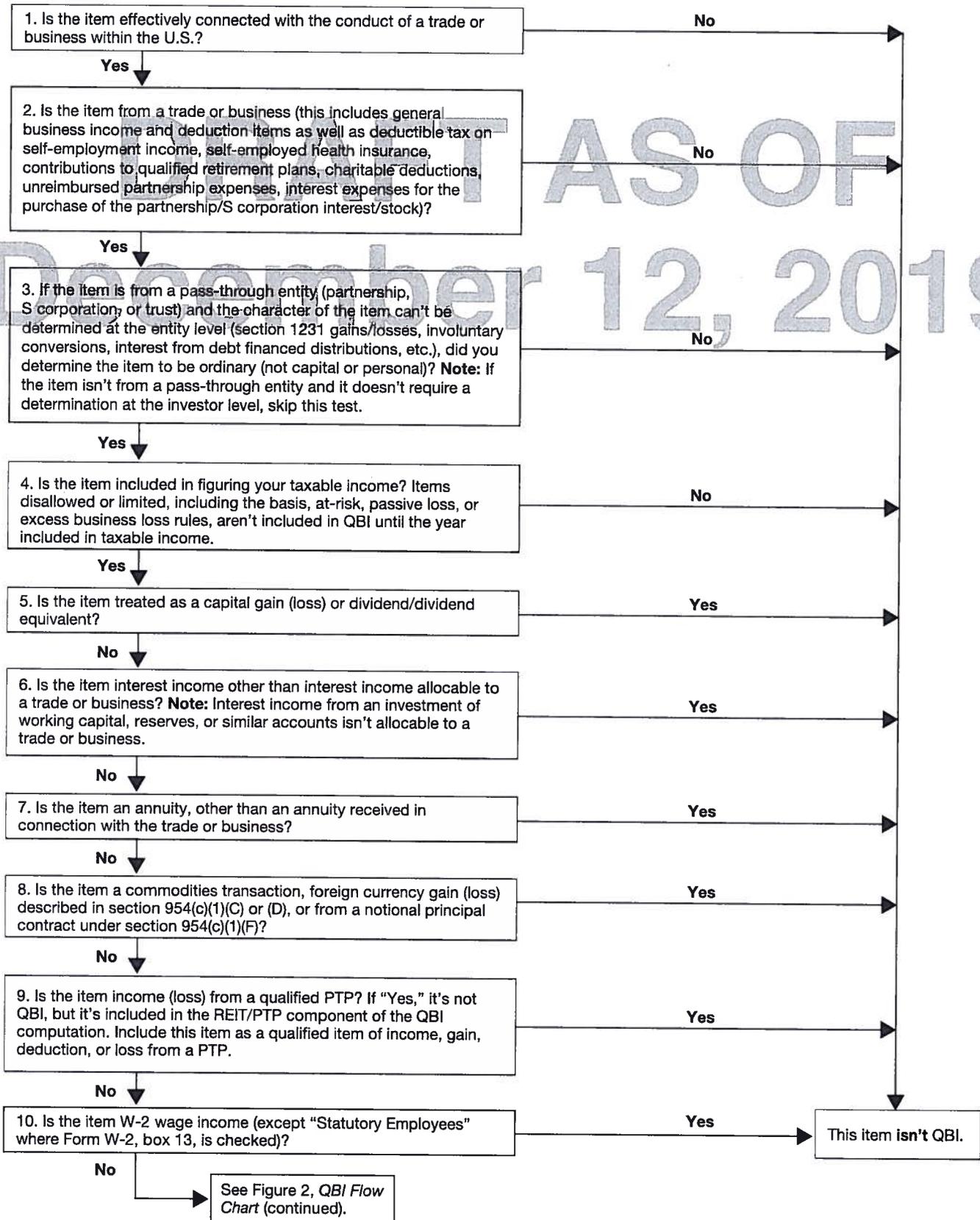
1041-N, line 9; Form 990-T, line 39; S-corporation portion of an ESBT, line 11.

**Line 40.** If the sum of lines 28 and 29 result in a loss (negative number) the loss must be carried forward to next year.

# DRAFT AS OF December 12, 2019

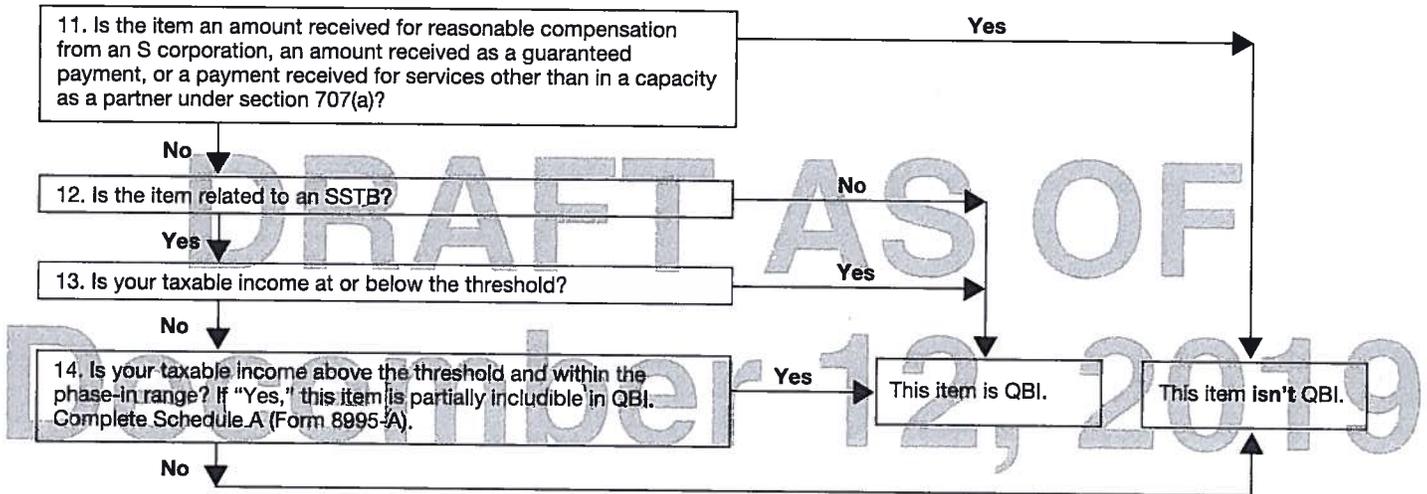
# QBI Flow Chart

Figure 1. Use this chart to determine if an item of income, gain, deduction, or loss is included in QBI.



## QBI Flow Chart (continued)

Figure 2. Use this chart to determine if an item of income, gain, deduction, or loss is included in QBI.



### Paperwork Reduction Act Notice

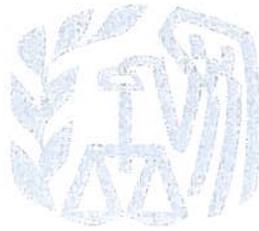
We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law.

Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for business taxpayers filing this form is approved under OMB control number 1545-0123 and is included in the estimates shown in the instructions for their business income tax return.

**Note:** *The draft you are looking for begins on the next page.*



## **Caution: *DRAFT—NOT FOR FILING***

This is an early release draft of an IRS tax form, instructions, or publication, which the IRS is providing for your information. **Do not file draft forms** and do **not** rely on draft forms, instructions, and publications for filing. We generally do not release draft forms until we believe we have incorporated all changes, but sometimes unexpected issues arise, or legislation is passed. Also, forms generally are subject to OMB approval before they can be officially released. Drafts of instructions and publications usually have some changes before their final release.

Early release drafts are at [IRS.gov/DraftForms](https://www.irs.gov/DraftForms) and may remain there even after the final release is posted at [IRS.gov/LatestForms](https://www.irs.gov/LatestForms). All information about all forms, instructions, and pubs is at [IRS.gov/Forms](https://www.irs.gov/Forms).

Almost every form and publication also has a page on IRS.gov with a friendly shortcut. For example, the Form 1040 page is at [IRS.gov/Form1040](https://www.irs.gov/Form1040); the Pub. 501 page is at [IRS.gov/Pub501](https://www.irs.gov/Pub501); the Form W-4 page is at [IRS.gov/W4](https://www.irs.gov/W4); and the Schedule A (Form 1040) page is at [IRS.gov/ScheduleA](https://www.irs.gov/ScheduleA). If typing in a link above instead of clicking on it, be sure to type the link into the address bar of your browser, not a Search box.

If you wish, you can submit comments about draft or final forms, instructions, or publications at [IRS.gov/FormsComments](https://www.irs.gov/FormsComments). We cannot respond to all comments due to the high volume we receive. Please note that we may not be able to consider many suggestions until the subsequent revision of the product.

**Qualified Business Income Deduction**

Department of the Treasury  
Internal Revenue Service

▶ Attach to your tax return.

▶ Go to [www.irs.gov/Form8995A](http://www.irs.gov/Form8995A) for instructions and the latest information.

**2019**

Attachment  
Sequence No. **55A**

Name(s) shown on return

Your taxpayer identification number

**Part I Trade, Business, or Aggregation Information**

Complete Schedules A, B, and/or C (Form 8995-A), 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		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
B		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
C		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

**Part II Determine Your Adjusted Qualified Business Income**

	A	B	C
2 Qualified business income from the trade, business, or aggregation. See instructions . . . . .	2		
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. See instructions . . . . .	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		

**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	( )	



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

- Basic questions and answers on new 20-percent deduction for pass-through businesses
- Pass-through Entity
- Patrons and Cooperatives
- Rental FAQs

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

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

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

### Q1. What is the Qualified Business Income Deduction?

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

1. QBI Component. This component of the deduction equals 20 percent of QBI from a domestic business operated as a sole proprietorship or through a partnership, S corporation, trust or estate. Depending on the taxpayer's taxable income, the QBI component is subject to multiple limitations including the type of trade or business, the amount of W-2 wages paid by the qualified trade or business and the unadjusted basis

immediately after acquisition (UBIA) of qualified property held by the trade or business. It may also be reduced by the patron reduction if the taxpayer is a patron of an agricultural or horticultural cooperative. Income earned through a C corporation or by providing services as an employee is not eligible for the deduction.

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

The deduction is limited to the lesser of the QBI component plus the REIT/PTP component or 20 percent of the taxpayer's taxable income minus the net capital gain. For details on figuring the deduction, see Q&A 6 and 7. The deduction is available for taxable years beginning after Dec. 31, 2017 and ending before December 31, 2025. Most eligible taxpayers will be able to claim it for the first time when they file their 2018 federal income tax return in 2019. The deduction is available, regardless of whether an individual itemizes their deductions on Schedule A or takes the standard deduction.

## **Q2. Who may take the QBI deduction?**

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

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

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

## **Q4. What is qualified business income?**

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

## **Q5. What is a qualified trade or business?**

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

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

2. For taxpayers with taxable income that exceeds the threshold amount, specified service trades or businesses (SSTBs). An SSTB is a trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, investing and investment management, trading, dealing in certain assets or any trade or business where the principal asset is the reputation or skill of one or more of its employees or owners. The principal asset of a trade or business is the reputation or skill of its employees or owners if the trade or business consists of the receipt of income from endorsing products or services, the use of an individual's image, likeness, voice, or other symbols associated with the individual's identity, or appearances at events or on radio, television, or other media formats. The SSTB exception does not apply for taxpayers with taxable income below the threshold amount and is phased in for taxpayers with taxable income above the threshold amount. For 2018, the threshold amount is \$315,000 for a married couple filing a joint return, or \$157,500 for all other taxpayers. The threshold amounts will be adjusted for inflation in subsequent years.
3. The trade or business of performing services as an employee.

## **Q6. How is the deduction for qualified business income computed?**

A6. The SSTB limitation discussed in Q&A 5 does not apply if a taxpayer's taxable income (before the QBI deduction) is at or below the threshold amount, discussed in Q&A 5; the deduction is the lesser of:

1. 20 percent of the taxpayer's QBI, plus 20 percent of the taxpayer's qualified REIT dividends and qualified PTP income' or
2. 20 percent of the taxpayer's taxable income minus net capital gain.

If the taxpayer's taxable income (before the QBI deduction) is above the threshold amount, the deduction may be limited based on whether the business is an SSTB, the W-2 wages paid by the business and the unadjusted basis immediately after acquisition of certain property used by the business. For 2018, these limitations are phased in for joint filers with taxable income above \$315,000 but below \$415,000, and all other taxpayers with taxable income above \$157,500 but below \$207,500. The threshold amounts and phase-in range are for tax year 2018 and will be adjusted for inflation in subsequent years. Income earned through a C corporation or by providing services as an employee is not eligible for the deduction regardless of the taxpayer's taxable income. In some cases, patrons of horticultural or agricultural cooperatives are required to reduce their deduction under section 199A(b)(7) (patron reduction). See also Q&A 13 for more information on computation and available worksheets.

## **Q7. I have income from a specified service trade or business. How does that affect my deduction?**

A7. The SSTB limitation does not apply to any taxpayer whose taxable income (before the qualified business deduction) is at or below the threshold amounts discussed in Q&A #5. For taxpayers whose taxable income is within the phase-in range discussed in Q&A #6, the taxpayer's share of QBI, W-2 wages and UBIA of qualified property related to the SSTB may be limited. If the taxpayer's taxable income exceeds the phase-in range, no deduction is allowed with respect to any SSTB. The threshold amounts and phase-in range are for tax year 2018 and will be adjusted for inflation in subsequent years.

In some cases, patrons of horticultural or agricultural cooperatives are required to reduce their deduction under section 199A(b)(7) (patron reduction). See also Q&A 13 for more information on computation and available worksheets.

**Q8. In 2018, I will report taxable income under \$315,000 and file married filing jointly. Do I have to determine if I am in an SSTB in order to take the deduction? Is there any limitation on my deduction?**

A8. No, if your 2018 taxable income (before the QBI deduction) is at or below the threshold amount (\$315,000, if married filing jointly, or \$157,500 for all other filing statuses), the SSTB limitations do not apply. You will be able to deduct the lesser of:

1. Twenty percent (20%) of your QBI, plus 20 percent of your qualified REIT dividends and qualified PTP income, or
2. Twenty percent (20%) of your taxable income minus your net capital gain.

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

**Q9. In 2018, I will report taxable income between \$157,500 and \$207,500 and file as single. I receive QBI. Does it matter if it is from an SSTB?**

A9. Yes, because your taxable income is above the threshold amount, your QBI deduction with respect to any SSTB will be limited. However, because you are within the phase-in range (above \$315,000 but below \$415,000 for married filing joint, and all other taxpayers with taxable income above \$157,500 but below \$207,500), you may be allowed some QBI deduction with respect to an SSTB. In addition, for taxpayers above the threshold amount, the 20 percent QBI with respect to any trade or business, including an SSTB, may be limited by the amount of W-2 wages paid by the trade or business and the UBIA of qualified property held by the trade or business. Sections 1.199A-1 and 1.199A-2 of the regulations (PDF) provides additional information.

**Q10. In 2018, I am single and will report taxable income over \$207,500. My only income is from an SSTB. Am I entitled to the deduction with respect to the SSTB?**

A10. No. The same is true for a married couple filing a joint return whose taxable income exceeds \$415,000.

**Q11. In 2018, I am single and will report taxable income over \$207,500. I am NOT in an SSTB. Am I entitled to the deduction?**

A11. Yes, if you have QBI, qualified REIT dividends or qualified PTP income. For eligible taxpayers with total taxable income in 2018 over \$207,500 (\$415,000 for married filing joint returns), the deduction for QBI may be limited by the amount of W-2 wages paid by the qualified trade or business and the UBIA of qualified property

held by the trade or business. The regulations provide additional information on these limitations. The IRS also issued Revenue Procedure 2019-11 (PDF) providing methods for determining W-2 wages for purposes of the limitation.

## **Q12. How do cooperatives qualify for the qualified business income deduction?**

A12. Cooperatives do not qualify for the QBI deduction under section 199A(a) but may be eligible to take the section 199A(g) deduction. Section 199A(g) provides a deduction for Specified Agricultural or Horticultural Cooperatives (Specified Cooperatives) and their patrons similar to the deduction under former section 199, which was known as the domestic production activities deduction. The IRS issued additional guidance for cooperatives and their patrons on June 18, 2019.

## **Q13. Is there a form for reporting the qualified business income deduction? And if so, where can I find it?**

A13. There is no form for reporting the QBI deduction in 2018. However, two worksheets have been developed to help taxpayers compute their deduction. The first worksheet is located in the instructions to Form 1040 and can be used by taxpayers with taxable income (before the QBI deduction) at or below the threshold amount (\$315,000 for a married couple filing a joint return, or \$157,500 for all other taxpayers) and that are not patrons in a horticultural cooperative.

The second worksheet will be located in Publication 535, Business Expenses. It should be used by taxpayers with taxable income exceeding the threshold amount. It should also be used by taxpayer's that are patrons of specified agricultural or horticultural cooperatives.

For tax year 2019, Form 8995, Qualified Business Income Deduction Simplified Computation, and Form 8995-A, Qualified Business Income Deduction, will be available and will replace the worksheets found in the Form 1040 instructions and Publication 535, respectively.

## **Q14. Does the deduction reduce earnings subject to self-employment tax?**

A14. No. The QBI deduction does not reduce net earnings from self-employment, under section 1402. Similarly, the deduction does not reduce net investment income under section 1411 (Form 8960, Net Investment Income Tax).

## **Q15. If I report taxable income under the threshold are there any limits to my deduction?**

A15. If your taxable income (before the QBI deduction) is at or below the threshold, then most of the limitations are not applicable.

The specified service trade or business, W-2 wage, and UBIA limitations do not apply to taxpayers whose taxable income is at or below these thresholds.

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

### **Q16. Do any limitations apply to the REIT/PTP Component?**

A16. Yes. The REIT/PTP Component generally includes qualified REIT dividends (including REIT dividends earned through a RIC) and PTP income as defined in section 199A and the regulations thereunder. For taxpayers above the threshold amount, discussed in Q&A #5 and #6, qualified PTP income may be limited if the PTP operates an SSTB. The limitation does not apply to any taxpayer whose taxable income (before the qualified business deduction) is at or below the threshold amounts discussed in Q&A #5. For taxpayers whose taxable income is within the phase-in range discussed in Q&A #6, the taxpayer's PTP income from the SSTB may be limited. If the taxpayer's taxable income exceeds the phase-in range, no deduction is allowed with respect to any SSTB operated by a PTP. The threshold amounts and phase-in range are for tax year 2018 and will be adjusted for inflation in subsequent years.

### **Q17. If someone is a real estate professional, will their rental real estate qualify for the deduction?**

A17. The deduction is not based on whether the taxpayer qualifies as a real estate professional under section 469. Rental real estate may constitute a trade or business for purposes of the QBI deduction if the rental real estate:

- Rises to the level of a trade or business under section 162,
- Satisfies the requirements for the safe harbor provided by Rev. Proc. 2019-38, or
- Meets the self-rental exception (i.e., the rental or licensing of property to a commonly controlled trade or business conducted by an individual or RPE).

Whether rental real estate rises to the level of a trade or business under section 162 depends on all the facts and circumstances. To be engaged in a trade or business under section 162, the taxpayer must be actively involved in the activity with continuity and regularity and the primary purpose for engaging in the activity must be for income or profit.

### **Q18. If I have net income from one qualified business and a net loss from another qualified business, is the loss from the second business carried forward and applied against that same business in the future or is it netted against the income from the first business when calculating the deduction? What if the losses are greater than the income, does this mean I will not get a deduction?**

A18. A taxpayer must net their QBI, including losses, from multiple trades or businesses (including aggregated trades or businesses). So, negative QBI from one business will offset positive QBI from other trades or businesses (including aggregated trades or businesses) in proportion to the net income of the trades or

businesses with positive QBI.

If the total QBI from all trades or businesses is less than zero, the taxpayer's QBI Component will be zero and any negative amount is carried forward to the next taxable year. The carried forward negative QBI will be treated as negative QBI from a separate trade or business for purpose of determining the QBI Component in the next taxable year.

### **Q19. Does a net QBI Component loss reduce the REIT PTP Component?**

A19. A net loss in the QBI Component does not impact the calculation of the deduction with respect to the REIT/PTP Component. However, if qualified PTP income is a loss, it is netted against qualified REIT dividends in a separate netting calculation from the loss netting of the QBI Component. These two netting requirements could result in two separate loss carryforwards, one for the QBI Component and one for the REIT/PTP Component.

### **Q20. Do I have to materially participate in a business to qualify for the deduction?**

A20. No. Material participation under section 469 is not required for the QBI deduction. Eligible taxpayers with income from a trade or business may be entitled to the QBI deduction (if they otherwise satisfy the requirements of section 199A) regardless of their involvement in the trade or business.

### **Q21. I file a joint return, my income is under the threshold amount, the only income I have is from W-2 wages and a domestic Schedule C business. Does my QBI equal the amount on Schedule C, line 31, Net profit or (loss)?**

A21. Not necessarily. As discussed in Q&A #4, QBI is the net amount of qualified items of income, gain, deduction and loss from any qualified trade or business. In addition to the profit or loss from Schedule C, QBI must be adjusted by any other items of gain or deduction related to the business, including but not limited to gains from Form 4797, the deductible part of self-employment tax, self-employed health insurance, self-employed SEP, SIMPLE, and qualified plan deductions. Amounts received as W-2 income, reasonable compensation from an S corporation, guaranteed payments from a partnership, and payments received by a partner for services under section 707(a) are not QBI and are not eligible for the deduction.

### **Q22. I am a statutory employee and report my income on Schedule C. Does it qualify for the qualified business income deduction?**

A22. Payments made to statutory employees, as defined in section 3121(d)(3), are excluded from the definition of wages considered income from the trade or business of performing services as an employee under §1.199A-5(d)(1). Items of income, gain, deduction, and loss from performance of services as a statutory employee are considered QBI and are eligible for the QBI deduction to the extent the requirements of section 199A are satisfied.

### **Q23. Can you explain in more detail how losses that are limited by basis, at-risk, or passive activity rules affect the deduction?**

A23. Items not included in taxable income are not qualified items of income, gain, deduction, or loss and are not current year QBI. If a taxpayer has a suspended loss that is allowed against current year taxable income, whether the loss reduces QBI depends on whether the loss was limited before or after January 1, 2018.

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

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

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

### **Q24. How do I satisfy the disclosure requirements if I choose to aggregate my trade or businesses?**

A24. Pub 535, Business Expenses, has a Qualified Business Income Deduction Worksheet that can be used to compute the QBI deduction. Schedule B, Aggregation of Business Operations, or another schedule reflecting the taxpayer's aggregation should be attached to the return as a PDF to satisfy the disclose requirement.

### **Q25. Do I need to disclose my aggregated trades or businesses when I use the simplified worksheet in the Instructions for Form 1040 to calculate the QBI deduction?**

A25. Yes, taxpayers should disclose their aggregations regardless of which worksheet they use to compute the QBI deduction. A failure to aggregate will not be considered to be an aggregation for purposes of the consistency requirement. So, if the taxpayer is under the threshold in 2018 and there is not a need to aggregate, it would not prevent the taxpayer from aggregating in a subsequent year when the taxpayer's taxable income exceeds the threshold amount.

### **Q26. I received a REIT dividend either directly or through a regulated investment company (RIC), reported as a section 199A dividend in box 5 of Form 1099-DIV. Is this amount eligible for the QBI deduction?**

A26. Box 5 of Form 1099-DIV is used by REITs and RICs to report amounts that may be eligible for the QBI deduction, but some amounts reported in box 5 may be ineligible for the deduction.

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

1. The taxpayer had an option to sell, was under a contractual obligation to sell, or entered into (and not closed) a short sale of substantially identical stock or securities.
2. The taxpayer was a grantor (writer) of an option to buy substantially identical stock or securities.
3. The taxpayer's risk of loss was diminished by holding one or more other positions in substantially similar or related property.

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

## Pass-through Entity

### **Q27. I am a partner in several partnerships, how do I know what qualifies for the deduction?**

A27. The Schedule K-1s for 2018 have new codes for the QBI deduction items. The partnership needs to provide each partner with their share of QBI items, W-2 wages, UBIA of qualified property, and other information necessary for partners to compute their deduction. The same rules apply for S corporations.

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

### **Q28. If a pass-through entity has one business, is it only required to provide one dollar amount for the QBI?**

A28. The pass-through entity is required to provide the owners QBI information necessary for the owner to compute the deduction. If the entity only has ordinary income from a single trade or business, it may be appropriate to reflect one QBI amount. Items from a pass-through entity are required to be separately stated due to the potential of unique treatment on one or more owners' returns. Items not included in current year taxable income are not included in QBI. Therefore, additional details will also need to be provided for the owners. If for example, in addition to ordinary income the owner is allocated a section 179 deduction, since the 179 deduction may be limited, the detail would be required in order for the owner to properly determine the current year QBI.

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

### **Q29. My income is under the threshold amount and I only have income from W-2 wages and a partnership interest. Does my QBI equal the amount of partnership income reported on Schedule K-1?**

A29. Maybe. As discussed in Q&A 4, QBI is the net amount of qualified items of income, gain, deduction and loss from any qualified trade or business. To determine the total amount of QBI, the taxpayer must consider deductions not reported on Schedule K-1 that are related to the trade or business. This could include unreimbursed partnership expenses, business interest expense, the deductible part of self-employment tax, the self-employment health insurance deduction, and self-employed SEP, SIMPLE, and qualified plan deductions in addition to other adjustments. Amounts received as guaranteed payments and payments received by a partner for services under section 707(a) are not QBI and are not eligible for the deduction.

**Q30. What about fiscal-year pass-through entities? I have a partnership whose fiscal year ended on March 31, 2018. Do I get a qualified business income deduction for the income I earned?**

A30. The QBI deduction itself is available only to taxpayers whose tax years begin after December 31, 2017.

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

For example, a calendar year partner in a partnership with a fiscal year end of March 31, 2018, will be able to include the partnership's QBI for the entire fiscal year in determining the partner's 2018 QBI deduction. The partner may also use the partnership's W-2 wages and UBIA of qualified property in computing the deduction, if applicable.

Note that the pass-through entity's 2017 Schedule K-1 does not have the detail relating to the new QBI deduction. The entity should still provide the necessary detail to the owners as an attachment to the Schedule K-1.

**Q31. In 2018, I receive a Schedule K-1 allocating a PTP loss. The loss is not currently allowable due to the passive activity rules. Is it used in computing the REIT/PTP component?**

A31. No. Since the loss is not included in taxable income for 2018, it is not used in computing the QBI deduction in 2018. In a later taxable year, when the loss is allowable, the loss generated in 2018 will be used in computing the REIT/PTP component.

**Q32. I was told that I can rely on the rules in the proposed regulations under § 1.199A-1 through 1.199A-6 to calculate qualified business income (QBI) for my 2018 tax return. Does this mean I do not have to include adjustments for items such as the deductible portion of self-employment tax, self-employed health insurance deduction, or the self-employed retirement deduction when calculating my QBI in 2018?**

A32. Section 199A(c)(1) defines qualified business income as the net amount of qualified items of income, gain, deduction, and loss with respect to any qualified trade or business of the taxpayer. Proposed regulation § 1.199A-1(b)(4) followed this definition, providing that QBI is the net amount of qualified items of income,

gain, deduction, and loss with respect to any trade or business as determined under the rules of 1.199A-3(b). Section 1.199A-1(b)(5) of the final regulations retains this rule, also providing that QBI means the net amount of qualified items of income, gain, deduction, and loss with respect to any trade or business (or aggregated trade or business) as determined under the rules of 1.199A-3(b).

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

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

**Q33. Health insurance premiums paid by an S-Corporation for greater than 2% shareholders reduce qualified business income (QBI) at the entity level by reducing the ordinary income used to compute allocable QBI. If I take the self-employed health insurance deduction for these premiums on my individual tax return, do I have to also include this deduction when calculating my QBI from the S-Corporation?**

A33. Generally, the self-employed health insurance deduction under section 162(l) is considered attributable to a trade or business for purposes of section 199A and will be a deduction in determining QBI. This may result in QBI being reduced at both the entity and the shareholder level.

## **Patrons and Cooperatives**

**Q34. What is the purpose of the proposed regulations in §§1.199A-7 through 1.199A-12?**

A34. The purpose of these proposed regulations is (1) to provide guidance to patrons of cooperatives regarding the application of the QBI deduction (See Q&A1) including the reduction of the QBI deduction that is required for patrons of Specified Agricultural and Horticultural Cooperatives (patron reduction) and (2) to provide guidance to Specified Agricultural and Horticultural Cooperatives (Specified Cooperatives) and their patrons on the computation and allowance of the deduction for income attributable to domestic production activities of Specified Cooperatives (Section 199A(g) deduction). These proposed rules apply to taxable years

ending after final regulations are published in the Federal Register. Taxpayers, however, may rely on these proposed regulations until that date, but only if the taxpayers apply the rules in their entirety and in a consistent manner.

### **Q35. I am a farmer who is a patron of a Specified Cooperative. Could I be entitled to two deductions under section 199A?**

A35. Yes. A farmer can have a qualified trade or business that generates a QBI deduction and could be passed through a Section 199A(g) deduction from the Specified Cooperative of which the farmer is a patron. Regardless of whether the section 199A(g) deduction was passed through, the farmer would have to determine whether their QBI deduction is subject to the patron reduction under section 199A(b)(7). The farmer may take any Section 199A(g) deduction passed through to the extent of their taxable income determined after their QBI deduction.

### **Q36. What are Specified Cooperatives?**

A36. They are agricultural or horticultural cooperatives to which Part I of subchapter T of the Internal Revenue Code applies that are engaged (i) in the manufacturing, production, growth, or extraction (MPGE) in whole or significant part of any agricultural or horticultural product, or (ii) in the marketing of any agricultural or horticultural product that their patrons have MPGE in whole or significant part. Specified Cooperatives include cooperatives that are considered nonexempt or exempt. Exempt cooperatives are those farmers' cooperatives that are qualified under section 521 of the code. An organization will not be considered exempt, even though it operates within the provisions of sections 521 and 1381 through 1388, unless it files IRS Form 1028, Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code or has previously received a ruling recognizing its exemption under section 521 of the Internal Revenue Code of 1986 or corresponding provisions of prior law.

### **Q37. How do cooperatives and their patrons handle the QBI deduction?**

A37. Cooperatives are C corporations for federal income tax purposes, and therefore are not eligible for the QBI deduction. However, patrons that are individuals and certain trusts and estates may qualify for the deduction. See also Q&A 2.

Patrons of cooperatives that are individuals, trusts or estates and that have QBI, qualified REIT dividends or qualified PTP income may qualify for the QBI deduction. The rules in §§1.199A-1 through 1.199A-6 apply to all taxpayers, including patrons, eligible to take the QBI deduction. See preceding Q&A's for additional information on computing the QBI deduction. To the extent a patron receives patronage dividends or similar payments from a cooperative, the patron must follow the additional special rules and clarification in proposed §1.199A-7 to calculate its QBI deduction. Patronage dividends or similar payments from cooperatives may be included in the patron's QBI to the extent that (i) these payments are related to the patron's trade or business, (ii) are qualified income at the cooperative's trade or business level, (iii) are not income from a specified service trade or business (SSTB) at the cooperative's trade or business level (unless the patron has taxable income below the threshold amount; see Q&A5), and (iv) provided the patron receives information from the cooperative regarding whether the payments are qualified items of income. Patrons that

receive qualified payments from a Specified Cooperative are required to reduce their QBI deduction as provided in section 199A(b)(7) (patron reduction). See Chapter 12 of Publication 535 and Instructions for Form 8995-A.

### **Q38. How is the patron reduction computed and what are qualified payments?**

A38. Patrons that receive qualified payments must reduce their QBI deduction by the lesser of 9% of the QBI properly allocable to the qualified payments, or 50% of the W-2 wages paid with respect to the QBI allocable to the qualified payments. This reduction is required whether the Specified Cooperative passes through all, some, or none of the Specified Cooperative's Section 199A(g) deduction to the patrons in that taxable year.

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

### **Q39. What information are Cooperatives required to determine and provide to patrons for computation of the QBI deduction?**

A39. Cooperatives must provide patrons with certain information for the patron to determine its QBI deduction. The cooperative must determine whether its distributions of patronage dividends and similar payments from each trade or business that is not a SSTB contain qualified items of income, gain, deduction, and loss. The cooperative must also determine the amount of SSTB income, gain, deduction, and loss included in its distributions that is qualified with respect to any SSTB directly conducted by the cooperative. A Specified Cooperative must also report the amount of distributions that are qualified payments made to the eligible taxpayer. All of this information is reported to the patron on an attachment to or on the Form 1099-PATR, Taxable Distributions Received From Cooperatives, or any successor form, unless otherwise provided by the instructions to the Form.

The patron then determines if any of the distributions may be included in the patron's QBI depending on the patron's taxable income and the statutory phase-in and threshold amounts (\$315,000 in the case of joint returns and \$157,500 for all other taxpayers for any taxable year beginning before 2019) and whether the patron reduction applies.

Cooperatives should not allocate W-2 wages or unadjusted basis immediately after acquisition (UBIA) of qualified property to their patrons. For the patrons' QBI deduction, the patrons consider the W-2 wages and UBIA of qualified property from the patrons' trade or business from which the payments arise.

### **Q40. What is the Section 199A(g) deduction?**

A40. Section 199A(g) provides a deduction for Specified Cooperatives and their patrons similar to the deduction under former section 199, which was known as the domestic production activities deduction. Section 199A(g) allows a deduction for income attributable to domestic production activities of Specified

Cooperatives. The deduction allowed is equal to 9 percent of the lesser of (i) the qualified production activities income (QPAI) or (ii) the taxable income of the Specified Cooperative for the taxable year. The deduction is further limited to 50 percent of the W-2 wages of the Specified Cooperative for the taxable year that are properly allocable. Calculating the deduction is further explained in Q&As below.

#### **Q41. How do Specified Cooperatives and their patrons handle the Section 199A(g) deduction?**

A41. Only a Specified Cooperative may calculate the Section 199A(g) deduction. A Specified Cooperative may pass all, some, or none of the Section 199A(g) deduction to patrons that are eligible to take the deduction (this does not include a patron that is C corporation, unless that patron is a Specified Cooperative). The Specified Cooperative will reduce its deduction under section 1382 by the amount of the Section 199A(g) deduction that was passed through.

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

#### **Q42. How do nonexempt Specified Cooperatives compute the Section 199A(g) deduction?**

A42. Proposed §1.199A-8 sets forth four steps to determine the amount of a nonexempt Specified Cooperative's Section 199A(g) deduction;

1. Patronage/Nonpatronage Split – Identify and separate the gross receipts and related deductions that are from patronage sources and from nonpatronage sources. Nonexempt Specified Cooperatives may use only patronage gross receipts and related deductions to calculate domestic production gross receipts (DPGR), QPAI, taxable income, and the W-2 wage limitation.
2. Identify Patronage DPGR – Nonexempt Specified Cooperatives only consider gross receipts from patronage sources when identifying DPGR from the disposition of agricultural or horticultural products. DPGR are gross receipts of the taxpayer that are derived from any lease, rental, license, sale, exchange, or other disposition of any agricultural or horticultural product which was MPGE by the taxpayer. Such term shall not include gross receipts which are derived from the disposition of land or services. Proposed §1.199A-9 contains additional information on DPGR.
3. Calculating Patronage QPAI – Nonexempt Specified Cooperatives must determine cost of goods sold (COGS) and other expenses, losses, or deductions that are allocable to patronage DPGR. Proposed §1.199A-10 contains additional information on making this determination.
4. Calculating Patronage Section 199A(g) Deduction – A nonexempt Specified Cooperative's Section 199A(g) deduction is equal to 9% of the lesser of QPAI or taxable income from patronage sources, and is subject to a 50% W-2 wage limitation. A patronage Section 199A(g) deduction may only be used to reduce patronage taxable income. Proposed §1.199A-11 contains additional information on the W-2 wage limitation.

#### **Q43. How do exempt Specified Cooperatives compute the Section 199A(g) deduction?**

A43. Exempt Specified Cooperatives calculate two separate Section 199A(g) deductions, one based on gross receipts and related deductions from patronage sources, and one based on gross receipts and related deductions from nonpatronage sources. Proposed §1.199A-8 requires exempt Specified Cooperatives to perform steps two through four twice, first using only its patronage gross receipts and related deductions and second using only its nonpatronage gross receipts and related deductions. An exempt Specified Cooperative cannot combine, merge, or net patronage and nonpatronage items at any step in determining its patronage Section 199A(g) deduction and its nonpatronage Section 199A(g) deduction. Exempt Specified Cooperatives may only use the patronage Section 199A(g) deduction to reduce patronage taxable income.

#### **Q44. How does a Specified Cooperative pass through a Section 199A(g) deduction to its patrons?**

A44. Specified Cooperatives may pass through all, some, or none of their allowable Section 199A(g) deduction to patrons who are eligible taxpayers as defined in section 199A(g)(2)(D), that is, (i) a patron, that is not a C corporation, or (ii) a patron that is a Specified Cooperative. A Specified Cooperative must notify each of its patrons of the amount of Section 199A(g) deduction being passed to them in a written notice mailed to the patron during the payment period described in section 1382(d) and also include any amount passed through in such written notice on the Form 1099-PATR issued to its patrons. The amount of the Section 199A(g) deduction that a Specified Cooperative can pass through to an eligible taxpayer is limited to the portion of the Section 199A(g) deduction that is allowed with respect to the QPAI to which the qualified payments made to the patron are attributable. The Specified Cooperative will reduce its deduction under section 1382 by the amount of the Section 199A(g) deduction that was passed through.

Individual patrons that receive a written notice from a Specified Cooperative allocating a Section 199A(g) deduction may take the deduction to the extent of their taxable income determined after their QBI deduction. A Section 199A(g) deduction that can't be used in the year it is received is lost. A Specified Cooperative that receives a Section 199A(g) deduction as an eligible taxpayer can take the deduction only against patronage gross income and related deductions, or can pass on the deduction to its patrons that are eligible taxpayers.

#### **Q45. Can an exempt Specified Cooperative pass through its nonpatronage Section 199A(g) deduction?**

A45. No. Exempt Specified Cooperatives are not allowed to pass through any of the section 199A(g) deduction attributable to nonpatronage activities because no QPAI is attributable to any qualified payments.

#### **Q46. What if a Specified Cooperative is a partner in a partnership?**

A46. The proposed rules provide that the partnership must separately identify and report on the Schedule K-1 to the Form 1065, U.S. Return of Partnership Income, issued to a Specified Cooperative partner the Specified Cooperative's allocable share of gross receipts and related deductions. This allows the Specified Cooperative partner to include the partnership items when applying the four steps in proposed §1.199A-8 required to calculate its Section 199A(g) deduction (as described in Q&A42). For example, when applying the four steps, a Specified Cooperative determines the amount of gross receipts from the partnership that are patronage and that qualify as DPGR from the disposition of agricultural or horticultural products.

## **Q47. What is the definition of patronage and nonpatronage?**

A47. Proposed §1.1388-1(f) sets forth a definition of patronage and nonpatronage that is consistent with the current state of the law. Whether an item of income or deduction is patronage or nonpatronage sourced is determined by applying the directly related use test. The directly related use test provides that if the income or deduction is produced by a transaction that actually facilitates the accomplishment of the cooperative's marketing, purchasing, or services activities, the income or deduction is from patronage sources. However, if the transaction producing the income or deduction does not actually facilitate the accomplishment of these activities but merely enhances the overall profitability of the cooperative, being merely incidental to the association's cooperative operation, the income or deduction is from nonpatronage sources. Patronage and nonpatronage income or deductions cannot be netted unless otherwise permitted by the Internal Revenue Code or regulations thereunder, or guidance published in the Internal Revenue Bulletin.

## **Rental FAQs**

### **Q48. When is rental real estate treated as a trade or business for purposes of determining the QBI deduction?**

A48. Rental real estate is treated as a trade or business for purposes of the QBI deduction under section 199A if it meets any of the following three tests:

1. The rental real estate rises to the level of a section 162 trade or business.
2. The rental real estate is a rental real estate enterprise meeting the requirements of the safe harbor provided in Revenue Procedure 2019-38. See Q49.
3. The rental or licensing of property is to a commonly controlled trade or business operated by an individual or a passthrough entity as described in Treas. Reg. § 1.199A-1(b)(14). This is often referred to as a self-rental.

### **Q49. When is a rental real estate enterprise eligible to rely upon the safe harbor provided in Revenue Procedure 2019-38?**

A49. Revenue Procedure 2019-38 provides a safe harbor under which a rental real estate enterprise that meets certain requirements will be treated as a trade or business for purposes of section 199A. In order to rely upon the safe harbor, the enterprise must meet all requirements of the Revenue Procedure.

A rental real estate enterprise is defined as an interest in real property held for the production of rents and may consist of an interest in a single property or interests in multiple properties. The interest must be held directly or through a disregarded entity by the individual or relevant passthrough entity (RPE) relying on the safe harbor. Multiple properties of the same category (residential or commercial) can be treated as a single enterprise if the individual or RPE also includes all other properties of the same category in the enterprise. Residential and commercial property cannot be combined into a single property except for mixed-use property as discussed in Q 51. To qualify under the safe harbor, the rental real estate enterprise must satisfy all of the following requirements:

1. Separate books and records are maintained to reflect income and expenses for each rental real estate enterprise. If a rental real estate enterprise contains more than one property, this requirement may be

satisfied if income and expense information statements for each property are maintained and then consolidated;

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

3. The taxpayer maintains contemporaneous records, including time reports, logs, or similar documents, regarding the following: (i) hours of all services performed; (ii) description of all services performed; (iii) dates on which such services were performed; and (iv) who performed the services. If services with respect to the rental real estate enterprise are performed by employees or independent contractors, the taxpayer may provide a description of the rental services performed by such employee or independent contractor, the amount of time such employee or independent contractor generally spends performing such services for the enterprise, and time, wage, or payment records for such employee or independent contractor. Such records are to be made available for inspection at the request of the IRS.

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

- A description (including the address and rental category) of all rental real estate properties that are included in each rental real estate enterprise;
- A description (including the address and rental category) of rental real estate properties acquired and disposed of during the taxable year; and
- A representation that the requirements of this revenue procedure have been satisfied.

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

## **Q50. How can I meet the records requirement of the safe harbor contained in Revenue Procedure 2019-38 and what happens if I don't meet it?**

A50: Reliance upon the safe harbor requires the maintenance of contemporaneous records, including time reports, logs or similar documents, regarding the hours of all services performed, a description of services performed, dates on which such services were performed and who performed the services.

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

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

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

### **Q51. How does the safe harbor provided for in Revenue Procedure 2019-38 apply to mixed-use properties?**

A51. Mixed-use property, as defined in Revenue Procedure 2019-38, is a single building that combines residential and commercial units. An interest in mixed-use property may be treated as a single rental real estate enterprise or may be split into separate residential and commercial properties. If treated as a single rental real estate enterprise, it may not be treated as part of the same enterprise as other residential, commercial or mixed-use property.

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

1. Each mixed-use building is treated as two separate interests in rental real estate, one commercial and one residential. The taxpayer treats these as six separate rental real estate enterprises, three commercial and three residential.
2. Each mixed-use building is treated as two separate interests in rental real estate, one commercial and one residential. The taxpayer treats the three commercial interests as a single rental real estate enterprise and also treats the three residential interests as a separate single rental real estate enterprise. The taxpayer has two rental real estate enterprises, one commercial and one residential.
3. Each mixed-use building is treated as two separate interests in rental real estate, one commercial and one residential. The taxpayer treats the three commercial interests as a single rental real estate enterprise but treats the residential interests as three separate single rental real estate enterprises. The taxpayer has four rental real estate enterprises, one commercial and three residential.
4. Each mixed-use building is treated as two separate interests in rental real estate, one commercial and one residential. The taxpayer treats the three residential interests as a single rental real estate enterprise but treats the commercial interests as three separate single rental real estate enterprises. The taxpayer has four rental real estate enterprises, three commercial and one residential.
5. Each mixed-use property is treated as a stand-alone enterprise containing both residential and commercial properties. The taxpayer has three rental real estate enterprises, three mixed-use.

If other non-mixed-use properties are also owned or subsequently acquired, the similar properties rule under Revenue Procedure 2019-38 still applies. In other words, if the mixed-use properties are split into residential and commercial properties, the requirement to either treat all similar properties as their own enterprises or as a single enterprise will include these properties, as well. For example, if the taxpayer described in example

b above acquires an additional commercial property, that new property must also be added to the existing commercial real estate enterprise. The taxpayer may not treat the newly acquired commercial property as its own enterprise.

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

**Q52. If rental real estate is treated as a trade or business for purposes of the QBI deduction (discussed in Q 48), do I report the rental real estate on Schedule C of my Form 1040, and is it subject to self-employment tax?**

A52. In general, the answer to both questions is no. How rental real estate is reported on Form 1040 has NOT changed due to the QBI deduction. Rental real estate is usually reported on Schedule E, Part I, and is not subject to self-employment tax.

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

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

**Q53. Can rental real estate that is a trade or business for purposes of section 199A be aggregated using the rules in Treas. Reg. § 1.199A-4?**

A53. Rental real estate that is a trade or business can be aggregated with other trades or businesses, including other rental real estate trades or businesses, if the rules of section 1.199A-4 of the Regulations are met. This includes rental real estate that rises to the level of a section 162 trade or business, rental real estate enterprises that meet the safe harbor requirements of Revenue Procedure 2019-38 and self-rentals as described in section 1.199A-1(b)(14).

**Q54. Do I have to materially participate in rental real estate for it to qualify for the QBI deduction?**

A54. No. Section 199A does not have a material participation requirement. Eligible taxpayers with income from a qualified trade or business may be entitled to the QBI deduction regardless of their level of involvement in the trade or business.

**Q55. If my rental real estate generates a net loss that is limited by section 469, passive activity loss limitations, what do I do with those losses for QBI purposes?**

A55. Any losses from a trade or business that are suspended and not available for use in computing taxable income in the year incurred are not included in QBI for that year. The suspended loss will be treated as qualified business net loss carryover from a separate trade or business in the year the loss is allowed for

purposes of determining taxable income.

For example, Taxpayer A owns rental property that rises to the level of a section 162 trade or business. The rental property generates a \$20,000 net loss in Tax Year 2018. The loss would be includable in QBI in Tax Year 2018 if it were not fully limited by section 469, passive activity loss limitations. The \$20,000 loss is not included in the calculation of taxable income in Tax Year 2018, so it is not included in A's QBI for Tax Year 2018. However, if the loss is allowed for use in computing A's Tax Year 2019 taxable income, the loss will be treated as qualified business net loss carryover from a separate trade or business and will be used to calculate A's Tax Year 2019 QBI deduction.

See Q23 for more information on suspended losses.

### **Q56. Do I need to file information returns, such as Form 1099-MISC, if I take a QBI deduction from income generated by my rental property?**

A56. As provided in section 6041, persons engaged in a trade or business and making payment in the course of such trade or business to another person of \$600 or more in any taxable year may be required to file an information return reflecting the details of such transactions. Application of section 199A and its rules do not change any existing requirement for information reporting as provided under section 6041.

### **Q57. Triple net leases do not qualify for the safe harbor of Revenue Procedure 2019-38. Does this mean that income, gains, deductions and losses from a triple net lease can never be included in QBI?**

A57. No. As explained in Q 48, rental real estate is treated as a trade or business for purposes of the QBI deduction if it rises to the level of a section 162 trade or business, is a self-rental as described in Treas. Reg. § 1.199A-1(b)(14) or is a rental real estate enterprise described in Revenue Procedure 2019-38. Revenue Procedure 2019-38 only excludes triple net leases from being included in a rental real estate enterprise (and are therefore not eligible for the safe harbor).

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

### **Q58. If real estate is rented to a SSTB does that mean the rental real estate is also considered an SSTB?**

A58. It depends. If real estate is rented to a commonly owned SSTB, meaning 50 percent or more common ownership including direct or indirect ownership by related parties within the meaning of sections 267(b) or 707(b), the portion of real estate rented to the commonly owned SSTB is a separate SSTB with respect to the related parties, only. Any portions not rented to the commonly owned SSTB, as well as any interests held by an unrelated party, would not be a SSTB.

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

### **Q59. If real estate is rented to a C corporation, are the income, gain, deduction and losses from the rental QBI?**

A59. It depends. Rentals to a C corporation can generate QBI if the rental real estate is conducted by an individual or a relevant passthrough entity (RPE) and is a section 162 trade or business or a rental real estate enterprise under Revenue Procedure 2019-38. The self-rental rule in Treas. Reg. § 1.199A-1(b)(14) does not apply to rentals to C corporations. Disclaimer

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