



QBI 20% of Your Income Tax-Free

February 6, 2019



PEASE & ASSOCIATES, CPAs

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Today's Agenda



- ▶ General Overview
- ▶ What Businesses Qualify/Not Qualify
- ▶ How the Computation Works
- ▶ Aggregation Election/Requirement
- ▶ Planning Ideas



TAXES

BUSINESS

GROWTH

General Overview



General Overview



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History of 199A



- ▶ Tax Cuts and Jobs Act Passed December 22, 2017
- ▶ Proposed Regulations issued in August 2018
- ▶ Final Regulations issued in January 2019
- ▶ Purpose of 199A – C Corporation and Pass Through Entity (PTE) equality
 - ▶ 21% maximum C Corp rate, possible 29.6% PTE rate

C Corporation vs. S Corporation Considerations



Consider effective rates:

Marginal Rate – S Corporation	
Top Marginal Tax Rate – Individuals	37.00%
IRC §199A Deduction (20% of top rate)	(7.40%)
Total Effective Rate – S Corp	29.60%

Flat Rate – C Corporation	21.00%				
Percentage of Earnings Distributed	100.0%	50.0%	20.0%	10.0%	0.0%
After Tax Percentage to Distribute	79.00%	39.50%	15.80%	7.90%	0.00%
Long Term Capital Gain Rate	23.80%	23.80%	23.80%	23.80%	23.80%
Effective Rate of Distributed Earnings	18.80%	9.40%	3.76%	1.88%	0.00%
Plus C Corp Tax Rate	21.00%	21.00%	21.00%	21.00%	21.00%
Total Effective Rate – C Corp	39.80%	30.40%	24.76%	22.88%	21.00%

199A Overview



- ▶ Deduction is not permanent
- ▶ Deduction is available in 2018 for fiscal year taxpayers
- ▶ Do not need to itemize to be eligible for deduction
- ▶ Deduction does not reduce basis
- ▶ Deduction does not reduce self-employment tax or net investment income tax



**Taxable Income
> \$315,000
Married Filing Joint**

Yes

**Is it
Prohibited
Income?**

No

No

**Excludable =
20% of Business
Income**

**Deduction = Smaller of
Excludable or 20% of
Taxable Income (See
bottom right corner re:
taxable income.)**

Yes

No Deduction!

**Compute 20% of
Business Income**

= A

AND

**Compute Greater of:
1) 50% of Wages, and,
2) 25% of Wages Plus 2.5% of
Property Cost**

= B

Then

**Excludable =
Lesser of
A or B**

**Deduction = Smaller
of Excludable or 20%
of: Taxable Income
less Capital Gains**



What Businesses
Qualify/Not Qualify



What Businesses Qualify/Not Qualify



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Qualifying Businesses



- ▶ For purposes of the QBI deduction, a qualified business includes any trade or business defined under Section 162. This also includes rental real estate that is treated as a trade or business.
- ▶ A Section 162 Trade or Business is not clearly defined in the Code and regulations but in order to qualify as a “trade or business”, the taxpayer must be involved in the activity as follows:
 - ▶ “with continuity and regularity” (and not “merely sporadically”);
 - ▶ and the taxpayer’s primary purpose for engaging in the activity must be for income or profit

Rental Real Estate as a Trade or Business



- ▶ IRS safe harbor guidance has the following requirements:
 - ▶ Maintaining separate books or records for each rental activity
 - ▶ Spending 250 hours or more each year
 - ▶ Maintaining contemporaneous records to support this





- ▶ Safe harbor test cannot be used in the following circumstances:
 - ▶ Renting your personal residence
 - ▶ Properties rented on a triple net lease basis
- ▶ If relying on safe harbor test, a statement must be attached to the return stating that all requirements have been satisfied

Triple Net Leases



- ▶ Landlord passes on responsibility of paying real estate taxes, insurance, and maintenance to tenant
- ▶ Viewed as an investment rather than a trade or business
- ▶ Excluded from the IRS rental real estate trade or business safe harbor

Self-Rental Real Estate



- ▶ Self rental to a commonly controlled trade or business may be treated as a trade or business
- ▶ Common control – 50% or more for both the property and the business
- ▶ Excludes Specified Service Trades or Businesses (SSTB's)

Non-Qualifying Businesses



The following are not considered to be qualified trade or business activities:

- ▶ A specified service trade or business (SSTB), or (**although this category is widely considered as non-qualifying, there are limitations that apply as well as de minimis rules. We will discuss this in further detail later in the presentation**)The other activity that does not qualify under QBI is The trade or business of performing services as an employee

Let's discuss the employee issue first before we cover the specifics of SSTB's.

Trade or Business of Being an Employee



- ▶ Trade or business of performing services as an employee:

Doesn't matter if the employer treats a service provider as an independent contractor, if the IRS determines that the service provider is an employee using established factors, no §199A deduction is available.

- ▶ Solely for purposes of §199A:

If an individual who was an employee is subsequently treated as an independent contractor, but continues to render substantially the same services to the former employer, the individual is presumed to still be an employee; thus, no §199A deduction. The Final Regulations indicate that a person who was an employee will be presumed to be an employee for a period of three years even after restructuring to be an independent contractor or going to work for a separate entity that is an independent contractor to the original employer.

- ▶ Fortunately, this presumption may be rebutted by providing records that are sufficient to corroborate the individual's status as a non-employee for federal tax purposes. Records can include contracts and partnership or shareholder agreements.

Specified Service Trade or Business (SSTB)



- ▶ An SSTB is:

“Any trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, investing, trading or dealing in securities, partnership interests or commodities or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners.”

- ▶ Architects and engineers are specifically excluded from the definition of SSTB services.
- ▶ For taxpayers with less than \$157,500 or \$315,000 of taxable income, if married, income from an SSTB qualifies for the 20% QBI deduction. Taxpayers with income above those levels have a phase-out or complete elimination of the deduction.

Specified Service Trade or Business (SSTB) (cont.)



- ▶ It is very important to note that the determination of whether a business is an SSTB is made at the business level. Reg. §1.199A-6(b)(3): an RPE (*relevant pass-through entity*) must separately identify and report on the Schedule K-1 issued to its owners whether any business engaged in directly by the RPE is an SSTB.

This is very important!

Specified Service Trade or Business (SSTB) (cont.)



- ▶ Example:

“A” is a CPA. “A” works for an engineering firm S corporation, but performs all accounting functions, which IS an SSTB. The determination of the nature of the business is done at the S corporation level. Because engineering is not an SSTB, on the K-1 the S corporation provides “A”, it will not designate the business as an SSTB. Thus, “A” should not be prohibited from claiming the §199A deduction.

Specified Service Trade or Business (SSTB) (cont.)



Over the next several slides, I will explain how the service categories are defined. I will cover most but not all in detail.

- ▶ Consulting:
 - ▶ Those who provide professional advice and counsel to clients to assist the client in achieving goals and solving problems, including government lobbyists
 - ▶ **Does not** include:
 - ▶ Salespeople and those who provide training and educational courses
 - ▶ Performance of consulting services which are not separately paid for and are either:
 - ▶ Embedded in, or ancillary to, the sale of goods, or
 - ▶ Embedded in, or ancillary to, the performance of services on behalf of a business that isn't otherwise a specified service business, such as a building contractor

Specified Service Trade or Business (SSTB) (cont.)



▶ **Health:**

- ▶ Applies to healthcare professional (physician, pharmacist, nurse, veterinarian, etc.) performing medical services directly or indirectly for a patient
- ▶ Pharmacies, adult congregate facilities, surgery centers and testing operations can escape SSTB services by having independent parties provide the medical services associated with the facility or operation
- ▶ Does not include provision of services such as health clubs, payment processing, or the research, testing, manufacture, and/or sale of pharmaceuticals and/or medical devices

▶ **Law:**

- ▶ Includes lawyers, paralegals, legal arbitrators, mediators, and similar professionals performing legal services in their capacity as such.
- ▶ Does not include performance of services which do not require unique skills to the practice of law, such as printers, delivery services, or stenography services

Specified Service Trade or Business (SSTB) (cont.)



▶ **Accounting:**

- ▶ Services provided by individuals such as accountants, enrolled agents, return preparers, financial auditors, and similar professionals performing services in their capacity as such (i.e. bookkeepers)
- ▶ The field of accounting does not include payment processing and billing analysis.

▶ **Actuarial Science:**

- ▶ Services provided by individuals such as actuaries and similar professionals performing services in their capacity as such.
- ▶ The field of actuarial science does not include the provision of services by analysts, economists, mathematicians, and statisticians not engaged in analyzing or assessing the financial costs of risk or uncertainty of events.

Specified Service Trade or Business (SSTB) (cont.)



▶ **Financial Services:**

- ▶ Includes services such as wealth management, advising clients with respect to finances, developing retirement plans, and providing advisory and similar services related to mergers and acquisitions. Taking deposits and making loans is not an SSTB service but arranging lending transactions between lenders and borrowers is an SSTB service.
- ▶ Does not include S Corp banks.

▶ **Brokerage Services:**

- ▶ The performance of services in which a person arranges transactions between a buyer and a seller with respect to securities (as defined in section 475(c)(2)) for a commission or fee. This includes services provided by stock brokers and other similar professionals.
- ▶ The performance of services in the field of law does not include services provided by real estate agents and brokers, or insurance agents and brokers.

▶ **Investing and Investment:**

- ▶ A trade or business involving the receipt of fees for providing investing, asset management, or investment management services, including providing advice with respect to buying and selling investments.
- ▶ The performance of services of investing and investment management does not include directly managing real property.

Specified Service Trade or Business (SSTB) (cont.)



▶ **Trading:**

- ▶ A trade or business of trading in securities (as defined in section 475(c)(2)), commodities (as defined in section 475(e)(2)), or partnership interests.
- ▶ Whether a person is a trader in securities, commodities, or partnership interests is determined by taking into account all relevant facts and circumstances, including the source and type of profit that is associated with engaging in the activity regardless of whether that person trades for the person's own account, for the account of others, or any combination thereof.

Specified Service Trade or Business (SSTB) (cont.)



▶ **Dealing in Securities:**

- ▶ The provision of services in dealing means trades or businesses dealing in securities (as defined in section 475(c)(2)), commodities (as defined in section 475(e)(2)), or partnership interests that regularly purchase securities, commodities, or partnership interests from and sell securities, commodities, or partnership interests to customers in the ordinary course of a trade or business or regularly offer to enter into, assume, offset, assign, or otherwise terminate positions in securities, commodities, or partnership interests, with customers in the ordinary course of a trade or business.
- ▶ Performing services to originate a loan is not treated as the purchase of a security from the borrower in determining whether the lender is dealing in securities.

Specified Service Trade or Business (SSTB) (cont.)



▶ **Performing Arts:**

- ▶ The performance of services by individuals who participate in the creation of performing arts, such as actors, singers, musicians, entertainers, directors, and similar professionals performing services in their capacity as such.
- ▶ The performance of services in the field of performing arts does not include the provision of services that do not require skills unique to the creation of performing arts, such as the maintenance and operation of equipment or facilities for use in the performing arts.
- ▶ Similarly, the performance of services in the field of the performing arts does not include the provision of services by persons who broadcast or otherwise disseminate video or audio of performing arts to the public.

Specified Service Trade or Business (SSTB) (cont.)



▶ **Athletics:**

- ▶ The performance of services by individuals who participate in athletic competition such as athletes, coaches, and team managers in sports such as baseball, basketball, football, soccer, hockey, martial arts, boxing, bowling, tennis, golf, skiing, snowboarding, track and field, billiards, and racing. Includes PTEs that own professional sports teams.
- ▶ The performance of services in the field of athletics does not include the provision of services that do not require skills unique to athletic competition, such as the maintenance and operation of equipment or facilities for use in athletic events. Similarly, the performance of services in the field of athletics does not include the provision of services by persons who broadcast or otherwise disseminate video or audio of athletic events to the public.

Specified Service Trade or Business (SSTB) (cont.)



- ▶ **An SSTB includes:**

“Any trade or business where the principal assets of such trade or business is the reputation or skill of one or more of its employees or owners.”

- ▶ This was very concerning prior to the Proposed Regulations.
 - ▶ The Final Regulations, however, interpret this VERY narrowly.
-
- ▶ **A business will only be a “trade or business where the principal assets of such trade or business is the reputation or skill of one or more of its employees or owners” if:**
 - ▶ A person receives fees, compensation, or other income for endorsing products or services,
 - ▶ A person licenses or receives fees, compensation or other income for the use of an individual’s image, likeness, name, signature, voice, trademark, or other symbols associated with the individual’s identity, or
 - ▶ A person receives fees, compensation, or other income for appearing at an event on radio, television, or another media format.

Specified Service Trade or Business (SSTB) – Anti-Abuse Rule



- ▶ An anti-abuse rule prevents specified service businesses otherwise ineligible for the 20% deduction to use related entities to create income eligible for the 20% deduction.
- ▶ Anti-abuse rule applies if there is 50% or more common related party ownership between specified service business and qualifying business.
- ▶ The 80% rule of its property or services to the an SSTB with common related party ownership that was in the Proposed Regulations has been eliminated in the Final Regulations.
- ▶ Simply stated, if there is more than 50% or more of common ownership, the portion of the trade or business providing property or services to the 50% or more commonly owned SSTB, will be treated as a separate SSTB, with the income attributable to the services provided to non-SSTBs being considered to be non-SSTB income.

Specified Service Trade or Business (SSTB) – De Minimis Rule



- ▶ Trades or businesses with less than \$25 million in gross receipts are not an SSTB if less than 10% of the gross receipts are attributable to a SSTB
- ▶ Trades or business with more than \$25 million in gross receipts are not an SSTB if less than 5% of the gross receipts are attributable to a SSTB
- ▶ Example:

A consultant could join an engineering firm with less than \$25 million in annual receipts and qualify non-employment income for the exemption, if the consulting revenue is less than 10% of total revenue. A 5% threshold will apply if the engineering firm has more than \$25 million in annual receipts.

A close-up photograph of a person's hands working at a desk. One hand is holding a pen over a calculator, while the other hand is resting on the calculator's keypad. A laptop keyboard is visible in the background. The scene is brightly lit, suggesting a window nearby.

How the Computation Works



How the Computation Works



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**Compute 20% of
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of: Taxable Income
less Capital Gains**

What Qualifies as Business Income



- ▶ QBI deduction is 20% of qualified business income
- ▶ Must be effectively connected with conduct of business within the United States
 - ▶ Income originating outside the U.S. does not qualify; depending upon entity structure, this may exclude income eligible for IC-DISC commission
- ▶ Qualified income from a partnership, S corporation, or sole proprietorship
 - ▶ Investment income is excluded, including interest, dividends and capital gains
 - ▶ Investment expenses do not reduce QBI
 - ▶ Net Section 1231 gain is not included if taxed as capital gain
 - ▶ Net Section 1231 loss **does** reduce QBI
- ▶ Earned income is excluded, including salaries and guaranteed payments
 - ▶ Reasonable compensation paid to S corp. shareholder is excluded, but counts toward wage test (addressed later)
 - ▶ LLC with no wages could consider electing to be taxed as an S corporation and pay reasonable wages to its owners, to get the QBI deduction on the remaining profit

QBI Taxable Income Limitation



- ▶ QBI deduction can be affected by the amount of taxable income before the deduction
- ▶ Relevant taxable income ranges:
 - ▶ Less than \$315,000 for married filing joint (MFJ) return; less than \$157,500 for all others
 - ▶ Between \$315,000 - \$415,000 for MFJ; from \$157,500 to \$207,500 for all others
 - ▶ Over \$415,000 for MFJ; over \$207,500 for all others
- ▶ Taxable income below the phase-out range:
 - ▶ QBI deduction is allowed in full
 - ▶ Business being a SSTB does not matter
 - ▶ Wage and tangible property cost basis do not matter

Wage and UBIA Limitations



- ▶ Taxable income above lower end of phase out range - QBI deduction can be limited unless meet wage or UBIA tests – based on the greater of:
 - ▶ 50% of W-2 wages for the business
 - ▶ 25% of W-2 wages plus 2.5% of unadjusted basis immediately after acquisition (UBIA) of qualified property
- ▶ W-2 wages – wages subject to withholding, plus elective deferrals, such as 401(k) contributions, plus deferred compensation
 - ▶ Rev. Proc. 2019-11 offers three methods of calculating W-2 wages
 - ▶ Can only include wages properly allocable to QBI
- ▶ Final regulations offer ability to include W-2 wages for common-law employees of the business paid by another entity, such as a related payroll entity or a professional employer organization (PEO)
 - ▶ Wages reallocated cannot count for the wage test of the payer
 - ▶ Decision to allocate wages may be affected by election to aggregate related businesses (discussed later)

What is UBIA?



- ▶ **UBIA of qualified property**
 - ▶ Primarily offered with real estate rental activities in mind
 - ▶ Available to all taxpayers
 - ▶ Unadjusted basis – original cost, with no reduction for depreciation
 - ▶ 2.5% only gives you a \$25,000 deduction per \$1 million of UBIA
 - ▶ Qualified property – tangible property subject to depreciation – no land or intangibles
 - ▶ Determine whether fixed asset software will calculate UBIA for you
- ▶ **UBIA generally uses original tax cost, but there are exceptions allowing higher original cost from before the following transactions:**
 - ▶ Section 1031 exchanges
 - ▶ Section 1033 involuntary conversions
 - ▶ Section 351 transfer to an S corporation
 - ▶ Section 743 basis adjustment on outside purchase of a partnership / LLC interest
- ▶ **UBIA of property is included in the QBI calculation for the later of:**
 - ▶ Ten years after the property is placed in service
 - ▶ The end of the last full year in the applicable recovery period (15, 27.5, and 39 year property)

Taxable Income Above Phase-Out Range



- ▶ If taxable income exceeds \$415,000 MFJ or \$207,500 for all others:
 - ▶ No QBI deduction is allowed for specialized service trade or business (SSTB) income
 - ▶ QBI deduction is fully subject to the wage and UBIA tests for all other business income
- ▶ Example:

ABC Co. and Related Entities
Based on December 31, 2018 Activity

Entity	Taxable Income	W-2 Wages	(A)	(B)	Tax Basis Depreciable Assets (UBIA)	2.5% Depreciable Assets	(D) = (B) + (C)	(E) = Greater of (A) or (D)	(F)	Lesser of (E) or (F)
			50% W-2 Wages	25% W-2 Wages			Total (25% W-2 Wages + 2.5% Dep Assets)	IRC 199A Limitation	20% * QBI Limitation	IRC 199A Deduction
Real Estate, LLC	200,000	0	0	0	1,400,000	35,000	35,000	35,000	40,000	35,000
XYZ Manufacturing, Inc	1,000,000	750,000	375,000	187,500	400,000	10,000	197,500	375,000	200,000	200,000

Taxable Income Within Phase-Out Range



- ▶ Taxable income between \$315,000 and \$415,000 MFJ; between \$157,500 and \$207,500 for all other taxpayers – this is the most complex part of the calculation:
 - ▶ Limitations based on wages and UBIA are being phased **in**
 - ▶ Ability to claim the tentative 20% QBI deduction for SSTB income is being phased **out**
 - ▶ Both adjustments occur ratably over the relevant range
 - ▶ If taxable income before any QBI deduction is \$385,000 MFJ, a taxpayer is 70% into the relevant range
 - ▶ The taxpayer will lose 70% of the additional deduction they would have received with no wage or UBIA limitation
 - ▶ If the income is also from an SSTB, they will lose 70% of the deduction that remained after the wage and UBIA adjustment
 - ▶ Once taxable income reaches the high end of the range, the deduction is zero

Two Additional Components of Section 199A



- ▶ In addition to any QBI deduction determined above, a taxpayer also gets a deduction for 20% of:
 - ▶ Qualified REIT dividends; and
 - ▶ Publicly traded partnership (PTP) income
 - ▶ The deduction for PTP income is subject to phase-out if it is from an SSTB; the wage and UBIA limitations do not apply
 - ▶ This deduction does not affect the primary QBI deduction explained previously, nor is it impacted by that deduction
- ▶ The final component is a deduction for specified agricultural and horticultural cooperatives
 - ▶ Generally 20% of qualified cooperative dividends
 - ▶ Law firms need not apply

Final Limit – Taxable Income Less Capital Gains



- ▶ The three QBI deductions noted above are then subject to an overall limitation of 20% of the excess of:
 - ▶ Taxable income before any QBI deduction; over
 - ▶ Net capital gain income taxable at favorable rates. This includes:
 - ▶ Long-term capital gains at 20% or less
 - ▶ Qualified dividend income at 20% or less
 - ▶ Unrecaptured Section 1250 gain at 25%
 - ▶ Collectibles gain at 28%
 - ▶ The QBI deduction is only allowed against income being taxed at ordinary income rates

A blurred background image showing hands holding a document, suggesting a meeting or agreement. The image is overlaid with a semi-transparent blue box containing the title text.

Aggregation Election Requirements



Aggregation Election/Requirement



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- ▶ The statute required that the deduction be determined separately for each business. However, that can cause limitations the deduction to be limited on the personal return.
- ▶ Aggregation allows for multiple entities to be grouped together
 - ▶ The election can be made by an individual or a pass-through entity.
 - ▶ Can only aggregate a Section 162 trade or business. This means that the SSTB's can not be included.
 - ▶ It allows for the QBI, W-2 wages and net tax value to be added together and treated as one trade or business.

The Election



- ▶ Aggregation is an election. However, once elected, the taxpayer is expected to continue to aggregate consistently in all later tax years.
 - ▶ If no election is completed in 2018, an election can still be made on a future return.
 - ▶ For 2018 only, an amended return can be prepared to complete the aggregation.
 - ▶ A change to election can be made to add a newly created or newly acquired trade or business.
 - ▶ If in a later year there was a change in facts and circumstances and a prior aggregation of trade or businesses no longer qualified then election is no longer valid and the rules would have to be reapplied to see if a new permissible aggregation exists.
- ▶ The election is a statement included with the tax return.
 - ▶ The election identifies each trade or business and other information.
 - ▶ If an individual fails to include the statement, then the IRS could disaggregate.

Aggregation Rules - Requirements



- ▶ In order to aggregate, the individual must demonstrate the following 5 requirements are met.
 1. The same person or group of persons, directly or indirectly, owns 50% or more of each trade or business to be aggregated;
 2. The ownership exists for a majority of the taxable year in which the items attributable to each trade or business to be aggregated are included in income;
 3. All of the items attributable to each trade or business to be aggregated are reported on returns with the same taxable year end;
 4. None of the trade or businesses are SSTB's.

Aggregation Rules – Requirements Cont'd



5. The trades or businesses to be aggregated satisfy at least two of the following factors (based on all the facts and circumstances):
 - ▶ The trades or businesses provide products and services that are the same or customarily offered together.
 - ▶ The trades or businesses share facilities or share significant centralized business elements, such as personnel, accounting, legal, manufacturing, purchasing, human resources, or information technology resources.
 - ▶ The trade of businesses are operated in coordination with, or reliance upon, one or more of the businesses in the aggregated group.

Ownership Breakdown



▶ Ownership Requirement

- ▶ Family attribution includes spouse, children, grandchildren, parents and siblings.
- ▶ The individual making the election does not need to own greater than 50% but must be able to show that a group of people own greater than 50%
- ▶ Example: There are three partnerships ABC, LLC; XYZ, LLC & 123, LLC. A chart below show the ownership.

	ABC	XYZ	123
Jamie	75%	50%	25%
Elizabeth	5%	5%	75%
Nathan	20%	45%	0%

- ▶ Assuming all other qualifications are met, Jamie and Elizabeth can aggregation all 3 entities together. Nathan will be able to aggregate ABC, LLC & XYZ, LLC.

Example of Aggregation



- ▶ Bob owns and operates a catering business and a restaurant through separate disregarded entities. The two businesses share centralized purchasing to obtain volume discounts and a centralized accounting office. Bob maintains a website and print advertising materials that reference both businesses. Can Bob aggregate the two businesses?
 - ▶ Bob owns 100% of both entities and the entities will be reported under the same year end. Neither entity is an SSTB. The businesses have similar products and are centralized. Therefore, Bob can aggregate the businesses on his tax return.

Entity Election



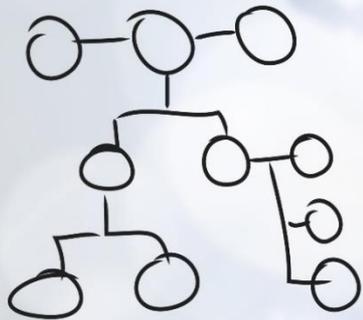
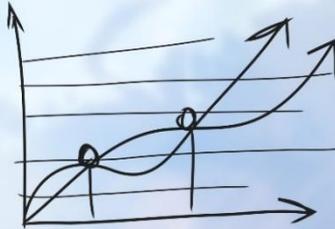
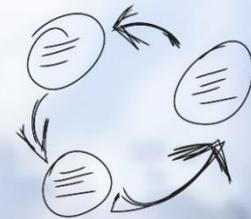
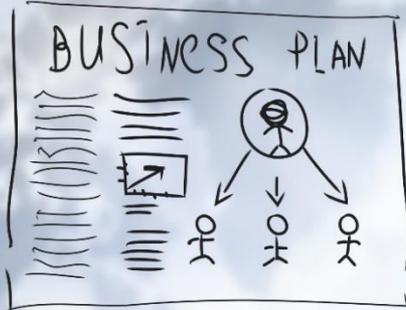
- ▶ A pass-through entity can also make the election. If the entity makes an election, then the owners are unable to change that aggregation but they can add to it on their 1040.
 - ▶ Example: Foodie, LLC is a catering business. Foodie, LLC also owns 70% of Southside, LLC. Southside, LLC has 2 side by side business, a theater and a bakery. The two entities share purchasing, accounting and management.
 - ▶ Foodie, LLC could aggregate with the bakery side of the business but not the theater.
 - ▶ However, Southside, LLC could do the aggregation to include Foodie, LLC with its two businesses.

Final Result



- ▶ Here is how the aggregation can be used to help a taxpayer maximize the QBI deduction.
- ▶ Example:

Entity	QBI	W-2 Wages	NTV	QBI Deduction
ABC, LLC	50,000	200,000	25,000	10,000
XYZ, LLC	500,000	100,000	100,000	50,000
123, LLC	150,000	0	0	0
Aggregated	700,000	300,000	125,000	140,000



Planning Ideas





Planning Ideas



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Paying Yourself Compensation



- ▶ Paying yourself from your business

- ▶ S-corporation

- ▶ Increase your pay to maximize the wage limitation number.



- ▶ Partnership (LLC)

- ▶ Guaranteed payments do not count towards the wage limitation. Furthermore, the guaranteed payment is a reduction to business income for computing the QBI.
 - ▶ Change ownership so that you do not own a direct interest in the LLC. For instance, insert a holding company between you and the LLC paying you. This converts the guaranteed payments to wages. Now the payments qualify for the wage limitation.
 - ▶ Change partnership agreement to make your payments a special allocation of income. Now the allocation is qualified income and is part of the potential 20% deduction.

Dealing with SSTBs



- ▶ Use “nonrelated” service provider

EXAMPLE:

- ▶ Medical Service Provider LLC (MSP) earns \$2 million
 - ▶ The entity is an SSTB and does not qualify for QBI
 - ▶ Set up a service provider which charges the MSP and pays out wages
 - ▶ Service provider must be nonrelated which means that whoever owns MSP cannot own 50% or more of the service provider.
 - ▶ The service provider income would qualify for QBI treatment
-
- ▶ Have SSTB owned by a complex trust which distributes less than \$157,500 to each of its beneficiaries
 - ▶ Each beneficiary picks up the \$157,500 as income and assuming they have no other income, the full \$157,500 qualifies for QBI treatment.
 - ▶ The trust can also qualify for QBI deduction if the remaining trust income is under \$157,500.
 - ▶ Consider Married Filing Separate (MFS) to bring the spouse with SSTB income below \$157,500.

QBI Limited by Taxable Income



- ▶ If you have QBI but non QBI losses or itemized deductions are decreasing your taxable income so that the 20% of taxable income limit applies so that you are missing out on the full potential 20% of QBI deduction:

Consider accelerating non QBI income. This increases your taxable income and drives up the 20% deduction.

EXAMPLE:

- ▶ You have \$1 million of QBI, but losses from non QBI activities or Itemized deductions are bringing your taxable income down to \$400,000. Your maximum potential 20% deduction is \$200,000. However, the deduction is limited to 20% of \$400,000 or \$80,000.
- ▶ If you have pending income such as a pension or IRA account and you are looking at distributions in the near future, take a distribution now to drive up the taxable income and benefit from the increased 20% deduction.
- ▶ The same holds true if you are contemplating a sale of stock, sell the stock, take the gain, and benefit from the increased 20% deduction.

Sale of a Business or Rental



- ▶ Timing of a sale of a Business or Rental will have an impact:
 - ▶ Sale of a business should be done at the end of the year to maximize potential 20% deduction on ordinary income from sale because the business has a full year of wages for purposes of the wage limitation.

EXAMPLE:

- ▶ Sale of business generates \$1 million of ordinary income
 - ▶ Potential QBI deduction of \$200,000 on the ordinary income
 - ▶ This requires \$400,000 of wages
 - ▶ If you sell in early January, you may not have paid \$400,000 of wages yet.
- ▶ Sale of a rental property should be done at the beginning of the year as compared to the end of the year because the 20% deduction limitation based on 2.5% of property basis is computed based on basis at December 31.

EXAMPLE:

- ▶ Property basis of \$10 million
 - ▶ If you sell in December, you do not get the potential \$250,000 QBI deduction based on property basis.
 - ▶ If you wait to sell in early January of the next year, you get the potential \$250,000 QBI deduction for the prior year.

Triple Net Leases



- ▶ Triple Net Leases do not qualify as business income for the QBI
 - ▶ Change the lease terms to not be a triple net lease. In a triple net lease, you do nothing but collect the rent. The more you do, the less you look like a triple net lease, the better your position to avoid this pitfall.
 - ▶ Taxpayers who regularly enter into and sell triple net leases can make the argument that they qualify as a business.
 - ▶ The business of a partnership is not attributed to the partners and the business of the partners are not attributed to the partnership.
 - ▶ Consider having a holding company which owns multiple single member LLCs so that all the activity of every single member LLC is treated as part of the holding company. Now the holding company can make the argument that it is regularly engaged in entering into and selling triple net leases.
 - ▶ It will be very important to log the time and efforts spent on the activity.

Thank You



Questions



PEASE & ASSOCIATES, CPAs