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The Qualified Business Income Deduction (Section 199A): Interim Guidance

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The Qualified Business Income Deduction (Section 199A): Interim Guidance

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April 19, 2018

The Tax Cuts and Jobs Act (the "TCJA") was signed into law by President Trump on December 22, 2017. The law generally goes into effect for taxable years beginning after December 31, 2017. One of the overriding purposes of the TCJA is to reduce the United States income tax rates on business income earned in the United States. The tax rate reductions are summarized below.

Comparison of Maximum Income Tax Rates

	Pre-TCJA	Under TCJA
Domestic C Corporations		
▪ Domestic C Corporations (other than Personal Service Corporations)	up to 35%	21%
▪ Personal Service Corporations[2]	35%	21%
Domestic C Corporations and Their Owners[3]	50.47%	39.8%
Taxpayers Other Than C Corporations and Their Owners[4]		
▪ "Tax-Disfavored" Business Income	39.6%	37%
▪ "Tax-Favored" Business Income	**39.6%**	**29.6%**

Under the TCJA, the tax-rate discrimination between Personal Service Corporations and other C corporations ended. All business income earned in the United States by domestic C corporations is now taxed at the same rate: 21 percent. All dividends received from C corporations by United States citizens and residents is also taxed at the same rates: a maximum dividend tax rate of 20 percent and a net investment income tax rate of 3.8 percent. See Table I, below. The TCJA, however, uses tax-rate discrimination to favor certain business owners[5] and the owners and beneficiaries of certain flow-through entities.[6] The tax-rate discrimination mechanism is Section 199A, which allows a 20 percent deduction against the "qualified business income"[7] of "tax-favored"[8] business owners. This mechanism will be called the "QBI deduction." The operation of the QBI deduction is illustrated in Table II, below.

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Why Unofficial Interim Guidance Is Necessary

The QBI deduction is overly complex and has generated significant confusion. The United States Treasury and IRS, however, refuse to be pinned down. Here are the details:

> On January 29, 2018 the American Institute of Certified Public Accountants (AICPA) wrote David J. Kautter, Assistant Secretary for Tax Policy, requesting immediate guidance on, *inter alia*, the operation of the QBI deduction.[9] IRS responded on February 7, 2018 with an updated "2017-2018 Priority Guidance Plan" which merely stated that its guidance under the TCJA would include "[c]computational, definitional, and [tax] anti-avoidance guidance under new Section 199A."[10] The political response was quick to come. On February 14, 2018 Treasury Secretary Mnuchin was questioned on by the seemingly tardy response from IRS at a Senate Finance Hearing. Secretary Mnuchin responded that there is a "full-time" focus regarding the QBI deduction and that guidance and rules will be issued to ensure that the QBI deduction cannot be abused. Secretary Mnuchin did not, however, provide a time table.[11] The AICPA responded a week later on February 21, 2018 with a second letter to David J. Kautter of IRS, which specifically focused on the implementation of the QBI deduction.[12] This second AICPA letter provides 12 pages of questions, analysis, and recommendations followed by a five-page outline of topics. This second AICPA letter is "must reading" for practitioners who wish to undertake tax planning for the QBI deduction. According to the National Small Business Association, David J. Kautter belatedly responded on March 7, 2018 stating the QBI deduction rules likely will not be released until the late summer or early fall.[13]

Observation:
Many business owners do not want to wait until the late summer or early fall to begin planning for the QBI deduction.

But many business owners do not want to wait until the late summer or early fall to begin planning for the QBI deduction. This is reflected in a number of articles in the media.[14] Thus, the purpose of this article is to explain the complex provisions of Section 199A as they apply to many businesses.[15] There are important ambiguities that will need be resolved by Treasury Regulations and IRS Notices that have yet to be drafted. Therefore, the reader should exercise caution and should read this article in conjunction with the AICPA letter dated February 21, 2018, whose URL is listed in Footnote 13. Also, in the interest of readability, there has been no attempt to capture every last detail of this overly complex law.

How Does the QBI Deduction Work?

As noted above, the QBI deduction allows business owners to deduct up to 20 percent of their "qualified business income." Thus, if a business owner has "qualified business income" of $100,000, the business owner's QBI deduction is $20,000, subject to limitations discussed below. The impact of the QBI deduction on effective income tax rates is illustrated in Table II, below.

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What Is "Qualified Business Income?"

What is "qualified business income" or QBI? This is one of the central questions surrounding the implementation of Section 199A.[16] We begin with the following specific requirements:

1. Location of the Business Within the United States

QBI must be effectively connected with the conduct of a trade or business within the United States within the meaning of Section 864(c), IRC[17] and the Treasury regulations promulgated thereunder.

2. Earned Income of Business Owners Is Excluded from QBI

QBI cannot include reasonable compensation for services performed by owners[18] regardless of whether the business is conducted as a sole proprietorship, partnership, S corporation, estate or trust. Thus,

a. QBI cannot include guaranteed payments made by a partnership to a partner described in Section 707(c).[19]

b. QBI cannot include payments described under Section 707(a) made by a partnership to a partner for services performed for the partnership.[20]

c. QBI cannot include income earned by a business owner as an employee of his business.[21]

Under the above interpretation of Section 199A, QBI is not affected by the type of legal entity through which the business is operated. This is consistent with the AICPA Report (February 21, 2018), which provides in a different context that "Treasury should not interpret changes to the Code in a manner that necessitates changes in the legal structures and employment arrangements of businesses."[22]

A question arises as to the characterization of income earned by a business owner where capital is an income-producing factor. Under existing IRS standards,[23] if capital is a material income producing factor, up to 30 percent of the income derived from the business is considered earned income. If capital is NOT a material income producing factor, all income is earned income. Specifically,

a. A partner who participates in the operation of a business engaged in selling merchandise would consider as earned income the fair market value of her services rendered to the partnership up to 30 percent of her income from the partnership.[24] This earned income is thereby excluded from the deduction "base" of "qualified business income."

b. Similarly, a business owner who operates a rental business as a sole proprietorship and performs significant services must treat up to 30 percent of her income as earned income.[25]

c. All fees derived from a professional occupation (doctor or lawyer) are earned income[26] since capital is not a material income producing factor.[27] It is very possible, however, that IRS is dealing with a situation where the professional is self-employed and works without employees.

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Again, QBI is not and should not be affected by the type of legal entity through which the business is operated.

3. Passive Investment Income[28] Is Generally Excluded from QBI

Passive investment income[29] is generally excluded from QBI. The "qualified items of income, gain, deduction and loss," discussed above, expressly do not include "any item" of capital gains and losses;[30] dividends;[31] interest other than interest income that is properly allocable to a trade or business;[32] foreign currency gains;[33] or annuity income which is not received in connection with the trade or business.[34] Thus, the QBI deduction cannot be taken against these items of income.

- **Observation**: As noted, Section 199A does not use the term "passive investment income." I have used this phrase simply as a conceptual container to hold the various types of passive income listed above.

- **Observation**: AICPA has specifically asked that IRS confirm that that taxpayers may claim the QBI deduction even if they do not personally participate in the generation of QBI income.[35]

4. Determination of QBI

Qualified business income or QBI is positively defined as (1) "the net amount of" qualified items of income, gain, deduction and loss with respect to any qualified trade or business of the taxpayer[36] (2) to the extent "included or allowed" in the determination of taxable income for the year.[37]

- **Observation**: QBI is limited to the net income of "qualified businesses." The "qualified businesses" limitation is discussed under **Limitations on the QBI Deduction**, below.

5. Determination of Qualified Business Losses

If losses are not "included or allowed" in the determination of taxable income for a year, they are not included in the determination of QBI. Examples include suspended passive losses[38] and suspended losses of partners and S corporation shareholders who lacks sufficient basis to deduct their flow-through losses. In both cases, the losses are not included or allowed in the determination of the business owner's taxable income.[39] The AICPA Report (February 21, 2018), Pages 6 and 7 urges IRS to clarify the determination of losses in three ways:

Observation:
If losses are not "included or allowed" in the determination of taxable income for a year, they are not included in the determination of QBI.

(1) To provide examples clarifying the mechanics of losses in section 199A.

(2) To clarify losses that are limited, suspended, and/or carried over pursuant to sections 704(d), 1366(d), 465, 469, and 461(l).

(3) To simplify the calculation for taxpayers with taxable income below the threshold amount.

The reader is urged to read the detailed analysis contained in Page 6 through 9 of the AICPA Report (February 21, 2018).

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6. Carryover of Qualified Business Losses to Future Years

If the net amount of "qualified income, gain, deduction, and loss" is less than zero, such negative amount is treated as an item of loss in the succeeding taxable year.[40] Thus, losses in one year reduce the QBI deduction in succeeding taxable years thereby increasing the effective income tax rate imposed on the qualified business income earned in such future years.[41]

Limitations on the QBI Deduction

There are several limitations on the QBI deduction.

1. The Taxable Income Limitation

A taxpayer's QBI deduction cannot exceed 20 percent of the taxpayer's taxable income (determined without the QBI deduction)[42] reduced by the taxpayers net capital gains as determined under Section 1(h).[43] This limitation appears to have been adopted so that most taxpayers with QBI deductions pay at least some tax.

In addition, the QBI deduction cannot reduce taxable income below zero.[44] In determining taxable income for purposes of this limitation,

a. Taxable income is determined without regard to the QBI deduction.[45]

b. Taxable income is reduced by the net capital gain as determined existing Section 1(h).[46]

This second limitation was adopted because a QBI deduction cannot create a net operating loss carryforward.[47]

2. The "Threshold Amount" Limitation

The full QBI deduction is allowed to married taxpayers filing joint income tax returns with taxable incomes up to $315,000; and to all other individual taxpayers with taxable incomes up to $157,500. These are "Threshold Amounts."[48] Once taxpayers exceed their "Threshold Amounts" they might lose part or all of their QBI deduction based on the additional limitations described immediately below in Paragraphs 3 and 4.

3. The "Specified Service Trade or Businesses" Limitation

a. In General

Qualified business income does not include income derived from a "specified service trade or business." This limitation only affects business owners with taxable incomes above the "Threshold Amount." See immediately above.

b. What Is a "Specified Service Trade or Business"?

What is a "specified service trade or business"? This is defined as (1) employment as an employee and (2) any trade or business performing services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of

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such trade or business is the reputation or skill of 1 or more of its employees.[49] A "specified service trade or business" also includes investing, investment management services, and trading in securities, partnership interests and commodities.[50]

Not all service firms are "specified service trade or business." Engineering and architectural service firms are explicitly "tax favored."[51] Other "tax-favored" service firms appear to include computer programming, lobbying, real estate management and advertising. Manufacturing firms and agricultural firms are also "tax favored" because their product is a tangible product, and not services. Retail stores also appear to be tax-favored.

- **Observation**: "Specified service trades or businesses," tend to generate high-paying 21st century jobs that require college, professional, and graduate school education. The "tax-favored" businesses that benefit from the QBI deduction tend to generate low-paying 19th century jobs such as jobs in factories, fields, mines and retail stores that do not require significant post-high school education. [52] These economic differences mirror the political divide in the United States today.

c. The Phase-Out of the QBI Deduction for a "Specified Services Trade or Business"

The QBI deduction for the QBI income of "specified services" begins to "phase out" once a business owner reaches the owner's "Threshold Amount,"[53] discussed in Paragraph 2, above. The phase-out range is $100,000 of taxable income for married taxpayers filing joint income tax returns; and $50,000 of taxable income for all other taxpayers.[54] Thus, "Phase-Out Amounts" end at $415,000 for married taxpayers filing joint income tax returns; and $207,500 for all other individual taxpayers. The complex phase-out calculation is discussed in the next section of this article under **"The Transitional QBI Deduction."**

Observation:
The QBI deduction for the QBI income of "specified services" begins to "phase out" once a business owner reaches the owner's "Threshold Amount."

4. The "W-2 Wages" and "Qualified Property" Limitations

Once taxpayers exceed their "Threshold Amount" their QBI deduction for cannot exceed 50 percent of "W-2 wages"; or 25 percent of the "W-2 wages" plus 2.5 percent of the unadjusted basis of the "qualified property" of their business.[55]

a. What are "W-2 Wages?"

Generally,

(1) "W-2 wages" cannot include any amount that is not properly allocable to "qualified business income," described above.[56]

(2) Also, the related W-2 return must be filed with the Social Security Administration on or before the 60th day after the due date (including extensions).[57]

Thus, the computation of W-2 income can be easily adjusted. For example, a sole proprietor cannot pay herself W-2 income. Neither can a partner.[58] But the sole shareholder of an S corporation can pay herself "W-2 wages."

It follows that a sole proprietor who otherwise qualifies for the QBI deduction and has taxable income over the threshold amount may want to incorporate herself as an S corporation so that she can give herself "W-2 wages" that permit her to maximize her QBI deduction.

Two remaining issues need to be addressed:

(1) Sometimes a single trade or business is divided, for legal reasons, into several entities. In such cases, IRS guidance is required to determine if W-2 income paid by one entity can be used to compute QBI income of the trade or business.

- I note that the AICPA Report (February 21, 2018), Page 5 asks that IRS clarify that the income and expenses of related business activities be aggregated under Treasury Regulation 1.469-4(d)(5).[59] This regulation generally permits the aggregation of business income and expense using "any reasonable method" based on the "facts and circumstances" of each case.[60] Similarly, IRS should allow the aggregation of W-2 wages among related businesses. See **Aggregation and Bifurcation of Businesses**, below.

(2) Sometimes a business will use an employee leasing company. The AICPA Report (February 21, 2018) asks that IRS clarify that a trade or business may include, in its Form W-2 wage limitation, the wages of leased employees that perform services on a substantially full-time basis to a trade or business that generates QBI.

b. How is the Amount of "Qualified Property" Determined?

As noted above, the QBI deduction may be further limited by 2.5 percent of "qualified property," which is defined as tangible property (1) used in the business during the year; (2) held by the business at the close of the taxable year; and (3) its depreciable period does not end during the taxable year.[61] The minimum depreciable period is 10 years.[62] The amount of the property is its acquisition cost, before adjustment for depreciation.[63]

- **Observation**: It should not matter if property is depreciated immediately since the minimum depreciation period for purposes of the QBI deduction is deemed to be 10 years.

- **Observation**: Based on the above, it appears that basis adjustments under a Section 754 election are not recognized for purposes of the qualified property limitation since the basis adjustment under Section 754 does not necessarily reflect "acquisition cost."

- **Observation**: If IRS allows the aggregation of W-2 wages among related businesses (see above), it should also allow the aggregation of property for purposes of the qualified property limitation.

c. The Phase-In of the "W-2 Wages" and the "Qualified Property" Limitations

The W-2 wages and tangible property limitations to the QBI deduction begin to "phase-in" once a business owner reaches the owner's "Threshold Amount,"[64] discussed in Paragraph 2, above. The phase-in range is $100,000 of taxable income for married taxpayers filing joint income tax returns; and $50,000 of taxable income for all other taxpayers.[65] Thus, "Phase-In Amounts" end at $415,000 for married taxpayers filing joint income tax returns; and $207,500 for all other individual taxpayers. The complex phase-in calculation is discussed in the next section of this article under **"The Transitional QBI Deduction."**

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The "Transitional" QBI Deduction

There is an intermediate area between (1) taxable incomes below a taxpayer's "Threshold Amount"[66] and (2) taxable income above a taxpayer's "Phase-In" and "Phase-Out" amounts.[67] The calculations are complex. Hopefully, software will be available to compute the transitional QBI deduction. These complex rules are best illustrated by the following example.

- **Example**. Assume a married taxpayer with $100,000 of "qualified business income" from a "tax-favored" business, that is, a business that is not a "specified services trade or business." W-2 wages from her business are $30,000. The business does NOT use tangible property in the business so that the 2.5 percent of tangible property does not result in a higher limitation.[68] The taxpayer files a joint income tax return and reports taxable income, before the QBI deduction,[69] of $350,000.

1. Phase-In of the "W-2 Wages" and "Qualified Property" Limitations for "Tax-Favored" Businesses

Consider the above example. The taxpayer's QBI deduction, before limitations, is 20 percent of her "qualified business income" base of $100,000 or $20,000.

Since the taxpayer's taxable income is above her "Threshold Amount" of $315,000, her QBI deduction is limited to 50 percent of her W-2 wages.[70] Since the taxpayer's W-2 wages are $30,000, her QBI deduction after the "W-2 wage" limitation is $15,000.[71] The reduction in the QBI deduction caused by the W-2 wage limitation is $5,000 ($20,000 LESS $15,000). This limitation on the QBI deduction is called the "excess amount."[72]

How is the $5,000 "excess amount" phased-in? The "phase-in ratio" is the excess of the taxable income of the taxpayer (assumed to be $350,000 before the QBI deduction) over her $315,000 base divided by her $100,000[73] phase-in range.[74] The taxpayer's "phase-in ratio" is therefore 35 percent[75] and 35 percent of the $5,000 "excess amount" or $1,750[76] is phased-in. The taxpayer's "Transitional" QBI deduction is therefore $18,250 ($20,000 less $1,750).[77]

2. Phase-Out of the QBI Deduction for "Specified Services Trades or Businesses"

Consider, again, the above example, except that the business is a "specified service trade or business." Under Section 199A, the taxpayer takes into account the "applicable percentage" of each of the items that are involved in the deduction of QBI from a business that is NOT a "specified services trade or business." The "applicable percentage" is 100 LESS the "phase-in ratio" of 35 percent, computed above, or 65 percent (100 LESS 35 percent.)[78] Thus, the taxpayer takes into account 65 percent of both her "qualified business income" and her W-2 wages.[79] If her qualified business income is $100,000 her adjusted QBI is 65 percent of $100,000 or $65,000. If her "W-2 wages" are $30,000, her adjusted W-2 wages is 65 percent of $30,000 or $19,500. Thus her QBI deduction is 20 percent of her adjusted QBI income of $65,000 or $13,000.[80] Her QBI deduction is limited to 50 percent of her adjusted W-2 wages of $19,500 or $9,750.

Aggregation and Bifurcation of Businesses

As noted above, the QBI deduction discriminates in favor of certain business owners[81] and the owners[82] and beneficiaries of certain flow-through entities.[83] This discrimination raises important questions:

1. Aggregation of Similar Qualified Businesses

Sometimes a single trade or business is divided among multiple entities for purposes of minimizing exposure to creditors. For example, a real estate management company may place each piece of rental real estate in a separate legal entity. Similarly, a retail company may set up a management holding company, where each of the retail stores is owned by a separate entity underneath the management company. Thus,

(1) May the income and deductions of the group be aggregated for purposes of determining the QBI deduction?

(2) May the W-2 wages of the management company be aggregated with the qualified business income of the subsidiaries to determine the W-2 limitation to the QBI deduction?

(3) May the real estate owned by the subsidiaries be aggregated with the qualified business income of the management company to determine the "qualified property" limitation to the QBI deduction?

The AICPA Report (February 21, 2018), Page 5 asks IRS to clarify that the income and expenses of related business activities be aggregated under Treasury Regulation 1.469-4(d)(5).[84] This regulation generally permits the aggregation of business income and expense using "any reasonable method" based on the "facts and circumstances" of each case.[85] Similarly, IRS should allow the aggregation of W-2 wages and "qualified property" among related businesses. Similarly, the AICPA Report on Page 6 states:

"Similar to sections 469 and 1411, Treasury should not interpret changes to the Code in a manner that necessitates changes in the legal structures and employment arrangements of businesses. Our interpretation is consistent with the ordering provisions, which appear to apply section 199A after taxable income (before section 199A) is determined. Taxpayers group their activities in accordance with section 469; those groupings should also apply for section 199A. Additionally, the application of a separate legal entity standard is neither reasonable for taxpayer compliance nor efficient for IRS administration.

"Allowing taxpayers the opportunity to aggregate or group separate legal activities together for purposes of applying the section 199A will provide administrative relief to tiered entities and family businesses. For simplicity and consistency, Treas. Reg. § 1.469-4 standards should apply."

2. Bifurcation of Dissimilar Businesses

It is possible that a single entity might hold more than one trade or business. For example, a firm of computer experts might have two related businesses, one is a "specified services" business and the other is a qualified ("tax-favored") business. Thus,

(1) The "specified services" consulting business determines how computer software can help a client; and

(2) The qualified ("tax-favored") business develops software for clients.

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The AICPA Report (February 21, 2018) Page 2 argues that:

> Taxpayers "should have the ability to segregate their net business income between specified service and non-service activities for purposes of calculating the section 199A deduction."
>
> "Once taxpayers identify the qualified and nonqualified business activities, they should segregate by revenue, then allocate expenses. The taxpayer should allocate expenses and costs of goods sold based upon concepts applied under Treas. Reg. § 1.199-4, applying simplified methods."

IRS guidance is needed to confirm if and how the two trades or businesses can be bifurcated.

- **Observation**: It costs money to tease out the income and expenses of a tax-favored business from the income and expense of a "tax-disfavored" business. Taxpayers should confirm that the anticipated tax benefit justifies the additional cost.

Combining QBI Deductions and Netting Losses

1. Combining QBI Deductions of Separate Qualified Trades or Businesses

If a business owner owns an interest in more than one qualified trade or business, the business owner computes his/her QBI deduction separately for each trade or business and combines the result.[86] This makes intuitive sense because the QBI deduction limitations – that is the W-2 wage limitation and qualified property limitations may vary from business to business. IRS clarification is needed.

- **Observation**: The QBI deductions should be determined after similar businesses are aggregated under Treasury Regulation 1.469-4(d)(5), assuming that IRS agrees with the request made by the AICPA in its February 21, 2018 Report. See above.

2. Netting of Gains and Losses Among Separate Qualified Trades or Businesses

If a taxpayer owns more than one qualified trade or business, losses from one "qualified business" may offset QBI from another business. Section 199A(c)(2) provides that "if the net amount of qualified income, gain, deduction, and loss with respect to qualified trades or businesses of the taxpayer for any taxable year is less than zero, such amount shall be treated as a loss from a qualified trade or business in the succeeding taxable year" (emphasis added). This suggests when one qualified business has QBI income and another has a QBI loss, the gains and losses offset. This seems consistent with the legislative intent to apply the QBI rate-reduction mechanism only to QBI. See, also, the discussion of QBI losses on page 6, above. This issue also requires clarification by IRS.

Observation:
If a taxpayer owns more than one qualified trade or business, losses from one "qualified business" may offset QBI from another business.

Other Important Considerations

Application of Section 199A to Partnerships and S Corporations

The computation of the business deduction and the restrictions on this tax benefit associated with W-2 wages and depreciable property restrictions are made at the partner/shareholder level.[87] To compute tax-favored business income,

(1) Each partner takes into account his allocable share of tax-favored income, gain, deduction and loss;[88] and

(2) Each S-corporation shareholder takes into account his pro rata share of such tax-favored income, gain, deduction and loss.[89]

To compute W-2 wages and property, for purposes of the W-2 and property limitations to the QBI deduction, each partner takes into account his allocable share of wage expense and depreciation, respectively. Each S-corporation shareholder uses his pro rata share.[90]

Application of Section 199A to Fiduciaries

The allocation of the business deduction between fiduciaries and their beneficiaries will be made through regulation. These regulations will be consistent with existing Section 199(d)(1)(B)(i).[91] Under Treasury Regulation 1.199-5, it is anticipated that the business deduction will be determined at the fiduciary level and will be distributed to beneficiaries based on the Distributable Net Income allocated by the fiduciary to the beneficiaries. If there is no DNI distribution, the deduction will be allowed to the fiduciary.[92]

- **Observation**: A fiduciary may hold a partnership interest in a partnership. IRS guidance is needed to confirm how the fiduciary will treat a QBI deduction "passed through" from a partnership.

- **Observation:** Under certain circumstances an Electing Small Business Trust ("ESBT") can be a shareholder of an S corporation. The AICPA Report (February 21, 2018), Page 11 and 12, asks IRS to confirm that ESBT's that own S corporation stock will be allowed the QBI deduction under Section 641I(2)(C)(i) as "a Section 1366 item." This appears to be consistent with the legislative intent of Section 199A, which is to reduce the effective tax rate on business income through the QBI deduction.

Effect of the Section 199A QBI Deduction on Individuals

The Section 199A business deduction is designed solely to adjust business tax rates. Accordingly,

(1) The QBI deduction is not allowed in arriving at Adjusted Gross Income.[93] This means that items measured by Adjusted Gross Income – such as the medical expense deduction – are not affected by the QBI deduction.

(2) The QBI deduction is allowed regardless of whether taxpayers itemize or claim the standard deduction.[94]

(3) The QBI deduction is NOT allowed in computing net operating loss carryforwards.[95]

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(4) The QBI deduction is NOT allowed in computing the alternative minimum tax.[96]

(5) The QBI deduction is NOT allowed in computing any taxes other than income taxes.[97] This presumably means that the business deduction cannot be used against any portion of self-employment income or investment income for purposes of the Net Investment Income Tax.

Choice of Entity Considerations

Some business owners are considering changing the type of entity they use to run their business.[98] As noted on pages 4 and 5, above, the determination of QBI does not appear to be affected by the choice of entity used by business owners to run their businesses. The W-2 wage limitation, however, IS affected by the choice of entity. As noted on page 9, above, a sole proprietorship cannot pay W-2 wages to its owner. Similarly, a partnership generally cannot pay W-2 wages to a partner.[99] In contrast, an S corporation can pay W-2 wages to its shareholders. Thus, if the business owner needs to pay herself W-2 wages in order to maximize her QBI deduction, the only entity available is the S corporation. The S corporation has two additional benefits. First, the S corporation income passing through to shareholders under Section 1366 is not subject to the self-employment tax.[100] Second, the S corporation income passing through to shareholders is not subject to the net investment income tax.[101]

- **Observation**: As noted above, the W-2 wages limitation to the QBI deduction only applies when the business owner's taxable income exceeds the "threshold amount" of $315,000 for a married person filing a joint return and $157,500 for all other taxpayers.

Section 6662 Accuracy Related Penalties

How does the accuracy-related penalty under Section 6662 affect decisions to use the Section 199A business deduction? The accuracy related penalty imposes a penalty of 20 percent of the understated tax if there is a "substantial understatement.[102] TCJA Section 11011(c) changes the "substantial understatement" test from (1) the greater of $5,000 or 10 percent of the understatement to (2) the greater of $5,000 or 5 percent of the understatement.[103]

Tax Planning for Various Taxpayers

In this section I ask how taxpayers other than C corporations can structure their affairs to maximize their QBI deduction.[104]

1. The QBI Deduction for "Specified Services" Professional Practice Income

The QBI deduction applies to professionals whose taxable income is at or below the threshold amounts of $315,000 for married taxpayers filing a joint income tax return and $157,500 in all other cases. It does not matter whether their business is a "specified service trade or business." All that matters is that their practice income be "qualified business income."

As noted above, only "unearned income" can be used for the "qualified business income" that serves as the base for the QBI deduction. IRS has suggested rules of thumb governing the allocation of business income between "earned income" and "unearned income." Specifically, where capital is a factor, only up to 30 percent of

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income is earned income and the balance is unearned income.[105] In my experience professional practices require a substantial investment in leasehold improvements, photocopiers, furniture, computers, photocopier/printers and the soft-costs needed to assemble and train a professional staff. In my experience, it takes an investment of at least $100,000 to support each professional job in a law firm. Thus, even a small professional practice operating in Boston's Financial District may represent an investment of several million dollars.[106] Thus, I would take the position that the owners of a professional firm have made a significant investment. Pending IRS guidance, I would treat the greater of the fair value of the professional's services or 30 percent of practice income as "earned income." I would then reduce the professional's share of practice income by her earned income. The result if the "qualified business income" base for the QBI deduction.[107]

> Example 1. Assume that a partner in a law firm earns $300,000 in 2018. The partner treats $175,000 as the fair value of her services.[108] If she is married and files a joint income tax return with her spouse she is entitled to the full QBI deduction until her joint taxable income, determined without the QBI deduction, exceeds $315,000. Thus, if her spouse has no income, she would have "qualified business income" of $125,000[109] and her QBI deduction would be $25,000 representing 20 percent of the $125,000 "qualified business income" base. Her deduction is worth $6,000.[110] It will not matter whether the partner's firm is organized and characterized as a partnership or an S corporation.

Suppose, in Example 1, above, the partner earned $450,000 and her joint taxable income was about $475,000. She might still be able to qualify for a QBI deduction by participating in qualified pension and profit sharing plans. Based on her age and other factors, it is possible that her tax-deductible contributions to these tax-deferred retirement plans might be sufficient to reduce her joint taxable income to below $315,000, thereby allowing her to claim a QBI deduction.

2. The QBI Deduction for "Tax-Favored" Professional Practices

Professionals with taxable income above the threshold amounts cannot take a QBI deduction if their income is derived from a "specified service trade or business." If their income is NOT derived from a specified service trade or business their QBI deduction is limited to the greater of (1) 50 percent of W-2 wages; or (2) 25 percent of W-2 wages and 2.5 percent of tangible property used in the business.

Observation:
Professionals with taxable income above the threshold amounts cannot take a QBI deduction if their income is derived from a "specified service trade or business."

Let's assume that two computer programmers operate a computer programming business, which does not appear to be a "specified service trade or business".[111] Each earns $1 million and works full-time in the business. They have several employees and pay about $600,000 to their employees. The do not use tangible personal property in their business. Assume that the fair value of their services is $350,000 each.[112] I will therefore assume that, on a per partner level, the "qualified business income" of each partner is $650,000.[113] They share the W-2 income of the employees equally. Thus, each has $300,000 of W-2 income allocated from their employer. It follows that each partner is entitled to a QBI deduction of $130,000, as follows:

The QBI computation (20 percent of $650,000)	$ 130,000
The W-2 Limitation (50 percent of $300,000)	$ 150,000

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The QBI deduction is the lower amount. The tax savings arising from the $130,000 QBI deduction is over $45,000 per partner based on each partner's assumed incremental income tax rates.

Assume that the computer programming partners have no employees. In such case, it is unclear whether the partners would be entitled to QBI deduction. For under the Internal Revenue Code, partners do not receive W-2 income. Rather, they receive "guaranteed payments" that are reported on Form 1065 K-1, and not on Form W-2. Therefore, their QBI deduction is limited to 50 percent of "zero." Thus, the QBI deduction for each partner is computed as follows:

The QBI computation (20 percent of $650,000)	$ 130,000
The W-2 Limitation (50 percent of $0)	$ 0

Since the QBI deduction is the lower amount, the computer programmers would not be able to take a QBI deduction.

Assume that the programmers incorporate themselves as an S corporation and each takes a W-2 salary of $350,000. Thus, each would now have a W-2 salary of $350,000 of their own to use in the QBI deduction computation. In such case the QBI deduction for each partner is computed as follows:

The QBI computation (20 percent of $650,000)	$ 130,000
The W-2 Limitation (50 percent of $350,000)	$ 175,000

The QBI deduction is the lower amount. The value of the $130,000 QBI deduction is over $45,000 per partner based on each partner's assumed incremental income tax rates. In addition, the partners would be able to avoid a portion for the Medicare tax, which is 2.9 percent of earned income, without a ceiling. The approximate total savings to incorporating and making an S election are:

QBI Deduction (approximate)	$ 45,000
Medicare Tax Savings (2.9 percent of $650,000[114])	18,850
Total	$ 63,850

3. Placing Real Estate in a Related Partnership

Assume that the two computer programmers purchase an office condominium. They run their partnership through an LLC and run their office condominium through a separate LLC, which is also a partnership. They pay themselves rent. Rental income is qualified business income and is not income derived from a specified service trade or business. The QBI deduction is limited to 2.5 percent of the acquisition cost of their office condominium.

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Assume that the condo is acquired for $1.5 million and each partner has an acquisition cost in the condo of $750,000. The partners do not pay salaries. After paying all expenses, including interest and real estate taxes, each partner has a net rental income of $20,000. The QBI deduction is determined as follows:

The QBI computation (20 percent of $20,000)	$ 4,000
The W-2 Limitation (50 percent of $)	$ 0
The Property Limitation (2.5 percent of $750,000)	$ 18,750

The QBI deduction is the lowest amount: $4,000. The tax value of the $4,000 QBI deduction is about $1,400 based on each partner's assumed incremental income tax rates.

4. Straddling the Line: Simultaneously Operating "Tax-Favored" and "Specified Service" Trades or Businesses"

An economic activity may involve simultaneously operating both a "tax-favored" and a "specified service trade or business." For example, assume the computer programmers consult with a client to determine how to best satisfy a client's needs. Then, the programmers develop the computer programs identified in the consultation. While computer programing is "tax favored," the initial consulting work is a "specified service trade or business." This will require firms that "straddle the line" between tax-favored business activities and tax-disfavored business activities to allocate "qualified items of income, gain, deduction and loss" between these business activities.

The allocation of costs requires a sharp pencil. It may – or may not be worth the time, effort and money to allocate income and costs between "tax-favored" and "tax-disfavored" business activities. For example,

(1) As noted above, the distinction between a "tax-favored" business and a "specified services trade or business" only applies when the taxable income of the professionals rise above $315,000 for married taxpayers filing joint income tax returns; and above $157,500 for all other taxpayers. Therefore, a preliminary question is whether some taxpayers are above these income threshold levels.

(2) If there are taxpayers above these income threshold levels, it is necessary to "run the numbers." I note that the separation of real estate into a separate entity only netted the programmers about $1,400 each in tax savings. See above. Clearly, we do not want to perform professional services costing a multiple of the anticipated tax savings.

5. Retail Sales

As noted above,[115] IRS has explicitly taken the position that a partner in a retail merchandising partnership must treat as earned income the lesser of the fair value of his services up to 30 percent of the partner's income. Thus, the owner of a retail store must reduce the fair value of her services to arrive at her "qualified business income."

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It is then necessary to "run the numbers" to determine if the business owner needs to (1) incorporate as an S corporation and pay herself a salary; and/or (2) to acquire tangible property to be used in the business.

Specifically, if a business owner is married filing a joint return we ask if her taxable income level is over $315,000. In all other cases we ask if the business owners' income level exceeds $157,500. If the taxpayer's income level exceeds these amounts, the QBI deduction is limited to the greater of (1) 50 percent of W-2 wages or (2) 25 percent of W-2 wages plus 2.5 percent of the acquisition cost of tangible property used in the business. If the owner's income level is below $315,000 or $157,500, as the case may be, we do not need to consider the limitations based on W-2 wages and property used in the business. Thus, by running the numbers it is possible to advise her on how to maximize her QBI deduction.

(Continued on next page.)

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Appendix

TABLE I: Combined U.S. Income and Net Investment Taxes
For C Corporations and their Owners on U.S. Business Income

TABLE II: Combined U.S. Income and Net Investment Taxes
For Taxpayers other than C Corporations and their Owners
on U.S. Business Income

(Continued on next page.)

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TABLE I:[116]
Combined U.S. Income and Net Investment Taxes
For C Corporations and their Owners
on U.S. Business Income

		Pre-TCJA	Under TCJA
Business Taxable income	(A)	$100,000	$100,000
Corporate Tax Maximum Rate	(B)	35%	21%
Corporate Level Tax - Maximum[117] (A times B)	(C)	**$35,000**	**$21,000**
Available for Distribution to Shareholders (A *minus* C)	(D)	$65,000	$79,000
Shareholder Level Income Tax – Maximum Rate	(E)	20%	20%
Shareholder Level Income Tax – Maximum[118] (D *times* E)	(F)	**$13,000**	**$15,800**
Shareholder Level Net Investment Income Tax Rate	(G)	3.8%	3.8%
Shareholder Level Net Investment Income Tax (D *times* G)	(H)	**$2,470**	**$3,002**
Total U.S. Income Taxes on U.S. Business Income (C *plus* F *plus* H)		**$50,470**	**$39,802**
Effective Combined Tax Rate		**50.47%**	**39.8%**

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TABLE II
Combined U.S. Income and Net Investment Taxes
For Taxpayers other than C Corporations and their Owners
on U.S. Business Income

		Pre-TCJA	Under TCJA	
			Favored	Disfavored
Business Taxable income	(A)	$ 100,000	$ 100,000	$100,000
Section 199A Deduction (20[119] Percent of $100,000)		NA	(20,000)	NA
Taxable Income After Section 199A Deduction		$ 100,000	$80,000	$100,000
Maximum Tax Rate	(B)	39.6%	37%	37%
Tax (A times B)		**$ 39,600**	**$ 29,600**	**$ 37,000**
Effective Tax Rate		**39.6%**	**29.6%**	**37%**

- **Note**: The Net Investment Income Tax is generally NOT applicable, except where the business throws off passive rental income.[120]

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[1] Attorney Morris N. Robinson, CPA, LLM is Managing Director of M. Robinson Tax Law, a tax law firm boutique located in Boston's Financial District. His practice emphasizes tax planning, tax audit defense, and tax compliance for businesses and individuals. He acknowledges the invaluable assistance of Attorney Patricia Weisgerber, Associate and Joseph Kelley, Paralegal.
[2] Under the TCJA, IRC Section 11(b)(2) is abolished. See TCJA Section 13001.
[3] See **Table I**, below, for supporting computations.
[4] These taxpayers, generally, are sole proprietors, owners of single-member LLCs characterized as sole proprietorships, partners, S corporation shareholders, estates and trusts, and beneficiaries of estates and trusts. See **Table II**, below, for supporting computations.
[5] Thus, employees are not eligible to reduce their effective tax rate under Section 199A. See Section 199A(d)(1)(B).
[6] See Footnote 4, above.
[7] The term "qualified business income" is defined with specificity in new Section 199A. An overview of Section 199A suggests that QBI represents the "profit" earned by business owners in the United States through their use of labor and depreciable property. This article discusses "qualified business income" extensively.
[8] "Tax-favored" business income is the income to which the new reduced tax rates applies through the mechanism of the QBI deduction. New Section 199A does not use the phrase "tax-favored" business income or "tax-disfavored" business income.
[9] Item 14 (beginning on Page 3 of the AICPA "Request for Immediate Guidance Regarding Pub. L. No. 115-97") lists 14 bullet points that AICPA believed needed "immediate guidance" from IRS.
https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/20180129-aicpa-guidance-request-on-pub-l-no-115-97.pdf (last visited March 13, 2018).
[10] See "2017-2018 Priority Guidance Plan, Second Quarter Update, Page 3, Part I, Item 7. https://www.irs.gov/pub/irs-utl/2017-2018_pgp_2nd_quarter_update.pdf (last visited March 13, 2018).
[11] *See Mnuchin Says Tax Law Guidance on Pass-Throughs 'Coming Soon'* https://www.bloomberg.com/news/videos/2018-02-14/mnuchin-says-tax-law-guidance-on-pass-throughs-coming-soon-video (last visited March 13, 2018).
[12]This letter provides 12 pages of questions, analysis, and recommendations followed by a five-page outline of topics. This letter is "must reading" for practitioners who wish to undertake tax planning for the QBI deduction.
https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/20180221-aicpa-sec-99a-qbi-comment-letter-faq.pdf (last visited March 13, 2018).
[13] http://nsba.biz/tax-law-guidance-forthcoming/ (last visited March 13, 2018).
[14] For example, a February 22, 2018 ***Wall Street Journal*** article reported that some businesses are rethinking their status in light of the TCJA. https://www.wsj.com/articles/tax-law-leaves-business-owners-with-big-decision-to-c-or-not-to-c-1519295401 (last visited March 13, 2018). Similarly, on March 8, 2018 ***Accounting Today*** reported that the National Society of Accountants has request to IRS by the National Society of Accountants to extend the S corporation election limitation by six months.
https://www.accountingtoday.com/news/accountant-group-asks-irs-for-more-time-to-make-s-corp-election (last visited March 13, 2018).
[15] Thus, this article does not deal with some of the more esoteric provisions of Section 199A such as its impact on the taxation of real estate investment trusts, cooperative dividends, and publically traded partnerships. Also, this article does not deal with tiered pass-through businesses or with single businesses that are separated into different entities for legal purposes such as, for example, where a business with a management holding company owning several retail stores, each in its own entity. See, generally, AICPA Report (February 21, 2018), attached to the AICPA letter dated February 21, 2018, Pages 5 and 6.
[16] See, generally, the AICPA Report (February 21, 2018), pages 1 through 4.
[17] Section 199A(c)(3)(A)(i).
[18] See Footnote 5, above.
[19] Section 199A(c)(4)(B).
[20] Section 199A(c)(4)(C).
[21] See Section 199A(d)(1)(B), which states that "the term 'qualified trade or business' means any trade or business other than …the trade or business of performing services as an employee." Thus, the QBI of an S corporation is determined after the S corporation deducts the salaries of its owners. Similarly, the QBI of a sole proprietor is determined after considering the value of the services rendered by the business owner to her business.
See immediately below.
[22] AICPA Report (February 21, 2018), Page 6.
[23] IRS Publication 54: Tax Guide for U.S. Citizens and Resident Aliens Abroad (2017), Page 16, right column, **Earned and Unearned Income**. I note that the House version of Section 199A, which did NOT become law, uses a possibly different 30 percent "capital percentage" standard in situations where capital is a material income producing factor. See Conference Report on H. R. 1 Committee Report to Section 1004 of the House Bill, Wolters Kluwer, ***Tax Cuts and Jobs Act***, Paragraph 10,030, Page 769 (December 2017). We expect the United States Treasury will issue regulations in this area.
[24] IRS Publication 54: Tax Guide for U.S. Citizens and Resident Aliens Abroad (2017), Page 16, Right Column, **Capital a factor**, **Example 2**.
[25] *Id.*, Page 17, Left Column, **Rental income, Example**.

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[26] *Id.*, Page 17 Middle Column, **Professional fees**.
[27] *Id*., Page 16, Right Column, **Capital a factor**.
[28] Section 199A does NOT use the term "passive investment income."
[29] Id.
[30] Section 199A(c)(3)(B)(i).
[31] Section 199A(c)(3)(B)(ii).
[32] Section 199A(c)(3)(B)(iii).
[33] Section 199A(c)(3)(B)(iv).
[34] Section 199A(c)(3)(B)(vi).
[35] See AICPA Report (February 21, 2018), Page 3.
[36] Section 199A(c)(1).
[37] Section 199A(c)(3)(A)(ii).
[38] See, generally, Section 469.
[39] We anticipate that the United States Treasury will issue regulations in this areas.
[40] Section 199A(c)(2).
[41] This treatment of losses is consistent with only allowing net operating losses to offset up to 80 percent of business income in a future year. The operation of the amendments to the net operating loss deduction under Section 172 is beyond the scope of this article.
[42] Section 199A(e)(1).
[43] Section 199A(a)(1)(B).
[44] Section 199A(a).
[45] Section 199A(e)(1).
[46] Section 199A(a).
[47] TCJA, Section 11011(d)(1).
[48] These amounts are called "threshold amounts" in Section 199A. See Section 199A(e)(2)(A). These "threshold amounts" are adjusted for inflation for taxable years beginning after 2018. See Section 199A(e)(2)(B).
[49] Section 199A(d)(2)(A) and existing Section 1202(e)(3)(A) as made applicable by new Section 199A.
[50] Section 199A(d)(2)(B).
[51] Engineering and architectural service firms are specifically exempted from "disfavored status" under Section 199A(d)(2)(A).
[52] The AICPA Report (February 21, 2018) , Page 4, asks that IRS clarify that specified services provided by individuals and businesses performing essentially the same activities should have the same tax treatment irrespective of any degree, license, training or credentials of the service provider.
[53] 199A(e)(2)(A).
[54] Section 199A(d)(3)(A)(i).
[55] Section 199A(b)(2)(B)(i) and (ii).
[56] Section 199A(b)(4)(B)
[57] Section 199A(b)(4)(C).
[58] The guaranteed payments of partners are reported on the Form 1065 K-1 of the partners. These guaranteed payments are not reported on W-2 Forms filed with the Social Security Administration. See, also, Revenue Ruling 69-184.
[59] See AICPA Report (February 21, 2018), Page 5.
[60] Section 469 is used to determine the limitation on passive losses.
[61] See Section 199A(b)(6)(A)(iii).
[62] See Section 199A(b)(6)(B)(i).
[63] Section 199A(b)(2)(B)(ii).
[64] 199A(e)(2)(A).
[65] Section 199A(b)(3)(B)(i).
[66] $315,000 for married individuals filing joint income tax returns; and $157,500 for all other individuals.
[67] $415,000 for married individuals filing joint income tax returns; and $207,500 for all other individuals. See Section 199A(b)(3)(B) and Section 199A(d)(3)(A).
[68] See Section 199A(b)(2)(B)(ii).
[69] Section 199A(e)(1).
[70] Since the taxpayer does not use tangible property in her business, the property limitation is zero and the W-2 limitation is used because it is "greater." Section 199A(b)(2)(B).
[71] 50 percent of the $30,000 of W-2 wages.
[72] Section 199A(b)(3)(B)(iii).

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[73] The range for married taxpayers filing a joint income tax return is $100,000. The range for all other taxpayers is $50,000. Section 199A(b)(3)(B)(i)(I).
[74] Section 199A(b)(3)(B)(ii).
[75] The excess of $350,000 over the $315,000 base is $35,000. The phase-in of the W-2 and property amounts is $35,000/$100,000 or 35 percent. Section 199A(b)(3)(B)(ii).
[76] The applicable percent (35 percent) of the reduction in the QBI deduction of $5,000.
[77] This is the QBI deduction of $20,000 LESS the phased-in W-2 wages limitation of $1,750.
[78] Section 199A(d)(3)(B).
[79] In the previous example, the "phase-in ratio" was calculated at 35 percent. The "applicable percentage" is 100 LESS the "phase-in ratio" or 35 percent or 65 percent. See Section 199A(d)(3)(B).
[80] 20 percent of $65,000.
[81] Thus, employees are not eligible to reduce their effective tax rate under Section 199A. See Section 199A(d)(1)(B).
[82] Id.
[83] See Footnote 4, above.
[84] See AICPA Report (February 21, 2018), Page 5.
[85] Section 469 is used to determine the limitation on passive losses.
[86] Section 199A(b)(1) and (2) provide that the "combined qualified business income amount" that is, the QBI deduction, is the sum of the QBI deductions of each trade or business.
[87] Section 199A(f)(1)(A)(i).
[88] Section 199A(f)(1)(A)(ii)
[89] Section 199A(f)(1)(A)(ii) and last sentence.
[90] Section 199A(f)(1)(A)(iii) and subsequent flush language.
[91] Section 199A(f)(1)(B).
[92] See, generally, Treasury Regulation 1.199-5(e)(2).
[93] Section TCJA, Section 11011(b)(1).
[94] TCJA, Section 11011(b)(2) and (b)(3).
[95] TCJA, Section 11011(d)(1).
[96] Section 199A(f)(2).
[97] Section 199A(f)(3).
[98] See Footnote 12, above.
[99] Revenue Ruling 69-184.
[100] Revenue Ruling 59-221.
[101] The net investment income tax base only includes dividends from C corporations. See Section 1411 (c)(1)(A)(i). The definition of "dividends" is limited to distributions from C corporations. See Section 316(a).
[102] Section 6662(a) and (b)(2).
[103] TCJA, Section 11011(c).
[104] I do not consider whether a business should restructure itself as a C corporation. I do note, however, that taxpayers who wish to shelter income be taking advantage of the low C corporation rates must also consider (1) the use of qualified pension and retirement plans as a more tax efficient alternative; (2) the additional United States and Massachusetts income taxes that might need to be incurred when the money is provided to the shareholders as dividends, salary or as capital gains on the sale of the company. Tax practitioners will also want to consider the United States personal holding tax, accumulations earnings tax and the collapsible corporation rules, all of which are beyond the scope of this article.
[105] See, also, pages 4 and 5, above. Caution is required because IRS has not stated that it will follow its 30 percent rule-of-thumb in determining the QBI deduction under Section 199A.
[106] This investment does not consider the investment the partner has made in his career through participation in professional seminars, writing professional articles and blogs, and participation in professional societies.
[107] This assumes that the practice income meets the other requirements of "qualified business income" discussed above.
[108] This is more than 30 percent of $300,000. My feeling is that a "rule of thumb" is just that: a rough measure, that has to be adjusted in each case.
[109] The professional's share of practice income ($300,000) less the fair value of her services ($175,000).
[110] The QBI deduction of $25,000 times the partner's United States incremental income tax rate of 24 percent.
[111] In the language of Section 199A, computer programming is not a specified service trade or business.
[112] $650,000 is total income per partner of $1,000,000 less $350,000 representing the fair value of services. The $350,000 is used because it is more than $300,000 representing 30 percent of each partners' share of partnership income. See, also, Footnote 105, above.
[113] The income earned of $1 million less the fair value of services rendered of $350,000.
[114] $1 million of income less salaries of $350,000.

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[115] See Page 4, above.
[116] **Caution:** For incomes of up to $1 million, most owners of C corporations will take out the income as salary. Therefore, the above Table illustrates rate changes but is not necessarily a realistic reflection of the actual behavior of business owners.
[117] Section 11 IRC before and after TCJA.
[118] Section 1(h) IRC before and after TCJA.
[119] Section 199A(a)(2(A).
[120] Generally, non-passive operating income from an unincorporated business or from a trust, estate, partnership or S corporation is not subject to the Net Investment Income Tax. See IRC Section 1411 and IRS Questions and Answers on the Net Investment Income Tax. https://www.irs.gov/newsroom/net-investment-income-tax-faqs. Last visited December 24, 2017.

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