

New IRC Section 199A - Qualified Business Income Deduction

The Tax Cuts and Jobs Act of 2017 added Internal Revenue Code §199A to provide for a new deduction of up to 20% of qualified domestic business income beginning in 2018 and ending in 2025. While that sounds simple, the new Section is quite complex with many explanations, qualifications and limitations. This article brushes the surface of these issues to help you determine whether you should be exploring this deduction, but does not address the more unusual types of income that may be eligible.



Key Terms. Here is an overview of some of the key terms:

Eligible Taxpayer is any taxpayer other than a corporation subject to many qualifications.

Qualified Business Income is the net amount of qualified items of income, gain, deduction and loss with respect to any "qualified trade or business".

Qualified Trade or Business is any trade or business other than a "specified service trade or business" or the performance of services as an employee.

Specified Service Trade or Business is the performance of any 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 is the reputation or skill of one or more of its employees.

Limitations. The deduction is limited to the lesser of (a) taxable income for the year over net capital gain, plus aggregate qualified cooperative dividends; or (b) the greater of (i) 50% of the W-2 wages with respect to the trade or business, or (ii) the sum of 25% of the W-2 wages, plus 2.5% of the unadjusted basis immediately after acquisition (UBIA, which is the basis on the date the property is placed in service) of all qualified tangible property subject to depreciation. However, the W-2 limitation does not apply to individual taxpayers with taxable income of less than \$157,500/\$315,000 for married filing jointly per year and is phased in for taxpayers with taxable income above those thresholds.

Regulations. The IRS recently issued its final Regulations intended to clear up many of the questions raised by the statute itself.

The taxpayer must demonstrate, considering all facts and circumstances, the taxpayer's involvement in the activity on a regular, continuous and substantial basis with the primary purpose of making a profit. Self-rentals can qualify in certain situations. Multiple trades or businesses may exist within one entity and those trades or businesses can be aggregated.

There are special rules for suspended losses and the like, as well as deductions for self-employment taxes. It is important to note that §1231 gains and losses will be netted at the individual level.

The Regulations did not address the interaction of §199A with the new excess business loss rule for non-corporate individual taxpayers to \$250,000/\$500,000 for married filing jointly.

As you can see, this Sec. 199A is quite complex. If you have questions about whether you can benefit from the Sec. 199A deduction, please contact your [Couzens Lansky Tax Attorney](#).