Final Section 199A Regulations vs. Proposed Section 199A Regulations *

Part I: Operational Rules, QBI, UBIA, W-2 Wages, Reporting, Aggregation & Recharacterization Rules

Section 199A Item	Proposed Regulations	Comments on Proposed Regulations	Final Regulations
Operational Rules - Definition of Relevant Passthrough Entity ("RPE")	An RPE is a partnership (other than a PTP) or an S corporation that is owned, directly or indirectly, by at least one individual, estate, or trust. A trust or estate is treated as an RPE to the extent it passes through QBI, W-2 wages, UBIA of qualified property, qualified REIT dividends, or qualified PTP income.	Common trust funds as described in section 1.6032-T and religious or apostolic organizations described in section 501(d), should be considered RPEs. Registered Investment Companies ("RICs") should be treated as RPEs.	Common trust funds as described in section 1.6032-T and religious or apostolic organizations described in section 501(d), are also treated as RPEs if the entity files a Form 1065, U.S. Return of Partnership Income, and is owned, directly or indirectly, by at least one individual, estate, or trust. Declined to adopt the recommendation of another commenter to treat regulated investment companies (RICs) as RPEs because RICs are C corporations, not passthrough entities.
Operational Rules - Definition of "Net Capital Gain"	No specific definition of net capital gain.	Questioned how net capital gain is determined for purposes of section 199A.	Section 1.199A-1(b)(3) defines net capital gain for purposes of section 199A as net capital gain within the meaning of section 1222(11) plus any qualified dividend income (as defined in section 1(h)(11)(B)) for the taxable year. Treasury and IRS note that under section 1(h)(2), net capital gain is reduced by the amount that the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii). This reduction does not change the definition of net capital gain for purposes of section 1(h).
Operational Rules - Definition of "Trade or Business"	Trade or business is defined by reference to section 162.	Noted that there are significant uncertainties in the meaning of trade or business under section 162 and requested additional guidance with respect to determining whether an activity rises to the level of a section 162 trade or business. Suggested guidance in the form of a regulatory definition, a bright-line test, a factor-based test, or a safe harbor.	Retain and slightly reword the proposed regulation's definition of trade or business. Specifically, section 1.199A-1(b)(14) defines trade or business as… "a trade or business under section 162 (section 162 trade or business) other than the trade or business of performing services as an employee." Do not provide a bright line test … "whether an activity rises to the level of a section 162 trade or business … is inherently a factual question and specific guidance under section 162 is beyond the scope of these regulations."
Operational Rules – Rental Real Estate as a Trade or Business.	Trade or business is defined by reference to section 162.	Questioned treatment of rental real estate activities and noted inconsistency in the case law in determining whether a taxpayer renting real estate is engaged in a trade or business. Suggested including safe harbors, tests, or a variety of factors, which if satisfied, would qualify a rental real estate activity as a trade or business.	Not all rental real estate activities rise to the level of being a trade or business for purposes of section 199A, however recognized difficulty in determination. Notice 2019-07 provides notice of a proposed revenue procedure detailing a proposed safe harbor under which a rental real estate enterprise may be treated as a trade or business solely for purposes of section 199A. Safe harbor requires at least 250 hours of "rental services" and triple-net lease does not qualify.

**This chart is reflective of the final regulations as corrected.*

**The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register. Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.*

Final Section 199A Regulations vs. Proposed Section 199A Regulations *

Part I: Operational Rules, QBI, UBIA, W-2 Wages, Reporting, Aggregation & Recharacterization Rules

Section 199A Item	Proposed Regulations	Comments on Proposed Regulations	Final Regulations
Operational Rules - Renting to a Related Person	Solely for purposes of section 199A, the rental or licensing of tangible or intangible property to a related trade or business is treated as a trade or business if the rental or licensing activity and the other trade or business are commonly controlled.	Asked for clarification regarding whether this rule applies to situations in which the rental or licensing is to a commonly controlled C corporation. Recommended that the exception be limited to scenarios in which the related party is an individual or an RPE and that the term related party be defined with reference to existing attribution rules under sections 267, 707, or 414.	Clarify this special rule is limited to situations in which the related party is an individual or an RPE. Provide that the related party rules under sections 267(b) or 707(b) will be used to determine relatedness for purposes of section 1.199A-4 and this special rule.
Operational Rules - Multiple Trades or Businesses within a single entity.	Do not provide a bright line test or safe harbor for determining whether multiple trades or businesses exist within a single entity. It is a facts and circumstances based test.	Suggested that there be safe harbors or factors to delineate separate section 162 trades or businesses within an entity and when an entity's combined activities should be considered a single section 162 trade or business.	Acknowledged that an entity can conduct more than one section 162 trade or business. Pointed to the reporting requirements detailed in section 1.199A-6 confirming the position.
Computation of section 199A Deduction – Loss Netting	Provides that if an individual's QBI from at least one trade or business is less than zero, the individual must offset the QBI attributable to each trade or business that produced net positive QBI with the QBI from each trade or business that produced net negative QBI in proportion to the relative amounts of net QBI in the trades or businesses with positive QBI. Applied prior to application of W-2 Wage and UBIA of qualified property limitations.	Rule requiring losses to be allocated to a trade or business with positive QBI should be eliminated. Aggregation is optional and netting provisions force a mathematical aggregation where one is not desired or necessary.	Final regulations do not change or modify the loss netting rules.
Qualified Business Income – Items Spanning Multiple Tax Years	Section 1.199A-3(b)(1)(iii) provides that section 481 adjustments (whether positive or negative) are taken into account for purposes of computing QBI to the extent that the requirements of this section and section 199A are otherwise satisfied, but only if the adjustment arises in taxable years ending after December 31, 2017.	Suggested that income from installment sales and deferred cancellation of indebtedness income under section 108(i) arising in taxable years ending before January 1, 2018, should not be taken into account for purposes of computing QBI. Also recommended that items deferred under Revenue Procedure 2004-34, 2004-1 C.B. 911 (advanced payments not included in revenue) prior to January 1, 2018, should be included in QBI.	Continue to study this issue and request additional comments on when items arising in taxable years prior to January 1, 2018, should be taken into account for purposes of computing QBI.

**This chart is reflective of the final regulations as corrected.*

**The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register. Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.*

Final Section 199A Regulations vs. Proposed Section 199A Regulations *

Part I: Operational Rules, QBI, UBIA, W-2 Wages, Reporting, Aggregation & Recharacterization Rules

Section 199A Item	Proposed Regulations	Comments on Proposed Regulations	Final Regulations
Qualified Business Income – Previously Disallowed Losses	Previously disallowed losses or deductions (including under sections 465, 469, 704(d), and 1366(d)) allowed in the taxable year are taken into account for purposes of computing QBI so long as the losses were incurred in a taxable year beginning after January 1, 2018.	Recommended that final regulations provide an ordering rule for the use of such losses.	Any losses disallowed, suspended, or limited under the provisions of sections 465, 469, 704(d), and 1366(d), or any other similar provisions, shall be used, for purposes of section 199A and these regulations, in order from the oldest to the most recent on a FIFO basis.
Qualified Business Income – Reasonable Methods for Allocation of Items Among Multiple Trades or Businesses	If an individual or an RPE directly conducts multiple trades or businesses, and has items of QBI which are properly attributable to more than one trade or business… the individual or RPE must allocate those items among the several trades or businesses to which they are attributable using a reasonable method based on all the facts and circumstances.	Suggested that a reasonable approach to allocating items that are not clearly attributable to a single trade or business could be the cost allocation methods used in section 1.199-4(b)(2).	Declined to adopt this comment as the rules under section 1.199-4 were intended solely for the allocation of expenses. Treasury and IRS continue to study this issue and request additional comments, including comments with respect to potential safe harbors.
Qualified Business Income – Qualified REIT Dividends & Interaction with RICs	Did not provide that qualified REIT dividends and PTP income of a RIC are passed through to shareholders.	Requested guidance that would allow RIC shareholder to take a section 199A deduction with respect to certain distributions or deemed distributions from the RIC attributable to qualified REIT dividends received by the RIC. Also suggested that RICs should be able to pass through qualified PTP income.	Proposed regulations simultaneously issued that address the payment by RICs of dividends that certain shareholders may include as qualified REIT dividends under section 199A(b)(1)(B). The proposed regulations do not provide for the pass through of qualified PTP income by RICs, describes complexities and requests comments.
Qualified Business Income – Meaning of Qualified REIT Dividend	A REIT dividend is not a qualified REIT dividend if the stock with respect to which it is received is held for fewer than 45 days, taking into account the principles of sections 246(c)(3) and (4).	Interpreted the rule as requiring the REIT stock to have been held at least 45 days prior to the dividend, and asked that the definition of qualified REIT dividend not be conditioned on a 45-day holding period.	The holding period requires holding the stock no fewer than any 45 days, not necessarily the 45 days prior to the REIT dividend. Final regulations define the requisite holding period for the REIT stock as the period described in section 246(c)(1)(A). Treasury and IRS intend to provide guidance to REITs and brokers on how to report qualified REIT dividends in instances in which it is impractical to determine whether the shareholder has met the requisite holding period.

**This chart is reflective of the final regulations as corrected.*

**The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register. Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.*

Final Section 199A Regulations vs. Proposed Section 199A Regulations *

Part I: Operational Rules, QBI, UBIA, W-2 Wages, Reporting, Aggregation & Recharacterization Rules

Section 199A Item	Proposed Regulations	Comments on Proposed Regulations	Final Regulations
Aggregation – Aggregation by RPEs	Aggregation is determined at the individual level.	Recommended that RPEs be permitted to aggregate at the entity level.	Permit an RPE to aggregate trades or businesses it operates directly or through lower-tier RPEs. The resulting aggregation must be reported by the RPE and by all owners of the RPE. An individual or upper-tier RPE may not separate the aggregated trade or business of a lower-tier RPE. However, an individual or an upper-tier RPE may aggregate additional trades or businesses with the lower-tier RPE's aggregation if the rules of section 1.199A-4 are otherwise satisfied. Each RPE in a tiered structure is subject to the disclosure and reporting requirements in section 1.199A-4(c)(1).

**This chart is reflective of the final regulations as corrected.*

**The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register. Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.*

Final Section 199A Regulations vs. Proposed Section 199A Regulations *

Part I: Operational Rules, QBI, UBIA, W-2 Wages, Reporting, Aggregation & Recharacterization Rules

Section 199A Item	Proposed Regulations	Comments on Proposed Regulations	Final Regulations
Aggregation – 50% Ownership Test	A taxpayer may aggregate trades or businesses based on a 50-percent ownership test, which must be maintained for a majority of the taxable year. The rule is satisfied so long as one person or group of persons holds a 50 percent or more ownership interest in each trade or business.	Suggested that to avoid abuse in situations where actual overlapping ownership is low, anyone who owns less than 10 percent of the value of an enterprise could be excluded from the group of owners whose ownership is considered in testing. Suggested that aggregation should be allowed for trades or businesses that do not meet the common ownership test if the general partner or managing member is the same for each entity.	Declined to adopt these recommendations. Clarify that majority of the taxable year must include the last day of the taxable year.
Aggregation – Factors Required for Aggregation	To determine whether trades or businesses may be aggregated, multiple trades or businesses must, among other requirements, satisfy two of three listed factors: (1) the businesses provide products and services that are the same (for example, a restaurant and a food truck) or customarily provided together (for example, a gas station and a car wash); (2) the businesses share facilities or share significant centralized business elements (for example, common personnel, accounting, legal, manufacturing, purchasing, human resources, or information technology resources); or (3) the businesses are operated in coordination with, or reliance on, other businesses in the aggregated group (for example, supply chain interdependencies).	Noted that it is unclear how to apply the first factor with respect to real estate as real estate is neither a product nor a service. Requested additional guidance on whether certain fact patterns regarding specific trades or businesses would satisfy a particular factor.	Retain the factors provided in the proposed regulations, modified to take real estate into account. Describe the first factor as products, property, or services that are the same or customarily offered together. Added examples clarifying when a real estate trade or business satisfies the aggregation rules. Declined to address specific fact patterns of trades or businesses because this test is based on all the facts and circumstances. Therefore, specific rules would be impractical and imprecise.

**This chart is reflective of the final regulations as corrected.*

**The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register. Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.*

Final Section 199A Regulations vs. Proposed Section 199A Regulations *

Part I: Operational Rules, QBI, UBIA, W-2 Wages, Reporting, Aggregation & Recharacterization Rules

Section 199A Item	Proposed Regulations	Comments on Proposed Regulations	Final Regulations
Reporting – Aggregation	Require consistent reporting of aggregated trades or businesses. Each individual who chooses to aggregate must attach a statement to their return annually identifying each trade or business to be aggregated.	Requested the following: (1) Clarification of these rules in situations in which a taxpayer did not aggregate or failed to report an aggregation (2) Guidance as to whether a taxpayer is required to aggregate in its first year and if the failure to aggregate precludes aggregation in a later year (3) Guidance regarding when a taxpayer could re-aggregate	Provide that a taxpayer who fails or chooses not to aggregate in Year 1 can still choose to aggregate in Year 2 or other future year. Generally do not allow for an initial aggregation to be made on an amended return, as this would allow aggregation decisions to be made with hindsight. However, will allow initial aggregations to be made on amended returns for the 2018 taxable year. A taxpayer who chooses to aggregate must continue to aggregate each taxable year unless there is a material change in circumstances that would cause a change to the aggregation. Retain the annual disclosure requirement and, in order to provide flexibility as forms and instructions change, allow the Commissioner to require disclosure of information on aggregated trades or businesses as provided in a variety of formats including forms, instructions, or published guidance.
Reporting – Failure to report an item	If an RPE fails to separately identify or report any QBI, W-2 wages, UBIA of qualified property, or SSTB determinations, the owner's share (and the share of any upper-tier indirect owner) of QBI, W-2 wages, and UBIA of qualified property attributable to trades or businesses engaged in by that RPE will be presumed to be zero.	Suggested that the final regulations clarify that if an RPE fails to separately identify or report each owner's allocable share of QBI, W-2 wages, or UBIA of qualified property, then only the unidentified or unreported amount is presumed to be zero.	Retain the reporting requirement but revise the presumption to provide that if an RPE fails to separately identify or report an item of QBI, W-2 wages, or UBIA of qualified property, the owner's share of each unreported item of positive QBI, W-2 wages, or UBIA of qualified property attributable to trades or businesses engaged in by that RPE will be presumed to be zero. Such information can be reported on an amended or late filed return for any open tax year.
Reporting – Special rules for reporting	Requested comments regarding whether it is administrable to provide a special rule that if none of the owners of the RPE have taxable income above the threshold amount, the RPE does not need to determine and report W-2 wages, UBIA of qualified property, or whether the trade or business is an SSTB.	Recommended that a special rule be provided that an RPE need not determine or report W-2 wages, UBIA of qualified property or whether the trade or business is an SSTB if none of the owners of the RPE have taxable income above the threshold amount.	Do not contain a special reporting rule for RPEs based on whether the RPE's owners have taxable income below the threshold amount. A trade or businesses that is not effectively connected with the United States produces no QBI, W-2 wages, or UBIA of qualified property and thus has no reporting requirement under section 1.199A-6.

**This chart is reflective of the final regulations as corrected.*

**The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register. Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.*

Final Section 199A Regulations vs. Proposed Section 199A Regulations *

Part I: Operational Rules, QBI, UBIA, W-2 Wages, Reporting, Aggregation & Recharacterization Rules

Section 199A Item	Proposed Regulations	Comments on Proposed Regulations	Final Regulations
W-2 Wages	A notice of proposed revenue procedure, Notice 2018-64, which provides three methods for calculating W-2 wages, was issued concurrently with the proposed regulations. The three methods in the notice are substantially similar to the methods provided in Rev. Proc. 2006-47, for purposes of calculating "paragraph (e)(1) wages" (that is, wages described in §1.199-2(e)(1) issued under former section 199). The first method (the unmodified Box method) allows for a simplified calculation while the second and third methods (the modified Box 1 method and the tracking wages method) provide for greater accuracy.	Commenter asked for clarification regarding whether W-2 wages include elective deferrals to self-employed Simplified Employee Pensions (SEP), simple retirement accounts (SIMPLE), and other qualified plans.	Revenue Procedure 2019-11, issued concurrently with these final regulations, provides additional guidance on the definition of W-2 wages, including amounts treated as elective deferrals. Confirmed that the definition of W-2 wages includes amounts paid to officers of an S corporation and common-law employees of an individual or RPE.
UBIA of Qualified Property - Allocations	Each partner's or shareholder's share of the UBIA of qualified property is allocated based on tax depreciation (which reflects the impact of Sec. 704(c)). If no tax depreciation, each partner's share of the UBIA of qualified property allocated based on gain allocation to the partners under Sec. 704(b) and Sec. 704(c) in a hypothetical liquidation based on current FMV.	Suggested that only section 704(b) should be used for this purpose, arguing that the use of section 704(c) allocation methods would be unduly burdensome and could lead to unintended results.	Each partner's share of the UBIA of qualified property is determined in accordance with how depreciation would be allocated for section 704(b) book purposes under section 1.704-1(b)(2)(iv)(g) on the last day of the taxable year. Requested comments on whether a new regime is necessary in the case of a partnership with qualified property that does not produce tax depreciation during the taxable year. Note, a partner or S corp shareholder has to own interest at the end of the year to get a share of UBIA in qualified property.
UBIA of Qualified Property – section 1031 Exchanges	Example 2 to proposed section 1.199A-2(c)(4) illustrates that the UBIA of qualified property received in a section 1031 like-kind exchange is the adjusted basis of the relinquished property transferred in the exchange as determined under section 1031(d), which reflects the adjustment in basis for depreciation deductions previously taken under section 168.	Argued that the proposed regulations discourage like-kind exchanges by providing an incentive to retain property in order to maintain greater UBIA of qualified property.	Provide that the UBIA of qualified like-kind property that a taxpayer receives in a section 1031 like-kind exchange is the UBIA of the relinquished property. However, if a taxpayer either receives money or property not of a like kind to the relinquished property (other property) or provides money or other property as part of the exchange, the taxpayer's UBIA in the replacement property is adjusted. Also provide rules for when the portion of the individual's or RPE's UBIA in the replacement property either does or does not exceed the UBIA in the relinquished property.

**This chart is reflective of the final regulations as corrected.*

**The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register. Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.*

Final Section 199A Regulations vs. Proposed Section 199A Regulations *

Part I: Operational Rules, QBI, UBIA, W-2 Wages, Reporting, Aggregation & Recharacterization Rules

Section 199A Item	Proposed Regulations	Comments on Proposed Regulations	Final Regulations
UBIA of Qualified Property – section 743(b) Adjustments	Basis adjustments under section 743(b) are not treated as qualified property.	Commenters recommended that section 743(b) adjustments should generate new UBIA.	Section 743(b) basis adjustments are treated as qualified property to extent the section 743(b) basis adjustment reflects an increase in the fair market value of the underlying qualified property. See final regulations for the computation as well as an example illustrating a Sec. 743(b) adjustment as being treated as qualified property. (Note, basis adjustments under Sec. 734(b) are not considered qualified property)
UBIA of Qualified Property – section 721 transactions	UBIA of qualified property contributed to a partnership in a section 721 transaction generally equals the partnership's tax basis under section 723 rather than the contributing partner's original UBIA of the property. Similarly, the UBIA of qualified property contributed to an S corporation in a section 351 transaction is determined by reference to section 362.	Commenters suggested that the UBIA of qualified property contributed to a partnership under section 721 or to an S corporation under section 351 should be determined as of the date it was first placed in service by the contributing partner or shareholder.	Sec. 1.199A-2(c)(3)(iv) provides that if qualified property is acquired in a transaction described in section 168(i)(7)(B), the transferee's UBIA in the qualified property is the same as the transferor's UBIA in the property, decreased by the amount of money received by the transferor in the transaction or increased by the amount of money paid by the transferee to acquire the property in the transaction.

**This chart is reflective of the final regulations as corrected.*

**The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register. Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.*

Final Section 199A Regulations vs. Proposed Section 199A Regulations *

Part I: Operational Rules, QBI, UBIA, W-2 Wages, Reporting, Aggregation & Recharacterization Rules

Section 199A Item	Proposed Regulations	Comments on Proposed Regulations	Final Regulations
SSTB Recharacterization Rules – De minimis Rule	Trade or business with gross receipts of $25 million or less for the taxable year, a trade or business is not an SSTB if less than 10 percent of the gross receipts of the trade or business are attributable to a specified service field. The percentage is reduced to 5 percent in the case of trades or businesses with gross receipts in excess of $25 million.	Requested clarification regarding whether the entire trade or business is designated an SSTB if the threshold is exceeded. Suggested the de minimis threshold be raised.	Retain the proposed rule but add an additional example demonstrating the result in which a trade or business has income from a specified service activity in excess of the de minimis threshold.
SSTB Recharacterization Rules – Services or Property Provided to an SSTB	A trade or business that provides more than 80 percent of its property or services to an SSTB is treated as an SSTB if there is 50 percent or more common ownership of the trades or businesses. In cases in which a trade or business provides less than 80 percent of its property or services to a commonly owned SSTB, the portion of the trade or business providing property to the commonly owned SSTB is treated as part of the SSTB with respect to the related parties.	Suggested that the rule automatically treating a trade or business that provides more than 80 percent of its goods or services to a commonly owned SSTB as an SSTB is unnecessary, as there are no abuse concerns regarding the portions of goods or services provided to a third party.	Removed the 80 percent rule in the final regulations. Provide that if a trade or business provides property or services to an SSTB and there is 50 percent or more common ownership of the trade or business, the portion of the trade or business providing property or services to the 50 percent or more commonly-owned SSTB will be treated as a separate SSTB with respect to related parties.
SSTB Recharacterization Rules – Incidental Rule	If a trade or business (that would not otherwise be treated as an SSTB) has both 50 percent or more common ownership with an SSTB and shared expenses with an SSTB, then the trade or business is treated as incidental to and, therefore, part of the SSTB, if the gross receipts of the trade or business represent no more than five percent of the total combined gross receipts of the trade or business and the SSTB in a taxable year.	Recommended that this rule be removed because it is unnecessary and causes administrative difficulties for taxpayers who must determine whether a trade or business is incidental in order to apply the rule.	The rule is removed from the final regulations.

This chart is reflective of the final regulations as corrected.

The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register. Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.

Final Section 199A Regulations vs. Proposed Section 199A Regulations *

Part I: Operational Rules, QBI, UBIA, W-2 Wages, Reporting, Aggregation & Recharacterization Rules

Section 199A Item	Proposed Regulations	Comments on Proposed Regulations	Final Regulations
Recharacterization – Trade or Business of Performing Services as an Employee	An individual who was previously treated as an employee and is subsequently treated as other than an employee while performing substantially the same services to the same person, or a related person, will be presumed to be in the trade or business of performing services as an employee for purposes of section 199A.	Questioned how the rule would be applied and asked for clarification on application.	The presumption is necessary to prevent misclassifications but agree that some clarification of the presumption is necessary. Provide a three-year look back rule for purposes of the presumption. An individual may rebut the presumption by showing records, such as contracts or partnership agreements that are sufficient to corroborate the individual's status as a non-employee for three years from the date a person ceases to treat the individual as an employee for Federal employment taxes. See Example 4 to paragraph (d)(3) of Treas. Reg. 1.199A-5

This chart is reflective of the final regulations as corrected.

The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register. Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.

Final Section 199A Regulations vs. Proposed Section 199A Regulations*

Part II: SSTB Clarifications

SSTB Field	Comments on Proposed Regulations	Final Regulations
Health – Medical Services Provided Directly to Patient	One commenter suggested that services are not performed in the field of health unless services are performed directly to a patient. Another commenter stated that defining services in the field of health by proximity to patients could lead to arbitrary results, pointing out that a radiologist who acts as an expert consultant to a physician engages in the same exercise of medical skills and judgment as a physician who sees patients.	In the preamble to the final regulations, Treasury and IRS agreed with commenters that proximity to patients is not a necessary component of providing services in the field of health. Accordingly, the final regulations remove the requirement that medical services be provided directly to the patient.
Health – Veterinary Services	One commenter argued that veterinary medicine should not be considered an SSTB.	The preamble to the final regulations indicates that Treasury and IRS believe it is appropriate to continue the long-standing treatment of veterinary services as the performance of services in the field of health for purposes of section 199A and these final regulations.
Health – Sale of Pharmaceuticals and Medical Devices	Several commenters requested clarification regarding whether a retail pharmacy selling pharmaceuticals or medical devices is engaged in a health service trade or business.	In the preamble to the final regulations, Treasury and IRS agreed that the sale of pharmaceuticals and medical devices by a retail pharmacy is not by itself a trade or business performing services in the field of health. The preamble further provides, however, that some services provided by a retail pharmacy through a pharmacist are for the performance of services in the field of health. The final regulations provide an additional example of a pharmacist performing services in the field of health. See example 1 of Treas. Reg. 1.199A-5.

This chart is reflective of the final regulations as corrected.

The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register.Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.

Final Section 199A Regulations vs. Proposed Section 199A Regulations*

Part II: SSTB Clarifications

SSTB Field	Comments on Proposed Regulations	Final Regulations
Health – Skilled Nursing, Assisted Living and Similar facilities	Commenters noted the many services that skilled nursing facilities and assisted living facilities provide are unrelated to health care, including housing, meals, laundry facilities, security, and socialization activities. They noted that in some cases, skilled nursing and similar facilities may make available independent contractors who provide services related to health care available to patients, without the facility receiving any payment or revenue with respect to such services.	In the preamble to the final regulations, Treasury and IRS agreed that skilled nursing, assisted living, and similar facilities provide multi-faceted services to their residents. The preamble further provides that whether such a facility and its owners are in the trade or business of performing services in the field of health requires a facts and circumstances inquiry that is beyond the scope of these final regulations. The final regulations provide an additional example of one such facility offering services that Treasury and IRS do not believe rises to the level of the performance of services in the field of health. See example 2 of Treas. Reg. 1.199A-5.
Health – Outpatient Surgical Center	Several commenters asked for clarification regarding when two separate activities would generally be viewed separately, particularly in the context of health care facilities such as emergency centers, urgent care centers, and surgical centers that provide improved real estate and equipment but do not directly provide treatment or diagnostic care to service recipients.	The final regulations provide an additional example of an outpatient surgical center demonstrating a fact pattern that Treasury and IRS do not believe is a trade or business providing services in the field of health. See example 3 of Treas. Reg. 1.199A-5.
Health – Technicians who Operate Medical Equipment or Test Samples	One commenter suggested that technicians who operate medical equipment or test samples, but are not required to exercise medical judgment should not be considered as performing services in the field of health.	The final regulations do not adopt the suggestion that technicians who operate medical equipment or test samples are not considered to be performing services in the field of health as this is a question of fact. However, the final regulations do include an additional example related to laboratory services. See example 4 of Treas. Reg. 1.199A-5.

This chart is reflective of the final regulations as corrected.

The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register.Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.

Final Section 199A Regulations vs. Proposed Section 199A Regulations*

Part II: SSTB Clarifications

SSTB Field	Comments on Proposed Regulations	Final Regulations
Consulting	One commenter suggested that proposed section 1.199A-5(b)(3), Example 3, should be modified to clarify that C, a taxpayer in the business of providing services that assist unrelated entities in making their personnel structures more efficient, does not provide any temporary workers, and C's compensation and fees are not affected by whether C's clients use temporary workers. The commenter also suggested that the final regulations include an additional example similar to Example 7 of section 1.448-1T(e)(4)(iv)(B) related to staffing firms. The commenter recommended that the example provide that a business that assists other businesses in meeting their personnel needs by referring job applicants to them does not engage in the performance of services in the field of consulting when the compensation for the business referring job applicants is based on whether the applicants accept employment positions with the businesses searching for employees.	The final regulations adopt these suggestions. See Sec. 1.199A-5(b)(3), Examples 8 and 9.
Consulting [Cont'd]	Another commenter suggested that the phrase "provision of professional advice and counsel to clients to assist the client in achieving goals and solving problems" is overly broad as it could apply to almost any service-based business that assists clients in achieving goals and solving problems. The commenter stated that applying the ancillary rule would be difficult where a taxpayer is required to separately bill for embedded consulting services under state or local sales tax laws. The commenter suggested that the consulting field should be limited to taxpayers that fall under a consulting-related business activity code under the North American Industry Classification Systems (NAICS).	In the preamble to the final regulations, Treasury and IRS agreed with the commenter that many service-based businesses could be construed as providing professional advice and counsel to clients to assist the client in achieving goals and solving problems; however, Treasury and IRS declined to adopt the recommendation to limit the consulting field based on NAICS codes. Section 1.199A-5(b)(2)(vii) excludes the performance of services other than providing advice and counsel from the field of consulting. The preamble states that, at issue is whether advice and counsel is provided in the context of the provision of goods or services (that are not otherwise SSTBs). It further provides that this is a question of facts and circumstances.
Consulting [Cont'd]	Another commenter suggested that final regulations clarify whether services provided by engineers and architects could be considered to be an SSTB if their services meet the definition of consulting services.	The final regulations adopted this comment. Sec. 1.199A-5(b)(2)(vii) of the final regulations provides that services within the fields of architecture and engineering are not treated as consulting services for purposes of section 199A.

**This chart is reflective of the final regulations as corrected.*

**The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register.Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.*

Final Section 199A Regulations vs. Proposed Section 199A Regulations*

Part II: SSTB Clarifications

SSTB Field	Comments on Proposed Regulations	Final Regulations
Performing Arts	Multiple commenters stated that the definition of performance of services in the field of performing arts should be limited to the definition in section 1.448-1T(e)(4)(iii). Another commenter suggested that writers should fall outside the definition of the performance of services in the field of performing arts because writing does not require a skill unique to the creation of performing arts.	Treasury and IRS declined to limit the definition of the performance of services in the field of performing arts to the definition in section 1.448-1T(e)(4)(iii). The preamble to the final regulations also provides that to the extent that a writer is paid for written material, such as a song or screenplay, that is integral to the creation of the performing arts, the writer is performing services in the field of performing arts.
Franchising	One commenter suggested that in order to provide certainty and further economic growth, the final regulations should include a franchising example to clarify that a franchisor will not be considered to be an SSTB based solely on the selling of a franchise in a listed field of service.	The final regulations adopted this comment and have included a franchising example in the final regulations. See example 12 of Treas. Reg. 1.199A-5.

This chart is reflective of the final regulations as corrected.

The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register.Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.

Final Section 199A Regulations vs. Proposed Section 199A Regulations*

Part II: SSTB Clarifications

SSTB Field	Comments on Proposed Regulations	Final Regulations
Athletics	A few commenters suggested that the definition of a trade or business involving the performance of services in the field of athletics should not include the trade or business of owning a professional sports team. One commenter stated that the definition should be limited to entities that are either owned or controlled by, or whose primary beneficiaries are, professional athletes or that involve the performance of services by those athletes; in other words, the definition should apply solely to athletes' personal services companies. One commenter recommended that section 1.199A-5(b)(3) Example 2 of the proposed regulations be revised to reflect that neither sports clubs nor club owners perform services described in section 1202(e)(3)(A).	The preamble to the final regulations indicate Treasury and IRS do not believe that definitional guidance should be limited to that provided in section 1.448-1T(e)(4)(i) (by analogy to performing arts for athletics).The preamble provides the following: "While sports club and team owners are not performing athletic services directly, that is not a requirement of section 199A, which looks to whether there is income attributable to a trade or business involving the performance of services in a specified activity, not who performed the services. A professional sports club may operate more than one trade or business. For example, a team may operate its concession services as a separate trade or business. Treasury and IRS agree that such concession services generally would not be a trade or business of performing services in the field of athletics. Nonetheless, a professional sports club's operation of an athletic team is a trade or business of performing services in the field of athletics. Income from that trade or business, including income from ticket sales and broadcast rights, is income from a trade or business of performing services in the field of athletics."
Financial Services	Several commenters suggested that final regulations clarify that financing, including taking deposits, making loans, and entering into financing contracts, is not a financial service. One commenter stated that the determination that banking is not a financial service appears to be wrong and inconsistent with statutory construction since any common definition of financial services includes banking services.	The final regulations clarify that the provision of financial services does not include taking deposits or making loans. Further, as a matter of statutory construction, the preamble to the final regulations indicates Treasury and IRS believe that banking is excluded from the definition of financial services for purposes of section 199A.

This chart is reflective of the final regulations as corrected.

The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register.Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.

Final Section 199A Regulations vs. Proposed Section 199A Regulations*

Part II: SSTB Clarifications

SSTB Field	Comments on Proposed Regulations	Final Regulations
Financial Services [cont'd]	One commenter suggested that insurance should be categorically excluded from the meaning of financial services because insurance is described in section 1202(e)(3)(B). The commenter also suggested that a rule similar to the ancillary services rule for consulting should be extended to cover financial services. Another commenter argued that insurance agents and others who provide investment advice are not in the field of financial services, unless the agent receives a fee for the advice, rather than a commission on the sale.	In the preamble to the final regulations, Treasury and IRS agreed that by operation of section 1202(e)(3)(B), insurance cannot be considered a financial service for purposes of section 199A. Treasury and IRS declined to categorically exclude services provided by insurance agents from the definition of financial services as financial services such as managing wealth, advising clients with respect to finances, and the provision of advisory and other similar services that can be provided by insurance agents. However, Treasury and IRS noted that the provision of these services to the extent that they are ancillary to the commission-based sale of an insurance policy will generally not be considered the provision of financial services for purposes of section 199A.
Brokerage Services	One commenter suggested that final regulations clarify that life insurance products are not securities for purposes of section 199A or that life insurance brokers engaged in their capacity as such are not brokers in securities for purposes of section 199A. Other commenters requested the final regulations clarify that the business of financing or making loans, including the services provided by mortgage banking companies, does not fall within the definition of brokerage services.	Treasury and IRS addressed this comment in the final regulations by explicitly stating that although the performance of services in the field of financial services does not include taking deposits or making loans, it does include arranging lending transactions between a lender and borrower. The final regulations define securities by reference to section 475(c)(2).
Investing & Investment Management	Commenters generally suggested a definition of investment should be provided for purposes of section 199A. Another commenter suggested that final regulations clarify that investing and investment management does not include the sale of life insurance products and that life insurance products are not investments for purposes of section 199A.	While Treasury and IRS declined to define investment for purposes of section 199A, they noted in the preamble to the final regulations that commission-based sales of insurance policies generally will not be considered the performance of services in the field of investing and investing management for purposes of section 199A.
Dealing: Mortgage Banking, Credit Sales, and Non-Bank Lending	Several commenters suggested that the provisions regarding dealing in securities should exclude mortgage banking and other lending activities in which lending is the primary business focus.	The final regulations provide that the performance of services to originate a loan is not treated as the purchase of a security from the borrower in determining whether the lender is performing services consisting of dealing in securities.

**This chart is reflective of the final regulations as corrected.*

**The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register.Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.*

Final Section 199A Regulations vs. Proposed Section 199A Regulations*

Part II: SSTB Clarifications

SSTB Field	Comments on Proposed Regulations	Final Regulations
Dealing: Banking	Many commenters recommended that traditional banking activities be excluded entirely from the definition of an SSTB, including the performance of services that consist of dealing in securities. Commenters argued that Congress intended banks that elect under section 1362(a) to be S corporations (subchapter S banks) to have the same relative reduction in taxes as C corporation banks after enactment of the TCJA.	In the preamble to the final regulations, Treasury and IRS indicate they do not believe that there is a broad exemption from the listed SSTBs with respect to all services that may be legally permitted to be performed by banks. Final regulations continue to exclude taking deposits or making loans from the definition of an SSTB involving the performance of financial services, and exclude the origination of loans from the definition of dealing in securities for purposes of section 199A. The preamble notes that an RPE, including a subchapter S bank, may operate more than one trade or business. Thus, a subchapter S bank could segregate specified service activities from an existing trade or business and operate such specified service activities as an SSTB separate from its remaining trade or business, either within the same legal entity or in a separate entity.

This chart is reflective of the final regulations as corrected.

The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register.Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.

Final Section 199A Regulations vs. Proposed Section 199A Regulations*

Part II: SSTB Clarifications

SSTB Field	Comments on Proposed Regulations	Final Regulations
Dealing: Commodities	Several commenters suggested that the final regulations provide that a trade or business is not engaged in the performance of services of investing, trading, or dealing in commodities if it regularly takes physical possession of the underlying commodity in the ordinary course of its trade or business. These commenters also argued that a business that takes physical possession of the commodity should not be treated as an SSTB if it hedges its risk with respect to the commodity as part of the ordinary course of its trade or business. The commenters state that dealing in commodities for purposes of section 199A should be understood to mean an activity similar to dealing in securities (i.e., limited to dealing in financial instruments referenced to commodities, such as futures or options traded on regulated exchanges).	In the preamble to the final regulations, Treasury and IRS agreed with commenters that the definition of dealing in commodities for purposes of section 199A should be limited to a trade or business that is dealing in financial instruments or otherwise does not engage in substantial activities with respect to physical commodities. To distinguish the trades or businesses, the final regulations adopt rules similar to the rules that apply to qualified active sales of commodities in section 1.954-2(f)(2)(iii).
Reputation or Skill	One commenter requested additional clarification regarding whether advertising income received for on air advertising spots in which a program host reads a script describing the positive qualities of a product or service, and may also choose to describe his or her own positive experiences with the product, is endorsement income as described in section 1.199A-5(b)(2)(xiv)(A). The commenter argued that such income should not be considered endorsement income because it is not received in connection with a separate trade or business of making endorsements.	Treasury and IRS declined to adopt this suggestion as section 1.199A-5(b)(2)(xiv)(A) looks to whether the individual or RPE is receiving income from the endorsement of products or services, not whether the income is received in connection with a separate trade or business of making endorsements. The preamble to the final regulations further provides that whether a taxpayer endorses a product or services is dependent on the facts and circumstances.

This chart is reflective of the final regulations as corrected.

The general rule is that the final regulations apply to taxable years ending after the date of publication in the Federal Register.Taxpayers may rely on the rules set forth in sections 1.199A-1 through 1.199A-6, in their entirety, or on the proposed regulations under sections 1.199A-1 through 1.199A-6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.