



CC:PA:LPD:PR
REG-107892-18
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: REG-107892-18, Written Comment on Notice of Proposed Rulemaking on Qualified Business Income Deduction under Section 199A

Dear Sir or Madame,

Associated Builders and Contractors, Inc. submits the following comments to the Department of Treasury and IRS in response to the above-referenced notice of proposed rulemaking published in the *Federal Register* on August 16, 2018, at 83 Fed. Reg. 40884.

About Associated Builders and Contractors Inc.

ABC is a national construction industry trade association representing more than 21,000 members. ABC and its 70 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work. ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industrial and commercial sectors. Moreover, the vast majority of our contractor members are classified as small businesses. Our diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

ABC Comments on Proposed Rule

The new deduction for qualified business income (QBI) under Section 199A is unquestionably the most important provision in the *Tax Cuts and Jobs Act* for the majority of ABC members, just as is for the overwhelming majority of construction companies, 94 percent of whom are organized as pass-through businesses according to analysis by the *Tax Foundation*. It is therefore crucial that Treasury and IRS get these rules right, and allow this deduction to apply broadly, simply, and fairly to the Main Street employers Congress intended the provision to benefit.

Aggregation and Grouping

First and foremost, it is critical that the final regulations allow for reasonable aggregation and grouping of related entities. As in many industries, construction contractors often utilize multiple entities for reasons entirely unrelated to tax considerations, ranging from liability to geography to joint ventures.

According to [recent analysis](#) by Ernst & Young on behalf of the Parity for Main Street Employers Coalition (PMSE), Section 199A can help Main Street businesses achieve near parity with C corporations, but only if they are able to claim the full deduction on all qualified income. A domestic S corporation that receives the full 20 percent deduction would see a 31.9 percent effective rate, competitive with the average C corporation rate of 30.6 percent. Without the ability to aggregate, this delta grows sharply under current law, before exploding in 2026 and beyond, when the provision is slated to expire.

Fortunately, the proposed regulations lay out a seemingly sensible, if somewhat novel, approach to grouping related entities. ABC appreciates this effort, as it appears to be workable for the majority of businesses. We would, however, ask that you take into consideration comments by PMSE and others to further refine the aggregation rules. We would also point to existing areas of the code that could serve as a ready template, such as Section 469.

Construction and SSTBs

Another key element in the calculation of the deduction provided for in the proposed rule is the definition of a trade or business, as well as a qualified trade or business (QTB) as distinguished from a specified service trade or business (SSTB). While construction clearly does not fall into the category of specified services, ABC appreciates the proposed rule's limited approach to "reputation or skill" as the "principal asset" of a given trade or business in the context of the statute's explication of SSTBs. An elastic reading of such a phrase could easily ensnare many bona fide Main Street businesses in construction or other industries in ways that go beyond what Congress' guard rails were intended to limit. Like, the specified service definition of "consulting" as distinct from "consulting services embedded in, and ancillary to...a trade or business that is otherwise not an SSTB (such as typical services provided by a building contractor)" is an important caveat that is consistent to with Treasury's long-held approach to the construction industry.

"Presumption" Standard for Former Employees

One area of concern in the proposed rule is the "presumption" standard for former employees as it relates to the wage limitation. While understanding concerns regarding worker misclassification, the approach described in the proposed rule would create needless complexity and contradiction, putting entrepreneurs in the position of facing self-employment taxes without the benefit of the 199A deduction on otherwise qualified income. In an industry like construction with many independent contractors and a career track that often sees former employees hanging their own shingle, this new standard would create an unnecessary regulatory hurdle for the smallest of businesses. Asking them to prove a negative is neither appropriate nor fair.

Conclusion

ABC's guiding principle for reforming the tax code has always been ensuring fair treatment for all companies regardless of size, structure, or sector. Section 199A represents Congress' best effort to do just that. The proposed rules are a welcome start to implementing the deduction in the way that it was intended, and offering Main Street businesses a sensible framework to understand and ultimately benefit from TCJA. We appreciate your consideration and look forward to working with Treasury and IRS to ensure that this important provision succeeds.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "K Swearingen". The signature is written in a cursive, flowing style.

Kristen Swearingen
Vice President of Legislative and Political Affairs