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# The qualified retirement plan opportunity created by the new Internal Revenue Code section 199A

Chuck Rolph, JD, MSFS, CFP<sup>®</sup>, CEBS, CPC, CPFA, TGPC, CLU<sup>®</sup>, ChFC<sup>®</sup>, RICP  
Director, Advanced Consulting Group  
Nationwide<sup>®</sup>

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## I. Overview of the “opportunity”

1.1. The 2017 tax act<sup>1</sup>, commonly referred to in the popular press as the “Tax Cuts and Jobs Act” or “TCJA,” contains a provision for tax years beginning after December 31, 2017 that allows taxpayers other than C corporations (i.e., sole proprietorships, partnerships, limited liability companies, and S corporations) with pass-through income to deduct 20% of its qualified business income or “QBI.”<sup>2</sup> There are limitations that apply to the general rule and those limitations are the subject of this paper. The focus of this paper is on how the proper and timely utilization of a deduction for a qualified retirement plan (hereinafter “plan”) contribution might allow a business owner with pass-through income to take full advantage of the Code section 199A deduction for the QBI. The opportunity for a business owner with pass-through income to take full advantage of the Code section 199A deduction can be limited or lost entirely in two separate instances (i.e., the W-2 wage limitation and the specified service trade or business exclusion) that will be discussed below in Sections IV and V, respectively.

1.2. The common denominator in those two instances is that if a taxpayer’s taxable income does not exceed a threshold amount (as defined in paragraph 4.1), neither limitation will apply to reduce the taxpayer’s ability to take advantage of the Code section 199A deduction. The amount of the contribution made to the plan’s trust by the sponsor of the plan that is passed through to the affected taxpayer will serve to reduce his or her taxable income, possibly below the threshold amount, with the result that the affected taxpayer may be eligible for the QBI deduction on his or her personal return.

## II. Allowance of Code section 199A deduction

2.1. The Code section 199A deduction reduces taxable income and is not allowed in computing adjusted gross income.<sup>3</sup> Taxpayers are eligible for the Code section 199A deduction regardless of whether or not they itemize their deductions, as the deduction is taken after the taxpayer’s adjusted gross income is computed.<sup>4</sup>

2.2. The amount of the Code section 199A deduction is equal to the lesser of: (i) the taxpayer’s combined QBI amount; or (ii) an amount equal to 20% of the excess (if any) of (A) the taxable income of the taxpayer, over (B) the net capital gain of the taxpayer.<sup>5</sup> The determination of the combined QBI amount is determined as the sum of the deductible amounts for each trade or business of the taxpayer.<sup>6</sup> This is discussed in Section III, below.

### 2.3. Definitions applicable to the Code section 199A deduction

2.3.1. QBI is defined as the net amount of qualified items of income, gain, deduction, and loss with respect to the qualified trade or business of the taxpayer.<sup>7</sup> The term “qualified items of income, gain, deduction, and loss” means items of income, gain, deduction, and loss to the

extent such items are: (i) effectively connected with the conduct of a trade or business within the United States (within the meaning of section 864(c), determined by substituting "qualified trade or business (within the meaning of section 199A)" for "nonresident alien individual or a foreign corporation" or for "a foreign corporation" each place it appears); and (ii) included or allowed in determining taxable income for the taxable year.<sup>8</sup>

2.3.2. A "qualified trade or business" is defined as any trade or business other than a specified service trade or business or the trade or business of being an employee.<sup>9</sup>

2.3.3. A "specified service trade or business" means any trade or business: (i) which is described in Code section 1202(e)(3)(A) (applied without regard to the words "engineering" and "architecture") or which would be so described if the term "employees or owners" were substituted for "employees" therein; or (ii) which involves the performance of services that consist of investing and investment management, trading, or dealing in securities, partnership interests, or commodities.<sup>10</sup> The businesses described under Code section 1202(e)(3)(A) include any trade or business involved in the performance of 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 such trade or business is the reputation or skill of one or more of its employees.

2.3.4. QBI does not include specified items of income, gain, deduction, and loss.<sup>11</sup> These include: (i) short-term or long-term capital gain or loss; (ii) dividends or income equivalent to dividends; (iii) certain gain or loss involved in commodities transactions or foreign currency gains; (iv) income, gain, or loss in connection with notional principle contracts; (v) amounts received from annuities not received in connection with the trade or business; and (vi) any item of deduction or loss properly allocable to the aforementioned items.

2.3.5. QBI also does not include: (i) reasonable compensation paid to the taxpayer by any qualified trade or business for services rendered with respect to the trade or business; (ii) any guaranteed payment made by a partnership to a partner for services rendered with respect to the trade or business; or (iii) to the extent provided in regulations, any amount paid by a partnership to a partner acting other than in his or her capacity as a partner for services.<sup>12</sup>

2.3.6. The term "combined QBI amount" means, with respect to any taxable year, an amount equal to: (i) the sum of the deductible amounts for each qualified trade or business carried on by the taxpayer; plus (ii) 20% of the aggregate amount of the qualified REIT dividends and qualified publicly traded partnership income of the taxpayer for the taxable year.<sup>13</sup> See Section III for a description of how the deductible amount is determined for each trade or business.

2.3.7. The term "qualified property" means tangible property of a character subject to depreciation: (i) that is held by, and available for use in, the qualified trade or business at the end of the tax year; (ii) that is used in the production of QBI; and (iii) for which the depreciable period has not ended before the end of the tax year.<sup>14</sup>

### III. Determination of deductible amount for each trade or business

3.1. The deductible amount of QBI under Code section 199A with respect to each qualified trade or business of the taxpayer is the lesser of: (i) the amount determined under paragraph 3.2 (the "QBI limitation" for ease of reference); or (ii) 3.3 (the "W-2 wage limitation" for ease of reference).<sup>15</sup>

3.2. 20% of the taxpayer's QBI with respect to the qualified trade or business.

3.3. the greater of –

3.3.1. 50% of the W-2 wages with respect to the qualified trade or business, or

3.3.2. the sum of 25% of the W-2 wages with respect to the qualified trade or business, plus 2.5% of the unadjusted basis immediately after acquisition of all qualified property.

#### IV. Modifications to computation of the deductible amount based on taxable income

4.1. If a taxpayer's income for the taxable year does not exceed the threshold amount, then the determination of the deductible amount for each trade or business is made without regard to the W-2 wage limitation described in paragraph 3.3.<sup>16</sup> The "threshold amount" is \$157,500 or \$315,000 (in the case of a joint return).<sup>17</sup> The dollar amounts that are the threshold amount are adjusted for inflation in taxable years beginning after 2018.<sup>18</sup>

4.2. For purposes of the W-2 wage limitation computations, the following operational rules apply.

4.2.1. W-2 wages are defined as the total wages subject to wage withholding, elective deferrals, and deferred compensation paid by a qualified trade or business with respect to employment of its employees during the calendar year ending during the tax year of the taxpayer.<sup>19</sup>

4.2.2. In the case of a partnership or S corporation: (i) Code section 199A is applied at the partner or shareholder level; (ii) each partner or shareholder shall take into account such person's allocable share of each qualified item of income, gain, deduction, and loss; and (iii) each partner or shareholder shall be treated as having W-2 wages and unadjusted basis immediately after acquisition of qualified property for the taxable year in an amount equal to such person's allocable share of the W-2 wages and the unadjusted basis immediately after acquisition of qualified property of the partnership or S corporation for the taxable year.<sup>20</sup>

4.3. Phase-in of the W-2 wage limitation. If the taxpayer's taxable income for the taxable year exceeds the threshold amount, but does not exceed the sum of the threshold amount plus \$50,000 (\$100,000 in the case of a joint return), the W-2 wage limitation is phased-in until it becomes fully phased-in at the \$50,000 and \$100,000 amounts in excess of the applicable thresholds; i.e., \$207,500 and, in the case of joint returns, \$415,000 (hereinafter referred to as the "fully phased-in amount").<sup>21</sup>

4.3.1. The phase-in of the W-2 wage limitation operates between the threshold amount and the fully phased-in amount.

4.3.2. If the taxable income of the taxpayer for the taxable year exceeds the threshold amount, but does not exceed the fully phased-in amount, and the amount of the Code section 199A deduction determined using the W-2 wage limitation with respect to any trade or business of the taxpayer is less than the amount of such deduction determined by using the QBI limitation, the amount of the deduction is determined by using the QBI limitation, subject to the reduction described in subparagraph 4.3.3.<sup>22</sup> Thus, the effect of the phase-in of the W-2 wage limitation is to limit the amount of Code section 199A deduction, determined using the QBI limitation, until the W-2 wage limitation is fully phased-in. Once the W-2 wage limitation is fully phased-in, there is no opportunity to use the QBI limitation in determining the amount of Code section 199A deduction if the amount determined using the W-2 wage limitation is less than that determined using the QBI limitation.

4.3.3. The reduction applied to the dollar amount of Code section 199A deduction by using the QBI limitation if subparagraph 4.3.2 applies is the amount which bears the same ratio to the excess amount as: (i) the amount by which the taxpayer's taxable income for the taxable year exceeds the threshold amount, bears to; (ii) \$50,000 (\$100,000 in the case of a joint return).<sup>23</sup> The term "excess amount" is the excess of: (i) the amount of Code section 199A deduction determined using the QBI limitation; over (ii) the amount of Code section 199A deduction determined using the W-2 wage limitation.<sup>24</sup>

4.3.4. Example of the phase-in computation. Assume that taxpayer T ("T") files a joint return with his or her spouse and operates a business that generates \$25,000 of QBI during the taxable year and that T's business pays \$8,000 of W-2 wages during the taxable year. Assume further that T's taxable income for the year is \$355,000.

- The W-2 wage limitation is phased-in because T's taxable income exceeds the threshold amount for joint returns (\$315,000) by \$40,000, but is less than the fully phased-in amount (\$415,000).
- To determine the amount of the W-2 wage limitation phase-in, we first determine the excess amount. The amount of Code section 199A deduction using the QBI limitation is \$5,000 (\$25,000 of QBI multiplied by 20%). The amount of Code section 199A deduction determined using the W-2 wage limitation is \$4,000 (\$8,000 of W-2 wages multiplied by 50%). The excess amount is \$1,000 (\$5,000 - \$4,000).
- Next, we determine the ratio by which the taxpayer's income in excess of the threshold amount (\$40,000) bears to the fully phased-in amount (\$100,000). That equals 40%.
- 40% multiplied by the excess amount (\$1,000) equals \$400, which is the dollar amount of the phase-in reduction.
- The deduction determined using the QBI limitation is \$5,000 (20% multiplied by \$25,000).
- We next subtract the dollar amount of the phase-in reduction (\$400) from the dollar amount of the deduction using the QBI limitation without regard to the phase-in reduction (\$5,000) to arrive at a Code section 199A deduction of \$4,600.

4.3.5. Once the taxpayer's taxable income exceeds the fully phased-in amount, the W-2 wage limitation applies without exception.

## V. Specified service trade or business exclusion to the QBI deduction

5.1. The otherwise applicable Code section 199A QBI deduction can be lost if the affected trade or business generating the QBI is a specified service trade or business, as defined in subparagraph 2.3.3.<sup>25</sup> The general rule excepts a specified service trade or business from the definition of qualified trade or business (see subparagraph 2.3.2).

5.2. There is an exception to the general rule that a qualified trade or business does not include a specified service trade or business that is based on the taxpayer's income.<sup>26</sup>

5.2.1. If the taxpayer's taxable income does not exceed an applicable threshold amount (see paragraph 4.1), the exclusion of a specified service trade or business from the definition of a qualified trade or business does not apply.<sup>27</sup>

5.2.2. Similar to the phase-in of the W-2 wage limitation, the specified service trade or business exclusion phases in for taxpayers with taxable income in excess of the threshold amount (see paragraph 4.1) but less than the fully phased-in amount (see paragraph 4.3). In the phase-in period (i.e., from the threshold amount to the fully phased-in amount), only the applicable percentage (see subparagraph 5.2.3) of qualified items of income, gain, deduction, or loss, and W-2 wages and the unadjusted basis immediately after acquisition of qualified property, of the taxpayer allocable to the affected specified service trade or business are taken into account in computing QBI, W-2 wages, and the unadjusted basis immediately after acquisition of qualified property.<sup>28</sup>

5.2.3. As the specified service trade or business phases in, the taxpayer may only take into account the "applicable percentage" of QBI and the W-2 wage limitation. The "applicable percentage" is 100% reduced by the percentage equal to the ratio which taxable income in excess of the threshold amount bears to \$50,000 or \$100,000, whichever is applicable.<sup>29</sup> The exclusion is fully applicable at the fully phased-in amount (see paragraph 4.3). Thus, once the fully phased-in amount is reached, there is no opportunity for a specified service trade or business to avail itself of the Code section 199A deduction.

5.2.3. Example of the applicable percentage phase-in computation for a specified service trade or business. Assume that taxpayer T ("T") files a joint return with his or her spouse and operates

a business that generates \$25,000 of QBI during the taxable year and that T's business pays \$8,000 of W-2 wages during the taxable year. Assume further that T's taxable income for the year is \$355,000.

- T's taxable income in excess of the threshold amount is \$40,000 (\$355,000 - \$315,000).
- The ratio of taxable income in excess of the threshold amount (\$40,000) to the fully phased-in amount (\$100,000) is 40%.
- The applicable percentage is 60% (100% - 40%).
- The applicable percentage of QBI is \$15,000 (\$25,000 x 60%). The applicable percentage of W-2 wages is \$4,800 (\$8,000 x 60%).
- Because the taxable income of the taxpayer for the taxable year exceeds the threshold amount, but does not exceed the fully phased-in amount, and because the amount of the Code section 199A deduction determined using the W-2 wage limitation is less than the amount of such deduction determined by using the QBI limitation, the amount of the deduction is determined by using the QBI limitation, subject to the reduction described in subparagraph 4.3.3.<sup>30</sup>
- Due to the fact that the reduction is being applied to a specified service trade or business, there is yet another step triggered by application of the phase-in of the W-2 wage limitation. We must determine the respective limitations after application of the applicable percentage: (i) QBI limitation = \$15,000 x 20% or \$3,000; and (ii) W-2 wage limitation = \$4,800 x 50% or \$2,400.
- The amount of the W-2 wage limitation that is phased-in and that will offset the dollar amount of deduction otherwise available by using the QBI limitation is equal to \$240. To arrive at the \$240 amount, we first determine the excess amount, which is \$600 (\$3,000 due to the QBI limitation after reduction by the applicable percentage minus \$2,400 due to the W-2 wage limitation after reduction by the applicable percentage). Next, we determine the ratio by which the taxpayer's income in excess of the threshold amount (\$40,000) bears to the fully phased-in amount (\$100,000). That equals 40%. Then, we multiply 40% by the excess amount (\$600) to arrive at our \$240 amount that will reduce the amount of the available deduction.
- Thus, T's Code section 199A deduction, after all the calculations, is limited to \$2,760 (\$3,000 - \$240).

VI. Tax forms involved in the Code section 199A deduction. As of the date of this paper, the 2018 tax forms have not yet been released; therefore, all comments and observations in this section are based on 2017 tax forms and the IRS instructions for the respective forms.

#### 6.1. A sole proprietor's return.

6.1.1. The sole proprietor will file a Form 1040, along with a Schedule C to the Form 1040 to include items of income and deduction related to the business of the sole proprietor.

6.1.2. The instructions to the Schedule C, Form 1040, line 19 state: "Enter your deduction for the contributions you made for the benefit of your employees to a pension, profit-sharing, or annuity plan (including SEP, SIMPLE, and SARSEP plans described in Pub. 560). If the plan included you as a self-employed person, enter the contributions made as an employer on your behalf on Form 1040, line 28, or Form 1040NR, line 28, not on Schedule C."

6.1.3. The net profit or loss from the sole proprietor's business, as determined on Schedule C, is entered on line 12 of Form 1040 as either a positive or negative amount.

6.1.4. Thus, the contributions a sole proprietor makes to his or her retirement plan will be included on lines 12 and 28 of Form 1040 as an above-the-line deduction in arriving at adjusted gross income, which is entered on line 37 (front side) of Form 1040 and carried over to line 38

(back side) of Form 1040. The lower one's adjusted gross income, the lower is his or her taxable income.

6.1.5. As discussed in paragraph 2.1, the Code section 199A deduction for QBI is taken after the taxpayer's adjusted gross income is computed and is allowable as a deduction, regardless of whether the taxpayer itemizes his or her personal deductions on Schedule A to the Form 1040. The logical line to insert the Code section 199A deduction for QBI seems to be Line 42 of Form 1040, inasmuch as the deduction is to be taken after adjusted gross income is computed and before taxable income is determined. Furthermore, the exemptions entered on Line 42 of the 2017 Form 1040 have been eliminated beginning in 2018, so Line 42 appears to be the slot. That being said, we have to wait until the 2018 Form is released to see for certain where the Code section 199A deduction will be entered.

6.1.6. In examining Form 1040 to see where the deduction might occur, let's look at the following lines:

- **Line 40. Itemized deductions** (from Schedule A) **or your standard deduction** (see left margin) ...
- **Line 41.** Subtract line 40 from line 38 (adjusted gross income) ...
- **Line 42. Exemptions.** If line 38 is \$156,900 or less, multiply \$4,050 by the number on line 6d. Otherwise, see instructions ...
- **Line 43. Taxable Income.** Subtract line 42 from line 41. If line 42 is more than line 41, enter -0- ...

## 6.2. The return of a partner or LLC member taxed as a partnership.

6.2.1. Form 1065 for partners and LLC members. Line 18 of Form 1065 is a line for deduction of retirement plan contributions. The instructions to Form 1065, Line 18, state in applicable part: "Do not deduct payments for partners to retirement or deferred compensation plans including IRAs, qualified plans, and simplified employee pension (SEP) and SIMPLE IRA plans on this line. These amounts are reported on Schedule K-1, box 13, using code R, and are deducted by the partners on their own returns. Enter the deductible contributions not claimed elsewhere on the return made by the partnership for its common-law employees under a qualified pension, profit-sharing, annuity, or SEP or SIMPLE IRA plan, and under any other deferred compensation plan."

6.2.2. Form 1040 of the partner or LLC member. The instructions to Form 1040, Line 28, indicate that this is where partners would deduct the contributions referred to in subparagraph 6.2.1. Thus, the contribution allocable to the affected partner has the effect of lowering his or her adjusted gross income, which means a lower taxable income.

6.2.3. See subparagraphs 6.1.5. and 6.1.6. to see how the Code section 199A deduction is carried out on the Form 1040 of the partner.

## 6.3. The return of a shareholder in an S corporation.

6.3.1. Form 1120S for S corporation shareholders. Line 17 of Form 1120S is a line for deduction of retirement plan contributions. The instructions to Form 1120S, Line 17, state in applicable part: "Enter the deductible contributions not claimed elsewhere on the return made by the corporation for its employees under a qualified pension, profit-sharing, annuity, or simplified employee pension (SEP) or SIMPLE IRA plan, or any other deferred compensation plan. If the corporation contributes to an individual retirement arrangement (IRA) for employees, include the contribution in salaries and wages on page 1, line 8, or Form 1125-A, line 3, and not on line 17."

6.3.2. Schedule K-1 to Form 1120S. Unlike the treatment of a retirement plan contribution in the case of a partnership (Forms 1065 and Schedule K-1 to Form 1065), when the employer is an S corporation, any retirement plan contribution is deducted at the corporate level on line 17. In the case of a partnership, each partner's share of a retirement plan contribution is passed through

to him or her on the Schedule K-1 to Form 1065, so that it can be deducted on the affected partner's Form 1040. However, in the case of a Schedule K-1 to Form 1120S prepared for an S corporation shareholder, there is no box on the Schedule K-1 for Form 1120S to pass through a retirement plan contribution to the respective S corporation shareholder. The S corporation shareholder will receive the tax benefit of the S corporation's retirement plan contribution by virtue of the fact it lowers the amount of income reportable to the affected shareholder on Schedule K-1 to Form 1120S.

6.3.3. Form 1040 of the S corporation shareholder. The S corporation shareholder will report his or her respective share of S corporation profit or loss on line 17 of Form 1040 and on Schedule E to Form 1040. Generally speaking, ordinary net business income or loss is reported on Schedule E. Other sources of income are reported on their own schedules, then entered on the appropriate line of the 1040 tax return. For example, interest and dividends passed through by an S-corporation to a shareholder are reported on Schedule B. Capital gains are reported on Schedule D.

6.3.4. See subparagraphs 6.1.5. and 6.1.6. to see how the Code section 199A deduction is carried out on the Form 1040 of the S corporation shareholder.

## VII. Planning strategies with qualified retirement plans to enhance the availability of the Code section 199A deduction for QBI.

7.1. The deduction for QBI is available to sole proprietors, partners, LLC members, and S corporation shareholders and is taken on the taxpayer's personal return (i.e., Form 1040) after his or her adjusted gross income has been determined. The deduction is available without regard to whether the taxpayer itemizes deductions or takes the standard deduction.

7.2. The taxpayer's deduction for QBI under Code section 199A can be limited or lost entirely in two circumstances.

7.2.1. The W-2 wage limitation (defined in paragraph 3.3. and discussed in Section IV) can limit or eliminate the eligibility of the taxpayer to take advantage of the deduction.

7.2.2. If the taxpayer is in a specified service trade or business, his or her eligibility to take the Code Section 199A deduction for QBI is lost if the taxpayer's income exceeds the fully phased-in amount and is limited if the taxpayer's income is between the threshold amount and the fully phased-in amount. This is discussed in Section V.

7.3. The financial advisor and retirement plan professional are in a unique position to assist their business owner clients who own and operate pass-through entities by: (i) making them aware of the new opportunity to deduct QBI; (ii) informing them of the impediments to full utilization of the deduction, as described in paragraph 7.2; and (iii) showing them how proper and tax-efficient retirement plan design may make it possible to recapture the Code section 199A deduction for QBI that might otherwise be lost due to taxable income that exceeds the threshold amount. The first step is for the financial advisor and retirement plan professional to determine that the business owner is taking full advantage of any existing 401(k) plans in terms of maxing out the contributions. Of course, if the business owner doesn't have a plan in place, the advisor can assist with implementing one. If, after taking full advantage of the 401(k) plan opportunity, the business owner's taxable income still exceeds the threshold amount, the advisor can introduce the concept of a traditional defined benefit plan or a cash balance plan to further add tax-deductible contributions which have the effect of lowering the business owner's taxable income, as described in Section VI.

7.4. The computation of QBI and the opportunity to deduct a portion of it on one's personal tax return is not a simple task, as can be appreciated by a reading of this paper. The services of a professional CPA, other tax accountant, or tax attorney will be required to make the necessary computations on behalf of the business owner/client. The financial advisor and retirement plan professional can assist

the tax professional in helping the business owner/client maximize his or her opportunity to take full advantage of the Code section 199A deduction for QBI by illustrating how a properly designed and funded plan can reduce the taxable income of the affected business owner/client, thereby avoiding the two impediments to the successful utilization of the deduction discussed in paragraph 7.2.



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<sup>1</sup> Pub. L. No. 115-97

<sup>2</sup> Pub. L. No. 115-97, sec. 11011(a), adding Internal Revenue Code (“Code”) section 199A.

<sup>3</sup> Code sec. 62(a), as amended by the 2017 tax act, sec. 11011(b)(1).

<sup>4</sup> See Code secs. 63(b)(3) and 63(d)(3), as amended by the 2017 tax act, sec. 11011(b)(2)-(3).

<sup>5</sup> Code sec. 199A(a).

<sup>6</sup> Code sec. 199A(b)(1).

<sup>7</sup> Code sec. 199A(c)(1).

<sup>8</sup> Code sec. 199A(c)(3)(A).

<sup>9</sup> Code sec. 199A(d)(1).

<sup>10</sup> Code sec. 199A(d)(2)(A), (B).

<sup>11</sup> Code sec. 199A(c)(3)(B).

<sup>12</sup> Code sec. 199A(c)(4).

<sup>13</sup> Code sec. 199A(b)(1).

<sup>14</sup> Code sec. 199A(b)(6)(A).

<sup>15</sup> Code sec. 199A(b)(2).

<sup>16</sup> Code sec. 199A(b)(3)(A).

<sup>17</sup> Code sec. 199A(e)(2)(A).

<sup>18</sup> Code sec. 199A(e)(2)(B).

<sup>19</sup> Code sec. 199A(b)(4)(A).

<sup>20</sup> Code sec. 199A(f)(1).

<sup>21</sup> Code sec. 199A(b)(3)(B)(i).

<sup>22</sup> *Id.*

<sup>23</sup> Code sec. 199A(b)(3)(B)(ii).

<sup>24</sup> Code sec. 199A(b)(3)(B)(iii).

<sup>25</sup> Code sec. 199A(d)(1)(A).

<sup>26</sup> Code sec. 199A(d)(3).

<sup>27</sup> Code sec. 199A(d)(3)(A).

<sup>28</sup> Code sec. 199A(d)(3)(A)(i), (ii).

<sup>29</sup> Code sec. 199A(d)(3)(B).

<sup>30</sup> *Id.*