

VIA ELECTRONIC MAIL

October 1, 2018

Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Qualified Business Income Deduction, Proposed Regulations under Section 199A of the Internal Revenue Code (REG-107892-18); 83 Federal Register 40884 (Aug. 16, 2018).

Dear Sir or Madam:

The American Bankers Association¹ (ABA) appreciates this opportunity to comment on the Internal Revenue Service's (IRS) proposed regulations implementing section 199A of the Internal Revenue Code (IRC). Section 199A, added to the IRC under the Tax Cuts and Jobs Act of 2017, provides that an individual, trust, or estate taxpayer generally can deduct 20% of qualified business income (section 199A deduction) from a partnership, S corporation or sole proprietorship (relevant passthrough entity). Statutorily, the availability of the section 199A deduction may be limited based on (1) the type of trade or business that is engaged, (2) the amount of W-2 wages paid with respect to the trade or business, and (3) the unadjusted basis immediately after acquisition (UBIA) of qualified property held for use in the trade or business (collectively referred to as taxable income, wage, and UBIA thresholds).

ABA member institutions with fiduciary powers may act as trustee or executor of a trust or estate that receives qualified business income from a partnership, S corporation, or sole proprietorship. Therefore, as the corporate fiduciary and taxpayer, the financial institution would compute any available section 199A deduction under the proposed regulations in 26 CFR 1.199A-6(d). From this perspective as a corporate fiduciary, we share our comments on two specific aspects of the proposal.²

Charitable Remainder Trusts

In the preamble to the proposed regulations, the Treasury Department and the IRS request comments on whether taxable beneficiaries of split-interest trusts, such as charitable remainder trusts, should be eligible for the section 199A deduction. ABA urges the IRS in its final rule to allow charitable remainder trusts to calculate the section 199A deduction at the trust level and treat the trust as a *single* taxpayer for purposes of the taxable income, wage, and UBIA thresholds. The IRS should allow trustees to calculate the trust's taxable income each year solely

¹ The American Bankers Association is the voice of the nation's \$18 trillion banking industry, which is comprised of small, regional, and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits, and extend nearly \$10 trillion in loans.

² On September 21, 2018, ABA submitted a separate letter to the IRS on these proposed regulations and their effect on subchapter S banks.

for purposes of determining the appropriate section 199A deduction. Since a charitable remainder trust, unlike a taxable non-grantor trust, is not subject to tax at the trust level, it does not have taxable income on which it pays income tax. Therefore, we recommend the IRS define taxable income of a charitable remainder trust for section 199A purposes as the amount in the ordinary income category as determined under IRC section 664(b)(1). The section 199A deduction can then either be applied to the ordinary income category of the charitable remainder trust, or alternatively, allocated out as a deduction to the beneficiary. In the case of an allocation to the beneficiary, the 199A deduction would be determined under the same proposed rules for non-grantor taxable trusts and be based on the beneficiary's share of distributable net income (DNI).

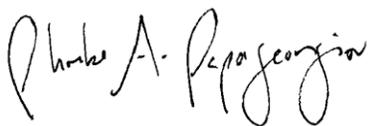
We also ask that if the qualified business income is also unrelated business taxable income (UBTI) to the charitable remainder trust, the IRS allow for the application of the section 199A deduction before imposing the UBTI excise tax.

Common Trust Funds

Under the proposed regulations, a relevant passthrough entity may be a partnership or an S corporation that is owned directly or indirectly by at least one individual, estate, or trust.³ Under certain circumstances, a trust or estate may also be treated as a relevant passthrough entity.⁴ Many ABA members establish common trust funds under IRC section 584 as a means to invest the assets of their fiduciary accounts efficiently and collectively. Because these funds are often considered fiscally transparent from a federal tax perspective where beneficiaries look through the fund for purposes of identifying income with preferential tax rates, the IRS should explicitly recognize common trust funds as relevant passthrough entities.

ABA appreciates this opportunity to comment on the proposed regulations governing the application of section 199A deduction for charitable remainder trusts and common trust funds.

Sincerely,



Phoebe A. Papageorgiou
Vice President, Trust Policy

³ Proposed 26 CFR 1.199A-1(b)(9).

⁴ Id. The trust or estate must pass through qualified business income, W-2 wages, UBIA of qualified property, qualified REIT dividends, or qualified publicly-traded partnership income.