



### Real Estate Professionals and the Qualified Business Income Rule

On January 18/22, the Treasury Department and the Internal Revenue Service issued their final regulations regarding the new 20 percent deduction on qualified business income (“QBI”) under the 2017 Tax Cuts and Jobs Act. Until the regs were finally published, there had been uncertainty about their interpretation.

26 U.S. Code § 199A now permits owners of sole proprietorships, S corporations, or partnerships to deduct up to 20% of their earned business income. The purpose of the provision was to allow small businesses to keep pace with the tax cuts offered to corporations under the Act.

According to the NAR (“Treasury, IRS Give Big Win to Real Estate Professionals in Qualified Business Income Rule”):

Friday’s ruling from Treasury and the IRS, however, signaled a significant victory for the real estate industry and for many of the National Association of Realtors®’ 1.3 million members.

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These final guidelines will allow real estate professionals to benefit from the Section 199A 20 percent pass-through deduction, a move that will empower Realtors® to expand their operations and provide improved services to consumers and potential homebuyers across the country.

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A central component of the new tax law is a reduction of the corporate tax rate – from 35 to 21 percent. However, since nine out of ten American businesses are structured as pass-through entities rather than corporations, the Section 199A provision provides critical tax deductions for small businesses and self-employed independent contractors, which is how many real estate professionals are classified.

According to the article, there are three major provisions that will benefit Realtors®:

First, it clarifies that all real estate brokers who operate as sole proprietors or owners of partnerships, S corporations or limited liability companies are eligible for the new deduction.

Second, the rule as written limited the 20% deduction to income from a “trade or business” – a broad term that requires a case-by-case determination. Now, under the new guidelines, there is a “...bright-line safe harbor test requiring at least 250 hours per year spent on maintaining and



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repairing property, collecting rent, paying expenses and conducting other typical landlord activities.”

And lastly, although originally denied eligibility, the new regs now recognize property that the taxpayer holds as the result of a Section 1031 exchange.

However, there are a number of tips and traps to know and understand – well beyond the scope of this article. Now, with the new rules bringing clarity, Realtors® are encouraged to check with their tax professional to determine if they qualify.

Links for more information:

- <https://www.nar.realtor/tax-reform/the-tax-cuts-and-jobs-act-what-it-means-for-homeowners-and-real-estate-professionals>
- <https://www.irs.gov/newsroom/treasury-irs-issue-final-regulations-other-guidance-on-new-qualified-business-income-deduction-safe-harbor-enables-many-rental-real-estate-owners-to-claim-deduction>
- <https://www.irs.gov/newsroom/tax-cuts-and-jobs-act-provision-11011-section-199a-qualified-business-income-deduction-faqs>
- <https://www.irs.gov/newsroom/tax-cuts-and-jobs-act-provision-11011-section-199a-qualified-business-income-deduction-faqs>
- <https://www.journalofaccountancy.com/issues/2018/nov/irs-sec-199a-business-deduction.html>