

Understanding Requirements to qualify for the Section 199A Business Deduction for Rental Properties

Rev. Proc. 2019-38 Clarification of QBI for passive rental income.

Solely for the purposes of section 199A, each rental real estate enterprise will be treated as a single trade or business if the following requirements are satisfied during the taxable year with respect to the rental real estate enterprise:

- (A) **Separate books and records are maintained to reflect income and expenses for each rental real estate enterprise.** If a rental real estate enterprise contains more than one property, this requirement may be satisfied if income and expense information statements for each property are maintained and then consolidated;
- (B) For rental real estate enterprises that have been in existence less than four years, 250 or more hours of rental services are performed (as described in this revenue procedure) per year with respect to the rental real estate enterprise. For rental real estate enterprises that have been in existence for at least four years, in any three of the five consecutive taxable years that end with the taxable year, **250 or more hours of rental services are performed (as described in this revenue procedure) per year with respect to the rental real estate enterprise;** and
- (C) **The taxpayer maintains contemporaneous records, including time reports, logs, or similar documents, regarding the following: (i) hours of all services performed; (ii) description of all services performed; (iii) dates on which such services were performed; and (iv) who performed the services.** If services with respect to the rental real estate enterprise are performed by employees or independent contractors, the taxpayer may provide a description of the rental services performed by such employee or independent contractor, the amount of time such employee or independent contractor generally spends performing such services for the enterprise, and time, wage, or payment records for such employee or independent contractor. Such records are to be made available for inspection at the request of the IRS.

(The following types of property may not be included in a rental real estate enterprise and are therefore not eligible for the safe harbor: (A) Real estate used by the taxpayer (including an owner or beneficiary of an RPE) as a residence under section 280A(d). (B) Real estate rented or leased under a triple net lease. For purposes of this revenue procedure, a triple net lease includes a lease agreement that requires the tenant or lessee to pay taxes, fees, and insurance, and to pay for maintenance activities for a property in addition to rent and utilities. (C) Real estate rented to a trade or business conducted by a taxpayer or an RPE which is commonly controlled under § 1.199A-4(b)(1)(i). 8 (D) The entire rental real estate interest if any portion of the interest is treated as an SSTB under § 1.199A-5(c)(2) (which provides special rules where property or services are provided to an SSTB).)

I certify that I have provided an attachable statement to my timely filed original return for this tax year that includes the following:

- (1) A description (including the address and rental category) of all rental real estate properties that are included in each rental real estate enterprise;
- (2) A description (including the address and rental category) of rental real estate properties acquired and disposed of during the taxable year.

I also certify that the requirements of this revenue procedure have been satisfied.

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Co-owner Signature

\_\_\_\_\_  
Date