

**** IHS Member Advisory ****
Twenty Percent Deduction for Qualified Business Income

In 2018, IHS partnered with law/lobby firm Brownstein Hyatt Farber Schreck to pursue a favorable regulatory outcome on a new law, the Tax Cuts and Jobs Act of 2017, which included a new tax deduction that could provide benefit to hearing aid dispensing business owners. As part of the lobbying effort, IHS/Brownstein met with the U.S. Department of Treasury and Joint Tax Committee to raise awareness of hearing aid businesses and the importance of ensuring the tax benefit could be used by qualified business owners. The following is information from IHS' tax counsel on the final regulations, adopted in January 2019. IHS advises any member to consult with his/her tax advisor to review the applicability of the deduction to his/her tax status/filing.

Background

Section 199A of the Internal Revenue Code ("Code") was added as part of the Tax Cuts and Jobs Act of 2017 and provides a deduction of up to 20 percent of income from a domestic business operated as a sole proprietorship or through a partnership, S corporation, trust, or estate, (the "section 199A deduction"). Section 199A applies to taxable years beginning after 2017 and before 2026. The section 199A deduction is not allowable – other than for taxpayers with incomes below specified income levels (less than \$315,000 for married taxpayers filing jointly or \$157,500 for individuals) – with respect to the income of a "specified service trade or business" ("SSTB").

For taxpayers whose taxable income is above the threshold amount, the section 199A deduction may also be limited based on the amount of W-2 wages paid with respect to the trade or business, and/or the value of qualified property held for use in the trade or business.

Final Regulations

The Department of Treasury issued final regulations under section 199A Code regarding the 20 percent deduction for passthrough businesses. The final regulations apply to tax years ending after their publication in the Federal Register; however, taxpayers may rely on the proposed regulations for tax years ending in 2018. The guidance could have a significant impact for members of the International Hearing Society who carry on their business through sole proprietorships, partnerships, and S corporations.

Specified Service Trade or Business

Of particular interest to IHS members is guidance regarding what constitutes performance of service in the fields of health. The performance of services in the field of health is a listed SSTB and therefore income from such services is not eligible (or is subject to a phase out) for the section 199A deduction with respect to taxpayers who exceed the income thresholds described above.

The regulations define the performance of services in the field of health as “the provision of medical services by individuals such as physicians, pharmacists, nurses, dentists, veterinarians, physical therapists, psychologists and other similar healthcare professionals performing services in their capacity as such. The performance of services in the field of health does not include the provision of services not directly related to a medical services field, even though the services provided may purportedly relate to the health of the service recipient.” Health services do not include the testing, manufacture, or sales of pharmaceuticals or medical devices. This definition is broader than what was in the proposed regulations. The final regulations remove a requirement in the proposed regulations that medical services be provided directly to the patient.

Exception for *de minimis* SSTB

The regulations add a *de minimis* exception to the definition of SSTB, which was not included in section 199A. Under the exception, an otherwise qualified business will not be a SSTB if less than 5 percent of its gross receipts are from activities that would cause the business to be an SSTB, or less than 10 percent of its gross receipts if it has gross receipts of \$25 million or less for the taxable year.

Other SSTB Limitations

In addition, several anti-abuse rules apply to multiple businesses with common ownership involving services typical of an SSTB. The regulations state that if a trade or business provides property or services to an SSTB that shares common ownership with an SSTB (50 percent or more), that portion of the trade or business of providing property or services to the commonly-owned SSTB will be treated as a separate SSTB with respect to the related parties.

Conclusion

While the regulations provide much needed guidance, there is no explicit guidance on whether the provision of audiology services will constitute the performance of services in the field of health. The regulations provide a favorable rule that, depending on your particular facts and circumstances, may allow you to claim the section 199A deduction, either because of the nature of the services provided, satisfaction of the income threshold, or by application of the *de minimis* rule.

We encourage you to consult with your tax advisor to determine how your business can fit within the framework of the rules and qualify for the section 199A deduction.