Professional Education Services, LP

Proposed Regulations to Clarify the Section 199A Deduction

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PROPOSED REGULATIONS TO CLARIFY THE SECTION 199A DEDUCTION

The statute enacting section 199A was vague in many respects. However, the statute expressly grants authority to the IRS to prescribe such regulations as are necessary to carry out the purposes of section 199A. The IRS released a draft of proposed regulations in August 2018 and scheduled a public hearing for October 2018. The proposed regulations are just that – proposed – and may change when ultimately finalized. A detailed summary follows.

The purpose of these proposed regulations is to provide taxpayers with computational, definitional, and anti-avoidance guidance regarding the application of section 199A. These proposed regulations contain six substantive sections, §§ 1.199A-1 through 1.199A-6, each of which provides rules relevant to the calculation of the section 199A deduction.

PROPOSED § 1.199A-1: OPERATIONAL RULES

Section 1.199A-1 of the proposed regulations provides guidance on the determination of the section 199A deduction. For simplicity, the proposed regulations use the term individual when referring to an individual, trust, estate, or other person eligible to claim the section 199A deduction. The term relevant pass-through entity (RPE) is used to describe pass-through entities that directly operate the trade or business or pass through the trade or business' items of income, gain, loss, or deduction from lower-tier RPEs to the individual.

This regulation:

- Generally defines a "trade or business" using the section 162 rules that most practitioners are familiar with.
- Requires that a loss in a given year for 199A purposes is carried over to the succeeding year solely for calculating the succeeding year section 199A deduction.
- Requires that the QBI of each trade or business must be calculated separately and subject to its own wage and property limitations before being combined with the QBI of other businesses. Thus, no "sharing" excess wages from one business with another.
- Provides that the section 199A deduction is calculated at the shareholder or partner level and has no impact on the basis of the partnership interest or the basis of the shareholder's stock.
- Provides that the 199A deduction does not reduce net earnings for calculation of the self employment tax or the tax on net investment income.
- The deduction is not modified for AMT purposes.

- The penalty for a substantial understatement of tax is calculated based on 5% (instead of 10%) of the tax required to be reported on the return or $5,000, whichever is greater.

PROPOSED §1.199A-2: DETERMINATION OF W-2 WAGES AND THE UBIA OF QUALIFIED PROPERTY AMOUNT

Section 199A(b)(2)(B) imposes a limit on the section 199A deduction based on the greater of either (i) the W-2 wages paid, or (ii) the W-2 wages paid and UBIA of qualified property attributable to a trade or business.

Under this regulation, " W-2 wages" means.

- W-2 wages generally follows the definition in prior section 199.
- Wages, includes amounts paid by third-party payors such as professional employer organizations.
- W-2 wage limitation in section 199A applies separately for each trade or business
- A partner's allocable share of W-2 wages must be allocated in the same manner as the allocation of the underlying wages expense.
- A notice of proposed revenue procedure, Notice 2018-64, provides three methods of determining W-2 wages.

Determining the basis of property. Under this regulation:

- The recovery period is not altered by taking additional first year depreciation or an expense under section 179.
- Partnership Special Basis Adjustments, such as under section 743 are not considered qualified property.
- Anti-abuse rules deny, including in basis, any property transferred for the purposes of tax avoidance.
- Detailed like-kind exchange rules generally provide for a carryover basis calculation using the original placed in service date for the value of the exchanged property, plus a new basis and placed in service date for any "boot" paid as part of the exchange.
- The IRS is considering rules to apply to other non-recognition transactions to section 199A.
- A partner's or shareholder's allocable share of the UBIA of qualified property is determined in the same manner as the partner's allocable share or shareholder's pro rata share of depreciation.

PROPOSED §1.199A-3: QBI, QUALIFIED REIT DIVIDENDS, QUALIFIED PTP INCOME

§1.199A-3 restates the definitions in section 199A(c) and provides additional guidance on the determination of QBI, qualified REIT dividends, and qualified PTP income.

QBI

Section 199A(c)(1) provides that the term "QBI" means, for any taxable year, the net amount of qualified items of income, gain, deduction, and loss attributable to any qualified trade or business of the taxpayer. QBI does not include any qualified REIT dividends or qualified PTP income. Section 199A(c)(3)(A) provides that 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. Section 199A(c)(3)(B) provides a list of items that are not taken into account as qualified items of income, gain, deduction, and loss, including capital gain or loss, dividends, interest income other than interest income properly allocable to a trade or business, amounts received from an annuity other than in connection with a trade or business, certain items described in section 954, and items of deduction or loss properly allocable to these items. Section 199A(c)(4) provides that QBI does not include reasonable compensation paid to the taxpayer by any qualified trade or business of the taxpayer for services rendered with respect to the trade or business, any guaranteed payment described in section 707(c) paid to a partner for services rendered with respect to the trade or business, and to the extent provided in regulations, any payment described in section 707(a) to a partner for services rendered with respect to the trade or business.

Special rules. Under this regulation:

- Treatment of Section 751 Gain – Any gain attributable to assets of a partnership giving rise to ordinary income under section 751(a) or (b) is considered attributable to the trades or businesses conducted by the partnership, and therefore, may constitute QBI if the other requirements of section 199A are satisfied.
- Guaranteed Payments for the Use of Capital are not considered attributable to a trade or business, and thus do not constitute QBI.
- Section 481 Adjustments – Section 481 adjustments attributable to a trade or business, whether positive or negative, and arising in a taxable year ending after December 31, 2017, are treated as attributable to that trade or business. Accordingly, such section 481 adjustments will constitute QBI to the extent the requirements of section 199A are satisfied. Section 481 adjustments arising in a taxable year ending before January 1, 2018, do not constitute QBI.
- Previously Suspended Losses – To the extent that any previously disallowed losses (sections 465, 469, etc.) or deductions are allowed in the taxable year, they are treated as items attributable to the trade or business. However, losses or deductions that were

disallowed for taxable years beginning before January 1, 2018, are not taken into account for purposes of computing QBI in a later taxable year.

- Net operating losses – Generally, items giving rise to a net operating loss are allowed in computing taxable income in the year incurred. Because those items would have been taken into account in computing QBI in the year incurred, the net operating loss should not be treated as QBI in subsequent years.

- Section 1231 gains & losses – If gain or loss is treated as capital gain or loss under section 1231, it is not QBI. Conversely, if section 1231 provides that gains or losses are not treated as gains and losses from sales or exchanges of capital assets, the gains or losses must be included in QBI (provided all other requirements are met).

- Interest Income – QBI does not include any interest income other than interest income that is properly allocable to a trade or business. Interest income received on working capital, reserves, and similar accounts is not properly allocable to a trade or business, and therefore should not be included in QBI, because such interest income, although held by a trade or business, is simply income from assets held for investment. In contrast, interest income received on accounts or notes receivable for services or goods provided by the trade or business is not income from assets held for investment, but income received on assets acquired in the ordinary course of trade or business.

- Reasonable Compensation – QBI does not include "reasonable compensation paid to the taxpayer by any qualified trade or business of the taxpayer for services rendered with respect to the trade or business." Similarly, guaranteed payments for services under section 707(c) are excluded from QBI. The phrase "reasonable compensation" is a well-known standard in the context of S corporations. The legislative history of section 199A confirms that the reasonable compensation rule was intended to apply to S corporations. It does not apply to other types of entities.

- Guaranteed Payments – QBI does not include any guaranteed payment described in section 707(c) paid by a partnership to a partner for services rendered with respect to the trade or business. Section 199A(c)(4)(B) does not limit the term "partner" to an individual. Consequently, for purposes of the guaranteed payment rule, a partner may be an RPE. Therefore, for the purposes of this rule, a guaranteed payment paid by a lower-tier partnership to an upper-tier partnership retains its character as a guaranteed payment and is not included in QBI of a partner of the upper-tier partnership regardless of whether it is guaranteed to the ultimate recipient.

- Guaranteed Payments for the Use of Capital – Because guaranteed payments for the use of capital under section 707(c) are determined without regard to the income of the partnership, such payments are not considered attributable to a trade or business, and thus do not constitute QBI.

- Section 707(a) Payments – QBI does not include, to the extent provided in regulations, any payment described in section 707(a) to a partner for services rendered with respect to the trade or business. Section 707(a) addresses arrangements in which a partner engages with the partnership other than in its capacity as a partner. Within the context of section 199A, payments under section 707(a) for services are similar to, and therefore, should be treated similarly as guaranteed payments, reasonable compensation, and wages, none of which is includable in QBI.

PROPOSED §1.199A-4: AGGREGATION RULES

The proposed regulations incorporate the rules under section 162 for determining whether a trade or business exists for purposes of section 199A. A taxpayer can have more than one trade or business for purposes of section 162. See §1.446-1(d)(1). However, in most cases, a trade or business cannot be conducted through more than one entity.

Under the proposed regulation:

- Grouping rules – The grouping rules under section 469 are not appropriate for determining a trade or business for section 199A purposes. Accordingly, the IRS is not adopting the section 469 grouping rules as the means by which taxpayers can aggregate trades or businesses for purposes of applying section 199A.
- Aggregation Rules – Under proposed §1.199A-4, aggregation is permitted but is not required. An individual may aggregate trades or businesses only if the individual can demonstrate that:
    - Each trade or business must itself be a trade or business as defined in §1.199A-1(b)(13)
    - The same person, or group of persons, must directly or indirectly, own a majority interest in each of the businesses to be aggregated for the majority of the taxable year.
    - None of the aggregated trades or businesses can be an SSTB.
    - Individuals and trusts must establish that the trades or businesses meet at least two of three factors, which demonstrate that the businesses are in fact part of a larger, integrated trade or business. These factors include: (A) The businesses provide products and services that are the same (for example, a restaurant and a food truck) or they provide products and services that are customarily provided together (for example, a gas station and a car wash); (B) the businesses share facilities or share significant centralized business elements (for example, common personnel, accounting, legal, manufacturing, purchasing, human resources, or information technology resources); or (C) the businesses are operated in coordination with, or reliance on, other businesses in the aggregated group (for example, supply chain interdependencies).

- RPEs – RPEs must compute QBI, W-2 wages, and UBIA of qualified property for each trade or business. An RPE must provide its owners with information regarding QBI, W-2 wages, and UBIA of qualified property attributable to its trades or businesses.
- Reporting and Consistency – Once multiple trades or businesses are aggregated into a single aggregated trade or business, individuals must consistently report the aggregated group in subsequent tax years.

PROPOSED §1.199A-5: SPECIFIED SERVICE TRADE OR BUSINESS AND THE TRADE OR BUSINESS OF PERFORMING SERVICES AS AN EMPLOYEE

Section 199A(c)(1) provides that only items attributable to a qualified trade or business are taken into account in determining the section 199A deduction for QBI. Section 199A(d)(1) provides that a "qualified trade or business" means any trade or business other than (A) an SSTB, or (B) the trade or business of performing services as an employee.

SSTB

This part V.A. explains the provisions under proposed §1.199A-5 relating to SSTBs. First, the effect of classification as an SSTB is discussed. Second, the exceptions for taxpayers below the threshold amount and a de minimis exception are described. Third, guidance is provided on the meaning of the activities listed in the definition of SSTB. Fourth, the rules for determining whether a trade or business is treated as part of an SSTB are described. Finally, rules regarding classification as an employee for purposes of section 199A are discussed. These are perhaps the most important part of the proposed regulations.

1. Effect of being an SSTB

a. General Rule

Consistent with section 199A, proposed §1.199A-5(a)(2) provides that, unless an exception applies, if a trade or business is an SSTB, none of its items are to be taken into account for purposes of determining a taxpayer's QBI. In the case of an SSTB conducted by an entity, such as a partnership or an S corporation, if it is determined that the trade or business is an SSTB, none of the income from that trade or business flowing to an owner of the entity is QBI, regardless of whether the owner participates in the specified service activity. Therefore, a direct or indirect owner of a trade or business engaged in an SSTB is treated as engaged in the SSTB for purposes of section 199A regardless of whether the owner is passive or participated in the SSTB. Similarly, none of the W-2 wages or UBIA of qualified property will be taken into account for purposes of section 199A. For example, because the field of athletics is an SSTB, if a partnership owns a professional sports team, the partners' distributive shares of income from the partnership's athletics trade or business is not QBI, regardless of whether the partners participate in the partnership's trade or business. Proposed §1.199A-5 contains further examples illustrating the operation of this rule.

2. Exceptions to the General Rule

Under section 199A(d)(3), individuals with taxable income below the threshold amount are not subject to a restriction with respect to SSTBs. Therefore, if an individual or trust has taxable income below the threshold amount, the individual or trust is eligible to receive the deduction under section 199A notwithstanding that a trade or business is an SSTB. As described in part I.C of this Explanation of Provisions, the exclusion of QBI, W-2 wages, and UBIA of qualified property from the computation of the section 199A deduction is subject to a phase-in for individuals with taxable income within the phase-in range. The application of this phase-in is determined at the individual, trust, or estate level, which may not be where the trade or business is operated. Therefore, if a partnership or an S corporation operates an SSTB, the application of the threshold does not depend on the partnership or S corporation's taxable income but rather, the taxable income of the individual partner or shareholder claiming the section 199A deduction. For example, if the partnership's taxable income is less than the threshold amount, but each of the partnership's individual partners have income that exceeds the threshold amount plus $50,000 ($100,000 in the case of a joint return) then none of the partners may claim a section 199A deduction with respect to any income from the partnership's SSTB.

Proposed § 1.199A-5(c)(1) provides that a trade or business is not an SSTB if the trade or business has gross receipts of $25 million or less (in a taxable year) and less than 10 percent of the gross receipts of the trade or business is attributable to the performance of services in an SSTB. For trades or business with gross receipts greater than $25 million (in a taxable year), a trade or business is not an SSTB if less than 5 percent of the gross receipts of the trade or business are attributable to the performance of services in an SSTB.

3. Guidance

The definition of an SSTB for purposes of section 199A is (1) any trade or business involving 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 or owners, and (2) any trade or business that involves the performance of services that consist of investing and investment management, trading, or dealing in securities (as defined in section 475(c)(2)), partnership interests, or commodities (as defined in section 475(e)(2)).

SSTBs Listed in Section 199A(d)(2)(A)

The definition of an SSTB under section 199A is substantially similar to the list of service trades or businesses provided in section 448(d)(2)(A) and § 1.448-1T(e)(4)(i), as the legislative history notes. See Joint Explanatory Statement of the Committee of Conference, footnotes 44-46. Section 448 prohibits certain taxpayers from computing taxable income under the cash receipts and disbursements method of accounting. Under section 448, qualified personal service corporations generally are not subject to the prohibition from using the cash method. Section 448(d)(2) defines the term qualified personal service corporation to include certain employee-owned corporations, substantially all of the activities of which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting. The regulations under section 448(d)(2), found in

§1.448-1T(e)(4)(i), provide additional guidance on several of the terms, including health, performing arts, and consulting. In addition, there have been several court opinions, technical advice memoranda, and private letter rulings interpreting the various fields listed in section 448(d)(2) and §1.448-1T(e)(4)(i).

a. Health

Proposed §1.199A-5(b)(2)(ii) is informed by the definition of "health" under section 448 and provides that the term "performance of services in the field of health" means the provision of medical services by physicians, pharmacists, nurses, dentists, veterinarians, physical therapists, psychologists, and other similar healthcare professionals who provide medical services directly to a patient. The performance of services in the field of health does not include the provision of services not directly related to a medical field, even though the services may purportedly relate to the health of the service recipient. For example, the performance of services in the field of health does not include the operation of health clubs or health spas that provide physical exercise or conditioning to their customers, payment processing, or research, testing, and manufacture and/or sales of pharmaceuticals or medical devices.

b. Law

Proposed §1.199A-5(b)(2)(iii) is based on the ordinary meaning of "services in the field of law" and provides that the term "performance of services in the field of law" means the provision of services by lawyers, paralegals, legal arbitrators, mediators, and similar professionals in their capacity as such. The performance of services in the field of law does not include the provision of services that do not require skills unique to the field of law, for example, the provision of services in the field of law does not include the provision of services by printers, delivery services, or stenography services.

c. Accounting

Proposed §1.199A-5(b)(2)(iv) is based on the ordinary meaning of "accounting" and provides that the term "performance of services in the field of accounting" means the provision of services by accountants, enrolled agents, return preparers, financial auditors, and similar professionals in their capacity as such. Provision of services in the field of accounting is not limited to services requiring state licensure as a certified public accountant (CPA). The aim of proposed §1.199A-5(b)(2)(iv) is to capture the common understanding of accounting, which includes tax return and bookkeeping services, even though the provision of such services may not require the same education, training, or mastery of accounting principles as a CPA. The field of accounting does not include payment processing and billing analysis.

d. Actuarial Science

Proposed §1.199A-5(b)(2)(v) is based on the ordinary meaning "actuarial science" and provides that the term "performance of services in the field of actuarial science" means the provision of services by actuaries and similar professionals in their capacity as such. Accordingly, the field of actuarial science does not include the provision of services by analysts, economists, mathematicians, and statisticians not engaged in analyzing or assessing the financial costs of risk or uncertainty of events.

e. Performing Arts

Proposed §1.199A-5(b)(2)(vi) is informed by the definition of "performing arts" under section 448 and provides that the term "performance of services in the field of the performing arts" means the performance of services by individuals who participate in the creation of performing arts, such as actors, singers, musicians, entertainers, directors, and similar professionals performing services in their capacity as such. The performance of services in the field of performing arts does not include the provision of services that do not require skills unique to the creation of performing arts, such as the maintenance and operation of equipment or facilities for use in the performing arts. Similarly, the performance of services in the field of the performing arts does not include the provision of services by persons who broadcast or otherwise disseminate video or audio of performing arts to the public.

f. Consulting

Proposed §1.199A-5(b)(2)(vii) is informed by the definition of "consulting" under section 448 and provides that the term "performance of services in the field of consulting" means the provision of professional advice and counsel to clients to assist the client in achieving goals and solving problems. Consulting includes providing advice and counsel regarding advocacy with the intention of influencing decisions made by a government or governmental agency and all attempts to influence legislators and other government officials on behalf of a client by lobbyists and other similar professionals performing services in their capacity as such. The performance of services in the field of consulting does not include the performance of services other than advice and counsel. This determination is made based on all the facts and circumstances of a person's business.

The field of consulting does not include consulting that is embedded in, or ancillary to, the sale of goods if there is no separate payment for the consulting services.

g. Athletics

The field of athletics is not listed in section 448(d)(2), and there is little guidance on its meaning as used in section 1202(e)(3)(A). The term "performance of services in the field of athletics" means the performances of services by individuals who participate in athletic competition such as athletes, coaches, and team managers in sports such as baseball, basketball, football, soccer, hockey, martial arts, boxing, bowling, tennis, golf, skiing, snowboarding, track and field, billiards, and racing. The performance of services in the field of athletics does not include the provision of services that do not require skills unique to athletic competition, such as the maintenance and operation of equipment or facilities for use in athletic events. Similarly, the performance of services in the field of athletics does not include the provision of services by persons who broadcast or otherwise disseminate video or audio of athletic events to the public.

h. Financial Services

The definition of financial services is that typically performed by financial advisors and investment bankers and provides that the field of financial services includes the provision of financial services to clients including managing wealth, advising clients with respect to finances, developing retirement plans, developing wealth transition plans, the provision of advisory and other similar services regarding

valuations, mergers, acquisitions, dispositions, restructurings (including in title 11 or similar cases), and raising financial capital by underwriting, or acting as the client's agent in the issuance of securities, and similar services. This includes services provided by financial advisors, investment bankers, wealth planners, and retirement advisors and other similar professionals, but does not include taking deposits or making loans. Banks are excluded.

i. Brokerage Services

The field of brokerage services includes services in which a person arranges transactions between a buyer and a seller with respect to securities (as defined in section 475(c)(2)) for a commission or fee. This includes services provided by stock brokers and other similar professionals, but does not include services provided by real estate agents and brokers, or insurance agents and brokers.

j. Any Trade or Business Where the Principal Asset of Such Trade or Business Is the Reputation or Skill of 1 or More of Its Employees or Owners

The "reputation or skill" clause as used in section 199A was intended to describe a narrow set of trades or businesses, not otherwise covered by the enumerated specified services, in which income is received based directly on the skill and/or reputation of employees or owners. Additionally, the Treasury Department and the IRS believe that "reputation or skill" must be interpreted in a manner that is both objective and administrable. Thus, proposed § 1.199A-5(b)(2)(xiv) limits the meaning of the "reputation or skill" clause to fact patterns in which the individual or RPE is engaged in the trade or business of: (1) Receiving income for endorsing products or services, including an individual's distributive share of income or distributions from an RPE for which the individual provides endorsement services; (2) licensing or receiving income for the use of an individual's image, likeness, name, signature, voice, trademark, or any other symbols associated with the individual's identity, including an individual's distributive share of income or distributions from an RPE to which an individual contributes the rights to use the individual's image; or (3) receiving appearance fees or income (including fees or income to reality performers performing as themselves on television, social media, or other forums, radio, television, and other media hosts, and video game players). Proposed § 1.199A-5(b)(4) contains two examples illustrating the application of this definition.

SSTBs Described in 199A(d)(2)(B)

As mentioned previously, section 199A(d)(2)(B) provides that an SSTB also includes any trade or business that involves the performance of services that consist of investing and investment management, trading, or dealing in securities (as defined in section 475(c)(2)), partnership interests, or commodities (as defined in section 475(e)(2)). This rule is very complex and beyond the scope of this course.

4. Anti-Abuse Rules

What is in an SSTB?

The Treasury Department and the IRS are aware that some taxpayers have contemplated a strategy to separate out parts of what otherwise would be an integrated SSTB, such as the administrative functions, in an attempt to qualify those separated parts for the section 199A deduction. Such a strategy is

inconsistent with the purpose of section 199A. Therefore, in accordance with section 199A(f)(4), in order to carry out the purposes of section 199A, proposed § 1.199A-5(c)(2) provides that an SSTB includes any trade or business with 50 percent or more common ownership (directly or indirectly) that provides 80 percent or more of its property or services to an SSTB. Additionally, if a trade or business has 50 percent or more common ownership with an SSTB, to the extent that the trade or business provides property or services to the commonly-owned SSTB, the portion of the property or services provided to the SSTB will be treated as an SSTB (meaning the income will be treated as income from an SSTB). For example, A, a dentist, owns a dental practice and also owns an office building. A rents half the building to the dental practice and half the building to unrelated persons. Under proposed § 1.199A-5(c)(2), the renting of half of the building to the dental practice will be treated as an SSTB.

Additionally, proposed § 1.199A-5 provides a rule that if a trade or business (that would not otherwise be treated as an SSTB) has 50 percent or more common ownership with an SSTB and shared expenses, including wages or overhead expenses with the SSTB, it is treated as incidental to an SSTB and, therefore, as an SSTB, if the trade or business represents no more than five percent of gross receipts of the combined business.

5. Presumption for Former Employees

Section 199A provides that the trade or business of providing services as an employee is not eligible for the section 199A deduction. Therefore, taxpayers and practitioners noted that it may be beneficial for employees to treat themselves as independent contractors or as having an equity interest in a partnership or S corporation in order to benefit from the deduction under section 199A. For purposes of section 199A, if an employer improperly treats an employee as an independent contractor or other non-employee, the improperly classified employee is in the trade or business of performing services as an employee notwithstanding the employer's improper classification. This issue is particularly important in the case of individuals who cease being treated as employees of an employer, but subsequently provide substantially the same services to the employer (or a related entity) but claim to do so in a capacity other than as an employee

PROPOSED § 1.199A-6: SPECIAL RULES FOR RPES, PTPS, TRUSTS, AND ESTATES

Proposed § 1.199A-6 provides guidance that certain specified entities (for example, RPEs, PTPs, trusts, and estates) may need to follow for purposes of computing the entities' or their owners' section 199A deductions.

Computational Steps for RPEs and PTPs

Although RPEs cannot take the section 199A deduction at the RPE level, each RPE must determine and report the information necessary for its direct and indirect owners to determine their own section 199A deduction. RPEs must determine what amounts and information to report to their owners and the IRS, including QBI, W-2 wages, the UBIA of qualified property for each trade or business directly engaged in, and whether any of its trades or businesses are SSTBs.

RPEs must also determine and report qualified REIT dividends and qualified PTP income received directly by the RPE. RPEs report this information on or with the Schedules K-1 issued to the owners. RPEs must report this information regardless of whether a taxpayer is below the threshold.