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Corrected Final Section 199A Treasury Regulations Released

The IRS has issued the corrected draft of the final regulations on the qualified business income (QBI) deduction under Section 199A. Section 199A was enacted as part of the 2017 Tax Cuts and Jobs Act (TCJA). It provides a deduction for noncorporate taxpayers of up to 20 percent of QBI from a qualified U.S. trade or business operated as a sole proprietorship or through a partnership, S corporation, trust or estate. (See our prior coverage here <https://www.stradley.com/insights/publications/2019/01/tax-insights-january-30-2019> and here <https://www.stradley.com/insights/publications/2018/08/tax-insights-august-15-2018>.) The corrections generally address the computation of excess Section 743(b) basis adjustments, and provide that any business conducted by a disregarded entity will be treated as conducted directly by the owner for purposes of Section 199A. (Section references are to the Internal Revenue Code of 1986, as amended.)

NYSBA Issues Report on Proposed Foreign Tax Credit Regulations

The New York State Bar Association (NYSBA) Tax Section has issued a report (<https://www.nysba.org/1408/>) on proposed regulations for the foreign tax credit (<https://www.irs.gov/pub/irs-drop/reg-105600-18.pdf>). Generally, under Section 904, a taxpayer that pays taxes to a foreign country is permitted to take either a deduction of the taxes from its gross income or credit such taxes against its U.S. income tax liability on the foreign source income. The TCJA made several changes to the foreign tax credit rules. (See our prior coverage here <https://www.stradley.com/insights/publications/2018/12/tax-insights-december-5-2018>.) The NYSBA report provides a simpler alternative to the transition rules for pre-TCJA foreign tax credit carryforwards provided in the regulations, which the NYSBA deems too administratively burdensome. The report also seeks further guidance and clarification on the definition of a qualified business unit for purposes of the basketing rules.

SIFMA Issues Report on Proposed Foreign Tax Credit Regulations

The Federal Tax Committee of the Securities Industry and Financial Markets Association (SIFMA) has issued a letter (<https://www.sifma.org/wp-content/uploads/2019/02/SIFMA-Comments-re-REG-105600-18.pdf>) to the IRS regarding suggested changes to the proposed regulations for the foreign tax credit. The letter:

- Provides principles for banks and other regulated financial services companies to determine the amount of interest expense allocable to the foreign branch category.
- Recommends that adjustments to take account of disregarded transactions should be made on an aggregate net basis across all of a taxpayer's foreign branches, rather than on a transaction-by-transaction or branch-by-branch basis.
- Recommends that the sourcing of income and expense derived or incurred by foreign branches in respect of intercompany transactions should be conformed to the treatment of disregarded branch-to-home office transactions.
- Recommends that foreign tax credit carryovers from pre-TCJA years should be

allocated to the branch category in the same proportion as taxes paid by foreign branches bears to all foreign taxes paid by the taxpayer in that year.

- Taxpayers should be allowed to apportion foreign taxes in respect of periods that straddle two U.S. taxable years to the extent necessary to ensure an effective matching of income and taxes.

IRS Issues FAQs on Resumption of Appeals Following Government Shutdown

The IRS issued FAQs (<https://www.irs.gov/newsroom/february-2019-appeals-resumption-faqs>) about the resumption of appeals following the government shutdown, noting that appeals officers were furloughed during the shutdown and will reach out to taxpayers about rescheduling any hearings scheduled during the shutdown. It will take several days to get the process up and running again.

California Updates Partnership Income Tax Return

California released (<https://www.ftb.ca.gov/professionals/taxnews/Editions/2019/February/All-About-Business.shtml>) an updated partnership income tax return form (Form FTB 565), which added a line on which partnerships could report to the California Franchise Tax Board (FTB) any changes or corrections made as a result of an IRS audit under the new federal centralized partnership audit regime. Each IRS change or correction should be reported to the FTB within six months after the date of each final federal determination.

Pennsylvania Governor Presents Budget for the 2019-2020 Fiscal Year

Pennsylvania Governor Tom Wolf presented his fiscal 2019-2020 budget (<https://www.governor.pa.gov/governor-wolfs-budget-goal-create-strongest-workforce-nation/>) on Feb. 5, 2019. The proposed budget (<https://www.budget.pa.gov/PublicationsAndReports/CommonwealthBudget/Pages/default.aspx>) contained no new taxes, but the budget includes proposals to:

- Reduce the Corporate Net Income Tax rate to 5.99 percent by 2024.
- Implement full combined reporting for businesses effective Jan. 1, 2020.
- Expand the Resource Enhancement and Protection tax credits.
- Address skills gap in the workforce by creating the Keystone Economic Development and Workforce Command Center.



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- Increase the minimum wage to \$12 per hour on July 1, 2019.
- Increase investment in early childhood development and parent support, and in early childhood education programs and the public school system.

Philadelphia DOR Issues Section 199A FAQs

The Philadelphia Department of Revenue issued FAQs (<https://www.phila.gov/media/20190117124605/199A-Philadelphia-tax-impacts-Frequently-Asked-Questions-FAQs.pdf>) regarding the application of Section 199A to the Philadelphia Business Income and Receipts Tax (BIRT) and Net Profits Tax (NPT), noting that the deduction cannot be taken by BIRT or NPT filers (both corporations and pass-through entities).

Philadelphia DOR Issues Guidance on Section 965 Repatriation Tax

The Philadelphia Department of Revenue has issued an advisory notice (<https://www.phila.gov/media/20190117124605/199A-Philadelphia-tax-impacts-Frequently-Asked-Questions-FAQs.pdf>) providing that the repatriation transition tax income and deduction are reflected in the BIRT base for Method II taxpayers. (See our prior coverage on the repatriation transition tax here <https://www.stradley.com/insights/publications/2019/01/tax-insights-january-23-2019>.) The Notice also states that the federal election to pay the tax over eight years is not applicable to the BIRT.