The MSU Income Tax School provides tax professionals with training and the latest information on tax law.

[Links to: 2020 Tax School Brochure, Online Registration, Tax School Moderator Form]
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2020 Tax School Brochure  Online Registration
Bill VanEerden

MSU Income Tax School
Instructor

MSU Income Tax School

Authored Documents

- Chapter 7 - Ag & Natural Resources Issues.
- Chapter 3 - QBISlides.
- Chapter 11 - Business Issues.
- Chapter 6 - Business Entity Issues.
Power Point Slides – website

https://www.canr.msu.edu/taxschool/2020-two-day-tax-seminar-powerpoint-slides

2020 Two-Day Tax Seminar PowerPoint Slides

CHAPTER 10 - INDIVIDUAL TAX ISSUES PT. 2

CHAPTER 11 - BUSINESS ISSUES
Chapter 3 Intro & objectives

1. Calculating – The basics
3. QBI Losses – what now?
4. Partnerships and S corps – allocating and reporting
5. Real Estate – qualify for QBI?
Taxable Income Limit:

QBI \times 20\% \quad \text{Lesser} \quad \text{Taxable Income} \times 20\%

(W-2 Limit and SSTB Limit discussed later)
Definition of QBI

**QBI, generally:**
Qualified item of income, gain, deduction and loss with respect to any qualified trade or business

**Trade or business:**
Reference to IRC 162 and certain self-rentals
Effectively connected with US trade or business
Effectively Connected with a US Trade or Business

“effectively connected”  
Per IRC 864(c)

Office / fixed place
Material factor in realization of income
Substantial activities

T or B in US
Excluded from QBI

QBI excludes:

- Dividends
- Interest Income (unless allocated to T or B)
- Capital Gains and Losses
- Foreign personal holding companies
- Annuities
### REITs and PTPs – Separate!

<table>
<thead>
<tr>
<th>QBI component</th>
<th>REITs and PTPs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule C</td>
<td>REIT #1</td>
</tr>
<tr>
<td>20,000</td>
<td>4,000</td>
</tr>
<tr>
<td>Schedule E</td>
<td>REIT #2</td>
</tr>
<tr>
<td>30,000</td>
<td>(2,000)</td>
</tr>
<tr>
<td>Partnership</td>
<td>PTP #1</td>
</tr>
<tr>
<td>(8,000)</td>
<td>1,000</td>
</tr>
<tr>
<td>1120S</td>
<td></td>
</tr>
<tr>
<td>5,000</td>
<td></td>
</tr>
<tr>
<td>Net</td>
<td></td>
</tr>
<tr>
<td>47,000</td>
<td>Net</td>
</tr>
<tr>
<td></td>
<td>3,000</td>
</tr>
<tr>
<td><strong>combined</strong></td>
<td><strong>50,000</strong></td>
</tr>
</tbody>
</table>

*If above threshold, QBI component calculated on each T or B separately, with W-2 and SSTB limits*
Reasonable Compensation to S Corp Shareholders

Distribution (does not reduce QBID)

S Corp

Salary (reduces QBID)

Shareholder

If salary not reasonable, IRS can recharacterize, up to reasonable compensation

p. 75
Guaranteed payments to partners

**Partnership**

*as partner*

- Distribution (does not (reduce QBID))

*not as partner*

- Guaranteed Payment (reduces QBID)
Example 3.2 – Guaranteed Payments
– for services

D & D Sporting Goods

Dan

50%

QBI 550,000
(125,000)
(125,000)
300,000
(150,000)
(150,000)
0

Guar pay

QBI

Dave

50%

Guar pay

QBI
Other Deductions reduce QBI?

The following other deductions reduce QBI:
- Deductible portion of SE tax
- Self Employment Health Insurance
- Contribution to qualified 404 retirement plans

If the individual’s gross income from the trade or business is taken into account in calculating the allowable QBI deduction
FAQ 33 states self employed health insurance will still be deducted from QBI, so it may actually reduce QBI at both levels!
Polling question #1

The deductible portion of SE tax reduces the QBI deduction.

True
False
Polling question #1

The deductible portion of SE tax reduces the QBI deduction.

True
False
Limitations on QBI

QBI x 20% = preliminary QBI deduction

limitations:

**Everyone:**
- Taxable income limit

**Above the Threshold:**
- W-2 wage and capital limit
- SSTB limit
Taxable income limit

Taxable Income, before QBI deduction
Less: Net Capital Gains
= Adjusted Taxable income \times 20\% = \text{limitation}

Net capital gains includes:
• Unrecaptured 1250 gain
• Collectibles gain
• 1202 gain
• Qualified dividends
W-2 and Capital Limit

1. QBI x 20%

2. Taxable Income x 20%

**NOW a 3rd limit, if above threshold:**

3. W-2 and Capital Limit:
   Greater of:
   50% of W-2 wages, or
   25% of W-2 wages, plus 2.5% of the UBIA

(W-2 wages? UBIA? Last year = pages 17-23)
2020 Phase-in Ranges

<table>
<thead>
<tr>
<th></th>
<th>Single, MFS</th>
<th>Joint</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>213,300</td>
<td>426,600</td>
</tr>
<tr>
<td>50,000</td>
<td>163,300</td>
<td>326,600</td>
</tr>
<tr>
<td></td>
<td>Full W-2 Limit</td>
<td>Partial W-2 Limit</td>
</tr>
<tr>
<td></td>
<td>No W-2 Limit</td>
<td>100,000</td>
</tr>
</tbody>
</table>
Example 3.5 - below phase in

Facts: Single, Wages paid 15,000, UBIA 10,000

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wages</td>
<td>100,000</td>
</tr>
<tr>
<td>S Corp – QBI</td>
<td>75,000 x 20% = 15,000 QBID</td>
</tr>
<tr>
<td>Standard ded</td>
<td>(12,400)</td>
</tr>
<tr>
<td>Taxable income</td>
<td>162,600 x 20% = 32,520 TI limit</td>
</tr>
</tbody>
</table>

What is the lower limit for single?
Example 3.5 - below phase in

Facts: Single, Wages paid 15,000, UBIA 10,000

Wages 100,000
S Corp – QBI 75,000 x 20% = 15,000 QBID
Standard ded (12,400)
Taxable income 162,600 x 20% = 32,520 TI limit

What is the lower limit for single?
Example 3.6 - above phase in

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facts: Single, Wages paid 15,000, UBIA 10,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Income?</td>
<td>112,400</td>
<td>75,000 x 20% = 15,000</td>
</tr>
<tr>
<td>Wages</td>
<td>100,000</td>
<td>275,000 x 20% = 55,000</td>
</tr>
<tr>
<td>S Corp – QBI</td>
<td>75,000</td>
<td>15,000 x 50% = 7,500</td>
</tr>
<tr>
<td>Standard deduc</td>
<td>(12,400)</td>
<td>or 15,000 x 25% = 3,750</td>
</tr>
<tr>
<td>Taxable income</td>
<td>275,000</td>
<td>10,000 x 2.5% = 250</td>
</tr>
</tbody>
</table>

What is the upper limit for single?

\[
\text{Upper limit for single} = 15,000 + 3,750 + 250 = 19,000
\]

p. 77
### Example 3.6 - above phase in

**Facts:** Single, Wages paid 15,000, UBIA 10,000

<table>
<thead>
<tr>
<th>Income</th>
<th>Amount</th>
<th>Calculation</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Income?</td>
<td>112,400</td>
<td>75,000 x 20%</td>
<td>15,000</td>
</tr>
<tr>
<td>Wages</td>
<td>100,000</td>
<td>275,000 x 20%</td>
<td>55,000</td>
</tr>
<tr>
<td>S Corp – QBI</td>
<td>75,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Standard deduc</td>
<td>(12,400)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taxable income</td>
<td>275,000</td>
<td>15,000 x 50% or 15,000 x 25% + 10,000 x 2.5%</td>
<td>7,500 or 3,750 + 250 = 4,000</td>
</tr>
</tbody>
</table>

What is the upper limit for single?

- 7,500
- 3,750 + 250 = 4,000
Taxable income within the phase-in range

How far thru the phase-in range?

<table>
<thead>
<tr>
<th>Taxable Income</th>
<th>326,600</th>
<th>394,600</th>
<th>426,600</th>
</tr>
</thead>
<tbody>
<tr>
<td>68,000</td>
<td>100,000</td>
<td>68%</td>
<td></td>
</tr>
</tbody>
</table>

\[ \frac{68,000}{100,000} = 68\% \]
Example 3.7  TI in phase-in - TEST

<table>
<thead>
<tr>
<th>If TI below</th>
<th>If TI above</th>
</tr>
</thead>
<tbody>
<tr>
<td>326,600</td>
<td>394,600</td>
</tr>
<tr>
<td>426,600</td>
<td></td>
</tr>
</tbody>
</table>

QBI x 20%

175,000

x 20%

35,000

If QBI x 20% compare to wages x 50%:

QBI x 20% = 35,000

Wages x 50% = 25,000

If QBI x 20% is less than wages x 50%:

QBI x 20% is compared to wages x 50%:

If QBI x 20% is less, no limit applies.

If QBI x 20% is greater, it is compared to wages x 50%.

If QBI x 20% is greater, the limit applies.
Example 3.7 TI in phasein - calculation

If TI below

<table>
<thead>
<tr>
<th>326,600</th>
<th>QBI x 20%</th>
<th>175,000</th>
<th>x 20%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>35,000</td>
<td></td>
</tr>
</tbody>
</table>

If TI above

<table>
<thead>
<tr>
<th>394,600</th>
<th>TI 68%</th>
<th>wages 50,000</th>
<th>x 50%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>=</td>
</tr>
</tbody>
</table>

If TI above

| 426,600 | |

QBI x 20% at risk 10,000

lose 68% of the 10,000 = 6,800

35,000 – 6,800 = 28,200
### Example 3.7 TI in phase-in - calculation

<table>
<thead>
<tr>
<th>If TI below</th>
<th>If TI above</th>
</tr>
</thead>
<tbody>
<tr>
<td>326,600</td>
<td>394,600</td>
</tr>
<tr>
<td>426,600</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>QBI x 20%</th>
<th>wages x 50%</th>
</tr>
</thead>
<tbody>
<tr>
<td>175,000</td>
<td>50,000</td>
</tr>
</tbody>
</table>

\[ \text{at risk} \times 20\% = 35,000 \]

\[ \text{lose } 68\% \text{ of the } 10,000 = 6,800 \]

\[ 35,000 - 6,800 = 28,200 \]
Specified Service T or B Limitation (using joint)

3 different calculations, depending on income:

<table>
<thead>
<tr>
<th>Income Level</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>426,600</td>
<td>No QBI deduction</td>
</tr>
<tr>
<td></td>
<td>Phase in period:</td>
</tr>
<tr>
<td></td>
<td>Partial W-2 and Specified Service</td>
</tr>
<tr>
<td></td>
<td>Limitations</td>
</tr>
<tr>
<td>326,600</td>
<td>Only limit is Taxable Income</td>
</tr>
</tbody>
</table>
Polling Question #2

If you are an SSTB and your taxable income is 400,000, on a joint return, you get no QBI deduction.

True
False
Polling Question #2

If you are an SSTB and your taxable income is 400,000, on a joint return, you get no QBI deduction.

True  False
Definition of SSTB – IRC 199A(d)(2) from IRC 1202

Health
Law
Accounting
Consulting
Performing Arts
Actuarial
Financial
Athletics
Brokage
Principle asset-Reputation
Definition of SSTB – IRC 199A(d)(2)B added and subtracted:

Investing

Investment Management

Trading

Dealing in securities, partnership interests or commodities

Engineers

Architecture
Specified Service T or B Limitation (using joint)  

Below 326,600

EASY!
No limitation

In phase in range

NOT SO EASY! The farther you are thru the phase in range, the less deduction you get!

Above 426,600

EASY!
No deduction
<table>
<thead>
<tr>
<th>Taxable Income</th>
<th>326,600</th>
<th>394,600</th>
<th>426,600</th>
</tr>
</thead>
<tbody>
<tr>
<td>68% used for W-2 limitation</td>
<td>32% used for SSTB limitation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Example 3.8 TI in phase in SSTB - calc  p. 82

<table>
<thead>
<tr>
<th>If TI below</th>
<th>TI 394,600</th>
<th>If TI above</th>
</tr>
</thead>
<tbody>
<tr>
<td>326,600</td>
<td>32%</td>
<td>426,600</td>
</tr>
<tr>
<td>QBI 175,000</td>
<td></td>
<td>wages 50,000</td>
</tr>
<tr>
<td>x 32%</td>
<td></td>
<td>x 32%</td>
</tr>
<tr>
<td>56,000</td>
<td></td>
<td>16,000</td>
</tr>
<tr>
<td>x 20%</td>
<td></td>
<td>x 50%</td>
</tr>
<tr>
<td>11,200</td>
<td>at risk 3,200</td>
<td>8,000</td>
</tr>
</tbody>
</table>

lose 68% of the 3,200 = 2,176
11,200 – 2,176 = 9,024
### Example 3.8 TI in phase-in SSTB-calc

<table>
<thead>
<tr>
<th></th>
<th>If TI below</th>
<th>If TI above</th>
</tr>
</thead>
<tbody>
<tr>
<td>TI</td>
<td>326,600</td>
<td>394,600</td>
</tr>
<tr>
<td>QBI</td>
<td>175,000</td>
<td></td>
</tr>
<tr>
<td>x 32%</td>
<td>56,000</td>
<td></td>
</tr>
<tr>
<td>x 20%</td>
<td>11,200</td>
<td></td>
</tr>
<tr>
<td>At risk</td>
<td></td>
<td>3,200</td>
</tr>
<tr>
<td>Lose</td>
<td></td>
<td>68%</td>
</tr>
<tr>
<td>Wages</td>
<td></td>
<td></td>
</tr>
<tr>
<td>x 32%</td>
<td></td>
<td>16,000</td>
</tr>
<tr>
<td>x 50%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Lose 68% of the 3,200 = 2,176
11,200 – 2,176 = 9,024
De Minimis Rule – Not treated as an SSTB  

Gross Receipts under 25,000,000:
- 90% Not SSTB income
- 10% SSTB income

Gross Receipts over 25,000,000:
- 95% Not SSTB income
- 5% SSTB income

Ignore
Example 3.10 - De Minimis Rule

Landscaper – sells equipment and design (consulting) 
Does **not** sell the trees, shrubs, flowers it recommends
Invoices separately
One set of books - single trade or business

2,000,000

<table>
<thead>
<tr>
<th>Total gross receipts</th>
</tr>
</thead>
<tbody>
<tr>
<td>2,000,000</td>
</tr>
<tr>
<td>250,000</td>
</tr>
</tbody>
</table>

consulting gross receipts

Since the Landscaping gross receipts is over 10%, the entire business is an SSTB!!
Each business separately tested to determine whether that business is an SSTB. The de minimis threshold is applied to each business separately.
De Minimis Rule – Example 3.11

Veterinarian Services & develops and sells organic dog food at clinics and on line. Maintains separate set of books, separate employees. Treats as separate trades or businesses for 162 &199A.

- Vet GR over 10%, But NOT an SSBT because Vet and Dog Food separate trade or businesses under 162.

<table>
<thead>
<tr>
<th>Gross Receipts</th>
<th>Vet - SSTB</th>
</tr>
</thead>
<tbody>
<tr>
<td>3,000,000</td>
<td>1,000,000</td>
</tr>
</tbody>
</table>
Services or Property provided to SSTB – Antiabuse rule

Portion provided to SSTB must be treated as a separate SSTB. Portion not provided to SSTB, eligible for 199A
Example 3.12 – leasing to SSTB

Patterson Dental – Owns a building in which it conducts a dental practice

Dental Practice \( \rightarrow \) Building \( \rightarrow \) Pays rent

Income from leasing the building to the dental practice is SSTB income
Example 3.13 – leasing to SSTB and Non-SSTB

Patterson Dental – Owns a building in which it conducts a dental practice and rents to a coffee shop

Income from leasing the building to the coffee shop is **NOT** SSTB income
Allocations of expenses

**Office Building**

- **Dentist**
  - Gross Income: 200,000
  - Share: 2/3

- **Coffee Shop**
  - Gross Income: 100,000
  - Share: 1/3

**Direct Tracing**

- Dentist
- Coffee Shop
Issue #2 Aggregation of Activities

Entity #1
High QBI
Low Wages & UBIA

Aggregate to maximize W-2 limitation

Entity #2
Low QBI
High Wages/UBIA

(also look for loss entities with wages)
Use 8995-A to decide when aggregating will help

**Form 8995-A**

**Qualified Business Income Deduction**

Attach to your tax return.

Go to [www.irs.gov/Form8995A](https://www.irs.gov/Form8995A) for instructions and the latest information.

Name(s) shown on return

<table>
<thead>
<tr>
<th>Part I</th>
<th>Trade, Business, or Aggregation Information</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Complete Schedules A, B, and/or C (Form 8995-A), as applicable, before starting Part I. Attach additional worksheets when needed. See instructions.</td>
</tr>
<tr>
<td>1</td>
<td>(a) Trade, business, or aggregation name</td>
</tr>
<tr>
<td>A</td>
<td></td>
</tr>
<tr>
<td>B</td>
<td></td>
</tr>
<tr>
<td>C</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Part II</th>
<th>Determine Your Adjusted Qualified Business Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Qualified business income from the trade, business, or aggregation. See instructions.</td>
</tr>
<tr>
<td>3</td>
<td>Multiply line 2 by 20% (0.20). If your taxable income is $160,700 or less ($160,725 if married filing separately; $321,400 if married filing jointly), skip lines 4 through 12 and enter the amount from</td>
</tr>
</tbody>
</table>
## Aggregation of Activities

### 8995-A Schedule B

<table>
<thead>
<tr>
<th></th>
<th>(a) Name of trade or business</th>
<th>(b) Taxpayer identification number</th>
<th>(c) Qualified business income/(loss)</th>
<th>(d) W-2 wages</th>
<th>(e) Unadjusted basis immediately after acquisition</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4 **Totals.** Total columns (c), (d), and (e). Enter the total amounts on Schedule C (Form 8995-A) or on Form 8995-A, Part II, for the corresponding aggregation, as appropriate. See instructions . . . .

Combine as 1

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.
Aggregation Requirements

- NOT an SSTB
- Business Relationship
- Common Ownership

See flow chart on page 89
2 of 3 required:
1. Provide products, property or services that are the same or customarily offered together
2. Share facility or business function: personnel, accounting, legal, manufacturing, etc..
3. Coordination or interdependence between businesses
Common Ownership

Business #1
- others
- ≥50%

Business #2
- ≥50%
- others
- > ½ tax year

#1
#2
#3
Example 3.15 Similar products, shared facilities

Restaurant Entity
- own staff
- equipment

kitchen
purchasing
accounting
advertising

Catering Entity
- own staff
- equipment

Common Ownership

Owners may elect to aggregate
Example 3.16 Dissimilar products, shared functions

Owners cannot elect to aggregate the businesses. Need to meet 2 tests.
Example 3.17 Residential and Commercial are dissimilar

NOT the same type of property, and do NOT provide similar services!
Example 3.18 Aggregation to increase QBID

<table>
<thead>
<tr>
<th></th>
<th>Wanda</th>
<th>Howard</th>
<th>Aggregate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Income</td>
<td>1,000,000</td>
<td>1,000,000</td>
<td>2,000,000</td>
</tr>
<tr>
<td>W-2 wages</td>
<td>600,000</td>
<td>150,000</td>
<td>750,000</td>
</tr>
<tr>
<td>UBIA</td>
<td>3,000,000</td>
<td>0</td>
<td>3,000,000</td>
</tr>
<tr>
<td>Tentative</td>
<td>200,000</td>
<td>200,000</td>
<td>400,000</td>
</tr>
<tr>
<td>50% W-2</td>
<td>300,000</td>
<td>75,000</td>
<td>375,000</td>
</tr>
<tr>
<td>25% W-2 +</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.5% UBIA</td>
<td>225,000</td>
<td>37,500</td>
<td>262,500</td>
</tr>
</tbody>
</table>

lesser  

greater
Consistency and reporting

2019 Aggregate consistent

T or B #1
T or B #2

+ T or B #3

Newly created or newly acquired T or B can be added, if all tests met

Significant change in fact, no longer aggregate a T or B
Aggregation of Business Operations

Provide a description of the aggregated trade or business and an explanation of the factors met that allow the aggregation in accordance with Regulations section 1.159A-4. In addition, if you hold a direct or indirect interest in a relevant pass-through entity (RPE) that aggregates multiple trades or businesses, you must attach a copy of the RPE’s aggregations.

Has this trade or business aggregation changed from the prior year? This includes changes in the aggregation due to a trade or business being formed, acquired, disposed of, or ceasing operations. If "Yes," explain. If "No," skip line 2 and go to line 3.

<table>
<thead>
<tr>
<th></th>
<th>Name of trade or business</th>
<th>Taxpayer identification number</th>
<th>Qualified business income (less)</th>
<th>W-2 wages</th>
<th>Unadjusted basis immediately after acquisition</th>
</tr>
</thead>
</table>
Failure to Disclose – individual

T or B #1

No disclosure

Aggregated T or B

T or B #2

IRS
disaggregate

Cannot aggregate for 3 years
If taxable income is below the threshold, you can use the simplified calculation on Form 8995 and net QBI losses against QBI income.
QBI Loss – below the threshold
### Example 3.19 - Loss from qualified business

<table>
<thead>
<tr>
<th>Industry</th>
<th>QBI Income</th>
<th>QBI Loss</th>
<th>Allocate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farm</td>
<td>150,000</td>
<td>(10,000)</td>
<td>28,000</td>
</tr>
<tr>
<td></td>
<td>140,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>x 20%</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>28,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wages</td>
<td>40,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>x 50%</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>20,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Restaurant</td>
<td>150,000</td>
<td>(10,000)</td>
<td>28,000</td>
</tr>
<tr>
<td></td>
<td>140,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>x 20%</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>28,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wages</td>
<td>30,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>x 50%</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>15,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Furniture</td>
<td>(20,000)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wages</td>
<td>20,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Lesser 35,000 or TI 417,800 x 20% = 83,560**
## PLANNING POINTER - AGGREGATION

<table>
<thead>
<tr>
<th></th>
<th>QBI income</th>
<th>Wages</th>
</tr>
</thead>
<tbody>
<tr>
<td>farm</td>
<td>150,000</td>
<td>40,000</td>
</tr>
<tr>
<td>restaurant</td>
<td>150,000</td>
<td>30,000</td>
</tr>
<tr>
<td>furniture</td>
<td>(20,000)</td>
<td>20,000</td>
</tr>
</tbody>
</table>

**Lesser 45,000 or TI 417,800 x 20% = 83,560**

<table>
<thead>
<tr>
<th></th>
<th>QBI income</th>
<th>Wages</th>
</tr>
</thead>
<tbody>
<tr>
<td>aggregate</td>
<td>280,000</td>
<td>90,000</td>
</tr>
</tbody>
</table>

- farm QBI income: 150,000
- restaurant QBI income: 150,000
- furniture QBI loss: (20,000)
- aggregate QBI income: 280,000

Wages:
- farm: 40,000
- restaurant: 30,000
- furniture: 20,000
- aggregate: 90,000

Lesser 45,000 or TI 417,800 x 20% = 83,560
Example 3.20 – QBI loss carryover

<table>
<thead>
<tr>
<th></th>
<th>QBI income</th>
<th>QBI loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>farm</td>
<td>150,000</td>
<td></td>
</tr>
<tr>
<td>restaurant</td>
<td>150,000</td>
<td></td>
</tr>
<tr>
<td>furniture</td>
<td></td>
<td>(400,000)</td>
</tr>
</tbody>
</table>

Net QBI loss (100,000)

The (100,000) is carried forward and treated as a separate trade of business for purposes of computing 199A deduction in subsequent year.

NOTE: for income tax purposes, the (100,000) loss may offset Sandra’s salary income.
<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business A QBI</td>
<td>20,000</td>
<td>Business A QBI 20,000</td>
</tr>
<tr>
<td>Business B QBI loss</td>
<td>(50,000)</td>
<td>Business B QBI 50,000</td>
</tr>
<tr>
<td>carryover to 2021</td>
<td>(30,000)</td>
<td>loss carryover</td>
</tr>
<tr>
<td>net</td>
<td>40,000</td>
<td></td>
</tr>
<tr>
<td>No 199A Deduction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>QBID</td>
<td>8,000</td>
<td></td>
</tr>
</tbody>
</table>

x 20%
Polling question #3

If you aggregate a business with a loss, you get to use the W-2 wages for the Wage Limitation.

True
False
Polling question #3

If you aggregate a business with a loss, you get to use the W-2 wages for the Wage Limitation.

True
False
## Previously disallowed losses

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td></td>
<td>Loss disallowed, suspended, or reduced:</td>
<td>Loss allowed (FIFO):</td>
</tr>
<tr>
<td></td>
<td></td>
<td>At risk</td>
<td>if a loss from 2018 or later reduces</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Basis</td>
<td>taxable income then</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Passive</td>
<td>is a qualified item of deduction or loss</td>
</tr>
<tr>
<td></td>
<td></td>
<td>does not affect QBI in 2018</td>
<td>does reduce QBI in 2019 or later</td>
</tr>
</tbody>
</table>

QBI: Qualified Business Income
Please turn to page 474
Suspended losses are carried over as a separate trade or business in the year they are taken into account in computing taxable income.

Decision of whether the loss is part of QBI in the year allowable is determined in year loss incurred.

List of losses not inclusive.
If suspended loss is from an SSTB, the portion of the loss taken into account in the QBI calculation is based on the taxable income in the year the loss incurred.

3 possibilities:
1. below – entire disallowed loss taken into account
2. within – only applicable % taken into account
3. above – none of loss taken into account
Example 14.1 – partial loss disallowance

Andrew

LLC
Not SSTB

2018

Share of loss – (100,000)
QBI portion - (80,000) \[\text{80\%}\]

But, 465 – only 60,000 of loss allowable

80\% \times 60,000 = 48,000 \text{ included in 2018 QBI calculation}
80,000 – 48,000 = 32,000 \text{ carried over}
Example 14.2 – suspended SSTB loss

**Bettina (Single)**

Taxable income: $177,500 (before QBI)

**LLC SSTB**

50%

Share of loss: $100,000

QBI portion: $100,000

But, $465 – $100,000 of loss disallowed

Applicable % = 60%

Carryover QBI loss: $60,000

2018
Loss tracking worksheet

Instructions for 8995
Example 3.21 Suspended losses

<table>
<thead>
<tr>
<th>Rental Property</th>
<th>162 trade or business</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019 Passive loss suspended (20,000)</td>
<td>2020 Can use the loss against taxable income. Treated as a QBI loss carryover from a separate trade or business</td>
</tr>
</tbody>
</table>
Generally, an NOL is not included in calculating QBI.

However, an excess business loss under 461(l) is treated as an NOL carryover to the following tax year and is taken into account for purposes of computing QBI in the subsequent tax year that it is deducted.
4 steps:
1. One or more trades or businesses?
2. QBI for each trade or business?
3. W-2 wages and UBIA for each trade or business
4. REIT dividends & PTP income
Allocating QBI Items - Partnerships

- Each partner’s share is determined by the partnership agreement.
- 704 gives some discretion.
- Special allocations must have substantial economic effect.
- If partnership agreement silent, use partner’s interest in the partnership.
ALLOCATION OF QBI ITEMS – S CORPORATIONS

• More rigid than partnerships
• Pro-rata share of each qualified item of:
  • Income, loss, deduction, credit
• One class of stock
• Allocate based on number of shares owned, on a daily basis
**REPORTING**

**1065 K-1**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Formatted Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Other income (loss)</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Section 179 deduction</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Other deductions</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Self-employment earnings (loss)</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Other information</td>
<td><strong>Z STMT A</strong></td>
</tr>
<tr>
<td>21</td>
<td>More than one activity for at-risk purposes*</td>
<td></td>
</tr>
</tbody>
</table>

- **QBI**
- **W-2 wages**
- **UBIA**
- **Whether SSTB**

Also, statements for pass thru info from RPEs and aggregations.
<table>
<thead>
<tr>
<th>QBI</th>
<th>W-2 wages</th>
<th>UBIA</th>
<th>Whether SSTB</th>
</tr>
</thead>
</table>

Also, statements for pass thru info from RPEs and aggregations.
If W-2 wages and UBIA are not determined and reported separately for each trade or business, they are presumed to be zero.
Is a rental activity a trade or business under 162?

Factors:
1. Type of property – commercial vs residential
2. Number of properties
3. Owners day to day involvement
4. Other services provided
5. Type of lease:
   - Net lease vs traditional lease
   - short term vs long term
“solely for purposes of section 199A, the rental or licensing of tangible or intangible property to a related trade or business is treated as a trade or business..”
SELF RENTALS

Commonly Controlled

- Trade or Business (Not C corp)
  - tenant can be an individual or RPE

- Rental Property
  - Solely for 199A, treated as a trade or business gain / loss QBI.
SAFE HARBOR

Rev Proc 2019-38
Safe harbor under which a “rental real estate enterprise” may be treated as a trade or business *solely* for purposes of 199A

A real estate rental enterprise may consist of an interest in multiple properties
SAFE HARBOR

Real Estate Enterprise

1  or  2  or  3  Etc..

Similar (commercial / residential not similar)
Special rules for mixed use property
Separate books and records
Same from year to year
No vacation homes or triple net leases
<table>
<thead>
<tr>
<th>NO QBI</th>
<th>May qualify for QBI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does not generally give rise to a T or B</td>
<td>If otherwise treated as a T or B?</td>
</tr>
<tr>
<td>Excluded from the Safe Harbor</td>
<td>Triple net lease that is a self rental?</td>
</tr>
</tbody>
</table>
SAFE HARBOR TEST

In existence less than 4 years:
250 hours of service performed each year

In existence for at least 4 years:
250 hours of service performed per year for 3 out of 5 years
SAFE HARBOR TEST – SERVICES INCLUDE:

- Advertising
- Executing leases
- Verifying information
- Collecting rent
- Daily operations
- Management
- Supervision
- Arranging financing
- Reviewing financials
- Planning

Performed by owner, employees and independent contractors
RECORDKEEPING

- Separate books and records for each enterprise
- **Contemporaneous** records: time reports, logs:
  - Hours of service
  - Description of services
  - Dates
  - Who performed services

**NOTE:** Contemporaneous record requirement will not apply to tax years beginning before 1/1/20
If using the Safe Harbor, the taxpayer or RPE must include a statement:

- **Must include:**
  - Description of properties in enterprise
  - Address
  - Rental category
  - Properties acquired or disposed of during year
  - A representation that requirements of the revenue procedures have been met
POLLING QUESTION #4

For the rental real estate safe harbor, the 250 hours must be performed by the owner.

True
False
POLLING QUESTION #4

For the rental real estate safe harbor, the 250 hours must be performed by the owner.

True

False
Rental Real Estate

**Schedule E**
Normal rental, even if trade or business for 199A

**Schedule C**
If substantial services performed (boarding house, hotel, motel, B and B)

**NOT subject to SE tax**

**Subject to SE tax**
UPDATE since book printed:

Draft instructions for the 2020 Form 8995 and 8995-A no longer require pass-throughs to reduce their QBI by Charitable Contributions.
QUESTIONS?