

Tax Cuts and Jobs Act (TCJA)

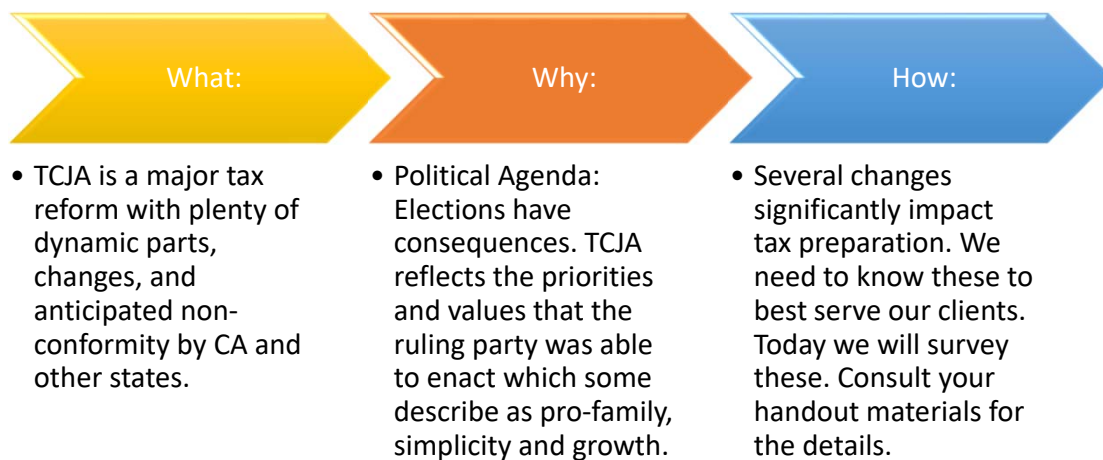
CSEA 2019 IRS Practitioner Seminar

Review by Miles Lawrence, EA, ESQ

(President CSEA Palomar Chapter)

Slides available at <https://www.socal-taxpro-seminars.com/>

The What, Why and How



A word about the TCJA handout materials:

- TJCA became law on 12-22-17. The materials (which generally do not reflect subsequent extender or correction legislation in 2018 or later) have been prepared in spreadsheet format to reflect the:
 - Effective dates (roll out starting in 2016; with many sunset dates),
 - IRC section,
 - Act section (including some no action provisions)
 - Form or Schedule impacted,
 - General commentary re “win”, “loss”, “pro-simplicity; pro-family; pro-growth”,
 - Explanation from the Act changes to the IRC along with the Congressional JCT explanation available at the time the law was signed by the President.

A word about the IRC 199A Qualified Business Income Deduction (QBID) handout materials:

- IRS Proposed Regulations were published 8-16-18 including many computational and illustration examples. In spreadsheet format I’ve summarized both the IRC and proposed regs pending final regs.
- Within a month the IRS also published drafts of the 2018 Form 1040 with instructions for the QBID simplified worksheet calculations. These became final in December. I’ve enclosed the keys pages. IRS provided no examples
- On 12-19-18 IRS released it’s first draft of Publication 535 with Worksheet 12-A including schedules A, B, C and D detailing the more complex QBID calculations. I’ve enclosed the key pages. IRS provided no examples. Subsequent updated draft versions of Pub 535 are now available following corrections by IRS to earlier mistakes.

A final word about the handout materials:

- They are designed to be a reference tool to help:
 - Point the reader to the substantial authority (IRC 6662) for further research because laws are complex with many rules, exceptions to rules, and the facts and circumstances of each case can determine outcome
 - Quickly confirm an answer you have already researched because the laws are complex and always changing.
 - Power Point Presentation Slides are available at
 - <https://www.socal-taxpro-seminars.com/>
- *NOW LET'S BEGIN THE TCJA REVIEW!*

TCJA: Tax Rates

- IRC section 1:
 - For tax years beginning after 2017 and before 2026:
 - 7 tax rates apply for individuals: 10%, 12%, 22%, 24%, 32%, 35%, and 37%
 - 4 tax rates apply for estates and trusts: 10%, 24%, 35%, and 37%.
 - Kiddie Tax: The taxable income for a child attributable to earned income is taxed under the rates for single individuals, and taxable income of a child attributable to net unearned income is taxed according to the brackets applicable to trusts and estates (unless parent elects to file Form 8814).
 - For 2018, new statutory breakpoints apply for the imposition of 0%, 15% and 20% capital gains/qualified dividend rates for non-corporate taxpayers (similar to 2017).
 - For Trusts and Estates: 0% up to \$2,600; 15% then up to \$12,700; 20% above \$12,700.
- IRC section 11 and 243:
 - For tax years beginning after 2017, the C-corporate income tax rate is a flat 21%, and the dividend deduction is reduced to 50% (exceptions for affiliated groups and 20% owned corps). 199A section has illustration slide comparing to S-corp.

Form 1040 - 2018 Tax Rate Schedules

Caution. Don't use these Tax Rate Schedules to figure your 2017 taxes. Use only to figure your 2018 estimated taxes.

Schedule X—Use if your 2018 filing status is Single					Schedule Z—Use if your 2018 filing status is Head of household				
If line 3 is:					If line 3 is:				
The tax is:					The tax is:				
Over—	But not over—			of the amount over—	Over—	But not over—			of the amount over—
\$0	\$9,525	—	+ 10%	\$0	\$0	\$13,600	—	+ 10%	\$0
9,525	38,700	\$952.50	+ 12%	9,525	13,600	51,800	\$1,360.00	+ 12%	13,600
38,700	82,500	4,453.50	+ 22%	38,700	51,800	82,500	5,944.00	+ 22%	51,800
82,500	157,500	14,089.50	+ 24%	82,500	82,500	157,500	12,698.00	+ 24%	82,500
157,500	200,000	32,089.50	+ 32%	157,500	157,500	200,000	30,698.00	+ 32%	157,500
200,000	500,000	45,689.50	+ 35%	200,000	200,000	500,000	44,298.00	+ 35%	200,000
500,000	—	150,689.50	+ 37%	500,000	500,000	—	149,298.00	+ 37%	500,000

Schedule Y-1—Use if your 2018 filing status is Married filing jointly or Qualifying widow(er)					Schedule Y-2—Use if your 2018 filing status is Married filing separately				
If line 3 is:					If line 3 is:				
The tax is:					The tax is:				
Over—	But not over—			of the amount over—	Over—	But not over—			of the amount over—
\$0	\$19,050	—	+ 10%	\$0	\$0	\$9,525	—	+ 10%	\$0
19,050	77,400	\$1,805.00	+ 12%	19,050	9,525	38,700	\$952.50	+ 12%	9,525
77,400	165,000	8,907.00	+ 22%	77,400	38,700	82,500	4,453.50	+ 22%	38,700
165,000	315,000	28,179.00	+ 24%	165,000	82,500	157,500	14,089.50	+ 24%	82,500
315,000	400,000	64,179.00	+ 32%	315,000	157,500	200,000	32,089.50	+ 32%	157,500
400,000	600,000	91,379.00	+ 35%	400,000	200,000	300,000	45,689.50	+ 35%	200,000
600,000	—	161,379.00	+ 37%	600,000	300,000	—	80,689.50	+ 37%	300,000

Form 1040 - 2017 Tax Rate Schedules

Caution. Do not use these Tax Rate Schedules to figure your 2016 taxes. Use only to figure your 2017 estimated taxes.

Schedule X—Use if your 2017 filing status is Single					Schedule Z—Use if your 2017 filing status is Head of household				
If line 5 is:					If line 5 is:				
The tax is:					The tax is:				
Over—	But not over—			of the amount over—	Over—	But not over—			of the amount over—
\$0	\$9,325	—	+ 10%	\$0	\$0	\$13,350	—	+ 10%	\$0
9,325	37,950	\$932.50	+ 15%	9,325	13,350	50,800	\$1,335.00	+ 15%	13,350
37,950	91,900	5,226.25	+ 25%	37,950	50,800	131,200	6,952.50	+ 25%	50,800
91,900	191,650	18,713.75	+ 28%	91,900	131,200	212,500	27,052.50	+ 28%	131,200
191,650	416,700	48,643.75	+ 33%	191,650	212,500	416,700	49,816.50	+ 33%	212,500
416,700	416,400	120,910.25	+ 35%	416,700	416,700	444,550	117,202.50	+ 35%	416,700
416,400	—	121,505.25	+ 39.6%	416,400	444,550	—	126,950.00	+ 39.6%	444,550

Schedule Y-1—Use if your 2017 filing status is Married filing jointly or Qualifying widow(er)					Schedule Y-2—Use if your 2017 filing status is Married filing separately				
If line 5 is:					If line 5 is:				
The tax is:					The tax is:				
Over—	But not over—			of the amount over—	Over—	But not over—			of the amount over—
\$0	\$18,650	—	+ 10%	\$0	\$0	\$9,325	—	+ 10%	\$0
18,650	75,900	\$1,865.00	+ 15%	18,650	9,325	37,950	\$932.50	+ 15%	9,325
75,900	153,100	10,452.50	+ 25%	75,900	37,950	76,550	5,226.25	+ 25%	37,950
153,100	233,350	29,752.50	+ 28%	153,100	76,550	116,675	14,876.25	+ 28%	76,550
233,350	416,700	52,222.50	+ 33%	233,350	116,675	208,350	26,111.25	+ 33%	116,675
416,700	470,700	112,728.00	+ 35%	416,700	208,350	235,350	56,364.00	+ 35%	208,350
470,700	—	131,628.00	+ 39.6%	470,700	235,350	—	65,814.00	+ 39.6%	235,350

TCJA: New Form 1040 and Schedules 1-6

- For Tax Year 2018, you will no longer use Form 1040A or Form 1040EZ, but instead will use the redesigned Form 1040.
- Many people will only need to file Form 1040 and no schedules.
- However, if your return is more complicated, you will need to complete one or more of the new Form 1040 Schedules (1-6)

Form 1040 (1/2)

Form 1040 Department of the Treasury—Internal Revenue Service (90) **2018** CMB No. 1545-0074 IRS Use Only—Do not write or staple in this space.

U.S. Individual Income Tax Return

Filing status: ☐ Single ☐ Married filing jointly ☐ Married filing separately ☐ Head of household ☐ Qualifying widow(er)

Your first name and initial Last name Your social security number

Your standard deduction: ☐ Someone can claim you as a dependent ☐ You were born before January 2, 1954 ☐ You are blind

If joint return, spouse's first name and initial Last name Spouse's social security number

Spouse standard deduction: ☐ Someone can claim your spouse as a dependent ☐ Spouse was born before January 2, 1954 ☐ Full-year health care coverage or exempt (see inst.)

☐ Spouse is blind ☐ Spouse itemizes on a separate return or you were dual-status alien

Home address (number and street). If you have a P.O. box, see instructions. Apt. no. Presidential Election Campaign (see inst.) ☐ You ☐ Spouse

City, town or post office, state, and ZIP code. If you have a foreign address, attach Schedule 6. If more than four dependents, see inst. and ✓ here ▶ ☐

Dependents (see instructions):

(i) First name	Last name	(ii) Social security number	(iii) Relationship to you	(iv) ✓ If qualifies for (see inst.):
				Child tax credit Credit for other dependents

Sign Here Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature Date Your occupation

Spouse's signature, if a joint return, both must sign. Date Spouse's occupation

Paid Preparer Use Only Preparer's name Preparer's signature PTIN Firm's EIN Check if: ☐ 3rd Party Designee ☐ Self-employed

Firm's name ▶ Phone no. Firm's address ▶

For Disclosure, Privacy Act, and Paperwork Reduction Act Notices, see separate instructions. Cat. No. 11300R Form **1040** (2018)

Form 1040 (2/2)

Form 1040 (2018) Page **2**

1 Wages, salaries, tips, etc. Attach Form(s) W-2

2a Tax-exempt interest

3a Qualified dividends

4a IRAs, pensions, and annuities

5a Social security benefits

6 Total income. Add lines 1 through 5. Add any amount from Schedule 1, line 22

7 Adjusted gross income. If you have no adjustments to income, enter the amount from line 6; otherwise, subtract Schedule 1, line 36, from line 6

8 Standard deduction or itemized deductions (from Schedule A)

9 Qualified business income deduction (see instructions)

10 Taxable income. Subtract lines 8 and 9 from line 7. If zero or less, enter -0-

11 a Tax (see inst.) (check if any from: 1 ☐ Form(s) 9814 2 ☐ Form 4872 3 ☐)

12 a Child tax credit (for other dependents) b Add any amount from Schedule 3 and check here ☐

13 Subtract line 12 from line 11. If zero or less, enter -0-

14 Other taxes. Attach Schedule 4

15 Total tax. Add lines 13 and 14

16 Federal income tax withheld from Forms W-2 and 1099

17 Refundable credits: a EIC (see inst.) b Sch. 8612 c Form 8833

18 Add lines 16 and 17. These are your total payments

19 If line 18 is more than line 15, subtract line 15 from line 18. This is the amount you overpaid

20a Amount of line 19 you want refunded to you. If Form 8878 is attached, check here ☐

20b Routing number a Type: ☐ Checking ☐ Savings

20c Account number

21 Amount of line 19 you want applied to your 2019 estimated tax

22 Amount you owe. Subtract line 16 from line 15. For details on how to pay, see instructions

23 Estimated tax penalty (see instructions)

Go to www.irs.gov/Form1040 for instructions and the latest information.

Form **1040** (2018)

IF YOU....

THEN USE...

Have additional income, such as capital gains, unemployment compensation, prize or award money, or gambling winnings. Have any deductions to claim, such as student loan interest deduction, self-employment tax, or educator expenses.	SCHEDULE 1 (1040 line 6)
Owe AMT or need to make an excess advance premium tax credit repayment.	SCHEDULE 2 (1040 line 11b)
Can claim a nonrefundable credit other than the child tax credit or the credit for other dependents, such as the foreign tax credit, education credits, or general business credit.	SCHEDULE 3 (1040 line 12b)
Owe other taxes, such as self-employment tax, household employment taxes, additional tax on IRAs or other qualified retirement plans and tax-favored accounts.	SCHEDULE 4 (1040 line 14)
Can claim a refundable credit other than the earned income credit, American opportunity credit, or additional child tax credit, such as the net premium tax credit or health coverage tax credit. Have other payments, such as an amount paid with a request for an extension to file or excess social security tax withheld. Owe	SCHEDULE 5 (1040 line 17)
Have a foreign address or a third party designee other than a paid preparer.	SCHEDULE 6

Form 1040 – Schedule 1

SCHEDULE 1 (Form 1040)		Additional Income and Adjustments to Income		OMB No. 1545-0074 2018 Attachment Sequence No. 01	
Department of the Treasury Internal Revenue Service		▶ Attach to Form 1040. ▶ Go to www.irs.gov/Form1040 for instructions and the latest information.		Your social security number	
Additional Income	1-9b	Reserved	1-9b		
10	Taxable refunds, credits, or offsets of state and local income taxes	10			
11	Alimony received	11			
12	Business income or (loss). Attach Schedule C or C-EZ	12			
13	Capital gain or (loss). Attach Schedule D if required. If not required, check here <input type="checkbox"/>	13			
14	Other gains or (losses). Attach Form 4797	14			
15a	Reserved	15b			
16a	Reserved	16b			
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17			
18	Farm income or (loss). Attach Schedule F	18			
19	Unemployment compensation	19			
20a	Reserved	20b			
21	Other income. List type and amount ▶	21			
22	Combine the amounts in the far right column. If you don't have any adjustments to income, enter here and include on Form 1040, line 8. Otherwise, go to line 23	22			
Adjustments to Income	23	Educator expenses	23		
24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106	24			
25	Health savings account deduction. Attach Form 8889	25			
26	Moving expenses for members of the Armed Forces. Attach Form 3903	26			
27	Deductible part of self-employment tax. Attach Schedule SE	27			
28	Self-employed SEP, SIMPLE, and qualified plans	28			
29	Self-employed health insurance deduction	29			
30	Penalty on early withdrawal of savings	30			
31a	Alimony paid	31a			
32	IRA deduction	32			
33	Student loan interest deduction	33			
34	Reserved	34			
35	Reserved	35			
36	Add lines 23 through 35	36			

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 71479F Schedule 1 (Form 1040) 2018

Form 1040 – Schedule 2

SCHEDULE 2 (Form 1040)		Tax		OMB No. 1546-0074 2018 Attachment Sequence No. 02	
Department of the Treasury Internal Revenue Service		▶ Attach to Form 1040. ▶ Go to www.irs.gov/Form1040 for instructions and the latest information.		Your social security number	
Tax	38-44	Reserved	38-44		
45	Alternative minimum tax. Attach Form 6251	45			
46	Excess advance premium tax credit repayment. Attach Form 8962	46			
47	Add the amounts in the far right column. Enter here and include on Form 1040, line 11	47			

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 71478U Schedule 2 (Form 1040) 2018

Form 1040 – Schedule 3

SCHEDULE 3 (Form 1040)		Nonrefundable Credits		OMB No. 1545-0074	
Department of the Treasury Internal Revenue Service		▶ Attach to Form 1040. ▶ Go to www.irs.gov/Form1040 for instructions and the latest information.		2018 Attachment Sequence No. 03	
Name(s) shown on Form 1040				Your social security number	
Nonrefundable Credits	48	Foreign tax credit. Attach Form 1116 if required	48		
	49	Credit for child and dependent care expenses. Attach Form 2441	49		
	50	Education credits from Form 8863, line 19	50		
	51	Retirement savings contributions credit. Attach Form 8880	51		
	52	Reserved	52		
	53	Residential energy credit. Attach Form 5695	53		
	54	Other credits from Form a <input type="checkbox"/> 3800 b <input type="checkbox"/> 8801 c <input type="checkbox"/>	54		
	55	Add the amounts in the far right column. Enter here and include on Form 1040, line 12	55		

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 71480G Schedule 3 (Form 1040) 2018

Form 1040 – Schedule 4

SCHEDULE 4 (Form 1040)		Other Taxes		OMB No. 1545-0074	
Department of the Treasury Internal Revenue Service		▶ Attach to Form 1040. ▶ Go to www.irs.gov/Form1040 for instructions and the latest information.		2018 Attachment Sequence No. 04	
Name(s) shown on Form 1040				Your social security number	
Other Taxes	57	Self-employment tax. Attach Schedule SE	57		
	58	Unreported social security and Medicare tax from: Form a <input type="checkbox"/> 4137 b <input type="checkbox"/> 8919	58		
	59	Additional tax on IRAs, other qualified retirement plans, and other tax-favored accounts. Attach Form 5329 if required	59		
	60a	Household employment taxes. Attach Schedule H	60a		
	60b	b Repayment of first-time homebuyer credit from Form 5405. Attach Form 5405 if required	60b		
	61	Health care: individual responsibility (see instructions)	61		
	62	Taxes from: a <input type="checkbox"/> Form 8959 b <input type="checkbox"/> Form 8960 c <input type="checkbox"/> Instructions; enter code(s)	62		
	63	Section 965 net tax liability installment from Form 965-A	63		
	64	Add the amounts in the far right column. These are your total other taxes . Enter here and on Form 1040, line 14	64		

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 71481R Schedule 4 (Form 1040) 2018

Form 1040 – Schedule 5

SCHEDULE 5 (Form 1040)		Other Payments and Refundable Credits		OMB No. 1545-0074 2018 Attachment Sequence No. 05	
Department of the Treasury Internal Revenue Service		▶ Attach to Form 1040. ▶ Go to www.irs.gov/Form1040 for instructions and the latest information.			
Name(s) shown on Form 1040				Your social security number	
Other Payments and Refundable Credits	65	Reserved	65		
	66	2018 estimated tax payments and amount applied from 2017 return	66		
	67a	Reserved	67a		
	b	Reserved	67b		
	68-69	Reserved	68-69		
	70	Net premium tax credit. Attach Form 8962	70		
	71	Amount paid with request for extension to file (see instructions)	71		
	72	Excess social security and tier 1 RRTA tax withheld	72		
	73	Credit for federal tax on fuels. Attach Form 4136	73		
	74	Credits from Form: a <input type="checkbox"/> 2439 b <input checked="" type="checkbox"/> Reserved c <input type="checkbox"/> 8885 d <input type="checkbox"/>	74		
75	Add the amounts in the far right column. These are your total other payments and refundable credits . Enter here and include on Form 1040, line 17.	75			

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 71482C Schedule 5 (Form 1040) 2018

New Head of Household Due Diligence Rule:

- IRC section 2(b) defines who qualifies for Head of Household filing status
 - IRC 152 (defines dependents) and 7703 (determines marital status) must be consulted
 - Practice Alert: HOH uses a narrower qualifying relative test than just members of household.
- The TCJA established a \$520 penalty for paid preparers who fail to exercise due diligence when determining if a taxpayer qualifies for HOH status
- Form 8867 is the Paid Preparer Due Diligence Checklist form relative to HOH, Child Tax Credit, American Opportunity Tax Credit and EITC
 - IRS Pub 4687 Due Diligence: *Know the law; apply your knowledge; ask all the right questions; get all the facts; DOCUMENT as you go and keep records.*
 - IRS Letter 5025 discusses the due diligence requirements and can be googled.

Enhanced Child (and Other Dependent) Tax Credits-IRC 24

- CTC doubled to \$2,000 per qualifying child under age 17 and credit phase-out thresholds substantially increased (\$400k MFJ; \$200k other).
 - Use Form 1040 instruction worksheets (potential Pub 972 also)
 - Nonrefundable amount listed on Form 1040 line 12(a)
 - Refundable portion increased to \$1,400 (Schedule 8812 required with amount carried to Form 1040 line 17(b))
 - SSN required for qualifying child so TIN's no longer allowed
- New \$500 non-refundable credit available for each dependent who is a US citizen, national or resident, other than a qualifying child
 - TIN's still allowed for new non-child dependent
- Due Diligence Form 8867 required....\$520 penalty for violation

Education Credits- IRC 25A

- No major changes to report....but, pay attention to Form 8863 and 8867 rules regarding adequate books and records requirements.
- Use Form 1040 line 12 (from Sch 3) and 17(c) instructions and worksheets to calculate
- Refundable amount carried to Form 1040 line 17(c)
- Due Diligence Form 8867 required...\$520 penalty for violation

Earned Income Tax Credit-IRC 32

- No major changes to report.... but, see handout regarding proposed rules regarding adequate books and records requirements.
 - Maximum amount of EITC and AGI-based phase-outs have increased
 - Maximum amount of investment income to qualify is \$3,500
- Schedule EIC required and amount reflected on 1040 line 17(a)
- Due Diligence Form 8867 required...\$520 penalty for violation

Form 8867 (1/4)

Form 8867 Department of the Treasury Internal Revenue Service		Paid Preparer's Due Diligence Checklist Earned Income Credit (EIC), American Opportunity Tax Credit (AOTC), Child Tax Credit (CTC) (including the Additional Child Tax Credit (ACTC) and Credit for Other Dependents (ODC)), and Head of Household (HOH) Filing Status ▶ To be completed by preparer and filed with Form 1040, 1040NR, 1040SS, or 1040PR. ▶ Go to www.irs.gov/Form8867 for instructions and the latest information.		OMB No. 1545-0074 2018 Attachment Sequence No. 70	
Taxpayer name(s) shown on return		Taxpayer identification number			
Enter preparer's name and PTIN					
Part I Due Diligence Requirements					
Please check the appropriate box for the credit(s) and/or HOH filing status claimed on this return and complete the related Parts I-V for the benefit(s), and/or HOH filing status claimed (check all that apply).		EIC	CTC/ ACTC/ODC	AOTC	HOH
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1 Did you complete the return based on information for tax year 2018 provided by the taxpayer or reasonably obtained by you?		<input type="checkbox"/> Yes <input type="checkbox"/> No			
2 If credits are claimed on the return, did you complete the applicable EIC and/or CTC/ACTC/ODC worksheets found in the Form 1040, 1040SS, 1040PR, or 1040NR instructions, and/or the AOTC worksheet found in the Form 8863 instructions, or your own worksheet(s) that provides the same information, and all related forms and schedules for each credit claimed?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			
3 Did you satisfy the knowledge requirement? To meet the knowledge requirement, you must do both of the following. • Interview the taxpayer, ask questions, and document the taxpayer's responses to determine that the taxpayer is eligible to claim the credit(s) and/or HOH filing status. • Review information to determine that the taxpayer is eligible to claim the credit(s) and/or HOH filing status and the amount of any credit(s) claimed.		<input type="checkbox"/> Yes <input type="checkbox"/> No			

Form 8867 (2/4)

4 Did any information provided by the taxpayer or a third party for use in preparing the return, or information reasonably known to you, appear to be incorrect, incomplete, or inconsistent? (If "Yes," answer questions 4a and 4b. If "No," go to question 5.) ☐ Yes ☐ No

a Did you make reasonable inquiries to determine the correct, complete, and consistent information? ☐ Yes ☐ No

b Did you document your inquiries? (Documentation should include the questions you asked, whom you asked, when you asked, the information that was provided, and the impact the information had on your preparation of the return.) ☐ Yes ☐ No

5 Did you satisfy the record retention requirement? To meet the record retention requirement, you must keep a copy of your documentation referenced in 4b, a copy of this Form 8867, a copy of any applicable worksheet(s), a record of how, when, and from whom the information used to prepare Form 8867 and any applicable worksheet(s) was obtained, and a copy of any document(s) provided by the taxpayer that you relied on to determine eligibility for the credit(s) and/or HOH filing status or to compute the amount of the credit(s). List those documents, if any, that you relied on.

6 Did you ask the taxpayer whether he/she could provide documentation to substantiate eligibility for the credit(s) and/or HOH filing status and the amount of any credit(s) claimed on the return if his/her return is selected for audit? ☐ Yes ☐ No

7 Did you ask the taxpayer if any of these credits were disallowed or reduced in a previous year? ☐ Yes ☐ No ☐ N/A
(If credits were disallowed or reduced, go to question 7a; if not, go to question 8.)

a Did you complete the required recertification Form 8862? ☐ Yes ☐ No ☐ N/A

8 If the taxpayer is reporting self-employment income, did you ask questions to prepare a complete and correct Form 1040, Schedule C? ☐ Yes ☐ No ☐ N/A

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 261424 Form 8867 (2018)

Form 8867 (3/4)

Form 8867 (2018) Page 2

Part II Due Diligence Questions for Returns Claiming EIC (If the return does not claim EIC, go to Part III.)

	EIC	CTC/ ACTC/ODC	AOTC	HOH
9a Have you determined that this taxpayer is, in fact, eligible to claim the EIC for the number of children for whom the EIC is claimed, or to claim the EIC if the taxpayer has no qualifying child? (Skip 9b and 9c if the taxpayer is claiming the EIC and does not have a qualifying child.) <input type="checkbox"/> Yes <input type="checkbox"/> No				
b Did you ask the taxpayer if the child lived with the taxpayer for over half of the year, even if the taxpayer has supported the child the entire year? <input type="checkbox"/> Yes <input type="checkbox"/> No				
c Did you explain to the taxpayer the rules about claiming the EIC when a child is the qualifying child of more than one person (tiebreaker rules)? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A				

Part III Due Diligence Questions for Returns Claiming CTC/ACTC/ODC (If the return does not claim CTC, ACTC, or ODC, go to Part IV.)

	EIC	CTC/ ACTC/ODC	AOTC	HOH
10 Have you determined that each qualifying person for the CTC/ACTC/ODC is the taxpayer's dependent who is a citizen, national, or resident of the United States? <input type="checkbox"/> Yes <input type="checkbox"/> No				
11 Did you explain to the taxpayer that he/she may not claim the CTC/ACTC if the taxpayer has not lived with the child for over half of the year, even if the taxpayer has supported the child, unless the child's custodial parent has released a claim to exemption for the child? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A				
12 Did you explain to the taxpayer the rules about claiming the CTC/ACTC/ODC for a child of divorced or separated parents (or parents who live apart), including any requirement to attach a Form 8332 or similar statement to the return? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A				

Form 8867 (4/4)

Part IV Due Diligence Questions for Returns Claiming AOTC (If the return does not claim AOTC, go to Part V.)				
	EIC	CTC/ ACTC/ODC	AOTC	HOH
13 Did the taxpayer provide the required substantiation for the credit, including a Form 1098-T and/or receipts for the qualified tuition and related expenses for the claimed AOTC?			<input type="checkbox"/> Yes <input type="checkbox"/> No	

Part V Due Diligence Questions for Claiming HOH (If the return does not claim HOH filing status, go to Part VI.)				
	EIC	CTC/ ACTC/ODC	AOTC	HOH
14 Have you determined that the taxpayer was unmarried or considered unmarried on the last day of the tax year and provided more than half of the cost of keeping up a home for the year for a qualifying person?				<input type="checkbox"/> Yes <input type="checkbox"/> No

Part VI Eligibility Certification

► You will have complied with all due diligence requirements for claiming the applicable credit(s) and/or HOH filing status on the return of the taxpayer identified above if you:

- Interview the taxpayer, ask adequate questions, document the taxpayer's responses on the return or in your notes, review adequate information to determine if the taxpayer is eligible to claim the credit(s) and/or HOH filing status and to determine the amount of the credit(s) claimed;
- Complete this Form 8867 truthfully and accurately and complete the actions described in this checklist for any applicable credit(s) claimed and HOH filing status, if claimed;
- Submit Form 8867 in the manner required; and
- Keep all five of the following records for 3 years from the latest of the dates specified in the Form 8867 instructions under *Document Retention*.
 - A copy of Form 8867;
 - The applicable worksheet(s) or your own worksheet(s) for any credit(s) claimed;
 - Copies of any documents provided by the taxpayer on which you relied to determine eligibility for the credit(s) and/or HOH filing status;
 - A record of how, when, and from whom the information used to prepare this form and the applicable worksheet(s) was obtained; and
 - A record of any additional questions you may have asked to determine eligibility to claim the credit(s), and/or HOH filing status and the amount(s) of any credit(s) claimed and the taxpayer's answers.

► If you have not complied with all due diligence requirements, you may have to pay a \$520 penalty for each failure to comply related to a claim of an applicable credit or HOH filing status.

15 Do you certify that all of the answers on this Form 8867 are, to the best of your knowledge, true, correct, and complete? ☐ Yes ☐ No

Form 8867 (2018)

Credit for Employer Paid Family and Medical Leave (FMLA)-IRC 45S

- 12.5% general business credit based on amount of wages paid to qualifying employees during any period they're on FML if the rate of wage payment is at least 50% of the wages normally paid to an employee, up to a maximum of 12 weeks of leave for any employee during the tax year.
- Other qualifying requirements exist.

Alternative Minimum Tax (AMT)-IRC 53 to 59

- The C-corporation AMT is repealed and AMT Credits refundable ratably until fully used by 2022.
- The individual AMT exemption amounts have been increased with the AMTI phase-out thresholds substantially raised (over \$1,000,000 for MFJ; and \$500,000 for single)
 - For a child subject to kiddie tax, the AMT exemption amount is the lesser of \$7,600 plus the child's earned income, or \$70,300.
- The Estates and Trusts AMT exemption is \$24,600

Standard Deduction-IRC 63

- The basic standard deduction amounts for 2018 are: \$12k for single and MFS; \$24k for MFJ and surviving spouses; and \$18k for HOH's.
- The additional standard deduction amounts for elderly and blind taxpayers for 2018 are \$1,600 for unmarried taxpayers (including HOH's) and \$1,300 for married taxpayers (whether or not filing jointly) or surviving spouses.
- For tax years after 2017, the standard deduction is increased by the net IRC 165 disaster loss (also AMT is adjusted)

2% Floor on Misc Itemized Deductions-IRC 67

- Schedule A Miscellaneous itemized deductions subject to 2% of AGI floor are suspended
 - Includes IRC 162 unreimbursed EBE and IRC 212 production, protection and collection of income expenses
 - Still allowed are those miscellaneous expenses listed in IRC 67(b) that are not subject to 2% AGI floor such as:
 - IRDD,
 - claim of right,
 - certain unrecovered pension basis,
 - amortizable bond premiums,
 - annual gambling losses to extent of winnings,
- IRS announced it intends to issue regs clarifying that non-grantor trusts may continue to deduct “administrative” expenses under IRC 67(e)

Overall (“Pease”) limitation on Schedule A Itemized Deductions-IRC 68

- Suspended

Alimony paid with respect to Agreements executed after 2018-IRC 71 (and 61, 215)

- Starting in 2019, alimony and separate maintenance payments are not deductible by the payor spouse and are not included in the income of the payee spouse
 - The new rule can also apply to pre-2019 agreements but modified after 2018 if the modification expressly conforms with this law change

Qualified 2016 Disaster Distributions-IRC 72(t) (and 401)

- For context, see the new IRC 165 Presidentially declared disaster rules with effective date back to 2016
- Up to \$100k from pensions (including IRA's) qualify for relief from 10% early withdrawal penalty
- Taxed income can be included ratably over three years
- If recontributed to an eligible retirement plan within 3 years is treated as a qualified rollover, not subject to taxation

Deferral Election for Qualified Equity Grants- IRC 83 (and 3401, 6051)

- A qualified employee (less than 1% owner)
- With qualified stock (non-publically traded stock)
- Can elect to defer (for income tax but not payroll tax purposes) recognition of the amount of income if proper notice is timely made
- If election is made then the employer's deduction is also deferred until income recognition by employee

HSA and MSA plans-IRC 106 (and 220, 223)

- TCJA did not change the existing rules but the JCT explanation provides a good review for this area which likely will expand with more liberal HRA rules in 2019:
 - MSA's: HDHP with annual 2018:
 - Deductible limits: Individual: Min of \$2,300; Max of \$3,450; Family: Min of \$4,550; Max of \$6,850
 - Maximum out-of-pocket expenses: Individual: \$4,550; Family: \$8,400
 - HSA's: HDHP with annual 2018:
 - Deductible limits: Individual: Min of \$1,350; Family: Min of \$2,700
 - Maximum out-of-pocket expenses: Individual: \$6,650; Family: \$13,300

Student Loan Discharged on Death or Disability-IRC 108

- The exclusion of COD income is expanded to include death and total and permanent disability

No change to sale of principal residence rules-IRC 121

- Be aware, changes to IRC 121 could be coming in the future such as the following which were included in the JCT explanations:
 - Ownership and Use in 5 out of 8 years
 - 1 sale every 5 years
 - Phase out for AGI over thresholds (\$500k MFJ; \$250k others)

Moving Expenses & Reimbursements-IRC 132(g) [and 217(k)]

- Only members of armed forces on active duty who move pursuant to military orders and incident to permanent change of station can deduct moving expenses and exclude moving expense reimbursements

Qualified Bicycle Commuting Exclusion-IRC 132(f)

- The employer deduction is suspended and the employee reimbursement is considered taxable
- IRC 132 covers certain working fringe benefits and the requirements to qualify for employer deductibility and employee exclusion from gross income. TCJA has modified this list. The following qualified transportation fringe benefits are tax-exempt to the employee but not deductible to the employer:
 - Qualified parking benefits, transit passes and transportation in a commuter highway vehicle

Personal Exemption Deduction-IRC 151 (and 3402)

- Personal exemptions (and personal exemption phase-out are suspended
- Doesn't change standard deduction for trusts and estates

Mortgage Interest Deduction-IRC 163(h)

- Qualified Residence Interest:
 - Only includes acquisition indebtedness.
 - Deductibility of home equity indebtedness is suspended.
 - Acq Debt capped at \$750k per taxpayer (\$375k if MFS) unless debt incurred before 12-15-17 in which case prior \$1million/\$500k limits remain.
 - Exception for pre-12-15-17 binding written contract if actual COE before 4-1-18.
 - Refinancing grandfather rule: \$1MM/\$500k limits continue relative to pre 12-31-17 Acq Debt so long as resulting new refi debt doesn't exceed the amount of old refinanced debt

Business Interest Expense-IRC 163(j)

- Every business, regardless of its form, is generally subject to a disallowance of a deduction for net interest expenses in excess of 30% of the business's adjusted taxable income (i.e. before depreciation, amortization or depletion; not less than zero) plus business interest income and floor plan financing interest (e.g. auto dealers):
 - Small Business Exemption: For taxpayers (other than tax shelters) with average annual gross receipts for the three-tax year period ending with the prior taxable year that do not exceed \$25 million.

SALT taxes on Schedule A-IRC 164

- TCJA limits to \$10k (\$5k for MFS) the Schedule A line 5 deduction for:
 - State and local income taxes or general sales taxes (Elect one, not both, but consider IRC 1411 NIIT and IRC 61 tax benefit rule);
 - State and local real estate taxes (foreign property taxes excluded)
 - State and local personal property taxes
- Additional Schedule A allowable taxes are deductible on line 6 such as: Foreign income tax; GST tax on certain distributions
- SALT taxes attributable to businesses reporting on Schedules C, E and F continue (IR-2018-178) . Also, IRC 212 investment property taxes may not be limited on Schedule A.

States attempt to circumvent SALT tax rule:

- The IRS issued Prop. Reg. 1-170A-1(h)(3) to prevent taxpayers from circumventing the TCJA's \$10k deduction limit by treating payments for real estate taxes as charitable contributions, getting in return state tax credits against their SALT taxes. The proposed rule reduced the charitable deduction double benefit unless state tax credit benefit was less than 15% of the taxpayers payment.
- The workaround implemented by certain states, and pending litigation in Federal District Court, is an effort by states to resist the TCJA limit.

Form 1040 Schedule A (1/2)

SCHEDULE A (Form 1040)		Itemized Deductions		OMB No. 1545-0074	
Department of the Treasury Internal Revenue Service (99)		<p>► Go to www.irs.gov/ScheduleA for instructions and the latest information.</p> <p>► Attach to Form 1040.</p> <p>Caution: If you are claiming a net qualified disaster loss on Form 4684, see the instructions for line 16.</p>		<p>2018</p> <p>Attachment Sequence No. 07</p>	
Name(s) shown on Form 1040				Your social security number	
Medical and Dental Expenses	<p>Caution: Do not include expenses reimbursed or paid by others.</p> <p>1 Medical and dental expenses (see instructions)</p> <p>2 Enter amount from Form 1040, line 7 2</p> <p>3 Multiply line 2 by 7.5% (0.075)</p> <p>4 Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-</p>	1		3	4
Taxes You Paid	<p>5 State and local taxes.</p> <p>a State and local income taxes or general sales taxes. You may include either income taxes or general sales taxes on line 5a, but not both. If you elect to include general sales taxes instead of income taxes, check this box <input type="checkbox"/></p> <p>b State and local real estate taxes (see instructions)</p> <p>c State and local personal property taxes</p> <p>d Add lines 5a through 5c</p> <p>e Enter the smaller of line 5d or \$10,000 (\$5,000 if married filing separately)</p> <p>6 Other taxes. List type and amount ►</p> <p>7 Add lines 5e and 6</p>	5a		5b	
		5c		5d	
		5e		6	
		7			

Form 1040 Schedule A (2/2)

Interest You Paid		8 Home mortgage interest and points. If you didn't use all of your home mortgage loan(s) to buy, build, or improve your home, see instructions and check this box <input type="checkbox"/> a Home mortgage interest and points reported to you on Form 1098 <input type="checkbox"/> b Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying no., and address <input type="checkbox"/> c Points not reported to you on Form 1098. See instructions for special rules <input type="checkbox"/> d Reserved <input type="checkbox"/> e Add lines 8a through 8c <input type="checkbox"/>		8a	8b	8c	8d	8e	9	10
Gifts to Charity		11 Gifts by cash or check. If you made any gift of \$250 or more, see instructions <input type="checkbox"/> 12 Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8263 if over \$500 <input type="checkbox"/> 13 Carryover from prior year <input type="checkbox"/> 14 Add lines 11 through 13 <input type="checkbox"/>		11	12	13	14			
Casualty and Theft Losses		15 Casualty and theft loss(es) from a federally declared disaster (other than net qualified disaster losses). Attach Form 4684 and enter the amount from line 16 of that form. See instructions <input type="checkbox"/>						15		
Other Itemized Deductions		16 Other—from list in instructions. List type and amount <input type="checkbox"/>						16		
Total Itemized Deductions		17 Add the amounts in the far right column for lines 4 through 16. Also, enter this amount on Form 1040, line 8 <input type="checkbox"/>						17		
18 If you elect to itemize deductions even though they are less than your standard deduction, check here <input type="checkbox"/>										

For Paperwork Reduction Act Notice, see the Instructions for Form 1040. Cat. No. 17145C Schedule A (Form 1040) 2018

Form 540 Schedule CA (1/5)

TAXABLE YEAR		2018		SCHEDULE		CA (540)	
Important: Attach this schedule behind Form 540, Side 5 as a supporting California schedule.							
Name(s) as shown on tax return _____ SSN or ITIN _____							
Part I Income Adjustment Schedule				A Federal Amounts (describe amounts from your federal tax return)	B Subtractions (See instructions)	C Additions (See instructions)	
Section A—Income from federal Form 1040							
1 Wages, salaries, tips, etc. See instructions before making an entry in column B or C <input type="checkbox"/>				1	<input type="checkbox"/>	<input type="checkbox"/>	
2 Taxable interest (a) <input type="checkbox"/>				2(b)	<input type="checkbox"/>	<input type="checkbox"/>	
3 Ordinary dividends. See instructions. (a) <input type="checkbox"/>				3(b)	<input type="checkbox"/>	<input type="checkbox"/>	
4 IRAs, pensions, and annuities. See instructions. (a) <input type="checkbox"/>				4(b)	<input type="checkbox"/>	<input type="checkbox"/>	
5 Social security benefits. (a) <input type="checkbox"/>				5(b)	<input type="checkbox"/>	<input type="checkbox"/>	
Section B—Additional Income from federal Schedule 1 (Form 1040)							
10 Taxable refunds, credits, or offsets of state and local income taxes <input type="checkbox"/>				10	<input type="checkbox"/>	<input type="checkbox"/>	
11 Alimony received <input type="checkbox"/>				11	<input type="checkbox"/>	<input type="checkbox"/>	
12 Business income or (loss) <input type="checkbox"/>				12	<input type="checkbox"/>	<input type="checkbox"/>	
13 Capital gain or (loss). See instructions <input type="checkbox"/>				13	<input type="checkbox"/>	<input type="checkbox"/>	
14 Other gains or (losses) <input type="checkbox"/>				14	<input type="checkbox"/>	<input type="checkbox"/>	
15a Reserved <input type="checkbox"/>				15(b)			
16a Reserved <input type="checkbox"/>				16(b)			
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. <input type="checkbox"/>				17	<input type="checkbox"/>	<input type="checkbox"/>	
18 Farm income or (loss) <input type="checkbox"/>				18	<input type="checkbox"/>	<input type="checkbox"/>	
19 Unemployment compensation <input type="checkbox"/>				19	<input type="checkbox"/>	<input type="checkbox"/>	
20a Reserved <input type="checkbox"/>				20(b)			
21 Other income:							
a California lottery winnings <input type="checkbox"/>				a	<input type="checkbox"/>	<input type="checkbox"/>	
b Disaster loss deduction from FTB 3805V <input type="checkbox"/>				b	<input type="checkbox"/>	<input type="checkbox"/>	
c Federal NOL (federal Schedule 1 (Form 1040), line 21) <input type="checkbox"/>				c	<input type="checkbox"/>	<input type="checkbox"/>	
d NOL deduction from FTB 3805V <input type="checkbox"/>				d	<input type="checkbox"/>	<input type="checkbox"/>	
e NOL from FTB 3805Z, 3806, 3807, or 3809 <input type="checkbox"/>				e	<input type="checkbox"/>	<input type="checkbox"/>	
f Other (describe): <input type="checkbox"/>				f	<input type="checkbox"/>	<input type="checkbox"/>	

Form 540 Schedule CA (2/5)

22	Total. Combine line 1 through line 21 in column A. Add line 1 through line 21 in column B and column C. Go to Section C.	22			
Section C – Adjustments to Income from federal Schedule 1 (Form 1040)					
23	Educator expenses	23			
24	Certain business expenses of reservists, performing artists, and fee-basis government officials	24			
25	Health savings account deduction	25			
26	Moving expenses. Attach federal Form 3903. See instructions	26			
27	Deductible part of self-employment tax	27			
28	Self-employed SEP, SIMPLE, and qualified plans	28			
29	Self-employed health insurance deduction	29			
30	Penalty on early withdrawal of savings	30			
31a	Alimony paid. (b) Recipient's: SSN <input type="radio"/> Last name <input type="radio"/>	31a			
32	IRA deduction	32			
33	Student loan interest deduction	33			
34	Reserved	34			
35	Reserved	35			
36	Add line 23 through line 31a and line 32 through line 35 in columns A, B, and C. See instructions	36			
37	Total. Subtract line 36 from line 22 in columns A, B, and C. See instructions	37			

For Privacy Notice, get FTB 1131 ENG/SP. 7731183 Schedule CA (540) 2018 Side 1

Form 540 Schedule CA (3/5)

Part II Adjustments to Federal Itemized Deductions		A Federal Amounts (from federal Schedule A (Form 1040))	B Subtractions See instructions	C Additions See instructions
Check the box if you did NOT itemize for federal but will itemize for California <input type="radio"/>				
Medical and Dental Expenses				
1	Medical and dental expenses	1		
2	Enter amount from federal Form 1040, line 7	2		
3	Multiply line 2 by 7.5% (0.075)	3		
4	Subtract line 3 from line 1. If line 3 is more than line 1, enter 0	4		
Taxes You Paid				
5a	State and local income tax or general sales taxes	5a		
5b	State and local real estate taxes	5b		
5c	State and local personal property taxes	5c		
5d	Add lines 5a through 5c	5d		
5e	Enter the smaller of line 5d or \$10,000 (\$5,000 if married filing separately) in column A. Enter the amount from line 5a, column B in line 5e, column B. Enter the difference from line 5d and line 5e, column A in line 5e, column C	5e		
6	Other taxes. List type	6		
7	Add lines 5e and 6	7		

Form 540 Schedule CA (4/5)

Interest You Paid

8a	Home mortgage interest and points reported to you on Form 1098	8a	<input type="radio"/>		<input type="radio"/>
8b	Home mortgage interest not reported to you on Form 1098	8b	<input type="radio"/>		<input type="radio"/>
8c	Points not reported to you on Form 1098	8c	<input type="radio"/>		<input type="radio"/>
8d	Reserved	8d	<input type="radio"/>		<input type="radio"/>
8e	Add lines 8a through 8c	8e	<input type="radio"/>		<input type="radio"/>
9	Investment interest	9	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10	Add lines 8e and 9	10	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Gifts to Charity

11	Gifts by cash or check	11	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12	Other than by cash or check	12	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
13	Carryover from prior year	13	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
14	Add lines 11 through 13	14	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Casualty and Theft Losses

15	Casualty or theft loss(es) (other than net qualified disaster losses). Attach federal Form 4684. See instructions	15	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Other Itemized Deductions

16	Other—from list in federal instructions	16	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
17	Add lines 4, 7, 10, 14, 15, and 16 in columns A, B, and C	17	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

18 Total Adjustments to Federal Itemized Deductions. Combine line 17 column A less column B plus column C ☐ 18

Form 540 Schedule CA (5/5)

Job Expenses and Certain Miscellaneous Deductions

19	Unreimbursed employee expenses - job travel, union dues, job education, etc. Attach federal Form 2106 if required. See instructions	19	<input type="radio"/>	<input type="text"/>
20	Tax preparation fees	20	<input type="radio"/>	<input type="text"/>
21	Other expenses - investment, safe deposit box, etc. List type <input type="radio"/>	21	<input type="radio"/>	<input type="text"/>
22	Add lines 19 through 21	22	<input type="radio"/>	<input type="text"/>
23	Enter amount from federal Form 1040, line 7	23	<input type="radio"/>	<input type="text"/>
24	Multiply line 23 by 2% (0.02). If less than zero, enter 0	24	<input type="radio"/>	<input type="text"/>
25	Subtract line 24 from line 22. If line 24 is more than line 22, enter 0	25	<input type="radio"/>	<input type="text"/>
26	Total Itemized Deductions. Add line 18 and line 25	26	<input type="radio"/>	<input type="text"/>
27	Other adjustments. See instructions. Specify <input type="radio"/>	27	<input type="radio"/>	<input type="text"/>
28	Combine line 26 and line 27	28	<input type="radio"/>	<input type="text"/>
29	Is your federal AGI (Form 540, line 13) more than the amount shown below for your filing status? Single or married/RDP filing separately \$194,504 Head of household \$291,760 Married/RDP filing jointly or qualifying widow(er) \$389,013 No. Transfer the amount on line 28 to line 29.	29	<input type="radio"/>	<input type="text"/>
30	Enter the larger of the amount on line 29 or your standard deduction listed below Single or married/RDP filing separately. See instructions \$4,401 Married/RDP filing jointly, head of household, or qualifying widow(er) \$8,802 Transfer the amount on line 30 to Form 540, line 18	30	<input type="radio"/>	<input type="text"/>

Casualty and Theft Loss Deduction-IRC 165(h)

- For major Presidentially declared disasters arising during 2016 and 2017, special rules apply for personal casualty losses such that if there is a net disaster loss then the 10% AGI threshold doesn't apply and the \$100-per-casualty floor is increased to \$500.
- For tax years after 2017, personal (not business) casualty and theft loss deduction is eliminated, except for personal casualty losses incurred in a Federally Declared disaster (subject to special \$500 rule mentioned above), and non-disaster personal casualty losses to the extent of personal casualty gains.
- Review the modified Form 4684 starting in year 2016 if this applies to your clients.

Gambling Losses-IRC 165(d)

- TCJA didn't change the basic rule that gambling losses are deductible to the extent of gambling winnings.
- What TCJA did was now apply that same "no net annual gambling loss limit" to "wagering losses" thus limiting all deductions (e.g. IRC 162 or 212) for expenses incurred in carrying out wagering transactions which now limits mostly the professional gambler.

Depreciation: Bonus Depreciation and Qualified Property-IRC 168(k)

- TCJA increased the special depreciation allowance from 50% to 100% for qualified property acquired and placed in service after 9-27-17. It also did away with the requirement that the property must be new to qualify.
 - Qualified Property: Includes MACRS recovery period of 20 years or less
 - Qualified Improvement Property (QIP): A technical correction (or guidance by IRS) is likely needed to include QIP as qualified property because Congress intended a 15-year recovery period (JCT explanation) but failed to amend the text of 168(e)(3)(E) to reflect the 15-yr period.

Depreciation: Qualified Improvement Property(QIP)-IRC 168(e) and (g)

- TCJA changed the definition of QIP by eliminating the former categories of qualified leasehold-restaurant-retail improvement property. Now, to qualify as QIP, the following tests must be met:
 - Nonresidential real property improvements only to interior portion of building;
 - Improvement placed in service after the date the building first placed in service (does not need to be subject to a lease or after 3-years from date building first placed in service);
 - Does not enlarge building
 - Not related to elevators or escalators
 - Not related to internal structural framework of the building.

Depreciation: Election to expense-IRC 179

- Maximum deduction increased to \$1 million and phase-out threshold to \$2.5 million;
- Qualifying property is generally IRC 1245 tangible personal property but TCJA has expanded it to include:
 - Qualifying real property (QRP) described earlier as QIP including the following improvements made to nonresidential QRP: roofs, HVAC, Fire protection and alarm systems; security systems.
 - Certain tangible personal property used predominantly to furnish lodging or in connection with furnishing lodging.
 - **WARNING**: This only applies to property used in an active TRADE or BUSINESS (see IRS definition in Reg 1.179-2(c)(6)(ii). Therefore, property rented to others generally doesn't qualify unless the taxpayer purchases it, the lease term is less than 50% of the property class life and for the first 12 months of the lease, business deductions on the property exceed 15% of its rental income (i.e. NNN likely out!). More on this later.

Depreciation: Luxury Auto limits-IRC 168(k) and 280F

- For passenger autos eligible for bonus depreciation, the increase to the first year depreciation limit remains \$8k
- The annual limit on the amount of depreciation allowed for passenger autos for which bonus depreciation is not claimed for 2018 is \$10k for the placed in service year, \$16k for 2nd year, \$9,600 for 3rd year, \$5,760 for 4th and later years.
- Heavy SUV IRC 179 expensing limit remains \$25k

Depreciation: Computer Equipment-IRC 280F

- Removed as a listed asset.

Charitable Contributions-IRC 170

- The 50% limit for cash contributions to public charities and certain private foundations is increased to 60%, subject to 5 year carryforward rule.
- No charitable deduction is allowed for payments to educational institutions in exchange for rights to buy tickets or seating at athletic events

Net Operating Losses (NOL's)-IRC 172

New Excess Business Loss Rule-IRC 461(l)

- NOL's: Limited to 80% of taxable income. Can't be carried back but can be carried forward indefinitely (exceptions for farmers and insurance cos).
- New Form 461 for new Excess Business Loss Rule:
 - New for non-C corporation taxpayers, excess business losses are not allowed for the tax year, but are instead carried forward and treated as part of the taxpayer's NOL carryforward in subsequent years.
 - This limitation applies: (1) after the application of PAL rules; (2) at individual level;
 - Starting in 2018, an excess business loss is the excess of aggregate deductions over income or gains of the taxpayer attributable to the taxpayer's trades and businesses, plus a threshold amount (\$500k MFJ; \$250k others). More on this later.

Form 461

Form 461		Limitation on Business Losses		OMB No. XXXX-XXXX	
Department of the Treasury Internal Revenue Service		▶ Attach to your tax return. ▶ Go to www.irs.gov/Form461 for instructions and the latest information.		2018	
Name(s) shown on return		Identifying number		Attachment Sequence No. XX	
Part I Total Income/Loss Items See instructions if you are filing a tax return other than Form 1040.					
1	Enter amount from Form 1040, line 1	2	Enter amount from Schedule 1 (Form 1040), line 12	3	Enter amount from Schedule 1 (Form 1040), line 13
4	Enter amount from Schedule 1 (Form 1040), line 14	5	Enter amount from Schedule 1 (Form 1040), line 15	6	Enter amount from Schedule 1 (Form 1040), line 16
7	Enter amount from Schedule 1 (Form 1040), line 17	8	Enter other income, gain, or losses from a trade or business not reported on lines 1 through 7	9	Combine lines 1 through 8
Part II Adjustments to Income/Losses See instructions if you are filing a tax return other than Form 1040.					
10	Enter any income or gain reported on lines 1 through 8 that is not attributable to a trade or business	11	Enter any loss or deduction reported on lines 1 through 8 that is not attributable to a trade or business. See instructions.	12	Subtract line 11 from line 10
Part III Limitation on Losses					
13	If line 12 is a negative number, enter it here as a positive number. If line 12 is a positive number, enter it here as a negative number	14	Add lines 9 and 13	15	Enter \$250,000 (or \$500,000 if married filing jointly)
16	Add lines 14 and 15. If less than zero, enter the amount from line 16 as a positive number on Schedule 1 (Form 1040), line 21. See instructions if you are filing a tax return other than a Form 1040. If zero or greater, do not attach this form to your tax return.				

For Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 1885-01 Form **461** (2018)

Domestic Production Activities Deduction (DPAD)-IRC 199

- Repealed
 - Although elements are included in the new QBID 199A and sub-section (g) for agricultural and horticultural cooperatives (AgCoop).

Qualified Business Income Deduction (QBID)-IRC 199A

- See special section in your handout materials including summary of IRC 199A, proposed Regs., examples in Regs., and worksheet(s) included in PUB 535 and Form 1040 instructions for line 9.

Medical Expense Deduction-IRC 213 (and 56)

- The Schedule A threshold for medical expense deductions is 7.5% of AGI for both regular and AMT tax calculations.
 - Goes back to 10% for everyone starting in 2019.

Disallowance of Entertainment-IRC 274

- Business deductions for entertainment expenses are generally disallowed after 2017
 - The 50% limitation on business related meals expense directly related to the conduct of a business continues.
 - Meals for the convenience of an employer is non-taxable fringe benefit to employee but now only 50% deductible by employer (after 2025 fully disallowed).

Pension loan offset amount rollover-IRC 402

- If an employee has a loan from their pension [403(b) and 458(b)] at severance from employment, the loan offset amount rollover period is extended from 60 days to the date of the tax years timely filed return plus extension.

Roth IRA Conversions-IRC 408

- Roth-IRA Re-characterizations:
 - Disallowed for Conversions
 - Still allowed for Contributions
- Permanent change that doesn't sunset after 2025

Cash Method of Accounting-IRC 448 (and 263A, 460, 471 and 481)

- Beginning after 2017, TCJA expanded the universe of “small business” taxpayers (other than tax shelters) that may use the cash method of accounting that satisfy a \$25 million gross receipts test (average last 3-years), regardless of whether the purchase, production or sale of merchandise is an income-producing factor [IRC 448(c)].
 - In addition, such taxpayers are not required to account for inventories under IRC 471 or 263A. Instead they may treat inventories as non-incidental materials and supplies or conform to their financial accounting treatment of inventories.
 - See Rev. Proc 2018-40 and 31 for Form 3115 preparation procedures re a small business may obtain auto IRC 481 consent to change to the cash method of accounting per TCJA.

S Corporation conversions to C Corporations-IRC 481 (and 1371)

- TCJA also provides for favorable IRC 481 adjustments for conversions from S to C corporation. See materials for details.

Qualified Tuition Programs (QTP's)-IRC 529

- New expanded use of 529 plan account funds: The term higher educational expenses is expanded to include tuition at an elementary or secondary public, private, or religious school, up to \$10k limit per tax year, per student.
- TCJA also modified certain rules relative to ABLE (IRC 529A) accounts and QTP distributions to ABLE accounts.
 - See IRC 25B for ABLE account savers contribution credit availability.

Partnership Technical Termination-IRC 708

- Starting 2018, the technical termination rule is repealed.
 - Previously, a partnership is terminated for tax purposes if within a twelve month period of time, there was a sale or exchange of 50% or more of the partnership capital and profits interest.

Deemed Repatriation Transition Tax-IRC 965 (and new IRC 245A, 951A GILTI tax)

- To transition to a new territorial international tax system, TCJA levies a one-time transition tax on post-1986 untaxed foreign earnings of specified controlled foreign corporations (CFCs) owned by U.S. shareholders (owning at least 10% of a foreign subsidiary) by deeming those earnings to be repatriated. This could be via K-1's from partnership investments.
 - Some individual's 2017 returns may have been impacted resulting in additional tax. See the following for additional guidance: IRS News Release 2018-131; Form 965-A and instructions for Form 1040 Schedule 4 line 63; Pub 5292.
- Starting in 2018 a new global intangible low-taxed income (GILTI tax on Form 8992) under IRC 951A, a U.S. shareholder of any CFC for a tax year must include in gross income its GILTI for that year. Look for K-1 entries.

Exchange of property held for productive use or investment-IRC 1031

- Like-kind exchanges are allowed only with respect to real property that is not held primarily for sale
 - Special transition rule: However, the like-kind exchange rules continue to apply to exchanges of personal property if the taxpayer has either disposed of the relinquished property or acquired the replacement property on or before 12-31-17.
 - IRC 1031 no longer contains express "like-kind" exclusion language relative to partnership interests. Furthermore, section 1031(e) does address an election under IRC 761(a) out of sub-chapter K partnership treatment such that taxpayer may be able to look thru the partnership to see the assets of that partnership in order to qualify for 1031 exchange of real estate treatment. Further guidance is needed.

Partnership Interests held in connection with performance of services-IRC 1061 (and 83)

- Partnership Carried Interest Rule: TCJA imposes a new 3-year, rather than 1-year, holding period requirement for the partnership carried interest to be treated as long-term capital gain rather than ordinary income.

Self-Created Property Capital Asset Rule-IRC 1221(a)(3)

- With regard to dispositions after 2017, TCJA expanded the list of self-created assets excluded from the definition of a capital asset under IRC 1221(a)(3) with the addition of the following:
 - Patents (IRC 1235 rule didn't change so might still get CG treatment)
 - Inventions
 - Models or Designs (whether or not patented)
 - Secret Formulas or Processes
- The new rule applies to assets which are held either by the taxpayer who created the property or by a taxpayer with a substituted or transferred basis from the taxpayer who created the property (or for whom the property was created)

Estate and Gift Tax-IRC 2001 (and 2010)

- Starting in 2018, the new Estate and Gift Tax threshold amounts increased to \$11,180,000 per person regarding the Unified Credit and Lifetime Transfers.
 - Plus deceased spousal unused exclusion credit amount
 - IRS issued Prop. Regs. That would protect pre-2026 gifts from the post-2025 drop in the exclusion amount.

ACA Individual Mandate-IRC 5000A(c)

- Starting in 2019, TCJA reduced to zero the individual shared responsibility payment (also referred to as the penalty). The ACA required individuals, who were not covered by a health plan that provided at least minimum essential coverage, to pay a shared responsibility payment (?...tax not penalty...?) with their federal tax return. Therefore, starting in 2019 there will be no individual income tax penalty for failure to have health insurance.
 - TCJA leaves intact the IRC 1411 NIIT 3.8% tax and .9% additional Medicare Tax.

.....BREAK TIME.....

- Next we will launch into the new *IRC 199A Qualified Business Income Deduction (QBID)*

QBID-Background and basics before building a detailed understanding of 199A complexities

- Per IRS Prop. Regs. Preamble: Congress enacted section 199A to provide individuals, estates, and trusts a deduction of up to 20% of QBI (Qualified Business Income) from domestic business, which includes trades or businesses operated as a sole proprietorship or through a partnership, S corporation, trust, or estate.
 - Anticipated Impacts on Administrative and Compliance Costs:
 - Estimated total annual reporting burden: 25 million hours;
 - Estimated average annual burden hours per respondent will vary from 30 minutes to 20 hours, depending on individual circumstances, with an estimated average of 2.5 hours;
 - Estimated number of respondents: 10 million;
 - Estimated annual gross compliance costs: \$1.3 Billion
 - PRACTICE POINTER: Review engagement letter/fee schedule and time allocations.

Handout Materials: Technical (IRC and Prop. Regs.) and Practical (Form 1040 line 9 QBID instructions/worksheet and IRS Pub 535)

- Technical: Substantial authority per Reg. 1.6662-4(d) includes the IRC, Regulations, court cases and congressional intent as reflected in committee reports including joint explanatory statements of managers included in conference committee reports.
 - See the summary (including terms, definitions and explanations) in your handout materials of IRC, Prop. Regs. & JCT explanatory statements.
- Practical: While not substantial authority, as tax practitioners we rely on the IRS tax forms, instructions and publications explaining in less technical language the expected compliance IRS requires.
 - See the Form 1040 line 9 QBID instructions and simplified worksheet
 - Also see the IRS PUB 535 with worksheet 12-A and Schedules A,B,C & D.


Practical continued: Overview of Simplified Worksheet

- Simplified Worksheet: Only 17 lines with QBID amount from line 15 being transferred to Form 1040 line 9 (or if non-grantor trust/estate to Form 1041 where instructed).
 - Key data required for 2018: QTB, QBI, QREIT, QPTP, TI and Net “Capital Gains”.
 - Threshold Amounts (TA): Only used if 2018 taxable income before QBID is less than or equal to \$157,500 (\$315,000 if married filing joint). Otherwise use Worksheet 12-A.
 - Only used if taxpayer is not a patron in a specified agricultural or horticultural cooperative (AgCoop). Otherwise use Worksheet 12-A.
 - If the net QBI of all QTB’s is less than zero then the QBI net loss is carried over to following year as it’s own separate QTB.

Form 1040 - Line 9 Worksheet (1/2)

2018 Form 1040—Line 9

2018 Qualified Business Income Deduction—Simplified Worksheet

Keep for Your Records 

Before you begin: This worksheet is for taxpayers who:

- ☒ Have qualified business income, REIT dividends, or PTP income.
- ☒ Are not a patron in a specified agricultural or horticultural cooperative.
- ☒ Have taxable income of \$157,500 or less (\$315,000 or less if married filing jointly).

I.	(a) Trade or business name	(b) Employer identification number	(c) Qualified business income or (loss)
i.			
ii.			
iii.			
iv.			

2. Total qualified business income or (loss). Add the amounts in 1i through 1iv, column (c) 2.

Note. If reporting qualified business income or (loss) from more than four trades or businesses, see the instructions for line 2 of this worksheet.

3. Qualified business loss carryforward from the prior year 3.

4. Total qualified business income. Combine lines 2 and 3. If zero or less, enter -0- 4.

5. Qualified business income component. Multiply line 4 by 20% (0.20) 5.

Form 1040 - Line 9 Worksheet (2/2)

6. Qualified REIT dividends and PTP income or (loss) 6. <input type="text"/>		
7. Qualified REIT dividends and PTP loss carryforward from the prior year 7. <input type="text"/>		
8. Total qualified REIT dividends and PTP income. Add lines 6 and 7. If zero or less, enter -0- 8. <input type="text"/>		
9. REIT and PTP component. Multiply line 8 by 20% (0.20) 9. <input type="text"/>		
10. Qualified business income deduction before the income limitation. Add lines 5 and 9 10. <input type="text"/>		
11. Taxable income before qualified business income deduction 11. <input type="text"/>		
12. Net capital gains (see instructions) 12. <input type="text"/>		
13. Subtract line 12 from line 11. If zero or less, enter -0- 13. <input type="text"/>		
14. Income limitation. Multiply line 13 by 20% (0.20) 14. <input type="text"/>		
15. Qualified business income deduction. Enter the smaller of line 10 or line 14 15. <input type="text"/>		
16. Total qualified business loss carryforward. Add lines 2 and 3. If more than zero, enter -0- 16. <input type="text"/>		
17. Total qualified REIT dividends and PTP loss carryforward. Add lines 6 and 7. If more than zero, enter -0- 17. <input type="text"/>		

QBID Simplified Worksheet Formula:

- QBID = the lesser of:
 - Line 10 [(20% of net QBI from QTB's shown on lines 1 to 5)+(20% of net QREIT+QPTP shown on lines 6 to 9)], or
 - Line 14 [20% of TI-(net Capital Gains + Qlfd Dividends) shown on lines 11 to 14]
- THIS BASIC QBID FORMULA IS REPEATED IN THE MORE COMPLEX WORKSHEET 12-A WHICH INCLUDES THE MORE COMPLEX FEATURES OF SSTB (Sch A), TI OVER TA PHASE-OUT FORMULA'S USING QBI W-2'S AND QP UBIA, AGGREGATING (Sch B), LOSS NETTING (Sch C) AND AGRICULTURAL/HORTICULTURAL COOPERATIVES (Sch D).
- QBID Planning FYI: Maximum QBID is achieved when line 10 and 14 are equal i.e. net QBI and TI (less CG) are equal. Think about those planning strategies that impact one but not the other as possible ways to maximize QBID. Examples might be CG loss harvesting, pensions or IRA's, Roth conversions, depreciation elections and other TI management items.
 - Additional planning is appropriate to get TI below TA to avoid QBID phase-out.

Simplified worksheet examples in Prop. Regs. Section 1.199A-1(c):

- The Prop. Regs have four computational examples with TI below TA:
 - Examples 1 and 2 are illustrated later.
 - Example 3 involves a married couple with TI of \$270k, an S-corp QTB with QBI of \$100k. Because QBI is below TI therefore QBID is 20% QBI or \$20k with projected tax savings of \$4,800.
 - Example 4 are the same facts except they also have net QREIT and QPTP income of \$1500. Therefore 20% of QBI is \$20k plus 20% of net QREIT/QPTP is \$300 so QBID is \$20,300 and projected tax savings is about \$4,900.

Practical continued: Overview of “Complex” Worksheet 12-A

- “Complex” Worksheet 12-A: Contains 39 lines with QBID amount from line 37 transferred to 1040/1041. Also includes Schedules A, B, C and D to calculate necessary parts of worksheet including DPAD for patrons of Agricultural or Horticultural Cooperatives (AgCoop). There is an ordering rule to the schedules: Start with Schedules B then C, A and D before starting worksheet 12-A.
 - Because Worksheet 12-A does everything and more that the Simplified Worksheet does, with the added complexity of phase out calculations because income is over the threshold amounts, the following additional data is required for 2018:
 - SSTB..Sch A.. (Specified Service Trade or Business) discussed in detail in your materials,
 - Special Rules apply when combined with a non-SSTB QTB (in your materials);
 - Aggregating Election..Sch B.. (if qualify, this allows non-SSTB's to group QBI items...income, W-2 and UBIA info),
 - Loss Netting..Sch C.. (this spreads proportionately all QTB's with loss QBI across profit QTB's),
 - QP (Qualified Property) with special rules in your materials,
 - UBIA (Unadjusted Basis Immediately After Acquisition) with special rules in your materials,
 - W-2 (special rules in your materials)...must file all payroll tax returns with FICA/Medicare wages; PEO rules.
 - AgCoop...Sch D...discussed in your materials but not reviewed today.
 - Phase-out formulas: Applicable Percentage and Reduction Amount in materials. Phase-out range is \$50k above TA (\$100k if MFS).

QBID “Complex” Worksheet 12-A formula:

- QBID = the amount using the “General Test” (i.e. see the Simplified worksheet formula) or, if TI is over TA and/or taxpayer has AgCoop income, then the lesser of the General Test or the lesser of the following:
 - “Wage Limit Test” = greater of:
 - 50% of QTB wages, or
 - 25% of QTB wages and 2.5% QP UBIA
 - “Phase-out Test”:
 - If SSTB then wage limit test using Applicable Percentage and Reduction Amount formula's
 - If QTB but not a SSTB then wage limit test using the Reduction Amount formula.

Worksheet 12-A (1/2)

Worksheet 12-A. Qualified Business Income Deduction Worksheet Keep for Your Records

Part I: Trade, Business, or Aggregation Information

1. (a) Name	(b) Check if specified service	(c) Check if Aggregated	(d) Taxpayer identification number	(e) Check if Patron
A. _____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>
B. _____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>
C. _____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>

Part II: Determine Your Qualified Business Income Component

2. Qualified business income from the trade, business, or aggregation. (see instructions)	_____
3. Multiply line 2 by 20% (0.20). If your taxable income is \$157,500 or less (\$315,000 if married filing jointly), skip lines 4 through 12 and enter line 3 on line 13	_____
4. Allocable share of W-2 wages from the trade, business, or aggregation	_____
5. Multiply line 4 by 50% (0.50)	_____
6. Multiply line 4 by 25% (0.25)	_____
7. Allocable share of the unadjusted basis of all qualified property	_____
8. Multiply line 7 by 2.5% (0.025)	_____
9. Add lines 6 and 8	_____
10. Enter the greater of line 5 or line 9	_____
11. W-2 wage and qualified property limitation. Enter the smaller of line 3 or line 10	_____
12. Phase-in reduction. Enter amount from Part III, line 25, if any. See instructions	_____
13. Qualified business income deduction before patron reduction. Enter the greater of line 11 or line 12	_____
14. Patron reduction. Enter the amount from Schedule D, line 6, if any	_____
15. Qualified business income component. Subtract line 14 from line 13	_____
16. Total qualified business income component. Add all amounts reported on line 15	_____

Worksheet 12-A (2/2)

Part III: Phase-In Reduction

Caution. Complete Part III only if your taxable income is more than \$157,500 but not \$207,500 (\$315,000 and \$415,000 if married filing jointly), and line 10 is less than line 3. Otherwise, skip Part III.

	A	B	C
17. Enter amounts from line 3	_____	_____	_____
18. Enter the amount from line 10	_____	_____	_____
19. Subtract line 18 from line 17	_____	_____	_____
20. Taxable income before qualified business income deduction	_____	_____	_____
21. Threshold. Enter \$157,500 (\$315,000 if married filing jointly)	_____	_____	_____
22. Subtract line 21 from line 20	_____	_____	_____
23. Phase-in range. Enter \$50,000 (\$100,000 if married filing jointly)	_____	_____	_____
24. Phase-in percentage. Divide line 22 by line 23	_____	_____	_____
25. Total phase-in reduction. Multiply line 19 by line 24	_____	_____	_____
26. Qualified business income after phase-in reduction. Subtract line 25 from line 17. Enter this amount on line 12 for the corresponding trade or business	_____	_____	_____

Part IV: Determine Your Qualified Business Income Deduction

27. Total qualified business income component from all qualified trades, businesses, aggregations, etc. Enter the amount from line 16	_____
28. Qualified REIT dividends and qualified PTP income or loss (see instructions)	_____
29. Qualified REIT dividends and qualified PTP loss carryforward from prior years (enter a negative number)	_____
30. Total qualified REIT dividends and qualified PTP income. Add lines 28 and 29. If less than zero enter -0-	_____
31. Qualified business income deduction before capital gain deduction. Add lines 27 and 30	_____
32. Capital gain deduction. Enter the amount from line 31, if any	_____
33. Taxable income before qualified business income deduction	_____
34. Net capital gain (see instructions)	_____
35. Subtract line 34 from line 33. If zero or less, enter -0-	_____
36. Income limitation. Multiply line 35 by 20% (0.20)	_____
37. Qualified business income deduction. Enter the smaller of line 32 or line 36	_____
38. Total qualified REIT dividend and qualified PTP loss carryforward. Add lines 28 and 29, if zero or greater enter -0-	_____
39. DPAD under section 199A(g) allocated from an agricultural or horticultural cooperative. Don't enter more than line 33 minus line 37. Enter this deduction on Form 1040, line 10. See the instructions for Form 1040, line 10	_____
40. Qualified business income deduction. Subtract line 39 from line 37	_____

Worksheet 12-A Schedule A

Schedule A—Specified Service Trades or Businesses (SSTB) *Keep for Your Records*

Caution. Complete Schedule A only if your trade or business is a specified service trade or business and your taxable income is more than \$157,500 but not \$207,500 (\$315,000 and \$415,000 if married filing jointly). If your taxable income isn't more than \$157,500 (\$315,000 if married filing jointly), and you aren't a patron of agricultural or horticultural cooperative, don't use this worksheet; instead, use the Qualified Business Income Deduction—Simplified Worksheet in the Instructions for Form 1040. Otherwise, complete Schedule D before beginning Part I. If your taxable income is more than \$207,500 (\$415,000 if married filing jointly), your specified service business doesn't qualify for the deduction.

	SSTB 1	SSTB 2	SSTB 3
1a. Trade or business name:			
1b. Taxpayer identification number			
2. Qualified business income from the trade or business			
3. Allocable share of W-2 wages from the trade or business			
4. Allocable share of the unadjusted basis of all qualified property			
5. Taxable income before qualified business income deduction			
6. Threshold. Enter \$157,500 (\$315,000 if married filing jointly)			
7. Subtract line 6 from line 5			
8. Phase-in range. Enter \$50,000 (\$100,000 if married filing jointly)			
9. Divide line 7 by line 8			
10. Applicable percentage. Subtract line 9 from 100%			
11. Applicable percentage of qualified business income. Multiply line 2 by line 10. Enter this amount on Schedule C or Part II, line 2, for the corresponding trade or business, as appropriate			
12. Applicable percentage of W-2 wages. Multiply line 3 by line 10. Enter this amount on Part II, line 4, for the corresponding trade or business, as appropriate			
13. Applicable percentage of the unadjusted basis of qualified property. Multiply line 4 by line 10. Enter this amount on Part II, line 7, for the corresponding trade or business, as appropriate			

Worksheet 12-A Schedule B

Schedule B—Aggregation of Business Operations *Keep for Your Records*

Aggregation:

- Provide a description of the trade or business and an explanation of the factors met that allow the aggregation in accordance with Regulations section 1.199A-4.

- 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, or ceasing operations. If yes, explain.

(a) Name of trade or business	(b) Taxpayer identification number	(c) Qualified business income/(loss)	(d) W-2 wages	(e) Unadjusted basis immediately after acquisition	(f) Qualified REIT dividends and qualified PTP income/(loss)
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

4. Totals. Total columns (c), (d), (e) and (f). Enter the total amounts on Schedule C or Parts II and IV of Worksheet 12-A, as appropriate. See instructions

Note. If you have more than one aggregated group, attach additional Schedules B. Name the additional aggregations 2, 3, 4, and so forth.

Worksheet 12-A Schedule C

Schedule C—Loss Netting and Carryforward *Keep for Your Records*

Trade, business, or aggregation name _____ Taxpayer identification number _____

(a) Qualified business income/(loss) (b) Reduction for loss netting (c) Adjusted qualified business income (combine (a) and (b); if zero or less, enter -0-)

1. _____

2. Qualified business net loss carryforward from prior years _____

3. Total trade or business losses. Combine the negative amounts on lines 1, column (a), and 2, for all trades and businesses. Enter as a negative number _____

4. Total trade or business income. Add the positive amounts on line 1, column (a), for all trades and businesses _____

5. Losses netted with income of other trades or businesses. Enter as a negative number, the smaller of the absolute value of line 3 or line 4. Allocate this amount to each trade or business on line 1, column (b). See instructions _____

6. Qualified business net loss carryforward. Subtract line 5 from line 3. If greater than zero, enter -0- _____

Worksheet 12-A Schedule D

Schedule D—Special Rules for Patrons of Agricultural or Horticultural Cooperatives (Coop) *Keep for Your Records*

Caution. Complete Schedule D only if you're a patron of an agricultural or horticultural cooperative.

	Coop 1	Coop 2	Coop 3
1a. Trade, business, or aggregation name: _____	_____	_____	_____
1b. Taxpayer identification number _____	_____	_____	_____
2. Qualified business income allocable to qualified payments received from cooperative _____	_____	_____	_____
3. Multiply line 2 by 9% (0.09) _____	_____	_____	_____
4. W-2 wages from trade or business allocable to the qualified payments _____	_____	_____	_____
5. Multiply line 4 by 50% (0.50) _____	_____	_____	_____
6. Patron reduction. Enter the smaller of line 3 or line 5. Enter this amount on Part II, line 14, for the corresponding trade or business _____	_____	_____	_____

QBID “Complex” Worksheet 12-A Formula:

- When TI is over the TA, or the taxpayer has QBI from AgCoop QTB's, this Worksheet 12-A and Schedules A,B, C and D are potentially required. The following features make this worksheet and schedules complicated:
 - Mandatory Loss Netting (Sch C) on a proportional QTB QBI basis. This schedule must be prepared first, unless aggregating is elected, before others or worksheet 12-A;
 - Elective Aggregating (Sch B) which combines allocable income, W-2 wages and UBI from QP of QTB's that aggregate. If elected this is the first schedule to prepare;
 - Phase-out of potential QBID on a per QTB basis depending upon if QTB is an SSTB or not and if TI is above TA plus phase-in limit
 - SSTB's get completely phased out within phase-in range subject to applicable percentage and excess amount reduction formula's (Sch A plus 12-A)
 - Non-SSTB's are subject to excess amount reduction formula within phase-in range otherwise above that just use the wage limit test to limit QBID (worksheet 12-A)

199A New Terms and Definitions:

- Your handout materials reflect the Acronym for new 199A Terms then define them per the IRC or Prop. Regs. The following are the main terms for today's presentation related to the Simplified Worksheet:
 - QTB: Qualified Trade or Business...this is the most basic term we must understand to determine if our client has any QTB's that would qualify for the new QBID. Plenty of confusion revolves around the meaning of this term, especially related to rental activities other than QTB self-rental situations, which we will attempt to clarify.
 - RPE: Relevant Pass-thru Entities are QTB's organized as partnerships, S-corporations and trusts/estates that have special reporting rules regarding their QBI information.
 - QBI: Qualified Business Income...means the net amount of qualified items of income, gain, deduction, and loss effectively connected to any QTB within the USA owned by the taxpayer and included in TI. We will discuss things specifically excluded along with the Prop. Reg. examples and possible disguised effectively connected expenses located elsewhere on a Form 1040.
 - QREIT: Qualified REIT income is ordinary income (1099-DIV box 5 usually).
 - QPTP: Qualified Publically Traded Partnerships..See the special K-1 codes with this info.
 - TI: Taxable Income before QBID.
 - Net Capital Gains: Defined as Qualified Dividends plus the smaller of Schedule D line 15 or 16.

Step 1: Determining your QTB

- Per the 199A Prop. Regs., a QTB means an IRC 162 trade or business (TB) other than the TB of performing services as an employee. This is based on the fact that the definition of TB under IRC 162 is “derived from a large body of existing case law and administrative guidance interpreting the meaning of TB in the context of a broad range of industries.” The preamble states that QBID is not based on the taxpayers level of involvement in the business meaning both active and passive owners of IRC 162 TB’s may be entitled if they satisfy all the requirements.
- Rev Proc 2019-3: IRS updates list of “No Rule” areas which includes 162 TB.
- Most courts apply the Comm. v. Groetzinger (USSC, 2987) standard to distinguish between a TB activity and a hobby. The Supreme Ct reiterated that the question of whether a taxpayer is engaged in a TB requires an examination of all of the relevant facts.

The IRC 162 Facts and Circumstance QTB test:

- In applying the facts and circumstances test, courts have focused on three mutually dependent factors indicative of whether a TB exists. Note how IRC 162 TB determination also draws upon other statutory tests e.g. 183, 195, 167, etc.
 - First, the taxpayer must undertake an activity intending to make a profit. Look to motive (state of mind) and examine the primary purpose of the taxpayer (i.e. good faith intentions; see IRC 183);
 - Second, the taxpayer must be regularly and actively involved in the activity. This requirement contemplates extensive business activity over a substantial period of time as opposed to a one-time venture or investment including a sporadic activity, hobby, or an amusement diversion (i.e. taxpayer must do more than merely owning the property in order to establish that a rental activity is a QTB; see IRC 165, 166).
 - Third, the taxpayer’s business operations must actually have commenced i.e. it has advanced beyond the start-up and pre-opening phase (see IRC 195 requirement); and assets have actually been placed in service (see IRC 167, 168, 179).

Threshold QTB 162 Determination:

- Whether a taxpayer's activities meet these TB factors depends on the facts and circumstances of each case. Numerous court cases have concluded both for and against QTB status with regard to rental real estate activities. You and your client must analyze and decide this fundamental issue before moving on.
 - Ohana v. Comm (TCM 2014-83): "A married couple who owned two homes, one of which they lived in and renovated while monitoring the home market with an eye toward potential sale, and the other of which they rented out but eventually planned to occupy, were held to have neither engaged in the activity with sufficient frequency nor possessed the required profit motive necessary to meet the standard for being engaged in a TB."
 - Woody v Comm (TCM 2009-93): Rental real estate was TB but hadn't started yet.

Threshold QTB 162 determination continued:

- David Keefe, et ux... the 2nd Circuit Ct of Appeals ruled against TB after examining the taxpayers efforts to rent the property; maintenance and repairs supplied by them or agent; employment of labor to manage property or provide services to tenants;
- Gilford ct. ruled for TB who owned eight buildings on eight separate parcels of land where taxpayer used managing agent;
- Fackler ct. ruled for TB even though taxpayer was full time lawyer, visiting property once or twice per month (1 or 2 hrs each time);
- Murtaugh ct. ruled for TB which involved renting two timeshares.

Threshold QTB 162 Determination continued:

- Once the 3-factor test is satisfied, then determine if it is a single unified TB or multiple separate TB's.
 - The determination is made at the entity level. With regard to sole-proprietorship businesses (Schedules C, E and F) Treasury regulations group TB's unless each keep a complete and separate set of books and records.
 - Grouping under IRC 469 is not determinative for purposes of IRC 199A.
 - Courts have also evaluated based on common management, shared office space, shared employees, and nature of business.
 - Note the Regs have a special self-rental rule: Even if the rental of property doesn't rise to the level of an IRC 162 TB, it is still treated as a TB for QBI purposes if rented to a QTB that has 50% or more common ownership.

Let's now look to some Treasury Regulations for guidance:

- 1.199A-1(d)(4)...examples 1 and 2 both deal with Sch E sole-proprietorship rental real estate activities with the determination such were QTB's. Both involve TI over TA therefore UBIA of QP is essential. Because land is not depreciable, example 1 resulted in zero QBID. Example 2 had depreciable UBIA resulting in QBID of \$250k and projected tax savings of \$92,500.
- 6041 and regulations: A taxpayer whose rental real estate activity is a TB is subject to the IRC 6041 information return reporting requirement e.g. Form 1099-MISC. But a taxpayer whose rental real estate activity is not considered a TB (i.e. just engaged in a passive investment activity) is not required to file Forms 1099.
 - The 2010 Small Business Act imposed 1099 filing requirements on all rental real estate activities until the 2011 Taxpayer Protection Act repealed the requirement.
 - Note the Schedule E Part I questions A and B asking if rental TB filed Forms 1099.

Active conduct by the taxpayer of a TB per IRS Reg. 1.179-2(c)(6)(i)

- (i) Trade or business. For purposes of this section and §1.179-4(a), the term “trade or business” has the same meaning as in section 162 and the regulations thereunder. Thus, property held merely for the production of income or used in an activity not engaged in for profit (as described in section 183) does not qualify as section 179 property and taxable income derived from property held for the production of income or from an activity not engaged in for profit is not taken into account in determining the taxable income limitation.

Active conduct by the taxpayer of a TB per IRS Reg. 1.179-2(c)(6)(ii)...continued

- (ii) Active conduct. For purposes of this section, the determination of whether a trade or business is actively conducted by the taxpayer is to be made from all the facts and circumstances and is to be applied in light of the purpose of the active conduct requirement of section 179(b)(3)(A). In the context of section 179, the purpose of the active conduct requirement is to prevent a passive investor in a trade or business from deducting section 179 expenses against taxable income derived from that trade or business. Consistent with this purpose, a taxpayer generally is considered to actively conduct a trade or business if the taxpayer meaningfully participates in the management or operations of the trade or business. Generally, a partner is considered to actively conduct a trade or business of the partnership if the partner meaningfully participates in the management or operations of the trade or business. A mere passive investor in a trade or business does not actively conduct the trade or business.

Active conduct by the taxpayer of a TB per IRS Reg. 1.179-2(c)(6)(ii)...Example

- (iii) Example. The following example illustrates the provisions of paragraph (c)(6)(ii) of this section.
- *Example.* A owns a salon as a sole proprietorship and employs B to operate it. A periodically meets with B to review developments relating to the business. A also approves the salon's annual budget that is prepared by B. B performs all the necessary operating functions, including hiring beauticians, acquiring the necessary beauty supplies, and writing the checks to pay all bills and the beauticians' salaries. In 1991, B purchased, as provided for in the salon's annual budget, equipment costing \$9,500 for use in the active conduct of the salon. There were no other purchases of section 179 property during 1991. A's net income from the salon, before any section 179 deduction, totaled \$8,000. A also is a partner in PRS, a calendar-year partnership, which owns a grocery store. C, a partner in PRS, runs the grocery store for the partnership, making all the management and operating decisions. PRS did not purchase any section 179 property during 1991. A's allocable share of partnership net income was \$6,000. Based on the facts and circumstances, A meaningfully participates in the management of the salon. However, A does not meaningfully participate in the management or operations of the trade or business of PRS. Under section 179(b)(3)(A) and this paragraph (c), A's aggregate taxable income derived from the active conduct by A of any trade or business is \$8,000, the net income from the salon.

Rental QTB example/comments by JCT Part II 199A General Explanation December 2018:

- "An activity that is treated as a TB for all relevant Federal income tax purposes (and that keeps a complete and separable set of books and records) may be treated as a QTB."
- For example, assume that an individual owns a rental building in which the ground floor space is rented to 3 unrelated commercial establishments (a coffee shop, a drycleaner, and a newsstand) and the upper floors hold apartments rented to residential tenants. For Fed tax purposes, the individual accounts for the rental activities with respect to the entire building using a single set of books and records. Assume further that the individual materially participates in the rental activity, IRC 168 depreciation is allowable with respect to the building, and deductions for expenses with respect to operating and maintaining the building are allowable under IRC 162. Because a complete and separable set of books and records is kept with respect to the entire building, and because deductions under IRC 162 are allowable, the real estate rental TB is a QTB for purposes of IRC 199A.

The trouble with NNN “Net Lease” rentals:

- Typically, it will be difficult for a taxpayer to demonstrate active participation in a net lease property since such an arrangement transfers the operating expenses (and thus any related work) from the owner to the tenant.
- IRS Passive Activity Audit Guide describes a Net Lease when (1) deductions (other than interest, taxes, and depreciation) are less than 15% of gross rents, or (2) the lessor is guaranteed a specific return or against loss of income.

“Does Net Rental Income Qualify for the Section 199A Deduction?”

- This is the title to an article written by David M. Fogel, EA, CPA, USTCP, that is definitely worth reading. You can find it on his website online at:
 - https://img1.wsimg.com/blobby/go/310b78c2-6a3e-4922-acb3-709b44966191/downloads/1cj1au49p_579493.pdf
 - David Fogel is a familiar name and popular author to the professional tax community including CSEA and NAEA. He is located in Roseville, CA and can be contacted via his website address at: <https://fogelcpa.com>
- The article is well footnoted with plenty of case and regulatory authority (some of which is cited in this presentation) illustrating how the facts and circumstances of each case independently determine the outcome of whether rental real estate is a QTB. It discusses residential, commercial and “net lease” scenarios with examples both for and against QTB status.

Determining your rental QTB from Pub 535:

- “The ownership and rental of real property doesn’t, as a matter of law, constitute a TB, and the issue is ultimately one of fact in which the scope of your activities in connection with the property must be so extensive as to give rise to the stature of a TB. However, the rental or licensing of property to a commonly controlled TB is considered a TB under section 199A.”
- Question: Do you now understand that the determination of this issue is not a simple exercise therefore rigorous analysis of the facts and circumstances is necessary to arrive at the correct and defensible conclusion?
 - Ethical issue: Don’t let loss rentals conveniently escape QTB status or profit rentals conveniently qualify for QTB status.
 - Practice Alert: Our tax software may require us to override default assumptions that the activity is or is not a QTB.

Practical Tax Practice QTB sole-proprietorship thoughts re “rentals”:

1. Sch E sole-proprietorship rentals:

- Profit Motive:
 - If client rents under market to family or friends then probably not QTB
 - If client rental is vacation rental with personal use also then probably not QTB
- Active, continuous, regular:
 - If client rental is “net lease” then probably not QTB
 - If client does no management functions or oversight then probably not QTB
- Placed in service:
 - No QTB until rental is an ongoing concern rather than start-up phase
- Self-rental to QTB:
 - Yes, statutorily treated at QTB.

Step 2: Determining your QBI

- There are many things excluded from the definition of QBI including the following (but see the handout materials for details):
 - Investment items such as capital gains or losses, dividends and interest
 - What about IRC 1231 depreciation recapture ordinary income? I believe this is QBI.
 - Pensions and Annuities
 - Wages (reasonable comp paid to QTB owner (ethical issue?)...which usually includes benefits such as health ins and pension) and Guaranteed Payments (which usually includes benefits such as health insurance). Also see IRS Notice 2018-64 on wages.
 - Pre-2018 previously disallowed IRC 469 PAL suspended losses
 - IRC 172 NOL's. However, to the extent that the NOL is disallowed under IRC 461(l), the NOL is taken into account for purposes of determining QBI
- Two Tests for QBI: (1) Must be connected to a QTB, and (2) must be included or allowed in determining TI for the tax year.

Two Factor Test of qualified items of QBI (income, gain, deduction, and loss) per IRC 199A(c); 1.199A-3

1. Effectively Connected domestic QTB within meaning of IRC 864(c):
 - Factors taken into account shall include an Asset Use Test and Business Activities Test. In both cases, due regard shall be given to whether or not such asset or such income, gain, or loss was accounted for through such QTB.
 - Asset Use Test: the income, gain, or loss is derived from assets used in QTB
 - Business Activities Test: the activities of such QTB were a material factor in the realization of income, gain, or loss.
 - Notice the IRC 864(c) test doesn't address "deductions" which is one of the QBI items in 199A we are trying to determine (probably because of the NRA focus of IRC 864 with it's withholding at source rules) but it does address a "due regard of QTB accounted for reporting". This may explain the different treatment of similar items between a sole-proprietorship vs RPE such as S-corp or partnership where owner wages and GP of partners is statutorily excluded.

Two Factor QBI Test continued:

2. Included or allowed in determining taxable income for the tax year:

- The Regs provide the following example/illustration:
 - If in 2018 a QTB with \$100k of income, purchases FF&E of \$25k that is depreciated over 5 years rather than expensed under IRC 179 (i.e. \$5k/yr for five years), then QBI for 2018 is \$95k;
 - If an individual owns an interest in a QPTP, and for the taxable year is allocated a distributive share of net loss which is disallowed under the passive activity rules of IRC 469, such loss is not taken into account for purposes of IRC 199A because it was not included or allowed in determining TI for that year;
 - However, losses or deductions that were disallowed, suspended, limited, or carried over from taxable years ending before 1-1-18 (including under 469, etc.) are not taken into account in a later taxable year for purposes of computing QBI;
 - WARNINIG: Therefore we must keep track of pre vs post 1-1-18 suspended PAL's.

Determining QBI from example 1 in Prop Regs 1.199A-1(c):

- Facts: Single taxpayer; sole-proprietorship (Sch C computer repair) QTB with QBI of \$100,000; TI of \$81,000.
 - Tax Return should look like this:
 - Sch C QBI.....\$100k
 - Less ½ SE tax.....(\$7k)
 - Less Std Ded.....(\$12k)
 - TI.....\$81k
 - QBID is 20% of the lesser of QBI or TI. In this example QBID is \$16,200 and potential tax savings \$3,500.
- NOTE: The facts give us QBI but it doesn't seem to include the \$7k AGI deduction for ½ SE tax. Shall we assume QBI expenses exclude ½ SE tax of the Sch C owner? How about the other business related adjustments to AGI such as pension or owner health insurance?
- Possible Answer: The proposed regs and examples are silent so I assume we don't reduce QBI by those items because they are not considered effectively connected to the QTB. Perhaps IRS just didn't give us all the facts to reach this conclusion.

Determining QBI from example 2 in Prop Regs 1.199A-1(c):

- Facts: Assume same facts as example 1 except taxpayer has net capital gains of \$7k and TI is reduced to \$74,000.
 - Tax Return should look like this:
 - Sch C QBI.....\$100k
 - Sch D CG's.....\$7k
 - Less ½ SE tax.....(\$7k)
 - Less other non-QBI deductions the facts don't provide.....(\$26k)
 - TI.....\$74k
 - QBID is 20% of the lesser of QBI or TI reduced by CG. In this example QBID is \$13,400 and potential tax savings \$3k.
- NOTE: While the facts don't explain what the other \$26k deductions relate to (other than they are not QBI related), they must include at least Sch A itemized deductions or Std Deduction. Perhaps this taxpayer also had SE health insurance and SEP but the reg example doesn't tell us to reduce QBI by that info.

Determining QBI from Form 461 and instructions:

- Form 461 is new under TCJA and is a limit on business losses. The instructions define TB to be an activity if your primary purpose for engaging in the activity is for income or profit and you are involved in the activity with continuity and regularity. The facts and circumstances of each case determine if an activity is a TB. The regularity of activities and transactions and the production of income are important elements. You do not need to actually make a profit to be in a TB as long as you have a profit motive. However, you do need to make ongoing efforts to further the interests of your business.
 - Form 461 requests TB info from Sch 1 lines 12 thru 21 (i.e. net income from Sch C, E and F) but not adjustment to AGI deductions on lines 23 to 35 including ½ SE tax, pensions, SE health insurance.

Determining QBI by choice of entity: Is this fair?

	Sch C	1065 K-1	1120S K-1	Comments
Gross income	100,000	100,000	100,000	
Less owner wages or guaranteed pmts (GP's)	N/A	-11,500	-35,000	Per statute QBI exclusions
Less employer portion of owner wage payroll taxes or GP ½ SE tax	Not on Sch C but adjustment to AGI	Not on K-1 but adjustment to AGI	-3,500	Normal reporting by QTB
Less owner health related deductions	Not on Sch C but adjustment to AGI	Usually listed as GP's then F 1040 AGI adjustment	-11,500	Normal reporting by QTB
Less owner pension	Not on Sch C but AGI adjustment	-20,000 K-1 code R	-20,000	Normal reporting by QTB
Net QTB Income reported	100,000	68,500	30,000 + owner W-2 = \$65,000	Per financial statements normal reporting of QTB
QBI	100,000	68,500 (?pension?)	30,000	
Best entity for QBID	Winner	Middle	Last	
However	Owe SE tax on full \$100k	Owe SE tax on full \$100k. Review GP terms	No SE tax but owner wages and employer payroll taxes reduce net K-1	If TI is over TA, QBI items of W-2 and UBIA may favor S-corp

Choice of Entity continued...compared to new C-corp tax rates:

- TCJA dropped top C-corp rates from 35% to a flat 21%. For some of our C-corp clients with earnings less than \$50k that means a tax hike from 15% to 21% i.e. 6% increase. If we analyze choice of entity at the highest rates, taking into consideration the double taxation effective of those C-corp earnings when distributed to the owners, then the following are the results:
 - Pre TCJA tax cost for C-corp (35) + shareholder dividend (23.8 of net) = 50%
 - Pre TCJA flow thru entity tax cost = 39.6%
 - Post TCJA tax cost for C-corp (21) + shareholder dividend (23.8 of net) = 39.8%
 - Post TCJA flow thru entity tax cost = 37% (on TI - QBID) = 29.6% WINNER!!

Determining QBI from RPE Schedule K-1 codes. Warning: If not provided then presumed to be zero! If preparing these returns, do you know what qualifies for these codes?

Code Category	1065 K-1 line 20	1120S K-1 line 17	1041 K-1 line 14 code I
QTB type if SSTB	Statement Provided	Statement Provided	Statement Provided
QBI	Z	V	Statement Provided
W-2	AA	W	Statement Provided
UBIA	AB	X	Statement Provided
QREIT	AC	Y	Statement Provided
QPTP	AD	Z	Statement Provided
Patron	Statement Provided	Statement Provided	Statement Provided

RPE accuracy concerns:

- 1.199A-6 addresses reporting rules for RPE's (i.e. K-1's from 1065, 1120S and 1041) requiring them to report all necessary QTB, SSTB, QBI info as discussed in prior slide reflecting codes and statements.
 - 1.199A-6(b)(3)(iii) states the following about failure to report info:
 - If an RPE fails to separately identify or report on the Schedule K-1 (or any attachments thereto) issued to an owner any items described in paragraph (b)(3)(1), the owner's share of such information then it will be presumed to be zero.
 - Practice Alert: We all have clients with QPTP K-1 type investments that in a year of disposition receive supplemental K-1 info to modify the 1099B basis with adjustment calculations converting some basis info from Schedule D to Form 4797 to determine the IRC 1231 ordinary income (which is QBI) recapture. Be sure the supplemental K-1 report authorizes these entries as qualifying for QBI treatment under 199A.
 - This reporting supplement reminder should also accompany returns we prepare for RPE clients with K-1's that might have depreciation recapture separately allocated entries.

Status of “Final Regs” clarifications:

- Because of the US Govt shutdown that impacts IRS, very little is known as to the current status of Final Regs and Final QBID Pub 535.
- Until then we will not have further clarification to many of the issues surrounding this new 199A statute such as QBI “deductions”, etc...
 - Practice Thought: Should we place on extension all such QBID client returns until further clarification from IRS or Congress?

Special Rules and Definitions for Worksheet 12-A:

- Step 1: Aggregating Election determination (Sch B)
- Step 2: Loss Netting calculation (Sch C)
- Step 3: SSTB special rules and Sch A applicable percentage phase-out
- Step 4: AgCoop Sch D calculations
- Step 5: Worksheet 12-A. Begin calculations using revised QBI info from Schedules A, B, C and D

Determining what QTB's can elect Aggregating (12-A Schedule B):

- If TI is above TA then Aggregating may render a larger QBID because it combines the QBI items of income, W-2, UBIA, QREIT and QPTP from multiple QTB's into a single QTB. See handout materials for special rules and annual reporting requirements via Schedule B:
 - SSTB's can't Aggregate
 - At least 50% common QTB ownership
 - Satisfy at least two of three factors:
 - Provide products or services that are the same or customarily offered together;
 - Share facilities or significant centralized business elements;
 - Operated in coordination with or reliance upon one or more of the QTB's
 - Election is irrevocable unless substantial change in facts/circumstances
 - **Practice Alert:** Because QBI netting is mandatory then Aggregating may be best overall strategy (see the 6 computational examples in Regs which support this conclusion).
- 1.199A contains 6 computational Aggregating examples (i.e. 7 thru 12) and 14 Aggregating illustration examples. See next slide.

Aggregating examples 7 & 8 from 1.199A-1(d):

- Ex 7: Taxpayer has TI of \$2.7MM which includes 3 sole-proprietorships with no QP UBIA as follows:
 - X has QBI of \$1MM with W-2 \$500k
 - Y has QBI of \$1MM with zero wages
 - Z has QBI of \$2k with W-2 \$500k
 - Taxpayer doesn't elect Aggregation, has TI over TA phase-out range therefore QBID is limited based on wage limit test as follows: X is \$200k (smaller of 20% QBI or 50% w-2); Y is zero because no wages; Z is \$400 (smaller of 20% of QBI or 50% W-2). Total QBID is \$200,400.
- Ex 8: If taxpayer had Aggregated all three businesses then QBI is \$2,002,000 and W-2 is \$1MM therefore QBID is \$400,400 (20% of QBI).

Loss Netting calculation (12-A Sch C):

- If an individual's QBI from at least one QTB is less than zero, then that loss must proportionately offset against each QTB with positive QBI using Schedule C from Pub 535. This is mandatory however per the Pub 535 instructions is done after any Aggregating Sch B election.
- 1.199A-1(d) contains four computational examples (e.g. examples 9 thru 12) with half also illustrating the QBID advantage of Aggregating:
 - Ex 9: QTB X has QBI of \$1MM; QTB Y has QBI of \$1MM; QTB Z has QBI of (\$600k). Loss netting results in X and Y QBI netting down to \$700K each i.e. two positive QTB's split \$600k loss QTB therefore subtract \$300k as offset to positive QTB QBI. Because TI is over TA and X,Y and Z each have different W-2 and UBIA info, after Aggregating election made, the QBID almost doubles for this taxpayer.

Determining SSTB and Special Rules

- 1.199A-5 provides definitions of SSTB's and expansive illustrations of what is and is not covered. Review handout materials for details. For instance, real estate agents/brokers and insurance agents/brokers are not SSTB's.
 - Generally Pub 535 does a good job reiterating the Prop Regs but it's 12-19-18 early draft release mistakenly included real estate and insurance agents/brokers as SSTB's.
 - The Regs include special anti-avoidance (e.g. segregation) rules dealing specifically with controlled or affiliated group arrangements between SSTB's and QTB's:
 - QTB De minimis rule: Two rules depending upon gross receipts (\$25MM) and percentage (10%/5%) of SSTB type business income generated by QTB;
 - QTB Services/Property provided to an SSTB Rule: Three rules proportioning income depending upon 80% (svc/property) commingling with at least 50% common ownership;
 - Incidental to SSTB rule: If 50% common ownership, shared expenses and token 5% QTB gross income, then QTB is part of the SSTB.
 - The Regs contain 1 computational example and 11 SSTB and special rule illustration examples. See next slide.
 - Practice Alert: This is a minefield of potential trouble especially given the commingled nature of some businesses our clients might own.

SSTB example 6 from 1.199A-1(d):

- Example 6 is an SSTB with assumed facts from example 5 a non-SSTB.
 - Common Facts: Married filing joint taxpayer with TI of \$375k and S-corp QBI of \$300k which has no QP but wages of \$40k.
 - Because TI is within the phase-out range above TA therefore must use Worksheet 12-A and reduction amount formula applies to both but Schedule A Applicable Percentage additional limitations apply to SSTB. Results are:
 - Example 5 QBID is \$36k resulting in tax savings of about \$11,520;
 - Example 6 QBID is \$14,400 resulting in tax savings of about \$4,608.

Determining QP and UBIA (12-A):

- Qualified Property (QP) is tangible property that qualifies for depreciation per IRC 167.
 - Depreciable period generally begins when first placed in service and ends the later of 10 years after such date or the last day of the last full year in the applicable recovery period that would apply under IRC 168.
 - Example: FF&E 10 years; the depreciable part of real property re the MACRS life
 - 1031 Exchange: Exchange basis in relinquished property starts when it was purchased; Excess basis in replacement property starts when it was purchased; if the 168 election is made then the exchange and excess basis depreciable period begins when replacement property first placed in service.
 - Treatment of transferees in certain nonrecognition transactions (e.g. IRC 351 capitalization) is similar.
 - Improvements in QP treated as separate QP
 - Basis step up at death per IRC 1014 permitted; No basis adjustment per IRC 734 or 743
 - UBIA is the unadjusted basis immediately after acquisition of QP without adjustments for depreciation/179 and tax credits.
 - Warning: Make sure tax software has all assets including correct date placed in service.
 - 1.199A-2(c) contains three illustration examples of UBIA including a 1031 exchange and corporate capitalization example. See next slide.

UBIA of QP continued: illustration examples 2 & 3....

- Ex 2 (1031 exchange): QTB buys \$1MM depreciable real property on 1-5-12 that on 12-31-18 has adj. deprec. basis of \$821k. On 1-15-19 it is exchanged for equal value real estate and no boot. Carryover excess basis in replacement property is \$821k with 1-5-12 date first began.
 - Practice example: Our 1031 exchange clients might step up which means we will also have replacement exchange basis with 1-15-19 date.
- Ex 3 (351 corp capitalization): Sole-proprietorship QTB buys \$10k of depreciable FF&E on 1-5-11 that on 12-31-18 has adj. deprec. basis of \$2,500 when it incorporates. Carryover basis will be \$2,500 with 1-5-11 date placed in service date.
 - Practice pointer: This means some fixed assets will have dates placed in service prior to incorporation date on corporate return.

Overview of 12-A phase out formula's: Applies when TI is above TA and depends if TI is within or above phase-out range:

- Reduction Amount: Applies to both SSTB and non-SSTB calculations using the QBI items of income, wages and UBIA of QTB's. Calculation is performed on Worksheet 12-A parts II and III.
- Applicable Percentage: Applies to only SSTB's effectively reducing the amount of QBI items of income, wages and UBIA of SSTB prior to the reduction amount phase out formula. Calculation is performed on Schedule A.
- 1.199A-1(d) contains 12 computational phase-out examples where TI is above TA. The examples cover rentals, partnerships, S-corp, SSTB, aggregating, proportional loss netting, carryovers, and QPTP.

Determining disqualified QTB's that should be employees instead:

- The TB of performing services as an employee is not a QTB for 199A
- 1.199A-5 goes further regarding worker classification issues which present clear ETHICAL issues for the tax professional:
 - If a worker should be properly classified as an employee, it is of no consequence that the employee is treated as an independent contractor;
 - Rebuttable presumption that former employees are still employees: The presumption may be rebutted upon showing under Federal tax law, regulations, etc. that the individual is performing services in a capacity other than as an employee. This presumption applies regardless of whether individual provides services directly or indirectly via an entity.
 - Example: Former employee working for partnership, becomes partner therefore as a matter for federal tax law is no longer an employee.
 - The regs contain 3 illustration examples. See next slide.

Disqualified EE QTB's continued .. illustration examples from 1.199A-5(d):

- Ex 1: A is employed by PRS then quits, forms either a sole-proprietorship, disregarded entity or RPE and contracts with PRS doing substantially the same services. Solely for purposes of IRC 199A, A is presumed to be an employee and not a QTB unless the presumption is rebutted.
- Ex 2: C is employed as an attorney for Law Firm 1, a partnership, then is fired. C forms a new partnership, Law Firm 2, which contracts to perform substantially the same legal services for Law Firm 1 and it's clients. Unless presumption is rebutted, C and Law Firm 2 are not a QTB.
- Ex 3: Change above facts, C becomes partner in Law Firm 1 as a career milestone, shares in overall net profits. Presumption rebutted per Fed law.
- Practice Alert: A disqualified QTB doesn't mean it's not a legitimate TB but must be sure to not take QBID. Look for software override.

Anti-Abuse Rules and modified Accuracy-Related Penalty-IRC 6662(d)(1)

- Now, substantial understatement exists if greater than \$5,000 or 5% of tax required to be shown. Previously, for the accuracy-related penalty, a tax understatement is considered substantial if it exceeds the greater of (a) 10% of the tax required, or (b) \$5k.
 - This change to the penalty indicates Congress is aware of the potential for gamesmanship and is attempting to discourage aggressive positions on QBID.
 - The IRS is likely to attack any arrangements that are not at arm's length or otherwise seem to have no economic purpose other than increasing QBID.
 - Warning: As complex as IRC 199A is, requiring many determinations of both law and the clients facts and circumstances, exercise due diligence and fortify your records to support the QBID calculations your tax software produces.

Examples:

- From Prop. Regs.: See handout materials which include a summary of the sixteen computational examples discussed from the Proposed Regs. The first four can be calculated using the Simplified Worksheet because TI is below TA. The last twelve must be calculated using Worksheet 12-A and schedules A,B and C.
 - Practice Recommendation: Study Regs for unique rules and guidance from examples.
- From our tax practices: Let's quickly illustrate some sample examples using a draft spreadsheet my office created earlier that is included in your materials.

That's all folks. Have a great tax season.

❖ **THANK YOU.....**

☐ Action Item: Join your local CSEA chapter because both individually and collectively, we are all stronger and better off, together!