

Revenue Procedure
2019-07
 Prepared for the
 MI Society of Enrolled Agents
 March 19, 2018
 Livonia MI




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James R. Sullivan, CPA taxman@875main.com

Serving the People Behind the Numbers

- ATS Advisors, A Certified Public Accounting Firm, Founder and President, 1997 to Present
- BA Accountancy, University of Notre Dame, 1995
- University of Michigan Primary Instructor–Tax Practitioners Institute, 2001 to Present
- US Army, 101st Airborne Division D Co. 3rd Bn. 187th AARCT Infantry, “Rakkasan” 1988-1991

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Section 199A Trade or Business Safe Harbor: Rental Real Estate

PURPOSE:

- §§ 1.199A-1 through 1.199A-6 of the Income Tax Regulations
- This notice contains a proposed revenue procedure that provides for a safe harbor under which a rental real estate enterprise will be treated as a trade or business solely for purposes of § 199A of the Internal Revenue Code (Code) and

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Section 199A Trade or Business Safe Harbor

- To qualify for treatment as a trade or business under this safe harbor, the rental real estate enterprise must satisfy the requirements of the proposed revenue procedure.
 - If an enterprise fails to satisfy these requirements, the rental real estate enterprise may still be treated as a trade or business for purposes of § 199A if the enterprise otherwise meets the definition of trade or business in § 1.199A-1(b)(14)

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Background

- Congress enacted §199A to provide a deduction to non-corporate taxpayers of up to 20 percent of the taxpayer’s qualified business income from each of the taxpayer’s qualified trades or businesses.
 - including RPE’s & REIT) dividends and qualified PTP partnership income.

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What is a trade or business?

- Section 199A(d) defines a qualified trade or business as any trade or business other than a specified service trade or business (SSTB) or the trade or business of performing services as an employee.
 - Section 1.199A-1(b)(14) defines trade or business, in relevant part, as a trade or business under §162 other than the trade or business of performing services as an employee.

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The WHY:

- The Treasury Department and the IRS are aware that whether a rental real estate enterprise is a trade or business is the subject of uncertainty for some taxpayers.
- To help mitigate this uncertainty, the proposed revenue procedure set forth in section 6 of this notice provides for a safe harbor under which a rental real estate enterprise will be treated as a trade or business **solely** for purposes of the section 199A deduction.

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Effective Date

Applies generally to taxpayers with taxable years ending after December 31, 2017.

- Until such time that the proposed revenue procedure is published in final form, taxpayers may use the safe harbor described in the proposed revenue procedure

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IRS Contact for the this Rev Proc.

- For further information regarding this notice, contact
- Robert D. Alinsky or Margaret Burow at (202) 317-5279 or
- Vishal R. Amin or Frank J. Fisher at (202) 317-6850
- (not a toll-free call).

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Application

The safe harbor provided by this revenue procedure applies solely for purposes of section 199A

- Do not try to apply this to PAL rules!!

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Application

This safe harbor is available to taxpayers who seek to claim the deduction under section 199A with respect to a rental real estate enterprise.

- If the safe harbor requirements are met, the real estate enterprise will be treated as a trade or business (for §199A)
- (RPEs) may also use this safe harbor in order to determine whether a rental real estate enterprise is a trade or business (for §199A)

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Rental real estate enterprise (defined)

Solely for purposes of this safe harbor:

- Rental real estate enterprise is defined as an interest in real property held for the production of rents and may consist of an interest in multiple properties.
 - The individual or RPE relying on this revenue procedure must hold the interest directly or through an entity disregarded as an entity separate from its owner

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Multiple Property Treatment

- Taxpayers must either treat each property held for the production of rents as a separate enterprise or treat all similar properties held for the production of rents as a single enterprise.
 - There is an exception (OF COURSE)

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Multiple Property Treatment

- Commercial and residential real estate **MAY NOT** be part of the same enterprise.
- Taxpayers may not vary this treatment from year-to-year unless there has been a significant change in facts and circumstances

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Safe Harbor Requirements:

- Separate books and records are maintained to reflect income and expenses for each rental real estate enterprise;
- For taxable years beginning prior to January 1, 2023, 250 or more hours of rental services are performed per year with respect to the rental enterprise.
- For taxable years beginning after December 31, 2022, in any three of the five consecutive taxable years that end with the taxable year (or in each year for an enterprise held for less than five years), 250 or more hours of rental services are

AND...

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Safe Harbor Requirements:

- The taxpayer maintains **contemporaneous** records, including time reports, logs, or similar documents, regarding the following:
 - (i) hours of all services performed;
 - (ii) description of all services performed;
 - (iii) dates on which such services were performed; and
 - (iv) who performed the services.

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Safe Harbor Requirements:

- Such records are to be made available for inspection at the request of the IRS.
- The contemporaneous records requirement will not apply to taxable years beginning prior to January 1, 2019

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What are Rental Services?

- Rental services for purpose of this revenue procedure include:
- (i) advertising to rent or lease the real estate;
 - (ii) negotiating and executing leases;
 - (iii) verifying information contained in prospective tenant applications;
 - (iv) collection of rent;
 - (v) daily operation, maintenance, and repair of the property;
 - (vi) management of the real estate;
 - (vii) purchase of materials; and
 - (viii) supervision of employees and independent contractors. Rental services may be performed by owners or by employees, agents, and/or independent contractors of the owners.

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What are NOT Rental Services?

- The term rental services does not include financial or investment management activities, such as arranging financing; procuring property; studying and reviewing financial statements or reports on operations; planning, managing, or constructing long-term capital improvements; or **hours spent traveling to and from the real estate.**

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Certain rental real estate arrangements excluded

- Real estate used by the taxpayer (including an owner or beneficiary of an RPE relying on this safe harbor) as a residence for any part of the year under section 280A {home office and vacation homes} is not eligible for this safe harbor.
- Real estate rented or leased under a **triple net lease** is also not eligible for this safe harbor.

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Certain rental real estate arrangements excluded

- Real estate rented or leased under a triple net lease is also not eligible for this safe harbor.
 - For purposes of this revenue procedure, a triple net lease includes a lease agreement that requires the tenant or lessee to pay taxes, fees, and insurance, and to be responsible for maintenance activities for a property in addition to rent and utilities.

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Certain rental real estate arrangements excluded

- This includes a lease agreement that requires the tenant or lessee to pay a portion of the taxes, fees, and insurance, and to be responsible for maintenance activities allocable to the portion of the property rented by the tenant.

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Procedural requirements

The return must include a statement on which it claims the section 199A deduction or passes through section 199A information that the requirements in **Section 3.03 (SLIDES 15-18 *supra*)** of this revenue procedure have been satisfied

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Procedural requirements

The statement must be signed by the taxpayer, or an authorized representative of an eligible taxpayer or RPE, which states:

“Under penalties of perjury, I (we) declare that I (we) have examined the statement, and, to the best of my (our) knowledge and belief, the statement contains all the relevant facts relating to the revenue procedure, and such facts are true, correct, and complete.”

Those who sign must have personal knowledge of the facts and circumstances related to the statement

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Effective Date

- This revenue procedure applies to taxable years ending after December 31, 2017.
- Until such time that the proposed revenue procedure is published in final form, taxpayers may use the safe harbor described in this proposed revenue procedure for determining when a rental real estate enterprise may be treated as a trade or business solely for purposes of section 199A

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Questions?

Thank you for your time and participation

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