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Report No. 1392

March 23, 2018

The Honorable David J. Kautter  
Assistant Secretary (Tax Policy)  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable David J. Kautter  
Acting Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

The Honorable William M. Paul  
Principal Deputy Chief Counsel and  
Deputy Chief Counsel (Technical)  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Re: *Report No. 1392 on Section 199A Deduction*

Dear Messrs. Kautter and Paul:

I am pleased to submit Report No. 1392 addressing Section 199A of the Internal Revenue Code of 1986, as amended (the "Code"), which was added to the Code pursuant to P.L. 115-97 (the "Act") on December 22, 2017. As discussed in the Report, Section 199A raises numerous technical and interpretative issues that should be addressed. In particular, we believe that there is an immediate need for guidance with respect to (1) the identification of a "specified service trade or business," (2) the determination as to whether a given set of activities constitutes a single trade or business or multiple trades or businesses for purposes of Section 199A (including activities conducted through one or more pass-through entities), (3) the application of Section 199A's netting principles where a taxpayer is engaged

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in multiple “qualified trades or businesses,” and (4) the measurement of “W-2 wages” for purposes of calculating certain limitations on the Section 199A deduction.

Given the scope of Section 199A, and in light of our uncertainty regarding Congressional intent with respect to the resolution of several of the technical ambiguities within the statute, this Report generally refrains from offering firm recommendations on the issues identified for immediate guidance. Rather, this Report notes a number of alternative approaches that could be considered by Treasury and the Service in crafting regulations under Section 199A. For example, with respect to the identification of a “specified service trade or business,” the Report notes that Treasury and the Service may consider (i) “safe harbor” lists clarifying the status of certain trades or businesses, (ii) certain mechanical tests as the basis for a presumption, or (iii) certain principles in constructing a regulatory standard. Similar approaches are taken with respect to the identification and separation of multiple “qualified trades or businesses” and the application of the Section 199A netting rules. At the conclusion of the Report we have identified other technical areas in need of guidance, and where possible have offered firmer recommendations where we believe a given result is clearly warranted by the statutory framework of Section 199A.

If further elaboration on any of the points addressed in this Report would be useful to Treasury and the Service, we would be happy to provide additional commentary upon request.

Respectfully submitted,

A handwritten signature in black ink that reads "Karen G. Sowell". The signature is written in a cursive, flowing style.

Karen G. Sowell  
Chair

Enclosure

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