

COMMERCIAL REAL ESTATE INSIGHT & NEWS

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IRS Guidance Issued for Rental Real Estate and the QBI Deduction

BY SCOTT C. CASHMAN • NOVEMBER 21, 2019

The Internal Revenue Service recently issued guidance to taxpayers with rental real estate activities to qualify as a trade or business for purposes of the qualified business income (QBI) deduction. The QBI deduction under Section 199A was enacted as part of the Tax Cuts and Jobs Act and generally provides non-corporate taxpayers with a deduction of up to 20 percent of the taxpayer's qualified business income.

Individual income taxpayers generally report rental real estate activities on Schedule E rather than C, and there was some question whether rental real estate activities could rise to the level of a trade or business in order to qualify for the QBI deduction.

The safe harbor under Revenue Procedure 2019-38 removes this uncertainty and sets forth the procedural requirements that must be met for using it.

In order to qualify under the safe harbor, the following requirements must be satisfied:

1. **Separate books and records must be maintained.** The taxpayer must maintain separate books and records to reflect income and expense for each rental property.
2. **250 hours per year.** For rental enterprises in existence for less than four years, the taxpayer must perform at least 250 hours or more of rental services. For rental properties in existence for at least four years, the 250-hour requirement must be met in at least three out of five years ending with the current tax year.
3. **Contemporaneous records.** The taxpayer must maintain contemporaneous records recording hours spent on the activity, description of services performed, dates services were performed and who performed the services
4. **Attach a statement to the tax return.** The taxpayer must attach a statement to a timely filed tax return for each year the taxpayer relies upon the safe harbor.

The QBI deduction is a potentially valuable deduction for small business owners. The recent IRS guidance mitigates

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much of the uncertainty with respect to rental real estate activities.

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