

SAFE HARBOR FOR REAL ESTATE ENTERPRISES FOR PURPOSES OF THE QBI DEDUCTION

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On September 24, 2019, the Internal Revenue Service released Revenue Procedure 2019-38, 2019-42 IRB, which provides a safe harbor rule for the Qualified Business Income Deduction (“QBI Deduction”). The QBI Deduction (codified in Section 199A of the Internal Revenue Code) is a deduction for income from trades or businesses operated as flow-through entities. For taxpayers who receive business income from partnerships, S corporations and sole proprietorships, there is potentially a QBI Deduction as high as 20% on Qualified Business Income.

Revenue Procedure 2019-38 provides a safe harbor for classifying rental real estate enterprises as a trade or business for purposes of the QBI Deduction. The rental real estate enterprise will be treated as a trade or business if:

1. Separate books and records are maintained to show income and expenses for each enterprise;
2. For enterprises in existence for less than four years, the enterprise performs 250 or more hours of rental services per year; and for enterprises in existence for more than four years, the enterprise performs 250 or more hours of rental services in any three of the previous five years;

3. The taxpayer maintains contemporaneous records that include: hours of all services, description of services, dates the services were performed, and who performed the services; and
4. The taxpayer attaches a statement with the tax return for the year in which the taxpayer relies on the safe harbor.

Note, the IRS specifically excludes real estate rented or leased under a triple net lease.

The safe harbor rule is determined annually and is effective as of 2018. This allows the QBI Deduction to be claimed on an amendment to the 2018 tax filings.

Because of the potential impact of the QBI Deduction, it is important to consult with your Bodman attorney and your accountant to review your business structure and operations to ensure that you are maximizing tax efficiencies.

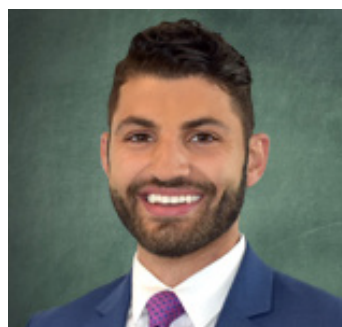
Please call any member of the Bodman Tax Practice Group listed below to help you understand the impact of this safe harbor as well as other changes to the tax code that may impact your business.



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Jennifer L. Long concentrates her practice on representing individual clients on estate planning and on gift and income tax matters. She also advises individual clients on corporate and transactional matters in connection with their closely-held businesses.



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