QBI: SSTBS
Chapter 2    pp. 47 - 81
2019 National Income Tax Workbook™
Chapter 2 Intro

First Half

Determine whether a trade or business is an SSTB

Second Half

SSTB Limitations:
Phase in range
De minimis rule
Antiabuse rule
Employee presumption
Rebut the presumption
I.R.C. § 199A(d)(2) defines an SSTB as any trade or business involving the performance of services in the following fields.
Definition of SSTB – I.R.C. 199A(d)(2)
Definition of SSTB – I.R.C. 199A(d)(2)B continued:

- Investing
- Investment Management
- Trading
- Dealing in securities, partnership interests, or commodities
- Engineers
- Architecture

p. 48
Guidance – definition of an SSTB

I.R.C. 1202
I.R.C. 448
I.R.C. 199A
Guidance 448 - distinction

199A Looks at Trade or business of performing services involving one of the listed fields

448 Looks at Performance of services themselves
## Health

<table>
<thead>
<tr>
<th>In</th>
<th>Grey?</th>
<th>Out</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical service by physicians, nurses, Dentists, and other similar health care professionals</td>
<td>?</td>
<td>Not directly related to medical service, i.e.: health clubs payment processing research, testing</td>
</tr>
</tbody>
</table>
Example 2.1 Residential Care Facility

Green Acres Nursing Home

Housing, meals, laundry, entertainment, etc. No medical health?

Health care organizations

Contracts

Bills residents directly
Example 2.2 Surgical Centers

Meadow Lakes Surgical Center

Provides facilities for outpatient surgery
Bills patient for facility costs only

Professional Medical Organizations

Bills patients for medical costs

Health?
Example 2.3 - Pharmacists

Rural Healthcare

Only 1 pharmacist
Needs help occasionally

Brett - Health?

Brett – pharmacist

contracts

reviewing & filling orders
make recommendations
inoculations
drug interactions
Example 2.4 - Lab services

Tests to detect medical condition
Do not diagnose or treat
Not healthcare professionals

Send test results

Zoya Development

Healthcare Professionals

Do not inform Zoya of diagnosis or treatment

Health?
<table>
<thead>
<tr>
<th><strong>In</strong></th>
<th>Grey?</th>
<th><strong>Out</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyers</td>
<td></td>
<td>Printers</td>
</tr>
<tr>
<td>Paralegals</td>
<td></td>
<td>Delivery services</td>
</tr>
<tr>
<td>Arbitrators</td>
<td></td>
<td>Stenography</td>
</tr>
<tr>
<td>Mediators</td>
<td></td>
<td>Services that do not require skills unique to the field of law</td>
</tr>
<tr>
<td>Similar professions</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Accounting

In
Accountants
Enrolled agents
Return preparers
Financial Advisors
Not limited to CPA, but common understanding of accounting

Grey?

Out
Billing processing
Depends on facts and circumstances
Performing Arts

In Grey?

Actors
Singers
Musicians
Entertainers
Directors
Writer-song
Screenplay
Similar professionals

Do not require arts skills
- maintenance, operation of facilities
Broadcasters
Managers, promotors

Out
Example 2.5 - Royalties

Ari
Singer & Songwriter

Writes and records a song

Song is licensed or streamed

Song played publicly

Performing Arts?
Example 2.6 Movie profits

Movie LLC
Film production company

Passive
Owner

Brenda

Services

Performing Arts?

Performing Arts?
Consulting

In
Professional advice & counsel – to help achieve goals & solve problems
Advocacy –
  government agencies
Influence legislators

Grey?

Out
Sales
Training & education
Consulting embedded in sale of goods, i.e.: building contractor

Look at how compensated!
Example 2.7 Ancillary consulting

Consulting – set up, operation, & repair

Sale of equipment

then

Customer

Consulting?
Example 2.8 Personnel consulting

Destinee Personnel

*Studies clients org charts and makes recommendations*

Does not provide workers. Comp not affected by clients decision

*Consulting?*
Example 2.10 Licensing Software

Felipe licenses Computer software to clients

Evaluates clients’ software needs
Advises client on products he licenses
Helps to implement software

Client pays a Flat price

Consulting?
Example 2.11 Economic Analysis

Business Activities
Entering new businesses
Business in different areas
Overall economic trends

Anna – Analysis & Forecasts

recommendations

Clients

Consulting?
Example 2.12 Data Processing

Erin – determines clients’ data processing needs

Clients

Consulting?

Recommends design and implementation of systems
No add’l services provided
Example 2.13 Business Management

Floyd determines Management & Business structure needs

Advises on changes to management and business structure

Consulting?
Example 2.14 Financial planning

Provides advice on budgets, strategies, etc.

Rodney studies financial situation

Assists clients in making decisions

Clients

Consulting?
Example 2.15 Securities and Commodities

Sara provides economic analysis and forecasts

Sarah purchases orders through stock exchange

Compensation based on orders placed

Clients

Wall Street

Consulting?
Example 2.16 Data Processing

Jim makes recommendations on design and implementation of data processing systems.

Client orders data processing equipment thru Jim.

Jim’s compensation based on equipment orders.
Example 2.17 Personnel

Pierre assists businesses meet personnel needs

Compensates based on job applicants who accept employment

Consulting?

Studies business and refers job applicants

Clients
Example 2.18 Personnel

Pierre assists workers find jobs

Consulting? Finds job openings for his clients

Compensates based on finding a job
Example 2.19 Advertising

Susan assists clients in making decisions on advertising

Compensation based on advertising orders

Client purchases advertising thru Susan, based on her recommendations
Example 2.20 Insurance

Compensation based on insurance purchases made by client

Consulting?

David studies clients insurance needs

Recommends various insurance products

Client
Follow the money. What is the compensation primarily for?

Advice = Consulting

Other product or service? ≠ Not consulting, even if some advice provided as well
In
Performance of services by individuals who participate in athletic competition –
Athletes
Coaches
Team managers
Sports clubs

Grey?

Out
Services not requiring skills unique to athletic competition
maintenance
broadcast
concessions
Example 2.21- Sports Teams

K & L Partners owns a professional sports team

Broadcasting LLC

Sells broadcasting rights

Income Athletics? Treat as SSTB?
Financial Services

In
Managing wealth
Finances
Retirement plans
Transition plans
Advisory
Financial capital
Arranging lending trans.

Grey?

Out
Taking deposits
Making loans
Banking
Insurance (?)
agent may do financial services
Example 2.22 Franchising

Hector

Financial planning Office #1

Franchising: Right to use name, Intellectual property, & marketing

Financial planning Office #2

Financial Services?
But, what is a security?
**Investing**

**In**
Receipt of fees for providing investment advice
Banks - Investment Management, outside
De minimis exception

**Grey?**

**Out**
Directly managing real property
Commission based sale on insurance policies
Investing - Banks

Single trade or business
Investing over de minimis (10%/5%)
Entire business SSTB!

RPE - S Corp Bank – more than one trade or business can segregate SSTB business from non-SSTB business
Principal Asset – reputation or skill

Endorsing products

Use of likeness

On the radio

Use of name

Appearing on TV

Appearing at event

Use of image

Use of voice

Endorsing services
Example 2.24 – Skill & reputation

8 employees,
Including,
Kalinda

Mountain Cyclery
S Corp owned by
Kalinda

Sales:
½ sale of bicycles
½ bicycle repairs

Employees are
highly skilled
in the field

Is it an SSTB?
Example 2.25 endorsement fee

Lance – well know chef

Disregarded entity

restaurant

Disregarded entity

restaurant

500,000 fee for Use of name on cookware

SSTB?
Example 2.26 Partnership Compensation

partner

Meryl - actress

Likeechnet Use of name

50% & Guaranteed payment

Partnership

Shoe company

partner

SSTB?
Questions?
SSTB Limitations
The SSTB limitation may *reduce or eliminate* the QBI deduction for an SSTB Owner with taxable income above the phase-in range.

- **Above**: NO QBI, W-2 Wages, UBIA can be used
- **Within**: Limitation partially applies
- **Below**: Limitation has no effect
3 different calculations, depending on income

- **$421,400**: W-2 & specified service limitations
- **Phase in period**: Partial W-2 and specified service limitations
- **$321,400**: Only limit is taxable income
# 2019 Phase-in Ranges

<table>
<thead>
<tr>
<th></th>
<th>2018</th>
<th>2019</th>
</tr>
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<tbody>
<tr>
<td><strong>Lower:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Single</td>
<td>157,500</td>
<td>160,700</td>
</tr>
<tr>
<td>Married Filing Separate</td>
<td>157,500</td>
<td>160,725</td>
</tr>
<tr>
<td>Joint</td>
<td>315,000</td>
<td>321,400</td>
</tr>
<tr>
<td><strong>Upper:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Single</td>
<td>207,500</td>
<td>210,700</td>
</tr>
<tr>
<td>Married Filing Separate</td>
<td>207,500</td>
<td>210,725</td>
</tr>
<tr>
<td>Joint</td>
<td>415,000</td>
<td>421,400</td>
</tr>
</tbody>
</table>
Ex 2.27- Taxable Income Limit below the Threshold

Lisa – Single. Doctor. Single member LLC

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>QBI</td>
<td>170,000</td>
</tr>
<tr>
<td>Wages</td>
<td>20,000</td>
</tr>
<tr>
<td>UBIA</td>
<td>0</td>
</tr>
<tr>
<td>Taxable Income</td>
<td>150,000</td>
</tr>
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</table>

Below threshold – SSTB and W-2 limitations do not apply. Lesser:

QBI x 20% \((170,000 \times 20\%) = 34,000\)

Taxable Income x 20% \((150,000 \times 20\%) = 30,000\)
Form 8995 – Example 2.27

• 2 new QBI forms for 2019
  8995 – Simplified Computation
  8995-A - Regular Computation

• Required to be attached to return
SSTB Limitation

3 different calculations, depending on income

421,400  W-2 & SSTB

Phase in period:
Partial W-2 and SSTB

321,400  Only limit is taxable income
Treatment of SSTB

- TI before QBID at or below the threshold; SSTB is treated as QBI
- TI, before QBID, exceeds the threshold and the phase-in range; SSTB is not a QUB and does not generate QBI, W-2 wages, or UBIA of qualified property
Treatment of SSTB

- TI before QBID exceeds the threshold but is within the phase-in range: SSTB is treated as a QBI but only the applicable percentage of QBI, W-2 wages and UBIA of qualified property are taken into account in determining QBID.
Applicable percentage:

FORMULAS

MFJ \[ 1 - \frac{(\text{taxable income} - 321,400)}{100,000} \]

Single \[ 1 - \frac{(\text{taxable income} - 160,700)}{50,000} \]
Example 2.28 Taxable income in phase-in, Not an SSTB

FACTS:
Ben & Carla Gomez - Joint return
Taxable income $381,400
Ben S/H in Mega Games S Corp - NOT an SSTB
Mega Games:
• Leases all equipment
• W-2 wages 45,000
• QBI - 306,400
QBU is reduced to

- The greater of 50% of wages or
- 25% of wages plus 2.5% of UBIA
TP must calculate the disallowance % using the following calculation

\[
1 - \frac{381,400 - 321,400}{100,000} = 0.40 = 40\%
\]

W-2 limit = 60%
Example 2.28
Taxable income in phase-in
Not SSTB - TEST

<table>
<thead>
<tr>
<th>If TI below</th>
<th>If TI above</th>
</tr>
</thead>
<tbody>
<tr>
<td>If TI below</td>
<td>If TI above</td>
</tr>
<tr>
<td>321,400</td>
<td>421,400</td>
</tr>
<tr>
<td>QBI x 20%</td>
<td>Wages x 50%</td>
</tr>
<tr>
<td>306,400</td>
<td>45,000</td>
</tr>
<tr>
<td>x 20%</td>
<td>x 50%</td>
</tr>
<tr>
<td>61,280</td>
<td>22,500</td>
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</table>

If lesser, no limit!

If lesser, limit applies
Example 2.28 TI in phasein
Not SSTB

321,400       TI 381,400       421,400

60% thru phasein

QBI x 20%
306,400
x 20%
61,280

Wages x 50%
45,000
x 50%
22,500

at risk 38,780

lose 60% of the 38,780 = 23,268
61,280 – 23,268 = 38,012
Mega Games Inc. K-1

Box 17 – Ben’s share
QBI – 306,400 (not always Box 1)
Wages – 45,000
UBIA - zero
No statement that Mega is an SSTB
Look at pages 68 and 69 and compare to our calculation. Same calculation, laid out in a different manner.
Example 2.29 Mega Games
IS an SSTB

Remember this?

\[
\begin{array}{ccc}
321,400 & \text{Taxable income} & 421,400 \\
\hline
381,400 & \text{W-2 limit} & 60\% \\
40\% & \text{SSTB limit}
\end{array}
\]

Now we’re going to use both the 60% and 40% limit!
Non SSTB  pg.14
TP must cal. the disallowance % using the following:
TI - $321,400 = Reduction %
  $100,000
Reduce Wages by %
Reduce QBID by %

SSTB  pg.66
Determine the applicable reduction % using the following:
100% - TI - $321,000 = AP
  $100,000
Example 2.29 Mega Games
IS an SSTB

\[ 321,400 \quad \text{TI} \quad 381,400 \quad 421,400 \]

\[ \text{W-2 limit 60\%} \quad \text{SSTB limit 40\%} \]

\[ \text{QBI 306,400} \quad \text{Wages 45,000} \]

\[ \times 40\% \quad \times 40\% \]

\[ 122,560 \quad 18,000 \]

\[ \times 20\% \quad \times 50\% \]

\[ 24,512 \quad \text{at risk 15,512} \quad 9,000 \]

\[ \text{lose 60\% x 15,512 (W-2 limit) = 9,307} \]

\[ 24,512 - 9,307 = 15,205 \]
Determine the excess amount:
- QBI of $306,400 × 40% = $122,500 × 20% = $24,510
- Reduced amount over the greater of 50% wage or 25% wages + 2.5% QBIA (ex 2.29 no QBIA)
- $45,000 × 40% = $18,000 × 20% = $9,000
- $15,512
- Multiplied by the reduction amount × 60% = 9,307
- QBID is lesser of $24,512 - $9,307 = $15,205
- or (TI) $381,400 × 20% = $76,280
Look at pages 71 – 73 and compare to our calculation. Same calculation, laid out in a different manner.
Aggregation of Businesses

If an individual chooses to aggregate trades or businesses, the individual must combine:

- QBI
- W-2 wages
- UBIA of qualified property

BEFORE applying the Wage Limitation

Remember, an SSTB cannot be aggregated.
Aggregation of Businesses

Trade or Business #1
Trade or Business #2

Has *some* SSTB income

Aggregate?

Yes, if the gross receipts from the SSTB is below de minimis threshold!
Above the Phase-in
SSTB

Taxable Inc.  SSTB Entity

421,400  NO QBI, W-2 wages, or UBIA, so No QBI deduction

Partial QBI, W-2 wages, and UBIA. Partial QBI deduction

321,400  Full QBI, W-2 wages, and UBIA - No limit on QBI deduction
Example 2.30 passthrough entity SSTB

Capital Partnership-
Owns Atlanta Doves

500 partners -
Direct / Indirect

Passive

Passive

Passive

Still must treat income
as SSTB!
RPE conducting an SSTB must disclose to the partners that the entity conducts an SSTB, regardless of the partners’ taxable income.

RPE must disclose owners’ allocable share of QBI, W-2 Wages, and UBIA or presumed to be zero.
De Minimis Rule – Not treated as an SSTB

Gross receipts at or under 25,000,000

- 90% Not SSTB income
- 10% SSTB income

Gross receipts over 25,000,000

- 95% Not SSTB income
- 5% SSTB income
Landscaper – sells equipment and design (consulting) 
Does not sell the trees, shrubs, flowers it recommends
Invoices separately
One set of books - single trade or business

Total Gross Receipts: 2,000,000
Consulting Gross Receipts: 250,000

Because the landscaping gross receipts are over 10%, the business is an SSTB!!
Veterinarian services & develops and sells organic dog food at clinics and online. Maintains separate set of books, separate employees. Treats as separate trades or businesses for 162 and 199A.

Vet GR over 10%, But NOT an SSTB because vet and dog food separate trades or businesses.
Services or Property provided to SSTB – Antiabuse rule

Portion provided to SSTB must be treated as a separate SSTB. Portion not provided to SSTB, eligible for 199A
Example 2.33 – leasing to SSTB

Patterson Dental – Owns a building in which it conducts a dental practice

Dental Practice → Pays rent → Building

Income from leasing the building to the dental practice is SSTB income
Example 2.34 – leasing to SSTB and Non-SSTB

Patterson Dental – Owns a building in which it conducts a dental practice and rents to a coffee shop

Pays rent

Income from leasing the building to the coffee shop is **NOT** SSTB income
Brown and Buckley partnership divides into 3 partnerships:

- B & B Law
- B & B Rentals
- B & B Staffing

Each partnership will be treated as an SSTB
Example 2.36 – unrelated SSTB

What if B & B Rental rents 50% to unrelated tenants?

B & B Rentals will treat 50% as SSTB and 50% not as an SSTB
“The trade or business of performing services as an employee is not a trade or business for purposes of Section 199A”

Within the meaning of I.R.C. 3401(a)

3401(a) – all remuneration for services performed as an employee, including paid in other than cash
3401(a) defines wages subject to withholding.

3401(a) also lists 23 items of compensation that are not considered wages for withholding purposes. They are listed on pages 77 and 78.

199A refers to wages as defined by 3401(a). The 23 items listed could, potentially, qualify as QBI, if all 199A requirements are met.
For 199A purposes, it is **immaterial** how the employer treats the worker.

**W-2 vs 1099**

If a worker should be treated as an employee, it is of no consequence that the employer treated the worker as a nonemployee.
### Presumed Employee

<table>
<thead>
<tr>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Properly treated as an employee</td>
<td>Provision of substantially the same services, now treated as a non-employee</td>
<td>Presumed to be an employee for 3 years</td>
<td></td>
</tr>
</tbody>
</table>

*But, rebuttal possible!*
Rebuttal of presumption that worker is an employee

Under federal law, regulations, and principles (including common law employee classification) The worker is performing services in a capacity other than as an employee.

Applies regardless if services directly, or indirectly through an entity or entities.
Rebuttal of presumption that worker is an employee

*Rebut with:*  
Contracts  
Partnership agreements  
Other evidence to support status as nonemployee

Written Documents
Example 2.37 presumed employee

Allen quits job

Allen performing same services, is presumed to be employee, unless Allen can rebut presumption
Example 2.38 presumed employee - entity

Upper Mountain Law Firm

Terminates employment relationship

Coral & other Associates

Contract – legal services

Form

Lower Mountain Law Firm Partnership

Coral is performing same services, presumed to be employee, unless she can rebut presumption
Example 2.39 Promotion

After 10 years, project engineers considered for partner

Apex Engineering Partnership

Employee, but after 10 years became partner

Edward
Project engineer

Edward presumed to be employee, but can rebut presumption by showing he became partner as a career milestone.
Firefly offers certain employees the option of becoming a partner.

Fatima – financial advisor

Fatima presumed to be employee, but can rebut presumption by showing she materially modified her relationship with the firm.
Allocations of expenses

Allocate using a *reasonable method*

- Individual or RPE
- Shared expenses
  - T or B
  - T or B
  - T or B
IRS believes that multiple trades or businesses generally will not exist within an entity unless different methods of accounting could be used for each trade or business.

No trade or business will be considered separate and distinct unless a complete separate set of books and records is kept for such trade or business.
Applicable Dates

General:
Final Regulations 199A-5 applies to tax years ending after February 8, 2019.

But, apply to tax years ending after 12/22/17:
• Provisions on services or property provided to an SSTB
• Presumption that former employees are still employees
Questions?