The Financial and Estate Planning Council of Metropolitan Detroit, Inc.

April 2019

33006 W. Seven Mile Road, #237, Livonia, MI 48152 • (313) 530-9223 • FAX: (248) 479-0350

President's Message

I hope everyone is ready for brighter days ahead as the cold and darker days of winter are behind us. We had a great turnout and meeting in February at the Skyline Club. Jordan Rosen gave us a better understanding of the new Tax Cuts and Jobs Act. His CPA humor was great, and we received a lot of good feedback.

Have you seen your tax refund yet? I hope you all get to enjoy that. Many people are completing their personal tax returns for the first year under the new tax law. I have seen taxes go down for many, but the stress of preparing a "simpler" return still exists for others. Enjoy each year's income tax as it beats the death tax! Think how blessed we are in this country to make money, pay some taxes and enjoy many freedoms.

If you are still in a good tax mood, or maybe not so good mood due to some back taxes and have questions on how to settle those tax debts,then our next lunch-and-learn event on Tuesday, April 30, may be of interest to you. The topic is "The IRS Offer in Compromise Program" and will be held at Picano's Italian Grille in Troy. Bring an associate and enjoy a good lunch and topic.

Have you seen any spring flowers yet? The sun has been shining a lot since the first day of spring, but the temperatures have not kept up. We hope for a warm and sunny day for our networking and charitable event on Monday, May 20th at Wabeek Country Club in Bloomfield Hills. The 13th annual charity golf outing will be a time to give back to a good cause, get outside after a long winter, and spend some time with fellow members, clients or business associates. We will not be having an educational speaker at this event.

The charity this year will be the Graham E. Smith Memorial Fund for Suicide Prevention. Its mission is to support community education on mental health, suicide prevention, and enhance overall community wellness. Activities and programs of the Farmington SAFE (Suicide Awareness for Everyone) are financed by funds raised through the Memorial Fund.

Our charity volunteers will be first responders from the Farmington Hills community. Let's have a great day and thank them for the sacrifices they make to keep us safe and help us in a time of need.

The Board would like to thank Brad Kreiner for leading this event again this year. Brad is passionate about giving back to charitable organizations and does a great job with our golf outing event.

We follow-up our May charity golf outing with an evening dinner event for spouses and guests on Tuesday, July 16, at Ford Field Hall of Legends in Detroit. We have David Dubensky, CEO of Ford Land, who will give us an update on Ford Motor Company's move to the Corktown area and the investment and rejuvenation of that area. He will share some of the renovation plans for the Michigan Central Station where parts of the Transformers movie were shot.

We toured the Hall of Legends in Ford Field and we think you will enjoy the impressive meeting space, top quality food, an optional 30-minute tour of the field and facility highlights, and ofcourse cocktail hour. Parking is convenient in the structure next to Ford Field with an enclosed pedestrian bridge that will guide you into the facility;then a short escalator ride will take you to the meeting space.

Our organization is driven by members like you and we

WELCOME TO OUR NEW MEMBERS

JILL E. GLEBA
Gleba & Associates, Inc.
Sponsors: Lynn Gross and Nave Grewal

MICHAEL P. MARSALESE, JD
The Marsalese Law Group, PLLC
Sponsors: Greg Hamilton and Jeff Hoenle

LAURA ANN SCHREINER, JD
Laura Ann Schreiner PLC
Sponsors: Diana Moak and Kristi Nimsgern

appreciate when you invite new members to participate in our networking and educational events. We would like to give a shout-out to our new members listed on page 1 and encourage you to invite others in the estate planning area to our next few events to meet the friendly and high-quality members in our organization.

I wish you all a warm and prosperous year.

Sincerely,

Craig A. Mathiesen CPA, MST, CTFA

FEPCMD President

The New 199A Deduction for Qualified Business Income and its Application to Trusts and Estates

Michael A. Breslow and Patrick A. Russo

I. Introduction

The 2017 Tax Act introduced §199A to the Internal Revenue Code of 1986, as amended (the "Code"). In general, §199A grants taxpayers a deduction of up to 20% of the qualified business income of pass-through businesses for tax years beginning after December 31, 2017 and before December 31, 2025. The §199A deduction is available to all pass-through taxpayers, including trusts and estates, who are owners of a sole proprietorship, partners in a partnership, members of an LLC or shareholders in an S Corporation.

For taxpayers whose income exceeds a certain threshold, the §199A deduction is subject to a number of limitations. Of specific interest to this Article are those based on the taxpayer's share of the entity's W-2 wages and the unadjusted basis immediately after acquisition of all qualified property (referred to as "UBIA"). In the case of trusts and estates, the fiduciary income tax structure adds some complexity not experienced by individual taxpayers.

The general conduit fiduciary income tax system should be familiar to most practitioners. Income earned by a trust can be taxable to the trust, to the beneficiaries of the trust, or can be split between the two. The taxable income from an entity is therefore shared between the trust and the beneficiaries. Generally speaking, income retained by a trust is taxable to the trust, and income distributed to a beneficiary is taxable to the beneficiary. Because the availability of the §199A deduction depends on the taxpayer's share of W-2 wages and UBIA, it is necessary that these tax attributes also be shared between trust and trust beneficiaries to apply the §199A deduction against the taxable income of the ultimate taxpayer—either the trust if the income is retained, or the beneficiary if the income is distributed.

The Code provides that the rules governing the allocation of W-2 wages and UBIA between the trust and the trust beneficiaries for §199A purposes will apply to trusts and estates in the same way that the deduction under former §199 (for domestic production activities) applied to trusts and estates. On January 18, 2019, the Internal Revenue Service issued Final Regulations under §199A which largely follow those under former §199 as to the application to trusts and estates, and also resolve some important issues left open by Congress.

Part II of this Article will briefly summarize the §199A deduction and the pertinent limitations on taxpayers' eligibility to claim the deduction, and Part III of this Article will summarize the application of the Regulations under §199A to several types of trusts that own pass-through entities (grantor trusts, non-grantor trusts and estates and for S corporations, QSSTs and ESBTs) for purposes of applying the W-2 wages and UBIA limitations.

II. Brief Summary of Section 199A

All taxpayers, except C corporations, are entitled to the deduction under §199A. As noted above, this includes trusts and estates. Section 199A(a) sets forth the deduction, and the rest of §199A contains important definitions and limitations, some of which are summarized below.

Section 199A Deduction

Section 199A(a) provides a deduction equal to the lesser of (i) the taxpayer's "combined qualified business income amount" and (ii) 20% of the taxpayer's taxable income, calculated without regard to net capital gain and without regard to the §199A deduction.

For the most part, §199A(a) sets forth a number of limitations that should be familiar or easily accessible to most practitioners. The new defined term is "combined qualified income amount," which is the term that does much of the "heavy lifting" for purposes of the §199A deduction.

Combined Qualified Income Amount

A taxpayer's "combined qualified income amount" is defined in §199A(b) as the sum of 20% of the taxpayer's "qualified business income" ("QBI") for each "qualified trade or business," plus 20% of qualified REIT dividends and qualified publicly traded partnership income. The calculation of QBI is the key component of a taxpayer's combined qualified business income amount.

The New 199A Deduction... - continued on page 6

FINANCIAL AND ESTATE PLANNING COUNCIL OF METROPOLITAN DETROIT

13th ANNUAL CHARITY GOLF OUTING

MONDAY, MAY 20, 2019

Wabeek Country Club
4000 Clubgate Drive
Bloomfield Hills, MI 48302
http://www.wabeekcc.org/
(248) 855-0700

11:15 AM REGISTRATION /11:45 AM: BOX LUNCH/ SHOTGUN START 12:00 PM

18 HOLES OF GOLF WITH A CART/DRIVING RANGE WARM-UP/UNLIMITED COURSE BEVERAGES

4-PERSON SCRAMBLE (INCLUDES DINNER)

$165 PER GOLFER
(SINGLE GOLFERS ARE WELCOME)

$650 PER FOURSOME

$750 FOR A FOURSOME AND A HOLE SPONSOR

$150 HOLE SPONSOR ONLY

5:00 PM COCKTAILS & NETWORKING
6:00 PM FILET OF BEEF TENDERLOIN DINNER
(OR AS SOON AS ALL GOLFERS ARE FINISHED WITH THEIR ROUND)

($70.00 COCKTAILS & DINNER ONLY)

Net Proceeds and Additional Contributions to Graham E. Smith Memorial Fund for Suicide Prevention

Mission: Support community education on mental health, suicide prevention, and enhance overall community wellness. All contributions to the Graham E. Smith Memorial Fund used to support this mission. Activities and programs of the Farmington SAFE are financed by funds raise d by the Graham E. Smith Memorial Fund.

Donate SECURELY ONLINE
http://ges-memorial-fund.com

Suicide Prevention Task Force Farmington Area ...let's talk about it.
http://farmingtonsafe.com

Log onto our website by May 10 to make your reservation and pay with VISA or Master Card. www.metrodetroitfepc.org

OR PLEASE MAIL YOUR RESERVATION AND CHECK BY MAY 10 TO: FEPCMD ● 33006 W. Seven Mile Road, #237 ● Livonia, MI 48152 Phone: (313) 530-9223 ● Fax: (248) 479-0350 ● Email: fepcmd@associationoffice.org

Golf Registration:

GROUP NAME:______________________________ GROUP CONTACT INFO:______________________

HOW MANY IN THE FOURSOME PLAN TO STAY FOR DINNER ______________________________

PLEASE LIST SPECIAL MEAL REQUEST(S), IF APPLICABLE: ______________________________

PLAYER #1
PLAYER #2
PLAYER #3
PLAYER #4 ______________________________

☐ YES I WANT TO SPONSOR A HOLE ☐ PAYMENT ENCLOSED:__________

HOLE SPONSOR WORDING: ______________________________

FPA of MICHIGAN — Society of FSP Financial Service Professionals — NAIFA MICHIGAN — NAEPC — OAKLAND UNIVERSITY Professional and Continuing Education

Five Organizations Come Together To Present

"The IRS Offer In Compromise Program"

Tuesday, April 30, 2019

(CFP CE Pending)

Venar Ayar, J.D., LL.M.
Ayar Law

PICANO'S ITALIAN GRILLE
(PLEASE NOTE NEW VENUE!)
3775 Rochester Road, Troy, MI 48084

Venar Ayar is the principal and founder of Ayar Law and focuses his legal practice on IRS and Michigan tax resolution for both businesses and individuals. He has personally handled a multitude of cases including defending tax audits, negotiating favorable settlements for back taxes, setting up tax payment plans, arranging release of tax liens and levies, defending criminal tax fraud cases and advising those with foreign bank accounts who have not complied with reporting requirements. He represents clients with multi-million dollar assets at stake as well as those with only thousands in assets. Venar earned his Juris Doctor degree at the University of San Diego School of Law and graduated Cum Laude. After graduation, Ayar continued his legal education at USD and earned an LL.M. degree. He has appeared on WDIV Local 4 TV News and WXYZ Action 7 TV News discussing various tax topics.

AGENDA:		
	10:30 a.m. – 11: 15 a.m.	Registration & Optional Networking
	11:20 a.m.	Family Style Dining
	11:30 a.m. – 12:30 p.m.	Presentation – Q&A

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Log onto our website by April 19 to make your reservation and pay with VISA or Master Card.
www.metrodetroitfepc.org

OR PLEASE MAIL YOUR RESERVATION AND CHECK BY April 19 TO: **COST:$15.00PERPERSON**

FEPCMD ● 33006 W. Seven Mile Road, #237 ● Livonia, MI 48152
Phone: (313) 530-9223 ● Fax: (248) 479-0350

MEMBER NAME: ______________________________ COMPANY NAME: ______________________________

GUEST NAME: ______________________________ TOTAL ENCLOSED: ______________________________
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FEPCMD
13TH ANNUAL CHARITY GOLF OUTING
ADDITIONAL SPONSORSHIP OPPORTUNITIES

Net Proceeds and Additional Contributions to Benefit Graham E. Smith Memorial Fund for Suicide Prevention

(Supports Farmington SAFE – Suicide Awareness for Everyone - The Farmington Area Suicide Prevention Task Force)

MONDAY, MAY 20, 2019
WABEEK COUNTRY CLUB

4000 Clubgate Drive
Bloomfield Hills, MI 48302

11:15 AM REGISTRATION – SHOTGUN START 12:00 PM
18 HOLES OF GOLF WITH A CART
4-PERSON SCRAMBLE
BOX LUNCH
BEEF TENDERLOIN FILET DINNER AFTER GOLF

PLEASE CONTACT FEPCMD FOR DETAILS: 313-530-923 OR FEPCMD@ASSOCIATIONOFFICE.ORG

- AUTO DEALERSHIP SPECIALTY HOLE SPONSORSHIP $750
  - ALSO INCLUDES AUTOMOBILE OF YOUR CHOICE ON HOLE #16 TEE BOX
- VENUE SPONSOR $500
- LUNCH SPONSOR $750
  - ALSO INCLUDES LOGO STICKER SIGNAGE ON LUNCH BOXES/BAGS
- DINNER SPONSOR $500
- GOLF BALL SPONSOR (PROVIDE ONE SLEEVE OF BALLS FOR EACH GOLFER - 125)
- REGISTRATION GIFT (PROVIDE GOLF GIFT FOR EACH GOLFER - 125)

NOTES:

- ALL SPONSORSHIPS ABOVE RECEIVE SIGNAGE AT THE REGISTRATION TABLE, A HOLE SPONSOR SIGN, TABLE TENT CARD SIGNAGE DURING DINNER, AND SPECIAL ACKNOWLEDGEMENT FROM THE PODIUM. SPONSORS ARE INVITED TO PROVIDE ITEMS FOR THE GOLFER GOODIES BAGS. PLEASE CONTACT THE ASSOCIATION OFFICE FOR COMPLETE INFORMATION: FEPCMD@ASSOCIATIONOFFICE.ORG

Qualified Business Income

A taxpayer's QBI is defined in §199A(c) as the net amount of qualified items of income, gain, deduction and loss effectively connected with the conduct of a qualified trade or business within the United States and included or allowed in determining taxable income for the taxable year. QBI does not include short term or long term capital gain or loss, dividend income, interest income not related to trade or business, reasonable compensation paid to the taxpayer for services rendered with respect to the business, guaranteed payments to a partner for services rendered to the trade or business, and REIT dividends, qualified cooperative dividends or qualified publicly traded partnership income (which are taken into account in separate inclusion/deduction provisions).

The Code makes clear that a taxpayer's QBI must be "with respect to" a "qualified trade or business" in order to be eligible for the §199A deduction. What constitutes a "qualified trade or business," however, can change depending on the amount of taxable income of the taxpayer.

Qualified Trade or Business

A "qualified trade or business" is defined in §199A(d) as any trade or business other than (1) a specified service trade or business or (2) the trade or business of performing services as an employee.

Note, however, that the definition of a "qualified trade or business" can change based on the taxpayer's taxable income. For taxpayers with taxable incomes below a certain threshold amount, a trade or business will be a "qualified trade or business" even if it is a specified service trade or business. For taxpayers with taxable incomes above the threshold amount but below a phase-in amount, the limitation is phased in ratably. Once the upper limit phase-in amount is reached, QBI from a specified service trade or business is fully excluded from the definition of QBI. In all events, however, every taxpayer remains subject to the rule that the trade or business of performing services as an employee is not a "qualified trade or business."

Deductible Amounts

For taxpayers with taxable income below the threshold amount, such taxpayers can simply multiply QBI by 20% to determine the deductible amount. No additional limitations are imposed.

For taxpayers with taxable income above the threshold amount, the combined qualified income amount is essentially the sum of the deductible amounts from each qualified trade or business of the taxpayer. The "deductible amount" for each trade or business is the lesser of:

(a) 20% of the QBI with respect to the trade or business, or

(b) the greater of (i) 50% of the taxpayer's share of W-2 wages from the qualified business, or (ii) the sum of 25% of the taxpayer's allocable share of W-2 wages plus 2.5% of unadjusted basis of all qualified property.

W-2 Wages and Share of UBIA Limitation

Similar to the treatment of specified service trades or businesses for purposes of the QBI definition, the limitations pertaining to the taxpayer's share of W-2 wages and UBIA are phased in based on the taxpayer's taxable income. The Regulations provide that the individual or relevant pass-through entity that directly conducts a qualified trade or business must determine and report each taxpayer's share of W-2 wages and basis of qualified property with respect to such qualified trade or business. With respect to trusts and estates, Congress provided that the taxpayer's share of W-2 wages and the taxpayer's share of UBIA are to be allocated between the trust and the beneficiary, pursuant to "[r]ules similar to the rules under section 199(d)(1)(B)(i) (as in effect on December 1, 2017)."

Section 199 related to the deduction for domestic production activities and was subject to limitations at the taxpayer level with respect to the taxpayer's share of W-2 wages of the entity, similar to the rules under new §199A described above. With respect to trusts and estates, Congress mandated in §199(d)(1)(B)(i) that the Treasury promulgate regulations for allocating such items between the trust/estate and the beneficiary. As noted above, the IRS issued Regulations that clarified some key points not addressed in the regulations under former §199.

The following Part will summarize how W-2 wages and UBIA are allocated between a trust or estate and the beneficiaries under these Regulations.

III. Section 199A Applied to Trusts and Estates

There are several types of trusts that can own interests in pass-through entities such as partnerships and S Corporations, including grantor trusts, Qualified Subchapter S Trusts (QSSTs), Electing Small Business Trusts (ESBTs), and non-grantor trusts/estates.

Grantor Trusts/Qualified Subchapter S Trusts

For grantor trusts, and qualified subchapter S trusts (QSSTs) for which the beneficiary is treated as the owner under §678, the Regulations create a fairly simple rule. The person treated as the owner of the pass-through business owned by the trust, whether a grantor or another person, computes its §199A deduction as if he or she conducted the activity of the trust directly, with respect to the portion of the trust that such person is considered to own.

Therefore, pursuant to the old §199 regulations and the Regulations under §199A, the grantor of a grantor trust, or the QSST beneficiary with respect to a QSST, is treated as the owner of the pass-through entity interest that is owned by the trust. Accordingly, there is no need to allocate the tax items between the trust and the beneficiary for these types of trusts. The share of W-2 wages and UBIA are all fully allocated to the grantor/QSST beneficiary.

Electing Small Business Trusts

An Electing Small Business Trust (ESBT) is a permissible shareholder of an S Corporation. An ESBT is taxed pursuant to rules set forth in §641(c). These rules provide that any portion of an ESBT that consists of stock of an S corporation is treated as a separate trust from the portion of the trust that owns other assets. Section 641(c)(2)(C) provides that "[t]he only items of income, loss, deduction, or credit to be taken into account are . . . [t]he items required to be taken into account under section 1366," which are the income items passed-through from the S corporation to the shareholder and reported to the shareholder on the shareholder's K-1.

Section 199 and the regulations thereunder did not specifically address ESBTs. Prior to the issuance of the Proposed and now Final Regulations under §199A, it was not entirely clear whether the §199A deduction would be available to an ESBT. The Regulations removed these lingering doubts, however, by providing that an ESBT is entitled to the §199A deduction. The availability of the deduction to ESBTs is important, as the income tax on the S portion of an ESBT is imposed at the highest marginal income tax rate applicable to trusts and estates (currently 37%). If the ESBT qualifies for the §199A deduction, the effective income tax rate may be reduced to 29.6%.

The Regulations provide that the S portion of the ESBT must take into account the QBI and other items from any S corporation owned by the ESBT, and that the ESBT portion of a trust would be attributed all W-2 wages and UBIA of the S corporation. The Regulations also provide that the grantor portion of the ESBT must take into account the QBI and other items from any assets treated as owned by a grantor or another person (owned portion) of a trust under §§671-679, and the non-S portion of the ESBT must take into account any QBI and other items from any other entities or assets owned by the ESBT. Therefore, the grantor would be attributed any W-2 wages and UBIA treated as owned by the grantor (as discussed above), and the non-S portion of the trust would allocate W-2 wages and UBIA among the trust and beneficiaries in the same manner as a non-grantor trust, as described below.

Non-Grantor Trusts and Estates

The application of §199A will be more complicated for non-grantor trusts and estates that own interests in pass-through entities. As a starting point, the §199A deduction is calculated at the entity level, and is then allocated among the trust and beneficiaries. The §199 regulations and Regulations under §199A provide, generally, that the key metric for allocating W-2 wages between the trust/estate and the beneficiaries is the trust/estate's distributable net income ("DNI"), as determined under §643, that is distributed or required to be distributed to the beneficiaries during the taxable year. The Regulations under §199A set forth the following rule, which is substantially identical to rule described in the 199 regulations:

The…W-2 wages [and share of UBIA]…of a trust or estate are allocated to each beneficiary and to the trust or estate based on the relative proportion of the trust's or estate's distributable net income (DNI), as defined by section 643(a), for the taxable year that is distributed or required to be distributed to the beneficiary or is retained by the trust or estate. For this purpose, the trust's or estate's DNI is determined with regard to the separate share rule of section 663(c), but without regard to section 199A…

The above-quoted regulation clarifies three important points regarding the application of the §199A deduction to trusts/estates:

1. The W-2 wages and the taxpayer's share of UBIA reported to the trust/estate from the pass-through entity will be allocated between the trust/estate and the beneficiary based on the distributable net income "distributed or required to be distributed to the beneficiary." In other words, these tax attributes will be allocated between the beneficiaries and the trust/estate on a pro-rata basis based on the DNI distributed to the beneficiaries. Further, it is immaterial whether the trust/estate's income from the pass-through entity is included in the amount distributed to the beneficiaries. The ultimate calculation of DNI and the allocation between the trust/estate and the beneficiaries is the key consideration.

For trusts/estates, there is often a disconnect between fiduciary accounting income required to be distributed to the beneficiaries and the taxable income from pass-through entities. Under the principal and income laws of most states, only amounts distributed to the estate/trust from the pass-through entity will be included in the estate/trust's fiduciary accounting income; however, the taxable income of the estate/

trust is calculated based on the estate/trust's proportionate share of the pass-through entity's taxable income. If an entity passes through taxable income to a trust or estate, but does not distribute cash to the trust or estate, the trust/estate will have taxable income but will not have fiduciary accounting income. All of the DNI might be allocated to the beneficiary, but the DNI is not composed of the business income. The trust or estate would be responsible for paying the income tax on the pass-through entity income. Therefore, the W-2 wages and UBIA might be allocated to the beneficiary, and the estate/trust might have its §199A deduction reduced or eliminated as a result.

2. The estate or trust's DNI will be calculated without regard to the §199A deduction for purposes of determining the allocation of §199A tax items to the trust and the estate.

3. If the estate or trust has no DNI in a given year, then the W-2 wages and the taxpayer's share of UBIA will all be allocated to the trust/estate. Relying upon DNI for the allocation of tax attributes for purposes of the §199A deduction could lead to problematic results, particularly because DNI can be zero in certain circumstances (e.g., as a result of a charitable distribution deduction). In that scenario, the Regulations provide that the share of W-2 wages and UBIA will be allocated to the trust/estate. However, a beneficiary could be required to include QBI in his or her gross income from the trust/estate as a result of a distribution from the entity that is included in fiduciary accounting income, but the beneficiary's §199A deduction could be limited or eliminated altogether because the beneficiary would receive no benefit of the estate/trust's share of the W-2 wages or UBIA. Ideally, this aspect of §199A will be addressed by additional guidance.

Estates with Fiscal Year Ending in 2018

As noted above, estates and trusts are obligated to report a beneficiary's share of QBI, W-2 wages and UBIA on a Schedule K-1 to the extent it passes out these items to the beneficiary (that is, a trust or estate becomes a "relevant pass-through entity" to the extent these items pass-through). Because estates can elect a fiscal year, this can lead to interesting reporting requirements and considerations for an executor.

For instance, assume a decedent dies in 2017 owning an interest in a qualified trade or business that has a December 31 year-end. The estate elects a first fiscal year-ending sometime in 2018. The estate receives a K-1 from the qualified trade or business for its taxable year ending on December 31, 2017 that will be reported on the estate's fiscal year return ending in 2018. Understandably, the K-1 from the pass-through business does not report any QBI or related items, since §199A and its reporting requirements did not apply to the business in 2017. In fact, if the estate does not distribute income, the estate would not be able to take any §199A deduction because its taxable year began prior to the effective date of the 2017 Tax Act.

However, the Regulations provide that any income earned and reported to the beneficiary of the estate in 2018 qualifies for the deduction, since the beneficiary will be receiving and reporting such income on his or her 2018 income tax return. Since the estate will be distributing income that qualifies as QBI, the §199A Regulations seemingly impose on the executor an obligation to report the QBI amount (as well as the beneficiary's share of W-2 wages and UBIA) to the beneficiary. In other words, the estate may be required to report certain information to the beneficiaries that was not required to be reported to the estate.

If the executor is not involved in the business, this information may not be readily available. Given the lack of guidance with this issue, the executor should work with the business's tax and accounting professionals and use a reasonable method to determine the estate's and beneficiary's share of §199A items.

Anti-Abuse Rules for Trusts

As noted above, the §199A deduction is subject to various limitations if the taxable income of the taxpayer exceeds a certain threshold. To prevent taxpayers from creating multiple trusts with taxable income below the threshold amounts (so the limitations would not apply), the Regulations provide anti-abuse rules under §199A as well as under §643(f). The Regulations under §199A provide that multiple trusts "formed or funded with a significant purpose of receiving a deduction under section §199A will not be respected for purposes of section 199A." These provisions apply to taxable years ending after December 22, 2017.

The Regulations under §643(f) provide that "two or more trusts will be aggregated and treated as a single trust if such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and if a principal purpose for establishing such trusts or for contributing additional cash or other property to such trusts is the avoidance of Federal income tax." The Regulations go on to provide that if a significant income tax benefit results from the creation of multiple trusts, income tax avoidance will be presumed unless there is a significant non-tax purposes for creating this trusts. These provisions apply to taxable years ending after August 16, 2018.

IV. Conclusion

Practitioners' and planners' understanding of the deduction for pass-through business income under §199A is certain to evolve as they begin to understand its implications in 2018 and in coming years. The Regulations under §199A have been useful in illuminating certain aspects of §199A; however, it is likely that the application of the §199A deduction to trusts and estates will be a particularly challenging area of focus for some time.

Michael A. Breslow is a partner at Heckscher, Teillon, Terrill & Sager, P.C. in West Conshohocken, Pennsylvania. Michael's practice focuses on tax and estate planning, charitable planning, and trust and estate administration. Michael follows and writes about developments in the law in the United States and abroad pertaining to the international effort to combat money laundering and terrorist financing. He earned a J.D. from Temple University Beasley School of Law and an LL.M. in taxation from New York University School of Law.

Patrick A. Russo is an associate at Heckscher, Teillon, Terrill & Sager, P.C. in West Conshohocken, Pennsylvania. Patrick's practice focuses on tax and estate planning and trust and estate administration. He earned a J.D. from Widener University School of Law and an LL.M. in taxation from Temple University Beasley School of Law.

FEPCMD 2019 Preliminary Calendar of Events

Tuesday, 4-30-19 Lunch & Learn Event

Presenter: VenarAyar, J.D., LL.M.
Topic: "The IRS Offer in Compromise Program"
Venue: Picano's Italian Grille, Troy

Monday, 5-20-19 Golf Outing

Charity golf outing - no formal presentation
Venue: Wabeek Country Club, Bloomfield Hills

Tuesday, 7-16-19 Spouse/Guest Dinner Meeting

Presenter: David Dubensky, CEO, Ford Land
Topic: "Update Regarding the Renovation Project at the Michigan Central Station in Corktown"

Watch for details regarding the Fall Lunch & Learn Event!

The Financial and Estate Planning Council of Metropolitan Detroit, Inc.
33006 W. Seven Mile Road, #237, Livonia, MI 48152
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