



# Parity for Main Street Employers

October 12, 18

CC:PA:LPD:PR (REG-107892-18)  
Room 5203  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Attention: Regina Johnson

*RE: REG-107892-18, Written Comment on Notice of Proposed Rulemaking on Qualified Business Income Deduction under Section 199A*

Dear Ms. Johnson:

The Parity for Main Street Employers Coalition (PMSE) is made up of national trade groups representing America's Main Street employers. We thank you for the opportunity to comment on REG-107892-18, the notice of proposed rulemaking on the qualified business income deduction under Section 199A of the Internal Revenue Code, particularly as it applies to aggregation or grouping of related pass-through entities.

We are pleased that the proposed rules permit aggregation in a broad range of circumstances. While PMSE members have specific concerns with Section 199A and its application under the proposed rules, we are unified that a well-constructed aggregation policy is an essential foundation to putting Main Street businesses on a level playing field with larger C corporations. The following comments include several areas where we believe the aggregation regime could be strengthened and improved.

Earlier this year, PMSE wrote to the Department of Treasury requesting rules allowing for aggregation of entities for the purpose of calculating the new deduction under Section 199A. As the letter noted:

*Section 199A permits owners of pass-through businesses to deduct up to 20 percent of qualified business income. Certain services businesses are precluded from this deduction, however, while even eligible businesses are subject to two alternative limitations, one based on the businesses' payroll and another on a combination of payroll and capital.*

*Absent aggregation, the application of these limitations would treat similar businesses differently depending on how they are organized. For example, a manufacturing business housed in a single S corporation may be eligible for the full deduction, while a similar business utilizing the common paymaster model described above may be eligible for none of it, despite having the same robust levels of payroll and investment.*

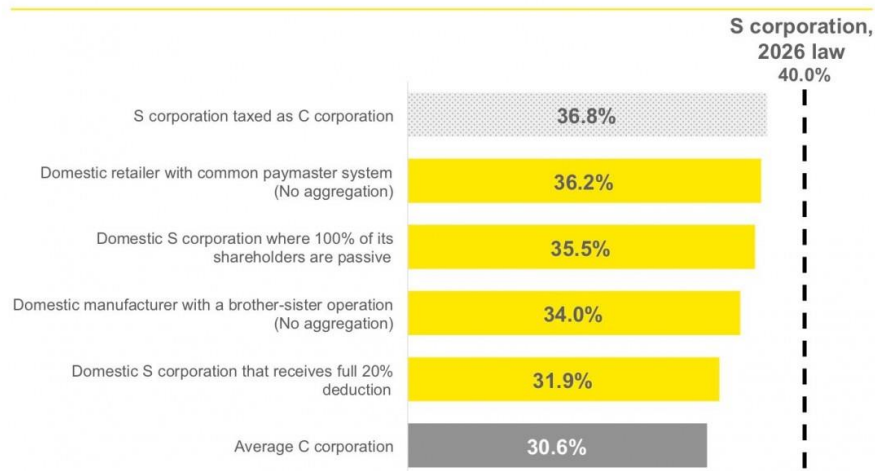
Similar support for aggregation was raised by the US Chamber of Commerce, the AICPA, and the American Bar Association.



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To illustrate the importance of aggregation, PMSE recently released an [analysis](#) by Ernst & Young (EY) of the Tax Cut and Jobs Act's effect on tax rates paid by pass-through businesses, with a focus on S corporations. The study found that pass-through businesses will consistently pay higher effective tax rates than the tax rate paid by an average C corporation. This result is true even for those businesses that qualify for the full, 20-percent deduction under Section 199A.

## Effective tax rate comparison, 2018 law



Note: S corporation taxed as C corporation is identical to Average C corporation except it has 100% taxable shareholders. S corporation, 2026 law is assumed to have 10% passive and 90% non-passive shareholders.

For pass-through businesses organized in multiple entities or units, their effective rate would be even higher absent an opportunity for their owners to group the related entities together when calculating the deduction. This disparity makes it essential that the Section 199A deduction be applied as broadly as possible, including a full and robust aggregation policy.

As the EY analysis demonstrates, the 20 percent deduction helps those Main Street businesses come close to tax rate parity with C corporations, but *only* if they get the full deduction on *all their qualified income*. A robust aggregation approach would ensure that more pass-through businesses get the full Section 199A deduction, regardless of how they are organized.

The proposed rules put forward by Treasury allow taxpayers to group together separate legal entities if they meet each of the following five conditions:

1. The same person or group of persons, directly or indirectly, owns 50 percent or more of each trade or business to be aggregated;



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2. The ownership exists for a majority of the taxable year in which the items attributable to each trade or business to be aggregated are included in income;
3. All of the items attributable to each trade or business to be aggregated are reported on returns with the same taxable year, not taking into account short taxable years;
4. None of the trades or businesses to be aggregated is a specified service trade or business (SSTB); and
5. The trades or businesses to be aggregated satisfy at least two of the following factors:
  - a. The trades or businesses provide products and services that are the same or customarily offered together;
  - b. The trades or businesses share facilities or share significant centralized business elements, such as personnel, accounting, legal, manufacturing, purchasing, human resources, or information technology resources; or
  - c. The trades or businesses are operated in coordination with, or reliance upon, one or more of the businesses in the aggregated group (for example, supply chain interdependencies).

PMSE has specific concerns with several of these conditions. First, it is unclear what purpose the 50 percent ownership condition serves. We do not see a tax policy rationale to deny taxpayers the ability to group their businesses together when they own a minority stake in an otherwise qualified group of businesses, but allow aggregation when they have a majority stake.

For example, many enterprises are organized as a series of partnerships, where the partner managing the properties holds a minority stake in each partnership. These enterprises include hotels, energy companies, and other common business arrangements. Under the proposed rules, the managing partner would be precluded from grouping together the individual partnerships, even though they obviously constitute a single enterprise. This condition is a disincentive for taxpayers to enter into joint ventures in the same trade or business where the risk can be shared.

To improve upon the proposed rules, PMSE recommends that Treasury drop the 50 percent ownership requirement for business owners seeking to group together multiple businesses.

Second, the proposed rules require that trade or businesses grouped together all of the “items attributable to each trade or business to be aggregated are reported on returns with the same taxable year, not taking into account short taxable years.” While most pass-through businesses operate on a calendar year basis, there are legitimate business reasons why a trade or business might elect something other than a calendar year. There is no reason to preclude these businesses from being part of a taxpayer’s group.

Finally, PMSE objects to the uneven treatment of unprofitable businesses in the proposed regulations. Section 199A-1(d)(2)(iii) requires loss-generating businesses to be grouped together with profitable businesses when calculating a taxpayer’s qualified business income (QBI). On the other hand, those same unprofitable businesses could be blocked from being part of a taxpayer’s grouping under Section 199A-1(d)(2)(iii)(A) if they fail to satisfy the five requirements listed above, reducing the taxpayers potential deduction by ignoring the wages and capital attributed to those unprofitable businesses. To



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fix this, PMSE recommends that if an unprofitable business is included in taxpayer's calculation of QBI, the taxpayer be given an election to include the same business with any group when determining their level of W-2 wages and capital.

We thank you for the opportunity to comment on these important matters and look forward to working with you on the final rulemaking.

Sincerely,

Parity for Main Street Employers Coalition Steering Committee Members:

American Council of Engineering Companies  
Associated Builders and Contractors  
Associated General Contractors of America  
Independent Community Bankers of America  
National Association of Wholesaler-Distributors  
National Beer Wholesalers Association  
National Electrical Contractors Association  
National Roofing Contractors Association  
S Corporation Association  
Wine and Spirits Wholesalers of America