SBG CONSULTING, INC.
CERTIFIED PUBLIC ACCOUNTANTS | BUSINESS ADVISORS

Tax-Saving Tips

April 2019

Good News: Most Rentals Likely Qualify as Section 199A Businesses

The Tax Cuts and Jobs Act tax reform added new tax code Section 199A, which created a 20 percent tax deduction possibility for you if your rental property (a) has profits and (b) can qualify as a trade or business.

As the law now stands, with rentals that achieve trade or business status, you win. Your business-status rental property creates the following five possible tax benefits for you:

1. Your rental property can create a Section 199A tax deduction of up to 20 percent of the rental property's qualified business income.
2. Your rental property receives tax-favored Section 1231 treatment, which (upon sale) delivers with a tax loss—an ordinary loss (the best kind of loss)—and with a tax-favored capital gain (the best kind of gain).
3. Your rental property can create the home-office deduction if you meet the other home-office requirements of exclusive and regular use.
4. Your rental-business status creates rental property deductions for the cost of your attendance at rental property meetings, seminars, and conventions.
5. Your rental-business status enables Section 179 expensing for certain assets used in the business (special rules apply to the real property).

To obtain the benefits listed above, you must have a rental property that qualifies as a trade or business.

How to Reimburse Medicare When You Have Fewer Than 20 Employees

The Affordable Care Act's $100-a-day penalty for improper medical reimbursements likely has your attention. And it should. But you can find many reimbursements that are allowed without penalty, including the ability to reimburse Medicare when you have fewer than 20 employees.

Some group insurance plans do not cover Medicare-eligible employees if the group plan covers fewer than 20 employees because:

- With fewer than 20 employees, the insurance company is the primary payer and Medicare is secondary.
- With 20 or more employees, Medicare is the primary payer and the insurance company is secondary.

If you (a) offer group insurance coverage to your fewer-than-20-employee workforce and (b) have one or more of the fewer than 20 employees on Medicare, you may use a health reimbursement account (HRA) or other account-based plan to reimburse Medicare parts B and/or D and Medigap insurance, if you satisfy the following requirements:

1. You offer a group health plan to employees who are not eligible for Medicare.
2. The employee receiving the HRA or other account-based Medicare reimbursement plan is actually enrolled in Medicare Part B or D.
3. You make the HRA or other account-based Medicare reimbursement plan available only to employees who are enrolled in Medicare Part B or D.
4. You permit the Medicare employee to permanently opt out of and waive future reimbursements from the HRA or other account-based plan at least annually and upon termination of employment.

What Can I Do If My K-1 Omits 199A Information?

Tax reform's Section 199A deduction often confuses small-business owners and tax professionals alike. It's quite possible you'll get a Schedule K-1 from a business that omits the information you need to calculate your deduction.

What do you do?

You have a big problem. Without a properly completed Schedule K-1, your Section 199A deduction is a big fat $0.

Best option: fix the K-1. You should request a corrected Schedule K-1 from the entity giving you the Schedule K-1 so you have the information you need to calculate your Section 199A deduction.

Not-so-great options. If you can't get a corrected Schedule K-1, you have two options:

1. Take no Section 199A deduction.
2. File Form 8082 with your tax return and claim the Section 199A deduction.

You file Form 8082 with your tax return when you take a position on your tax return that is inconsistent with the Schedule K-1 you received.

Since the final regulations *presume* the Section 199A amounts are $0 when omitted, it is possible Form 8082 can rebut that presumption. The truth is, we do not know for sure.

You can determine qualified business income, but not W-2 wages or unadjusted basis immediately after acquisition of qualified property, from the other information on the Schedule K-1. Therefore, the Form 8082 option is likely available only if you are under the Section 199A taxable income threshold ($315,000 on a joint return or $157,500 for all other filing statuses).

You also might use Form 8082 if your Schedule K-1 has wrong Section 199A information—for example, if the K-1 indicates the business is a specified service trade or business, but it is not.

Amended return. If you did not take a Section 199A deduction and you eventually get a corrected Schedule K-1, you can claim the deduction on an amended return and obtain a refund.

Terminating Your S Corporation Election

Tax reform may have you thinking of changing your S corporation to a C corporation, partnership, or sole proprietorship.

With such a switch, you need to consider:

- How do I terminate the S corporation election correctly?
- What are the tax consequences to me?

If you want to turn your S corporation into a C corporation, you file an S corporation election revocation statement with the IRS. Your corporation is then a C corporation for federal tax purposes.

If you don't want your business to be either an S or a C corporation, you liquidate the S corporation and contribute the assets to a new business entity.

If you chose S corporation taxation for your limited liability company (LLC), changing that election is a little more complicated.

First, you must file the S corporation election revocation statement with the IRS. The tax law then treats your LLC as a C corporation for federal tax purposes.

If that’s what you want, stop there.

If you want a disregarded entity (single-member LLC) or a partnership (multi-member LLC), you also need to file Form 8832, Entity Classification Election, to revoke the C corporation election.

Improvement Property Update

Qualified improvement property is any improvement to the interior portion of a building that is nonresidential real property (think office buildings and shopping centers) if you place the improvement in service after the date you place the building in service.

Lawmakers intended qualified improvement property to be 15-year property and eligible for 100 percent bonus depreciation. Not so.

Due to a drafting error in the Tax Cuts and Jobs Act (TCJA), qualified improvement property is currently 39-year property and ineligible for bonus depreciation.

One possible workaround for some taxpayers: qualified improvement property is Section 179 property, so you can elect to expense it using Section 179. But as you probably know, Section 179 is not available to everyone and has its limitations, which can affect your ability to claim it.

Congress has several bills that contain the fix. For example, the Tax Technical and Clerical Corrections Act, introduced in the House of Representatives, would fix the qualified improvement property issue retroactively, along with many other TCJA issues.

The best solution is to wait. If you can, hold off filing your tax return until after lawmakers fix the problem retroactively. Then you can claim bonus depreciation on your 2018 qualified improvement property on your extended 2018 tax return.

If Congress retroactively fixes the qualified improvement property issue after you file your 2018 tax return, you’ll have to amend your tax return in order to get the benefits of qualified improvement property being 15-year property.