TAX TREATMENT FOR INSURANCE BROKERAGE PASS-THROUGH ENTITIES

THE COUNCIL
The Council of Insurance Agents & Brokers

The Tax Cuts and Jobs Act created a new section in the tax code to create a 20-percent deduction on "qualified business income" (QBI) for owners and shareholders of pass-through businesses such as S corporations and partnerships. But the new law limits the ability of "specified services trade or businesses" from relief under this new section of the code (26 U.S.C. § 199A).

The Council of Insurance Agents & Brokers strongly believes that all pass-through entities should be treated the same. The disparate treatment provided to some under the law, and not to equally incorporated others, constitutes new complexity and confusion in the tax code, not simplification. The idea that services are inherently not as valuable to the economy as capital-focused enterprises is inherently unfair.

Further, and more importantly, it is the contention of The Council that insurance agencies and brokerages are not "specified service trades or businesses" because Congress expressly chose not to include "insurance" in the definition of "specified service trades or businesses."

On the one hand, Section 199A(d)(2)(A) incorporates a pre-existing IRC provision – 1202(e)(3)(A) – which defines a specified service trade as: "any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees."

While that language appears clear, it gets complicated. Another 1202 sub-section lists firms that effectively ARE eligible for the 20-percent of QBI deduction because they were not included within the scope of the services exemption: "banking, insurance, financing, leasing, investing, farming, any business giving rise to depletion, and any business of operating a hotel, motel or restaurant." Still another subsection of the new 199A itself adds more businesses that DO NOT qualify for the deduction, namely, the business of "investing and investing management, trading, or dealing in securities, partnership interests, or commodities." Tellingly, when these definitions were altered, Congress did not add insurance businesses to the list of non-qualified service businesses.

Describing the complexity of the pass-through rules, Tony Nitti in Forbes recently wrote: "The definitional debate has already gone crazy on the interwebs. For example: what do we do about an insurance business? Section 1202(e)(3)(B) included "insurance" among its disqualified businesses, but then Section 199A chose to link its definition of disqualified businesses only to Section 1202(e)(3)(A). Does this mean that insurance businesses are good to go under Section 199A? … Maybe, but wait…what type of "insurance" business is Section 1202 referring to? The business of selling insurance, or the business of actually creating insurance package? I honestly have no idea, and I doubt many others do either. But we're going to have to find out."

OUR POSITION

The Council believes that Congress should demand that the Treasury Department place a very high priority on development of regulations to implement the pass-through provisions of the Tax Cuts and Jobs Act, and insurance business – including agency and brokerage business – should NOT be treated as a "specified service trade or business" – consistent with the language of the new law.

ABOUT US

The Council of Insurance Agents & Brokers is the premier association for the top regional, national and international commercial insurance and employee benefits brokerage firms worldwide. Council members are market leaders who annually place 85 percent of U.S. commercial property/casualty insurance.

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