

What Is a Specified Service Trade or Business (SSTB) Under the *Tax Cuts and Jobs Act*?

Effective in 2018, the new Internal Revenue Code (IRC) Section 199A provides a 20 percent deduction of domestic qualified business income from a partnership, S corporation or sole proprietorship to noncorporate taxpayers, *i.e.*, individuals, trusts and estates. However, SSTBs are excluded from this provision if the noncorporate taxpayer's taxable income exceeds \$415,000 for married taxpayers and \$207,500 for all others. In proposed regulations for IRC §199A released on August 8, the IRS and U.S. Department of the Treasury define an SSTB as any trade or business involved in the performance of services in any of the following categories.

Health

Includes medical services provided by individuals directly to a patient (service recipient), such as physicians, pharmacists, nurses, dentists, veterinarians, physical therapists and psychologists.

Does not include services not directly related to a medical service field, such as the operation of health clubs or health spas that provide physical exercise or conditioning to their customers, payment processing or the research, testing and manufacture and/or sales of pharmaceuticals or medical devices.

Law

Includes performance of services in the field of law, such as lawyers, paralegals, legal arbitrators, mediators and similar professionals performing services in their capacity as such.

Does not include services that do not require skills unique to the field of law, *e.g.*, printer services, delivery services or stenography services.

Athletics

Includes services performed by individuals who participate in athletic competitions, such as athletes, coaches and team managers in sports such as baseball, basketball, football, soccer, hockey, martial arts, boxing, bowling, tennis, golf, skiing, snowboarding, track and field, billiards and racing.

Does not include performance of services that do not require skills unique to athletic competition, such as the maintenance and operation of the equipment or facilities used in athletic events. Also, does not include services performed by those who broadcast or otherwise disseminate video or audio of athletic events to the public.

Trading

Includes performance of services consisting of trading securities, commodities or partnership interests.

Does not include a manufacturer or farmer who engages in hedging transactions as part of their trade or business of manufacturing or farming.

Dealing

Includes performance of services consisting of dealing in securities, commodities or partnership interests, such as regularly purchasing and selling to customers in the ordinary course of business or regularly offering to enter into, assume, offset, assign or otherwise terminate positions in securities, commodities or partnership interests.

Does not include a taxpayer that regularly originates loans in the ordinary course of a trade or business of making loans but engages in no more than negligible sales of loans.

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Accounting

Includes services provided by individuals such as accountants, enrolled agents, return preparers, financial auditors and similar professionals performing services in their capacity as such.

Does not include payment processing and billing analysis.

Actuarial Science

Includes services provided by individuals such as actuaries and similar professionals performing services in their capacity as such.

Does not include analysts, economists, mathematicians and statisticians not engaged in analyzing or assessing the financial cost of risk or uncertainty of events.

Brokerage Services

Includes services in which a person arranges transactions between a buyer and seller with respect to securities for a commission or fee, such as stockbrokers and other similar professionals.

Does not include services provided by real estate agents and brokers, or insurance agents and brokers.

Investment Management

Includes performance of services consisting of investing and investment management involving the receipt of fees for providing investing, asset management or investment management services, including providing advice with respect to buying and selling investments.

Does not include management of real property.

Financial Services

Includes services such as managing wealth, advising clients with respect to finances, developing retirement plans, developing wealth transition plans, providing advisory and other similar services regarding valuations, mergers, acquisitions, dispositions, restructurings and raising financial capital by underwriting or acting as a client's agent in the issuance of securities and similar services. Includes services provided by financial advisors, investment bankers, wealth planners and retirement advisors and other similar professionals.

Does not include banking.

Performing Arts

Includes performance of services by individuals who participate in the creation of performing arts, such as actors, singers, musicians, entertainers, directors and similar professionals performing services in their capacity as such.

Does not include performance of services that do not require skills unique to the creation of performing arts, such as the maintenance and operation of equipment or facilities used in the performing arts or services by those who broadcast or otherwise disseminate video or audio of performing arts to the public.

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Consulting

Includes services providing professional advice and counsel to clients to assist the client in achieving goals and solving problems. Includes providing advice and counsel regarding advocacy with the intention of influencing decisions made by a government or governmental agency and all attempts to influence legislators and other government officials on behalf of a client by lobbyists and other similar professionals performing services in their capacity as such.

Does not include performance of services other than advice and counsel, such as sales or economically similar services or providing training and educational courses. Also, does not include performance of consulting services embedded in, or ancillary to, the sale of goods or performances of services on behalf of a trade or business that is not otherwise an SSTB **if** there is no separate payment for the consulting services.

Example: D is in the business of licensing software to customers. D discusses and evaluates the customer's software needs with the customer. The taxpayer advises the customer on the particular software products it licenses. D is paid a flat price for the software license. After the customer licenses the software, D helps to implement the software. D is engaged in the trade or business of licensing software and not engaged in an SSTB in the field of consulting.

Principal Asset Is the Reputation or Skill of Its Employees or Owners

Includes fact patterns in which the taxpayer is engaged in the trade or business of one or more of the following:

1. Receiving income for endorsing products or services
2. Licensing or receiving income for the use of an individual's image, likeness, name, signature, voice, trademark or other symbols associated with the individual's identity
3. Receiving fees or income for an appearance at an event or on radio, television or other media formats

Example: H is a well-known chef and the sole owner of multiple restaurants, each of which is owned in a disregarded entity. Due to H's skill and reputation as a chef, H receives an endorsement fee of \$500,000 for the use of H's name on a line of cooking utensils and cookware. H is in the trade or business of being a chef and owning restaurants and such trade or business is not an SSTB. However, H also is in the trade or business of receiving endorsement income. H's trade or business consisting of the receipt of the endorsement fee for H's skill and/or reputation is an SSTB.

Special Consideration: The proposed regulations provide a safe harbor rule stating a trade or business isn't an SSTB if it has gross receipts of \$25 million or less, and less than 10 percent of those gross receipts are attributable to the performance of services in an SSTB. This threshold decreases to 5 percent for businesses with gross receipts exceeding \$25 million.

Special Consideration: The proposed regulations include an anti-avoidance rule providing that an SSTB includes any trade or business that provides 80 percent or more of its property or services to an SSTB if there is 50 percent or more common ownership of the trades or businesses.