

October 1, 2018

David J. Kautter  
Acting Commissioner  
Internal Revenue Service  
Department of Treasury  
Room 5203  
PO Box 7604, Ben Franklin Station  
Washington, DC 20044

Attn: CC:PA:LPD:PR (REG-107892-18)

***Submitted electronically***

RE: Qualified Business Income Deduction (REG-107892-18)

Dear Acting Commissioner Kautter:

The Private Practice Section (PPS) of the American Physical Therapy Association (APTA) is an organization of physical therapists nationwide who own, operate, or work in private practice community-based settings, which most often are small businesses. On behalf of the 4,211 members of PPS, I am pleased to submit comments in response to the Internal Revenue Service' (IRS) Qualified Business Income Deduction proposed rule.

Private practice physical therapists are healthcare providers who use their expertise to restore function, improve mobility, relieve pain, and prevent or limit permanent physical disabilities in patients of all ages who experience injury or disease. In addition to their expertise in rehabilitation and habilitation, physical therapists also use their skills to help individuals improve and sustain overall health. Representing independent small business owners, PPS is particularly interested in policies that recognize and support our members as engines of our local economies as well as our ability to continue to provide care to our patients.

The proposed rule seeks to implement the *Tax Cuts and Jobs Act*, Provision 11011 Section 199A which became law in December 2017. This law provides taxpayers with a deduction for qualified business income earned from a qualified trade or business (QTB) operated directly (sole proprietorship) or through a pass-through entity for tax years beginning December 31, 2017 through January 1, 2026.<sup>1</sup> Under the law, a QTB is any trade or business, with two exceptions: those performing services as an employee or a specified service trade or business (SSTB), which

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<sup>1</sup> IRS Deduction for Qualified Business Income Deduction FAQs <https://www.irs.gov/newsroom/tax-cuts-and-jobs-act-provision-11011-section-199a-deduction-for-qualified-business-income-faqs> Accessed September 27, 2018.

includes a trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, investing and investment management, trading, dealing in certain assets or any trade or business where the principal asset is the reputation or skill of one or more of its employees. Eligible taxpayers may deduct up to twenty percent of their qualified business income from their taxable income; if the taxpayer's trade or business falls into one of the two exemptions then the deduction is only available if their annual taxable income is less than \$157,00 individually (or \$315,000 for married taxpayers filing jointly).<sup>2</sup>

The Department of Treasury's proposed rule would shift physical therapists from the overarching QTB category into the exemptions parameters by including physical therapists in the list of providers under the "health" category of Specified Service Trade or Business (SSTB). Prior to this proposal, physical therapists have not been explicitly included in the SSTB health category.

The existing Treasury Regulation 1.448-1T(e)(4)(ii) states:

*(ii) Meaning of services performed in the field of health. For purposes of paragraph (e)(4)(i)(A) of this section, the performance of services in the field of health means the provision of medical services by physicians, nurses, dentists, and other similar healthcare professionals. The performance of services in the field of health does not include the provision of services not directly related to a medical field, even though the services may purportedly relate to the health of the service recipient. For example, the performance of services in the field of health does not include the operation of health clubs or health spas that provide physical exercise or conditioning to their customers.*

This proposed rule adds to the list of the various health care professionals who perform services in the field of health SSTBs:

*For purposes of section 199A(d)(2) and paragraph (b)(1)(i) of this section only, the performance of services in the field of health means the provision of medical services by individuals such as physicians, pharmacists, nurses, dentists, veterinarians, physical therapists, psychologists and other similar healthcare professionals performing services in their capacity as such who provide medical services directly to a patient (service recipient). The performance of services in the field of health does not include the provision of services not directly related to a medical services field, even though the services provided may purportedly relate to the health of the service recipient. For example, the performance of services in the field of health does not include 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.*

A vast majority of private practice physical therapists would qualify for the deduction as laid out in the statute. While the IRS is offering clarity surrounding the definition of services performed

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<sup>2</sup> *Ibid.*

in the field of health SSTBs in its revised definition, doing so would switch how physical therapists were categorized by the IRS—shifting them from a QTB to a SSTB. This proposed change could reduce the number of private practice physical therapists who able to fully utilize the qualified business income tax deduction.

### **PPS Recommendations**

- 1. PPS appreciates the goal of clarifying types of health care providers which are to be considered a specified service trade or business (SSTB), but is concerned that adding physical therapists to the list of SSTBs goes beyond Congress’ legislative intent.**
- 2. PPS urges the Departments of Treasury to maintain the current definition of services performed in the field of health as defined under Treasury Regulation 1.448-1T(e)(4)(ii).**
- 3. Should the Department proceed to incorporate physical therapists in the SSTB definition, this could decrease the number of small business owners who are able to utilize the pass-through tax deduction; PPS therefore urges the IRS to not proceed with the proposed changes and retain the existing SSTB definition.**

### **Legislative Intent**

The purpose of the *Tax Cuts and Jobs Act* was to “deliver real tax relief to Americans across the country – especially low- and middle-income Americans”.<sup>3</sup> As with any legislative proposal, lawmakers undoubtedly took the existing Treasury Regulation 1.448-1T(e)(4)(ii) into consideration when drafting the legislative language to create this tax deduction. The IRS’ proposed regulation—with its expanded list of providers under the SSTB health category—would result in the deduction being available to fewer taxpayers, not more. PPS is concerned that the IRS’ efforts to change the regulation after the law was passed would result in a policy impact that is counter to the intent of the legislation. Therefore, instead of adding physical therapists to the SSTB health category, PPS recommends that the IRS maintain the current, more narrow definition in order to ensure the deduction is available to most number of people, particularly those who are small business owners. Doing so would support the economic vitality and value to a community that small businesses provide; physical therapists who operate small businesses should be assured full access to this pass-through deduction.

### **Expanding definition of Specified Service Trade or Business**

The lawmakers’ choice to grant the qualified business income deduction to QTB with two exceptions shows the purposeful decision to include specific types of businesses while excluding others. The SSTB section under section 199A limits the extent to which taxpayers who provide specific types professional services would qualify for the qualified business income tax deduction. The Department’s proposal to add veterinarians, physical therapists, psychologists,

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<sup>3</sup> House of Representatives Committee on Ways and Means. The Tax Cuts & Jobs Act Communications and Policy Details [https://waysandmeans.house.gov/wp-content/uploads/2017/10/WM\\_TCJA\\_PolicyOnePagers.pdf](https://waysandmeans.house.gov/wp-content/uploads/2017/10/WM_TCJA_PolicyOnePagers.pdf). Accessed September 25, 2018.

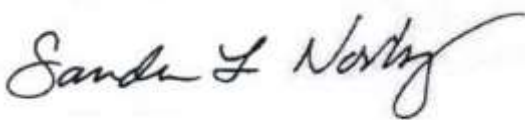
and pharmacists to the definition which currently only specifically references physicians, nurses, and dentists takes liberties beyond the parameters and structure provided by the statute. Should the Department proceed to incorporate physical therapists in the SSTB definition, this could decrease the number of small business owners who are able to utilize the pass-through tax deduction. PPS urges the Department of Treasury to maintain the current definition of services performed in the field of health as defined under Treasury Regulation 1.448-1T(e)(4)(ii).

Furthermore, while the Department of Treasury may deem it appropriate to identify physicians, nurses, dentists, and physical therapists as all belonging to single category of “individuals who furnish services in the field of health”, it is imperative that IRS recognize the inherent differences of these trades. Furthermore, Congress treats these occupations very differently. For example, physicians, nurses, and dentists have long been recognized by, included in, and received financial support from federal programs such as the Electronic Health Record Incentive Program and the National Health Service Corps student loan forgiveness program to name just a few. In contrast, physical therapists are not eligible to participate, nor receive any resources from these federal programs. Therefore, it is evermore appropriate for the IRS to maintain the current narrow definition of services furnished in the health field of SSTBs.

### **Conclusion**

PPS thanks the IRS for the opportunity to comment on the Qualified Business Income Deduction proposed rule. The *Tax Cuts and Jobs Act*, was heralded by Congress and the President as an effort to maximize tax cuts and benefit small businesses which would in turn support job growth across the country. PPS encourages the IRS to reconsider its proposal and retain the current definition of QTB in order to ensure the deduction is available to the most individuals and entities because doing so would achieve the goals of the law and the impact it was intended to have on the engine of the economy—small business owners. Should you have any questions regarding our comments, please contact Alpha Lillstrom-Cheng, PPS Lobbyist at 301-787-0877 or [alpha@lillstrom.com](mailto:alpha@lillstrom.com). Thank you for your consideration.

Sincerely,



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President  
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