

## **Part III - Administrative, Procedural, and Miscellaneous**

### Methods for Calculating W-2 Wages for Purposes of Section 199A(g)

Notice 2019-27

#### **SECTION 1. PURPOSE**

This notice (Notice) contains a proposed revenue procedure that provides computational guidance on methods and appropriate sources of data for calculating W-2 wages for purposes of section 199A(g) of the Internal Revenue Code and proposed §§1.199A-8 through 1.199A-12 of the Income Tax Regulations (26 CFR part 1), which are contained in a notice of proposed rulemaking (REG-118425-18) being published contemporaneously with this Notice. Specifically, this Notice provides three methods for calculating W-2 wages for purposes of section 199A(g)(1)(B)(i), which limits the amount of the deduction available to specified agricultural or horticultural cooperatives (Specified Cooperatives) under section 199A(g)(1)(A) to 50 percent of the Specified Cooperative's W-2 wages for the taxable year. The guidance contained in this notice is necessary because changes may be made to the underlying Form W-2, Wage and Tax Statement) on a more frequent basis than updates to the regulations under section 199A(g). The three methods in this Notice are substantially similar to the methods provided in Rev. Proc. 2006-47, 2006-2 C.B. 869, used to calculate W-2 wages for purposes of the section 199 deduction and provided in Rev. Proc. 2019-11, 2019-09 I.R.B. 742, used to calculate W-2 wages for purposes of the section 199A(a) deduction.

#### **SECTION 2. BACKGROUND**

Section 199A was enacted on December 22, 2017, by section 11011 of An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Public Law 115-97, 131 Stat. 2054, 2063 (TCJA). Parts of section 199A were amended on March 23, 2018, as if included in TCJA, by section 101 of Division T of the Consolidated Appropriations Act, 2018, Public Law 115-141, 132 Stat. 348, 1151 (2018 Act). Unless otherwise indicated, all references to section 199A are to section 199A as amended by 2018 Act. Section 199A applies to taxable years beginning after December 31, 2017, and before January 1, 2026. Section 199A(g), as amended by 2018 Act, provides that Specified Cooperatives may claim a special deduction that is substantially similar to the domestic production activities deduction under former section 199, which was repealed by the TCJA. Specifically, section 199A(g) provides a deduction for a Specified Cooperative in an amount equal to 9 percent of the lesser of qualified production activities income (QPAI) of the Specified Cooperative for the taxable year determined under section 199A(g)(3)(A), or the taxable income of the Specified Cooperative for the taxable year determined under section 199A(g)(1)(C). Section 199A(g)(1)(B)(i) limits the amount of this deduction to 50 percent of the W-2 wages of the Specified Cooperative for the taxable year.

Section 199A(g)(1)(B)(ii) provides that W-2 wages are determined in the same manner as under section 199A(b)(4), without regard to section 199A(b)(4)(B) (which excludes from the definition amounts not properly allocable to qualified business income for purposes of section 199A(c)(1)) and after application of section 199A(b)(5) (concerning acquisitions, dispositions, and short taxable years), except that such wages

do not include any amount that is not properly allocable to domestic production gross receipts (DPGR) for purposes of section 199A(g)(3)(A). Section 199A(b)(4)(A) defines the term W-2 wages to mean, with respect to any person for any taxable year of such person, the amounts described in section 6051(a)(3) and (8) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year. Proposed §1.199A-11 further defines W-2 wages for purposes of section 199A(g). The proposed revenue procedure included in this Notice would provide guidance on the methods for calculating the amount of W-2 wages (as defined in section 199A(g)(1)(B)(ii) and proposed §1.199A-11) for purposes of determining the deduction limitation in section 199A(g)(1)(B)(i). Section 1.199A-11(c) of the proposed regulations provides the Internal Revenue Service with authority to issue computational guidance providing the methods that may be used for calculating W-2 wages, as defined in section 199A(g)(1)(B)(ii) and proposed §1.199A-11(c).

### **SECTION 3. REQUEST FOR COMMENTS**

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) request comments on the proposed revenue procedure contained in this Notice. All materials submitted will be available for public inspection and copying. Public comments should be submitted no later than August 19, 2019. Comments should include a reference to Notice 2019-27. Comments may be submitted electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (type IRS-2019-0013 in the search field on the [www.regulations.gov](http://www.regulations.gov) homepage to find this notice and submit comments.) Alternatively, submissions may be sent to: CC:PA:LPD:PR

(Notice 2019-27), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044. Submissions also may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2019-27), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. All recommendations for guidance submitted by the public in response to this notice will be available for public inspection and copying in their entirety.

#### **SECTION 4. EFFECT ON OTHER REVENUE PROCEDURES**

Rev. Proc. 2006-47, 2006-2 C.B. 869, is obsolete.

#### **SECTION 5. EFFECTIVE DATE AND IMMEDIATE RELIANCE**

This Notice is effective on June 18, 2019. The proposed revenue procedure is proposed to apply generally to taxable years ending after December 31, 2017.

Until such time that the proposed revenue procedure is published in final form, Specified Cooperatives may use the methods described in the proposed revenue procedure in calculating W-2 wages (as defined in section 199A(g)(1)(B)(ii)) for purposes of determining the limitation in section 199A(g)(1)(B)(i).

#### **SECTION 6. DRAFTING INFORMATION**

The principal authors of this Notice are Andrew Holubeck and Mikhail Zhidkov of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) and Theresa Melchiorre of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further

information regarding this Notice, contact Andrew Holubeck or Mikhail Zhidkov at (202) 317-4774, or James Holmes at (202) 317-4137.

## **SECTION 7. FORM OF PROPOSED REVENUE PROCEDURE**

Set forth below is the form of the proposed revenue procedure that is proposed in this Notice:

### **FORM OF PROPOSED REVENUE PROCEDURE**

#### **Part III**

#### **Administrative, Procedural, and Miscellaneous**

26 CFR 1.199A-11: Wage limitation for the section 199A(g) deduction

(Also: [XX, XXX, XXX])

Rev. Proc. 2019-XX

### **SECTION 1. PURPOSE**

This revenue procedure provides methods for calculating W-2 wages as defined in section 199A(g)(1)(B)(ii) and §1.199A-11 of the Income Tax Regulations for purposes of the W-2 wage limitation provided in section 199A(g)(1)(B)(i) of the Internal Revenue Code. Specified agricultural or horticultural cooperatives (Specified Cooperatives) are

permitted a deduction under section 199A(g)(1)(A) equal to the lesser of 9 percent of qualified production activities income (QPAI) or taxable income of a Specified Cooperative, but not to exceed the W-2 wage limitation.

## **SECTION 2. BACKGROUND**

Section 199A(g)(1)(B)(i) limits the amount of the deduction under section 199A(g)(1)(A) to 50 percent of the W-2 wages of the Specified Cooperative (as defined in §1.199A-8(a)(2)) for the taxable year. Section 199A(g)(1)(B)(ii) provides that W-2 wages are determined in the same manner as under section 199A(b)(4), without regard to section 199A(b)(4)(B) (which excludes from the definition amounts not properly allocable to qualified business income for purposes of section 199A(c)(1)) and after application of section 199A(b)(5) (concerning acquisitions, dispositions, and short taxable years), except that such wages do not include any amount which is not properly allocable to domestic production gross receipts (DPGR) for purposes of section 199A(g)(3)(A).

Section 199A(b)(4)(A) defines the term W-2 wages to mean, with respect to any person for any taxable year of such person, the amounts described in section 6051(a)(3) and (8) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year. Section 199A(b)(4)(C) provides that W-2 wages shall not include any amount that is not properly included in a return filed with the Social Security Administration (SSA) on or before the 60th day after the due date (including extensions) for such return.

Section 1.199A-11(c) of the regulations provides the Internal Revenue Service

with authority to issue guidance providing computational methods that may be used to calculate W-2 wages.

This revenue procedure provides three methods for calculating W-2 wages (as defined in section 199A(g)(1)(B)(ii) and §1.199A-11) for purposes of section 199A(g) and the regulations thereunder. The first method (the unmodified Box method) allows for a simplified calculation, while the second and third methods (the modified Box 1 method and the tracking wages method) provide greater accuracy.

W-2 wages calculated under this revenue procedure are not necessarily the W-2 wages that are properly allocable to DPGR and eligible for use in computing the section 199A(g) limitations. Under §1.199A-8(b)(5)(ii)(B) a Specified Cooperative that is not qualified as a farmer's cooperative organization under section 521 (nonexempt Specified Cooperative) must use only patronage W-2 wages that are properly allocable to patronage DPGR to compute its section 199A(g)(1)(B)(i) W-2 wage limitation. Under §1.199A-8(c)(2) a Specified Cooperative that is qualified as a farmer's cooperative organization under section 521 (exempt Specified Cooperative) must calculate separate patronage and nonpatronage deductions under section 199A(g)(1)(A) and apply separate patronage and nonpatronage W-2 wage limitations. Under §1.199A-11(b)(2) the Specified Cooperative must determine the amount of wages that is properly allocable to DPGR for purposes of calculating QPAI (as defined in section 199A(g)(3)(A)). The Specified Cooperative may use any reasonable method that is satisfactory to the Secretary based on all of the facts and circumstances. The chosen reasonable method must be consistently applied from one taxable year to

another and must clearly reflect the wages allocable to DPGR for purposes of QPAI. The books and records maintained for wages allocable to DPGR for purposes of QPAI must be consistent with any allocations. Then, the amount of W-2 wages that are properly allocable to DPGR is used in determining the W-2 wage limitation under section 199A(g)(1)(B)(i) as determined under §1.199A-8(b)(5)(ii)(B) or §1.199A-8(c)(2) depending upon whether the Specified Cooperative is nonexempt or exempt, respectively.

### **SECTION 3. RULES OF APPLICATION**

.01 *In general.* In calculating W-2 wages for a taxable year under the methods described in this revenue procedure, include only wages properly reported on Forms W-2 that meet the applicable rules of §1.199A-11(a), §1.199A-8(b)(5)(ii)(B), and §1.199A-8(c)(2), as applicable. Specifically, §1.199A-11(a)(2) provides that, except as provided in §1.199A-11(d)(2) (concerning short taxable years that do not include December 31), the Forms W-2, Wage and Tax Statement, or any subsequent form or document used in determining the amount of W-2 wages are those issued for the calendar year ending during the taxable year of the Specified Cooperative for wages paid to employees (or former employees) of the Specified Cooperative for employment by the Specified Cooperative. Section 1.199A-11(a)(1) also provides that, for purposes of §1.199A-11, employees of the Specified Cooperative are limited to employees of such Specified Cooperative as defined in section 3121(d)(1) and (2) (that is, officers of a corporate taxpayer and employees of the taxpayer under the common law rules). Therefore, Forms W-2 provided to statutory employees described in section 3121(d)(3) (that is,

Forms W-2 in which the “Statutory Employee” box in Box 13 is checked) should not be included in calculating W-2 wages under any of the methods described in this revenue procedure.

*.02 No application in determining whether amounts are wages for employment tax purposes.* The discussions of “wages” in this revenue procedure and in the regulations under section 199A(g) are for purposes of section 199A(g) only and have no application in determining whether amounts are wages under section 3121(a) for purposes of the Federal Insurance Contributions Act, under section 3306(b) for purposes of the Federal Unemployment Tax Act, or under section 3401(a) for purposes of the Collection of Income Tax at Source on Wages (federal income tax withholding), or any other wage-related determination. See §1.199A-11(a)(1) of the regulations.

#### **SECTION 4. DEFINITION OF W-2 WAGES AND CORRELATION WITH BOXES ON FORM W-2**

*.01 Definition of W-2 wages.* Section 199A(g)(1)(B)(ii) provides that W-2 wages are determined in the same manner as under section 199A(b)(4) (without regard to section 199A(b)(4)(B)). Section 199A(b)(4)(A) provides that W-2 wages means, with respect to any person for any taxable year of such person, the sum of the amounts described in section 6051(a)(3) and (8) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year. Thus, as also provided in §1.199A-11(b)(1), W-2 wages include: (i) the total amount of wages (as defined in section 3401(a)); (ii) the total amount of elective deferrals (within

the meaning of section 402(g)(3)); (iii) the compensation deferred under section 457; and (iv) the amount of designated Roth contributions (as defined in section 402A).

*.02 Correlation with Form W-2.* On the 2018 Forms W-2, the elective deferrals under section 402(g)(3) and the amounts deferred under section 457 directly correlate to coded items reported in Box 12 on Form W-2. Box 12, Code D is for elective deferrals to a section 401(k) cash or deferred arrangement plan (including a SIMPLE 401(k) arrangement); Box 12, Code E is for elective deferrals under a section 403(b) salary reduction agreement; Box 12, Code F is for elective deferrals under a section 408(k)(6) salary reduction Simplified Employee Pension (SEP); Box 12, Code G is for elective deferrals and employer contributions (including nonelective deferrals) to any governmental or nongovernmental section 457(b) deferred compensation plan; Box 12, Code S is for employee salary reduction contributions under a section 408(p) SIMPLE (simple retirement account); Box 12, Code AA is for designated Roth contributions (as defined in section 402A) under a section 401(k) plan; and Box 12, Code BB is for designated Roth contributions (as defined in section 402A) under a section 403(b) salary reduction agreement. However, designated Roth contributions are also reported in Box 1, wages, tips, other compensation and are subject to income tax withholding.

## **SECTION 5. METHODS FOR CALCULATING W-2 WAGES**

For any taxable year, a Specified Cooperative must calculate W-2 wages for purposes of section 199A(g)(1)(B)(i) using one of the three methods described in section 5.01, 5.02, and 5.03 of this revenue procedure. For a Specified Cooperative

with a short taxable year, see section 6 of this revenue procedure. In calculating W-2 wages for a taxable year under the methods below, the Specified Cooperative includes only those Forms W-2 that are for the calendar year ending with or within the taxable year of the Specified Cooperative and that meet the rules of application described in section 3 of this revenue procedure.

*.01 Unmodified Box method.* Under the unmodified Box method, W-2 wages are calculated by taking, without modification, the lesser of—

(A) The total entries in Box 1; or

(B) The total entries in Box 5

of all Forms W-2 filed with SSA by the Specified Cooperative with respect to employees of the Specified Cooperative for employment by the Specified Cooperative.

*.02 Modified Box 1 method.* Under the modified Box 1 method, the Specified Cooperative makes modifications to the total entries in Box 1 of Forms W-2 filed with respect to employees of the Specified Cooperative. W-2 wages under this method are calculated as follows—

(A) Total the amounts in Box 1 of all Forms W-2 filed with SSA by the Specified Cooperative with respect to employees of the Specified Cooperative for employment by the Specified Cooperative;

(B) Subtract from the total in paragraph .02(A) of this section amounts included in Box 1 of Forms W-2 that are not wages for Federal income tax withholding purposes, including amounts that are treated as wages for

purposes of income tax withholding under section 3402(o) (for example, supplemental unemployment compensation benefits within the meaning of Rev. Rul. 90-72, 1990-2 C.B. 211); and

(C) Add to the amount obtained after paragraph .02(B) of this section the total of the amounts that are reported in Box 12 of Forms W-2 with respect to employees of the Specified Cooperative for employment by the Specified Cooperative and that are properly coded D, E, F, G, or S.

*.03 Tracking wages method.* Under the tracking wages method, the Specified Cooperative actually tracks total wages subject to Federal income tax withholding and makes appropriate modifications. W-2 wages under this method are calculated as follows—

(A) Total the amounts of wages subject to Federal income tax withholding that are paid to employees of the Specified Cooperative for employment by the Specified Cooperative and that are reported on Forms W-2 filed with SSA by the Specified Cooperative for the calendar year; and

(B) Add to the amount obtained after paragraph .03(A) of this section the total of the amounts that are reported in Box 12 of Forms W-2 with respect to employees of the Specified Cooperative for employment by the Specified Cooperative and that are properly coded D, E, F, G, or S.

## **SECTION 6. APPLICATION IN CASE OF SHORT TAXABLE YEAR**

*.01 Special rule for Specified Cooperative with a short taxable year.* In the case of a Specified Cooperative with a short taxable year, subject to the rules of application

described in section 3 of this revenue procedure, the W-2 wages of the Specified Cooperative for the short taxable year shall include only those wages paid during the short taxable year to employees of the Specified Cooperative, only those elective deferrals (within the meaning of section 402(g)(3)) made during the short taxable year by employees of the Specified Cooperative, and only compensation actually deferred under section 457 during the short taxable year with respect to employees of the Specified Cooperative. See §1.199A-11(e) of the regulations.

*.02 Method required for a short taxable year and modifications required in application of method.* The W-2 wages of a Specified Cooperative with a short taxable year shall be determined under the tracking wages method described in section 5.03 of this revenue procedure. In applying the tracking wages method in the case of a short taxable year, the Specified Cooperative must apply the method as follows—

(A) For purposes of section 5.03(A), the total amount of wages subject to Federal income tax withholding and reported on Form W-2 must include only those wages subject to Federal income tax withholding that are actually or constructively paid to employees during the short taxable year and reported on Form W-2 for the calendar year ending with or within that short taxable year (or, for a short taxable year that does not contain a calendar year ending with or within such short taxable year, wages subject to Federal income tax withholding that are actually or constructively paid to employees during the short taxable year and reported on Form W-2 for the calendar year containing such short taxable year); and

(B) For purposes of section 5.03(B), only the portion of the total amounts reported in Box 12, Codes D, E, F, G, or S on Forms W-2, that are actually deferred or contributed during the short taxable year are included in W-2 wages.

#### **SECTION 7. EFFECTIVE DATE**

This revenue procedure applies to taxable years ending after December 31, 2017.

#### **SECTION 8. DRAFTING INFORMATION**

The principal authors of this revenue procedure are Andrew Holubeck and Mikhail Zhidkov of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities) and Theresa Melchiorre of the Office of the Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Department of the Treasury and the Internal Revenue Service participated in its development. For further information regarding this revenue procedure contact Andrew Holubeck or Mikhail Zhidkov at (202) 317-4774, or James Holmes at (202) 317-4137.