### **Problem Set 1: Choice and Entity and Section 199A**

1. You are considering incorporating your business. Describe two entities that you could use to ensure that the entity will be treated a C corporation for tax purposes.
   1. **Answer: US/For Corp or LLC but with check the box election.**
2. Apple wants to get into the autonomous car business and wants to operate the business through a separate legal entity for liability purposes, but it does not want the entity to be treated as a C corporation. What do you recommend?
   1. **Answer: Use LLC; default rule is DRE. Also could use for eligible entity, provide that it does NOT have limited liability.**
3. If your income (say $100) is taxed at a rate of 37% and you can exclude 20% of your income ($20), what is the effective tax rate on your income of $100? Can you generalize this algebraically?
   1. **Answer: Tax (1-.20)/PT Income; since Tax is PT Inc \* Tax Rate, reduces to Tax Rate \* (1-.20) or 29.6%.**
4. If you operate your business through a corporation, are you eligible for the 199A deduction? 199A(a).
   1. **Answer: No. 199A(a) “taxpayer other than a Corp”**
5. *Qualified Business Income* (read 199A(c)(1), (c)(3)(A), and (c)(3)(B))
   1. Roughly what is QBI?
      1. **Operating; active bus. income; note reference to 864 ECI; need to understand FS and US source. 199A(c)(1), (c)(3)(A), and (c)(3)(B))**
   2. Are capital gains/losses, interest income, dividends QBI?
      1. **Answer: No;** **(c)(3)(B) even though can be ECI**
   3. Does compensation paid to a taxpayer by his QTB count as QBI?
      1. **Answer: No;** **(c)(4); excludes GP and 707a payments**
6. Q*ualified Trade or Business* (QTB) (read 199A(d)(1), (2), (3))
   1. Is being an employee a QTB?: **No: d1B**
   2. Is being a lawyer, doctor, accountant a QTB? Policy Rationale? **No: d2A**
   3. Is being a hedge fund or PE manager a QTB? **No: d2B**
   4. Read 1202(e)(3)(A)--what does it mean?
   5. A is a well-known chef who owns multiple restaurants. He earns $ from his restaurants and endorsement fees from endorsing a line of cooking utensils. Is one or both of H’s businesses a SSTB? *See* Prop. Reg. 1.199A-5(b)(3), Ex. 8
7. *Specified Service Business Exception* (read 199A(d)(3))

You are single and have opened up your own law firm, i.e., you are not an employee, and earn $160,725 solely from your law practice. (read 199A(d)(3), (e)(2))

* 1. Do you get some of the 199A benefits? If so, how much?
     1. **Answer: Using statutory amounts, limit is 157,500**
  2. At what income amount does the 199A benefits end for you?
     1. **Answer: Using statutory amounts, limit is 157,500 + 50,000 (d)(3)(A) and (B)**

1. You are single, have a QTB, and have $1,000,000 of QBIA but have no employees or qualified property. (read 199A(b)(2) and (3))
   1. What is the amount of your 199A deduction?
      1. **Answer: lesser of 200K or greater of 50%\*0, so 0. (b)(2)(B). The (B) limit applies b/c TI > 157,500. (b)(3)(A)**
   2. Same as a. but your W-2 wages for the QTB are $500,000?
      1. **Answer: 200k or 50%\* 500K, 200K.**
2. You are a real estate manager and own $100mm of rental property. You have very few employees because you hire mostly independent contractors for repairs, etc. (read 199A(b)(2) and (b)(6))
   1. Assume your QBI is $10mm and you have $1mm in wages. What is the amount of your 199A deduction assuming that the unadjusted basis of the property is $0?
      1. **Lesser of 20% of 10MM (2MM) or 25% of 1MM or 250K, so 250K.**
   2. Is real estate *qualified property?* **Yes, b/c it’s tangible depreciable property.**
   3. What does *unadjusted basis* mean**? Cost basis**
   4. Assume that the unadjusted basis of the rental property is $100mm? What’s the 199A deduction?
      1. **Answer: Lesser of 20% of 10MM (2MM) or greater of (1) 50% of 1MM (500K), or 25% of 1MM (250K) + 2.5% of 100MM (2.5MM), so 2MMM**

1. Very generally, how do these rules apply to pass-throughs, including S corps? (read lightly 199A(f)(1)(A))
   1. **Applied at P or SH level**
2. Husband (H) and Wife (W) are both lawyers and practice law together. In 2019 they have net income from their practice of $300,000. Their expenses for the year included $40,000 of W-2 wages. They did not use any qualified property in their practice. If H&W had taxable income of $381,400 for 2019, what is their QBD? Hint: see 199A(d)(3)(B), 199A(b)(2)(A), and 199A(b)(3)(B).
   1. **Answer: See detailed answer.**