

October 1, 2018

Honorable Steven T. Mnuchin, Secretary
CC:PA:LPD:PR (REG-107892-18)
Room 5203, Internal Revenue Service
Department of the Treasury
P.O. Box 7604, Ben Franklin Station
Washington, D.C., 20044

Re: Comments on IRS Notice of Proposed Rulemaking titled “Qualified Business Income Deduction,”
REG 107892-18, *83 Fed. Reg. 40884* (August 16, 2018)

Dear Secretary Mnuchin:

LPL Financial LLC (“LPL”) appreciates the opportunity to comment on an issue of importance in the recently-enacted Tax Cuts and Jobs Act. Specifically, we submit the following comments to the IRS notice of proposed rulemaking titled “Qualified Business Income Deduction” (NPRM) and published in the *Federal Register* on August 16, 2018. The NPRM proposed rules to implement Internal Revenue Code (IRC) section 199A, as enacted by the Tax Cuts and Jobs Act (“TCJA”). In these comments, we ask that the Internal Revenue Service clarify that financial advisors who operate under the independent contractor model shall qualify as “qualified trades or businesses” and shall not be considered “specified service trades or businesses” under new Code § 199A.

About LPL

LPL is one of the country’s largest independent broker-dealer firms and provides brokerage and advisory services to over 16,000 financial advisors and over 700 diverse financial institutions. LPL further serves as a trusted partner to many of the country’s retirement plans and market participants for technology, custodial, and consulting services.

The majority of our advisors are entrepreneurial independent contractors who are primarily located in rural and suburban areas and, as such, are local providers of independent advice. Many of our advisors operate under their own business name, and we may assist these advisors with their own branding, marketing and promotion, and regulatory review. Our advisors are a community of diverse, entrepreneurial financial services professionals, who employ taxpayers throughout the country. They provide critical assistance to hard-working American citizens in all fifty states and support approximately 4.8 million client accounts. They build long-term relationships with their clients by guiding them through the complexities of investment decisions, retirement solutions, financial planning, and wealth management.

Because of our independent contractor model, our advisors should be distinguished from those wealth managers, financial planners, and retirement advisors who are employed by the traditional employee-model broker-dealers. Our advisors run and manage their own small businesses – they acquire space, purchase supplies, invest in technology, and most critically, they employ tax-paying American citizens. LPL financial advisors are small business entrepreneurs and drivers of the American economy.

Proposed Modification to Definition of Specified Service Trades or Businesses

A key provision under the TCJA creates a 20% deduction on “qualified business income” for owners/shareholders of pass-through businesses, such as S corporations, partnerships, and sole proprietorships. A significant number of financial advisors associated with LPL are organized as pass-through entities, and we believe it is sound policy to allow these hard-working business owners to benefit from this new deduction in whole.

Under § 199A, owners and shareholders of certain types of businesses – the “specified service trades or businesses” – are limited in their ability to apply the 20% deduction if their overall taxable income exceeds certain thresholds. For example, this deduction is phased out starting at annual taxable income levels of \$315,000 (joint) and \$157,500 (single).

We understand that the Treasury Department and the IRS have received comments requesting guidance on the meaning and scope of the definition of specified service trades or businesses (“SSTB”). In the NPRM, the Treasury Department and the IRS noted that “...section 199A is a new Code provision intended to benefit a wide range of businesses, and taxpayers need certainty in determining whether their trade or business generates income that is eligible for the section 199A deduction.”

We appreciate the efforts made by the Treasury Department and the IRS to clarify the definition of SSTB in the NPRM. We note that the NPRM provides that the definition of SSTB includes:

“...the performance of services in the field of financial services means the provision of financial services to clients including managing wealth, advising clients with respect to finances, developing retirement plans, developing wealth transition plans, the provision of advisory and other similar services regarding valuations, mergers, acquisitions, dispositions, restructurings (including in title 11 or similar cases), and raising financial capital by underwriting, or acting as a client’s agent in the issuance of securities and similar services. This includes services provided by financial advisors, investment bankers, wealth planners, and retirement advisors and other similar professionals performing services in their capacity as such.”

The definition of SSTB further includes:

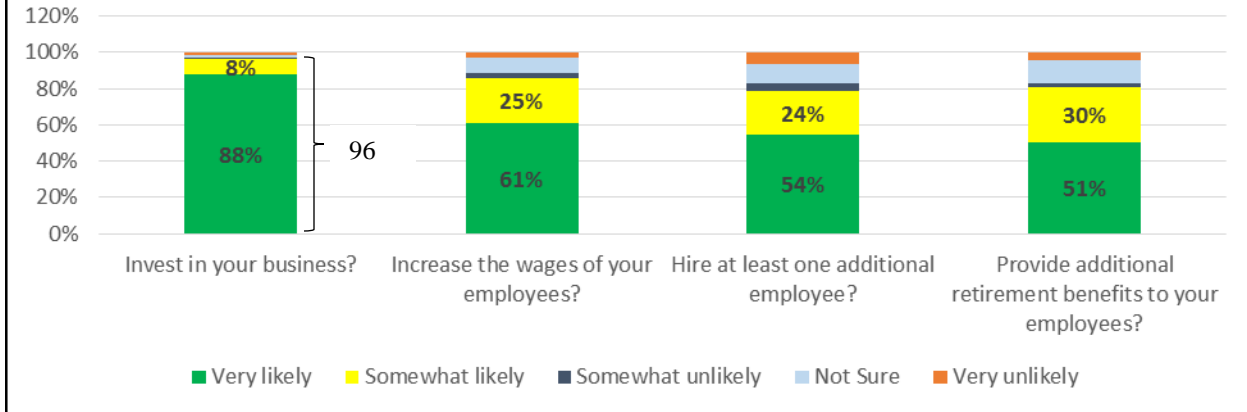
“...services in which a person arranges transactions between a buyer and a seller with respect to securities (as defined in section 475(c)(2)) for a commission or fee. This includes services provided by stock brokers and other similar professionals, but does not include services provided by real estate agents and brokers, or insurance agents and brokers.”

We are concerned that this definition unfairly and unintentionally disadvantages financial advisors such as those associated with LPL, and diminishes their ability to invest in and build their businesses. As described above, LPL financial advisors are small business owners and entrepreneurs; they employ workers and serve as community leaders in towns and cities across our nation. The significant contributions made to the economy by financial advisors, stock brokers, and insurance brokers are similar in nature; it is therefore unclear why the tax code should advantage one group to the detriment of another.

In a recent survey of a selection of our financial advisors, we asked current owners of pass-through entities how they would respond if they were able to take full advantage of the 20% deduction. Their responses are below:

- An overwhelming number of respondents indicated they would be “very likely” or “somewhat likely” to use the tax savings to invest in their business.
- Most of the increased spending would directly benefit existing employees through increased wages and retirement benefits, and/or hiring new workers.

If the law were changed to provide you with the full 20% deduction, how likely is it that you would use some of the tax savings to:



We ask that you interpret the definition of SSTB in accordance with Congress' clear and broad intent to promote economic growth among the small businesses that drive our economy. This broad intent would clearly permit LPL financial advisors who operate under the independent contractor model to fully benefit from the 20% deduction. To make this clear in the definition, we suggest that it be revised to reflect that SSTB includes *services provided by financial advisors, investment bankers, wealth planners, and retirement advisors and other similar professionals performing services in their capacity as such, but does not include such services should they be provided by independent contractor financial advisors.*

LPL believes that Congress did not intend to limit small business owners like our advisors from receiving the full benefits of the pass-through deduction. LPL financial advisors employ tens of thousands of individuals across the United States and are community leaders, supporting millions of clients. Excluding our advisors from the full benefits of the pass-through deduction would be contrary to Congress's public policy goals of growing the economy, creating jobs, and providing our small business owners with much needed tax relief. For these reasons, we believe the United States Treasury and the IRS should revise its guidance to clarify that financial advisors who perform services like ours under our independent contractor construct shall not be considered "specified service trades or businesses."

Thank you for your attention to this important issue. We look forward to serving as a resource to you as you continue your work on regulations to implement the TCJA. Please do not hesitate to contact us if we can provide further information.

Sincerely,

Dan Arnold
President and CEO