

QBI Safe Harbor Certification
For Rental Real Estate Activities
(for purposes of IRC §199A)

Client Name(s): _____
(Hereinafter referred to as "Client")

Tax Practitioner: Monica Haven, E.A.
(Hereinafter referred to as "EA")

To help align the tax rates of pass-through entities with the newly enacted flat tax on corporations, a 20% deduction from qualified business income (QBI) has been made available to sole proprietorships, LLC, partnerships and S-Corporations as per IRC §199A. Despite the Treasury's comprehensive regulations, it sometimes remains easier to determine what is not – rather than what is – QBI. For example, QBI does not include wages, reasonable S-Corp compensation, guaranteed partnership payments, investment income or income from publicly-traded partnerships; nor does rental real estate automatically qualify as QBI.

As defined in the Code, a rental real estate enterprise is an interest in real property (or properties) held for the production of rents. However, commercial and residential property may not be part of the same enterprise. While most rental activities performed by landlords satisfy the definition of a real estate enterprise, the taxpayer's activities may not rise to the level of a QBI and thus will not be eligible for the §199A Deduction. Some enterprises may meet the definition of a "trade or business" as per Teas. Reg. §1.199A-1(b)(14); however, others will seek to qualify for the QBI deduction under the Safe Harbor Rule as per IRS Notice 2019-38. Failure to qualify under either test means that the taxpayer is not eligible for the §199A deduction.

It will be the presumption of EA that Client's rental real estate enterprise does *not* satisfy the trade or business standard and that Client's activities do not fall within the safe harbor provisions. Therefore, the 20% deduction under IRS §199A will *not* be computed.

Alternatively, Client may assert that *all* three (3) requirements of the Safe Harbor Rule have been satisfied by checking the boxes below:

- ☐ Separate books and records are maintained to reflect the income and expenses for each rental real estate enterprise;
- ☐ 250 or more hours of rental services are performed per year with respect to each rental enterprise; AND
- ☐ Contemporaneous records are maintained, including time reports, logs or similar documents regarding the (a) hours of services performed; (b) the description of services performed; (c) the dates services were performed; and (d) who performed the services.

NOTE 1: Services performed do not include financial or investment activities such as arranging financing; procuring property; studying operational reports; planning, managing or constructing long-term capital improvements; and time spent traveling to and from the property. However, rental services may be performed by the property owner or the owner's employees, agents and/or independent contractors (presuming that contemporaneous time reports are available).

NOTE 2: Property used as a residence by the taxpayer for any part of the year under the vacation home rule (IRC §280A) and property subject to a triple net lease is ineligible for the Safe Harbor Rule.

Client signature(s) below are acknowledgment that Client(s) understand the IRC §199A rules regarding the QBI requirement for rental real estate activities.

Client Signature: _____	Date: _____
Print Client's Name: _____	
Spouse Signature: _____	Date: _____
Print Spouse's Name: _____	