



# Rental Real Estate QBI Safe Harbor



## CA Tax & Financial Services

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5870 Stoneridge Mall Road, Ste 201  
Pleasanton, CA 94588

925-462-0538 (Office)  
925-462-9210 (Fax)

[www.cataxservices.com](http://www.cataxservices.com)

### Qualified Business Income Deduction (QBID)

For tax years 2018 through 2025, you may be able to deduct up to 20% of qualified business income (QBI) from each of your qualified trades or businesses, including those operated through a sole proprietorship, or a pass-through entity, such as a partnership, LLC, or S corporation.

In general, income from rental real property held for investment purposes and reported on Schedule E (Form 1040) is not eligible for the QBID. However, you may be eligible for the QBID if you are operating the activity as a real estate business.

There is uncertainty for some as to whether rental real estate qualifies as a trade or business for purposes of the QBID. The IRS has provided a safe harbor under which a rental real estate enterprise will be treated as a trade or business solely for purposes of the QBID.

**Note:** The rental or licensing of tangible or intangible property to a related trade or business qualifies if both businesses are commonly controlled.

### Rental Real Estate Enterprise

Solely for purposes of the safe harbor, a rental real estate enterprise is defined as an interest in real property held for the production of rents and may consist of an interest in multiple properties. That is, you may own just one rental property or multiple rental properties that could potentially qualify as a rental real estate enterprise.

You or the relevant pass-through entity (RPE) such as a partnership or S corporation, relying on the safe harbor must hold the interest directly or through an entity disregarded as separate from its owner, such as a limited liability company (LLC).

You must either treat each property held for the production of rents as a separate enterprise or treat all similar properties held for the production of rents as a single enterprise. However, commercial and residential real estate may not be part of the same rental real estate enterprise. Once you choose to combine or keep properties separate, you may not vary this treatment from year-to-year unless there has been a significant change in facts and circumstances.

### Safe Harbor

Solely for purposes of the QBID, your rental real estate enterprise will be treated as a trade or business under the safe harbor, if all of the following requirements are satisfied during the tax year.

- You maintain separate books and records to reflect income and expenses for each rental real estate enterprise,
- For rental real estate enterprises that have been in existence less than four years, 250 or more hours of rental services are performed per year. For other rental real estate enterprises, 250 or more hours of rental services are performed in at least three of the past five consecutive tax years that ends with the current tax year,
- You attach a statement to your tax return for each year you wish to use the safe harbor that includes a representation that the requirements of the safe harbor are satisfied and a description of all rental properties that are included in each rental real estate enterprise, including properties acquired and disposed of during the year, and
- You maintain contemporaneous records, including time reports, logs, or similar documents, regarding:
  - Hours of all services performed,
  - Description of all services performed,
  - Dates on which such services were performed, and
  - Who performed the services.



## Rental Real Estate QBI Safe Harbor

**Rental services.** For purposes of the safe harbor, rental services include the following activities.

- Advertising to rent or lease the real estate,
- Negotiating and executing leases,
- Verifying information contained in prospective tenant applications,
- Collection of rent,
- Daily operation, maintenance, and repair of the property,
- Management of the real estate,
- Purchase of materials, and
- Supervision of employees and independent contractors.

Rental services may be performed by owners or by employees, agents, and/or independent contractors of the owners.

The term rental services does not include financial or investment management activities, such as arranging financing, procuring property, studying and reviewing financial statements or reports on operations, planning, managing, or constructing long-term capital improvements, or hours spent traveling to and from the real estate.

**Example:** Jill owns a condo that she rents out during 2023 and she does not use a management company. She receives rent deposits directly from the tenant during the year. In May, she made arrangements for repairs to be completed at the condo. She had no other contact with the tenant and did not visit the property during the year. In this scenario, Jill's rental real estate enterprise probably does not rise to the level of a trade or business under the safe harbor because it is unlikely she spent 250 hours performing rental services. She would not be entitled to claim the QBID for her rental income under the safe harbor.

**Excluded rental real estate arrangements.** The safe harbor does not apply to the following rental real estate arrangements.

- Real estate used by you as a personal residence for any part of the year, including vacation homes.
- Real estate rented or leased under a triple net lease which requires the tenant to pay property taxes, insurance, and maintenance in addition to rent.
- Real estate rented to a trade or business conducted by you (including a partnership or S corporation) which is commonly controlled.
- Any rental real estate enterprise treated as a specified service trade or business (SSTB).

This brochure contains general information for taxpayers and should not be relied upon as the only source of authority. Taxpayers should seek professional tax advice for more information.

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**SSTB.** An SSTB includes the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial or brokerage services, or receiving income for endorsing products or services, using your image, likeness, name, signature, voice, trademark, or public appearances.

### Trade or Business

If your rental real estate enterprise fails to satisfy the safe harbor requirements, it may still be treated as a trade or business for purposes of the QBID if the enterprise otherwise meets the definition of a trade or business under IRC section 162, other than the trade or business of performing services as an employee. Although a specific definition is not provided, the IRS has defined a trade or business to include any activity carried on for the production of income from selling goods or performing services. For example, you may be in a trade or business if you provide substantial services in conjunction with the property that are primarily for your tenant's convenience (regular cleaning, changing linen, etc.) or if you are a real estate professional.

## Contact Us

There are many events that occur during the year that can affect your tax situation. Preparation of your tax return involves summarizing transactions and events that occurred during the prior year. In most situations, treatment is firmly established at the time the transaction occurs. However, negative tax effects can be avoided by proper planning. Please contact us in advance if you have questions about the tax effects of a transaction or event, including the following:

- Pension or IRA distributions.
- Significant change in income or deductions.
- Job change.
- Marriage.
- Attainment of age 59½ or 73.
- Sale or purchase of a business.
- Sale or purchase of a residence or other real estate.
- Retirement.
- Notice from IRS or other revenue department.
- Divorce or separation.
- Self-employment.
- Charitable contributions of property in excess of \$5,000.