OMB 12866 Meeting
Guidance Under Section 199A (Computational)

National Automobile Dealers Association

In Person
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Via Teleconference
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Call-in: 202-395-6392; Code 6106240

- Typical new vehicle dealer structure
  - Single store
    - Individual franchised store
      - New vehicle sales (cars and light duty trucks)
      - Used vehicle sales (cars and light duty trucks)
      - Service for customer and dealer-owned vehicles
      - Parts and accessories sales
    - Pass-through legal entity filing its own federal income tax return
    - Real estate held in a separate related pass-through entity
  - Multiple stores (several, up to dozens)
    - Each store is usually a separate legal entity filing combined or separate federal income tax returns
    - Many are pass-throughs
    - Separate pass-throughs for real estate
    - Separate management company
      - Could be only top level executive(s)
      - Could include wide range of services including legal, accounting, advertising, etc.
  - Continues to be a consolidating industry and many of the pass through businesses might have exit transactions typically structured as asset sales.
- Problem areas
  - Separate consulting or real estate management companies need to be grouped or re-grouped with other entities in order to be qualified trades or businesses or otherwise be treated as qualified trades or businesses.
  - Maximizing the deduction with one of the two limitations: 50% of wages or 25% of wages plus 2.5% of the basis in certain property. Noting that wages are one of the largest expenses in a dealership in an industry that employs 1.1MM wage earners in the U.S.

    - Being able to group related entities to maximize the 199A deduction yet treat certain entities separately to allow for a deduction for floor plan interest for the dealership operations but bonus depreciation for non-dealership operations.
- Recommendations:
    - Allow sufficient time to restructure to maximize the 199A deduction opportunity and allow any restructuring that is completed before the extended due date of the 2018 federal income tax return to be retroactive to 1/1/2018.
    - Whether or not certain companies are grouped with other qualifying companies, these companies, such as management companies, real estate rental companies, etc., should be considered as qualified trades or businesses if they are related in ownership and business activities to other qualified trades or businesses.
    - Allow regrouping whenever rules are significantly changed or at least every five years.
    - W-2 Wages should be considered attributable to the trade or business for whom the services are performed and not based on any ELC, PEO, common paymaster, intercompany charge arrangement or any other name that appears as the payer on the W-2 Form.
    - In the case where a business is disposed of early in a year and there is a recapture of LIFO benefits or any other type of recapture, the taxpayer should be able to utilize the wages of the business during the 12-months prior for purposes of determining the wage-based limitation computation.
- These recommendations, if adopted, would greatly reduce the burden of dealers in complying with Section 199A and would provide parity for pass-through entities with corporate taxpayers who merely calculate their federal income tax by using a tax rate that is 40% lower.
- Desire is for this to be as transparent, straight forward and efficient as possible to carry out tax reform despite the complexity inherent in the legislative text keeping in mind that dealers represent a very significant employer base that is representative of taxpayers intended to benefit from tax reform.
- These issues are front and center concerning the impact of tax reform on dealership taxpayers. Section 199A is the most impactful aspect for dealers. Currently, there is a huge amount of concern and uncertainty due to the tremendous complexity including interaction with other areas of tax law such as at-risk and passive limitations on top of the current Subchapter K complications.