

Final Section 199A Rules Released

On Friday, January 18, the Treasury Department and IRS released the final regulations under Code § 199A (qualified business income deduction). The final regulations retain the language of the proposed rule regarding the payment and reporting of W-2 wages by a third party that NAPEO had advocated for, but with the following change (shown in red below):

(ii) Wages paid by a person other than a common law employer. In determining W-2 wages, an individual or RPE may take into account any W-2 wages paid by another person and reported by the other person on Forms W-2 with the other person as the employer listed in Box c of the Forms W-2, provided that the W-2 wages were paid to common law employees or officers of the individual or RPE for employment by the individual or RPE. In such cases, the person paying the W-2 wages and reporting the W-2 wages on Forms W-2 is precluded from taking into account such wages for purposes of determining W-2 wages with respect to that person. For purposes of this paragraph, persons that pay and report W-2 wages on behalf of or with respect to others can include, **but are not limited to**, certified professional employer organizations under section 7705, statutory employers under section 3401(d)(1), and agents under section 3504.

NAPEO believed that under the proposed rule, it was clear that a client employer may take into account W-2 wages paid and reported by a CPEO, but there was some uncertainty with respect to non-certified PEOs. The addition of the phrase noted above, “but are not limited to,” should be helpful in reducing some of that uncertainty and could be viewed as providing additional comfort to clients of non-certified PEOs.