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RE: Unadjusted Basis Immediately After Acquisition Of Qualified Property Acquired In Like-Kind Exchanges For Section 199A Purposes

The undersigned associations provide the following comments regarding the application of the section 199A deduction for qualified business income for property acquired through a section 1031 like-kind exchange.

The Treasury Department should interpret "unadjusted basis immediately after acquisition," for purposes of section 199A, in a manner that would neither inhibit nor impair the economics of a taxpayer's decision to engage in a section 1031 like-kind exchange.

Section 1031 is a powerful economic stimulator that contributes to the velocity of the economy by stimulating a broad spectrum of transactions, which in turn, generate taxable income and jobs for contractors, title and property insurers, escrow agents, financial services providers, attorneys, accountants, architects, landscapers, various real estate professionals, and others, as well as businesses that are reliant upon discretionary spending by gainfully employed workers. It is important to note that section 1031 provides only tax deferral, not tax savings. In the vast majority of cases, the gain is recognized and the tax must be paid.

Analysis of exchange transactions show that nearly all replacement properties are disposed of through a taxable sale, not through a subsequent like-kind exchange. Professors David Ling and

Milena Petrova reported in their "Economic Impact of Repealing or Limiting Section 1031 Like-Kind Exchanges in Real Estate" (2015) that 88 percent of real estate properties acquired through an exchange are later sold in a taxable transaction, and because of lower debt and greater capital investment rates, the taxes paid on sale of these properties are significantly greater than that of non-exchanged properties.[1] The Ling & Petrova study, along with a 2015 macroeconomic impact study by Ernst & Young, found that without the availability of section 1031 for real property, many transactions would be foregone or delayed, resulting in 1) longer holding periods and less-productive deployment of capital in the economy; 2) increased cost of capital; 3) reduced levels of investments; and 4) economic contraction.[2] Thus, section 1031 like-kind exchanges continue to serve valid economic goals of tax policy.

Solely for purposes of determining the wage and capital limitation of section 199A(b)(2)(B), the Treasury Department should interpret "unadjusted basis immediately after acquisition" as the acquisition cost of qualified property, regardless of whether acquired through purchase or like-kind exchange.

This definition is consistent with the longstanding treatment that the basis of property is its cost or purchase price and will not disadvantage businesses that acquired property through a like-kind exchange. Further qualifications or limitations specific for like-kind exchange acquired business property run counter to the Congressional intent and statutory purpose of both sections 199A and 1031. Section 199A was enacted to provide non-corporate business taxpayers with effective tax rate relief on their qualified business income somewhat comparable to the corporate rate reduction. Section 1031 was originally enacted, and preserved in the Tax Cuts and Jobs Act ("TCJA") for real property, to stimulate transactional activity and incentivize business growth by deferring capital gain recognition on the sale of business property where the owner will have continuity of investment in like-kind replacement property. For purposes of section 199A, the tax code should treat a like-kind

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[1] David C. Ling & Milena Petrova, *The Economic Impact of Repealing or Limiting Section 1031 Like-Kind Exchanges in Real Estate* (June 22, 2015), http://www.1031taxreform.com/wp-content/uploads/Ling-Petrova-Economic-Impact-of-Repealing-or-Limiting-Section-1031-in-Real-Estate.pdf

[2] Ernst & Young Economic Study, *Economic Impact Of Repealing Like-Kind Exchange Rules*, March 2015 (Revised November 2015), http://www.1031taxreform.com/wp-content/uploads/EY-Report-for-LKE-Coalition-on-macroeconomic-impact-of-repealing-LKE-rules-revised-2015-11-18.pdf

exchange acquisition as simply an acquisition, thereby removing unnecessary complexity and making the section 199A rate-equalizing deduction available on similar terms to similar business taxpayers.

Deduction for Qualified Business Income Capital Limitation

Section 11011 of Public Law No. 115-97, commonly referred to as the Tax Cuts and Jobs Act (the "TCJA" or "2017 Tax Act"), added new code section 199A, the "Deduction for Qualified Business Income of Pass-Thru Entities," to the U.S. Internal Revenue Code ("IRC").[3] Section 199A provides a 20 percent deduction for qualified business income ("QBI") for certain non-corporate taxpayers for tax years beginning after December 31, 2017.

For each qualified trade or business, the taxpayer is allowed a deductible amount equal to the lesser of 20 percent of the QBI or the limitation based either on wages paid or on wages paid plus a capital element. The wage and capital limit ("capital limit") for taxpayers above a threshold amount is the greater of (a) 50 percent of the W-2 wages paid with respect to the qualified trade or business, or (b) the sum of 25 percent of the W-2 wages paid with respect to the qualified trade or business plus 2.5 percent of the unadjusted basis, immediately after acquisition, of all qualified property. Qualified property is defined to include tangible property subject to depreciation for which the depreciable period has not ended before the close of the taxable year. The depreciable period with respect to qualified property of a taxpayer means the period beginning on the date the property is first placed in service by the taxpayer and ending on the later of (a) the date 10 years after that date, or (b) the last day of the last full year in the applicable recovery period that would apply to the property under section 168.

Because of the novel framework of the section 199A deduction, and the speed in which it was drafted, Congress anticipated that certain aspects of the new provision would require Treasury to promulgate guidance dealing with particular circumstances. The TCJA and new IRC Section 199A(h)(2) provide, "The Secretary [of the Treasury] shall— "prescribe rules for determining the unadjusted basis immediately after acquisition of qualified property acquired in like-kind exchanges or involuntary conversions."

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[3] Officially an "Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018"

The TCJA also retained IRC section 1031 (Section 13303, "Like-Kind Exchanges of Real Property"). The Act narrowed the classes of eligible property, preserving non-recognition treatment for real property that is held for productive use in a trade or business or for investment transferred in a like-kind exchange. The permanent retention of section 1031 affirmatively demonstrates its importance to Congress. In the lead up to introducing their versions of the TCJA, the respective House and Senate tax-writing committees judiciously scrutinized the existing tax code for provisions that should be repealed in exchange for lower tax rates. Significantly, both originally introduced House and Senate proposals affirmatively retained section 1031 for real property despite previous drafts calling for its repeal.[4] Thus, in the view of Congress, section 1031 for real property is a necessary component of the tax code to provide a strong incentive for capital formation and increased business investment.[5]

In a section 1031 like-kind exchange, the taxpayer acquiring property is permitted to temporarily defer the recognition of gain on the sale of the relinquished property, but the taxpayer will take an adjusted carryover basis in the acquired property. The basis is increased to the extent of any gain recognized as a result of the receipt of other property or money and decreased to the extent of any money or boot received by the taxpayer. The benefit to the taxpayer is primarily a timing difference, as the carryover basis will generally result in reduced depreciation deductions on the acquired property and, accordingly, higher taxable income during the depreciable life of the property acquired in a like-kind exchange.

[4] H.R. 1, the Tax Reform Act of 2014 introduced by former Ways and Means Committee Chairman Dave Camp (R-MI), was the last comprehensive tax legislation introduced prior to the TCJA and formed the basis for many policies adopted in the TCJA. The bill proposed to repeal Section 1031.

[5] In addition, economic studies have found that elimination of Section 1031 would likely produce a decrease in real estate investment, cause an 8 to 12 percent decline in commercial real estate prices, and an increase in the use of leverage. David C. Ling & Milena Petrova, *The Economic Impact of Repealing or Limiting Section 1031 Like-Kind Exchanges in Real Estate* (June 22, 2015), http://www.1031taxreform.com/wp-content/uploads/Ling-Petrova-Economic-Impact-of-Repealing-or-Limiting-Section-1031-in-Real-Estate.pdf.

Discussion of Specific Issues

I. Definition of Unadjusted Basis in Asset Acquired Through Like-Kind Exchange

In the context of like-kind exchange acquired qualified property, Treasury could, for purposes of section 199A, define "unadjusted basis" by reference to (1) the unadjusted basis of the relinquished property, (2) the fair market value of the relinquished property at the time of the exchange, (3) the additional capital invested in the replacement property, (4) the cost of the replacement property when acquired, or (5) some combination of the above.

We strongly believes that the only appropriate definition of "unadjusted basis immediately after acquisition" for section 199A purposes is the cost or purchase price of the qualified property. In the case of like-kind exchange acquired property, this would be the cost or purchase price of the qualified replacement property. This is the proper approach regardless of whether the qualifying property was acquired by purchase or through a like-kind exchange. This interpretation is consistent with the role of the capital limit within section 199A and is supported by the underlying policy goals of the legislation to promote capital investment and job creation. Moreover, alternative approaches would be in conflict with longstanding definitions of the tax code and encroach on the investment and capital formation policies underlying section 1031.

1. Congressional Intent and Purpose of Capital Limit

Congress enacted section 199A as part of a comprehensive plan to lower the effective tax rates on business income regardless of the businesses' classification for tax purposes. Congress believed that an across-the-board reduction of tax rates on all businesses regardless of form would spur business growth, jobs, and higher wages across the economy. To achieve this goal, the legislation reduced the corporate tax rate from 35 to 21 percent and included a corresponding benefit through the section 199A deduction for non-corporate taxpayers.

The enacted version of section 199A followed the Senate deduction proposal, while also adopting a capital investment component ("capital limit") based on a concept from the House Ways and Means Committee. The addition of the capital limit was designed to expand the benefit of the deduction to allow a greater share of non-corporate businesses to qualify for the deduction. According to House Ways and Means Committee Chairman Kevin Brady, "This was a provision that we have fought for, [that] we thought was important. We want to encourage businesses, pass-through businesses that do a lot of capital investment for growth – energy, advanced manufacturing, telecom. They may be making major investments but without tons of workers that accompany that."[6] Thus, the purpose of the capital limit in the overall structure of the code section is to allow firms making investments into the economy the ability to benefit fully from the deduction.

When viewed in the light of Congressional intent to provide tax rate parity between corporate and pass-through business taxpayers, including an expansion of the section 199A deduction to promote capital investment, defining the unadjusted basis as the cost of acquisition is consistent with the overall statutory purpose underlying section 199A. In enacting section 199A, Congress made a deliberate policy decision to ignore the adjusted basis of the asset when they mandated the use of the "unadjusted basis immediately after acquisition." This language suggests the intent of the capital limit is to simply measure the amount of investment, unrelated to gain recognition and depreciation. Thus, the statutory construction suggests that the 2.5 percent capital limitation specifying "unadjusted basis immediately after acquisition" was intended to serve only as a guardrail for measuring substantial investment.

The purchase price of property is the best method to calculate the capital invested into the economy and is an administrable standard. Similar to other real estate transactions, a like-kind exchange involves the sale and the purchase of new (replacement) property at a verifiable, established fair market value, and is the exact economic equivalent to a similar purchase.

A narrower and more restrictive rule threatens to undermine the primary objective behind section 199A of providing tax parity between corporate and non-corporate taxpayers. This is because a corporate taxpayer acquiring property through a like-kind exchange would continue to enjoy the full benefit of the substantially lower corporate tax rate without concern for, and potential diminishment by, a reduced capital limit. In contrast, and in contravention of Congressional intent, the non-

[6] Richard Rubin, *Rep. Kevin Brady Defends Changes for Pass-Throughs*, WALL STREET JOURNAL, December 18, 2017.

corporate taxpayer that acquired qualified property through a like-kind exchange could be denied rate relief by an artificially reduced capital limit.

The purchase price interpretation honors the policy behind section 199A and the intent to make it available for economic sectors and industries that are heavily invested in capital assets without sufficient qualifying wage expense. The use of actual cost basis of the replacement property makes the capital limit test more efficient, gives credit to the full investment value, and avoids the economic inefficiency that would be caused by adding a toll charge to the section 1031 exchange acquired property. The ability to defer gain under section 1031 is completely separable from the purpose of section 199A and reflects a different Congressional priority of promoting the continuity of business investment, and thus should have no influence on the capital limit, which is a safeguard device to measure a taxpayer's overall investment. Congress enacted section 1031 to defer the immediate recognition of capital gains so long as the sale proceeds continued to be invested by the business owner in qualifying property.

The cost of acquisition approach relying on the fair market value, as determined at the time of the replacement property acquisition, is the only proper and administrable way to measure substantial investment. The property's "unadjusted basis immediately after acquisition" serves the underlying purpose behind section 199A. Under the statute, if a taxpayer holds a property that appreciates in value, the benefit of the appreciation is not reflected in their deduction limit. However, absent a sale, it would be difficult to quantify true fair market value on an easily administrable basis. The only way for the taxpayer to capture the benefit of appreciation is to sell and reinvest in new property. Thus, when an accurate fair market value of the capital investment has been determined through an arms-length transaction, that market value should be respected regardless of whether it was accomplished through a purchase or like-kind exchange.

Lastly, this interpretation is supported by longstanding tax policy concepts and existing tax code and regulatory definitions. The Internal Revenue Code, Internal Revenue Service ("IRS"), and Treasury have long defined and held that the initial basis of property is the cost at the time of purchase or acquisition. IRC section 1012 and the accompanying regulations define the basis of property as the cost thereof. Cost is defined as the amount paid for such property in cash or other property. Moreover, a plain reading of the statute should not alter the unambiguous term of "acquisition" to specifically exclude like-kind exchange acquired property. In the context of the section 199A capital limit, there is no policy rationale for reading the term "acquisition" to except the full acquisition price for like-kind exchange purchases.

2. Section 1031

The cost of acquisition definition is consistent with the statutory purpose of the capital limit in the construct of the new section 199A deduction and section 1031. For the purpose of section 199A, the capital limit provides an alternative test to expand its applicability beyond solely relying on wages paid. In the TCJA, Congress affirmatively retained section 1031 as it applies to real property. Section 1031 allows business owners to defer the recognition of capital gains so long as there is continuity of investment. Hence, we urge Treasury to exercise its delegated authority to give both tax code sections their full, intended effect.

A. <u>Illustrative Example of Alternative Approach</u>

A different approach, such as a bifurcated, step-in-the-shoes method, would erode the benefits of section 199A and disadvantage business owners who acquire their qualified business and investment property through a section 1031 exchange. Under such an approach, the new unadjusted basis of like-kind exchange acquired property for section 199A purposes would be equal to the sum of the original unadjusted cost basis of the held property (the "Relinquished Property") and the new investment measured by the difference in the value at the time of sale of the Relinquished Property and the acquired property (the "Replacement Property"). The simple example below shows that a bifurcated approach would diminish the capital limit available under the section 199A deduction and when combined with reduced annual depreciation deductions would result in significantly higher taxable income for the taxpayer with exchange-acquired property.

In the example below, a taxpayer originally purchased the Relinquished Property for $500,000, held and depreciated the property for ten years, and then sold or exchanged the property and invested new property Replacement Property valued at $1,500,000.

Basic Example of Exchange Acquired Qualified Property	
Relinquished Property (Original Cost Basis)	$500,000
Value of Relinquished Property at Sale/Exchange	$1,000,000

Replacement Property Cost Basis (FMV at Acquisition)	$1,500,000
Adjusted Basis of Relinquished Property, Held for 10 Years	$371,800
Taxable Gain If Relinquished Property Sold	$628,200
Deferred Capital Gains Tax	$132,050

Disregarding the exchange transaction, the unadjusted basis immediately after acquisition of the qualified Replacement Property would be $1,500,000, treating the section 1031 taxpayer and non-1031 taxpayer alike. Comparatively, using a bifurcated approach for purposes of section 199A, the unadjusted basis would be $1,000,000 (calculated as $500,000 of original basis in Relinquished Property plus the $500,000 of "new investment" needed to acquire Replacement Property). The new investment would be measured by the difference between the sale proceeds or fair market value of the Relinquished Property and the acquisition cost of the Replacement Property.

Under this example, the pass-through business owner acquiring property by purchase would have a section 199A limitation of $37,500 ($1,500,000 x 2.5%). The same taxpayer acquiring the same qualified property via a like-exchange would have a significantly reduced limitation of $25,000 ($1,000,000 x 2.5%), or a decrease of 33 percent.

Section 199A Capital Limit Under Bifurcated Approach	
Relinquished Property Cost Basis	$500,000
Additional Investment In Replacement Property	$500,000
Bifurcated Unadjusted Basis In Replacement Property (Total Cash Invested, Not Counting Unrecognized Gain)	$1,000,000
Capital Limitation 2.5% Of $1,000,000 Bifurcated Unadjusted Basis	$25,000
Capital Limitation 2.5% Of $1,500,000 Unadjusted Basis Using Actual Acquisition Cost	$37,500
Annual Reduction Of 199A Deduction For 1031 Acquired Property	$12,500
Bifurcated Approach Annual 199A Deduction Loss For 1031 Acquired Property Stated As A Percentage	33%

As the example shows, an approach using the basis of the Relinquished Property would arbitrarily diminish the section 199A income tax deduction based on the amount of unrecognized gain embedded in the exchanged property. The example shows that the bifurcated approach would produce significantly differing results when applied to two identical properties purchased by two otherwise similarly situated business owners, an outcome that would frustrate and directly contradict the policy rationale underlying the capital limit test in section 199A and the capital formation, economic stimulus purpose of retaining section 1031 for real estate.

The adoption of any approach relying on "old" basis would in effect disregard a portion of the like-kind purchase price to the investor in a manner that is wholly unrelated to the amount of capital invested. Further, it would more significantly disadvantage business owners with higher amounts of gain in the sold or Relinquished Property, particularly harming owners of longer-held property that was acquired when real estate values were much lower. The taxpayers' capital limit and thus section 199A deduction would be greatly reduced in a way that is not measured by their current or future capital investment but would be determined largely by length of time for which they held the Relinquished Property.

In the example, the exchange acquired property business owner would face a 33 percent reduction in the section 199A capital limit compared to a purchase acquisition. However, for longer held property with greater amounts of built-in gain in the original property, the business owner's section 199A deduction would be more severely limited. Importantly, this policy approach could deter taxpayers from making new purchases, potentially creating a "lock-in" effect for certain real estate, the exact opposite result of what Congress intended in enacting the TCJA and retaining section 1031. A bifurcated approach would not only be substantially more complicated, but would also be inherently punitive to non-corporate taxpayers who acquire qualified property in a section 1031 like-kind exchange.

B. <u>Combined Impact of Section 199A and Depreciation Deductions</u>

An "old" basis formula would put the like-kind exchange acquired property business taxpayer at a further disadvantage when factoring in the reduced annual depreciation deductions. Under this scenario, the purchase taxpayer would have the dual benefits of lowering his taxable income through higher depreciation deductions and a greater deduction allowable under the section 199A capital limit. For the section 1031 purchaser, the benefit of capital gain deferral is largely a timing difference recouped by the U.S. Treasury through lower annual depreciation deductions. The reduced depreciation deductions in the Replacement Property that accompany an exchange significantly offset the value of immediate tax deferral. This is because the taxpayer takes a carryover *tax basis* in the Replacement Property measured by the *adjusted basis* of the Relinquished Property (plus new investment in Replacement Property). As a result of the lower adjusted basis for depreciation, the exchange taxpayer will have comparatively higher annual taxable income.

Continuing with the above example, the following table shows the impact that the lower *adjusted tax basis* would have on annual depreciation deductions and taxable income of the taxpayer with exchange acquired property compared to property acquired by purchase. As the table shows, the taxpayer with exchange acquired property will have a greatly reduced adjusted tax basis and a much lower annual depreciation deduction—depreciation deductions would be reduced by over 40 percent resulting in significant additional taxable income each year. For every dollar of unrecognized gain, there is an equal dollar of foregone depreciation available in the Replacement Property.

Impact Of 1031 On Depreciation	**Non-1031 Acquired Property**	**1031 Acquired Replacement Property**	**1031 Acquired Replacement Property (Cumulative Over 10 Year Hold)**	**1031 Acquired Replacement Property (Cumulative Over 39 Year Dep Life)**
Depreciable Basis of Replacement Property	$1,500,000	$871,800		
Annual allowable depreciation deduction	$38,462	$22,354		
Increased Income due to Foregone Depreciation		$16,108	$161,077	$628,200
Increased Income *Tax* due to Foregone Depreciation (37% rate)		**$5,960**	**$ 59,598**	**$232,434**

The final table below shows how the potential combined impact of both a reduced section 199A deduction together with lower depreciation deductions would significantly disadvantage the like-kind exchange acquired property owner. The example illustrates that the dual reductions would result in a significantly higher annual tax liability for the like-kind exchange property owner. Additionally, not shown on the table, the rolled over gain in the Replacement Property must be recognized and taxed at the time of ultimate sale, as required by Section 1031.

Combined Impact Of Reduced Depreciation Plus Reduced 199A Deduction	**Non-1031 Acquired Property**	**1031 Acquired Replacement Property**	**1031 Acquired Replacement Property, Held 10 Years**	**1031 Acquired Replacement Property, Over 39 Year Dep Life)**
Allowable Depreciation Plus 199A Deduction	$75,962	$47,354		
Increased Income Due To Forgone Depreciation PLUS Reduced Qualified Property Basis For 199A Deduction	-	$28,608	$286,077	$1,115,700
Increased Income *Tax* Due To Forgone Depreciation PLUS Reduced Qualified Property Basis For 199A Deduction	-	**$10,585**	**$105,848**	**$412,809**

This outcome further reinforces the view that the section 199A capital limit was intended and should function to test the amount of capital invested, unrelated to capital gain recognition, foregone depreciation, and future depreciation. Adopting a straightforward definition of acquisition cost for qualified property for both the Section 1031 and non-1031 property would logically reflect the policy purpose of the statute.

II. <u>Avoiding Unnecessary Complexity</u>

We encourage Treasury to draft guidance that achieves the statutory purpose of section 199A in the least burdensome manner. Treasury guidance defining the "unadjusted basis" of like-kind exchange acquired qualified property as its acquisition cost avoids adding unnecessary complexity to section 199A. If Treasury were to adopt an alternative rule, taxpayers would be forced to separately determine multiple tax bases solely for purposes of the capital limit, further complicating what is already recognized as a complicated calculation. Additionally, the 1031-taxpayer would then be required to keep yet another set of tax books to track the bifurcated unadjusted tax basis separately for the purpose of determining the allowable section 199A deduction. We suggest for administrative simplicity that by defining unadjusted basis as the acquisition cost, Treasury would take an important step toward achieving the TCJA's goal of simplification and burden-reduction for both the taxpayer and the tax administrators.

Furthermore, any reliance on the "old" basis of the Relinquished Property in the definition of "unadjusted basis" increases taxpayer complexity by increasing the likelihood that the depreciable period of the property, or a portion thereof, will expire and cause a further reduction in the section 199A capital limit. Under section 199A, qualified property only includes property subject to depreciation for which the depreciable period has not ended. The depreciable period ends at the later of 10 years or the last full year of the property's recovery period. An "old" basis approach could result in the loss of basis for longer-held property, resulting in a greatly reduced capital limit in spite of new investments. This outcome would singularly target exchange acquired property owners and would be a particularly unfair result that would not properly reflect their new capital investments. Exchange taxpayers would also encounter the additional complexity of determining the remaining depreciable period of their held property and calculating the future loss of that basis under the capital limit at the time of the transaction. This would once again result in added complexity and a reduced section 199A deduction relative to similar taxpayers. For these reasons, we support the position that the depreciable period of qualified property acquired by like-kind exchange should be measured solely in reference to the depreciable life of the acquired or replacement property. This interpretation would give effect to the statute's use of the phrase "the unadjusted basis, immediately after acquisition, of all qualified property." Thus, the depreciable period of qualifying property should be the depreciable life of the qualifying asset when it is acquired without any regard to the remaining depreciation period in the relinquished (sold or exchanged) property.

Lastly, using a bifurcated approach with reference to the relinquished property basis would require taxpayers to take into consideration the benefits of tax deferral under section 1031, coupled with a permanently reduced 199A deduction as a result of the lowered cost basis, as compared to engaging in a taxable sale and having a higher, full 199A deduction for the life of the new asset. The resulting lower benefits of using a like-kind exchange will undoubtedly reduce the use of this provision, frustrating the purpose of retaining section 1031 for real property and hollowing the benefits of the section 199A deduction.

III. <u>Policy Perspective: Recognizing the Dual Purposes of Section 1031 and Section 199A</u>

Treasury guidance that provides "unadjusted basis" of like-kind exchange acquired property would not convey a double benefit for such qualified property. Rather, for purposes of section 199A, an acquisition cost basis approach would ensure level treatment between similarly situated business taxpayers. While the respective code sections provide business owners with a favorable incentive to grow and operate, sections 199A and 1031 serve distinct and unrelated purposes that should not be conflated in the drafting of guidance.

Section 199A is an operating business benefit, enacted as a mechanism to provide non-corporate businesses with a lower effective tax rate that approximates the corporate rate reduction. For both policy and political reasons, Congress sought to expand business tax relief to all business income regardless of classification as a corporation or a pass-through business. The wage limitation, originally modeled from the former section 199 domestic production deduction, was expanded in recognition that businesses making significant capital investments in the economy should not be excluded from the benefits of the deduction.

Conversely, section 1031 provides a capital gains deferral mechanism to encourage business expansion. Section 1031 is premised not only on the tax policy of continued investment and the legislative purposes to increase transactional activity and investment, but also to avoid the unfairness of taxing a paper gain when the taxpayer remains invested and there has been no "cashing out." It is a provision designed to stimulate investment and to determine timing for recognition of gain on capital investments.

In summary, the respective code sections serve two distinct purposes, and neither should be interpreted in a manner that nullifies or disadvantages the other.

Signed,

Alternative and Direct Investment Securities Association
Asian American Hotel Owners Association
Building Owners and Managers Association International
CCIM Institute
Federation of Exchange Accommodators

Institute for Portfolio Alternatives

Institute of Real Estate Management

NAIOP, the Commercial Real Estate Development Association

Nareit

National Apartment Association

National Association of REALTORS®

National Multifamily Housing Council

REALTORS® Land Institute

S-Corporation Association