October 1, 2018

CC:PA:LPD:PR (REG-107892-18)
Room 5203
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

To Whom It May Concern:

The Institute for Portfolio Alternatives ("IPA") is pleased to submit the following comments in response to the proposed regulations concerning the deduction for qualified business income under Section 199A of the Internal Revenue Code ("Proposed Regulations"). We appreciate your efforts to implement Section 199A, which was enacted on December 22, 2017 as part of the Tax Cuts and Jobs Act ("TCJA"). We write to address our concern regarding the determination of unadjusted basis immediately after acquisition ("UBIA") under the Proposed Regulations with regard to certain transactions common to the real estate industry.

The IPA has an immediate interest in the application of UBIA as our members engage in numerous real estate transactions, including Section 1031 like-kind exchanges. For over 30 years the IPA has raised awareness of portfolio diversifying investment (PDI) products among stakeholders and market participants, including investment professionals, policymakers and the investing public. We support increased access to investment strategies with low correlation to the equity markets: lifecycle real estate investment trusts (Lifecycle REITs), net asset value REITs (NAV REITs), business development companies (BDCs), interval funds and direct participation programs (DPPs). Through advocacy and industry-leading education, the IPA is committed to ensuring that all investors have access to real assets and the opportunity to effectively balance their investment portfolios.

We believe that the Treasury Department should interpret UBIA 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. Solely for purposes of determining the wage and capital limitation of §199A(b)(2)(B), the Proposed Regulations should be modified to define UBIA after a tax-free exchange as the UBIA of the transferor's relinquished property as adjusted for changes as a result of the transfer. This definition is consistent with the framework of Section 1031 and similar provisions of the Code. 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 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. Section

1455 PENNSYLVANIA AVENUE, NW | SUITE 400
WASHINGTON, D.C. 20004 | 202.548.7190 | IPA.COM

1031 is important to the U.S. economy as it encourages greater investments in real property, creates jobs, and is a critical tool for real estate investors to sustain and grow their portfolio.

Section 199A does not provide rules for determining UBIA in the case of a like-kind exchange (or other nonrecognition transactions). In addition, there is no indication in the statutory text or legislative history of an intention to put taxpayers in a material detriment under Section 199A when conducting such transactions; rather, the Code encourages these transaction through tax-free treatment by allowing use of capital in transactions where a taxpayer is continuing its investment.

The term UBIA requires the determination of "unadjusted basis", and such determination is made immediately after an "acquisition". We agree with the Proposed Regulations that a tax-deferred exchange is a new "acquisition". Accordingly, UBIA computations should take into account factors on the acquisition, such if additional cash is invested in Section 1031 replacement property or where a Section 721(a) contribution may be in part a taxable sale. However, we believe that the Proposed Regulations simply overlook the other component of UBIA, which is the "unadjusted basis" requirement. Instead the Proposed Regulations used "adjusted basis", with a net effect of materially lowering a taxpayers UBIA for what should be a tax-neutral transaction. Further, to not carry over unadjusted basis of the transferor is inconsistent with the same regulatory provision carrying over the remaining UBIA amortization period of the transferor. Accordingly, we believe that the Proposed Regulations must be modified to define UBIA after a tax-free exchange as the UBIA of the transferor as adjusted for changes as a result of the transfer.

We appreciate your consideration of our views on this important issue, and look forward to working with the Treasury Department as it finalizes the Proposed Regulations. If the IPA may be of any assistance, please do not hesitate to contact me or Anya Coverman, IPA's Senior Vice President, Government Affairs and General Counsel, at (202) 548-7190.

Sincerely,

Anthony Chereso
President & CEO, Institute for Portfolio Alternatives