

S-Corp Member Call

March 26th, 2019



Defending America's Small & Family Owned Businesses

S-Corp Member Call

Agenda

- Increased Policy Uncertainty
- 199A in the Bunker
- Treasury Attacks Manufacturers
- SALT Efforts
- S Corp Modernization

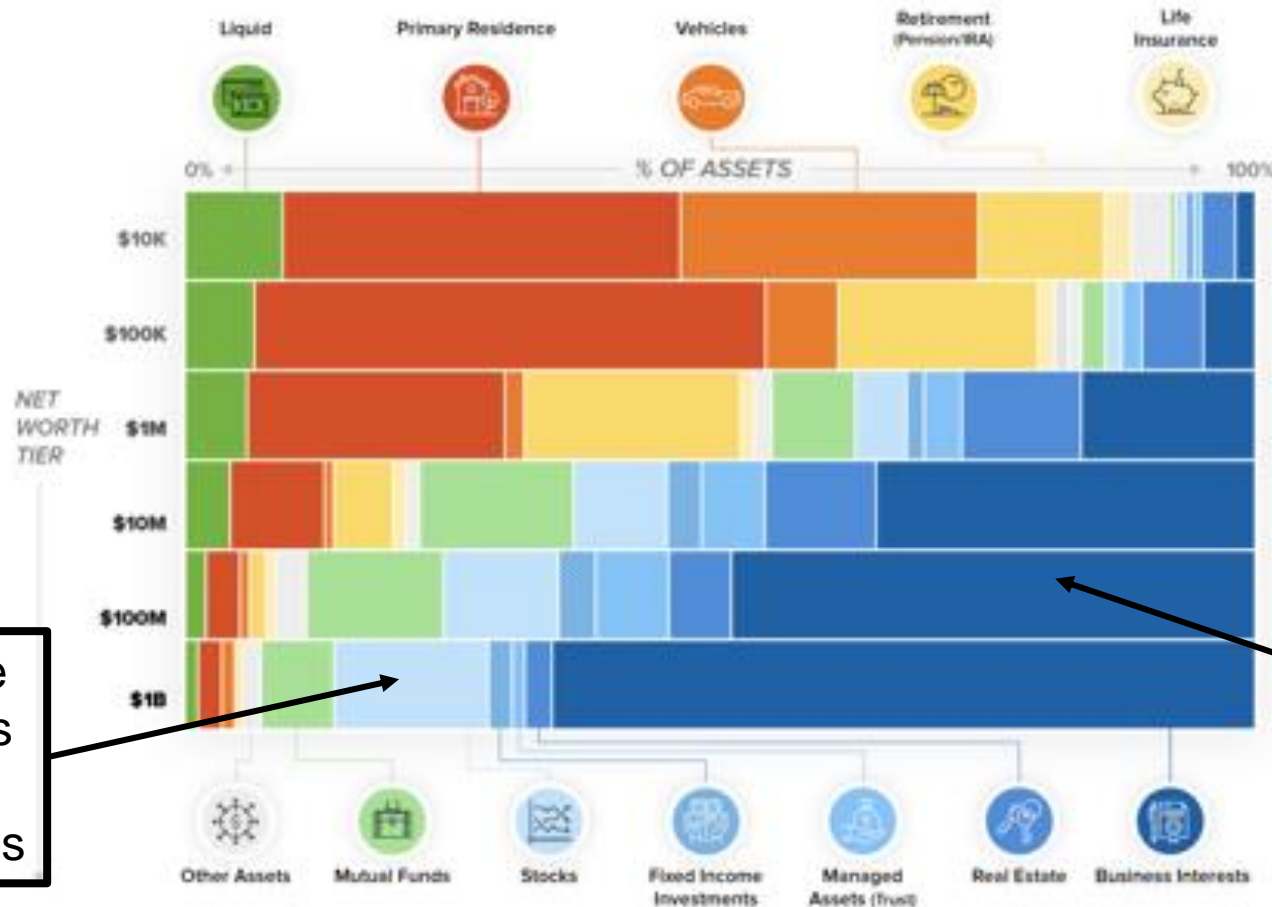
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World of Uncertainty

- Policy Gap between Republicans and Democrats is large and growing
- Democrat proposals to date:
 - 70 percent top individual tax rates (AOC)
 - 77 percent top estate tax rate (Sanders)
 - 2-3% Wealth Tax (Warren)
 - 0.1% Transactions Tax
- Why does S-Corp need to be concerned?

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Private Businesses at heart of income inequality debate

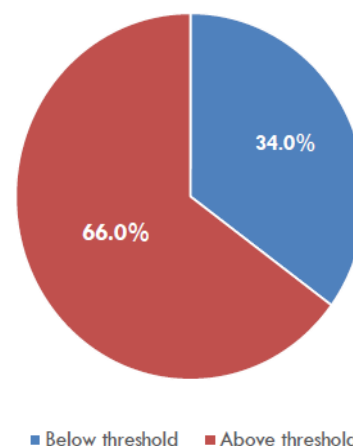


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199A Deduction

- This chart got lots of attention last week. It was part of a JCT presentation on 199A and it played right into the income inequality debate taking place in Congress
- Why should wealthy business owners get a deduction when wage earners do not?

Share of Section 199A Tax Benefit
Above and Below Threshold



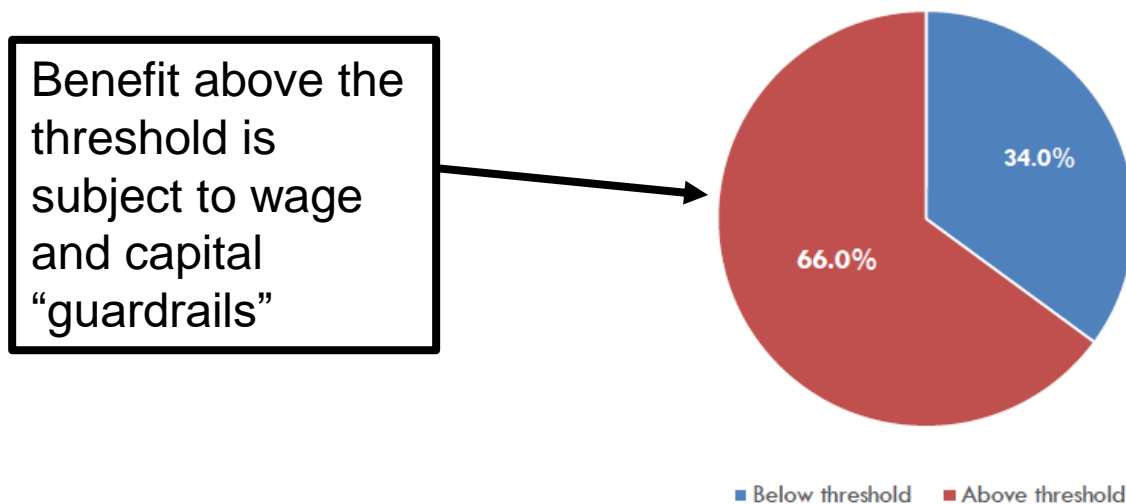
2019 Taxable Year Projections

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199A Deduction

- Lost in the criticism were the limitations placed 199A for larger businesses – you only get the deduction if you employ workers or invest significant amounts of capital

**Share of Section 199A Tax Benefit
Above and Below Threshold**



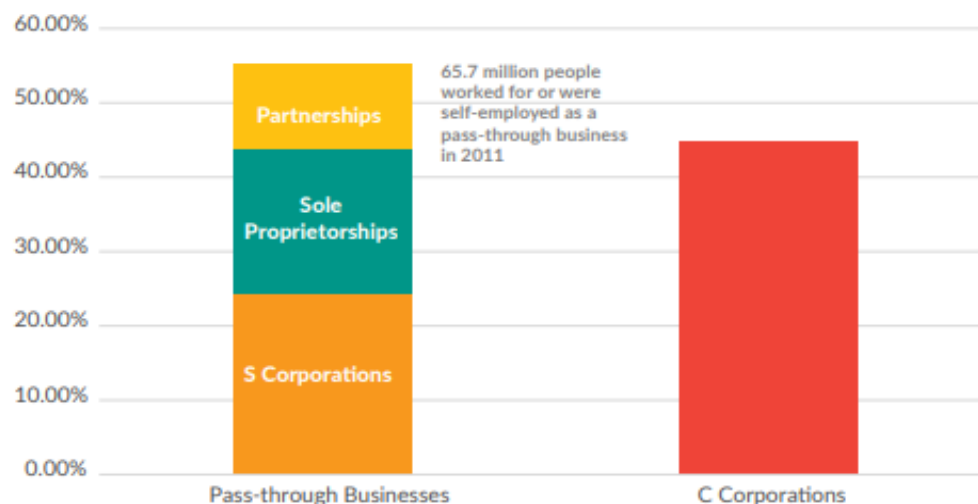
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199A Deduction Response

- Pass-through businesses are a key part of the economy – they are responsible for the majority of private sector jobs, employing nearly six-out-of-ten workers

Figure 5. Pass-through Businesses Employ More Than Half of the Private Sector Workforce

Share of Private Sector Workforce by Business Type, 2011



Source: Census Bureau.

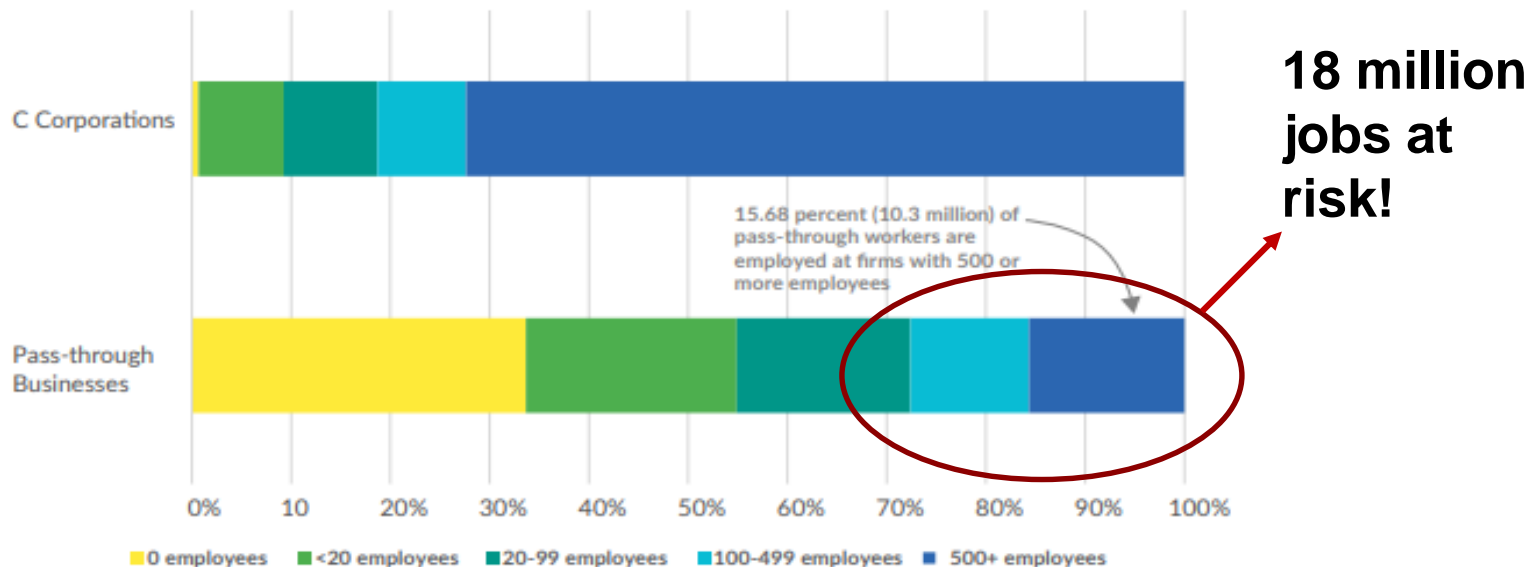
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199A Deduction Response

- Large pass-through businesses (with at least 100 employees) employ nearly one-out-of-six workers – 18m workers get up and go to work at a large pass-through every day

Figure 6. Not All Pass-through Businesses Are Small Businesses

Distribution of Pass-through and Corporate Employment by Firm Size, 2011



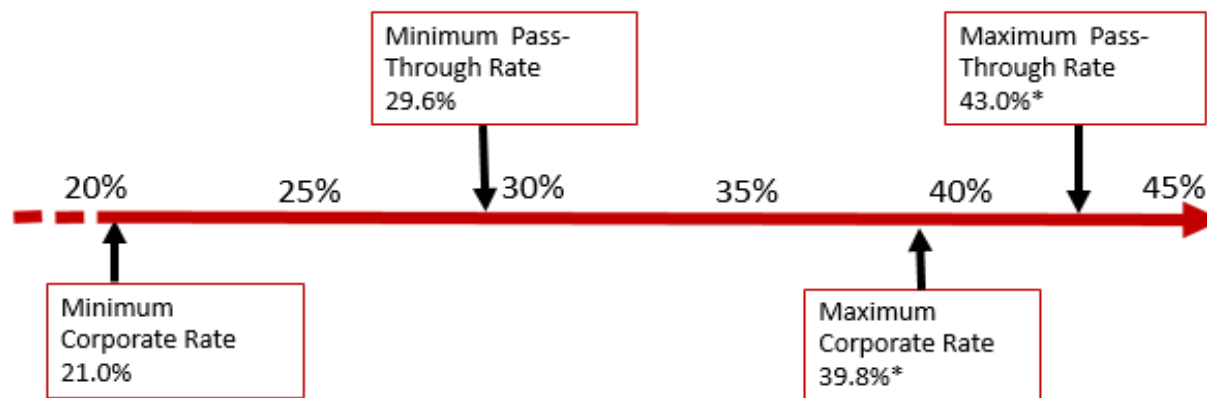
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199A Deduction Response

- The 199A deduction is necessary to restore parity with the new, 21-percent corporate rate

199A Pass-Through Deduction

Effective Business Top Rates under TCJA Vary Widely



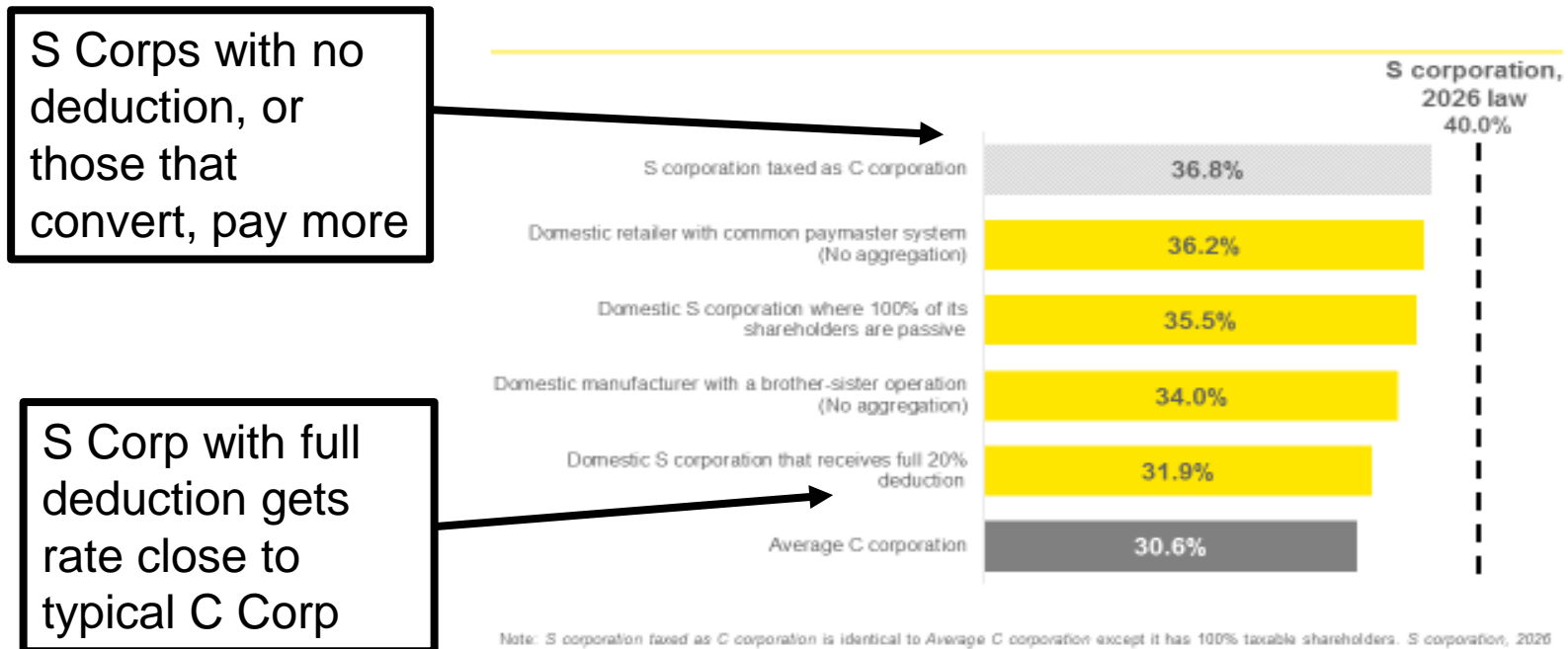
* Includes full double tax for C Corps. 37% rates, NIIT, and loss of SALT deduction for pass throughs

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199A Deduction Response

- EY Study: Pass-through businesses that receive the deduction come close to rate parity with the typical C corporation

Effective tax rate comparison, 2018 law



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199A Deduction Response

- Multiple studies confirm the EY results that pass-throughs with the deduction achieve something close to parity, while those without pay significantly higher rates

	With 199A Deduction		Without 199A Deduction	
	<u>C Corporation</u>	<u>Pass-Through</u>	<u>C Corporation</u>	<u>Pass-Throu</u>
DeBacker & Kasher -- Market Returns (AEI)	19%	20%	19%	27%
DeBacker & Kasher -- Above Market Returns (AEI)	16%	21%	16%	30%
Barro & Furman (Brookings)	26.0%	31.1%	26.0%	35.5%

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199A Deduction

- The tax provision 199A continues to take on fire
 - The Left dislikes it because it is earned by wealthy taxpayers
 - Some on the Right dislike it because its complicated and detracts from the lower corporate rate



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199A Deduction Implementation

SSTB

Non-SSTB

Below Threshold (\$315k)

- Must be a real section 162 trade or business
 - Rental property faces a 250 hour test
- 20% deduction on all QBI
 - Limited to 20% taxable income less cap gains
- Reasonable comp, guaranteed payments excluded
 - No comp requirements for LLCs & sole props!
- 3-Year Independent Contractor Limit

Above Threshold (\$415k)

- | | |
|---|---|
| <ul style="list-style-type: none"> • Long list of service businesses disqualified from 199A • May break up into multiple trades or businesses | <ul style="list-style-type: none"> • Wage & Capital guardrails apply • May aggregate multiple trades & businesses • 5/10% de minimis threshold |
|---|---|

Between Thresholds

- Deduction is phased out for SSTBs

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199A Deduction Response

- Our #1 Priority is to establish that 199A is necessary for pass-through businesses to maintain parity with the new, 21-percent rate
- We are speaking with David Winston to conduct focus groups and polling on the state of private companies and how to best discuss them with voters and policy makers
 - David has done a lot of work on the subject of the private sector and trust and is highly interested in
- Also working with EY to build on last year's report and further highlight the importance of 199A to pass-through parity

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199A Deduction Response

- Our second priority is to make the case for 199A permanence:
 - Jason Smith (R-MO) introduced the 199A permanence bill in the House with bipartisan support (Henry Cuellar (D-TX))
 - Working with Senator Daines to introduce the companion bill in the Senate
 - Circulating a business community letter through our Main Street Employers coalition in support
- Goal is to roll out the Senate bill and letter the week preceding April 15th

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Pass-Through SALT Efforts

- Our efforts to restore the pass-thru SALT deduction continue
- We released a new analysis making the legal case:
 - It reviews the new WI law, but its arguments are relevant to other states
 - Makes clear our reform's legal basis is well grounded and should survive scrutiny by the IRS and the courts
- Meanwhile, the IRS continues to target the charitable fix:

AGENCY: TREAS-IRS
 TITLE: State and Local Tax (SALT) Credits and Charitable Contributions [TCJA]
 STAGE: Final Rule
 RECEIVED DATE: [03/22/2019](#)

RIN: [1545-BO89](#)
 ECONOMICALLY SIGNIFICANT: No
 LEGAL DEADLINE: None

Status: [Pending Review](#)

AGENCY: TREAS-IRS
 TITLE: Notice - Guidance Under Sections 164 and 170(c) [TCJA]
 STAGE: Notice
 RECEIVED DATE: [03/22/2019](#)

RIN: [1545-ZA06](#)
 ECONOMICALLY SIGNIFICANT: No
 LEGAL DEADLINE: None

Status: [Pending Review](#)

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Section 163(j)

- Treasury's proposed rules for the new interest deduction limitation – Section 163(j) – include a penalty for manufacturers
 - The rules disallow depreciation allocated to inventory from being included in the calculation
 - The result is the 30% cap on interest is based on EBITDA for most taxpayers, but just EBIT for manufacturers
 - Has the effect of driving up marginal rates on manufacturers sharply
- In response, S-Corp:
 - Submitted written comments during the comment period for the rules
 - Is meeting with Treasury on the 4th to go through the challenge

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S Corp Modernization

- Working with Senator Thune (R-SD) and Rep. Kind (D-WI) on identifying provisions and finalizing the bill
- Had a very positive meeting with Thune's tax staff on locking down the new provisions
- Goal is to introduce the bill prior to our June meeting

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Conclusion

- Continue our robust efforts to promote the interests of S corps and Main Street businesses
- Two Additional Items:
 1. Save the Dates: Our Annual meeting is here in DC on June 17-19th. Be on the lookout for future emails with additional information
 2. S-CORP PAC: We are making a concerted effort to raise more resources and host more events. If you have a company or trade association PAC, please donate and help the cause

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