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Date:  
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TY:

Legend

Corporation =

Dear

This is in reply to your request for a ruling concerning which year's Forms W-2, Wage and Tax Statement, are used for purposes of computing the W-2 wage limitation under section 199(b) of the Internal Revenue Code for a taxpayer with a 52-53 week taxable year ending on the last Saturday in December.

### FACTS

Corporation computes its taxable income on the basis of a 52-53 week taxable year ending on the last Saturday in December. Corporation's taxable year for 2014 will begin on December 29, 2013, and end on December 27, 2014. Corporation's taxable year for 2015 will begin December 28, 2014, and end on December 26, 2015. Corporation's taxable year for 2016 will begin on December 27, 2015, and end on December 31, 2016. Corporation's taxable year for 2017 will begin on January 1, 2017, and end on December 30, 2017. Thus, Corporation's 2017 taxable year literally does not include December 31, and thus, absent a special rule, there is potentially no calendar year that ends during the 2017 taxable year.

### LAW AND ANALYSIS

Section 199(a)(1) provides for a deduction of an amount equal to 9 percent of the lesser of (A) the qualified production activities income of the taxpayer for the taxable year, or (B) taxable income (determined without regard to section 199) for the taxable year.

Section 199(b)(2) provides that the amount of the deduction allowable under section 199(a) for any taxable year shall not exceed 50 percent of the W-2 wages of the taxpayer for the taxable year. Section 199(b)(2)(A) provides that the term “W-2 wages” means, with respect to any person for any taxable year of such person, the sum of the amounts described in paragraphs (3) and (8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year. Treas. Reg. § 1.199-2(d) provides that amounts that are treated as W-2 wages for a taxable year under any method shall not be treated as W-2 wages of any other taxable year.

Section 441(a) provides that taxable income shall be computed on the basis of the taxpayer’s taxable year. Section 441(b) provides, in part, that the term “taxable year” means – (1) the taxpayer’s annual accounting period, if it is a calendar year or a fiscal year; (2) the calendar year, if section 441(g) applies; or (3) the period for which the return is made, if the return is for a period of less than 12 months. Section 441(d) provides that the term “calendar year” means a period of 12 months ending on December 31. Section 441(e) provides that the term “fiscal year” means a period of 12 months ending on the last day of any month other than December. In the case of any taxpayer who has made the election provided in section 441(f), the term means the annual period (varying from 52 to 53 weeks) so elected.

Section 441(f)(1) provides that a taxpayer who, in keeping his books, regularly computes his income on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week and ends always on whatever date such same day of the week last occurs in a calendar month, or on whatever date such same day of the week falls which is nearest to the last day of the calendar month, may elect to compute his taxable income on the basis of such annual accounting period.

Section 441(f)(2)(A) provides that in any case in which the effective date or the applicability of any provision of the Code is expressed in terms of taxable years beginning, including, or ending with reference to a specified date which is the first or last day of a month, a taxable year described in section 441(f)(1) shall be treated as beginning with the first day of the calendar month beginning nearest to the first day of such taxable year, or as ending with the last day of the calendar month ending nearest to the last day of such taxable year.

Treas. Reg. § 1.441-2(a)(1) provides in general that an eligible taxpayer may elect to compute its taxable income on a basis of a fiscal year that varies from 52 to 53 weeks, ends always on the same day of the week, and ends always on whatever date this same day of the week last occurs in a calendar month, or whatever date this same day of the week falls that is nearest to the last day of the calendar month.

Treas. Reg. § 1.441-2(c)(1) provides that, except as provided in paragraph (c)(3) of this section, for purposes of determining the effective date (e.g., of legislative, regulatory, or

administrative changes) or the applicability of any provision of the internal revenue laws that is expressed in terms of taxable years beginning, including, or ending with reference to the first day or last day of a specific calendar month, a 52-53 week taxable year is deemed to begin on the first day of the calendar month nearest to the first day of the 52-53 week taxable year, and is deemed to end or close on the last day of the calendar month nearest to the last day of the 52-53 week taxable year, as the case may be.

Treas. Reg. § 1.441-2(c)(1) further provides that examples of internal revenue provisions subject to the effective date rule include provisions relating to the time for filing returns and other documents, paying tax, or performing other acts, as well as the provisions under section 1561 relating to surtax exemptions of certain controlled corporations.

The issue to be determined in this case is whether section 441(f)(2)(A) applies to the taxpayer's 52-53 week taxable year ending December 30, 2017, so that the calendar year 2017 is treated as ending during such taxable year for purposes of section 199(b)(2)(A).

Section 441(f)(2)(A) applies to determine the applicability of any provision under Title 26 that is expressed in terms of a taxable year that begins, includes, or ends with reference to a specific date that is the first or last day of a month. If section 441(f)(2)(A) applies, a 52-53 week taxable year is treated as ending with the last day of the calendar month ending nearest to the last day of the 52-53 week taxable year.

Section 199(b)(2)(A) provides that the term "W-2 wages" means, with respect to any person for any taxable year of such person, the sum of the amounts described in paragraphs (3) and (8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year.

Section 441(d) provides that a calendar year, for purposes of subtitle A, means a period of 12 months ending on December 31.

The applicability of section 199(b)(2) is expressed in terms of a taxable year that includes a specific date that is the last day of a month. Specifically, section 199(b)(2) refers to amounts paid during a calendar year ending during a taxable year. That is to say, the applicability of section 199(b)(2) is based on whether the taxable year at issue includes the end of a calendar year, specifically December 31, which is also the last day of the month of December. Thus, the applicability of section 199(b)(2) is expressed in terms of a taxable year that includes a specific date that is the last day of a month (December 31). Accordingly, section 441(f)(2)(A) applies to determine the applicability of section 199(b)(2) to a 52-53 week taxable year.

Under section 441(f)(2)(A) and § 1.441-2(c)(1), a 52-53 week taxable year is deemed to begin on the first day of the calendar month beginning nearest to the first day of the 52-53 week taxable year and end on the last day of the calendar month ending nearest to the last day of the 52-53 week taxable year. In the case of a 52-53 week taxable year that ends on the last Saturday in December 2017, the last day of the taxable year is December 30, 2017. Under section 441(f)(2)(A) and § 1.441-2(c)(1), for purposes of section 199(b)(2) the deemed end of the taxable year is December 31, 2017, and the deemed beginning of the next taxable year is January 1, 2018. As a result, each taxable year for purposes of section 199(b)(2) will include one and only one December 31.

This treatment is consistent with § 1.441-2(c)(1), Example 4, which illustrates the application of the year end rules under section 1561. Section 1561 imposes limitations on multiple tax benefits in the case of certain controlled corporations. The application of the limitations described in section 1561 is determined on the basis of whether a corporation is a component member of a controlled group of corporations on a December 31. Example 4 describes a corporation created on January 1, 2001, that elects a 52-53 week taxable year ending on the Friday nearest the end of December. Thus, the corporation's first taxable year begins on Monday, January 1, 2001, and ends on Friday, December 28, 2001; its next taxable year begins on Saturday, December 29, 2001, and ends on Friday, January 3, 2003; and its next taxable year begins on Saturday, January 4, 2003, and ends on Friday, January 2, 2004. For purposes of applying section 1561, the corporation's first taxable year is deemed to end on December 31, 2001; its next taxable year is deemed to begin on January 1, 2002, and end on December 31, 2002; and its next taxable year is deemed to begin on January 1, 2003, and end on December 31, 2003. Accordingly, each taxable year is treated as including one and only one December 31.

Thus, under section 441(f)(2)(A) and for purposes of section 199(b)(2)(A), the 52-53 week taxable year of the Corporation that begins on January 1, 2017, and ends on December 30, 2017, is treated as ending on December 31, 2017. Therefore, calendar year 2017 is treated as ending during the Corporation's 52-53 week taxable year that begins on January 1, 2017 and ends on December 30, 2017.

A similar analysis applies to other taxable years. For example, under section 441(f)(2)(A) and for purposes of section 199(b)(2)(A), the 52-53 week taxable year of the Corporation that begins on December 27, 2015, and ends on December 31, 2016, is treated as beginning on January 1, 2016, and ending on December 31, 2016. Therefore, calendar year 2016 (and not calendar year 2015) is treated as ending during Corporation's 52-53 week taxable year that begins on December 27, 2015, and ends on December 31, 2016.

Therefore, we conclude as follows:

- (1) Corporation is required to use wages reported on Forms W-2, Wage and Tax Statement, for the calendar year ending December 31, 2014, for purposes of computing the W-2 wage limitation under section 199(b) for its taxable year beginning December 29, 2013, and ending December 27, 2014.
- (2) Corporation is required to use wages reported on Forms W-2, Wage and Tax Statement, for the calendar year ending December 31, 2015, for purposes of computing the W-2 wage limitation under section 199(b) for its taxable year beginning December 28, 2014, and ending December 26, 2015.
- (3) Corporation is required to use wages reported on Forms W-2, Wage and Tax Statement, for the calendar year ending December 31, 2016, for purposes of computing the W-2 wage limitation under section 199(b) for its taxable year beginning December 27, 2015, and ending December 31, 2016.
- (4) Corporation is required to use wages reported on Forms W-2, Wage and Tax Statement, for the calendar year ending December 31, 2017, for purposes of computing the W-2 wage limitation under section 199(b) for its taxable year beginning January 1, 2017, and ending December 30, 2017.
- (5) For any taxable year beginning after the 2017 taxable year (ending December 30, 2017), provided the Corporation maintains the same taxable year (i.e., 52-53 weeks ending on the last Saturday in December), Corporation is required to use wages reported on Forms W-2, Wage and Tax Statement, for the calendar year ending nearest to the last day of Corporation's taxable year for purposes of computing the W-2 wage limitation under section 199(b) for that taxable year.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This ruling only applies to a taxable year if the taxpayer maintains the same taxable year (52-53 week ending on the last Saturday of December) for that year. This ruling does not address the issue of whether any wages reported on the Forms W-2 used for purposes of computing the W-2 wage limitation for a taxable year qualify as W-2 wages for purposes of section 199(b). The determination of whether any wages reported on Forms W-2 for that year qualify as W-2 wages for purposes of section 199(b) is governed by the regulations under section 199.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Lynne Camillo  
Branch Chief, Employment Tax Branch 2 (Exempt  
Organizations/Employment Tax/Government  
Entities)  
(Tax Exempt & Government Entities)