



IRS Finalizes Tax Deduction Safe Harbor for Rental Property

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The IRS recently issued Revenue Procedure 2019-38, which finalized a safe harbor for rental property under Code Section 199A. This is a 20% tax deduction (subject to certain limits that are outside the scope of this article) on all rental income. This deduction is already available to triple net leases between commonly controlled entities.

To be eligible for the safe harbor, 250 hours of “rental services” must be performed for the rental real estate enterprise. The term “rental services” includes: (i) advertising to rent or lease the real estate; (ii) negotiating and executing leases; (iii) verifying information contained in prospective tenant applications; (iv) collection of rent; (v) daily operation, maintenance, and repair of the property; (vi) management of the real estate; (vii) purchase of materials; and (viii) supervision of employees and independent contractors. Importantly, these services may be performed by the owner of the enterprise, employees, or independent contractors.

This safe harbor is **not available** to triple net lease arrangements (other than those between commonly controlled entities). Accordingly, there is a tax planning opportunity available to modify your existing triple net lease agreement to a gross lease to qualify for the deduction. To learn more about whether this is a good fit for your particular business, contact Mike Zahrt at (616) 726-2223 or at mzahrt@fosterswift.com.

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