

The **Thursday** IMPOSSIBLE **Report**

March 8, 2018 | Issue #239

Re: The Don Quixote Report



The “fearless” Don Quixote on his faithful steed

AICPA Request for Guidance Shows 199A Concerns That You May Not Have Thought of by Brandon Ketron & Alan Gassman

Preview Chapter: From the Soon to be Released book, *Grow Your Medical Practice* by Alan Gassman, Pariksith Singh, MD, & David Finkel

**Look Before You Lease—Medical Practice Real Estate
Leasing Arrangements Under the Stark Law** by **Chris
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**New Florida Bar Ethical Pronouncements on Drafting
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Solicitation of Gifts for Relatives** by **Seaver Brown**

Humor! (Or Lack Thereof!)

We welcome questions, comments, suggestions, and compliments, whether true or not...

*To bear with unbearable Thursday Reports
To run where the Thursday Report dare not go
To write the unwritable Thursday Report
To dream the undreamable footnote*

Quote of the Week

"To dream ... the impossible dream ..."

– Don Quixote in *Man of LaMancha*

Some Background on Don Quixote (remember this name for Scrabble games):

The book, Don Quixote, was written in 1605 by Miguel de Cervantes, an author who was never interviewed on television. The novel depicts a 50 year old individual who was somewhat delusional, living in a fantasy world to imagine that he was royalty. (Just like many clients.) Fortunately, he had a talking horse named Juan Castaneda who helped him understand what people were thinking.

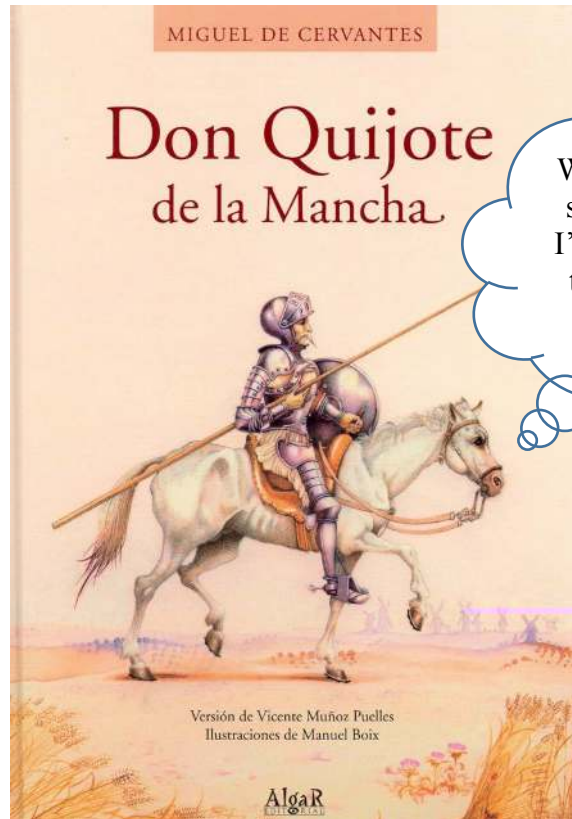
This horse was Juan of a kind.

Quixote died in 1776, just before his horse was inducted into the Spanish Main. (The Spanish Main was Central American and the Northern Coast of South America. It is noteworthy that most Lima Beans have never heard of Peru).. Click below to see Elvis, Frank Sinatra, or Jim Nabors sing The Impossible Dream. (some information gotten from Wikipedia)

Jim Nabors did it best (singing).

Jim Nabors was born on June 12, 1930 in Sylacauga, Alabama and played the role of Gomer Pyle in the situation comedy the Andy Griffith Show, and then Mayberry RFD, and then Gomer Pyle USMC.

He recorded 36 albums, and had never met Don Quixote.



Why are the horses so small in 1600's art? - I'm 3 times the size of this guy...and twice as smart!

Background on Don Quixote

Don Quixote is considered the most influential work of literature from the Spanish Golden Age and the entire Spanish literary canon. As a founding work of modern Western literature and one of the earliest canonical novels, it regularly appears high on lists of the greatest works of fiction ever published, such as the Bokklubben World Library collection that cites Don Quixote as the authors' choice for the "best literary work ever written."

The story follows the adventures of a noble (hidalgo) named Alonso Quixano who reads so many chivalric romances that he loses his sanity and decides to set out to revive chivalry, undo wrongs, and bring justice to the world, under the name Don Quixote de la Mancha. He recruits a simple farmer, Sancho Panza, as his squire, who often employs a unique, earthy wit in dealing with Don Quixote's rhetorical orations on antiquated knighthood. Don Quixote, in the first part of the book, does not see the world for what it is and prefers to imagine that he is living out a knightly story.

AICPA Request for Guidance Shows 199A Concerns That You May Not Have Thought of

by Brandon Ketron & Alan Gassman

The AICPA recently released a request to the Treasury for guidance under Section 199A, which can be found by clicking [here](#).

The AICPA has requested guidance in the following noteworthy areas:

1. The proposed aggregation method for the calculation of Qualified Business Income.

The AICPA has requested confirmation that the 199A 20% deduction can apply to one or more activities that occur under a single entity, and not be required to separate the activities into separate entities.

For example, an LLC that owns and operates a medical practice with active management and a building that is owned by a high income doctor would not be able to take the deduction on the income from health services, but may be able to take the deduction on the income attributable to having the building rented at arm's length, and running and providing management services without having to separate these operations into separate companies.

Even if the businesses are separated into separate entities, IRS personnel have informally indicated that regulations, that might be issued as soon as this summer, may apply to have the IRC Section 469 passive loss aggregation of activity rules combine entities consisting of a health and non-service business into one economic unit that would not be eligible for the deduction.

The AICPA request for guidance does not address this concern, and actually suggests that the 469 aggregation rules apply.

The AICPA is concerned that a business with multiple activities may not be able to satisfy the wage and qualified property test for all activities. The AICPA has proposed that entities be given the opportunity to group separate activities together as one trade or business (in a manner similar to the aggregation rules under 469) for purposes of satisfying the wage and qualified property test, and makes a request for further guidance in this area.

2. The definition of Section 199A Qualified Business Income.

The AICPA has requested guidance on the definition of a Specified Service Business, and is concerned by the lack of previous guidance under IRC Section 1202 defining the Specified Service Businesses, the income from which will not qualify for the deduction when high income taxpayers receive this income.

In addition the AICPA is concerned that the performance of a de minimis amount of one or more of these specified service businesses could taint the deduction for a otherwise qualified business, and has thus suggested that a 5% safe harbor apply whereby specified service income will be deemed non specified service income so long as at least 95% of the entity's gross receipts are recieved from a non specified activity.

The AICPA has also requested that the Treasury provide a formal definition of a trade or business and how much activity is required in order to qualify for the deduction. Further, the AICPA has suggested that rental real estate activity be automatically included in the definition of a trade or business.

3. The deductible amount of Qualified Business Income for a pass-through entity that has a net loss.

The AICPA has requested that the Treasury provide specific examples to illustrate how the taxpayer computes his or her deduction upon receipt of a net loss from a pass through entity and when a taxpayer has received a net loss from one pass-through entity and a net gain from another entity.

4. Whether wages paid by employee leasing companies can be included by the taxpayer for purposes of calculating the W-2 wage limitation.

The AICPA has requested guidance as to whether the taxpayer can include wages paid by a common paymaster, a PEO, or a employee leasing company.

5. The application of Section 199A to an owner of a fiscal year pass-through entity ending in 2018 that may have Qualified Business Income that needs to be reported on the 2017 IRS Forms.

6. The availability of a Section 199A deduction for Electing Small Business Trusts (ESBTs).

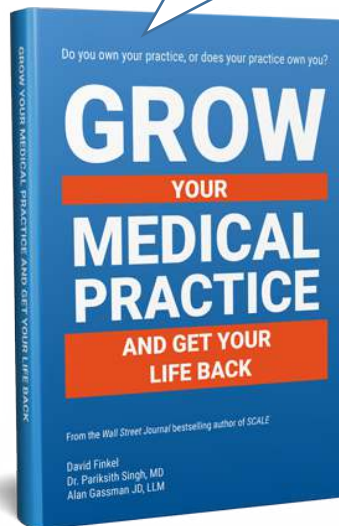
Section 641(c) list the only items of income, loss, deduction or credit that an ESBT can take into account when reporting its income. The Section 199A deduction is not included under Section 641(c). As a result, technically an ESBT cannot take a Section 199A deduction. Most commentators believe that this is a mistake and will be corrected in a technical correction bill due to the fact that the statute specifically states that the deduction is available for trusts.

Hat's off to the AICPA for contributing to the Section 199A tax literature and asking the IRS to make the right decisions in the administration of this complicated statute.

Preview of *Grow Your Medical Practice* – Chapter 9 – Accelerator Five: Protect Your Assets

**From the new book by Alan Gassman, Pariksith Singh, MD, &
David Finkel
Excerpt by Alan Gassman**

Click [HERE](#) to read
me now.



Creditor Protection Begins at the Office: Part 1

According to a 2010 AMA report, more than 61 percent of doctors older than fifty-five have been sued at least once. Let's face it: The odds are not in your favor. Here you are, working so hard, investing the time and energy to grow and mature your practice, and yet, it could all be shaken or even destroyed in a lawsuit. In this chapter, we'll lean heavily on Alan's thirty-three years of experience representing physicians and their medical practices. Dr. Singh and David like to refer to Alan as "the doctor's lawyer" because of his experience representing thousands of physicians in almost every conceivable situation. In this chapter you'll find his best input to help you protect yourself and your practice from lawsuits, creditors, and other potential threats.

Recognize Your Risks

The first step to protecting yourself is to concretely identify your top legal threats. Once you've recognized the sources of risk, you can then adequately protect yourself. Here are the top five legal risks you face as both a practicing physician and the owner of a medical practice:

Risk #1: Medical Malpractice for Acts and Omissions as a Practicing Physician

Malpractice can take many forms; among the most common is the failure to see a test and make a diagnosis, or the failure to notify a patient about an abnormal test result.

Risk #2: Medical Malpractice for the Acts and Omissions of Those Who Work for You

Remember, much of this liability falls to the practice entity and to you as the owner.

Risk #3: Medicare, Medicaid, and Insurance Carrier Suits and Infractions

These include suits and penalties related to billing and collections activities that are noncompliant with what are sometimes arcane and quite complex rules. Sadly, many of these suits are the result of employee whistle-blowers who were involved in the very violations they reported.

Risk #4: Liability for Car, Motorcycle, Boat, or Other Accidents

While it may seem as though this type of liability is not unique to doctors, in fact, people are more likely to sue when they learn that the operator of the other vehicle is a doctor; that is, they see a dollar sign on your head. You're also liable for the negligence of any driver operating a vehicle that contains your name on the title.

Risk #5: Ordinary Business Exposures

These exposures include the following: if someone slips and falls, if a patient or employee is mistreated or harassed by another employee, contract damage when a business dealing goes awry, liability from business or investment activities in your name or in the name of a company in which you serve as an officer or director, and liability for actions or inactions of a partner in a partnership that is not incorporated (all partners in a general partnership are jointly liable).

Many types of liabilities cannot be expunged through bankruptcy and will stay with you forever. These include some kinds of Medicare payback obligations and penalties, certain taxes, penalties associated with environmental waste, and malpractice in which the doctor was found reckless or willful in his or her conduct. Thankfully, just by identifying the risks that threaten you and your practice, you've taken an important first step toward safeguarding your livelihood. The next step is to build the proper legal protections around you and your practice.

Powerful Protections to Put into Place Before You Get Sued

Now that you understand the risks, let's talk about what you can do to protect yourself, your practice, and your family. Lawsuits are normally filed against both the doctor and the practice, and sometimes other affiliated entities as well. Many doctors erroneously assume that a lawsuit will settle within the limits of their malpractice insurance. This is incorrect. In fact, few

plaintiff lawyers are willing to settle for policy limits unless both the doctor and the practice entity are what we call “judgment proof.” What does it take to be judgment proof? You’ll find that below, along with the rest of our list of key strategies for protecting yourself. (And for even more information on how to be judgment proof, we strongly encourage you to watch Alan’s powerful video, “12 Asset Protection Strategies Every Physician Must Know to Reduce Their Personal and Practice Exposure.” You can watch this video for free at www.GrowMyMedicalPractice.com. See Appendix A for full details.)

Stay tuned for Part 2!

Coming in the next Thursday Report, which may not be next Thursday.

Depending on whether we pay our rent and the payroll checks clear.



Rahul N. Mehra, M.D. is the 2018 recipient of the M.A. Bernstein Behavioral Health Award

Each year, the Gulf Coast Jewish Family & Community Services (Gulf Coast JFCS) honors individual champions for advancements in Behavioral Health Services in the State of Florida.

Previous recipients have included Representative Kathleen Peters and Bob Dillinger, Public Defender – Pinellas and Pasco Counties.

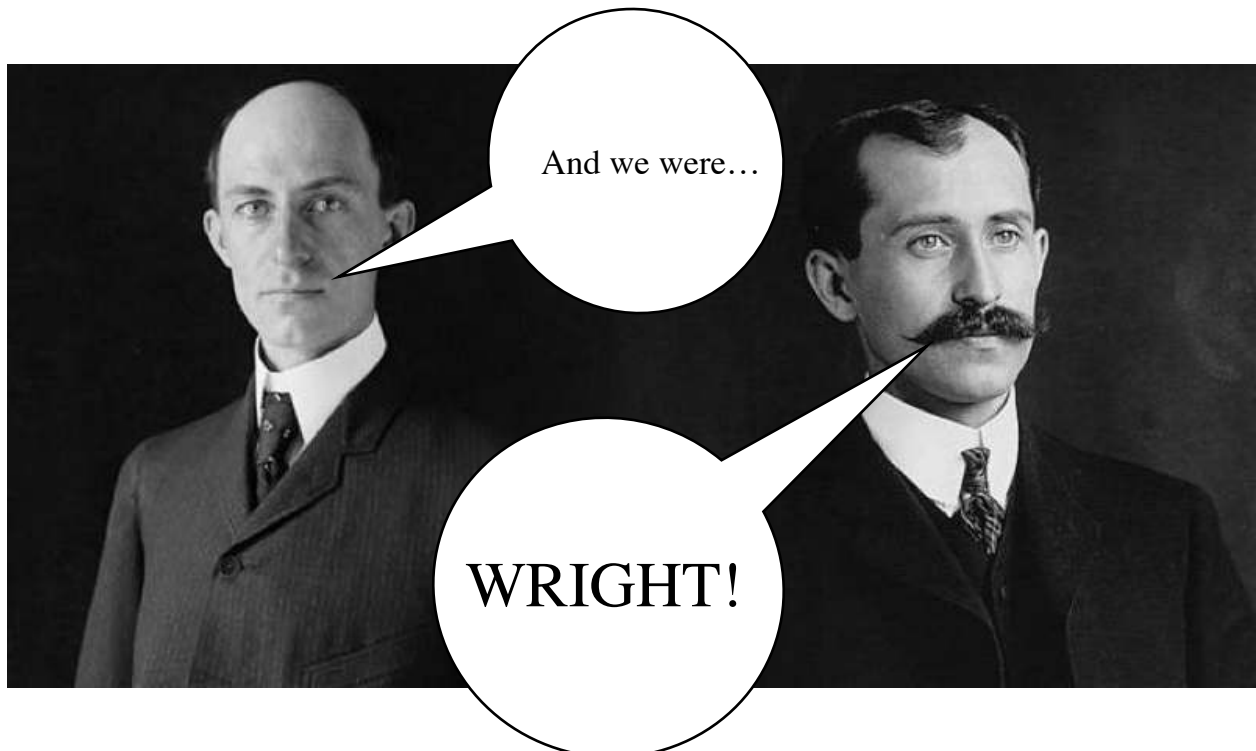
This year's honoree, Dr. Rahul N. Mehra, is dedicated to destigmatizing, raising awareness, and improving access for children and adults who are dealing with stressful life situations.

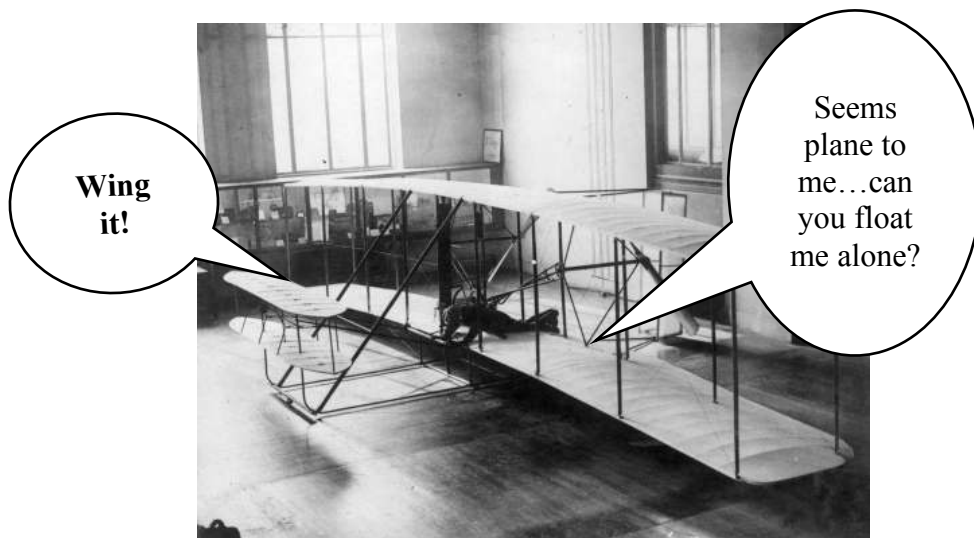
At the helm of MehraVista Health since 2007, Dr. Mehra is a Board Certified Child, Adolescent and Adult Psychiatrist by training. As a nationally recognized performance physician over the last thirty years, Dr. Mehra confidentially advises Major League Baseball, political leaders, physicians, C-Suite executives, judges and lawyers on a variety of matters, including their reactions to the Thursday Report.

An article by Dr. Mahra can be viewed [HERE](#).

"It is possible to fly without motors, but not without knowledge and skill."

- *The Wright Brothers*





The first successful aircraft manufactured by the Wright Brothers, on display at the Smithsonian Institution, Washington D.C., circa 1920. *Hulton Archive/Getty Images*

Look Before You Lease—Medical Practice Real Estate Leasing Arrangements Under the Stark Law by Chris Denicolo

The Federal Stark Law generally prohibits medical practices from making referrals of patients to other organizations or physicians with respect to Designated Health Services that are payable by Medicare, if the medical practice or physicians practicing thereunder have a financial relationship with the party to whom the patient is referred.

Essentially, no referrals for Designated Health Services may be made by the medical practice or an associated physician if a financial relationship exists between the practice or physician, on one hand, and the entity that renders the Designated Health Services, on the other hand, unless the relationship meets all applicable requirements of one or more specific exceptions.

Fortunately, the Stark Law recognizes significant exceptions with respect to the lease of office space and timeshare arrangements whereby different practices or physicians are entitled to use a portion of the property at different times. These exceptions can be very broad and can allow medical practices flexibility in structuring lease arrangements in compliance with the Stark Law.

One exception is the rental office exception that is found under 42 CFR 411.357(a), which is widely used, and requires that any such lease arrangement satisfy the following:

1. The lease arrangement is set forth in writing, is signed by the parties, and specifies the premises it covers.

2. The duration of the lease agreement is at least one (1) year. If the lease arrangement is terminated with or without cause, the parties may not enter into a new lease arrangement for the same space during the first year of the original lease arrangement.

3. The space that is leased does not exceed what is reasonable and necessary for the legitimate business purposes of the lease arrangement, and such space is used exclusively by the lessee when the lessee is conducting its business on the premises (i.e., the space cannot be shared without any other parties, including the lessor or any person or entity related to the lessor). However, the lessee can make payments for the use of common areas (i.e., common area maintenance charges) if the payments do not exceed the lessee's pro rata share of expenses for the space, as determined by the percentage of the property on which the lessee is entitled to exclusive use relative to the total amount of space (other than common areas) that is occupied by other parties.

4. The rental payable over the lease arrangement are set forth in advance and are consistent with fair market value.

5. The rent payable under the arrangement is not determined in a manner that takes into account the volume or value of any referrals made between the parties.

6. The lease arrangement must be commercially reasonable, even if no referrals are made between the lessor and lessee.

It is very important that the lease be based upon commercially reasonable terms, with the rent amount being indicative of fair market value for similar arrangements on an arm's-length basis. The penalties for non-compliance with this exception are draconian, so appropriate diligence must be followed in assuring that there is compliance with the exception.

Another exception to the Stark Law is the timeshare exception (which became effective on January 1, 2016 and is found under 42 CFR 411.357(y)) whereby several medical practices can enter into an agreement to allow each of them to use certain space at particular times during a week. This exception essentially allows each of the medical practices to have a license to use the property at various times and does not amount to a possessory interest that is found under conventional lease arrangements.

The requirements for this exception are as follows:

1. The arrangement must be between a physician or the physician's medical practice, and either (a) a hospital; or (b) an unrelated physician organization.

It is unclear whether this requirement would be problematic if physicians are owners of the landowner entity and are also owners of a medical practice that will lease the office space on a timeshare basis.

2. The lease must be based upon a written agreement that is signed by the parties, which describes all of the space to be leased. The lease also must specify any equipment, personnel, items, supplies and other services covered by the arrangement.

Any equipment covered by the arrangement must be located in the same building and cannot be used to furnish designated health services, except as incidental to evaluation and management services. This means that such equipment cannot include advanced imaging equipment, radiation therapy equipment, or pathology lab equipment, except for certain exceptions.

3. Any such timeshare arrangement must be set up predominantly for the provision of evaluation and management services to patients.

4. The arrangement cannot provide a possessory leasehold interest in the space to any of the tenants, as the timeshare arrangement must merely grant a non-exclusive privilege to act on the property and not confer any possessory rights on the medical practices.

5. The aggregate rent must be set in advance over the term of the lease and may not be calculated in a manner that takes into account the volume or value of referrals.

Specifically, the rental amount cannot be determined: (a) in a manner that takes into account the volume or value of referrals or other business generated between the parties; (b) by a formula based upon the percentage of revenue raised, earned, billed, collected, or otherwise attributable to services performed in the office space; or (c) per unit of service rental charges that are not time-based.

6. The rent also must be based upon fair market value, which we recommend be determined by a real estate leasing broker or appraiser who normally values these types of leases.

7. The lease must be for a commercially reasonable business purpose, even if there are no referrals between the parties.

Again, the penalties for not complying with these requirements are harsh, and it is very important to assure that any timeshare arrangement meets the above requirements.

Further, the timeshare arrangement should specify that it is a license and not a possessory interest, should mandate removal of each tenant's items when not using the space, and should provide for non-exclusivity of space and language prohibiting preferential treatment between the tenants.

Medical practices that utilize the timeshare exception will want to assure that each practice has its signage and other personal items removed from the office space when it is being used by

another practice. Further, each practice might want to have their respective patients sign a specific notice which expressly discloses that practices utilizing the space are not related and that the patient of one practice is not a patient of any other practice that is entitled to use the space under the arrangement.

The exterior sign should also not be misleading in that it should reference all of the that are entitled to use the space or none of them, but not only a few of them.

While signage is not, by itself, a fact that would cause liability issues or Stark Law issues, we recommend that the sign does not list only one practice in order to avoid possible confusion by patients as to the affiliation of the various practices. Another option would be to remove the sign of the applicable practice while the other practice is seeing patients at the location, which could be effective but impractical.

Spotlight On: OPOSSUMS

1. Newborn opossums are as tiny as honeybees.
2. Opossums range in size from that of a small mouse to the size of a large housecat. Most opossums have long snouts full jaws, and an impressive 50 teeth.
3. In tests to evaluate their ability to remember where food is, opossums performed better than not only rats and rabbits, but also dogs and cats!



That is
IM-POSSUM-ABLE!

Can you pass 199A 101? Take Our Test.
By Scotty Schenck

Scotty Schenck is a law clerk working for Gassman, Crotty & Denicolo, P.A., where he researches various legal issues. Scotty has worked with the firm on its articles regarding 199A extensively and the impact it will have on trades or businesses.

For guidance under the 199(A) deduction which provides a 20% deduction for “Flow Through” Entities.

The 199A 20% deduction for flow-through entities makes understanding the section of the IRC paramount. Below is a list of questions about 199A. Take your time, it’s not going anywhere (or is it?).

Questions:

1) Which of the following is an entity that CANNOT under any circumstances get a 199A deduction?

- A) C corporation
- B) S corporation
- C) a partnership
- D) sole proprietorship

2) When the profits (after wages are distributed) of a trade or business go directly to the owners, and are treated as the income of the owners, what are those profits called?

- A) dividends
- B) flow-through income
- C) flimsy income
- D) W-2 wages

3) Assume you are a partner at a law firm that specializes in ballpoint pen accident litigation; You are married and file jointly, with a taxable income of \$157,000, \$100,00 of which comes from your law firm. How big is your 199A deduction?

- A) \$100,000
- B) \$20,000
- C) \$50,000
- D) \$13,333 and some change

4) Which of the following is a Specified Service Trade or Business under 199A?

- A) a widget manufacturing business
- B) a retailer that exclusively distributes Mickey Mouse glass vases
- C) a law firm organized as a partnership
- D) a local grocery store

5) A person’s deduction, when they are not in a Specified Service Trade or Business under 199A, making over \$207,500 who is a single filer or \$415,000 filing jointly is the lesser of (1) 20% of the taxpayer’s qualified flow-through income and (2) the greater of _____.

A) (a) 45% of W-2 wages paid by the flow-through entity and (b) 25% of qualified depreciable property plus 25% of W-2 wages of the flow-through entity.

B) (a) 33% of W-2 wages paid by the company or (b) 50% of the taxpayer's taxable income

C) (a) 50% of W-2 wages paid by the flow-through entity and (b) 2.5% of qualified depreciable property plus 25% of W-2 wages of the flow-through entity.

D) (a) 25% of W-2 wages and (b) the number of people understanding the Tax Cuts and Jobs Act.

6) If a taxpayer wants to separate out your business into separate entities, what type of transactions would the taxpayer want the entities to conduct with regard to each other to maximize the chance that the IRS will view them as separate and distinct business entities?

A) similar transactions

B) knee-length transactions

C) 199A transactions

D) arms-length transaction

7) A flow-through trade or business located where could qualify for a 199A deduction?

A) Puerto Rico

B) North Korea

C) Guam

D) Canada

E) The Ukraine

8) Y owns part of a flow-through entity, and because Y is a single filer and earns more than \$157,500 a year, Y is worried that she may not qualify for 199A. Assume that Y does not make more than \$207,500 a year. Which of the following is true about the percentage Y can claim for her wage/wage and qualified property tests to determine her deduction?

A) Y cannot claim any wages from the flow-through entity for her wage test

B) Y can claim 100% of the wages for her wage test

C) Y can only claim her pro rata share of the W-2 wages

D) It depends on whether the flow-through entity is a Specified Service Trade or

Business

9) James Bond owns a medical practice (a Specified Service Trade or Business under 199A and 1202) and Mr. Bond's company pays \$200,000 in wages. Mr. Bond's flow-through income for the year from the practice is \$500,000. What size 199A deduction can he claim?

A) \$125,000

B) \$0

C) \$100,000

D) \$25,000

10) When, if ever, is the 199A deduction going to sunset?

A) 2020

B) When we have colonies on Mars

C) December 31, 2025

D) Never!

11) When will we get a Technical Corrections bill from Congress on the Tax Cuts and Jobs Act?

- A) Who knows.
- B) 2039
- C) 2024
- D) Never!

Answers:

- 1) A; Only flow-through entities are allowed to receive a 199A deduction, C corporations can never receive a 199A deduction.
- 2) B; If it flows-through a flow-through entity, it must be flow-through income!
- 3) B; if a taxpayer make less than 157,500 and owns part/all of a flow-through entity, regardless of the services that entity provide or the wages it pays, it can claim the 199A deduction.
- 4) C; As much as you may hate Mickey Mouse, retailers are not considered specified service businesses. specified services (which come from Section 1202 of the IRC) are mostly high-skilled professions like athletics, law, actuarial science, and health.
- 5) C
- 6) D; we believe that arms-length transactions will help the IRS see your business entities as distinct, though whether they will recognize the restructuring of certain businesses post-Act is yet to be seen.
- 7) A
- 8) C; Those making over \$415,000, filing jointly, in a Specified Service cannot claim a 199A deduction. The limit for single filers is \$207,500. Sorry, Mr. Bond.
- 9) B
- 10) C; Unfortunately, every party has to stop sometime, and 199A's door closes when 2026 starts.
- 11) We are split between A and D. We may be retired by the time it comes out.

Richard Connolly's World

Insurance advisor Richard Connolly of Ward & Connolly in Columbus, Ohio often shares pertinent articles found in well-known publications such as *The Wall Street Journal*, *Barron's*, and *The New York Times*. Each issue, we feature some of Richard's recommendations with links to the articles.

The attached article from Forbes reports:

Just when you thought you'd read about all of the tax scams: The Internal Revenue Service (IRS) is warning taxpayers about a new - and growing - scam involving erroneous tax refunds being deposited into real taxpayer bank accounts. Then, the crooks use various tactics to con taxpayers into turning over the funds. It's a new twist on an old scam.

To View the Full Article Click [Here](#)

MISSION: IMPOSSIBLE



MISSION IMPOSSIBLE:
Creating the Thursday Report
Coming to a law firm
near you...

New Florida Bar Ethical Pronouncements on Drafting Documents that Appoint a Lawyer as a Fiduciary and Solicitation of Gifts for Relatives

by Seaver Brown

The following Bar ethical rule change must be considered by estate planning lawyers.

It is well known that lawyers must follow the Disciplinary Rules of the Florida Bar, and that Ethical Considerations exist as useful guidance and commentary on how to follow the Disciplinary Rules.

It is also known that lawyers are often criticized for being named in legal documents as personal representatives and trustees, and then charging a percentage of the assets and consequent amounts that may far exceed what would typically be paid for the time spent by a responsible individual needing commensurate services and responsibilities to be fulfilled.

Last year, the Florida Bar proposed the following amendments to Rule 4-1.8(c):

RULE 4-1.8 CONFLICT OF INTEREST; PROHIBITED AND OTHER TRANSACTIONS

(c) A lawyer shall not is prohibited from soliciting any substantial gift from a client, including a testamentary gift, or prepare preparing on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this subdivision, related persons include a spouse, child, grandchild, parent, grandparent, or other relative with whom the lawyer or the client maintains a close, familial relationship.

The Supreme Court of Florida approved the above amendments and issued new language as part of the updated Ethical Considerations to Rule 4-1.8(c), which became effective February 1, 2018 (yes, 34 days ago):

Gifts to lawyers

A lawyer may accept a gift from a client, if the transaction meets general standards of fairness and if the lawyer does not prepare the instrument bestowing the gift. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, subdivision (c) does not prohibit the lawyer from accepting it, although the gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in subdivision (c). If effectuation of a gift requires preparing a legal instrument such as a will or conveyance, however, the client should have the detached advice that another lawyer can provide and the lawyer should advise the client

to seek advice of independent counsel. Subdivision (c) recognizes an exception where the client is related by blood or marriage to the donee.

The updated Ethical Considerations to Rule 4-1.8(c) also provide commentary with respect to lawyers who serve as the fiduciary of an estate planning documents they draft, which is copied below:

This rule does not prohibit a lawyer or a partner or associate of the lawyer from serving as personal representative of the client's estate or in another potentially lucrative fiduciary position in connection with a client's estate planning. A lawyer may prepare a document that appoints the lawyer or a person related to the lawyer to a fiduciary office if the client is properly informed, the appointment does not violate rule 4-1.7, the appointment is not the product of undue influence or improper solicitation by the lawyer, and the client gives informed consent, confirmed in writing. In obtaining the client's informed consent to the conflict, the lawyer should [1] advise the client in writing concerning who is eligible to serve as a fiduciary, [2] that a person who serves as a fiduciary is entitled to compensation, and [3] that the lawyer may be eligible to receive compensation for serving as a fiduciary in addition to any attorney's fees that the lawyer or the lawyer's firm may earn for serving as a lawyer for the fiduciary.

Lawyers and firms who have routinely named themselves as trustees or personal representatives will therefore be well advised to take care to follow these rules. There will doubtlessly be probate court challenges to compensation requested by lawyers named in documents signed after February 1, 2018 who are acting as fiduciaries when the above new Ethical Considerations are not followed.

Joseph Corsmeier, who is a former Bar lawyer who specializes in the representation of lawyers having disciplinary issues had the following to say about this:

“Bottom line: This Bar Rule amendment clarifies the rule and a lawyer will now violate this rule if he or she solicits any gift from a client or prepares an instrument with a gift, regardless of the size of the gift.

Be careful out there.”

The Thursday Report will continue to follow this issue, and welcomes questions, comments and suggestions with respect to what the best practices should be for lawyers who want to be able to continue to serve clients who have become incapacitated or deceased.

Tomorrow's Ethics Webinar with Joseph Corsmeier and Alan Gassman will discuss these topics and more. Please [click here](#) for more information.

**Join us tomorrow for Joseph Corsmeier's discussion on
*Social Media Ethics for Lawyers***

Humor! (Or lack thereof!)



Upcoming Seminars and Webinars

Calendar of Events



Newly announced events are shown in **RED**

FREE!

Join us

FOR A SPECIAL LEGAL ETHICS WEBINAR
PRESENTATION

Social Media: Lawyer Ethics Issues and Conflicts

Friday, March 9, 2018

12:00 PM & 5:30 PM

Join Joe and Alan as they discuss the dos and don'ts to maintain ethics on social media. Specific content to be addressed will include:

- ✓ Social-networking sites (Facebook, LinkedIn, AVVO, Twitter, etc.)
- ✓ Lawyer blogs (WordPress, LexBlog, etc.)
- ✓ Photo sharing sites (Instagram, SnapChat, etc.)
- ✓ Video-sharing sites (YouTube, etc.)



Joseph Corsmeier

For more information, please contact Alan at
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AGassman@gassmanpa.com



Alan Gassman

To Register for the 12:00 session, please click [HERE](#)
To Register for the 5:30 session, please click [HERE](#)

1.0 Hour continuing education credit will be offered for this presentation

NOT SO FREE!



A Leimberg Information Services Webinar
Presentation

OLD TRUSTS, NEW TRICKS. NEW TRUST, ESTATE AND TAX PLANNING STRATEGIES AFTER TAX REFORM

The new tax laws change not only the playing field and strategies that will apply to estate and trust clients who are not super wealthy, but also several key trust planning rules and the tax laws, metrics planning wisdom that will apply to Electing Small Business Trusts, Complex Trusts, Charitable Lead Annuity Trusts, Homestead Trust Planning and a host of other considerations beyond what the next tax law says.

Join Marty and Alan for this interesting and useful discussion of what to do with present structures that may no longer be needed, and how to adapt existing arrangements and client situations to new opportunities and traps for the unwary that must be considered.

This presentation will assume that the viewer is generally familiar with the new tax law, and wishes to make planning opportunities and appropriate adjustments available to colleagues and clients. Over 20 useful and client friendly charts and key clauses will be included.

To Register, please click [HERE](#)



Martin Shenkman



Elvis has not left the building



Alan Gassman

Thursday, March 22nd, 2018, 3:00 P.M. —4:00 P.M. EST

A Leimberg Information Services Webinar Presentation

There are no professional advancement credits (CPE, CLE, etc.) offered for viewing this webinar.

Elvis Presdog

Q: What is a dog's favorite song?

A: Ain't nuttin but a hound dog!



I wish to report
Marty Shenkman
for elder dog
abuse. He gave
me Kibbles, but
no Bits and
turned me into a
poodle!

What Advisors Need To Know To Help Florida-Based Clients Maximize Their Planning Opportunities!

Estate planning advisors, you do not want to miss this webinar. We will be sharing planning techniques and opportunities for your Florida-based clients, along with new practical ideas, and very useful client explanation charts, sample clauses, and checklists. We will also update you on the current status of Florida's changing order protection for limited partnerships and LLCs.

Important topics to be covered during this webinar include:

Business and tax law anomalies and planning opportunities.
Creditor protection considerations, and Florida's statutory creditor exemptions.
Unique aspects of the Florida Trust and Probate Codes.
Florida medical practice rules and regulations.
Documentary stamp taxes, sales taxes, rent taxes, property taxes and how to avoid them.
Traps and tricks associated with Florida's Homestead law, and Elective Share.
The new Florida Power of Attorney Act.

To register, please click [**HERE**](#)



Alan Gassman



Chris Denicolo

Friday, March 30th, 2018, 3:00 P.M.—4:00 P.M. EST

A Leimberg Information Services Webinar Presentation

There are no professional advancement credits (CPE, CLE, etc.) offered for viewing this webinar.

EVENT	DATE/TIME	LOCATION	DESCRIPTION	REGISTRATION	FLYER
Ethics Webinar with Joe Corsmeier	Friday, March 9, 2018, 12:00 PM	Gotowebinar.com	Recent Ethical Decisions That Impact Florida Lawyers	Contact: Agassman@gassmanpa.com	Click Here
Ethics Webinar with Joe Corsmeier	Friday, March 20, 2018, 12:00 PM	Gotowebinar.com	Recent Ethical Decisions That Impact Florida Lawyers	Contact: Agassman@gassmanpa.com	Click Here
Special Lunch Presentation at Stetson Law School	Friday, March 20, 2018, 12:00 PM – 12:50 PM	Stetson Law School-1401 61 st St S, Gulfport, FL 33707- Classroom G	The Business of Leal and Personal Relationships: The Good, The Bad and The Ugly	Contact: Agassman@gassmanpa.com	Click Here
Leimberg Services Webinar with Marty Shenkman	Thursday, March 22, 3:00 PM – 4:00 PM	Gotowebinar.com	OLD TRUSTS, NEW TRICKS - NEW TRUST, ESTATE AND TAX PLANNING STRATEGIES AFTER TAX REFORM	Click Here	Click Here
Leimberg Services Webinar with Chris Denicolo	Friday, March 30, 3:00 PM – 4:00 PM	Gotowebinar.com	What Advisors Needs To Know To Help Their Florida-Based Clients Maximize Their Planning Opportunities!	Click Here	Click Here
Maui Mastermind Business Law Webinar	Wednesday, April 11, 2018, 1:00PM-2:00PM	Gotowebinar.com	Understanding Bankruptcy Insolvency and Corporate Predator Planning	Contact: Agassman@gassmanpa.com	
Physician Tax and Creditor Protection Talk	Wednesday, April 18, 2018, 6:00PM-7:15PM	Holiday Inn Express - 2580 Gulf to Bay Blvd, Clearwater, FL 33765	Alan will discuss tax planning and creditor protection for physicians	Contact: Agassman@gassmanpa.com	
Physician Tax and Creditor	Wednesday, April 25, 2018,	Holiday Inn Express - 2171 54th Avenue N,	Alan will discuss tax planning and creditor	Contact: Agassman@gassmanpa.com	

Protection Talk	6:00PM-7:15PM	St. Petersburg, FL 33714	protection for physicians		
Ave Maria Estate Planning Conference- With Jonathan Gopman	Friday, April 27, 2018	Ritz Carlton Beach Resort- Naples, FL	“Asset Protection for the Everyday Estate Planning Lawyer: a nuts to bolts review of asset protection techniques from simple to complex”- presented by Alan and Jonathan Gopman.	Contact: Agassman@gassmanpa.com	Click Here
Physician Tax and Creditor Protection Talk	Wednesday, May 2, 2018, 6:00PM-7:15PM	Hampton Inn Suites - Downtown St. Petersburg - 80 Beach Dr NE, St. Petersburg, FL 33701	Alan will discuss tax planning and creditor protection for physicians	Contact: Agassman@gassmanpa.com	
Florida Bar Annual Wealth Protection Conference	Friday, May 4, 2018	Tampa Airport Marriott	Creditor Protection Planning for Business and Investment Entities and Their Owners - Including 7 Strategies you Didn't Know About	Contact: Agassman@gassmanpa.com	
Maui Mastermind Business Law Webinar	Wednesday, May 9, 1:00PM-2:00PM	Gotowebinar.com	What you Need to Know About Personal and Commercial Liability and Causal Insurances. *Guest speaker with Mr. Gassman will be Holly Kerr	Contact: Agassman@gassmanpa.com	
Private CPA Firms 199A talk	Friday, May 11, 2018	Center Club, 123 S Westshore Blvd, 8th Floor, Tampa, FL 33609	“199A with Filet”	Contact: Agassman@gassmanpa.com	
2018 MER Continuing Education Program Talks For Physicians	May 17-18, 2018	Nassau, Bahamas - Atlantis Paradise Island Resort	1. Lawsuits 101 2. Ten Biggest Mistakes That Physicians Make in Their Investment and Business Planning 3. 50 Ways to Leave Your Overhead & Increase	Contact: Agassman@gassmanpa.com	

			Personal Productivity.		
Maui Mastermind Business Law Webinar	Thursday, June 7, 1:00PM-2:00PM	Gotowebinar.com	TOPIC: Employee Practices, Hiring, Firing and Everything in Between *Guest speaker with Mr. Gassman will be Colleen M. Flynn, Esq.	Contact: Agassman@gassmanpa.com	
Maui Mastermind Conference	June 15, 2018	1001 N Westshore Blvd, Tampa, FL 33607	Wealth 101 for Business Owners	Contact: Agassman@gassmanpa.com	
MER Primary Care Conference	Thursday, July 5-7, 2018	Yellowstone, Wyoming	Alan will be speaking at the Medical Education Resources (MER) event	Contact: Agassman@gassmanpa.com	
Maui Mastermind Business Law Webinar	Wednesday, July 11, 1:00PM-2:00PM	Gotowebinar.com	Corporate and LLC Structuring - Business, Creditor, Tax and Family Planning Considerations	Contact: Agassman@gassmanpa.com	
Professional Acceleration Workshop	Friday, September 7, 2018. 11AM-5PM	Stetson Law School— Gulfport Campus 1401 61st Street South St. Petersburg, FL 33707	Reach Your Personal Goals, Increase Productivity and Accelerate Your Career.	Contact: Agassman@gassmanpa.com	Click Here
Florida Osteopathic Medical Association Conference	September 13-16, 2018	2900 Bayport Drive Tampa, Florida 33607	Mid-Year Seminar	Contact: Agassman@gassmanpa.com	
Notre Dame Tax Institute	October 11-12, 2018	South Bend Indiana	Planning Under Section 199A and Associated Tax and Practical Considerations	Contact: Agassman@gassmanpa.com	
MER Primary Care Conference	November 8-11, 2018	JW Marriott Los Cabos Beach Resort & Spa	1. Lawsuits 101 2. Ten Biggest Mistakes That Physicians Make in Their Investment and Business Planning 3. Essential Creditor Protection & Retirement	Contact: Agassman@gassmanpa.com	

			Planning Considerations. 4. 50 Ways to Leave Your Overhead & Increase Personal Productivity.		
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