Internal Revenue Code Section 199(c)(4)

Income attributable to domestic production activities

(a) Allowance of deduction.

There shall be allowed as a deduction an amount equal to 9 percent of the lesser of-

(1) the qualified production activities income of the taxpayer for the taxable year, or

(2) taxable income (determined without regard to this section) for the taxable year.

(b) Deduction limited to wages paid.

(1) In general.

The amount of the deduction allowable under subsection (a) for any taxable year shall not exceed 50 percent of the W-2 wages of the taxpayer for the taxable year.

(2) W-2 wages.

For purposes of this section -

(A) In general. 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.

(B) Limitation to wages attributable to domestic production. Such term shall not include any amount which is not properly allocable to domestic production gross receipts for purposes of subsection (c)(1) .

(C) Return requirement. Such term shall not include any amount which is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return.

(D) Special rule for qualified film. In the case of a qualified film, such term shall include compensation for services performed in the United States by actors, production personnel, directors, and producers.

(3) Acquisitions, dispositions, and short taxable years.

The Secretary shall provide for the application of this subsection in cases of a short taxable year or where the taxpayer acquires, or disposes of, the major portion of a trade or business or the major portion of a separate unit of a trade or business during the taxable year.

(c) Qualified production activities income.

For purposes of this section -

(1) In general.
The term "qualified production activities income" for any taxable year means an amount equal to the excess (if any) of-

(A) the taxpayer's domestic production gross receipts for such taxable year, over

(B) the sum of-

(i) the cost of goods sold that are allocable to such receipts, and

(ii) other expenses, losses, or deductions (other than the deduction allowed under this section), which are properly allocable to such receipts.

(2) Allocation method.
The Secretary shall prescribe rules for the proper allocation of items described in paragraph (1) for purposes of determining qualified production activities income. Such rules shall provide for the proper allocation of items whether or not such items are directly allocable to domestic production gross receipts.

(3) Special rules for determining costs.

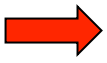
(A) In general. For purposes of determining costs under clause (i) of paragraph (1)(B), any item or service brought into the United States shall be treated as acquired by purchase, and its cost shall be treated as not less than its value immediately after it entered the United States. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to domestic production gross receipts.

(B) Exports for further manufacture. In the case of any property described in subparagraph (A) that had been exported by the taxpayer for further manufacture, the increase in cost or adjusted basis under subparagraph (A) shall not exceed the difference between the value of the property when exported and the value of the property when brought back into the United States after the further manufacture.

(C) Transportation costs of independent refiners.

(i) In general. In the case of any taxpayer who is in the trade or business of refining crude oil and who is not a major integrated oil company (as defined in section 167(h)(5)(B) , determined without regard to clause (iii) thereof) for the taxable year, in computing oil related qualified production activities income under subsection (d)(9)(B) , the amount allocated to domestic production gross receipts under paragraph (1)(B) for costs related to the transportation of oil shall be 25 percent of the amount properly allocable under such paragraph (determined without regard to this subparagraph).

(ii) Termination. Clause (i) shall not apply to any taxable year beginning after December 31, 2021.



(4) Domestic production gross receipts.

(A) In general. The term "domestic production gross receipts" means the gross receipts of the taxpayer which are derived from-

(i) any lease, rental, license, sale, exchange, or other disposition of-

(I) qualifying production property which was manufactured, produced, grown, or extracted by the taxpayer in whole or in significant part within the United States,

(II) any qualified film produced by the taxpayer, or

(III) electricity, natural gas, or potable water produced by the taxpayer in the United States,

(ii) in the case of a taxpayer engaged in the active conduct of a construction trade or business, construction of real property performed in the United States by the taxpayer in the ordinary course of such trade or business, or

(iii) in the case of a taxpayer engaged in the active conduct of an engineering or architectural services trade or business, engineering or architectural services performed in the United States by the taxpayer in the ordinary course of such trade or business with respect to the construction of real property in the United States.

(B) Exceptions. Such term shall not include gross receipts of the taxpayer which are derived from-

(i) the sale of food and beverages prepared by the taxpayer at a retail establishment,

(ii) the transmission or distribution of electricity, natural gas, or potable water, or

(iii) the lease, rental, license, sale, exchange, or other disposition of land.

(C) Special rule for certain government contracts. Gross receipts derived from the manufacture or production of any property described in subparagraph (A)(i)(I) shall be treated as meeting the requirements of subparagraph (A)(i) if-

(i) such property is manufactured or produced by the taxpayer pursuant to a contract with the Federal Government, and

(ii) the Federal Acquisition Regulation requires that title or risk of loss with respect to such property be transferred to the Federal Government before the manufacture or production of such property is complete.

(D) Partnerships owned by expanded affiliated groups. For purposes of this paragraph , if all of the interests in the capital and profits of a partnership are owned by members of a single expanded affiliated group at all times during the taxable year of such partnership, the partnership and all members of such group shall be treated as a single taxpayer during such period.

(5) Qualifying production property.

The term "qualifying production property" means-

(A) tangible personal property,

(B) any computer software, and

(C) any property described in section 168(f)(4) .

(6) Qualified film.
The term "qualified film" means any property described in section 168(f)(3) if not less than 50 percent of the total compensation relating to the production of such property is compensation for services performed in the United States by actors, production personnel, directors, and producers. Such term does not include property with respect to which records are required to be maintained under section 2257 of title 18, United States Code. A qualified film shall include any copyrights, trademarks, or other intangibles with respect to such film. The methods and means of distributing a qualified film shall not affect the availability of the deduction under this section.

(7) Related persons.

(A) In general. The term "domestic production gross receipts" shall not include any gross receipts of the taxpayer derived from property leased, licensed, or rented by the taxpayer for use by any related person.

(B) Related person. For purposes of subparagraph (A), a person shall be treated as related to another person if such persons are treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414, except that determinations under subsections (a) and (b) of section 52 shall be made without regard to section 1563(b).

(d) Definitions and special rules.

(1) Application of section to pass-thru entities.

(A) Partnerships and S corporations. In the case of a partnership or S corporation-

(i) this section shall be applied at the partner or shareholder level,

(ii) each partner or shareholder shall take into account such person's allocable share of each item described in subparagraph (A) or (B) of subsection (c)(1) (determined without regard to whether the items described in such subparagraph (A) exceed the items described in such subparagraph (B)),

(iii) each partner or shareholder shall be treated for purposes of subsection (b) as having W-2 wages for the taxable year in an amount equal to such person's allocable share of the W-2 wages of the partnership or S corporation for the taxable year (as determined under regulations prescribed by the Secretary), and

(iv) in the case of each partner of a partnership, or shareholder of an S corporation, who owns (directly or indirectly) at least 20 percent of the capital interests in such partnership or of the stock of such S corporation-

(I) such partner or shareholder shall be treated as having engaged directly in any film produced by such partnership or S corporation, and

(II) such partnership or S corporation shall be treated as having engaged directly in any film produced by such partner or shareholder.

(B) Trusts and estates. In the case of a trust or estate-

(i) the items referred to in subparagraph (A)(ii) (as determined therein) and the W-2 wages of the trust or estate for the taxable year, shall be apportioned between the beneficiaries and the fiduciary (and among the beneficiaries) under regulations prescribed by the Secretary, and

(ii) for purposes of paragraph (2) , adjusted gross income of the trust or estate shall be determined as provided in section 67(e) with the adjustments described in such paragraph .

(C) Regulations. The Secretary may prescribe rules requiring or restricting the allocation of items and wages under this paragraph and may prescribe such reporting requirements as the Secretary determines appropriate.

(2) Application to individuals.

In the case of an individual, subsections (a)(2) and (d)(9)(A)(iii) shall be applied by substituting "adjusted gross income" for "taxable income". For purposes of the preceding sentence, adjusted gross income shall be determined-

(A) after application of sections 86 , 135 , 137 , 219 , 221 , 222 , and 469, and

(B) without regard to this section.

(3) Agricultural and horticultural cooperatives.

(A) Deduction allowed to patrons. Any person who receives a qualified payment from a specified agricultural or horticultural cooperative shall be allowed for the taxable year in which such payment is received a deduction under subsection (a) equal to the portion of the deduction allowed under subsection (a) to such cooperative which is-

(i) allowed with respect to the portion of the qualified production activities income to which such payment is attributable, and

(ii) identified by such cooperative in a written notice mailed to such person during the payment period described in section 1382(d) .

(B) Cooperative denied deduction for portion of qualified payments. The taxable income of a specified agricultural or horticultural cooperative shall not be reduced under section 1382 by reason of that portion of any qualified payment as does not exceed the deduction allowable under subparagraph (A) with respect to such payment.

(C) Taxable income of cooperatives determined without regard to certain deductions. For purposes of this section , the taxable income of a specified agricultural or horticultural cooperative shall be computed without regard to any

deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

(D) Special rule for marketing cooperatives. For purposes of this section , a specified agricultural or horticultural cooperative described in subparagraph (F)(ii) shall be treated as having manufactured, produced, grown, or extracted in whole or significant part any qualifying production property marketed by the organization which its patrons have so manufactured, produced, grown, or extracted.

(E) Qualified payment. For purposes of this paragraph , the term "qualified payment" means, with respect to any person, any amount which-

(i) is described in paragraph (1) or (3) of section 1385(a) ,

(ii) is received by such person from a specified agricultural or horticultural cooperative, and

(iii) is attributable to qualified production activities income with respect to which a deduction is allowed to such cooperative under subsection (a) .

(F) Specified agricultural or horticultural cooperative. For purposes of this paragraph , the term "specified agricultural or horticultural cooperative" means an organization to which part I of subchapter T applies which is engaged-

(i) in the manufacturing, production, growth, or extraction in whole or significant part of any agricultural or horticultural product, or

(ii) in the marketing of agricultural or horticultural products.

(4) Special rule for affiliated groups.

(A) In general. All members of an expanded affiliated group shall be treated as a single corporation for purposes of this section.

(B) Expanded affiliated group. For purposes of this section , the term "expanded affiliated group" means an affiliated group as defined in section 1504(a), determined-

(i) by substituting "more than 50 percent" for "at least 80 percent" each place it appears, and

(ii) without regard to paragraphs (2) and (4) of section 1504(b).

(C) Allocation of deduction. Except as provided in regulations, the deduction under subsection (a) shall be allocated among the members of the expanded affiliated group in proportion to each member's respective amount (if any) of qualified production activities income.

(5) Trade or business requirement.
This section shall be applied by only taking into account items which are attributable to the actual conduct of a trade or business.

(6) Coordination with minimum tax.

For purposes of determining alternative minimum taxable income under section 55 -

(A) qualified production activities income shall be determined without regard to any adjustments under sections 56 through 59 , and

(B) in the case of a corporation, subsection (a)(2) shall be applied by substituting "alternative minimum taxable income" for "taxable income".

(7) Unrelated business taxable income.

For purposes of determining the tax imposed by section 511 , subsection (a)(1)(B) shall be applied by substituting "unrelated business taxable income" for "taxable income".

(8) Treatment of activities in Puerto Rico.

(A) In general. In the case of any taxpayer with gross receipts for any taxable year from sources within the Commonwealth of Puerto Rico, if all of such receipts are taxable under section 1 or 11 for such taxable year, then for purposes of determining the domestic production gross receipts of such taxpayer for such taxable year under subsection (c)(4) , the term "United States" shall include the Common-wealth of Puerto Rico.

(B) Special rule for applying wage limitation. In the case of any taxpayer described in subparagraph (A) , for purposes of applying the limitation under subsection (b) for any taxable year, the determination of W-60 wages of such taxpayer shall be made without regard to any exclusion under section 3401(a)(8) for remuneration paid for services performed in Puerto Rico.

(C) Termination. This paragraph shall apply only with respect to the first 11 taxable years of the taxpayer beginning after December 31, 2005, and before January 1, 2017.

(9) Special rule for taxpayers with oil related qualified production activities income.

(A) In general. If a taxpayer has oil related qualified production activities income for any taxable year beginning after 2009, the amount otherwise allowable as a deduction under subsection (a) shall be reduced by 3 percent of the least of-

(i) the oil related qualified production activities income of the taxpayer for the taxable year,

(ii) the qualified production activities income of the taxpayer for the taxable year, or

(iii) taxable income (determined without regard to this section).

(B) Oil related qualified production activities income. For purposes of this paragraph , the term "oil related qualified production activities income" means for any taxable year the qualified production activities income which is attributable to the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof during such taxable year.

(C) Primary product. For purposes of this paragraph , the term "primary product" has the same meaning as when used in section 927(a)(2)(C), as in effect before its repeal.

(10) Regulations.

The Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section , including regulations which prevent more than 1 taxpayer from being allowed a deduction under this section with respect to any activity described in subsection (c)(4)(A)(i).