

**Implementation Plan: Open Actions for Product 8903 INST**

Run by: SD\_GF2LB

Run date: 18-JAN-08

Reviewer: LIGHT, CLARENCE

Action Number	Act Section	IRC Section	Description of Action	Date Type	Effective Date	Target Due Date
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P.L. 108-357, American Jobs Creation Act of 2004

66.00766	102(a)		Revise instructions to reflect the increase of the transition % to 9% of the qualified production activities income used in figuring the domestic production activities deduction.		22-OCT-2004	28-DEC-2010
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Reviewer: WOOLF, JR., WILLIAM

Action Number	Act Section	IRC Section	Description of Action	Date Type	Effective Date	Target Due Date
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P.L. 108-357, American Jobs Creation Act of 2004

66.00764	102(a)		Revise inst to reflect the increase to 6% of the transition % of the qualified production activities income used in figuring the domestic activities production deduction.		22-OCT-2004	28-DEC-2007
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deduction.

**Reflected in General Instructions and throughout the 2007 Instructions.**

## **Major Changes to the 2007 Instructions for Form 8903, Domestic Production Activities Deduction**

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#### **What's New**

We inserted text concerning new guidance under section 199 issued in 2007.

- Final regulations that provide (1) advertising and product placement income are not DPGR, (2) gross receipts from customer and technical support, telephone and other telecommunications services, Internet access services, online banking services, and other services are not included in the computation of DPGR; and (3) the computation by cooperatives of QPAI in connection with patronage dividends, per-unit retain allocations, and non-patronage distributions. [T.D. 9317]
- Guidance clarifying that a partnership engaged in the extraction and processing of minerals in the United States is treated as a qualifying in-kind partnership and each partner of a qualifying in-kind partnership is treated as having manufactured, produced, grown, or extracted (MPGE) property MPGE by the partnership. [Rev. Rul. 2007-30]
- Guidance clarifying the calculation of qualified production activities income (QPAI) by pass-through entities on the entity level by eligible partnerships and S corporations on behalf of their partners and shareholders, respectively. [Rev. Proc. 2007-34]
- Guidance clarifying the use of statistical sampling for purposes of the section 199 deduction. [Rev. Proc. 2007-35]

#### **General Instructions, Purpose of the Form**

We updated the instructions to reflect the 6 percent rate available for 2007 taxpayers.

#### **Additional Guidance**

We updated the guidance that is available for 2007 taxpayers.

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#### **Coordination with other deductions**

We clarified that no deduction is allowed when calculating a net operating loss (NOL) under section 172. [IRC Sec. 172(d)(7)]

generally



## **S corporations and partnerships**

We inserted text that clarifies that ~~after May 17, 2006~~, certain S corporations and partnerships can figure QPAI and W-2 wages at the entity level and allocate and report these amounts to shareholders and partners. [Rev. Proc. 2007-34]

## **Agricultural and horticultural cooperatives**

**Note.** We have added a note stating patrons of agricultural or horticultural cooperatives cannot include in any distributions of qualified payments from cooperatives in the computation of the DPAD. [Reg. section 1.199-6(l)]

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### **Qualified Production Activities Income (QPAI)**

We updated the instructions to limit the DPAD to no more than 6 percent of QPAI for 2007.

## **S corporations and partnerships**

We revised the section to incorporate Rev. Proc. 2007-34 which clarifies that certain eligible entities (eligible partnerships and S corporations) may calculate QPAI and Form W-2 wages at the entity level on behalf of their partners and shareholders.

We added text to clarify that cooperatives calculate QPAI without any deduction under section 1382(b) or (c).

### **Domestic Production Gross Receipts (DPGR)**

We added text clarifying that receipts from advertising and product placement, customer and technical support, telephone and other telecommunications services, online services (including Internet access services, online banking services and providing access to online electronic books, newspapers, and journals) and other similar services are not DPGR.

### **Qualifying Production Property**

We inserted a new section on qualifying production property which outlines in greater detail tangible personal property, computer software, and sound recordings.

We inserted text on computer software and included an example.

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We also inserted text on sound recordings and included an exception.

### **Manufacturing, Producing, Growing, or Extracting**

We updated the guidance since the proposed regulations cited have become final regulations.

We inserted a section on qualifying in-kind partnerships.

We also expanded the text on EAG partnerships.

### **Cost of Goods Sold**

We added a reference to determining the amount of W-2 wages to include in cost of goods sold.

We also updated the guidance since the proposed regulations cited have become final regulations.

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### **Other Deductions, Expenses, or Losses (cont'd)**

#### **S corporations and partnerships**

We clarified that S corporations and partnerships, with a tax year beginning May 17, 2006, that meet specific requirements, can choose to figure QPAI at the entity level and allocate the QPAI to shareholders or partners. [Rev. Proc. 2007-34]

#### **Small Business Simplified Overall Method**

##### **Excluded Entities**

We updated the guidance for excluded entities since the proposed regulations have been finalized.

#### **S corporations and partnerships**

We added text clarifying that an S corporation or partnership can choose to use the small business simplified overall method to figure QPAI at the entity level and allocate that QPAI to shareholders or partners if it meets the requirements of an eligible small pass-through entity. We also clarify the requirements for an eligible small pass-through entity. [Rev. Proc. 2007-34]

## **Simplified Deduction Method**

### **S corporations and partnerships**

We added text clarifying that an S corporation or partnership can choose to use the small business simplified overall method to figure QPAI at the entity level and allocate that QPAI to shareholders or partners if it meets the requirements of an eligible widely-held pass-through entity. We also clarify the requirements for an eligible widely-held pass-through entity. [Rev. Proc. 2007-34]

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### **Expanded affiliated groups**

We deleted references to proposed regulations since these regulations were finalized.

### **Section 861 method**

#### **S corporations**

We added text that clarifies that an S corporation cannot use the section 861 method to figure QPAI. [Rev. Proc. 2007-34]

#### **Partnerships**

We also added text that clarifies that a partnership can use the section 861 method if it meets the requirements of an eligible section 861 partnership. We added the requirements for a section 861 partnership, including a qualifying partner. We also added language regarding material participation, the definition of a related person, and a non-qualifying partner. [Rev. Proc. 2007-34]

### **Adjusted Gross or Taxable Income**

We updated the instructions to limit the DPAD to no more than 6 percent of adjusted gross income (or taxable income) for 2007.

We added text to clarify that estates and trusts must look to the instructions for line 11 to figure adjusted gross income.

### **Form W-2 wages**

#### **Note.**

We clarified that DPAD is limited to 50 percent of Form W-2 wages allocable to DPGR.

## **Form W-2 Wages from an S corporation or partnership**

We revised the text to clarify that S corporations and partnerships, ~~with tax years beginning after May 17, 2006,~~ that meet specific requirements, can choose to figure Form W-2 wages at the entity level and report the allocated portion of W-2 wages to the S corporation shareholder or partner who then combines the allocated portion with W-2 wages from other sources on Form 8903 to determine the DPAD. We then specified the requirements for eligible entities. [Rev. Proc. 2007-34]

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#### **Figuring the 50% of Form W-2 Wages Limit**

We added language that clarifies the steps taxpayers must take to determine the 50% limitation for Form W-2 wages. [Temp. Reg. Section 1.199-2T(e)]

#### **Form W-2 Wages Allocable to DPGR**

We added language providing methods for taxpayers to determine Form W-2 wages allocable to DPGR. [Temp. Reg. Section 1.199-2T(e)]

#### **Small business simplified overall method safe harbor**

We added text to clarify that a taxpayer using the small business simplified overall method to allocate costs between DPGR and non-DPGR may use the small business simplified overall method safe harbor to determine the amount of W-2 wages allocable to DPGR. [Temp. Reg. Section 1.199-2T(e)]

#### **Wage expense safe harbor**

We added text to clarify how the wage expense safe harbor is to be used by a taxpayer under either the section 861 method or the simplified deduction method to determine the amount of wages allocable to DPGR.

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#### **More information**

We deleted guidance related to the transition rules for before and after May 17, 2006. We added references for more information on figuring Form W-2 Wages and figuring Form W-2 Wages properly allocable to DPGR.

#### **Specific Instructions**

### **Line 3**

Per discussion with CC:INTL and subsequent Form 8903 changes, we inserted references to the simplified deduction method from line 4 to line 3. We also revised the language for clarity.

#### **Line 7**

We clarified that beneficiaries of estates and trusts, partners, and S corporation shareholders report the QPAI distributed from estates and trusts and certain partnerships or S corporations on line 7.

#### **Line 9**

We clarified that estates and trusts must use Reg. Section 1.652(b)-3 to allocate QPAI to beneficiaries if DNI is distributed or required to be distributed to beneficiaries.

#### **Line 14**

We added text to specify that Form W-2 wages that are properly allocable to DPGR are to be entered on line 14.

#### **Line 15**

We added text to clarify that beneficiaries of estates and trusts, partners, and S corporation shareholders report the W-2 wages distributed from estates or trusts, and certain partnerships or S corporations on line 15.

#### **Line 17**

We added text to clarify that estates and trusts must use Regulations section 1.652(b)-3 to allocate W-2 wages to beneficiaries if DNI is distributed or required to be distributed to beneficiaries and that amount of W-2 wages allocated to beneficiaries must be reported on line 17.

#### **Line 22**

#### **Net operating losses**

We clarified that the net operating loss of an EAG member that is used in the computation of the EAG's taxable income cannot also be used as a NOL carryback or carryover to determine the taxable income of that member in a prior or subsequent year. [Temp. Reg. Section 1.199-7T(b)(4)]