



## TAX NEWS

**New Items Approved as Preventive Care for HDHP / HSA Purposes**—To be eligible to make deductible HSA contributions, the taxpayer must participate in a qualifying high deductible health plan (HDHP). Generally, the plan may not pay benefits until the participant has satisfied an annual minimum deductible. However, the HDHP will not be disqualified if it offers certain preventive care benefits before the deductible is met. IRS Notice 2019-45 expands the list of preventive care items for qualifying HDHP and HSA contribution purposes. [Page 2](#)

**Disaster Relief: Texas**—Parts of Texas have been declared a major disaster area because of severe storms and flooding June 24 and June 25, 2019. Tax deadlines occurring on or after that date are generally postponed to October 31, 2019. This includes the October 15 tax return due date for taxpayers with valid extensions.

A casualty loss related to this disaster may be claimed on an original or amended 2018 return or on a 2019 return filed next tax season. However, it is not a qualified disaster loss and cannot be used to increase the standard deduction. A personal casualty loss from this disaster may be claimed as an itemized deduction on line 15 of Schedule A. [Page 3](#)

**Taxpayers With Religious Objections May Claim the ODC for Dependents Without Taxpayer ID Numbers**—In order to claim dependent-connected benefits, the dependent must have a taxpayer ID number (TIN). Under administrative relief procedures, the IRS may allow the new credit for other dependents (ODC) for taxpayers who do not obtain a TIN for their dependents because of religious- or conscience-based objections. The taxpayer must supply proof of U.S. citizenship, such as a birth certificate. [Page 3](#)

## QUESTION OF THE WEEK

A client with a rental property would like to claim the qualified business income deduction. He handles all activities for the property, including choosing tenants, collecting rents, paying bills, and taking care of repairs and maintenance. Does he qualify for the QBID and, if so, does it mean he is a real estate professional? [Page 5](#)

## ORIGINAL INSIGHTS

**Tax: The Final Frontier? Foreign earned income exclusion and space travel** — Astronauts, taxes, and the foreign earned income exclusion—why NASA space travel doesn't exempt taxpayers from U.S. taxes. [Full insight](#). View all insights at [www.thetaxinstitute.com/insights/](http://www.thetaxinstitute.com/insights/).

## NEW ITEMS APPROVED AS PREVENTIVE CARE FOR HDHP / HSA PURPOSES

IRS news release [IR-2019-129](#) and [Notice 2019-45](#) expand the list of preventive care items for qualifying high deductible health plan (HDHP) and health savings account (HSA) contribution purposes.

Eligible participants in a qualifying HDHP may deduct contributions to a tax-advantaged HSA. One requirement to be a qualifying HDHP is that the plan may not pay or reimburse medical care until a minimum deductible has been met for the year. However, an HDHP may provide specified preventive care benefits to an individual prior to satisfying the deductible and still be a qualifying HDHP.

To be a preventive care benefit, the benefit must be described as preventive care under the Social Security Act or described as preventive care in guidance issued by the Treasury Department. Preventive care can include:

- Periodic health evaluations, including tests and diagnostic procedures ordered in connection with routine examinations,
- Routine prenatal and well-child care,
- Certain child and adult routine immunizations,
- Certain preventive care and screening for women, or
- Evidence-based items or services that have a rating of A or B in the current [US Preventive Services Task Force \(USPSTF\) guide](#) relative to the individual involved.

Preventive care generally does not include any service or benefit intended to treat an existing illness, injury or condition. Medications, when taken by a person who has risk factors for a disease but has not yet become medically evident, or to prevent the reoccurrence of a disease, are deemed as preventive. A succession of IRS notices has given guidance to medical procedures and equipment that qualify as preventive care.

In the latest guidance, Notice 2019-45, the IRS added the following medications, therapies, tests, and equipment to the list of approved preventive care if the individual has been diagnosed with a listed diagnosis.

<b>Preventive Care Allowed:</b>	<b>For Individuals Diagnosed with:</b>
Angiotensin Converting Enzyme (ACE) Inhibitors	Congestive heart failure, diabetes, and / or coronary artery disease
Anti-resorptive therapy	Osteoporosis and/or osteopenia
Beta-blockers	Congestive heart failure and / or coronary artery disease
Blood pressure monitor	Hypertension
Glucometer	Diabetes
Hemoglobin A1c testing	Diabetes
Inhaled corticosteroids	Asthma
Insulin and other glucose lowering agents	Diabetes
International Normalized Ratio (INR) testing	Liver disease and / or bleeding disorders
Low density Lipoprotein (LDL) testing	Heart disease
Peak flow meter	Asthma
Retinopathy screening	Diabetes
Selective Serotonin Reuptake Inhibitors (SSRIs)	Depression
Statins	Heart disease and/or diabetes

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## DISASTER RELIEF: TEXAS

Parts of Texas have been declared a major disaster area eligible for federal disaster aid to individuals and businesses.

Affected taxpayers have the option of claiming a casualty loss related to this disaster on their 2019 tax return filed next tax season or on an original or amended tax return for 2018.

**Note:** This is *not* a qualified disaster loss and cannot be used to increase the standard deduction. A personal casualty loss related to this disaster may be claimed only as an itemized deduction on line 15 of [Schedule A \(Form 1040\)](#), *Itemized Deductions*.

In addition, the IRS has postponed deadlines for affected taxpayers to file returns, pay taxes, and perform other time-sensitive acts. Affected taxpayers are those who:

- Live in the covered disaster area
- Have a main place of business located in the covered disaster area
- Have books and records needed to complete the return located in the disaster area
- Assist government or qualified non-profit organizations in relief efforts
- Were injured or killed while visiting the area

Generally, the IRS identifies affected taxpayers located in the disaster area and automatically applies filing and payment relief. Affected taxpayers outside the disaster area should call the IRS at 1-866-562-5227 to request tax relief.

**Texas disaster:** severe storms, tornadoes, and flooding starting on June 24, 2019

**FEMA disaster declaration announcement:** [DR-4454](#) dated July 17, 2019

**IRS release:** [TX-2019-02](#) dated July 18, 2019; check the link for future updates

**Covered disaster area (as of publication date):** Cameron, Hidalgo and Willacy counties.

**Postponement periods:** Tax returns and other time-sensitive acts due on or after June 24, 2019, and before October 31, 2019 are postponed until **October 31, 2019**.

This includes tax returns due October 15, 2019 for taxpayers with valid extensions, quarterly estimated income taxes due September 16, and employment and excise tax returns due July 31, 2019.

Employment and other excise tax deposits due on or after June 24, 2019, and before July 9, 2019, must have been deposited by July 9, 2019.

## TAXPAYERS WITH RELIGIOUS OBJECTIONS MAY CLAIM THE ODC FOR DEPENDENTS WITHOUT TAXPAYER ID NUMBERS

Last April the IRS issued a program manager technical advice memo ([PMTA 2019-002](#)). The memo explains that in some circumstances, the IRS may allow dependent-connected tax benefits for taxpayers who do not have tax identification numbers (TINs) for their dependents because of religious- or conscience-based reasons. For example, prior to the TCJA, the IRS would allow the dependent exemption under administrative relief procedures. However, the IRS cannot allow taxpayers to claim the EITC or, after 2017, the child tax credit (CTC) because administrative relief exceptions do not apply when the law specifically requires a social security number (SSN) for the dependent. See the April 24, 2019 edition of TAX in the News.

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The PMTA suggested that the administrative relief exception could apply to religious objectors for the new credit for other dependents (ODC). Accordingly, the IRS has recently amended the Internal Revenue Manual (IRM) to allow the ODC for dependents who do not have an SSN because of religious- or conscience-based objections. The taxpayer must provide proof of U.S. citizenship or U.S. residency to allow the ODC.

For example, the taxpayer may have a birth certificate for the child or other dependent. All other requirements for the ODC must be met. That is, the dependent must be the taxpayer's qualifying child or qualifying relative.

Below is a copy of the IRM procedural update. Note that the IRM also mentions that the IRS can recertify a taxpayer who was previously denied the child tax credit if appropriate proof of citizenship is obtained. This means that a taxpayer who was disqualified from the child tax credit may go through the certification process to claim the ODC.

**IRM PROCEDURAL UPDATE**

**DATE: 07/11/2019**

**NUMBER: wi-21-0719-0867**

**SUBJECT: Credit for Other Dependents**

**AFFECTED IRM(s)/SUBSECTION(s): 21.6.3.4.1.24.3**

**CHANGE(s): IRM 21.6.3.4.1.24.3 - Added religious or conscience-based objection procedures.**

1. IRC § 24 provides a \$500 nonrefundable credit, Credit for Other Dependents (ODC), for each dependent who is not a qualifying child for the Child Tax Credit. The dependent must be a U.S. citizen, U.S. national, or a U.S. resident. The credit is for tax years 2018 - 2025. Taxpayers will indicate eligibility for the credit by checking the "Credit for Other Dependents" box on page 1 of Form 1040.
2. Dependents, such as children and other relatives, must meet eligibility criteria, as shown in Pub 17, *Your Federal Income Tax (For Individuals)*. The dependent must have a valid ITIN, SSN, or ATIN issued on or before the due date of the return (including extensions).
3. ODC is calculated with the Child Tax Credit in the instructions for Form 1040 or Pub 972, *Child Tax Credit*. The total of Child Tax Credit and ODC is phased out by \$50 for each \$1,000 the AGI exceeds \$400,000 in the case of a joint return, \$200,000 for all other filers.
4. If CTC and/or ACTC were denied in a previous year due to deficiency procedures, taxpayers must recertify for ODC; follow procedures in IRM 21.6.3.5, *Credit Recertification*.
5. For taxpayers claiming a religious or conscience-based objection to obtaining a TIN, ODC can be allowed if the taxpayer provides proof of U.S. citizenship or U.S. residency (such as a U.S. birth certificate) for the dependent who qualifies for the credit.
6. To adjust the account:
  - o Use TC 291 with a money amount to allow/increase the credit.
  - o Use TC 290 with a money amount to decrease the credit.
  - o Use RC 173 and the appropriate source code and blocking series.

## QUESTION OF THE WEEK

**Q.** My client made a profit from a rental property in 2019. It is a “six-plex” – a building with six rental apartments, all of which are rented out. On average, he devotes about five hours a week to the property. He chooses the tenants, handles the leases, collects the rents, and pays bills for the property, including water, taxes, and insurance. He also takes care of the lawn in summer and the snow in winter, cleans the common vestibule, makes all repairs, buys any needed supplies for the building, and hires and supervises any needed outside help, such as electricians. He’s done a good job of keeping track of income and expenses and the work he does each week. The client also has a full-time job.

Does he qualify to claim the qualified business income deduction? If so, does this mean he is a real estate professional? For instance, if he has a loss in a future year, would he be able to deduct it?

**A.** From the information you’ve given, your client may be able to claim the qualified business income deduction (QBID) but he is probably not a real estate professional.

### Qualifying for the QBID safe harbor

Earlier this year, the IRS released [Notice 2019-07](#) that includes a proposed “safe harbor” for a rental real estate enterprise. Briefly, a rental real estate enterprise is a rental property either owned directly by a taxpayer or through a disregarded entity, such as a single-member LLC. Under the safe harbor, a rental real estate enterprise may be treated as a trade or business for QBID purposes.

To qualify for the QBID safe harbor:

- The taxpayer must perform a minimum of 250 hours of rental service, which includes the types of activities your client handles for the property.
- The taxpayer must maintain separate books and records of all income and expenses as well as contemporaneous logs of all activities.

If the safe harbor conditions are met and your client wishes to claim the QBID, he must include a signed statement with the return verifying that the safe harbor requirements have been met. The statement must include the following language:

“Under penalties of perjury, I (we) declare that I (we) have examined the statement, and, to the best of my (our) knowledge and belief, the statement contains all the relevant facts relating to the revenue procedure, and such facts are true, correct, and complete.”

Note that taxpayers with more than one property must either treat each property as a separate enterprise or treat all similar properties as a single enterprise. For instance, if your client owned more than one rental building he would have to treat each as a separate enterprise or combine them into a single enterprise. However, commercial and residential rentals cannot be combined. Also, a property that also has personal use is disqualified from the safe harbor.

### Qualifying as a real estate professional

To answer your second question, no, your client does not appear to be a real estate professional. The safe harbor for rental activities may be used to qualify a rental property for the QBID, but that does *not* mean that the activity is elevated to the status of a real property trade or business.

You’ve mentioned that your client has a full-time job and, although he does spend time on the activity each week, it does not likely add up to 750 hours or more a year. Both of these facts mean he is probably not a real estate professional.

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If he has a loss in a future year, he may be able to deduct it under the active participation rules that allow a taxpayer to deduct up to \$25,000 in loss from nonpassive income. See “Limits on rental losses” in IRS [Pub. 527](#), *Residential Rental Property* for more discussion on real estate professionals and active participation.

**Important:** Your client may not vary the treatment of his rental property from year to year. That is, he cannot apply the safe harbor in 2019 but not apply it in 2020 if the property sustains a loss. A rental loss in 2020 would mean a QBI loss that would be carried over and reduce the QBID in future years. These are points for your client to consider in deciding to elect the safe harbor.