variety of works not intended to be performed before an audience. The Treasury
Department and the IRS also decline to adopt this comment. To the extent that a writer
is paid for written material, such as a song or screenplay, that is integral to the creation
of the performing arts, the writer is performing services in the field of performing arts.

6. Consulting

One commenter suggested that proposed §1.199A-5(b)(3), Example 3, should be
modified to clarify that C, a taxpayer in the business of providing services that assist
unrelated entities in making their personnel structures more efficient, does not provide
any temporary workers, and C's compensation and fees are not affected by whether C's
clients use temporary workers. The commenter argued that such a change would
prevent the example from being interpreted as treating any recommendation for a
business to use temporary workers as consulting services. The commenter also
suggested that the final regulations include an additional example similar to Example 7
of §1.448-1T(e)(4)(iv)(B) related to staffing firms. The commenter recommended that
the example provide that a business that assists other businesses in meeting their
personnel needs by referring job applicants to them does not engage in the
performance of services in the field of consulting when the compensation for the
business referring job applicants is based on whether the applicants accept employment
positions with the businesses searching for employees. The final regulations adopt
these suggestions.

Another commenter suggested that final regulations clarify whether services
provided by engineers and architects could be considered to be an SSTB if their
services meet the definition of consulting services. The Treasury Department and the
services in the field of consulting means the provision of professional advice and counsel to clients to assist the client in achieving goals and solving problems. Consulting includes providing advice and counsel regarding advocacy with the intention of influencing decisions made by a government or governmental agency and all attempts to influence legislators and other government officials on behalf of a client by lobbyists and other similar professionals performing services in their capacity as such. The performance of services in the field of consulting does not include the performance of services other than advice and counsel, such as sales (or economically similar services) or the provision of training and educational courses. For purposes of the preceding sentence, the determination of whether a person’s services are sales or economically similar services will be based on all the facts and circumstances of that person’s business. Such facts and circumstances include, for example, the manner in which the taxpayer is compensated for the services provided. Performance of services in the field of consulting does not include the performance of consulting services embedded in, or ancillary to, the sale of goods or performance of services on behalf of a trade or business that is otherwise not an SSTB (such as typical services provided by a building contractor) if there is no separate payment for the consulting services.

Services within the fields of architecture and engineering are not treated as consulting services.

(viii) Meaning of services performed in the field of athletics. For purposes of section 199A(d)(2) and paragraph (b)(1)(vii) of this section only, the performance of services in the field of athletics means the performance of services by individuals who participate in athletic competition such as athletes, coaches, and team managers in
test, which is of no use to other employers. Upon completion of an ordered test, Z
analyses the results and provides its clients a report summarizing the findings. Z does
not discuss the report’s results, or the patient’s diagnosis or treatment with any health
care provider or the patient. Z is not informed by the healthcare provider as to the
healthcare provider’s diagnosis or treatment. Z is not providing services in the field of
health within the meaning of section 199A(d)(2) and paragraphs (b)(1)(i) and (b)(2)(ii) of
this section or where the principal asset of the trade or business is the reputation or skill
of one or more of its employees within the meaning of paragraphs (b)(1)(xiii) and
(b)(2)(xiv) of this section.

(v) Example 5 to paragraph (b)(3). A, a singer and songwriter, writes and records
a song. A is paid a mechanical royalty when the song is licensed or streamed. A is
also paid a performance royalty when the recorded song is played publicly. A is
engaged in the performance of services in an SSTB in the field of performing arts within
the meaning of section 199A(d)(2) or paragraphs (b)(1)(v) and (b)(2)(vi) of this section.
The royalties that A receives for the song are not eligible for a deduction under section
199A.

(vi) Example 6 to paragraph (b)(3). B is a partner in Movie LLC, a partnership.
Movie LLC is a film production company. Movie LLC plans and coordinates film
production. Movie LLC shares in the profits of the films that it produces. Therefore,
Movie LLC is engaged in the performance of services in an SSTB in the field of
performing arts within the meaning of section 199A(d)(2) or paragraphs (b)(1)(v) and
(b)(2)(vi) of this section. B is a passive owner in Movie LLC and does not provide any
services with respect to Movie LLC. However, because Movie LLC is engaged in an
SSTB in the field of performing arts, B’s distributive share of the income, gain,
deduction, and loss with respect to Movie LLC is not eligible for a deduction under
section 199A.

(vii) Example 7 to paragraph (b)(3). C is a partner in Partnership, which solely
owns and operates a professional sports team. Partnership employs athletes and sells
tickets and broadcast rights for games in which the sports team competes. Partnership
sells the broadcast rights to Broadcast LLC, a separate trade or business. Broadcast
LLC solely broadcasts the games. Partnership is engaged in the performance of
services in an SSTB in the field of athletics within the meaning of section 199A(d)(2) or
paragraphs (b)(1)(vii) and (b)(2)(viii) of this section. The tickets sales and the sale of
the broadcast rights are both the performance of services in the field of athletics. C is a
passive owner in Partnership and C does not provide any services with respect to
Partnership or the sports team. However, because Partnership is engaged in an SSTB
in the field of athletics, C’s distributive share of the income, gain, deduction, and loss
with respect to Partnership is not eligible for a deduction under section 199A.
Broadcast LLC is not engaged in the performance of services in an SSTB in the field of
athletics.

(viii) Example 8 to paragraph (b)(3). D is in the business of providing services
that assist unrelated entities in making their personnel structures more efficient. D
studies its client's organization and structure and compares it to peers in its industry. D then makes recommendations and provides advice to its client regarding possible changes in the client's personnel structure, including the use of temporary workers. D does not provide any temporary workers to its clients and D’s compensation and fees are not affected by whether D’s clients used temporary workers. D is engaged in the performance of services in an SSTB in the field of consulting within the meaning of section 199A(d)(2) or paragraphs (b)(1)(vi) and (b)(2)(vii) of this section.

(ix) Example 9 to paragraph (b)(3). E is an individual who owns and operates a temporary worker staffing firm primarily focused on the software consulting industry. Business clients hire E to provide temporary workers that have the necessary technical skills and experience with a variety of business software to provide consulting and advice regarding the proper selection and operation of software most appropriate for the business they are advising. E does not have a technical software engineering background and does not provide software consulting advice herself. E reviews resumes and refers candidates to the client when the client indicates a need for temporary workers. E does not evaluate her clients’ needs about whether the client needs workers and does not evaluate the clients’ consulting contracts to determine the type of expertise needed. Rather, the client provides E with a job description indicating the required skills for the upcoming consulting project. E is paid a fixed fee for each temporary worker actually hired by the client and receives a bonus if that worker is hired permanently within a year of referral. E’s fee is not contingent on the profits of its clients. E is not considered to be engaged in the performance of services in the field of consulting within the meaning of section 199A(d)(2) or (b)(1)(vi) and (b)(2)(vii) of this section.

(x) Example 10 to paragraph (b)(3). F is in the business of licensing software to customers. F discusses and evaluates the customer’s software needs with the customer. The taxpayer advises the customer on the particular software products it licenses. F is paid a flat price for the software license. After the customer licenses the software, F helps to implement the software. F is engaged in the trade or business of licensing software and not engaged in an SSTB in the field of consulting within the meaning of section 199A(d)(2) or paragraphs (b)(1)(vi) and (b)(2)(vii) of this section.

(xi) Example 11 to paragraph (b)(3). G is in the business of providing services to assist clients with their finances. G will study a particular client’s financial situation, including, the client’s present income, savings, and investments, and anticipated future economic and financial needs. Based on this study, G will then assist the client in making decisions and plans regarding the client’s financial activities. Such financial planning includes the design of a personal budget to assist the client in monitoring the client’s financial situation, the adoption of investment strategies tailored to the client's needs, and other similar services. G is engaged in the performance of services in an SSTB in the field of financial services within the meaning of section 199A(d)(2) or paragraphs (b)(1)(viii) and (b)(2)(ix) of this section.
interest and the corresponding distributive share with respect to the partnership interest for M’s likeness and the use of her name is an SSTB within the meaning of section 199A(d)(2) or paragraphs (b)(1)(xiii) and (b)(2)(xiv) of this section.

(c) Special rules—(1) De minimis rule—(i) Gross receipts of $25 million or less. For a trade or business with gross receipts of $25 million or less for the taxable year, a trade or business is not an SSTB if less than 10 percent of the gross receipts of the trade or business are attributable to the performance of services in a field described in paragraph (b) of this section. For purposes of determining whether this 10 percent test is satisfied, the performance of any activity incident to the actual performance of services in the field is considered the performance of services in that field.

(ii) Gross receipts of greater than $25 million. For a trade or business with gross receipts of greater than $25 million for the taxable year, the rules of paragraph (c)(1)(i) of this section are applied by substituting “5 percent” for “10 percent” each place it appears.

(iii) Examples. The following examples illustrate the provisions of paragraph (c)(1) of this section.

(A) Example 1 to paragraph (c)(1). Landscape LLC sells lawn care and landscaping equipment and also provides advice and counsel on landscape design for large office parks and residential buildings. The landscape design services include advice on the selection and placement of trees, shrubs, and flowers and are considered to be the performance of services in the field of consulting under paragraphs (b)(1)(vi) and (b)(2)(vii) of this section. Landscape LLC separately invoices for its landscape design services and does not sell the trees, shrubs, or flowers it recommends for use in the landscape design. Landscape LLC maintains one set of books and records and treats the equipment sales and design services as a single trade or business for purposes of sections 162 and 199A. Landscape LLC has gross receipts of $2 million. $250,000 of the gross receipts is attributable to the landscape design services, an SSTB. Because the gross receipts from the consulting services exceed 10 percent of Landscape LLC’s total gross receipts, the entirety of Landscape LLC’s trade or business is considered an SSTB.
(B) Example 2 to paragraph (c)(1). Animal Care LLC provides veterinarian services performed by licensed staff and also develops and sells its own line of organic dog food at its veterinarian clinic and online. The veterinarian services are considered to be the performance of services in the field of health under paragraphs (b)(1)(i) and (b)(2)(ii) of this section. Animal Care LLC separately invoices for its veterinarian services and the sale of its organic dog food. Animal Care LLC maintains separate books and records for its veterinarian clinic and its development and sale of its dog food. Animal Care LLC also has separate employees who are unaffiliated with the veterinary clinic and who only work on the formulation, marketing, sales, and distribution of the organic dog food products. Animal Care LLC treats its veterinary practice and the dog food development and sales as separate trades or businesses for purposes of section 162 and 199A. Animal Care LLC has gross receipts of $3,000,000. $1,000,000 of the gross receipts is attributable to the veterinary services, an SSTB. Although the gross receipts from the services in the field of health exceed 10 percent of Animal Care LLC’s total gross receipts, the dog food development and sales business is not considered an SSTB due to the fact that the veterinary practice and the dog food development and sales are separate trades or businesses under section 162.

(2) Services or property provided to an SSTB--(i) In general. If a trade or business provides property or services to an SSTB within the meaning of this section and there is 50 percent or more common ownership of the trades or businesses, that portion of the trade or business of providing property or services to the 50 percent or more commonly-owned SSTB will be treated as a separate SSTB with respect to the related parties.

(ii) 50 percent or more common ownership. For purposes of paragraph (c)(2)(i) and (ii) of this section, 50 percent or more common ownership includes direct or indirect ownership by related parties within the meaning of sections 267(b) or 707(b).

(iii) Examples. The following examples illustrate the provisions of paragraph (c)(2) of this section.

(A) Example 1 to paragraph (c)(2). Law Firm is a partnership that provides legal services to clients, owns its own office building and employs its own administrative staff. Law Firm divides into three partnerships. Partnership 1 performs legal services to clients. Partnership 2 owns the office building and rents the entire building to Partnership 1. Partnership 3 employs the administrative staff and through a contract with Partnership 1 provides administrative services to Partnership 1 in exchange for