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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:5
PLR-108471-17

Date:
August 30, 2017

In Re:

Legend

Taxpayer =

LLC =

State =

Dear :

This letter responds to a letter dated March 9, 2017, submitted on behalf of Taxpayer, requesting rulings under §§ 1382(b)(3), 199(d)(3)(C), and 199(d)(3)(D) of the Internal Revenue Code, and § 1.199-6(c) of the Income Tax Regulations.

FACTS

According to the information submitted and representations made, Taxpayer is organized as a cooperative association under the laws of State. Taxpayer is a nonexempt subchapter T cooperative and a "specified agricultural cooperative" within the meaning of § 199(d)(3)(F). Taxpayer is required under the laws of State and its Articles of Incorporation and Bylaws to distribute earnings, after setting aside reasonable reserves and paying preferred stock dividends, to members each year as

patronage dividends. Taxpayer does not have a similar obligation to pay patronage dividends to nonmembers. Taxpayer is engaged in the farm supply and grain marketing business. Taxpayer provides farm supplies to its members and markets their grain. Taxpayer's membership is limited to persons who are farm operators and agricultural producers.

Taxpayer is a member in LLC, a limited liability company classified as a partnership for Federal tax purposes. Taxpayer and an unrelated entity formed LLC to improve cost efficiencies and streamline operations. LLC is responsible for grain origination. LLC also markets grain for Taxpayer's patrons. LLC purchases grain directly from Taxpayer's members and other producers. LLC owns and operates grain elevators in the territory that LLC and Taxpayer serve. LLC receives, handles, and stores the grain in its elevators, and then sells the grain to terminal grain elevators, grain processors, feed lots, grain exporters and others.

Taxpayer proposes to assume the grain origination function. Taxpayer believes that the change could have a significant impact on grain origination. Grain in State is primarily marketed through cooperatives, and many producers in State strongly prefer to sell their grain to a local cooperative. To assume the grain origination function, Taxpayer will become a grain dealer under the laws of State and meet certain requirements and conditions in order to obtain a State grain dealer license. After Taxpayer assumes the grain origination function, Taxpayer will contract with its members and other producers to purchase grain at market price. The terms of each grain sale will be reflected in a written grain purchase contract between Taxpayer and its member or other producer. Taxpayer will pay for the grain with checks drawn from its bank account or by ACH (Automated Clearing House) transfers from its bank account. Immediately thereafter, Taxpayer will sell or contract to sell the grain to LLC on terms that mirror the terms of its purchases from its members and other producers. Taxpayer will be responsible to pay its members and other producers for the grain, and LLC will be responsible to pay Taxpayer.

To maintain efficient operations, Taxpayer contemplates entering into an Agency and Grain Sales Agreement with LLC after it assumes the grain origination function. LLC will act as Taxpayer's agent in purchasing grain from Taxpayer's members and other producers. As agent, LLC will be responsible for generating the customary grain contract documentation for the purchases in Taxpayer's name. Taxpayer's members and other producers will continue to deliver their grain to one of LLC's elevators. As agent, LLC will accept the grain and generate a settlement statement in Taxpayer's name. LLC will also be authorized to pay for the grain by a check in Taxpayer's name drawn on a Taxpayer's bank account.

For purpose of this ruling request, the term "Grain Payments" includes only Taxpayer's payments, made by checks drawn from Taxpayer's bank account or by ACH transfer from its bank account, pursuant to the grain contracts, to its members entitled to

share in patronage dividends and with respect to the grain marketed for them. Grain Payments do not include patronage dividends paid to Taxpayer's members with respect to the grain marketed for them. The market price Taxpayer pays its members for grain will be determined without reference to Taxpayer's net earnings. Taxpayer will typically make Grain Payments to its members shortly after delivery of the grain, and in any event, Grain Payments will occur within the payment period (as defined in § 1382(d)) for the year. Taxpayer will report Grain Payments to members as Per-unit Retain Allocations in Box 3 on Form 1099-PATR.

RULINGS REQUESTED

1. After Taxpayer's proposed assumption of the grain origination function, Grain Payments to Taxpayer's members will constitute "per-unit retain allocations paid in money" within the meaning of § 1382(b).

2. Pursuant to § 199(d)(3)(D), Taxpayer will be treated as having manufactured, produced, grown, or extracted in whole or significant part the grain purchased from its members, which the members have so manufactured, produced, grown or extracted.

3. For purposes of § 199, Taxpayer's qualified production activities income and taxable income will, pursuant to § 199(d)(3)(C) and § 1.199-6(c), be computed without regard to any deduction for Grain Payments to members.

LAW AND ANALYSIS

Section 1382(a) provides that, except as provided in § 1382(b), the gross income of any organization to which subchapter T applies (hereinafter, "a subchapter T cooperative") shall be determined without any adjustment (as a reduction in gross receipts, an increase in cost of goods sold, or otherwise) by reason of any allocation or distribution to a patron out of net earnings or by reason of any amount paid to a patron as per-unit retain allocations (as defined in § 1388(f)).

Section 1382(b) provides, in part, that, in determining the taxable income of a subchapter T cooperative, there shall not be taken into account amounts paid during the payment period for the taxable year - (1) as patronage dividends (as defined in § 1388(a)), to the extent paid in money, qualified written notices of allocation (as defined in § 1388(c), or other property (except nonqualified written notices of allocation (as defined in § 1388(d)) with respect to patronage occurring during such taxable year; (2) in money or other property (except written notices of allocation) in redemption of a nonqualified written notice of allocation which was paid as a patronage dividend during the payment period for the taxable year during which the patronage occurred; (3) as per-unit retain allocations (as defined in § 1388(f)), to the extent paid in money, qualified per-unit retain certificates (as defined in § 1388(h), or other property (except nonqualified per-unit retain certificates, as defined in § 1388(i)) with respect to

marketing occurring during such taxable year; or (4) in money or other property (except per-unit retain certificates) in redemption of a nonqualified per-unit retain certificate which was paid for the taxable year during which the marketing occurred.

Section 1382(d) provides, in part, that the payment period for any taxable year is the period beginning with the first day of such taxable year and ending with the fifteenth day of the ninth month following the close of such year.

Section 1385(a)(1) provides that each person shall include in gross income the amount of any patronage dividend which is paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from a subchapter T cooperative.

Section 1385(a)(3) provides that each person shall include in gross income the amount of any per-unit retain allocation which is paid in qualified per-unit retain certificates and which is received by him during the taxable year from a subchapter T cooperative.

Section 1388(a) provides, in part, that, for purposes of subchapter T, the term "patronage dividend" means an amount paid to a patron by a subchapter T cooperative: (1) on the basis of the quantity or value of business done with or for such patron, (2) under an obligation of such organization to pay such amount, which obligation existed before the organization received the amount so paid, and (3) which is determined by reference to the net earnings of the organization from business done with or for its patrons.

Section 1388(f) defines the term "per-unit retain allocation" to mean "any allocation, by a subchapter T cooperative to a patron with respect to products marketed for him, the amount of which is fixed without reference to the net earnings of the organization pursuant to an agreement between the organization and the patron.

Section 1388(g) defines the term "per-unit retain certificate" to mean any written notice which discloses to the recipient the stated dollar amount of a per-unit retain allocation to him by the organization.

Section 199(a) allows 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.

Section 199(b)(1) provides in general that the amount of the deduction allowable under § 199(a) for any taxable year shall not exceed 50 percent of the W-2 wages of the taxpayer for the taxable year.

Section 199(c)(1) defines the term "qualified production activities income" (QPAI) for any taxable year as 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 § 199), which are properly allocable to such receipts.

In the case of agricultural and horticultural cooperative, § 199(d)(3)(A) allows a deduction to patrons who receive a qualified payment from a specified agricultural or horticultural cooperative, for the taxable year in which the payment is received, equal to the portion of the deduction allowed under § 199(a) to the cooperative, which is (i) allowed with respect to the portion of QPAI 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 § 1382(d).

Under § 199(d)(3)(B), the taxable income of a specified agricultural or horticultural cooperative shall not be reduced under § 1382 by reason of that portion of any qualified payment as does not exceed the deduction allowable under § 199(d)(3)(A) with respect to such payment.

Section 199(d)(3)(C) provides that, for purposes of § 199, 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 § 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

Section 199(d)(3)(D) provides that, for purposes of § 199, a specified agricultural or horticultural cooperative described in § 199(d)(3)(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.

Section 199(d)(3)(E) provides that, for purposes of § 199(d)(3), a "qualified payment" means, with respect to any person, any amount which – (i) is described in § 1385(a)(1) or (3), (ii) is received by such person from a specified agricultural or horticultural cooperative, and (iii) is attributable to QPAI with respect to which a deduction is allowed to such cooperative under § 199(a).

Section 199(d)(3)(F) provides that, for purposes of § 199(d)(3), the term "specified agricultural or horticultural cooperative" means a subchapter T cooperative 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.

Section 1.199-6(c) provides that, for purposes of determining its § 199 deduction, the cooperative's QPAI (as defined in § 1.199-1(c)), and taxable income are computed without taking into account any deduction allowable under § 1382(b) or (c) (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

Section 1.199-6(e) provides that the term "qualified payment" means any amount of a patronage dividend or per-unit retain allocation, as described in § 1385(a)(1) or (3) received by a patron from a cooperative, that is attributable to the portion of the cooperative's QPAI, for which the cooperative is allowed a § 199 deduction. For this purpose, patronage dividends and per-unit retain allocations include any advances on patronage and per-unit retains paid in money during the taxable year.

CONCLUSIONS

Based solely on the information submitted and representations made, we conclude as follows:

1. After Taxpayer's proposed assumption of the grain origination function, Grain Payments to Taxpayer's members will constitute "per-unit retain allocations paid in money" within the meaning of § 1382(b)(3).

2. Pursuant to § 199(d)(3)(D), Taxpayer will be treated as having manufactured, produced, grown, or extracted in whole or significant part the grain purchased from its members, which the members have so manufactured, produced, grown or extracted.

3. For purposes of § 199, Taxpayer's QPAI and taxable income will, pursuant to § 199(d)(3)(C) and § 1.199-6(c), be computed without regard to any deduction for Grain Payments to members.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Jian H. Grant
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure (1)
Copy for section 6110 purposes