



September 5, 2019

The Honorable David J. Kautter
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Michael J. Desmond
Chief Counsel
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

RE: Guidance Concerning the Proposed Section 199A Treasury Regulations for Cooperatives and Their Patrons

Dear Messrs. Kautter and Desmond:

The American Institute of CPAs (AICPA) offers the following comments and recommendations related to the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) notice of proposed rulemaking REG-118425-18 (published June 19, 2019). The proposed regulations provide guidance regarding the application of sections 199A(a),¹ 199A(b)(7), and 199A(g) to cooperatives (to which sections 1381 through 1388 of the Internal Revenue Code apply) and their patrons regarding the deduction for qualified business income (QBI) as well as guidance to specified agricultural or horticultural cooperatives (“Specified Cooperatives”) and their patrons.

Section 199A, enacted under Pub. L. No. 115-97, commonly referred to as the Tax Cuts and Jobs Act (TCJA or “the Act”), generally provides for a deduction in the calculation of taxable income for certain taxpayers for tax years beginning after December 31, 2017, expiring for tax years beginning after December 31, 2025.² The Consolidated Appropriations Act, 2018 (H.R. 1625) (“CAA”) amended section 199A by modifying the QBI deduction for Specified Cooperatives under section 199A(g), and their patrons under section 199A(b)(7). Treasury and the IRS issued proposed regulations (“Proposed Regulations”)³ to provide guidance on the application of sections 199A(a), 199A(b)(7), and 199A(g) to cooperatives and their patrons. Section 199A(a) is generally available to patrons of all cooperatives. However, sections 199A(b)(7) and 199A(g) apply only to Specified Cooperatives and their patrons. In addition, these new Proposed Regulations suggest withdrawing the regulations under former section 199, which were repealed as part of the Act.

Specifically, the AICPA submits comments in the following areas:

I. Definition of Patronage and Nonpatronage Through the Directly Related Use Test

¹ Unless otherwise specified, all “section” references are to a section of the Internal Revenue Code of 1986, as amended (the “Code”), and the Treasury regulations (“Treas. Reg. §”) promulgated thereunder.

² Section 199A.

³ See IRS notice of proposed rulemaking, [REG-118425-18](#), published June 19, 2019.

- II. Allocation of C Corporation Patron Deduction
- III. Electing Out of the Section 199A Deduction
- IV. Determination of Income Received from Cooperatives
- V. Qualified Payments
- VI. Qualified Activities

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We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please contact me at (612) 397-3071 or chris.hesse@claconnect.com; Troy Lewis, Chair, AICPA Qualified Business Income Task Force, at (801) 523-1051 or tlewis@sisna.com; or Amy Wang, AICPA Senior Manager – Tax Policy & Advocacy, at (202) 434-9264 or amy.wang@aicpa-cima.com.

Sincerely,



Christopher W. Hesse, CPA
Chair, AICPA Tax Executive Committee

cc: The Honorable Charles Rettig, Commissioner, Internal Revenue Service
Mr. Thomas A. Barthold, Chief of Staff, Joint Committee on Taxation
Mr. James Holmes, Attorney, Passthroughs & Special Industries, Internal Revenue Service

AMERICAN INSTITUTE OF CPAs

Guidance Concerning the Proposed Section 199A Treasury Regulations for Cooperatives and Their Patrons

September 5, 2019

I. Definition of Patronage and Nonpatronage Through the Directly Related Use Test

Overview

The CAA provided regulatory authority under section 199A(g)(6) to Treasury and the IRS to issue regulations applicable to Specified Cooperatives and their patrons under former section 199 (as in effect before its repeal). The CAA did not amend Subchapter T, generally governed by sections 1381 through section 1388. However, the Proposed Regulations set forth a definition of “patronage and nonpatronage” that is “consistent with current case law under section 1388,” according to the Preamble.¹ Specifically, Prop. Treas. Reg. § 1.1388-1(f) provides:

“[w]hether an item of income or deduction is patronage or nonpatronage sourced is determined by applying the directly related use test. The directly related use test provides that if the income or deduction is produced by a transaction that actually facilitates the accomplishment of the cooperative’s marketing, purchasing, or services activities, the income or deduction is from patronage sources. However, if the transaction producing the income or deduction does not actually facilitate the accomplishment of these activities but merely enhances the overall profitability of the cooperative, being merely incidental to the association’s cooperative operation, the income or deduction is from nonpatronage sources. Patronage and nonpatronage income or deductions cannot be netted unless otherwise permitted by the Internal Revenue Code or regulations issued under the relevant section of the Internal Revenue Code, or guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).”

Recommendation

Treasury and the IRS should remove the definition of patronage and nonpatronage in Prop. Treas. Reg. § 1.1388-1(f). The definition places pressure on the general application of Subchapter T and the determination of patronage and nonpatronage sources of income and deductions.

Analysis

The Proposed Regulations note that this definition of patronage and nonpatronage “is intended to reflect the current case law under section 1388.” However, the Proposed Regulations do not cite to the existing case law that it used to define patronage or nonpatronage in the Proposed

¹ See IRS notice of proposed rulemaking, [REG-118425-18](#), published June 19, 2019.

Regulations or the Preamble. We believe this particular issue requires additional consideration and request further development.

In addition, the definition's strict prohibition on netting appears at odds with the widely held case law principle that a cooperative is not prohibited from netting nonpatronage losses against patronage income.² In fact, it was once the position of the IRS that a nonexempt Subchapter T cooperative was required to net nonmember/nonpatronage losses against patronage income.³ Although Treasury changed its view on the requirement, Rev. Rul. 74-377 still provides that a cooperative is allowed to net nonmember/nonpatronage losses against patronage income. Specifically, Rev. Rul. 74-377 states "[t]his [nonpatronage] net operating loss may be carried back and carried forward in accordance with section 172 to offset past or future income from business done with nonmembers to whom the cooperative has no obligation to return patronage dividends." Revenue Ruling 74-377 has been consistently interpreted by courts to mean that while netting of nonpatronage losses against patronage income is not required, it is permitted at the discretion of a cooperative.⁴ We request giving consideration to providing guidance allowing netting of nonpatronage losses with patronage sources.

As it relates to providing a single definition for patronage or nonpatronage, the Tax Court has recognized on multiple occasions that whether income is patronage-sourced requires a fact-intensive analysis.⁵ In the same regard, Treasury and the IRS declined to adopt commenters' recommendations with respect to what is a trade or business under 199A. Specifically, in the preamble to the final regulations, the rules provide, "[w]hether an activity rises to the level of a section 162 trade or business, however, is inherently a factual question and specific guidance under section 162 is beyond the scope of these regulations. Accordingly, Treasury and the IRS have concluded that the factual setting of various trades or businesses varies so widely that a single rule or list of factors is difficult to provide in a timely and manageable manner and difficult for taxpayers to apply." This same analysis applies to Treasury's definition of patronage and nonpatronage sources in the Proposed Regulations. We believe this definition is beyond the scope of the Proposed Regulations.

The directly related use test in the Proposed Regulations also appears to represent a departure from the general principles of Subchapter T, as it shifts the focus from the *activity* that produces the income or deduction, to the *transaction* that produces the income or deduction. It is not clear whether Treasury and the IRS intended to make this shift, or if consideration was given to how challenging it is to show how a discrete transaction facilitates or is directly related to patronage income or deductions.

² See Rev. Rul. 74-377, 1974-2 C.B. 274; *Farm Service Cooperative v. Comm'r*, 612 F.2d 718 (8th Cir. 1980).

³ See Rev. Rul. 70-420, 1970-2 C.B. 64, *revoked by* Rev. Rul. 74-377, 1974-2 C.B. 274.

⁴ See, e.g., *Farm Service Cooperative*, 612 F.2d 718 at footnote 16; *Certified Grocers of California, Ltd. v. Comm'r*, 88 T.C. 238 (1987) at footnote 21. See also IRS private letter ruling ("PLR") 201536011 (May 19, 2015) ("Rev. Rul. 74-377 has been consistently interpreted by Courts and, Taxpayer believes that while netting is not required, it is permitted in the discretion of a cooperative, so that, for instance, if a cooperative retains patronage earnings to recoup a nonmember/nonpatronage loss, the nonmember/nonpatronage loss could offset against such retained patronage earnings. . . . This approach is consistent with Rev. Rul. 74-377."). Although section 6110(k)(3) provides that taxpayers cannot use a PLR or cite it as precedent, a PLR suggests the IRS's views, as of the date of the issuance of such ruling, on the issue addressed.

⁵ See *Illinois Grain Corp. v. Comm'r*, 87 T.C. 435 (1986); *Certified Grocers of California, Ltd.*, 88 T.C. 238.

Furthermore, section 199A(g)(6) provides that “[t]he Secretary shall prescribe such regulations as are necessary to carry out the purposes of this subsection, including regulations which prevent more than 1 taxpayer from being allowed a deduction under this subsection with respect to any activity described in paragraph (3)(D)(i). Such regulations shall be based on the regulations applicable to cooperatives and their patrons under section 199 (as in effect before its repeal).”⁶ We believe it is important to note that neither the conference report (Report 115-466) nor the 2017 Joint Committee on Taxation’s Bluebook (Report 115-97) requests Treasury and the IRS to define patronage or nonpatronage under Subchapter T.

Under section 7805(a) the “Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.” Though Treasury has the authority to prescribe rules which may be necessary, the Proposed Regulations do not cite to this authority under section 7805(a) in defining patronage and nonpatronage sources under Subchapter T.

II. Allocation of C Corporation Patron Deduction

Overview

C corporations are not eligible to claim the section 199A deduction.⁷ Similarly, C corporations, which may exist as patrons of Specified Cooperatives, are expressly prohibited from claiming a deduction under section 199A(g).⁸ However, the Proposed Regulations do not clarify the effect of the section 199A(g) deduction otherwise allocable to a C corporation patron.

Recommendation

Treasury and the IRS should issue guidance under section 199A regarding the treatment of the section 199A(g) deduction otherwise allocable to an ineligible taxpayer. Specifically, guidance should confirm that a Specified Cooperative may allocate the section 199A(g) deduction to eligible taxpayers, without allocation to ineligible taxpayers, while maintaining such cooperative’s Subchapter T qualification. Further, guidance should provide that the section 199A(g) deduction otherwise allocable to an ineligible taxpayer is retained and deducted by the Specified Cooperative, if such cooperative obtains necessary information as to the eligibility status of its patron to whom the section 199A(g) deduction is allocated.

Analysis

An eligible taxpayer who receives a qualified payment from a Specified Cooperative is allowed a deduction equal to the portion of the deduction determined by the Specified Corporate identified

⁶ Consolidated Appropriations Act, 2018, Pub. L. No. 115-141 (Mar. 23, 2018). *See also* Joint Comm. on Taxation, General Explanation of Pub. L. 115-97, JCS-1-18 at 430 (Dec. 2018); Joint Comm. on Taxation, Technical Explanation of the Revenue Provisions of the House Amendment to the Senate Amendment to H.R. 1625, JCX-6-18 at 24 (Mar. 22, 2018).

⁷ Section 199A(a).

⁸ Section 199A(g)(2)(D)(i).

in a written notice.⁹ A C corporation is not an eligible taxpayer.¹⁰ It is unclear, however, whether the Specified Cooperative is allowed to retain the portion of the section 199A(g) deduction otherwise allocable to a C corporation patron, whether the amount can pass through to non C corporation patrons, or whether the section 199A(g) is lost and unavailable to any taxpayer.

Fundamental to operating on a cooperative basis under section 1381(a)(2), members of a cooperative are meant to share in the risks and benefits of the cooperative organization; moreover, the cooperation should operate under a concept of equal treatment among patrons. Absent guidance otherwise, we are concerned that if a Specified Cooperative treats a C corporation patron different from a non-C corporation patron, the cooperative's Subchapter T qualification is jeopardized by this disparate treatment.

Section 199A(g)(2)(A) allows a deduction to eligible taxpayers. Section 199A(g)(2)(A)(i) allows the deduction "with respect to the portion of the qualified production activities income to which such payment is attributable" Section 199A(g)(2)(A)(ii) allows the deduction to patrons in the amount determined by the Specified Cooperative. Under section 199A(g)(2)(C), the Specified Cooperative is denied the section 199A(g) deduction for that portion allowable to eligible taxpayers, identified by such cooperative in a written notice mailed to such taxpayer during the payment period described in section 1382(d).

The steps provided in section 199A(g)(2) indicate the following:

1. The Specified Cooperative computes the deduction under section 199A(g)(1);
2. The Specified Cooperative identifies the amount of section 199A(g)(1) deduction to retain;
3. The deduction not retained is allocated to patrons based upon the portion of qualified production activities income to which such payment is attributable;
4. C corporation patrons are disallowed the section 199A(g) deduction; and
5. Amounts allocated to ineligible taxpayers are allowed to the cooperative.

These steps require the Specified Cooperative to determine whether patrons are eligible taxpayers. In order for the Specified Cooperative to deduct the amounts otherwise allocated to ineligible patrons, the Specified Cooperative must obtain information as to the entity status of its patrons (*i.e.*, C corporation or otherwise). If the Specified Cooperative does not make inquiries as to patron tax status (C corporation or otherwise), the section 199A(g) deduction allocated is possibly lost. We request guidance confirming that the Specified Cooperative is not required to incur the administrative burden of determining the entity status (C corporation or otherwise) of its patrons.

We further request guidance providing that if the Specified Cooperative obtains information as to the tax status of its patrons, the section 199A(g) deduction allocated to ineligible taxpayers is allowable to the Specified Cooperative, subject to the taxable income limit of section 199A(g)(1)(A)(ii). As a consequence of this choice available to the Specified Cooperative, the section 199A(g) deduction otherwise allocable to a C corporation patron is either (a) lost (not available to any taxpayer) or (b) retained and deducted by the Specified Cooperative (if the Specified Cooperative receives information that the patron is not an eligible taxpayer).

⁹ Section 199A(g)(2)(A).

¹⁰ Section 199A(g)(2)(D)(i).

III. Electing Out of the Section 199A Deduction

Overview

Under section 199A, certain taxpayers “shall be allowed” a deduction related to QBI. Although a Specified Cooperative is not required to take a deduction under section 199A, section 199A(b)(7) provides a required modification to the section 199A(a) deduction of a patron who receives a qualified payment from a Specified Cooperative. Specifically, section 199A(b)(7) provides that patrons of a Specified Cooperative are required to reduce their section 199A(a) deduction by the lesser of (a) 9 percent of so much of the QBI with respect to such trade or business that is properly allocable to qualified payments from the Specified Cooperative, or (b) 50 percent of so much of the patrons’ W-2 wages (determined under section 199A(b)(4)) with respect to such trade or business as are so allocable.

This requirement is repeated within Treas. Reg. § 1.199A-1(e)(7). The reduction under section 199A(b)(7) and Treas. Reg. § 1.199A-1(e)(7) applies whether the Specified Cooperative passes through all, some, or none of the Specified Cooperative’s section 199A(g) deduction to the patron in that taxable year. If a Specified Cooperative determines not to take a deduction under section 199A(g) (*i.e.*, it neither retains nor passes through the section 199A(g) deduction), it is not entirely clear why a patron would need to make a modification under section 199A(b)(7).

Recommendation

Treasury and the IRS should provide guidance to allow Specified Cooperatives to “elect out” of section 199A(g), and thereby render the modification under section 199A(b)(7) for its patrons unnecessary.

Analysis

Regardless of whether the Specified Cooperative makes an allocation of the section 199A(g) deduction to its patrons, patrons are required to reduce their section 199A(a) deduction according to section 199A(b)(7). This reduction applies regardless of whether the Specified Cooperative or its patrons received a benefit from the Specified Cooperative’s section 199A(g) deduction in that taxable year, or whether the Specified Cooperative was entitled to a deduction under section 199A(g).¹¹

Facts and circumstances vary for each cooperative. While section 199A(g), as modified by section 199A(b)(7), benefits many patrons, there are situations where the benefits of section 199A(g) are more than eroded by the modifications of section 199A(b)(7). This may occur when patrons have their own wage base, the commodity marketed by the Specified Cooperative has a low margin, or the Specified Cooperative has a relatively small wage base.

While we recognize the need for Treasury to ensure that both the Specified Cooperative and their patrons do not “double up” on the section 199A deduction, we do not believe that the congressional

¹¹ Prop. Treas. Reg. § 1.199A-7(f).

intent was for the Act to make patrons of Specified Cooperatives worse off than they were prior to the Act. If these facts exist, the Specified Cooperative should have the ability to “elect out” of section 199A(g), provided the Specified Cooperative notifies its patrons of this election, which would allow the patron to avoid the modification under section 199A(b)(7). For example, under pre-TCJA section 199(d)(3), a domestic production activities deduction was not available to a patron or the specified agricultural or horticultural cooperative if the cooperative failed to compute the deduction at the cooperative level. The passthrough to the patron depended first on the cooperative computing the deduction.

Section 199A(b)(7) is computed in conjunction with the cooperative choosing to compute the section 199A(g) deduction, analogous to pre-TCJA section 199. The Specified Cooperative, controlled by its members, may choose not to incur the administrative burden of the computations. We believe that Treasury has the authority to provide this guidance and administrative relief to Specified Cooperatives and their patrons, based upon congressional intent provided in section 199A(g)(6) and the directive of the CAA (noted above).

IV. Determination of Income Received from Cooperatives

Overview

Patrons are uncertain as to the amount of QBI with respect to trade or business income received from Specified Cooperatives.

Recommendation

Treasury and the IRS should provide guidance to patrons to assist in determining their QBI with respect to their trade or business properly allocable to qualified payments received from Specified Cooperatives. We recommend year-by-year determination of trade or business income properly allocable to qualified payments received from the Specified Cooperative. Income received by the patrons from other sources (e.g., section 1245 gains on equipment sales other than to the cooperative, crop insurance receipts, government subsidy payments, and income from aggregated rental income under Treas. Reg. § 1.199A-4) are QBI but not properly allocable to qualified payments received from Specified Cooperatives for purposes of the section 199A(b)(7)(A) reduction.

Analysis

Section 199A(g)(1) provides a nine percent deduction (subject to limitation¹²) computed on the lesser of Qualified Production Activities Income (“QPAI”) or taxable income of the Specified Cooperative. Taxable income of the Specified Cooperative is determined without regard to any deduction allowable under section 1382(b) or (c). The Specified Cooperative determines the amount of section 199A(g)(1) retained and notifies eligible taxpayers of the amount of the cooperative’s section 199A(g)(1) payment allowed to the eligible taxpayer.

¹² Section 199A(g)(1)(B).

Eligible Taxpayers receiving a qualified payment and notice from the Specified Cooperative of that portion of the cooperative's section 199A(g) deduction are to reduce their QBI by the lesser of (a) nine percent of so much of the QBI properly allocable to qualified payments received from such cooperative, or (b) 50 percent of so much of the W-2 wages with respect to such trade or business as are so allocable.¹³ Thus, a patron that otherwise operates one trade or business must determine that portion of the trade or business allocable to business done with the Specified Cooperative.

Patronage dividends and per-unit retain allocations¹⁴ from the Specified Cooperative are qualified payments from the Specified Cooperative. Taxpayers are uncertain as to whether other gross receipts generate QBI, which is "properly allocable to qualified payments received from such cooperative."¹⁵ For example, the sale of equipment used by the eligible taxpayer may generate section 1245 gain. The cost recovery deductions from the equipment may have reduced QBI from the Specified Cooperative in previous years. Taxpayers are uncertain as to whether they must include a portion of the section 1245 gain (recapture of depreciation) in the determination of QBI properly allocable to qualified payments received from a Specified Cooperative.

Guidance should confirm that only the amount of qualified payments received by the taxpayer from the Specified Cooperative are considered in the determination of QBI from business done with the Specified Cooperative.

The timing of income is also a concern. Assume that an eligible calendar-year taxpayer sold 100 percent of its crop to a Specified Cooperative in 2019, receiving income in 2019. The notice of the section 199A(g) deduction for this income is received in 2020, when the eligible taxpayer has no receipts from the Specified Cooperative. In this situation, it appears that no section 199A(b)(7) reduction occurs due to the lack of QBI from the cooperative in 2020.

In addition, aggregation of rental income and operating income is provided in Treas. Reg. § 1.199A-4. We request guidance confirming that aggregated rental income is not part of the QBI attributable to the qualified payment received from the Specified Cooperative. QBI from the Specified Cooperative should consider only qualified payments from such cooperative in the year of receipt of the notice of the section 199A(b)(7) amount, consistent with the cash method of accounting and reporting of patronage dividends in the year of receipt of the written allocation from the cooperative.¹⁶

V. Qualified Payments

Overview

Section 199A(g)(2)(E) defines a qualified payment (for purposes of the deduction allowed to patrons under section 199A(g)(2)) as any amount which is (a) described in paragraph (1) or (3) of section 1385(a) (*i.e.*, a patronage dividend or per-unit retain allocation); (b) is received by an

¹³ Section 199A(b)(7).

¹⁴ Section 1382(b).

¹⁵ Section 199A(b)(7)(A).

¹⁶ Section 1385(a).

eligible taxpayer from a Specified Cooperative; and (c) is attributable to qualified production activities income (“QPAI”) with respect to which a deduction is allowed to the cooperative under section 199A(g)(1).

The examples in Prop. Treas. Reg. § 1.199A-8(e) appear to provide for inconsistent treatment of payments as per-unit retains paid in money (“PURPIMs”) or purchases.

Recommendation

Treasury and the IRS should clarify whether it is possible for a Specified Cooperative and its patron to contractually agree that a payment is not a qualified payment (*i.e.*, a purchase from a non-patron or a PURPIM to a patron).

Analysis

Example 2 of Prop. Treas. Reg. § 1.199A-8(e) suggests that certain payments from the Specified Cooperative to a patron are not qualified payments and therefore not included in the reduction amount determined under section 199A(b)(7). In example 1, the Specified Cooperative paid \$4 million to its patrons in the form of per-unit retain allocations pursuant to an agreement at the time grain was delivered to the cooperative. Example 2 is identical to example 1, however, the payments for the grain were not per-unit retain allocations described in section 1388(f).

It remains unclear from the facts of these two examples whether the patron’s relationship with the Specified Cooperative changed, or whether Treasury and the IRS believe that the Specified Cooperative and its patron can agree to treat such payments differently. Treasury and the IRS should clarify whether a Specified Cooperative and its patron may contractually agree that a payment upon the delivery of grain, for example, is, or is not, a qualified payment (*i.e.*, a PURPIM rather than a purchase).

VI. Qualified Activities

Overview

The Proposed Regulations modify the definition of “agricultural or horticultural products” from former section 199 and in doing so, remove several key examples that help to clarify which activities are qualifying for purposes of domestic production gross receipts (“DPGR”). We are not certain why these examples were removed from guidance.

Recommendation

Treasury and the IRS should add examples 1 and 2 from Treas. Reg. § 1.199-3(e)(5), related to the storage of agricultural products, and the examples from Treas. Reg. § 1.199-6(m) to the Proposed Regulations to provide additional clarity for purposes of the section 199A(g) deduction. Further, we recommend that guidance confirm that a Specified Cooperative should include in its determination of DPGR income received from a patron, as well as the related expense (including wages) incurred to provide agricultural supplies and services to the patron.

Analysis

Proposed Treas. Reg. §1.199A-8(a)(4) defines “agricultural or horticultural products” as:

[A]gricultural, horticultural, viticultural, and dairy products, livestock and the products thereof, the products of poultry and bee raising, the edible products of forestry, and any and all products raised or produced on farms and processed or manufactured products thereof within the meaning of the Cooperative Marketing Act of 1926, 44 Stat. 802 (1926). Agricultural or horticultural products also include aquatic products that are farmed whether by an exempt or a nonexempt Specified Cooperative. In addition, agricultural or horticultural products include fertilizer, diesel fuel, and other supplies used in agricultural or horticultural production that are MPGE by a Specified Cooperative.

The Proposed Regulations do not include several examples included in the section 199 regulations which would otherwise help to define agricultural or horticultural products and the storage of farm products. The CAA provided that Treasury guidance for section 199A(g) “shall be based on the regulations applicable to cooperatives and their patrons under section 199 (as in effect before its repeal).”¹⁷ Specifically, we request that the Proposed Regulations include Treas. Reg. §1.199-3(e)(5) examples 1 and 2 to clarify that the storage of farm products is a qualified activity, as well as include the examples in Treas. Reg. §1.199-6(m), consistent with how cooperatives and patrons were treated under former section 199.

Further, the Proposed Regulations are unclear regarding whether supplies and services provided in a single transaction are DPGR for the Specified Cooperative. Specifically, for purposes of the section 199A(g) calculation, DPGR should include wages that are often contained within the service activities of cooperatives. For example, the section 199A(g) calculation should include agronomy services provided by a Specified Cooperative to a patron (*e.g.*, the amount paid by a patron and included in the Specified Cooperative’s determination of income to purchase and spread fertilizer on the patron’s field). Had the patron performed these services on its own through its own employees, it would have deducted the wages as an input to the crop. Therefore, Treasury and the IRS should allow the Specified Cooperative to include as DPGR the income received from the patron and the related expense (including wages) incurred to provide these supplies and services to the patron.

¹⁷ Section 199A(g)(6).