

United States Senate  
WASHINGTON, DC 20510

February 25, 2020

The Honorable Steven Mnuchin  
Secretary of the Treasury  
1500 Pennsylvania Ave, NW  
Washington, DC 20220

Dear Mr. Secretary:

I write in regards to the IRS proposed rule "Section 199A for Cooperatives and Their Patrons" (REG-118425-18). I appreciate your attention to this issue.

As you know, prior to the Tax Cuts and Jobs Act (TCJA), section 199 of the Internal Revenue Code (IRC) provided a permanent tax deduction known as the Domestic Production Activities Deduction (DPAD). TCJA effectively repealed the DPAD but created a new deduction for agricultural cooperatives as part of section 199A.

In 2018, Congress amended Section 199A to correct a drafting error of this provision. Congress worked with multiple stakeholders during the process of creating the fix and ultimately came to an agreement based on two principles:

1. To replicate, to the greatest extent possible, the tax benefits that farmer-owned cooperatives and their farmer-patrons received under the previous Section 199 as it existed prior to its repeal.
2. To restore and maintain marketplace competition and remove any tax incentive for a farmer to do business with a firm because of its corporate structure.

In statute, we explicitly state in Section 199A(g)(6) that the Treasury should promulgate regulations that "shall be based on regulations applicable to cooperatives and their patrons under section 199 (as in effect before is repeal)." I have concern that the proposed rule deviates from the old Section 199 regulations in how agricultural cooperatives are able to claim the deduction for both patronage and non-patronage activity income.

It is important that Treasury's regulations accurately reflect the clear intent of Congress and the principles that were formed as part of the agreement. Final regulations should recreate Section 199 to the greatest extent practical, while maintaining the competitive balance in the marketplace.

Thank you for your consideration of this matter.

Sincerely,



Deb Fischer  
United States Senator

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