

February 25, 2020

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

Dear Mr. Secretary:

We are writing to you today on behalf of the Northwest Dairy Association (NDA), a dairy farmer-owned cooperative with farmer-owners in Washington, Idaho, Oregon, and Montana. Under the Darigold brand, the cooperative owns and operates numerous dairy manufacturing plants that process the milk produced by NDA farmers into consumer dairy products and ingredients. Darigold is a wholly owned subsidiary of NDA that joins in the filing of the cooperative's consolidated federal income tax return.

We would like to bring your attention to an issue pertaining to the implementation of the revised Section 199A(g) as enacted in the Consolidated Appropriations Act of 2018 (P.L. 115-141). As you likely know, dairy farmer cooperatives have used the previous Section 199 deduction for domestic manufacturing since it was first created in 2004, mostly by passing the deduction back directly to their farmer owners.

The statutory provisions that originally created Section 199 in the American Jobs Creation Act of 2004 (P.L. 108-357), in particular the special rule for affiliated groups, enabled cooperatives like NDA to calculate the deduction on income from wholly owned subsidiaries, like Darigold, that join in their consolidated federal return. The milk our NDA farmer owners produce is manufactured into consumer dairy products and ingredients at Darigold plants. In other words, the products generated by Darigold's manufacturing plants are the direct result of those plants processing the milk produced by NDA's farmer owners.

Fortunately, the statutory language in the Consolidated Appropriations Act of 2018 that lays out the special rule for affiliated groups under Section 199A(g) aligns with the original 2004 provision. However, despite this, we are greatly concerned that the Department's proposed rule does not make clear that cooperatives can count income from non-cooperative subsidiaries when calculating the deduction, even subsidiaries that are included in the cooperative's consolidated tax return.

Should the proposed rule move forward as currently written, virtually the entire Section 199 deduction that NDA takes would be eliminated because the cooperative would be unable to

count income generated by Darigold in the deduction. In recent years, NDA has taken a deduction totaling roughly \$60 million annually, which has been passed back to its farmer-owners in direct proportion to their share of NDA's total milk volume. While the amount passed back to each producer varies, on average this would amount to a lost deduction of \$135,000 annually per farmer if each produced the same volume of milk.

We strongly believe that now is not the time to impose a tax increase on dairy producers. As you likely know, dairy farmers have recently endured tremendous economic challenges, suffering from prolonged low prices for five consecutive years amidst uncertain market conditions and a challenging labor environment. Dairy producers are eternal optimists for the future and are heartened by the increased certainty and new market access that the new U.S.-Mexico-Canada Agreement will provide. However, a surprise tax increase would send the wrong signal at the wrong time.

We respectfully urge you to revise the proposed rule to ensure that when cooperatives calculate the Section 199A(g) deduction, they can include income from non-cooperative subsidiaries that join in the cooperative's consolidated tax return. Enclosed with this letter are two potential approaches for revising the proposed rule accordingly, one of which creates two new subsections and one of which simply modifies existing subsections.

Thank you for your consideration of this important request. We appreciate your dedicated service to our country and look forward to working with you to resolve this matter.

Sincerely,



Stan Ryan  
President & CEO  
*c.c. Monica Johnson*