

Email from Jeff Adkisson, Illinois Grain and Feed Association

Co-Op Tax Fix Still Evolving

Senators who shoehorned into the new tax reform law an offsetting provision to the repeal of the Sec. 199 manufacturing deduction so valuable to farmer-owned cooperatives remained confident this week a “dial back” of that provision’s unintended harm to grain marketing will be part of an FY2018 omnibus spending package in mid-February. However, those same Senate authors were confident a week ago a solution was in hand.

The section in question is how the new Sec. 199A, essentially a redefinition of which businesses qualify as “pass-through” entities for tax purposes, can be rewritten to maintain an equitable grain marketing playing field. As it now applies to cooperatives the pass-through deduction is so attractive, independent grain growers are far more likely to sell grain to cooperatives than to private grain companies, including country elevators. So dire are the long-term consequences of the mistake, some grain companies are looking into setting up cooperatives to take advantage of the new deduction.

To date, the IRS has not written rules on how the new Sec. 199A deduction is going to work, so most businesses are relying on accounting and audit firms to provide counsel. Some experts warn the deduction impacts each company differently, so based on income and other factors, for some the deduction may be worthless.

Sen. John Thune (R, SD) and Sen. John Hoeven (R, ND) led a handful of colleagues in getting the definition of a pass-through entity rewritten so cooperatives would qualify for a new 20% deduction. The Senators believed their solution would “mimic” the economic benefits of the original Sec. 199 deduction, most of which cooperatives send back to their members, using the remainder to invest in infrastructure and other expenses. These same Senators are negotiating a fix with the National Council of Farmer Cooperatives (NCFC), which pushed for the Sec. 199 substitute, and the National Grain & Feed Assn. (NGFA), which represents most of the nation’s country elevators as well as companies like Cargill, Inc. and ADM Co.

The two groups agree the goal is to preserve the intent of the Thune-Hoeven redefinition – a solution “that preserves the benefits that cooperatives and their farmer patrons enjoyed under Sec. 199” – but not turn the nation’s grain marketing system on its ear. Hoeven, who’s been hosting meetings between Senate staff and industry groups, says all stakeholders agree a fix is needed; Thune says he’s surprised industry didn’t recognize the potential problems the original fix might cause.