

Internal Revenue Service

Number: **200526012**

Release Date: 7/1/2005

Index Number: 1381.00-00

Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B05

PLR-162687-04

Date:

March 22, 2005

LEGEND:

Taxpayer =

b =

c =

d =

e =

Geographic Area =

f =

g =

Dear

This is in response to your request for rulings submitted on behalf of Taxpayer by its authorized representatives. The facts as represented by Taxpayer are as follows.

Taxpayer was incorporated in b. From b until c the Taxpayer marketed various types of crops for local farmers in the Geographic Area. During the summer months they held daily auctions to sell farmers crops to local produce brokers. The Taxpayer charged a minimal fee to cover the expenses of auctioning the produce and handling the paperwork. In an average year, the Taxpayer showed net income or loss of about f. In c, the Taxpayer ceased operations and closed.

In the years c to d, the stockholders and board of directors kept the property in hopes that the farmers auction block would once again open. In early d, the stockholders voted to liquidate the Taxpayer. In July of d, the property owned by the Taxpayer was sold. The sale resulted in a \$e gain to the Taxpayer. Most of the appreciation in value of the property occurred after the Taxpayer closed.

Taxpayer requests rulings that as a farmers' cooperative that is tax exempt under section 521 of the Internal Revenue Code, it may distribute as patronage dividends the net gain from the sale of the land and building and that the allocation of the patronage dividend be based on members as of the date that Taxpayer closed the auction market or as of the date of sale.

Section 1381(a) of the Code provides, in relevant part, that subchapter T shall apply to any organization exempt from tax under section 521 and to any corporation *operating* on a cooperative basis (emphasis added). Similarly, section 521 provides, in relevant part, that farmers' cooperatives exempt from taxation are organized and *operated* on a cooperative basis (emphasis added).

Under the facts, Taxpayer was organized as a farmers' cooperative but ceased operating on a cooperative basis for more than g. Accordingly, since the Taxpayer was not operating on a cooperative basis, it may not avail itself of the patronage dividend deduction provisions of subchapter T.

This ruling is directed only to the taxpayer that requested it. Under section 6110 (k)(3) of the Code it may not be used or cited as precedent. In accordance with a power of attorney filed with the request, a copy of the ruling is being sent to your authorized representative.

Sincerely yours,

Susan J. Reaman
Chief, Branch 5
Office of Associate Chief Counsel
(Passthroughs & Special Industries)