INTERNAL REVENUE SERVICE

Number: **200119016**
Release Date: 5/11/2001
Index Number: U.I.L. No. 1381.00-00

CC:P&SI:5-PLR-119611-00

February 6, 2001

Legend

Coop	=
State A	=
State B	=
Corp B	=
Corp C	=
b	=
c	=
d	=

Dear

This is in response to your letter dated October 3, 2000, submitted on behalf of Coop requesting a ruling under subchapter T of the Internal Revenue Code on a transaction described below.

Coop was incorporated in b in State A. Coop is engaged principally in the distribution of c products and related general merchandise products. Coop primarily does business with patrons who qualify and have been accepted as "member-patrons." The member-patrons are the shareholders of Coop and are primarily independent d.

Coop operates on a cooperative basis within the meaning of subchapter T and allocates amounts to patrons on the basis of the business done with or for such patrons. Accordingly, Coop is taxable on a cooperative basis pursuant to subchapter T of the Code, and Coop has been treated as a cooperative for federal income tax purposes since its formation in b. However, certain subsidiaries of the Coop do not operate on a cooperative basis.

Coop's capital stock consists of three classes, designated "Class A Shares," "Class B Shares," and "Class C Shares." The total number of Class A Shares that Coop is authorized to issue is 500,000, of which are issued and outstanding. The total number of Class B Shares that Coop is authorized to issue is 2,000,000, of which are issued and outstanding. The Coop is considering changing its form

of organization from that of a State A corporation to that of a State B limited liability company (an "LLC").

The board of directors of Coop has determined that a State B LLC will have certain advantages over the conduct of the business as a State A corporation. As a State A corporation, the Coop is subject to the provisions of the State A Corporations Code including Section 500, which limits the ability of Coop to make distributions (including distributions to repurchase its own shares). Section 500 permits repurchase only when retained earnings (as determined under generally accepted accounting principles) equal or exceed the amount of any proposed distribution. Historically, through the operations of its subsidiaries, the Coop has maintained sufficient retained earnings to accomplish its share repurchase program as set forth in its Articles and Bylaws. As a result of expenses associated with the merger with Corp B, and current operating losses of Corp B subsidiaries as well as operating losses of retail stores owned by Coop including stores acquired from Corp C for resale to members or others, the Coop's retained earnings have been depleted such that they are inadequate to permit repurchase of Coop shares. An alternative repurchase test permitted under Section 500 based on the ratio of assets to liabilities cannot be met since the Coop relies heavily on borrowings to finance its operations.

The requirements of Section 500 are unique to State A corporations and are not typical of the corporate laws of other states or of the laws governing repurchase of shares by LLCs organized in either State A or State B state. The State B law applicable to share repurchases by State B corporations and State B LLCs and the State A law applicable to share repurchase by LLCs base the entities' ability to repurchase shares upon a determination of whether, after giving effect to the distribution, the fair value of the assets of the entity exceed the total liabilities of the entity. The board of directors believes that such a governing principle will enable Coop to continue to repurchase shares in accordance with the provisions of its Articles and Bylaws so long as the board of directors is able to make the determination required by State B law.

Reorganizing Coop as a State B corporation (rather than as a LLC) would not result in the application of State B law regarding distributions. Instead, the "pseudo-foreign corporation" provisions of the State A Corporations Code would apply so as to require that State A corporate law regarding distributions continue to apply. In contrast, no similar principle of State A law would require that State A rather than State B law regarding distributions apply if Coop is reorganized as a State B LLC. Instead, the principles of State B law regarding distributions would apply to a State B LLC.

Coop would accomplish the change in form to a State B LLC in the following manner:

a. Coop would form an LLC by the filing of a certificate of formation with the

Secretary of State of the State of State B. The name of the LLC would be substantially identical to Coop's name. As the organizer, Coop would adopt bylaws as the operating agreement of the LLC. The provisions of the certificate of formation and bylaws of the LLC would be substantially the same as the provisions of the Amended and Restated Articles of Incorporation and the Bylaws of Coop with respect to capital structure, voting rights, board size and board authority, with the exception that the provisions authorizing Class C shares (one share held by each director) would be eliminated.

b. The LLC will make an election under section 301.7701-3(a) of the regulations to be taxed as an "association," effective as of the date of the LLC's organization.

c. Coop and the LLC will then enter into an agreement and plan of reorganization. Pursuant to the terms of such agreement, Coop will be merged in the LLC and all issued and outstanding Class A and Class B Shares of Coop, respectively, will be converted into the right to receive the same number of Class A and Class B shares of the LLC (the "Reorganization"), and the 24 Class C shares will be converted into the right to receive $10 per share in cash. As a result, the shareholdings of member patrons in the LLC immediately following the Reorganization will be identical to their shareholdings in Coop immediately prior to the Reorganization. For the foreseeable future following the Reorganization, the LLC, directly and through its wholly-owned subsidiaries, will continue the operations of Coop in substantially the same manner as Coop had done previously.

Coop represents that the Reorganization will qualify as a tax-free reorganization under Section 368(a)(1)(F). Coop further represents that, following the Reorganization, the LLC will continue to operate on a cooperative basis.

Ruling Requested

Coop requests a ruling that upon the Reorganization, the LLC will be treated as a cooperative under subchapter T of the Code.

Section 1381(a)(2) of the Code and section 1.1381-1(a) of the regulations promulgated thereunder provide that subchapter T applies to" ... any corporation operating on a cooperative basis and allocating amounts to patrons on the basis of the business done with or for such patrons." (emphasis added)

Section 301.7701-2(b)(2) of the regulations provides that an LLC that elects to be taxed as an association is treated as a "corporation" for all federal tax purposes.

Revenue Procedure 2000-3, Section 3.01(27), states that the Service will not rule whether a transaction constitutes a reorganization under Code § 368(a)(1)(F), but that policy extends only to the consequences of qualification under that section (such as non-recognition of gain or loss and carryover of basis). Accordingly, that rule should

not prevent the Service from issuing the requested ruling that the LLC will be treated as a cooperative under subchapter T of the Code following the Reorganization. As noted above, the taxpayer has represented that to the best of its knowledge, the transaction will qualify as a reorganization within the meaning of section 368(a)(1)(F).

Subchapter T applies to any corporation operating on a cooperative basis and allocating amounts to patrons on the basis of the business done with or for such patrons. Coop currently conducts business as a cooperative and allocates patronage dividends to patrons on the basis of the patronage based business done with or for such patrons. Accordingly, Coop is taxed on a cooperative basis pursuant to subchapter T of the Code. Following the Reorganization, the LLC will continue operating as a cooperative with respect to business done on a cooperative basis and will allocate patronage dividends to patrons on the basis of the patronage business done with or for such patrons. The LLC will elect to be taxed as an association effective as of the date of its organizations, and, under section 301.7701-2(b)(2) of the regulations, will be treated as a corporation for all federal tax purposes. Hence, the LLC should be taxed on a cooperative basis pursuant to subchapter T of the Code.

Accordingly, we rule that upon the reorganization the LLC will be treated as a cooperative under subchapter T of the Code provided it continues to operate on a cooperative basis.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the power of attorney submitted with the ruling request, a copy of this letter is being sent to Coop and a second representative.

Sincerely yours,
Walter H. Woo
Senior Technician Reviewer
Branch 5
Office of Associate Chief Counsel
(Passthroughs & Special Industries)