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Memorandum

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to: Senior Attorney (Cleveland)
(Large Business & International)

from: Senior Counsel, Branch 6
(Income Tax & Accounting)

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subject: Cooperatives and sections 267(a)(2) and (a)(3)

This Chief Counsel Advice responds to your request for assistance dated November 15, 2011. This advice may not be used or cited as precedent.

LEGEND

Parent	=	
System	=	
State1	=	
Firm	=	
A	=	
B	=	
C	=	
D	=	
E	=	
F	=	
G	=	
H	=	
I	=	
Date1	=	
Date2	=	
Date3	=	
Date4	=	

Date5	=	
Date6	=	
Date7	=	
Date8	=	
Date9	=	
Date10	=	
Date11	=	
Date12	=	
Date13	=	
Date14	=	
Date15	=	
Date16	=	
Date17	=	
Amount A	=	
Amount B	=	
Amount C	=	
Amount D	=	

ISSUE

Whether §§ 267(a)(2) and (a)(3) of the Internal Revenue Code (IRC) apply to the patronage dividends paid by Cooperative E to its related domestic and foreign patrons so that Cooperative E may not deduct them under § 1382 until the amounts are includible in the gross income of its patrons.

CONCLUSIONS

Section 267(a)(2) applies to the patronage dividends paid by Cooperative E to its related domestic patrons so that it will not be able to deduct them until the amounts are includible in the domestic patrons' gross income. Section 267(a)(3) applies to the patronage dividends paid by Cooperative E to its related foreign patrons, so it will similarly not be able to deduct them until the amounts are includible in the foreign patrons' gross income, subject to the exceptions and special rules set forth in § 267(a)(3)(B) and § 1.267(a)-3(c) of the Income Tax Regulations.

FACTS

Taxpayer (Parent) is the common parent of a consolidated group of corporations that file a consolidated Federal income tax return. Parent also has acquired several domestic corporations that are common parents of their own consolidated groups. Parent also has many foreign affiliates. All of the group members, the acquired domestic corporations who are not members of the Parent consolidated group, and the foreign affiliates meet the § 267(f) requirements for membership in the Parent controlled group.

Parent is primarily a holding company that operates a variety of businesses through its controlled subsidiaries, both domestic and foreign. These subsidiaries design, manufacture, and sell industrial products, with strong brand names and proprietary technology. In Date1, Parent owned, directly or indirectly, approximately A subsidiaries. As of Date2, Parent owned more than B subsidiaries.

During the late Date3, Parent hired a consultant to introduce a manufacturing system into one of its manufacturing plants in order to increase efficiency and reduce costs. The manufacturing system was later introduced into all of Parent's manufacturing operations. Parent has further developed and refined this manufacturing system, which is now called System.

The System central office is located in the Parent's headquarters, in State1. The System central office is headed by a vice president and has more than C employees stationed across subsidiary plants to provide on-site System improvement services. Such employees may be reassigned from one subsidiary manufacturing plant to another, as needed.

Beginning in Date1, Parent began implementing the advice received from Firm to transfer the System assets and operations out of Parent's consolidated group and into Cooperative E, an entity that Parent treats as a cooperative under subchapter T of the IRC.

Formation of Cooperative E

Prior to Date4, I was a third-tier domestic subsidiary of Parent and was part of Parent's consolidated group. I was an inactive corporation wholly-owned by F. F was wholly-owned by G, which was wholly-owned by Parent. Parent filed a consolidated Federal income tax return on a calendar year basis.

On Date4, Parent implemented the D tax strategy. I redeemed all but one of its common shares held by F. I's Certificate of Incorporation was then amended and restated to authorize its issuance of B shares of common stock. Each of the domestic and foreign subsidiaries of Parent that utilized System acquired one share of I's common stock for Amount A and became shareholders of I. After the stock issuance, Parent's domestic subsidiaries owned approximately 55% of I's stock, with the remainder owned by its foreign subsidiaries, all of which were controlled foreign corporations. Accordingly, I was no longer a member of Parent's consolidated group.

I also changed its accounting period from a calendar year to a fiscal year ending on Date5. I also elected to be taxed as a cooperative under Subchapter T of the IRC (hereinafter referred to as Cooperative E), and I's shareholders automatically became patrons of Cooperative E. Parent's domestic subsidiaries have never owned an 80 percent or greater interest in Cooperative E. Cooperative E and its patrons use an overall accrual method of accounting. The Exam team has confirmed that Cooperative

E and its patrons are members of the same controlled group (as defined in section 267(f)).

Cooperative E charges its patrons three types of fees. The first type of fee is a fixed fee for centralized services which is based on a formula developed by Firm. The second type of fee is a procurement fee for Cooperative E purchases made on behalf of its patrons. The third type of fee is an hourly service fee charged for actual application of the System to the patrons' operations. This hourly service fee is based on a multiple of the salaries and benefits of the System employees assigned to the patron's operations.

Cooperative E's past H Federal income tax returns disclose that the fees Cooperative E charged its patrons far exceeded its costs. Almost 93% of what Cooperative E charged was returned as patronage dividends. Throughout its H-year history, Cooperative E paid patronage dividends to its patrons on Date12 of the year following its Date5 year end, *i.e.*, 8 ½ months after the close of its fiscal year. With one exception, in Date13, Cooperative E had extra cash and paid a portion (approximately 45%) of its patronage dividends in Date14, with the remainder being paid on Date10 (a date after Date14). Accordingly, most of Cooperative E's patronage dividends were paid 8 ½ months after the close of its fiscal year.

For its fiscal years ended Date6, Date7, and Date8, Cooperative E deducted patronage dividends in the amounts of Amount B, Amount C, and Amount D, respectively. Most of these amounts were not paid to, or included in the income of, Parent's consolidated group until 8 ½ months later on Date9, Date10, and Date11, respectively. Accordingly, most of these dividends were not reported as income on Parent's consolidated returns until Date15, Date16, and Date17.

LAW AND ANALYSIS

Section 267(a)(2) provides, in relevant part, that if (A) by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not (unless paid) includible in the gross income of such person, and (B) at the close of the taxable year of the taxpayer for which (but for this paragraph) the amount would be deductible under this chapter, both the taxpayer and the person to whom the payment is to be made are persons specified in any of the paragraphs of § 267(b), then any deduction allowable under this chapter in respect of such amount shall be allowable as of the day as of which such amount is includible in the gross income of the person to whom the payment is made (or, if later, as of the day on which it would be so allowable but for this paragraph).

Section 267(a)(3)(A) provides that the Secretary shall by regulations apply the matching principle of § 267(a)(2) in cases in which the person to whom the payment is to be made is not a United States person.

Section 267(a)(3)(B)(i) provides that notwithstanding § 267(a)(3)(A), in the case of any item payable to a controlled foreign corporation (as defined in § 957) or a passive foreign investment company (as defined in § 1297), a deduction shall be allowable to the payor with respect to such amount for any taxable year before the taxable year in which paid only to the extent that an amount attributable to such item is includible (determined without regard to properly allocable deductions and qualified deficits under § 952(c)(1)(B)) during such prior taxable year in the gross income of a United States person who owns (within the meaning of § 958(a)) stock in such corporation.

Section 1.267(a)-3(b)(1) of the Income Tax Regulations provides that except as provided in § 1.267(a)-3(c), § 267(a)(3) requires a taxpayer to use the cash method of accounting with respect to the deduction of amounts owed to a related foreign person. An amount that is owed to a related foreign person and that is otherwise deductible under Chapter 1 thus may not be deducted by the taxpayer until such amount is paid to the related foreign person. For purposes of this section, a related foreign person is any person that is not a United States person within the meaning of § 7701(a)(30), and that is related (within the meaning of § 267(b)) to the taxpayer at the close of the taxable year in which the amount incurred by the taxpayer would otherwise be deductible.

Section 1.267(a)-3(b)(2) provides that § 1.267(a)-3 applies to otherwise deductible amounts that are of a type described in § 881(a)(1), (2), or (4). The rules of § 1.267(a)-3(c) provide limited exceptions to the general rule that requires a taxpayer to the use a cash basis method of accounting.

Section 1.267(a)-3(c)(1) provides that the provisions of § 267(a)(2) and the regulations thereunder, and not the provisions of § 1.267(a)-3(b), apply to an amount that is income of the related foreign person that is effectively connected with the conduct of a United States trade or business of such related foreign person.

Section 1.267(a)-3(c)(2) provides that except with respect to interest, neither § 1.267(a)-3(b) nor §§ 267(a)(2) or (a)(3) applies to any amount that is income of a related foreign person with respect to which the related foreign person is exempt from United States taxation on the amount owed pursuant to a treaty obligation of the United States (such as under an article relating to the taxation of business profits).

Section 1.267(a)-3(c)(3) provides that § 1.267(a)-3(b) applies to amounts that are income of a related foreign person with respect to which the related foreign person claims a reduced rate of United States income tax on the amount owed pursuant to a treaty obligation of the United States (such as under an article relating to the taxation of royalties).

Persons are related for purposes of § 267 if they fall within any of the relationships specified in § 267(b). Under § 267(b)(3), two corporations are related persons if they are members of the same controlled group (as defined in § 267(f)).

Section 267(f)(1) provides that for purposes of § 267, the term "controlled group" has the meaning given to such term by § 1563(a), except that (A) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in § 1563(a), and (B) the determination shall be made without regard to subsections (a)(4) (certain insurance companies) and (e)(3)(C) (stock owned by certain employees' trusts described in section 401) of § 1563.

Section 267(f)(2) provides that in the case of any loss from the sale or exchange of property between members of the same controlled group and to which subsection (a)(1) applies, subsection (a)(1) and (d) shall not apply to such loss, but such loss shall be deferred until the property is transferred outside such controlled group and there would be recognition of loss under consolidated return principles or until such other time as may be prescribed by regulations.

Section 1563(a)(1) provides that the term "controlled group of corporations" means any group of one or more chains of corporations connected through stock ownership with a common parent corporation if (A) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one or more of the other corporations; and (B) the common parent corporation owns stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

The regulations promulgated under § 267(f) were revised in 1995 to harmonize with revisions to the intercompany transaction regulations of § 1.1502-13. See T.D. 8597, 1995-2 C.B. 147, 154-155. Thus, § 1.267(f)-1 uses the nomenclature and adopts many of the concepts underlying § 1.1502-13. Section 1.267(f)-1(a)(1) specifies that the purpose of the regulations under § 267(f) is to prevent members of a controlled group from taking into account a loss or deduction solely as the result of a transfer of property between a selling member (S) and a buying member (B). Section 1.267(f)-1(a)(2) provides that S's loss or deduction from an intercompany sale is taken into account under the timing principles of § 1.1502-13, treating the intercompany sale as an intercompany transaction.

Section 1.267(f)-1(b)(1) defines an intercompany sale as a sale, exchange, or other transfer of property between members of a controlled group, if it would be an intercompany transaction under the principles of § 1.1502-13. Section 1.1502-13(b)(1)(i) defines an intercompany transaction as a transaction between corporations that are members of the same consolidated group immediately after the transaction.

Section 1.1502-13(b)(1)(i)(D) defines "intercompany transaction" as a transaction between corporations that are members of the same consolidated group immediately

after the transaction, including distributions from subsidiary made to parent with respect to the stock of subsidiary (dividend distributions). Section 1.1502-13(b)(2) defines "intercompany items" as income, gain, deduction, and loss from an intercompany transaction.

Section 446(a) provides that taxable income shall be computed under the method of accounting on the basis of which the taxpayer regularly computes his income in keeping his books. Section 1.446-1(a)(1) provides that the term “method of accounting” includes not only the overall method of accounting of the taxpayer but also the accounting treatment of any item. Section 1.446-1(e)(2)(ii)(*a*) states that a change in a method of accounting includes a change in the overall plan of accounting for gross income or deductions or a change in the treatment of any material item used in such overall plan of accounting. Section 1.446-1(a)(1) also provides that although a method of accounting may exist under this definition without the necessity of a pattern of consistent treatment of an item, in most instances a method of accounting is not established for an item without such consistent treatment. Moreover, § 1.446-1(e)(2)(ii)(*a*) provides that a material item is any item that involves the proper time for the inclusion of the item in income or the taking of a deduction. The key characteristic of a material item “is that it determines the timing of income or deductions.” Knight-Ridder Newspapers, Inc. v. United States, 743 F.2d 781, 798 (11th Cir. 1984).

If the accounting practice does not permanently affect the taxpayer’s lifetime taxable income, but does or could change the taxable year in which taxable income is reported, it involves timing and is therefore a method of accounting. See Knight-Ridder Newspapers, Inc., 743 F.2d at 799; Primo Pants Co. v. Commissioner, 78 T.C. 705, 723 (1982); Rev. Proc. 91-31, 1991-1 C.B. 566, at § 3.02.

Section 1382(b)(1) provides, in relevant part, that in determining the taxable income of a cooperative, there shall not be taken into account amounts paid during the payment period for the taxable year as patronage dividends (as defined in § 1388(a)) . . . with respect to patronage occurring during such taxable year. Moreover, the flush language to § 1382(b) provides, in relevant part, that for purposes of this title, any amount not taken into account under the preceding sentence shall, in the case of an amount described in (1), be treated in the same manner as an item of gross income and as a deduction therefrom. See also § 1.1382-1(a).

Section 1382(d) provides, in relevant part, that for purposes of § 1382(b), the payment period for any taxable year is the period beginning with the first day of such taxable year and ending with the 15th day of the ninth month following the close of such year.

Section 1388(a) provides, in relevant part, that the term “patronage dividend” means an amount paid to a patron by a cooperative—(1) on the basis of quantity or value of business done with or for such patron, (2) under an obligation of such

cooperative to pay such amount, which obligation existed before the cooperative received the amount so paid, and (3) which is determined by reference to the net earnings of the organization from business done with or for its patrons.

Section 1385(a)(1) provides that each person shall include in gross income the amount of any patronage dividend which is received by him during the taxable year from a cooperative. These amounts are includible in gross income for the taxable year in which they are received even though the cooperative organization was allowed a deduction for such amounts for its preceding taxable year because they were paid during the payment period for such preceding taxable year. Section 1.1385-1(a).

In the instant case, the following must be established to determine whether § 267(a)(2) applies: (1) whether Cooperative E and its patrons are related persons within the meaning of § 267(b); and (2) whether the timing mismatch of Cooperative E's patronage dividend deduction and its patrons' income inclusion of such amount is by reason of the related parties' methods of accounting.

Exam has confirmed that Cooperative E and its patrons are members of the same controlled group. For purposes of this analysis, it is taken as fact that Cooperative E and its patrons are related persons within the meaning of § 267(b)(3). Thus, the sole issue presented is whether the matching rule of § 267(a)(2) applies to the patronage dividends paid by Cooperative E to its related domestic patrons, and whether the matching rule of §§ 267(a)(2) and (a)(3) applies to the patronage dividends paid by Cooperative E to its related foreign patrons, such that Cooperative E cannot deduct the amount of the patronage dividends until the amount is includible in the gross income of its patrons.

As an initial matter, § 267(a)(2) provides that it applies "to amounts deductible under this chapter [Chapter 1]." The rules relating to cooperatives are contained in subchapter T of Chapter 1 of the IRC. Moreover, a cooperative to which subchapter T applies is permitted to claim a deduction from gross income for amounts paid during the payment period to patrons as a "patronage dividend." Patronage dividends are to be treated as a deduction for purposes of applying the IRC and the regulations thereunder. See §§ 1.1381-1(a) and 1.1382-2.

Section 267(a)(2) will apply if a transaction between related persons, within the meaning of § 267(b), results in the related payor being allowed a deduction under the payor's accounting method in a taxable year earlier than when the related payee is required to include the item in gross income under the payee's method of accounting. In determining whether § 267(a)(2) applies, Cooperative E and its related patrons must have established a method of accounting for the treatment of patronage dividends.

Cooperative E and its related patrons use an overall accrual method of accounting. However, the item "patronage dividends" is accounted for under the rules of subchapter T. With one exception, Cooperative E has paid all qualifying patronage

dividends 8 ½ months following the close of its fiscal taxable year for H years. In accordance with § 1382(a), Cooperative E has deducted from its gross income the qualifying patronage dividends in the current fiscal taxable year even if paid 8 ½ months following the close of the current fiscal taxable year. For H years the related domestic patrons have included the patronage dividends paid to them into taxable income when the amount has been received, as permitted under § 1385(a). Section 1385(a) effectively places the related domestic patrons on the cash method of accounting for the item "patronage dividends."

The accounting practices provided for patronage dividends under §§ 1382(a) and 1385(a) are methods of accounting within the meaning of § 1.446-1(e)(2)(ii)(*a*) because they provide the rules for determining the proper time in which a patronage dividend is allowable as a deduction and includible in gross income, respectively. See § 1.446-1(e)(2)(ii)(*a*) (providing that a change in a method of accounting includes a change in the treatment of any material item used in such overall plan of accounting). A "material item" is any item that involves the proper time for the inclusion of the item in income or the taking of a deduction. Id. Moreover, Cooperative E has established a method of accounting for the patronage dividend deductions for purposes of § 1.446-1(e)(2)(ii)(*a*) because it has consistently applied the timing rules of § 1382(a) for H years. See § 1.446-1(e)(2)(ii)(*a*) (providing that "in most instances, a method of accounting is not established for an item without such consistent treatment"); Bank One Corp. v. Commissioner, 120 T.C. 174, 282 (2003), *aff'd in part and vacated in part sub nom.* J.P. Morgan Chase & Co. v. Commissioner, 458 F.3d 564 (7th Cir. 2006), *citing* H.F. Campbell Co. v. Commissioner, 53 T.C. 439, 447 (1969), *aff'd* 443 F.2d 965 (6th Cir. 1971) (describing a method of accounting as including a "consistent treatment of any recurring, material item, whether that treatment be correct or incorrect"). Furthermore, the related domestic patrons have established a method of accounting for the income item "patronage dividends" for purposes of § 1.446-1(e)(2)(ii)(*a*) because they have consistently applied the timing rules of § 1385(a) for H years. See § 1.446-1(e)(2)(ii)(*a*).

Here, the distortion in the taxable year of Cooperative E's (a fiscal year taxpayer) patronage dividend deduction and its related domestic patrons' (calendar year taxpayers) patronage dividend income inclusion is magnified because the parties have different accounting periods. However, distortion also arises because of Cooperative E and its related domestic patrons' methods of accounting. Therefore, § 267(a)(2) is applicable to the instant facts.

Sections 1382(a) and 1385(a) provide rules for the timing of a cooperative's patronage dividend deduction and its patrons' patronage dividend income inclusion, respectively. For example, if a cooperative and its patrons both were calendar year taxpayers, a natural timing distortion results from the methods of accounting provided for patronage dividends under subchapter T. Therefore, it is evident that a portion of the distortion is attributable to Cooperative E's and the related domestic patrons' methods of accounting. The legislative history explains that Congress was concerned with the unwarranted tax benefits that arise when related persons have different

methods of accounting: “persons who are related should be required to use the same method of accounting with respect to transactions between themselves in order to prevent the allowance of a deduction without the corresponding inclusion in income.” S. Rep. No. 98-169, Vol. 1, at 494 (1984). Thus, § 267(a)(2) requires related persons to use the same accounting method with respect to transactions between themselves in order to prevent the allowance of a deduction without the corresponding inclusion in income.

Moreover, §§ 267(a)(2) and (a)(3) apply to an amount owed to a related foreign person that is otherwise deductible under chapter 1 of the IRC, and provide special timing rules to determine when this amount may be deducted. Section 1.267(a)-3(a) and § 267(a)(3). Cooperative E paid patronage dividends to related foreign patrons 8 ½ months after its fiscal year end in its taxable years ending Date6, Date7, and Date8. Absent an applicable exception to § 267(a)(3), Cooperative E may not deduct such amounts until its fiscal year in which they were paid. Insufficient facts are available to determine if any of the exceptions set forth in § 1.267(a)-3(c)(1)-(3) are available or if the special rule for amounts payable to controlled foreign corporations (as defined in section 957) in § 267(a)(3)(B) applies.

No opinion is expressed as to the application of § 1.267(a)-3(c) to Cooperative E’s patronage dividend deductions attributable to amounts paid to related foreign patrons.

No opinion is expressed as to whether Cooperative E is appropriately treated as a corporation operating on a cooperative basis within the meaning of Subchapter T of the IRC.

No opinion is expressed regarding the tax treatment of the patronage dividends paid to the related foreign patrons under either the Code or the provisions of any income tax treaty.

In addition, no opinion is expressed with respect to the potential application of §§ 367 and 482 to the transactions and payments described herein.

Application of § 267(f) to defer Cooperative E’s patronage dividend deduction

As an alternative to the §§ 267(a)(2) and (a)(3) analysis described above, Cooperative E’s patronage dividend deduction for amounts paid to related patrons will be deferred under § 267(f). The issue is whether Cooperative E must defer taking deductions for patronage dividends that it pays to its related patrons until such time as those dividends are included in the income of its related patrons. Section 267(f) applies here.

Section 267(f) defers losses and deductions from certain transactions (*i.e.*, intercompany sales) between members of a controlled group. Here, Cooperative E and

its related patrons are members of Parent's controlled group (see (a) below). Moreover, Cooperative E's payments of patronage dividends constitute "intercompany sales" (see (b) below). Therefore, § 267(f) mandates that Cooperative E defer taking deductions for patronage dividends paid until such time as those patronage dividends are picked up in income by its related patrons.

(a) Cooperative E and its patrons are members of a controlled group. To prevent tax avoidance between members of a controlled group, § 267(b) defines related parties to include two corporations that are members of the same "controlled group." Section 267(b)(3). Section 267(f) defines "controlled group" for purposes of § 267(b) without regard to the limitations of § 1563(b). "Controlled group" has the meaning defined in section 1563(a) substituting "more than 50 percent" of the vote or value for the "at least 80 percent" test of § 1563(a). A controlled group includes an FSC (as defined in § 922) and excluded members under Code § 1563(b)(2), but does not include a DISC (as defined in § 922).

Under § 1563(a), as modified for this purpose by § 267(f), a "controlled group" includes a chain of corporations connected through stock ownership with a common parent, if more than 50 % of the stock (by voting power or value) of each of the corporations (except the common parent) is owned by one or more of the other corporations, and the common parent corporation owns more than 50 % (by voting power or value) of the stock of at least one of the corporations. Here, Parent is the common parent.

Exam has concluded that the group members, the acquired domestic corporations who are not members of the Parent consolidated group, and the foreign affiliates all meet the § 267(f) requirements for membership in the Parent controlled group.

b. Payment of Patronage Dividends constitutes "Intercompany Sales." Section 1.267(f)-1(b)(1) defines "intercompany sale" for purposes of § 267(f) as a sale, exchange, transfer of property between members of a controlled group, if it would be an intercompany transaction under the principles of § 1.1502-13. "Intercompany sale" is defined broadly. Section 267(f) applies to far more than sales transactions. For example, it applies to a loss on an intercompany distribution subject to § 311 and § 1.1502-13(f)(2)(iii). 1 Andrew J. Dubroff et al., Federal Income Tax of Corporations Filing Consolidated Returns, § 31.11[2][a] (2d ed. 2011). "In effect, the regulatory definition of an intercompany sale conforms to the consolidated return definition of an intercompany transaction." Id. at FN 792. The payor's deduction from an intercompany sale is taken into account under the timing principles of § 1.1502-13, treating an intercompany sale as an intercompany transaction.

Under § 1.1502-13(b), a distribution with respect to stock is an "intercompany transaction." Because § 1.267(f)-1(b)(1)'s definition of "intercompany sale" conforms to § 1.1502-13(b)'s definition of "intercompany transaction," the patronage dividends at

issue here constitute “intercompany sales” for purposes of § 267(f). Therefore, any deductions taken by Cooperative E for the payment of the patronage dividends must be deferred until such patronage dividends are taken into account by the related patrons under their method of accounting.

In conclusion, because (a) Cooperative E is a member of the Parent controlled group; (b) Cooperative E pays patronage dividends to its related patrons, all of whom are also members of the Parent controlled group; (c) payments of patronage dividends constitute “intercompany sales” as defined in § 1.267(f)-1(b); (d) § 1.267(f)-1(a)(2) requires the payor’s loss or deduction from an intercompany sale to be taken into account under the timing principles of § 1.1502-13 (intercompany transactions between members of a consolidated group) treating the intercompany sale as an intercompany transaction; and (e) the matching and acceleration rules of § 1.1502-13 apply to intercompany transactions and thus, to intercompany sales for purposes of § 267(f). Section 267(f) requires the matching of Cooperative E’s deduction for patronage dividends paid and the related patrons’ inclusion of the corresponding income. To apply § 267(f) to the facts presented here, Cooperative E must defer taking deductions for patronage dividends paid to its related patrons until those related patrons take such patronage dividends into income.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

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Please call (202) 622-4930 if you have any further questions.

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