"Grain Glitch" in Tax Cuts and Jobs Act

Background

After a late amendment to the *Tax Cuts and Jobs Act*, during its consideration in 2017, the law provided a preferential tax deduction to cooperatives and cooperative customers relative to non-cooperative agriculture producers (the so-called "grain glitch"). On March 23, 2018, the President signed into law a change to reinstate conditions as they existed before the enactment of tax reform. The measure restores balance to commodity markets and reestablishes parity between cooperative and non-cooperative agriculture producers.

The change is retroactive to January 1, 2018 and available to pass-through businesses (sole-proprietors, partnerships, and S corporations). Farmers can still use the new 20 percent tax deduction for pass-through income (section 199A).

The modification to section 199A would replace the special rules with the following approach:

- Cooperatives would be permitted to determine their deduction based on rules substantially similar to those under former section 199, including the flexibility of retaining a portion of their deduction to offset income at the entity level and/or pass through some or all of the deduction to their farmer patrons.
- Farmers selling their agricultural products to independent buyers would continue to determine their deduction as under current law section 199A.
- Farmers selling their agricultural products to agricultural cooperatives (of which they are a patron) would be able to claim a deduction equal to 20 percent of the net business income on such sales, subject to either the wage or wage/capital limitation if the farmer has taxable income above the $157,500/$315,000 thresholds described above. This deduction would then be reduced by an amount equal to what the farmer would have had to forgo under old section 199 as the individual benefit had he/she sold to a cooperative (i.e., the lesser of 9 percent of the net income from the farmer's sales to the cooperative or 50 percent of wages attributed to such sales). This modified deduction, as under current law, would be limited to 20 percent of the farmer's taxable income (excluding capital gains). In addition to this modified deduction, the farmer would be able to claim the pass-through deduction from the cooperative (if any), up to the farmer's taxable income (including capital gains), after applying the farmer's individual deduction under section 199A.
- More information: https://www.finance.senate.gov/imo/media/doc/2018_0312%20%20Modified%20199A-Coop%20Deductions%20Summary.pdf