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Internal Revenue Service
Memorandum

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date: November 13, 2014

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subject: Treatment of Payment Made by Partnership Purportedly with Respect to Qualified Written Notices of Allocation Issued by Exempt Cooperative, which is the Predecessor in Interest to Partnership.

This Chief Counsel Advice responds to your request for assistance dated July 16, 2014. This advice may not be used or cited as precedent.

<u>LEGEND</u>

Cooperative =

Partnership =

Product =

Year 1 =

Year 2	=
Year 3	=
Year 4	=
Date 1	=
Date 2	=
State X	=
State Y	=
$A	=
$B	=
$C	=
$D	=
$E	=
$F	=
$G	=
$H	=
$J	=
Filing 1	=
Filing 2	=
a	=
b	=

ISSUES

1) Whether Partnership, the successor in interest to Cooperative, is entitled to a deduction for its payment in Year 4, purportedly with respect to qualified written notices of allocation (QWNAs) issued by Cooperative, the predecessor in interest, to its patrons (“Holders”) prior to its conversion into Partnership (Conversion); if so, whether that deduction is capital or ordinary.

2) Whether the Holders realized income upon receipt of the payment in Year 4; if so, whether that income is capital or ordinary.

CONCLUSIONS

1) Partnership is not entitled to a deduction for its payment in Year 4. Such payment was not made with respect to the QWNAs, which had been extinguished as part of the Conversion. Rather, such payment was made with respect to the Holders’ preferred partnership interest in Partnership (in the face amounts of the former QWNAs). Therefore, such payment is a nondeductible distribution of property by Partnership to the Holders pursuant to I.R.C. § 731(b).

2) The Holders that received the Year 4 payment from Partnership recognized gain or loss pursuant to I.R.C. § 731(a).

FACTS

Background:

Cooperative was a State Y corporation that was an exempt cooperative within the meaning of I.R.C. § 521(b)(1). Cooperative was a marketing cooperative that bought Product from its shareholders/patrons (“Holders”), processed the Product, and marketed the Product it produced. Each Holder was required to enter into a uniform delivery and marketing agreement with Cooperative whereby that Holder was required to deliver one Product to Cooperative each year for each share of stock the Holder held in Cooperative (see p. of Filing 1, a regulatory document filed by Partnership as the successor in interest to Cooperative). Cooperative began operations in Year 1. As of Date 1, Cooperative had outstanding a shares of stock (see p. of Filing 1) held by b shareholders (see p. of Filing 2, a regulatory document filed by Partnership as the successor in interest to Cooperative).

The Restructuring:

Effective on Date 2, Cooperative restructured into a State X limited liability company ("Partnership"). For State X business law purposes, the parties treated the restructuring as follows: (1) a statutory merger of Cooperative into a transitory State X corporation (the "acquiring corporation") followed by (2) a statutory conversion in which the acquiring corporation becomes subject to the State X limited liability company statute ("Conversion"). As a result of the Conversion, each share of Cooperative's common stock was converted into one Class A unit and one Class B unit of Partnership.

Following the Conversion, Partnership continued the Product processing and marketing business of Cooperative, but not as a cooperative. I.R.C. § 1381 (a cooperative can only operate in corporate form).

The QWNAs:

In the years prior to the Conversion, Cooperative paid its Holders patronage dividends, a portion of which were paid in the form of qualified written notices of allocation (QWNAs) within the meaning of I.R.C. § 1388(c)(1)(B). The QWNAs contained the following terms:

> (1) They were redeemable solely within the discretion of the board of directors and recited no promise to pay; (2) they gave the holders thereof no right to enforce payment; (3) they bore no interest; (4) they represented capital contributed to the revolving fund from patronage dividends; (5) they were subordinated to indebtedness of the cooperative; (6) they were not segregated from other capital funds of the cooperative; (7) they had no fixed maturity nor were they payable upon demand; and (8) allocations to the participation certificates were offset by operating losses showing them to constitute capital subject to the risk of the business.

See pp. of Filing 1.

As of Date 2, Cooperative still had outstanding $A of the QWNAs it had previously issued. Under its merger and conversion agreements, Partnership assumed Cooperative's obligation to pay the remaining balance ($A) of the QWNAs to the Holders of those QWNAs. Partnership paid off a total of $C of the QWNAs in Year 2 and Year 3 (and claimed a capital loss for each year of $D and $E, respectively). In Year 4, Partnership paid off the remaining $F of the QWNAs (and claimed a capital loss of $G).

Valuation:

As part of Conversion, Partnership sought an appraisal to determine the value of the QWNAs and the net value of Cooperative's assets.

The appraised value of the QWNAs was determined to be $B (an amount less than their aggregate face amount of $A). See p. of Filing 1. The appraised net value of Cooperative's assets as a going concern was $H. However, Partnership asserts that value could be as much as (or more than) $J (see p. of Filing 1).

LAW AND ANALYSIS:

LAW:

I.R.C. § 331(a) provides that amounts received by a shareholder in a distribution in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock.

I.R.C. § 336(a) provides that, except as otherwise provided in I.R.C. § 336 or 337, gain or loss shall be recognized to a liquidating corporation on the distribution of property in complete liquidation as if such property were sold to the distributee at its fair market value.

I.R.C. § 368(a)(1)(F) provides that the term "reorganization" means a mere change in identity, form, or place of organization of one corporation, however effected.

I.R.C. § 521(a) provides that a farmers' cooperative organization described in I.R.C. § 521(b)(1) shall be exempt from taxation under this subtitle A [I.R.C. §§ 1 – 1563] except as otherwise provided in part I of subchapter T (I.R.C. § 1381 and following).

I.R.C. § 521(b)(1)(A) defines the farmers' cooperatives that are exempt from taxation to the extent provided in I.R.C. § 521(a).

I.R.C. § 721(a) provides that no gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

I.R.C. § 731(a) describes the treatment to partners of a distribution of property from a partnership.

I.R.C. § 731(b) provides that no gain or loss shall be recognized to a partnership on a distribution to a partner of property, including money.

Treas. Reg. § 1.752-1(a)(4)(i) provides an obligation is a liability for purposes of I.R.C. § 752 and the regulations thereunder, only if, when, and to the extent that incurring the obligation (A) creates or increases the basis of any of the obligor's assets; (B) gives rise to an immediate deduction to the obligor; or (C) gives rise to an expense

that is not deductible in computing the obligator's taxable income and is not properly chargeable to capital.

Treas. Reg. § 1.752-1(a)(4)(ii) defines, for purposes of this paragraph, the term "obligation."

Treas. Reg. § 1.752-7(b)(3)(i) defines a "Treas. Reg. § 1.752-7 liability" as an obligation in Treas. Reg. § 1.752-1(a)(4)(ii) to the extent that either the obligation is not described in Treas. Reg. § 1.752-1(a)(4)(i) or the amount of the obligation (under paragraph (b)(e)(ii) of this section) exceeds the amount taken into account under Treas. Reg. § 1.752-1(a)(4)(i).

Treas. Reg. § 1.752-7(b)(3)(ii) provides that a partner's share of a partnership's Treas. Reg. § 1.752-7 liability is the amount of deduction that would be allocated to the partner with respect to the Treas. Reg. § 1.752-7 liability if the partnership disposed of all its assets, satisfied all other liabilities, and paid an unrelated person to assume all of its Treas. Reg. § 1.752-7 liabilities in a fully taxable arm's length transaction (assuming such payment would give rise to an immediate deduction to the partnership.)

Treas. Reg. § 1.752-7(b)(6) provides the remaining built-in loss associated with a Treas. Reg. § 1.752-7 liability equals the amount of the Treas. Reg. § 1.752-7 liability as of the time of the assumption of the Treas. Reg. § 1.752-7 liability by the partnership.

I.R.C. § 1381(a)(1) provides that this part shall apply to any organization exempt from tax under I.R.C. § 521 (relating to exemption of farmers cooperatives from tax).

I.R.C. § 1382(b)(1) provides that, in determining the taxable income of an organization to which this part applies, there shall not be taken into account amounts paid during the payment period for the taxable year as patronage dividends (as defined in I.R.C. § 1388(a)), to the extent paid in money, qualified written notices of allocation (as defined in I.R.C. § 1388(c)), or other property (except nonqualified written notices of allocation (as defined in I.R.C. § 1388(d)) with respect to patronage occurring during such taxable year.

I.R.C. § 1385(a)(1) provides that, except as otherwise provided in I.R.C. § 1385(b), each person shall include in gross income the amount of any patronage dividend which is paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from an organization described in I.R.C. § 1381(a).

I.R.C. § 1388(a) defines, for purposes of this subchapter, the term "patronage dividend."

I.R.C. § 1388(c)(1)(B) defines, for purposes of this subchapter, the term "qualified written notice of allocation."

Treas. Reg. § 1.1388-1(b) provides that the term "written notice of allocation" means any capital stock, revolving fund certificate, retain certificate, certificate of indebtedness, letter of advice, or other written notice, which discloses to the patron the stated dollar amount allocated to him on the books of the cooperative organization, and the portion thereof, if any, which constitutes a patronage dividend.

Treas. Reg. § 301.7701-3(g)(1)(ii) provides that, if an eligible entity classified as an association elects under Treas. Reg. § 301.7701-3(c)(1)(ii) to be classified as a partnership, the following is deemed to occur: The association distributes all of its assets and liabilities to its shareholders in liquidation of the association, and immediately thereafter, the shareholders contribute all of the distributed assets and liabilities to a newly formed partnership.

In Estate of Mixon v. United States, 464 F.2d 394, 402 (5th Cir. 1972), the Fifth Circuit stated that "[g]uidelines for determining the 'debt versus equity' question have [been - sic] developed by the courts in a number of cases. Decisions in this Circuit have stressed at least thirteen factors which merit consideration in determining this issue. They are":

(1) the names given to the certificates evidencing the indebtedness;

(2) the presence or absence of a fixed maturity date[1];

(3) the source of payments;

(4) the right to enforce payment of principal and interest[2];

(5) participation in management flowing as a result;

(6) the status of the contribution in relation to regular corporate creditors;

(7) the intent of the parties;

(8) "thin" or adequate capitalization[3];

(9) identity of interest between creditor and stockholder[4];

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[1] The presence of a fixed maturity date indicates a fixed obligation to repay, a characteristic of a debt obligation. The absence of the same on the other hand would indicate that repayment was in some way tied to the fortunes of the business, indicative of an equity advance. Mixon, at 404.

[2] A fixed obligation to repay the advance is an indicia of debt. Mixon, at 405.

[3] We have noted before that thin capitalization is very strong evidence of a capital contribution where (1) the debt to equity ratio was initially high, (2) the parties realized the likelihood that it would go higher, and (3) substantial portions of these funds were used for the purchase of capital assets and for meeting expenses need to c*ommence* operations. [emphasis in original] Mixon, at 408.

[4] If advances are made by stockholders in proportion to their respective stock ownership, an equity

(10) source of interest payments[5];

(11) the ability of the corporation to obtain loans from outside lending institutions[6];

(12) the extent to which the advance was used to acquire capital assets; and

(13) the failure of the debtor to repay on the due date or to seek a postponement.

ANALYSIS:

The Federal income tax consequences of the restructuring.

The Service and Partnership agree that, pursuant to I.R.C §368(a)(1)(F), the merger of Cooperative into the acquiring corporation qualifies as a tax-free reorganization.

The Service and Partnership also agree that Treas. Reg. § 301.7701-3(g)(1)(ii) governs the treatment of the Conversion. However, because the Service and Partnership view the status of the QWNAs differently, they reach different conclusions.

On the one hand, the Service takes the position that the QWNAs are an equity interest in Cooperative. This position results in the following treatment of the Conversion:

(A) Cooperative distributed all of its assets and liabilities to its shareholders (including all the Holders) in complete liquidation (and would recognize gain or loss pursuant to I.R.C. § 336),[7]

(B) Cooperative's shareholders (including all the Holders) received all of the assets and liabilities in exchange for (and in extinguishment of) their equity interest (both the common stock and the QWNAs) in Cooperative (and would recognize gain or loss pursuant to I.R.C. § 331(a)), and

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capital contribution is indicated. Mixon, at 409.

[5] The failure to insist on interest payments ordinarily indicates that the purported creditors are not seriously expecting any substantial interest income, but are interested in the future earnings of the corporation or the increased market value of their interest. Id.

[6] If a corporation is able to borrow funds from outside sources at the time an advance is made, the transaction has the appearance of a bona fide indebtedness. Mixon, at 410.

[7] There is a fact question of whether Cooperative had even a de minimus amount of assets greater than the face amount of the QWNAs to distribute to its shareholders with respect to the common stock, which is required for the dissolution of Cooperative to be treated as a liquidation under I.R.C. § 331. However, we note that the year of the dissolution is closed and that the tax status of the dissolution does not affect the issue of the treatment of the QWNAs.

(C) immediately thereafter, the Holders contributed all of those assets and liabilities to a newly formed partnership, Partnership, in exchange for partnership interests (one Class A unit and one Class B unit for each share of common stock they formerly held in Cooperative, and also preferred partnership interests in the aggregate amount of the former QWNAs) in Partnership (and neither Partnership nor the Holders would recognize gain or loss on this exchange pursuant to I.R.C. § 721(a)). See also Rev. Rul. 69-534, 1969-2 C.B. 48.

On the other hand, Partnership takes the position that the QWNAs are a liability of Cooperative. This position results in the following treatment of the Conversion:

(A) Cooperative distributed all of its assets and liabilities (including the QWNAs) to the owners of its common stock in complete liquidation (and would recognize gain or loss pursuant to I.R.C. § 336),

(B) The owners of Cooperative's common stock received all of the assets and liabilities (including the QWNAs) in exchange for (and in extinguishment of) their common stock in Cooperative (and would recognize gain or loss pursuant to I.R.C. § 331(a)),

(C) immediately thereafter, the former owners of the common stock of Cooperative contributed all of these assets and liabilities (including the QWNAs) to a newly formed partnership, Partnership, in exchange for interests of Partnership (one Class A unit and one Class B unit for each share of previously held common stock of Cooperative) and neither Partnership nor the former shareholders of Cooperative would recognize gain or loss on this exchange pursuant to I.R.C. § 721(a), and

(D) Partnership assumed Cooperative's obligation to pay the Holders with respect to the former QWNAs.[8]

Taxpayer's argument:

It is our understanding that the taxpayer asserts that the liquidation of Cooperative and subsequent I.R.C. § 721(a) contribution of the QWNAs in the formation of Partnership resulted in the assumption of a third party liability. It is also our understanding that the taxpayer argues that because not all the Holders are partners in Partnership (because, according to Partnership, the Holders held the QWNAs as creditors), the QWNAs therefore are a third party liability as to all patrons and not an equity interest in Partnership. According to Partnership, it is entitled to a deduction for the satisfaction of this liability above the remaining built-in loss associated with the

[8] This step is not specifically addressed in Treas. Reg. § 301.7701-3(g)(1)(ii). However, the Service takes the position that, as part of the construct described in that provision, creditors of the liquidating corporation become creditors of the resulting partnership. AM2011-003 (08/26/2011).

liability pursuant to Treas. Reg. § 1.752-7(e) which relates to partner's transfer of a Treas. Reg. § 1.752-7 liability.

Service position:

Treatment of the QWNAs:

The long standing position of the Service has been that, for purposes of applying the corporate reorganization provisions of I.R.C. § 368, a QWNA (or any substantively similar instrument[9]) represents an equity interest in a cooperative. Rev. Rul. 70-298, 1970-1 C.B. 82, and GCM 37743 (November 9, 1978). The Tax Court has adopted this position. See Atwood Grain and Supply Co. v. Comm'r, 60 T.C. 412 (1973). But see Gold Kist Inc. v. Comm'r, 104 T.C. 696 (1995) (the Court held that the tax benefit rule applies when a cooperative redeems QWNAs for less than their face amount since the taxpayer had deducted the full face amount of the QWNAs when it issued them and therefore did not have to address taxpayer's argument that § 311 overrides the tax benefit rule; in so holding the Court opined that the QWNAs at issue did not represent an equity interest for purposes of I.R.C. § 311 and therefore I.R.C. § 311 does not apply to distributions with respect to such instruments), reversed on other grounds, 110 F.3d 769 (11th Cir. 1997)(the Eleventh Circuit reversed the Tax Court's decision on the tax benefit rule without commenting on whether the QWNAs are debt or equity).

In Rev. Rul. 70-298, the Service held that the rearrangement of the capital structure of an exempt farmers' cooperative whereby its members' revolving fund credits[10] are exchanged for share interests in a permanent capital fund constitutes a reorganization under I.R.C. § 368(a)(1)(E). Rev. Rul. 70-298 listed the following factors in concluding that revolving fund credits are equity: (1) they are repayable at the discretion of the Board of Directors, (2) the holders are not entitled to interest on the outstanding balance, (3) they can only be paid out of the cooperative's capital account, and (4) upon dissolution, only assets remaining after payment to creditors can be paid to the holders.

The rationale of Rev. Rul. 70-298 applies to this case. First, the description of the revolving fund credits are, in all material respects, identical to the description of the QWNAs in this case. Moreover, these factors correspond to factors listed in Estate of Mixon as indicia of equity. For example, the first factor (they are repayable at the discretion of the Board of Directors) corresponds to the second Mixon factor (the presence or absence of a fixed maturity date[11]). The second factor (the holders are not entitled to interest on the outstanding balance) corresponds to the fourth Mixon factor (the right to enforce payment of principle and interest[12]). The third factor (they can only

[9] See Treas. Reg. § 1.1388-1(b).
[10] The term "revolving fund credits" is included in the definition of a written notice of allocation. See Treas. Reg. § 1.1388-1(b).
[11] See also n. 1.
[12] See also n. 2.

be paid out of the cooperative's capital account) corresponds to the third Mixon factor (the source of payments). The fourth factor (upon dissolution, only assets remaining after payment to creditors can be paid to the holders) corresponds to the sixth Mixon factor (the status of the contribution in relation to regular corporate creditors). Moreover, the QWNAs do not have any contrary factors indicating debt. Thus, for the same reasons the revolving fund credits in Rev. Rul. 70-298 are treated as equity, the QWNAs should be treated as equity in this case.

Second, as noted above, the revolving fund credits were exchanged for a share interest in the permanent capital fund of the same entity. Similarly, in this case, the Holders are exchanging the QWNAs for a preferred partnership interest in Partnership; that is, an interest in the permanent capital fund of Partnership. While the transaction does not involve the same entity (nor is the acquiring entity a corporation), the underlying principle nevertheless applies in both cases.

In Atwood Grain, petitioner was a patron in a farming cooperative which was merged with another cooperative. After the merger, petitioner exchanged participation certificates of the old cooperative for preferred stock in the merged cooperatives. The sole question before the Court was whether the participation certificates[13] constituted an equity interest in the cooperative. Petitioner exchanged them pursuant to a recapitalization which qualified as a nontaxable reorganization under I.R.C. § 368(a)(1)(E). Therefore, the loss sustained by petitioner on the exchange was not recognized by reason of I.R.C. § 354(a)(1).

The Atwood Grain court listed the following factors in holding that the participation certificates should be treated as equity: (1) they were redeemable solely within the discretion of the board of directors and recited no promise to pay[14]; (2) they gave the holders thereof no right to enforce payment as there is no evidence in the record whatever that the certificates imposed on the cooperative a legal obligation[15]; (3) they bore no interest[16]; (4) by their own terms they represented capital contributed to the revolving fund from patronage dividends[17]; (5) they were subordinated to indebtedness of the cooperative[18]; (6) they were not segregated from other capital funds of the cooperative[19]; (7) they had no fixed maturity nor were they, by their terms, payable upon demand[20]; and (8) allocations to the participation certificates were offset by operating losses showing them to constitute capital subject to the risk of the

[13] The Court stated that the term "retain certificate" is another term meaning the same as participation certificate. Atwood Grain, 60 T.C. 412, 420. A retain certificate is included in the definition of a written notice of allocation. See Treas. Reg. § 1.1388-1(b).
[14] The second Mixon factor.
[15] The fourth Mixon factor.
[16] Id.
[17] The first Mixon factor.
[18] The sixth Mixon factor.
[19] The third Mixon factor.
[20] The second Mixon factor.

business[21]. Atwood Grain, 60 T.C. at 421-422. As explained in the facts section of this memo, each of the factors listed by the Atwood Grain court as indicia of equity are also present with respect to the QWNAs issued in this case. Thus, for the same reasons the Atwood Grain court concluded that the participation certificates were equity, the QWNAs should also be equity in this case.

In Gold Kist, a cooperative redeemed QWNAs for less than their face amount (the "difference"). The Service argued that the taxpayer had to take the difference into income under the tax benefit doctrine (since, pursuant to I.R.C. § 1382(b)(1), it had deducted the full face amount of the QWNAs when it issued them). The taxpayer argued that the tax benefit doctrine did not require it to recapture the difference. Further, the taxpayer argued that even if the tax benefit doctrine ordinarily would require recapture, I.R.C. § 311(a) applied to the redemption of the QWNAs and overrode the application of the doctrine. I.R.C. § 311(a) provides, except as provided in I.R.C. §311(b),[22] that no gain or loss shall be recognized to a corporation on the distribution of property (not in complete liquidation) with respect to its stock.

The Tax Court held that the tax benefit rule applied. The Court then discussed the taxpayer's I.R.C. § 311(a) override argument. The Court concluded that it was not necessary to address this argument because it concluded that, for purposes of this case, the QWNAs were not stock and therefore I.R.C. § 311 did not apply. The Court reasoned as follows: (1) the QWNAs do not possess the salient features of common stock, (2) the taxpayer knew how to issue stock and chose not to do so, and (3) the taxpayer did not issue preferred stock.

As explained above, the QWNAs in this case meet the standards for an equity interest in a cooperative for purposes of applying the corporate reorganization provisions of I.R.C. § 368 under the standards of both Rev. Rul. 70-298 and Atwood Grain. In Atwood Grain, the Tax Court analyzed each feature of the participation certificates at issue before concluding in a well-reasoned opinion that they constituted equity. As discussed above, the features of the participation certificates at issue in Atwood Grain are remarkably similar to the QWNAs under consideration in the case at hand. Although, as also noted above, the Tax Court in Gold Kist determined that the QWNAs in that case (which are similar to the QWNAs here) did not meet the standard for an equity interest in a cooperative for purposes of applying I.R.C. § 311, the Tax Court was primarily concerned with the tax benefit rule issue and it did not discuss the effect of its decision that the participation certificates were not equity on Atwood Grain or distinguish it.[23]

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[21] The third Mixon factor.

[22] I.R.C. § 311(b) provides that if a corporation distributes appreciated property (other than an obligation of such corporation) to a shareholder in a distribution to which subpart A (I.R.C. §§ 301 – 307) applies, then the corporation shall recognize gain as if it sold the property to the shareholder at its fair market value. In this case, the taxpayer distributed cash to its shareholders in redemption of their QWNAs, so this provision did not apply.

[23] The Court simply noted that "the 'hybrid' nature of [QWNAs] has been previously addressed[]" in

In any event, the 11th Circuit reversed the Tax Court's decision in Atwood Grain without commenting on whether the QWNAs constituted debt or equity for purposes of I.R.C. § 311. Thus, we regard the holding of Atwood Grain (i.e., that QWNAs are equity for purposes of the corporate reorganization provisions of I.R.C. § 368) as the controlling precedent. Certainly if the instant case involved a reorganization, the Atwood Grain court would conclude that the QWNAs were equity. It is likely that the court would reach the same result in the liquidation context.[24] Thus, we believe that the correct approach is to apply the rationale of Rev. Rul. 70-298 and Atwood Grain to QWNAs extinguished as part of a liquidation within the meaning of I.R.C. § 336.

Treatment by Partnership of payment with respect to former QWNAs:

The Service disagrees with the taxpayer's position that the QWNAs assumed by Partnership are a Treas. Reg. § 1.752-7 liability as defined in Treas. Reg. § 1.752-7(b)(3). The payment is a nondeductible distribution of property to the partners and former partners made pursuant to I.R.C. §§ 731(b) and 736(a). Because the satisfaction of the QWNAs does not create or increase Partnership's basis, give rise to an immediate deduction, or give rise to a non-deductible expense, the QWNAs are not a Treas. Reg. § 1.752-7 liability.[25] Therefore, Partnership is not entitled to a deduction for the payment in Year 4 with respect to the QWNAs.

Atwood Grain. Gold Kist, 104 T.C. at 716, n. 23. However, the reference to the "hybrid" nature of revolving fund credits in Atwood Grain was part of the Court's introductory discussion. More importantly, the Atwood Grain court concluded that the "indicia of equity [in this case] predominates with certainty." Atwood Grain, 60 T.C. at 422.

[24]

Summary:

Because the QWNAs in the current case represent a preferred equity interest in Cooperative, Cooperative is first treated as distributing all of its assets and liabilities in the deemed liquidation to its Holders with respect to the QWNAs (up to the aggregate face amount thereof) and, second, is treated as distributing the remainder of its assets and liabilities to its Holders with respect to the common stock. Thus, both the QWNAs and the common stock of Cooperative are extinguished in the liquidation. The deemed contribution is treated as if the former shareholders of Cooperative contributed the assets and liabilities (that they were deemed to have received from Cooperative) to Partnership in exchange for the assumption of the former Cooperative's liabilities, and the Partnership's issuance of three classes of partnership interest. The Class A units and Class B units were essentially received by the former patrons in exchange for common stock in Cooperative. The preferred partnership interests were received by the former patrons as a result of the QWNAs that had been issued to them by the former Cooperative.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

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Please call 202-317-6850 if you have any partnership questions; please call 202-317-4137 if you have any co-op questions; and, please call 202-317-6065 if you have any corporate liquidation questions.

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