

## Which One is Your Section 199A Hat?

***Phil Kenkel***

***Bill Fitzwater Cooperative Chair***

In a cooperative business we often council board members to take off their “farmer hat” and put on their “board member hat”. That reflects the fact that a patron’s preference for a decision may not be in the long-run best interest of the cooperative. Cooperative patrons are often focused on an individual transaction or short term needs. The board member is challenged with having a longer run perspective and in seeing the big picture. We would hope that there is really not a true difference between the farmer view and the board member view. Most patrons support the “board member hat” view when they have the opportunity to really understand the issues. In essence, they understand that value is being created at the cooperative level and that they, as owners, deserve only what is left over after protecting the value creating unit.

Section 199A has created a new area of interconnectivity between the cooperative firm and the farmer patron. In addition to distributing or retaining profits the cooperative board now has the decision to distribute or retain tax deductions. This is a new aspect of a marketing cooperative’s value package and raises a slightly different challenge for the board. Section 199A (and its previous incarnation as DPAD) is a value package created out of the tax code. It is not clearly created at the cooperative level nor is it clearly created at the farm level. There is no clear “value creation unit” and no clear “residual claimant”. That might mean that the board shouldn’t simply “put on their “board member hats” and decide what portion of the deduction they need at the cooperative level. They also shouldn’t just put on their “farmer hats” and automatically pass on all, or almost all of the deduction. The strategy for Section 199A is likely to require them to simutanuously consider the extent to which retaining the deduction would help the cooperative and their member’s view as to what pass through amount is fair. They may need a new Section 199A hat that helps them find the balance that is most acceptable to their members.

Sounds like the board room is going to need a bigger hat rack!

8-14-2018