

# **COOPERATIVE TAXATION BRIEF**

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**November 2014**

## **IRS Permits Electronic and Alternative Notification of Patronage Dividends**

What counts as notice of patronage under Subchapter T? Traditionally, notices of allocation have been written – in the sense of paper and snail mail. But more recently, a cooperative questioned whether notice could include other – more technologically advanced – methods of notice. In a private letter ruling the IRS indicated that, as long as certain parameters were followed, these alternative methods of providing notice were acceptable.

### **Factual Background**

Cooperative is taxed under Subchapter T. It sells a broad range of items to its customer both in the U.S. and internationally. Customers become members by purchasing a minimum amount of merchandise each year.

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After each year ends, Cooperative sends out nonqualified written notices of allocation to its members. In the past, these notices were mailed to members at a substantial cost of printing and mailing.

### **Alternative Notification System**

To minimize these costs, Cooperative inquired whether other methods of notice would be sufficient under Subchapter T. With these alternative methods,



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Cooperative developed the following system of notifying its members of their patronage-dividend information:

- Website: Members will be able to view their patronage-dividend information on the Cooperative's website. The website will receive the capability to determine which members viewed their information online. Members may voluntarily access the information, or they will receive it as they "check out" and purchase items online.
- Email Notification: For those members who provide email addresses, the Cooperative will send out patronage-dividend information by email. The Cooperative will be able to determine which members opened the email.
- In-Store Notification: Cooperative has many stores where its members may shop. When members check out at these stores, a clerk will provide patronage-dividend information.
- First Mailing: If members do not receive their patronage-dividend information by email, or if a member requests the information by mail, the Cooperative will send the information by mail.
- Second Mailing: The Cooperative will send out a second mailing to members who have not accessed patronage-dividend information by other means.

In support of this proposed alternative system of notification, Cooperative asked the Service (i) whether email transmittal and website access are acceptable



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methods of providing patronage-dividend information for nonqualified written notices of allocation under Subchapter T, and (ii) whether such notice is deemed provided when the member actually uses the patronage dividend amount to purchase merchandise from the Cooperative.

## **The Alternative Notification System is Acceptable**

Based on the language of Subchapter T and its regulations, along with other sources, the Service concluded that Cooperative's alternative notification system satisfied Subchapter T. In so ruling, the Service reviewed the definition of "written notice of allocation" under Subchapter T and its regulations. The definition includes certain forms of "written notice" that inform the patron of his or her patronage allocation, along with any amount thereof that constitutes a patronage dividend. The written notice must be "issued" to the patron.

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In analyzing the "written" requirement, the Service looked to the definition of the word in Black's Law Dictionary. That definition indicates that electronic recording may qualify as a writing. And Circular 230's rules concerning written advice apply to electronic communications. In addition, the public-disclosure rules for tax-exempt organizations expressly allow electronic disclosure.

In addition to reviewing the format of the "written" notice, the Service reviewed the method of transmitting the notice. The Service found no requirement of Subchapter T that the transmittal must be by mail. In practice, cooperatives bring notices to annual meetings, use "fieldmen" to personally deliver the notices, or use other private delivery companies. As a result, the Service concluded that cooperatives may use methods of transmitting notices other than by mail.

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In conclusion, the Service deemed all proposed methods of notification as acceptable under Subchapter T.

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David is a member of the firm's cooperative and construction practice groups. He started his career as a C.P.A. and auditor for electric cooperatives, electric membership corporations, and energy-related taxable cooperatives. After attending law school, he worked as an international tax consultant at Deloitte Tax LLP until joining Autry, Horton & Cole, LLP. As part of his cooperative law practice, David advises electric, telephone, agricultural, Subchapter T, and other cooperatives on their cooperative tax and corporate questions, power-supply transactions, governance, and various cooperative law issues.

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The logo for Autry Cole, featuring the name "AUTRY COLE" in white, serif, all-caps font on a dark blue rectangular background. The text is centered and has a subtle reflection effect below it.

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