

CC:DOM:FS:P&SI
DCFegan

CC-1997-003
May 5, 1997

ACTION ON DECISION

Subject: Buckeye Countrymark v. Commissioner
103 T.C. 547 (1994)
T.C. Docket No. 29412-87

Issue:

Whether section 277 of the Internal Revenue Code applies to nonexempt cooperatives subject to subchapter T of the Code.

Discussion:

The predecessor of the petitioner was a nonexempt cooperative that served farmers mainly by purchasing supplies and equipment for them. It operated on a cooperative basis only with respect to its shareholders. It realized a loss in 1980 from transactions with shareholders and it attempted to carry that loss back to 1977 under section 172 of the Code.

The Commissioner argued that cooperatives are "membership organizations" described in section 277. Organizations described in section 277 are subject to certain limitations, one of which is that losses from furnishing goods or services to members may only be carried to succeeding years. The Tax Court held that section 277 does not apply to cooperatives subject to subchapter T of the Code (sections 1381-1388). This holding is consistent with the holding of the United States Claims Court in Landmark, Inc. v. United States, 25 Cl. Ct. 100 (1992).

We will no longer take the position that nonexempt cooperatives subject to subchapter T of the Code are subject to the limitations of section 277 of the Code. Nonexempt cooperatives subject to subchapter T may avail themselves of loss carrybacks allowed by section 172 of the Code.

Recommendation:

Acquiescence

Reviewers:

HML
WHW
PTMcG
PFK

/s/

DAVID C. FEGAN
Attorney

Approved: STUART L. BROWN
Chief Counsel

/s/

By:

JUDITH C. DUNN
Associate Chief Counsel (Domestic)

THIS DOCUMENT IS NOT TO BE RELIED UPON OR
OTHERWISE CITED AS PRECEDENT BY TAXPAYERS