

Workshop - Taxation of Patronage Dividends from Worker Cooperatives: Are They Subject to Employment Tax?

Speaker: Gregory R. Wilson

A. The Issue

Are patronage dividends paid by worker cooperatives subject to self-employment tax? The IRS took this position with about a dozen employee-members of a worker cooperative about two years ago and then backed down when challenged (without any explanation as to why they took the original position and why they backed down). The IRS has now taken the position again with about a dozen new employee-members (or the same employee-members but for more recent tax years) of the same cooperative. Unfortunately, there does not appear to currently be a clear answer to this question.

B. Report from/to the Field

In the workshop, members of other cooperatives will discuss what they are seeing on this issue – any IRS activity, how they treat patronage dividends with respect to employment taxes, and their opinions on this issue. We will discuss how other facts of each coop could impact this issue such as the type of entity the cooperative is and whether reasonable employment compensation is paid to the employee-members.

C. Seeking Written Guidance

In the workshop, we will discuss a plan to attempt to obtain published guidance from the IRS or a court addressing the issue of whether patronage dividends paid by worker cooperatives are subject to self-employment tax.

D. Analyzing the Issue

In the workshop, we will discuss analyze the legal issue of whether patronage dividends paid by worker cooperatives are subject to self-employment tax. We will consider the following topics, among others:

1. What is a Patronage Dividend?
2. The Taxation of Patronage Dividends
3. Are Patronage Dividends Subject to Self-Employment Tax?
4. Are Worker Coop Patronage Dividends Different (from a self-employment tax perspective)? than Patronage Dividends Paid by other Coops?
5. How Worker Coops Compare to Non-Coop Entities on the issue of Self Employment Tax