

paid as a part of the patronage dividend or payment of which such check or other instrument is also a part. A qualified check need not be in the form of an ordinary check which is payable through the banking system. It may, for example, be in the form of an instrument which is redeemable in money by the cooperative organization. The term *qualified check* does not include a check or other instrument paid as part of a patronage dividend or payment with respect to which a consent under subdivision (i) or (ii) of this subparagraph is in effect. In addition, the term *qualified check* does not include a check or other instrument which is paid as part of a patronage dividend or payment, if such patronage dividend or payment does not also include a written notice of allocation (other than a written notice of allocation that may be redeemed in cash at its stated dollar amount which meets the requirements of section 1388(c)(1)(A) and subparagraph (2) of this paragraph). Thus, a check which is paid as part of a patronage dividend is not a qualified check (even though it has the required statement imprinted on it) if the remaining portion of such patronage dividend is paid in cash or if the only written notices of allocation included in the payment are qualified under section 1388(c)(1)(A) and subparagraph (2) of this paragraph (relating to certain written notices of allocation which are redeemable by the patron within a period of at least 90 days).

(c) The provisions of this subdivision may be illustrated by the following example.

Example: (1) The A Cooperative is a cooperative organization filing its income tax returns on a calendar year basis. None of its patrons have consented in the manner prescribed in section 1388(c)(2) (A) or (B). On August 1, 1964, the A Cooperative pays patronage dividends to its patrons with respect to their 1963 patronage, and the payment to each such patron is partly by a qualified check and partly in the form of a written notice of allocation which is not redeemable for cash. Each patron who endorses and cashes his qualified check on or before December 14, 1964 (the ninetieth day following the close of the 1963 payment period) shall be considered to have consented with respect to the accompanying written notice of allocation and the amount of such check is treated

as a patronage dividend paid in money on August 1, 1964.

(2) As to any patron who has not endorsed and cashed his qualified check by December 14, 1964, there is no consent and both the written notice of allocation and the qualified check constitute nonqualified written notices of allocation within the meaning of section 1388(d) and paragraph (d) of this section. If such a patron then cashes his check on January 2, 1965, he shall treat the amount received as an amount received on January 2, 1965, in redemption of a nonqualified written notice of allocation. Likewise, the cooperative shall treat the amount of the check as an amount paid on January 2, 1965, in redemption of a nonqualified written notice of allocation.

(d) *Nonqualified written notice of allocation.* The term *nonqualified written notice of allocation* means a written notice of allocation which is not a qualified written notice of allocation described in section 1388(c) and paragraph (c) of this section, or a qualified check which is not cashed on or before the ninetieth day after the close of the payment period for the taxable year of the cooperative organization for which the payment of which it is a part is paid.

(e) *Patron.* The term *patron* includes any person with whom or for whom the cooperative association does business on a cooperative basis, whether a member or a nonmember of the cooperative association, and whether an individual, a trust, estate, partnership, company, corporation, or cooperative association.

[T.D. 6643, 28 FR 3160, Apr. 2, 1963]

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[T.D. 8673, 61 FR 27259, May 31, 1996]

§ 1.1394-1 Enterprise zone facility bonds.

(a) *Scope.* This section contains rules relating to tax-exempt bonds under section 1394 (enterprise zone facility bonds) to provide enterprise zone facilities in both empowerment zones and enterprise communities (zones). See sections 1394, 1397B, and 1397C for other rules and definitions.

(b) *Period of compliance*—(1) *In general.* Except as provided in paragraphs (b)(2) and (c) of this section, the requirements under sections 1394 (a) and (b) applicable to enterprise zone facility bonds must be complied with throughout the greater of the following—

(i) The remainder of the period during which the zone designation is in effect under section 1391 (zone designation period); and

(ii) The period that ends on the weighted average maturity date of the enterprise zone facility bonds.

(2) *Compliance after an issue is retired.* Except as provided in paragraph (c)(3) of this section, the requirements applicable to enterprise zone facility bonds do not apply to an issue after the date on which no enterprise zone facility bonds of the issue are outstanding.

(3) *Deemed compliance*—(i) *General rule.* An issue is deemed to comply with the requirements of sections 1394 (a) and (b) if—

(A) The issuer and the principal user in good faith attempt to meet the requirements of sections 1394 (a) and (b) throughout the period of compliance required under this section; and

(B) Any failure to meet these requirements is corrected within a one-year period after the failure is first discovered.

(ii) *Exception.* The provisions of paragraph (b)(3)(i) of this section do not apply to the requirements of section 1397B(d)(5)(A) (relating to certain prohibited business activities).

(iii) *Good faith.* In order to satisfy the good faith requirement of paragraph (b)(3)(i)(A) of this section, the principal user must at least annually demonstrate to the issuer the principal user's monitoring of compliance with the requirements of sections 1394 (a) and (b).

(c) *Special rules for requirements of sections 1397B and 1397C*—(1) *Start of compliance period.* Except as provided in paragraph (c)(2) of this section, the requirements of sections 1397B (relating to qualification as an enterprise zone business) and 1397C (relating to satisfaction of the rules for qualified zone property) do not apply prior to the *initial testing date* (as defined in paragraph (c)(4) of this section) if—

(i) The issuer and the principal user reasonably expect on the issue date of the enterprise zone facility bonds that those requirements will be met by the principal user on or before the initial testing date; and

(ii) The issuer and the principal user exercise due diligence to meet those requirements prior to the initial testing date.

(2) *Compliance period for certain prohibited activities.* The requirements of