

TITLE 26 - INTERNAL REVENUE CODE**Subtitle A - Income Taxes****CHAPTER 1 - NORMAL TAXES AND SURTAXES****Subchapter U - Designation and Treatment of Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas****PART II - TAX-EXEMPT FACILITY BONDS FOR EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES****§ 1394. Tax-exempt enterprise zone facility bonds****(a) In general**

For purposes of part IV of subchapter B of this chapter (relating to tax exemption requirements for State and local bonds), the term “exempt facility bond” includes any bond issued as part of an issue 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of which are to be used to provide any enterprise zone facility.

(b) Enterprise zone facility

For purposes of this section—

(1) In general

The term “enterprise zone facility” means any qualified zone property the principal user of which is an enterprise zone business, and any land which is functionally related and subordinate to such property.

(2) Qualified zone property

The term “qualified zone property” has the meaning given such term by section 1397D; except that—

(A) the references to empowerment zones shall be treated as including references to enterprise communities, and

(B) section 1397D (a)(2) shall be applied by substituting “an amount equal to 15 percent of the adjusted basis” for “an amount equal to the adjusted basis”.

(3) Enterprise zone business**(A) In general**

Except as modified in this paragraph, the term “enterprise zone business” has the meaning given such term by section 1397C.

(B) Modifications

In applying section 1397C for purposes of this section—

(i) Businesses in enterprise communities eligible

References in section 1397C to empowerment zones shall be treated as including references to enterprise communities.

(ii) Waiver of requirements during startup period

A business shall not fail to be treated as an enterprise zone business during the startup period if—

(I) as of the beginning of the startup period, it is reasonably expected that such business will be an enterprise zone business (as defined in section 1397C as modified by this paragraph) at the end of such period, and

(II) such business makes bona fide efforts to be such a business.

(iii) Reduced requirements after testing period

A business shall not fail to be treated as an enterprise zone business for any taxable year beginning after the testing period by reason of failing to meet any requirement of subsection (b) or (c) of section 1397C if at least 35 percent of the employees of such business for such year are residents of an empowerment zone or an enterprise community. The preceding sentence shall not apply to any business which is not a qualified business by reason of paragraph (1), (4), or (5) of section 1397C (d).

(C) Definitions relating to subparagraph (B)

For purposes of subparagraph (B)—

(i) Startup period

The term “startup period” means, with respect to any property being provided for any business, the period before the first taxable year beginning more than 2 years after the later of—

(I) the date of issuance of the issue providing such property, or

(II) the date such property is first placed in service after such issuance (or, if earlier, the date which is 3 years after the date described in subclause (I)).

(ii) Testing period

The term “testing period” means the first 3 taxable years beginning after the startup period.

(D) Portions of business may be enterprise zone business

The term “enterprise zone business” includes any trades or businesses which would qualify as an enterprise zone business (determined after the modifications of subparagraph (B)) if such trades or businesses were separately incorporated.

(c) Limitation on amount of bonds

(1) In general

Subsection (a) shall not apply to any issue if the aggregate amount of outstanding enterprise zone facility bonds allocable to any person (taking into account such issue) exceeds—

(A) \$3,000,000 with respect to any 1 empowerment zone or enterprise community, or

(B) \$20,000,000 with respect to all empowerment zones and enterprise communities.

(2) Aggregate enterprise zone facility bond benefit

For purposes of paragraph (1), the aggregate amount of outstanding enterprise zone facility bonds allocable to any person shall be determined under rules similar to the rules of section 144 (a)(10), taking into account only bonds to which subsection (a) applies.

(d) Acquisition of land and existing property permitted

The requirements of sections 147 (c)(1)(A) and 147 (d) shall not apply to any bond described in subsection (a).

(e) Penalty for ceasing to meet requirements

(1) Failures corrected

An issue which fails to meet 1 or more of the requirements of subsections (a) and (b) shall be treated as meeting such requirements if—

(A) the issuer and any principal user in good faith attempted to meet such requirements, and

(B) any failure to meet such requirements is corrected within a reasonable period after such failure is first discovered.

(2) Loss of deductions where facility ceases to be qualified

No deduction shall be allowed under this chapter for interest on any financing provided from any bond to which subsection (a) applies with respect to any facility to the extent such interest accrues during the period beginning on the first day of the calendar year which includes the date on which—

- (A) substantially all of the facility with respect to which the financing was provided ceases to be used in an empowerment zone or enterprise community, or
- (B) the principal user of such facility ceases to be an enterprise zone business (as defined in subsection (b)).

(3) Exception if zone ceases

Paragraphs (1) and (2) shall not apply solely by reason of the termination or revocation of a designation as an empowerment zone or an enterprise community.

(4) Exception for bankruptcy

Paragraphs (1) and (2) shall not apply to any cessation resulting from bankruptcy.

(f) Bonds for empowerment zones designated under section 1391 (g)

(1) In general

In the case of a new empowerment zone facility bond—

- (A) such bond shall not be treated as a private activity bond for purposes of section 146, and
- (B) subsection (c) of this section shall not apply.

(2) Limitation on amount of bonds

(A) In general

Paragraph (1) shall apply to a new empowerment zone facility bond only if such bond is designated for purposes of this subsection by the local government which nominated the area to which such bond relates.

(B) Limitation on bonds designated

The aggregate face amount of bonds which may be designated under subparagraph (A) with respect to any empowerment zone shall not exceed—

- (i) \$60,000,000 if such zone is in a rural area,
- (ii) \$130,000,000 if such zone is in an urban area and the zone has a population of less than 100,000, and
- (iii) \$230,000,000 if such zone is in an urban area and the zone has a population of at least 100,000.

(C) Special rules

- (i) Coordination with limitation in subsection (c)

Bonds to which paragraph (1) applies shall not be taken into account in applying the limitation of subsection (c) to other bonds.

- (ii) Current refunding not taken into account

In the case of a refunding (or series of refundings) of a bond designated under this paragraph, the refunding obligation shall be treated as designated under this paragraph (and shall not be taken into account in applying subparagraph (B)) if—

- (I) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and
- (II) the refunded bond is redeemed not later than 90 days after the date of issuance of the refunding bond.

(3) Empowerment zone facility bond

For purposes of this subsection, the term “empowerment zone facility bond” means any bond which would be described in subsection (a) if—

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscp.html>).

(A) in the case of obligations issued before January 1, 2002, only empowerment zones designated under section 1391 (g) were taken into account under sections 1397C and 1397D, and

(B) in the case of obligations issued after December 31, 2001, all empowerment zones (other than the District of Columbia Enterprise Zone) were taken into account under sections 1397C and 1397D.

(Added Pub. L. 103–66, title XIII, § 13301(a), Aug. 10, 1993, 107 Stat. 548; amended Pub. L. 104–188, title I, § 1703(n)(7), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–34, title IX, §§ 953(a), 955 (a), (b), Aug. 5, 1997, 111 Stat. 887, 889, 890; Pub. L. 106–554, § 1(a)(7) [title I, §§ 115(a), 116 (b)(3), (4)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601, 2763A–603; Pub. L. 107–147, title IV, § 417(16), Mar. 9, 2002, 116 Stat. 56.)

Prior Provisions

A prior section 1394, added Pub. L. 95–600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2895; amended Pub. L. 96–595, § 3(a)(6)–(8), Dec. 24, 1980, 94 Stat. 3465, related to rules applicable to distributions of an electing general stock ownership corporation, prior to repeal by Pub. L. 99–514, title XIII, § 1303(a), Oct. 22, 1986, 100 Stat. 2658.

A prior section 1395, added Pub. L. 95–600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2895, related to adjustment to basis of stock of shareholders, prior to repeal by Pub. L. 99–514, title XIII, § 1303(a), Oct. 22, 1986, 100 Stat. 2658.

Amendments

2002—Subsec. (c)(2). Pub. L. 107–147 substituted “paragraph (1)” for “subparagraph (A)”.

2000—Subsec. (b)(2). Pub. L. 106–554, § 1(a)(7) [title I, § 116(b)(3)(A)], substituted “section 1397D” for “section 1397C” in introductory provisions.

Subsec. (b)(2)(B). Pub. L. 106–554, § 1(a)(7) [title I, § 116(b)(3)(B)], substituted “section 1397D (a)(2)” for “section 1397C (a)(2)”.

Subsec. (b)(3). Pub. L. 106–554, § 1(a)(7) [title I, § 116(b)(4)(A)], substituted “section 1397C” for “section 1397B” wherever appearing.

Subsec. (b)(3)(B)(iii). Pub. L. 106–554, § 1(a)(7) [title I, § 116(b)(4)(B)], substituted “section 1397C (d)” for “section 1397B (d)”.

Subsec. (f)(3). Pub. L. 106–554, § 1(a)(7) [title I, § 115(a)], amended heading and text of par. (3) generally. Prior to amendment, text read as follows: “For purposes of this subsection, the term ‘new empowerment zone facility bond’ means any bond which would be described in subsection (a) if only empowerment zones designated under section 1391 (g) were taken into account under sections 1397B and 1397C.”

1997—Subsec. (b)(2). Pub. L. 105–34, § 955(b), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “The term ‘qualified zone property’ has the meaning given such term by section 1397C; except that the references to empowerment zones shall be treated as including references to enterprise communities.”

Subsec. (b)(3). Pub. L. 105–34, § 955(b), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: “The term ‘enterprise zone business’ has the meaning given to such term by section 1397B, except that—

“(A) references to empowerment zones shall be treated as including references to enterprise communities, and

“(B) such term includes any trades or businesses which would qualify as an enterprise zone business (determined after the modification of subparagraph (A)) if such trades or businesses were separately incorporated.”

Subsec. (f). Pub. L. 105–34, § 953(a), added subsec. (f).

1996—Subsec. (e)(2). Pub. L. 104–188, which directed that par. (2) be amended by striking “(i)” and inserting “(A)” and by striking “(ii)” and inserting “(B)”, could not be executed, because par. (2) contained neither “(i)” nor “(ii)”.

Effective Date of 2000 Amendment

Pub. L. 106–554, § 1(a)(7) [title I, § 115(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602, provided that: “The amendments made by this section [amending this section] shall apply to obligations issued after December 31, 2001.”

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

Amendment by section 1 (a)(7) [title I, § 116(b)(3), (4)] of Pub. L. 106-554 applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1 (a)(7) [title I, § 116(c)] of Pub. L. 106-554, set out as a note under section 1016 of this title.

Effective Date of 1997 Amendment

Section 953(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Aug. 5, 1997].”

Section 955(c) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Aug. 5, 1997].”

Effective Date of 1996 Amendment

Amendment by Pub. L. 104-188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103-66, §§ 13001-13444, to which such amendment relates, see section 1703(o) of Pub. L. 104-188, set out as a note under section 39 of this title.