

COOPERATIVE TAXATION BRIEF

March 2017

Service Approves Patrons' "Written Consent" by Website

In a [prior Cooperative Tax Post](#), we discussed the Service's trend of permitting cooperatives to satisfy notification requirements of Subchapter T by modern transmission methods. In this recent private letter ruling, the Service permitted a cooperative to obtain patrons' written consent for qualified written notices of allocation ("QWNAs") by checking a box on its website.

Background

Cooperative is a global farmers cooperative under Subchapter T. It operates a grain marketing and agricultural supply cooperative. In the past, Cooperative obtained its patrons' consent to recognize patronage dividends as taxable income ("Consent") through written consent forms. When they applied to become patrons of Cooperative, applicants signed and submitted a Patronage Application and Eligibility Form, on which the applicant agreed comply with the Consent provisions of the bylaws.

Read other [Cooperative Tax Briefs](#).

Proposal for Digital Consent Procedures

Under a plan to streamline processes and gain efficiencies, Cooperative sought to make its Consent progress online. As a first stage, applicants will be able to print out the form, execute it, and mail a copy to Cooperative.



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As a second stage, Cooperative will make the Consent process fully digital, simply by checking a box on Cooperative’s website. The Consent provision associated with the checkbox states:

CONSENT — By checking this box, entering my typed name below, and submitting this form, I consent to include in my gross income for federal income tax purposes in the year of receipt in the manner provided in Section 1385(a) of the Internal Revenue Code the stated dollar amount of each written notice of allocation which I receive from [Cooperative] and its successors with respect to my patronage occurring during the current and all subsequent taxable years. This consent does not apply to any written notices of allocation labeled “nonqualified.” Under Section 1385(b), written notices of allocation attributable to personal, living or family items and those properly taken into account as an adjustment to basis of property need not be included in gross income. This written consent shall be revocable by me in writing at any time. I also acknowledge receipt of the [Cooperative] Consent Bylaw and Statement of Significance set forth below, which provide additional information about my consent.

*Read more about cooperative law on
[AHHC’s Cooperative Law Blog.](#)*

After checking the box, the applicant must date and “sign” the form by typing his or her name in the signature line. Importantly, the form has additional security features that require the form to be fully completed and “signed” by the applicants.



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Does the Digital Process Comply with Subchapter T's "Written Consent" Requirement?

Under Subchapter T, cooperatives have the ability to deduct patronage-dividend deductions for QWNAs. I.R.C. § 1382(b)(1). To qualify as a QWNA, a written notice must either (i) be redeemed in cash during a certain period or (ii) be subject to the written consent of a patron to account for the QWNA as taxable income in the year of receipt ("Written Consent"). I.R.C. § 1388(c)(1)(B). No specific form is required to qualify as a Written Consent. Treas. Reg. § 1.1388-1(c)(3).

But the Code does not give any more specificity on the "written" aspect of Written Consent. Cooperative asked whether this requirement would include consent through its new Consent procedures through its website.

The Service reviewed the history of Subchapter T, noting it was enacted before the computer age. It looked to usage of "written" in other sections of the Code, many of which authorize the transmission of written notices by email. It also reviewed the varying practices of cooperative patrons in transmitting their written consent, which has included delivery at annual meetings, home visits by employees, and special delivery. Finally, it acknowledged the trend in federal laws to permit digital signatures and transmission of written authorizations and consents by email.

As a result, the new procedures designed to obtain patrons' Consent through Cooperative's website resulted in satisfaction of the Written Consent requirement.

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David is a member of the firm's cooperative tax practice group. He started his career as a C.P.A. and auditor for electric and telephone cooperatives. After attending law



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school, he worked as an international tax consultant at Deloitte Tax LLP until joining the firm. As part of his cooperative law practice, David advises electric, telephone, telecommunications, agricultural, Subchapter T, and other cooperatives on their cooperative tax and corporate questions, commercial transactions, governance, capital credits, and various cooperative law issues.

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