

TITLE 26 - INTERNAL REVENUE CODE**Subtitle A - Income Taxes****CHAPTER 1 - NORMAL TAXES AND SURTAXES****Subchapter B - Computation of Taxable Income****PART IV - TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS****Subpart A - Private Activity Bonds****§ 142. Exempt facility bond****(a) General rule**

For purposes of this part, the term “exempt facility bond” means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide—

- (1) airports,
- (2) docks and wharves,
- (3) mass commuting facilities,
- (4) facilities for the furnishing of water,
- (5) sewage facilities,
- (6) solid waste disposal facilities,
- (7) qualified residential rental projects,
- (8) facilities for the local furnishing of electric energy or gas,
- (9) local district heating or cooling facilities,
- (10) qualified hazardous waste facilities,
- (11) high-speed intercity rail facilities,
- (12) environmental enhancements of hydroelectric generating facilities,
- (13) qualified public educational facilities,
- (14) qualified green building and sustainable design projects, or
- (15) qualified highway or surface freight transfer facilities.

(b) Special exempt facility bond rules

For purposes of subsection (a)—

(1) Certain facilities must be governmentally owned**(A) In general**

A facility shall be treated as described in paragraph (1), (2), (3), or (12) of subsection (a) only if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit.

(B) Safe harbor for leases and management contracts

For purposes of subparagraph (A), property leased by a governmental unit shall be treated as owned by such governmental unit if—

- (i) the lessee makes an irrevocable election (binding on the lessee and all successors in interest under the lease) not to claim depreciation or an investment credit with respect to such property,
- (ii) the lease term (as defined in section 168 (i)(3)) is not more than 80 percent of the reasonably expected economic life of the property (as determined under section 147 (b)), and
- (iii) the lessee has no option to purchase the property other than at fair market value (as of the time such option is exercised).

Rules similar to the rules of the preceding sentence shall apply to management contracts and similar types of operating agreements.

(2) Limitation on office space

An office shall not be treated as described in a paragraph of subsection (a) unless—

- (A) the office is located on the premises of a facility described in such a paragraph, and
- (B) not more than a de minimis amount of the functions to be performed at such office is not directly related to the day-to-day operations at such facility.

(c) Airports, docks and wharves, mass commuting facilities and high-speed intercity rail facilities

For purposes of subsection (a)—

(1) Storage and training facilities

Storage or training facilities directly related to a facility described in paragraph (1), (2), (3) or (11) of subsection (a) shall be treated as described in the paragraph in which such facility is described.

(2) Exception for certain private facilities

Property shall not be treated as described in paragraph (1), (2), (3) or (11) of subsection (a) if such property is described in any of the following subparagraphs and is to be used for any private business use (as defined in section 141 (b)(6)).

- (A) Any lodging facility.
- (B) Any retail facility (including food and beverage facilities) in excess of a size necessary to serve passengers and employees at the exempt facility.
- (C) Any retail facility (other than parking) for passengers or the general public located outside the exempt facility terminal.
- (D) Any office building for individuals who are not employees of a governmental unit or of the operating authority for the exempt facility.
- (E) Any industrial park or manufacturing facility.

(d) Qualified residential rental project

For purposes of this section—

(1) In general

The term “qualified residential rental project” means any project for residential rental property if, at all times during the qualified project period, such project meets the requirements of subparagraph (A) or (B), whichever is elected by the issuer at the time of the issuance of the issue with respect to such project:

(A) 20–50 test

The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

(B) 40–60 test

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income.

For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Definitions and special rules

For purposes of this subsection—

(A) Qualified project period

The term “qualified project period” means the period beginning on the 1st day on which 10 percent of the residential units in the project are occupied and ending on the latest of—

- (i) the date which is 15 years after the date on which 50 percent of the residential units in the project are occupied,
- (ii) the 1st day on which no tax-exempt private activity bond issued with respect to the project is outstanding, or
- (iii) the date on which any assistance provided with respect to the project under section 8 of the United States Housing Act of 1937 terminates.

(B) Income of individuals; area median gross income**(i) In general**

The income of individuals and area median gross income shall be determined by the Secretary in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937 (or, if such program is terminated, under such program as in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for family size. Subsections (g) and (h) of section 7872 shall not apply in determining the income of individuals under this subparagraph.

(ii) Special rule relating to basic housing allowances

For purposes of determining income under this subparagraph, payments under section 403 of title 37, United States Code, as a basic pay allowance for housing shall be disregarded with respect to any qualified building.

(iii) Qualified building

For purposes of clause (ii), the term “qualified building” means any building located—

- (I)** in any county in which is located a qualified military installation to which the number of members of the Armed Forces of the United States assigned to units based out of such qualified military installation, as of June 1, 2008, has increased by not less than 20 percent, as compared to such number on December 31, 2005, or
- (II)** in any county adjacent to a county described in subclause (I).

(iv) Qualified military installation

For purposes of clause (iii), the term “qualified military installation” means any military installation or facility the number of members of the Armed Forces of the United States assigned to which, as of June 1, 2008, is not less than 1,000.

(C) Students

Rules similar to the rules of 42(i)(3)(D)¹ shall apply for purposes of this subsection.

(D) Single-room occupancy units

A unit shall not fail to be treated as a residential unit merely because such unit is a single-room occupancy unit (within the meaning of section 42).

(E) Hold harmless for reductions in area median gross income**(i) In general**

Any determination of area median gross income under subparagraph (B) with respect to any project for any calendar year after 2008 shall not be less than the area median gross income determined under such subparagraph with respect to such project for the calendar year preceding the calendar year for which such determination is made.

(ii) Special rule for certain census changes

In the case of a HUD hold harmless impacted project, the area median gross income with respect to such project for any calendar year after 2008 (hereafter in this clause referred to as the current calendar year) shall be the greater of the amount determined without regard to this clause or the sum of—

(I) the area median gross income determined under the HUD hold harmless policy with respect to such project for calendar year 2008, plus

(II) any increase in the area median gross income determined under subparagraph (B) (determined without regard to the HUD hold harmless policy and this subparagraph) with respect to such project for the current calendar year over the area median gross income (as so determined) with respect to such project for calendar year 2008.

(iii) HUD hold harmless policy

The term “HUD hold harmless policy” means the regulations under which a policy similar to the rules of clause (i) applied to prevent a change in the method of determining area median gross income from resulting in a reduction in the area median gross income determined with respect to certain projects in calendar years 2007 and 2008.

(iv) HUD hold harmless impacted project

The term “HUD hold harmless impacted project” means any project with respect to which area median gross income was determined under subparagraph (B) for calendar year 2007 or 2008 if such determination would have been less but for the HUD hold harmless policy.

(3) Current income determinations

For purposes of this subsection—

(A) In general

The determination of whether the income of a resident of a unit in a project exceeds the applicable income limit shall be made at least annually on the basis of the current income of the resident. The preceding sentence shall not apply with respect to any project for any year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit.

(B) Continuing resident’s income may increase above the applicable limit

If the income of a resident of a unit in a project did not exceed the applicable income limit upon commencement of such resident’s occupancy of such unit (or as of any prior determination under subparagraph (A)), the income of such resident shall be treated as continuing to not exceed the applicable income limit. The preceding sentence shall cease to apply to any resident whose income as of the most recent determination under subparagraph (A) exceeds 140 percent of the applicable income limit if after such determination, but before the next determination, any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit.

(C) Exception for projects with respect to which affordable housing credit is allowed

In the case of a project with respect to which credit is allowed under section 42, the second sentence of subparagraph (B) shall be applied by substituting “building (within the meaning of section 42)” for “project”.

(4) Special rule in case of deep rent skewing

(A) In general

In the case of any project described in subparagraph (B), the 2d sentence of subparagraph (B) of paragraph (3) shall be applied by substituting—

(i) “170 percent” for “140 percent”, and

(ii) “any low-income unit in the same project is occupied by a new resident whose income exceeds 40 percent of area median gross income” for “any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit”.

(B) Deep rent skewed project

A project is described in this subparagraph if the owner of the project elects to have this paragraph apply and, at all times during the qualified project period, such project meets the requirements of clauses (i), (ii), and (iii):

(i) The project meets the requirements of this clause if 15 percent or more of the low-income units in the project are occupied by individuals whose income is 40 percent or less of area median gross income.

(ii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed 30 percent of the applicable income limit which applies to individuals occupying the unit.

(iii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed 1/2 of the average gross rent with respect to units of comparable size which are not occupied by individuals who meet the applicable income limit.

(C) Definitions applicable to subparagraph (B)

For purposes of subparagraph (B)—

(i) Low-income unit

The term “low-income unit” means any unit which is required to be occupied by individuals who meet the applicable income limit.

(ii) Gross rent

The term “gross rent” includes—

(I) any payment under section 8 of the United States Housing Act of 1937, and

(II) any utility allowance determined by the Secretary after taking into account such determinations under such section 8.

(5) Applicable income limit

For purposes of paragraphs (3) and (4), the term “applicable income limit” means—

(A) the limitation under subparagraph (A) or (B) of paragraph (1) which applies to the project, or

(B) in the case of a unit to which paragraph (4)(B)(i) applies, the limitation which applies to such unit.

(6) Special rule for certain high cost housing area

In the case of a project located in a city having 5 boroughs and a population in excess of 5,000,000, subparagraph (B) of paragraph (1) shall be applied by substituting “25 percent” for “40 percent”.

(7) Certification to Secretary

The operator of any project with respect to which an election was made under this subsection shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual certification as to whether such project continues to meet the requirements of this subsection. Any failure to comply with the provisions of the preceding sentence shall not affect the tax-exempt status of any bond but shall subject the operator to penalty, as provided in section 6652 (j).

(e) Facilities for the furnishing of water

For purposes of subsection (a)(4), the term “facilities for the furnishing of water” means any facility for the furnishing of water if—

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

- (1) the water is or will be made available to members of the general public (including electric utility, industrial, agricultural, or commercial users), and
- (2) either the facility is operated by a governmental unit or the rates for the furnishing or sale of the water have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

(f) Local furnishing of electric energy or gas

For purposes of subsection (a)(8)—

(1) In general

The local furnishing of electric energy or gas from a facility shall only include furnishing solely within the area consisting of—

- (A) a city and 1 contiguous county, or
- (B) 2 contiguous counties.

(2) Treatment of certain electric energy transmitted outside local area

(A) In general

A facility shall not be treated as failing to meet the local furnishing requirement of subsection (a)(8) by reason of electricity transmitted pursuant to an order of the Federal Energy Regulatory Commission under section 211 or 213 of the Federal Power Act (as in effect on the date of the enactment of this paragraph) if the portion of the cost of the facility financed with tax-exempt bonds is not greater than the portion of the cost of the facility which is allocable to the local furnishing of electric energy (determined without regard to this paragraph).

(B) Special rule for existing facilities

In the case of a facility financed with bonds issued before the date of an order referred to in subparagraph (A) which would (but for this subparagraph) cease to be tax-exempt by reason of subparagraph (A), such bonds shall not cease to be tax-exempt bonds (and section 150 (b)(4) shall not apply) if, to the extent necessary to comply with subparagraph (A)—

- (i) an escrow to pay principal of, premium (if any), and interest on the bonds is established within a reasonable period after the date such order becomes final, and
- (ii) bonds are redeemed not later than the earliest date on which such bonds may be redeemed.

(3) Termination of future financing

For purposes of this section, no bond may be issued as part of an issue described in subsection (a)(8) with respect to a facility for the local furnishing of electric energy or gas on or after the date of the enactment of this paragraph unless—

(A) the facility will—

- (i) be used by a person who is engaged in the local furnishing of that energy source on January 1, 1997, and
- (ii) be used to provide service within the area served by such person on January 1, 1997 (or within a county or city any portion of which is within such area), or

(B) the facility will be used by a successor in interest to such person for the same use and within the same service area as described in subparagraph (A).

(4) Election to terminate tax-exempt bond financing by certain furnishers

(A) In general

In the case of a facility financed with bonds issued before the date of the enactment of this paragraph which would cease to be tax-exempt by reason of the failure to meet the local furnishing requirement of subsection (a)(8) as a result of a service area expansion, such bonds

shall not cease to be tax-exempt bonds (and section 150 (b)(4) shall not apply) if the person engaged in such local furnishing by such facility makes an election described in subparagraph (B).

(B) Election

An election is described in this subparagraph if it is an election made in such manner as the Secretary prescribes, and such person (or its predecessor in interest) agrees that—

- (i) such election is made with respect to all facilities for the local furnishing of electric energy or gas, or both, by such person,
- (ii) no bond exempt from tax under section 103 and described in subsection (a)(8) may be issued on or after the date of the enactment of this paragraph with respect to all such facilities of such person,
- (iii) any expansion of the service area—
 - (I) is not financed with the proceeds of any exempt facility bond described in subsection (a)(8), and
 - (II) is not treated as a nonqualifying use under the rules of paragraph (2), and
- (iv) all outstanding bonds used to finance the facilities for such person are redeemed not later than 6 months after the later of—
 - (I) the earliest date on which such bonds may be redeemed, or
 - (II) the date of the election.

(C) Related persons

For purposes of this paragraph, the term “person” includes a group of related persons (within the meaning of section 144 (a)(3)) which includes such person.

(g) Local district heating or cooling facility

(1) In general

For purposes of subsection (a)(9), the term “local district heating or cooling facility” means property used as an integral part of a local district heating or cooling system.

(2) Local district heating or cooling system

(A) In general

For purposes of paragraph (1), the term “local district heating or cooling system” means any local system consisting of a pipeline or network (which may be connected to a heating or cooling source) providing hot water, chilled water, or steam to 2 or more users for—

- (i) residential, commercial, or industrial heating or cooling, or
- (ii) process steam.

(B) Local system

For purposes of this paragraph, a local system includes facilities furnishing heating and cooling to an area consisting of a city and 1 contiguous county.

(h) Qualified hazardous waste facilities

For purposes of subsection (a)(10), the term “qualified hazardous waste facility” means any facility for the disposal of hazardous waste by incineration or entombment but only if—

- (1) the facility is subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on the date of the enactment of the Tax Reform Act of 1986), and
- (2) the portion of such facility which is to be provided by the issue does not exceed the portion of the facility which is to be used by persons other than—
 - (A) the owner or operator of such facility, and
 - (B) any related person (within the meaning of section 144 (a)(3)) to such owner or operator.

(i) High-speed intercity rail facilities**(1) In general**

For purposes of subsection (a)(11), the term “high-speed intercity rail facilities” means any facility (not including rolling stock) for the fixed guideway rail transportation of passengers and their baggage between metropolitan statistical areas (within the meaning of section 143 (k)(2)(B)) using vehicles that are reasonably expected to be capable of attaining a maximum speed in excess of 150 miles per hour between scheduled stops, but only if such facility will be made available to members of the general public as passengers.

(2) Election by nongovernmental owners

A facility shall be treated as described in subsection (a)(11) only if any owner of such facility which is not a governmental unit irrevocably elects not to claim—

(A) any deduction under section 167 or 168, and

(B) any credit under this subtitle,

with respect to the property to be financed by the net proceeds of the issue.

(3) Use of proceeds

A bond issued as part of an issue described in subsection (a)(11) shall not be considered an exempt facility bond unless any proceeds not used within a 3-year period of the date of the issuance of such bond are used (not later than 6 months after the close of such period) to redeem bonds which are part of such issue.

(j) Environmental enhancements of hydroelectric generating facilities**(1) In general**

For purposes of subsection (a)(12), the term “environmental enhancements of hydroelectric generating facilities” means property—

(A) the use of which is related to a federally licensed hydroelectric generating facility owned and operated by a governmental unit, and

(B) which—

(i) protects or promotes fisheries or other wildlife resources, including any fish by-pass facility, fish hatchery, or fisheries enhancement facility, or

(ii) is a recreational facility or other improvement required by the terms and conditions of any Federal licensing permit for the operation of such generating facility.

(2) Use of proceeds

A bond issued as part of an issue described in subsection (a)(12) shall not be considered an exempt facility bond unless at least 80 percent of the net proceeds of the issue of which it is a part are used to finance property described in paragraph (1)(B)(i).

(k) Qualified public educational facilities**(1) In general**

For purposes of subsection (a)(13), the term “qualified public educational facility” means any school facility which is—

(A) part of a public elementary school or a public secondary school, and

(B) owned by a private, for-profit corporation pursuant to a public-private partnership agreement with a State or local educational agency described in paragraph (2).

(2) Public-private partnership agreement described

A public-private partnership agreement is described in this paragraph if it is an agreement—

(A) under which the corporation agrees—

(i) to do 1 or more of the following: construct, rehabilitate, refurbish, or equip a school facility, and

(ii) at the end of the term of the agreement, to transfer the school facility to such agency for no additional consideration, and

(B) the term of which does not exceed the term of the issue to be used to provide the school facility.

(3) School facility

For purposes of this subsection, the term “school facility” means—

(A) any school building,

(B) any functionally related and subordinate facility and land with respect to such building, including any stadium or other facility primarily used for school events, and

(C) any property, to which section 168 applies (or would apply but for section 179), for use in a facility described in subparagraph (A) or (B).

(4) Public schools

For purposes of this subsection, the terms “elementary school” and “secondary school” have the meanings given such terms by section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801), as in effect on the date of the enactment of this subsection.

(5) Annual aggregate face amount of tax-exempt financing

(A) In general

An issue shall not be treated as an issue described in subsection (a)(13) if the aggregate face amount of bonds issued by the State pursuant thereto (when added to the aggregate face amount of bonds previously so issued during the calendar year) exceeds an amount equal to the greater of—

(i) \$10 multiplied by the State population, or

(ii) \$5,000,000.

(B) Allocation rules

(i) In general

Except as otherwise provided in this subparagraph, the State may allocate the amount described in subparagraph (A) for any calendar year in such manner as the State determines appropriate.

(ii) Rules for carryforward of unused limitation

A State may elect to carry forward an unused limitation for any calendar year for 3 calendar years following the calendar year in which the unused limitation arose under rules similar to the rules of section 146 (f), except that the only purpose for which the carryforward may be elected is the issuance of exempt facility bonds described in subsection (a)(13).

(I) Qualified green building and sustainable design projects

(1) In general

For purposes of subsection (a)(14), the term “qualified green building and sustainable design project” means any project which is designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency, as a qualified green building and sustainable design project and which meets the requirements of clauses (i), (ii), (iii), and (iv) of paragraph (4)(A).

(2) Designations

(A) In general

Within 60 days after the end of the application period described in paragraph (3)(A), the Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall designate qualified green building and sustainable design projects. At least one of the projects designated shall be located in, or within a 10-mile radius of, an empowerment zone as designated pursuant to section 1391, and at least one of the projects designated shall be located in a rural State. No more than one project shall be designated in a State. A project shall not be designated if such project includes a stadium or arena for professional sports exhibitions or games.

(B) Minimum conservation and technology innovation objectives

The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall ensure that, in the aggregate, the projects designated shall—

- (i) reduce electric consumption by more than 150 megawatts annually as compared to conventional generation,
- (ii) reduce daily sulfur dioxide emissions by at least 10 tons compared to coal generation power,
- (iii) expand by 75 percent the domestic solar photovoltaic market in the United States (measured in megawatts) as compared to the expansion of that market from 2001 to 2002, and
- (iv) use at least 25 megawatts of fuel cell energy generation.

(3) Limited designations

A project may not be designated under this subsection unless—

- (A) the project is nominated by a State or local government within 180 days of the enactment of this subsection, and
- (B) such State or local government provides written assurances that the project will satisfy the eligibility criteria described in paragraph (4).

(4) Application

(A) In general

A project may not be designated under this subsection unless the application for such designation includes a project proposal which describes the energy efficiency, renewable energy, and sustainable design features of the project and demonstrates that the project satisfies the following eligibility criteria:

- (i) Green building and sustainable design

At least 75 percent of the square footage of commercial buildings which are part of the project is registered for United States Green Building Council's LEED certification and is reasonably expected (at the time of the designation) to receive such certification. For purposes of determining LEED certification as required under this clause, points shall be credited by using the following:

- (I) For wood products, certification under the Sustainable Forestry Initiative Program and the American Tree Farm System.
- (II) For renewable wood products, as credited for recycled content otherwise provided under LEED certification.
- (III) For composite wood products, certification under standards established by the American National Standards Institute, or such other voluntary standards as published in the Federal Register by the Administrator of the Environmental Protection Agency.

- (ii) Brownfield redevelopment

The project includes a brownfield site as defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), including a site described in subparagraph (D)(ii)(II)(aa) thereof.

(iii) State and local support

The project receives specific State or local government resources which will support the project in an amount equal to at least \$5,000,000. For purposes of the preceding sentence, the term “resources” includes tax abatement benefits and contributions in kind.

(iv) Size

The project includes at least one of the following:

- (I)** At least 1,000,000 square feet of building.
- (II)** At least 20 acres.

(v) Use of tax benefit

The project proposal includes a description of the net benefit of the tax-exempt financing provided under this subsection which will be allocated for financing of one or more of the following:

- (I)** The purchase, construction, integration, or other use of energy efficiency, renewable energy, and sustainable design features of the project.
- (II)** Compliance with certification standards cited under clause (i).
- (III)** The purchase, remediation, and foundation construction and preparation of the brownfields site.

(vi) Prohibited facilities

An issue shall not be treated as an issue described in subsection (a)(14) if any proceeds of such issue are used to provide any facility the principal business of which is the sale of food or alcoholic beverages for consumption on the premises.

(vii) Employment

The project is projected to provide permanent employment of at least 1,500 full time equivalents (150 full time equivalents in rural States) when completed and construction employment of at least 1,000 full time equivalents (100 full time equivalents in rural States).

The application shall include an independent analysis which describes the project’s economic impact, including the amount of projected employment.

(B) Project description

Each application described in subparagraph (A) shall contain for each project a description of—

- (i)** the amount of electric consumption reduced as compared to conventional construction,
- (ii)** the amount of sulfur dioxide daily emissions reduced compared to coal generation,
- (iii)** the amount of the gross installed capacity of the project’s solar photovoltaic capacity measured in megawatts, and
- (iv)** the amount, in megawatts, of the project’s fuel cell energy generation.

(5) Certification of use of tax benefit

No later than 30 days after the completion of the project, each project must certify to the Secretary that the net benefit of the tax-exempt financing was used for the purposes described in paragraph (4).

(6) Definitions

For purposes of this subsection—

(A) Rural State

The term “rural State” means any State which has—

- (i) a population of less than 4,500,000 according to the 2000 census,
- (ii) a population density of less than 150 people per square mile according to the 2000 census, and
- (iii) increased in population by less than half the rate of the national increase between the 1990 and 2000 censuses.

(B) Local government

The term “local government” has the meaning given such term by section 1393 (a)(5).

(C) Net benefit of tax-exempt financing

The term “net benefit of tax-exempt financing” means the present value of the interest savings (determined by a calculation established by the Secretary) which result from the tax-exempt status of the bonds.

(7) Aggregate face amount of tax-exempt financing

(A) In general

An issue shall not be treated as an issue described in subsection (a)(14) if the aggregate face amount of bonds issued by the State or local government pursuant thereto for a project (when added to the aggregate face amount of bonds previously so issued for such project) exceeds an amount designated by the Secretary as part of the designation.

(B) Limitation on amount of bonds

The Secretary may not allocate authority to issue qualified green building and sustainable design project bonds in an aggregate face amount exceeding \$2,000,000,000.

(8) Termination

Subsection (a)(14) shall not apply with respect to any bond issued after September 30, 2012.

(9) Treatment of current refunding bonds

Paragraphs (7)(B) and (8) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(14) before October 1, 2012, if—

- (A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,
- (B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and
- (C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147 (b)(2)(A).

(m) Qualified highway or surface freight transfer facilities

(1) In general

For purposes of subsection (a)(15), the term “qualified highway or surface freight transfer facilities” means—

- (A) any surface transportation project which receives Federal assistance under title 23, United States Code (as in effect on the date of the enactment of this subsection),
- (B) any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and which receives Federal assistance under title 23, United States Code (as so in effect), or

(C) any facility for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers) which receives Federal assistance under either title 23 or title 49, United States Code (as so in effect).

(2) National limitation on amount of tax-exempt financing for facilities

(A) National limitation

The aggregate amount allocated by the Secretary of Transportation under subparagraph (C) shall not exceed \$15,000,000,000.

(B) Enforcement of national limitation

An issue shall not be treated as an issue described in subsection (a)(15) if the aggregate face amount of bonds issued pursuant to such issue for any qualified highway or surface freight transfer facility (when added to the aggregate face amount of bonds previously so issued for such facility) exceeds the amount allocated to such facility under subparagraph (C).

(C) Allocation by Secretary of Transportation

The Secretary of Transportation shall allocate the amount described in subparagraph (A) among qualified highway or surface freight transfer facilities in such manner as the Secretary determines appropriate.

(3) Expenditure of proceeds

An issue shall not be treated as an issue described in subsection (a)(15) unless at least 95 percent of the net proceeds of the issue is expended for qualified highway or surface freight transfer facilities within the 5-year period beginning on the date of issuance. If at least 95 percent of such net proceeds is not expended within such 5-year period, an issue shall be treated as continuing to meet the requirements of this paragraph if the issuer uses all unspent proceeds of the issue to redeem bonds of the issue within 90 days after the end of such 5-year period. The Secretary, at the request of the issuer, may extend such 5-year period if the issuer establishes that any failure to meet such period is due to circumstances beyond the control of the issuer.

(4) Exception for current refunding bonds

Paragraph (2) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(15) if—

(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(C) the refunded bond is redeemed not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147 (b)(2)(A).

Footnotes

¹ So in original. Probably should be “section 42 (i)(3)(D)”.

(Added Pub. L. 99–514, title XIII, § 1301(b), Oct. 22, 1986, 100 Stat. 2606; amended Pub. L. 100–647, title I, § 1013(a)(1), (39), title VI, § 6180(a)–(b)(2), Nov. 10, 1988, 102 Stat. 3537, 3544, 3727, 3728; Pub. L. 101–239, title VII, §§ 7108(e)(3), (n)(1), 7816 (s)(1), Dec. 19, 1989, 103 Stat. 2313, 2318, 2423; Pub. L. 102–486, title XIX, §§ 1919(a), 1921 (a), (b)(1), (2), Oct. 24, 1992, 106 Stat. 3025, 3027, 3028; Pub. L. 104–188, title I, §§ 1608(a), 1704 (j)(7), Aug. 20, 1996, 110 Stat. 1840, 1882; Pub. L. 105–206, title VI, § 6023(5), July 22, 1998, 112 Stat. 825; Pub. L. 107–16, title IV, § 422(a), (b), June 7, 2001, 115 Stat. 65; Pub. L. 108–357, title VII, § 701(a), (b), Oct. 22, 2004, 118 Stat. 1536; Pub. L. 109–59, title XI, § 11143(a), (b), Aug. 10, 2005, 119 Stat. 1963; Pub. L. 109–222, title II, § 209(b)(2), May 17, 2006, 120

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Stat. 352; Pub. L. 110–289, div. C, title I, §§ 3005(a), 3008 (a)–(c), 3009(a), 3010(a), July 30, 2008, 122 Stat. 2885–2888; Pub. L. 110–343, div. B, title III, § 307(a), (b), Oct. 3, 2008, 122 Stat. 3849; Pub. L. 111–5, div. B, title I, § 1504(a), Feb. 17, 2009, 123 Stat. 355.)

Amendment of Section

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

References in Text

Section 8 of the United States Housing Act of 1937, referred to in subsec. (d)(2)(A)(iii), (B)(i), (4)(C)(ii), is classified to section 1437f of Title 42, The Public Health and Welfare.

Sections 211 and 213 of the Federal Power Act, referred to in subsec. (f)(2)(A), are classified to sections 824j and 824l, respectively, of Title 16, Conservation.

The date of the enactment of this paragraph, referred to in subsec. (f)(2)(A), is the date of enactment of Pub. L. 102–486, which was approved Oct. 24, 1992.

The date of the enactment of this paragraph, referred to in subsec. (f)(3), (4)(A), (B)(ii), is the date of enactment of Pub. L. 104–188, which was approved Aug. 20, 1996.

The Solid Waste Disposal Act, referred to in subsec. (h)(1), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (h)(1), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

Section 14101 of the Elementary and Secondary Education Act of 1965, referred to in subsec. (k)(4), is section 14101 of Pub. L. 89–10, which was classified to section 8801 of Title 20, Education, prior to repeal by Pub. L. 107–110, title X, § 1011(5)(C), Jan. 8, 2002, 115 Stat. 1986.

The date of the enactment of this subsection, referred to in subsec. (k)(4), means the date of enactment of Pub. L. 107–16, which was approved June 7, 2001.

The enactment of this subsection, referred to in subsec. (l)(3)(A), probably means the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The date of the enactment of this subsection, referred to in subsec. (m)(1)(A), is the date of enactment of Pub. L. 109–59, which was approved Aug. 10, 2005.

Prior Provisions

A prior section 142, act Aug. 16, 1954, ch. 736, 68A Stat. 40, enumerated individuals not eligible for standard deduction, prior to repeal by Pub. L. 95–30, title I, § 101(d)(1), May 23, 1977, 91 Stat. 133, applicable to taxable years beginning after Dec. 31, 1976.

Amendments

2009—Subsec. (i)(1). Pub. L. 111–5 substituted “be capable of attaining a maximum speed in excess of” for “operate at speeds in excess of”.

2008—Subsec. (d)(2)(B). Pub. L. 110–289, § 3005(a), designated existing provisions as cl. (i), inserted heading, and added cls. (ii) to (iv).

Subsec. (d)(2)(C). Pub. L. 110–289, § 3008(b), added subpar. (C).

Subsec. (d)(2)(D). Pub. L. 110–289, § 3008(c), added subpar. (D).

Subsec. (d)(2)(E). Pub. L. 110–289, § 3009(a), added subpar. (E).

Subsec. (d)(3)(A). Pub. L. 110–289, § 3010(a), inserted at end “The preceding sentence shall not apply with respect to any project for any year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit.”

Subsec. (d)(3)(C). Pub. L. 110–289, § 3008(a), added subpar. (C).

Subsec. (l)(8). Pub. L. 110–343, § 307(a), substituted “September 30, 2012” for “September 30, 2009”.

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Subsec. (l)(9). Pub. L. 110–343, § 307(b), substituted “October 1, 2012” for “October 1, 2009”.

2006—Subsec. (d)(2)(B). Pub. L. 109–222 substituted “Subsections (g) and (h) of section 7872” for “Section 7872 (g)”.

2005—Subsec. (a)(15). Pub. L. 109–59, § 11143(a), added par. (15).

Subsec. (m). Pub. L. 109–59, § 11143(b), added subsec. (m).

2004—Subsec. (a)(14). Pub. L. 108–357, § 701(a), added par. (14).

Subsec. (l). Pub. L. 108–357, § 701(b), added subsec. (l).

2001—Subsec. (a)(13). Pub. L. 107–16, §§ 422(a), 901, temporarily added par. (13). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (k). Pub. L. 107–16, §§ 422(b), 901, temporarily added subsec. (k). See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (f)(3)(A)(ii). Pub. L. 105–206 struck out comma after “1997”.

1996—Subsec. (b)(1)(A). Pub. L. 104–188, § 1704(j)(7), provided that section 1921(b)(2) of Pub. L. 102–486 shall be applied as if a comma appeared after “(2)” in the material proposed to be stricken. See 1992 Amendment note below.

Subsec. (f)(3), (4). Pub. L. 104–188, § 1608(a), added pars. (3) and (4).

1992—Subsec. (a)(12). Pub. L. 102–486, § 1921(a), added par. (12).

Subsec. (b)(1)(A). Pub. L. 102–486, § 1921(b)(2), which directed the substitution of “(2), (3), or (12)” for “(2) or (3)”, was executed by making the substitution for “(2), or (3)”. See 1996 Amendment note above.

Subsec. (f). Pub. L. 102–486, § 1919(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “For purposes of subsection (a)(8), the local furnishing of electric energy or gas from a facility shall only include furnishing solely within the area consisting of—

“(1) a city and 1 contiguous county, or

“(2) 2 contiguous counties.”

Subsec. (j). Pub. L. 102–486, § 1921(b)(1), added subsec. (j).

1989—Subsec. (d)(2)(B). Pub. L. 101–239, § 7108(e)(3), inserted at end “Section 7872 (g) shall not apply in determining the income of individuals under this subparagraph.”

Subsec. (d)(4)(B)(iii). Pub. L. 101–239, § 7108(n)(1), substituted “exceed 1/2” for “exceed 1/3”.

Subsec. (i)(1). Pub. L. 101–239, § 7816(s)(1), inserted heading “In general”.

1988—Subsec. (a)(11). Pub. L. 100–647, § 6180(a), added par. (11).

Subsec. (b)(1)(B)(ii). Pub. L. 100–647, § 1013(a)(39), inserted “section” before “168(i)(3)”.

Subsec. (c). Pub. L. 100–647, § 6180(b)(2), substituted “mass commuting facilities and high-speed intercity rail facilities” for “and mass commuting facilities” in heading and substituted “paragraph (1), (2), (3) or (11) of subsection (a)” for “paragraph (1), (2), or (3) of subsection (a)” in par. (1) and in introductory text of par. (2).

Subsec. (d)(4)(B)(iii). Pub. L. 100–647, § 1013(a)(1), substituted “average gross rent” for “average rent”.

Subsec. (i). Pub. L. 100–647, § 6180(b)(1), added subsec. (i).

Effective Date of 2009 Amendment

Pub. L. 111–5, div. B, title I, § 1504(b), Feb. 17, 2009, 123 Stat. 355, 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 [Feb. 17, 2009].”

Effective Date of 2008 Amendment

Pub. L. 110–289, div. C, title I, § 3005(b), July 30, 2008, 122 Stat. 2885, provided that: “The amendments made by this section [amending this section] shall apply to—

“(1) determinations made after the date of the enactment of this Act [July 30, 2008] and before January 1, 2012, in the case of any qualified building (as defined in section 142(d)(2)(B)(iii) of the Internal Revenue Code of 1986)—

“(A) with respect to which housing credit dollar amounts have been allocated on or before the date of the enactment of this Act [July 30, 2008], or

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“(B) with respect to buildings placed in service before such date of enactment, to the extent paragraph (1) of section 42(h) of such Code does not apply to such building by reason of paragraph (4) thereof, but only with respect to bonds issued before such date of enactment, and

“(2) determinations made after the date of enactment of this Act [July 30, 2008], in the case of qualified buildings (as so defined)—

“(A) with respect to which housing credit dollar amounts are allocated after the date of the enactment of this Act [July 30, 2008] and before January 1, 2012, or

“(B) with respect to which buildings placed in service after the date of enactment of this Act [July 30, 2008] and before January 1, 2012, to the extent paragraph (1) of section 42(h) of such Code does not apply to such building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date of enactment and before January 1, 2012.”

Pub. L. 110–289, div. C, title I, § 3008(d), July 30, 2008, 122 Stat. 2887, provided that: “The amendments made by this section [amending this section] shall apply to determinations of the status of qualified residential rental projects for periods beginning after the date of the enactment of this Act [July 30, 2008], with respect to bonds issued before, on, or after such date.”

Pub. L. 110–289, div. C, title I, § 3009(b), July 30, 2008, 122 Stat. 2888, provided that: “The amendment made by this section [amending this section] shall apply to determinations of area median gross income for calendar years after 2008.”

Pub. L. 110–289, div. C, title I, § 3010(b), July 30, 2008, 122 Stat. 2888, provided that: “The amendment made by this section [amending this section] shall apply to years ending after the date of the enactment of this Act [July 30, 2008].”

Effective Date of 2006 Amendment

Pub. L. 109–222, title II, § 209(c), May 17, 2006, 120 Stat. 352, provided that: “The amendment made by this section [amending this section and section 7872 of this title] shall apply to calendar years beginning after December 31, 2005, with respect to loans made before, on, or after such date.”

Effective Date of 2005 Amendment

Pub. L. 109–59, title XI, § 11143(d), Aug. 10, 2005, 119 Stat. 1965, provided that: “The amendments made by this section [amending this section and section 146 of this title] apply to bonds issued after the date of the enactment of this Act [Aug. 10, 2005].”

Effective Date of 2004 Amendment

Pub. L. 108–357, title VII, § 701(e), Oct. 22, 2004, 118 Stat. 1540, provided that: “The amendments made by this section [amending this section and section 146 of this title] shall apply to bonds issued after December 31, 2004.”

Effective and Termination Dates of 2001 Amendment

Pub. L. 107–16, title IV, § 422(f), June 7, 2001, 115 Stat. 66, provided that: “The amendments made by this section [amending this section and sections 146 and 147 of this title] shall apply to bonds issued after December 31, 2001.”

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

Effective Date of 1992 Amendment

Section 1919(b) of Pub. L. 102–486 provided that: “The amendment made by subsection (a) [amending this section] shall apply to obligations issued before, on, or after the date of the enactment of this Act [Oct. 24, 1992].”

Section 1921(c) of Pub. L. 102–486 provided that: “The amendments made by this section [amending this section and section 146 of this title] shall apply to bonds issued after the date of the enactment of this Act [Oct. 24, 1992].”

Effective Date of 1989 Amendment

Amendment by section 7108(e)(3), (n)(1) of Pub. L. 101–239 applicable, except as otherwise provided, to determinations under section 42 of this title with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989, see section 7108(r) of Pub. L. 101–239, set out as a note under section 42 of this title.

Amendment by section 7816(s) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

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Effective Date of 1988 Amendment

Amendment by section 1013(a)(1), (39) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6180(c) of Pub. L. 100–647 provided that: “The amendments made by this section [amending sections 142, 146, and 147 of this title] shall apply to bonds issued after the date of enactment of this Act [Nov. 10, 1988].”

Accountability

Pub. L. 108–357, title VII, § 701(d), Oct. 22, 2004, 118 Stat. 1539, as amended by Pub. L. 110–343, div. B, title III, § 307(c), Oct. 3, 2008, 122 Stat. 3849, provided that: “Each issuer shall maintain, on behalf of each project, an interest bearing reserve account equal to 1 percent of the net proceeds of any bond issued under this section for such project. Not later than 5 years after the date of issuance of the last issue with respect to such project, the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, shall determine whether the project financed with such bonds has substantially complied with the terms and conditions described in section 142(l)(4) of the Internal Revenue Code of 1986 (as added by this section). If the Secretary, after such consultation, certifies that the project has substantially complied with such terms and conditions and meets the commitments set forth in the application for such project described in section 142(l)(4) of such Code, amounts in the reserve account, including all interest, shall be released to the project. If the Secretary determines that the project has not substantially complied with such terms and conditions, amounts in the reserve account, including all interest, shall be paid to the United States Treasury.”

No Inference With Respect to Outstanding Bonds From Use of Term “Person”

Section 1608(b) of Pub. L. 104–188 provided that: “The use of the term ‘person’ in section 142(f)(3) of the Internal Revenue Code of 1986, as added by subsection (a), shall not be construed to affect the tax-exempt status of interest on any bonds issued before the date of the enactment of this Act [Aug. 20, 1996].”

Tax-Exempt Bonds for Sale of Alaska Power Administration Facility

Section 1804 of Pub. L. 104–188 provided that: “Sections 142 (f)(3) (as added by section 1608) and 147(d) of the Internal Revenue Code of 1986 shall not apply in determining whether any private activity bond issued after the date of the enactment of this Act [Aug. 20, 1996] and used to finance the acquisition of the Snettisham hydroelectric project from the Alaska Power Administration is a qualified bond for purposes of such Code.”