

104TH CONGRESS  
2D SESSION

# H. R. 2864

To amend the Internal Revenue Code of 1986 to provide for 501(c)(3) bonds a tax treatment similar to governmental bonds, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 23, 1996

Mr. HOUGHTON (for himself, Mr. MATSUI, Mr. CRANE, Mr. NEAL of Massachusetts, Mr. RANGEL, Mr. SHAW, Mr. ENGLISH of Pennsylvania, and Mrs. KENNELLY) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for 501(c)(3) bonds a tax treatment similar to governmental bonds, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nonprofit Organiza-  
5 tions Tax-Exempt Bond Reform Act of 1996”.

6 **SEC. 2. TAX TREATMENT OF 501(c)(3) BONDS SIMILAR TO**  
7 **GOVERNMENTAL BONDS.**

8 (a) IN GENERAL.—Subsection (a) of section 150 of  
9 the Internal Revenue Code of 1986 (relating to definitions

1 and special rules) is amended by striking paragraphs (2)  
2 and (4), by redesignating paragraphs (5) and (6) as para-  
3 graphs (4) and (5), respectively, and by inserting after  
4 paragraph (1) the following new paragraph:

5           “(2) EXEMPT PERSON.—

6                   “(A) IN GENERAL.—The term ‘exempt per-  
7           son’ means—

8                           “(i) a governmental unit, or

9                           “(ii) a 501(c)(3) organization, but  
10                           only with respect to its activities which do  
11                           not constitute unrelated trades or busi-  
12                           nesses as determined by applying section  
13                           513(a).

14                   “(B) GOVERNMENTAL UNIT NOT TO IN-  
15                   CLUDE FEDERAL GOVERNMENT.—The term  
16                   ‘governmental unit’ does not include the United  
17                   States or any agency or instrumentality thereof.

18                   “(C) 501(c)(3) ORGANIZATION.—The term  
19                   ‘501(c)(3) organization’ means any organization  
20                   described in section 501(c)(3) and exempt from  
21                   tax under section 501(a).”

22           (b) REPEAL OF QUALIFIED 501(c)(3) BOND DES-  
23           IGNATION.—Section 145 of the Internal Revenue Code of  
24           1986 (relating to qualified 501(c)(3) bonds) is repealed.

25           (c) CONFORMING AMENDMENTS.—

1           (1) Paragraph (3) of section 141(b) of the In-  
2           ternal Revenue Code of 1986 is amended—

3                   (A) by striking “government use” in sub-  
4                   paragraph (A)(ii)(I) and subparagraph (B)(ii)  
5                   and inserting “exempt person use”,

6                   (B) by striking “a government use” in sub-  
7                   paragraph (B) and inserting “an exempt person  
8                   use”,

9                   (C) by striking “related business use” in  
10                  subparagraph (A)(ii)(II) and subparagraph (B)  
11                  and inserting “related private business use”,

12                  (D) by striking “RELATED BUSINESS USE”  
13                  in the heading of subparagraph (B) and insert-  
14                  ing “RELATED PRIVATE BUSINESS USE”, and

15                  (E) by striking “GOVERNMENT USE” in the  
16                  heading thereof and inserting “EXEMPT PERSON  
17                  USE”.

18           (2) Subparagraph (A) of section 141(b)(6) of  
19           such Code is amended by striking “a governmental  
20           unit” and inserting “an exempt person”.

21           (3) Paragraph (7) of section 141(b) of such  
22           Code is amended—

23                   (A) by striking “government use” and in-  
24                   serting “exempt person use”, and

1 (B) by striking “GOVERNMENT USE” in  
2 the heading thereof and inserting “EXEMPT  
3 PERSON USE”.

4 (4) Section 141(b) of such Code is amended by  
5 striking paragraph (9).

6 (5) Paragraph (1) of section 141(c) of such  
7 Code is amended by striking “governmental units”  
8 and inserting “exempt persons”.

9 (6) Section 141 of such Code is amended by re-  
10 designating subsection (e) as subsection (f) and by  
11 inserting after subsection (d) the following new sub-  
12 section:

13 “(e) CERTAIN ISSUES USED TO PROVIDE RESIDEN-  
14 TIAL RENTAL HOUSING FOR FAMILY UNITS.—

15 “(1) IN GENERAL.—Except as provided in para-  
16 graph (2), for purposes of this title, the term ‘pri-  
17 vate activity bond’ includes any bond issued as part  
18 of an issue if any portion of the net proceeds of the  
19 issue are to be used (directly or indirectly) by an ex-  
20 empt person described in section 150(a)(2)(A)(ii) to  
21 provide residential rental property for family units.  
22 This paragraph shall not apply if the bond would  
23 not be a private activity bond if the section  
24 501(c)(3) organization were not an exempt person.

1           “(2) EXCEPTION FOR BONDS USED TO PROVIDE  
2           QUALIFIED RESIDENTIAL RENTAL PROJECTS.—  
3           Paragraph (1) shall not apply to any bond issued as  
4           part of an issue if the portion of such issue which  
5           is to be used as described in paragraph (1) is to be  
6           used to provide—

7                   “(A) a residential rental property for fam-  
8                   ily units if the first use of such property is pur-  
9                   suant to such issue,

10                   “(B) qualified residential rental projects  
11                   (as defined in section 142(d)), or

12                   “(C) property which is to be substantially  
13                   rehabilitated in a rehabilitation beginning with-  
14                   in the 2-year period ending 1 year after the  
15                   date of the acquisition of such property.

16           “(3) SUBSTANTIAL REHABILITATION.—

17                   “(A) IN GENERAL.—Except as provided in  
18                   subparagraph (B), rules similar to the rules of  
19                   section 47(e)(1)(C) shall apply in determining  
20                   for purposes of paragraph (2)(C) whether prop-  
21                   erty is substantially rehabilitated.

22                   “(B) EXCEPTION.—For purposes of sub-  
23                   paragraph (A), clause (ii) of section 47(e)(1)(C)  
24                   shall not apply, but the Secretary may extend  
25                   the 24-month period in section 47(e)(1)(C)(i)

1           where appropriate due to circumstances not  
2           within the control of the owner.

3           “(4) CERTAIN PROPERTY TREATED AS NEW  
4           PROPERTY.—Solely for purposes of determining  
5           under paragraph (2)(A) whether the 1st use of prop-  
6           erty is pursuant to tax-exempt financing—

7                   “(A) IN GENERAL.—If—

8                           “(i) the 1st use of property is pursu-  
9                           ant to taxable financing,

10                           “(ii) there was a reasonable expecta-  
11                           tion (at the time such taxable financing  
12                           was provided) that such financing would be  
13                           replaced by tax-exempt financing, and

14                           “(iii) the taxable financing is in fact  
15                           so replaced within a reasonable period  
16                           after the taxable financing was provided,

17           then the 1st use of such property shall be treat-  
18           ed as being pursuant to the tax-exempt financ-  
19           ing.

20                   “(B) SPECIAL RULE WHERE NO OPERAT-  
21                   ING STATE OR LOCAL PROGRAM FOR TAX-EX-  
22                   EMPT FINANCING.—If, at the time of the 1st  
23                   use of property, there was no operating State or  
24                   local program for tax-exempt financing of the  
25                   property, the 1st use of the property shall be

1 treated as pursuant to the 1st tax-exempt fi-  
2 nancing of the property.

3 “(C) DEFINITIONS.—For purposes of this  
4 paragraph—

5 “(i) TAX-EXEMPT FINANCING.—The  
6 term ‘tax-exempt financing’ means financ-  
7 ing provided by tax-exempt bonds.

8 “(ii) TAXABLE FINANCING.—The  
9 term ‘taxable financing’ means financing  
10 which is not tax-exempt financing.”

11 (7) Section 141(f) of such Code, as redesi-  
12 gnated by paragraph (6), is amended—

13 (A) by adding “or” at the end of subpara-  
14 graph (E),

15 (B) by striking “, or” at the end of sub-  
16 paragraph (F), and inserting in lieu thereof a  
17 period, and

18 (C) by striking subparagraph (G).

19 (8) The last sentence of section 144(b)(1) of  
20 such Code is amended by striking “(determined”  
21 and all that follows to the period.

22 (9) Clause (ii) of section 144(c)(2)(C) of such  
23 Code is amended by striking “a governmental unit”  
24 and inserting “an exempt person”.

25 (10) Section 146(g) of such Code is amended—

1 (A) by striking paragraph (2), and

2 (B) by redesignating the remaining para-  
3 graphs after paragraph (1) as paragraphs (2)  
4 and (3), respectively.

5 (11) The heading of section 146(k)(3) of such  
6 Code is amended by striking “GOVERNMENTAL” and  
7 inserting “EXEMPT PERSON”.

8 (12) The heading of section 146(m) of such  
9 Code is amended by striking “GOVERNMENT” and  
10 inserting “EXEMPT PERSON”.

11 (13) Subsection (h) of section 147 of such Code  
12 is amended to read as follows:

13 “(h) CERTAIN RULES NOT TO APPLY TO MORTGAGE  
14 REVENUE BONDS AND QUALIFIED STUDENT LOAN  
15 BONDS.—Subsections (a), (b), (c), and (d) shall not apply  
16 to any qualified mortgage bond, qualified veterans’ mort-  
17 gage bond, or qualified student loan bond.”

18 (14) Section 147 of such Code is amended by  
19 striking paragraph (4) of subsection (b) and redesignig-  
20 nating paragraph (5) of such subsection as para-  
21 graph (4).

22 (15) Subparagraph (F) of section 148(d)(3) of  
23 such Code is amended—

24 (A) by striking “or which is a qualified  
25 501(c)(3) bond”, and

1 (B) by striking “GOVERNMENTAL USE  
2 BONDS AND QUALIFIED 501(c)(3)” in the heading  
3 thereof and inserting “EXEMPT PERSON”.

4 (16) Subclause (II) of section 148(f)(4)(B)(ii)  
5 of such Code is amended by striking “(other than a  
6 qualified 501(c)(3) bond)”.

7 (17) Clause (iv) of section 148(f)(4)(C) of such  
8 Code is amended—

9 (A) by striking “a governmental unit or a  
10 501(c)(3) organization” each place it appears  
11 and inserting “an exempt person”,

12 (B) by striking “qualified 501(c)(3)  
13 bonds,” and

14 (C) by striking the comma after “private  
15 activity bonds” the first place it appears.

16 (18) Subparagraph (A) of section 148(f)(7) of  
17 such Code is amended by striking “(other than a  
18 qualified 501(c)(3) bond)”.

19 (19) Paragraph (2) of section 149(d) of such  
20 Code is amended—

21 (A) by striking “(other than a qualified  
22 501(c)(3) bond)”, and

23 (B) by striking “CERTAIN PRIVATE” in the  
24 heading thereof and inserting “PRIVATE”.

1           (20) Section 149(e)(2) of such Code is amend-  
2 ed—

3           (A) by striking “which is not a private ac-  
4 tivity bond” in the second sentence and insert-  
5 ing “which is a bond issued for an exempt per-  
6 son described in section 150(a)(2)(A)(i)”, and

7           (B) by adding at the end the following new  
8 sentence: “Subparagraph (D) shall not apply to  
9 any bond which is not a private activity bond  
10 but which would be such a bond if the  
11 501(c)(3) organization using the proceeds  
12 thereof were not an exempt person.”

13           (21) The heading of subsection (b) of section  
14 150 of such Code is amended by striking “TAX-EX-  
15 EMPT PRIVATE ACTIVITY BONDS” and inserting  
16 “CERTAIN TAX-EXEMPT BONDS”.

17           (22) Paragraph (3) of section 150(b) of such  
18 Code is amended—

19           (A) by inserting “owned by a 501(c)(3) or-  
20 ganization” after “any facility” in subpara-  
21 graph (A),

22           (B) by striking “any private activity bond  
23 which, when issued, purported to be a tax-ex-  
24 empt qualified 501(c)(3) bond” in subpara-  
25 graph (A) and inserting “any bond which, when

1 issued, purported to be a tax-exempt bond, and  
2 which would be a private activity bond if the  
3 501(c)(3) organization using the proceeds  
4 thereof were not an exempt person”, and

5 (C) by striking the heading thereof and in-  
6 serting “BONDS FOR EXEMPT PERSONS OTHER  
7 THAN GOVERNMENTAL UNITS.—”.

8 (23) Paragraph (5) of section 150(b) of such  
9 Code is amended—

10 (A) by striking “private activity” in sub-  
11 paragraph (A),

12 (B) by inserting “and which would be a  
13 private activity bond if the 501(c)(3) organiza-  
14 tion using the proceeds thereof were not an ex-  
15 empt person” after “tax-exempt bond” in sub-  
16 paragraph (A),

17 (C) by striking subparagraph (B) and in-  
18 serting the following new subparagraph:

19 “(B) such facility is required to be owned  
20 by an exempt person, and”, and

21 (D) by striking “GOVERNMENTAL UNITS  
22 OR 501(c)(3) ORGANIZATIONS” in the heading  
23 thereof and inserting “EXEMPT PERSONS”.

24 (24) Section 150 of such Code is amended by  
25 adding at the end the following new subsection:

1       “(f) CERTAIN RULES TO APPLY TO BONDS FOR EX-  
2 EMPT PERSONS OTHER THAN GOVERNMENTAL UNITS.—

3           “(1) IN GENERAL.—Nothing in section 103(a)  
4 or any other provision of law shall be construed to  
5 provide an exemption from Federal income tax for  
6 interest on any bond which would be a private activ-  
7 ity bond if the 501(c)(3) organization using the pro-  
8 ceeds thereof were not an exempt person unless such  
9 bond satisfies the requirements of subsections (b)  
10 and (f) of section 147.

11           “(2) SPECIAL RULE FOR POOLED FINANCING  
12 OF 501(c)(3) ORGANIZATION.—

13           “(A) IN GENERAL.—At the election of the  
14 issuer, a bond described in paragraph (1) shall  
15 be treated as meeting the requirements of sec-  
16 tion 147(b) if such bond meets the require-  
17 ments of subparagraph (B).

18           “(B) REQUIREMENTS.—A bond meets the  
19 requirements of this subparagraph if—

20           “(i) 95 percent or more of the net  
21 proceeds of the issue of which such bond is  
22 a part are to be used to make or finance  
23 loans to 2 or more 501(c)(3) organizations  
24 or governmental units for acquisition of  
25 property to be used by such organizations,

1           “(ii) each loan described in clause (i)  
2           satisfies the requirements of section 147(b)  
3           (determined by treating each loan as a sep-  
4           arate issue),

5           “(iii) before such bond is issued, a de-  
6           mand survey was conducted which shows a  
7           demand for financing greater than an  
8           amount equal to 120 percent of the  
9           lendable proceeds of such issue, and

10           “(iv) 95 percent or more of the net  
11           proceeds of such issue are to be loaned to  
12           501(c)(3) organizations or governmental  
13           units within 1 year of issuance and, to the  
14           extent there are any unspent proceeds  
15           after such 1-year period, bonds issued as  
16           part of such issue are to be redeemed as  
17           soon as possible thereafter (and in no  
18           event later than 18 months after issuance).

19           A bond shall not meet the requirements of this  
20           subparagraph if the maturity date of any bond  
21           issued as part of such issue is more than 30  
22           years after the date on which the bond was is-  
23           sued (or, in the case of a refunding or series of  
24           refundings, the date on which the original bond  
25           was issued).”

1           (25) Section 1302 of the Tax Reform Act of  
2           1986 is repealed.

3           (26) Subparagraph (C) of section 57(a)(5) of  
4           such Code is amended by striking clause (ii) and re-  
5           designating clauses (iii) and (iv) as clauses (ii) and  
6           (iii), respectively.

7           (27) Paragraph (3) of section 103(b) of such  
8           Code is amended by inserting “and section 150(f)”  
9           after “section 149”.

10          (28) Paragraph (3) of section 265(b) of such  
11          Code is amended—

12                 (A) by striking clause (ii) of subparagraph  
13                 (B) and inserting the following:

14                         “(ii) CERTAIN BONDS NOT TREATED  
15                         AS PRIVATE ACTIVITY BONDS.—For pur-  
16                         poses of clause (i)(II), there shall not be  
17                         treated as a private activity bond any obli-  
18                         gation issued to refund (or which is part of  
19                         a series of obligations issued to refund) an  
20                         obligation issued before August 8, 1986,  
21                         which was not an industrial development  
22                         bond (as defined in section 103(b)(2) as in  
23                         effect on the day before the date of the en-  
24                         actment of the Tax Reform Act of 1986)  
25                         or a private loan bond (as defined in sec-

1           tion 103(o)(2)(A), as so in effect, but with-  
2           out regard to any exemption from such  
3           definition other than section  
4           103(o)(2)(A).”; and

5           (B) by striking “(other than a qualified  
6           501(c)(3) bond, as defined in section 145)” in  
7           subparagraph (C)(ii)(I).

8           (d) EFFECTIVE DATE.—

9           (1) IN GENERAL.—Except as provided in para-  
10          graph (2), the amendments made by this section  
11          shall apply to bonds issued after the date of the en-  
12          actment of this Act.

13          (2) EXCEPTION.—The amendments made by  
14          this section shall not apply to bonds issued before  
15          January 1, 1997, for purposes of applying section  
16          148(f)(4)(D) of the Internal Revenue Code of 1986.

○