

104TH CONGRESS
2D SESSION

S. 1879

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.

IN THE SENATE OF THE UNITED STATES

JUNE 14, 1996

Mr. MOYNIHAN introduced the following bill; which was read twice and referred to the Committee on Finance

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 “Section 501(c)(3) Non-
5 profit Organizations Tax-Exempt Bond Reform Act of
6 1996”.

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

9 (a) IN GENERAL.—Subsection (a) of section 150 of
10 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 24 1986 (relating to qualified 501(c)(3) bonds) is repealed.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 (including refunding bonds) is-
12 sued and capital expenditures made on or after the
13 date of the enactment of this Act.

14 (2) EXCEPTION.—The amendments made by
15 this section shall not apply to bonds issued before
16 January 1, 1997, for purposes of applying section
17 148(f)(4)(D) of the Internal Revenue Code of 1986.

○