

107TH CONGRESS  
1ST SESSION

# S. 794

To amend the Internal Revenue Code of 1986 to facilitate electric cooperative participation in a competitive electric power industry.

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## IN THE SENATE OF THE UNITED STATES

APRIL 26, 2001

Mr. THOMPSON (for himself, Mrs. LINCOLN, Mr. GRASSLEY, and Mr. BAUCUS) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to facilitate electric cooperative participation in a competitive electric power industry.

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 “Rural Electric Tax  
5 Equity Act”.

6 **SEC. 2. MEMBER INCOME TEST.**

7 (a) ELECTRIC INDUSTRY RESTRUCTURING INCOME  
8 EXCLUDED FROM MEMBER INCOME TEST.—

1           (1) IN GENERAL.—Section 501(c)(12)(C) of the  
2 Internal Revenue Code of 1986 is amended by strik-  
3 ing “or” at the end of clause (i), by striking the pe-  
4 riod at the end of clause (ii) and inserting a comma,  
5 and by adding at the end the following new clauses:

6                   “(iii) from the prepayment of any  
7 loan, debt, or obligation made, insured, or  
8 guaranteed under the Rural Electrification  
9 Act of 1936,

10                   “(iv) from any organization or entity  
11 in which the electric company owns an in-  
12 terest, other than income received by the  
13 electric company and paid by the organiza-  
14 tion or entity,

15                   “(v) from any member that volun-  
16 tarily waives any right to capital credits,  
17 patronage dividends, or similar amounts  
18 allocated or paid by the electric company,

19                   “(vi) from any member for electric en-  
20 ergy sold or furnished by the electric com-  
21 pany based upon the electric company’s in-  
22 cremental cost of generating, purchasing,  
23 transmitting, or distributing the electric  
24 energy,

1           “(vii) from the receipt of any money  
2           or capital or any other contribution in aid  
3           of construction that would be excluded  
4           from income under section 118(c) if re-  
5           ceived by a regulated public utility,

6           “(viii) either—

7                   “(I) from the transfer of any  
8                   amount into a trust, fund, or instru-  
9                   ment established to pay any nuclear  
10                  decommissioning costs, if the transfer  
11                  is in connection with the transfer of a  
12                  nuclear powerplant or nuclear power-  
13                  plant unit, or

14                  “(II) from the distribution of any  
15                  amount from any such trust, fund, or  
16                  instrument, including income rep-  
17                  resenting payments by the electric  
18                  company to the trust, fund, or instru-  
19                  ment, and investment income earned  
20                  by the trust, fund, or instrument,

21                  “(ix) from any individual, organiza-  
22                  tion, or entity for the electric company sell-  
23                  ing, leasing, exchanging, or otherwise  
24                  transferring on a mutually agreed upon

1 basis any property, property right, asset,  
2 or service territory, or

3 “(x) from any organization or entity,  
4 including any municipality, resulting from  
5 the compulsory or involuntary requisition  
6 or condemnation, or the threat or immi-  
7 nence of a compulsory or involuntary req-  
8 uisition or condemnation, of any property,  
9 asset, or service territory.”.

10 (2) SPECIAL RULES.—Section 512(b)(12) of  
11 such Code is amended by adding at the end the fol-  
12 lowing new subparagraphs:

13 “(E) For purposes of this paragraph, if  
14 any Federal, State, or local law, regulation,  
15 holding, or order prohibits an electric company  
16 from engaging in a business on a cooperative  
17 basis, and if the electric company owns an in-  
18 terest in any organization or entity engaged in  
19 that business, then, at the electric company’s  
20 election, the percentage of any income received  
21 by the electric company and paid by the organi-  
22 zation or entity equaling the percentage of  
23 amounts collected by the organization or entity  
24 from electric company members during the tax-  
25 able year shall be treated as amounts collected

1 by the electric company from members for the  
2 sole purpose of meeting losses and expenses.

3 “(F) For purposes of subparagraph (C),  
4 regardless of any contrary Federal, State, or  
5 local law, regulation, holding, or order, neither  
6 an electric company’s receipt of income de-  
7 scribed in clause (v) or (vi) of such subpara-  
8 graph, nor a member’s voluntary waiver of a  
9 right described in such clause (v) or payment  
10 described in such clause (vi), shall affect any  
11 determination that the electric company is oper-  
12 ating on a mutual or cooperative basis.”.

13 (b) ELECTRIC INDUSTRY RESTRUCTURING INCOME  
14 INCLUDED AS MEMBER INCOME IN MEMBER INCOME  
15 TEST.—Section 501(c)(12) of the Internal Revenue Code  
16 of 1986, as amended by subsection (a)(2), is amended by  
17 adding at the end the following new subparagraph:

18 “(G)(i) For purposes of this paragraph,  
19 amounts collected by a mutual or cooperative  
20 electric company from members for the sole  
21 purpose of meeting losses and expenses includes  
22 income received or accrued from any individual,  
23 organization, or entity not a member for, or in  
24 connection with, the electric company selling,  
25 performing, or otherwise providing any goods or

1 services as required by, in voluntary compliance  
2 with, or in order to conform to any electric in-  
3 dustry restructuring law, including the fol-  
4 lowing:

5 “(I) The transmission or distribution  
6 of electric energy to, with, or for any mem-  
7 ber, or the sale, performance, transfer, or  
8 other provision of any other goods or serv-  
9 ices related to the transmission or distribu-  
10 tion of electric energy to, with, or for any  
11 member.

12 “(II) The joining, participation in,  
13 transfer of ownership or control of prop-  
14 erty to, or provision of any other goods or  
15 services to or for a regional transmission  
16 organization, independent system operator,  
17 regional transmission group, or similar or-  
18 ganization or entity, all as approved or au-  
19 thorized by the Federal Energy Regulatory  
20 Commission, the Public Utility Commission  
21 of Texas, the Rural Utilities Service, or  
22 other appropriate entity.

23 “(III) The sale, performance, or other  
24 provision to, with, or for any member of  
25 any goods or services related to any meter-

1 ing, billing, collection, customer service, or  
2 similar activity.

3 “(IV) The sale or furnishing of elec-  
4 tric energy to, with, or for any member, or  
5 the sale, performance, or other provision of  
6 any other goods or services related to the  
7 sale or furnishing of electric energy to,  
8 with, or for any member.

9 “(V) The sale or furnishing of electric  
10 energy other than to, with, or for any  
11 member, or the sale, performance, or other  
12 provision of any other goods or services re-  
13 lated to the sale or furnishing of electric  
14 energy other than to, with, or for any  
15 member, but only to the extent that, after  
16 the electric company mandatorily or volun-  
17 tarily complies with any electric industry  
18 restructuring law, the annual income re-  
19 ceived or accrued for, or in connection  
20 with, the sale or furnishing of electric en-  
21 ergy to, with, or for any member, or the  
22 sale, performance, or other provision of  
23 any other goods or services to, with, or for  
24 any member, is less than the electric com-  
25 pany’s average annual income, adjusted for

1 historical growth, received or accrued dur-  
 2 ing the 3 calendar years preceding the  
 3 electric company's compliance.

4 “(ii) For purposes of this subparagraph,  
 5 ‘electric industry restructuring law’ means any  
 6 Federal, State, or local law, regulation, holding,  
 7 or order restructuring the retail or wholesale  
 8 electric industry or providing for or facilitating  
 9 the nondiscriminatory open access to, reliability  
 10 of, or safety associated with the transmission or  
 11 distribution of electric energy.”.

12 **SEC. 3. UNRELATED BUSINESS TAXABLE INCOME.**

13 Section 512(b) of the Internal Revenue Code of 1986  
 14 (relating to modifications) is amended by adding at the  
 15 end the following new paragraph:

16 “(18) There shall be excluded all income de-  
 17 scribed in section 501(c)(12)(G).”.

18 **SEC. 4. TREATMENT OF TAXABLE ELECTRIC COOPERA-**  
 19 **TIVES.**

20 Section 7701 of the Internal Revenue Code of 1986  
 21 (relating to definitions) is amended by redesignating sub-  
 22 section (n) as subsection (o) and by inserting after sub-  
 23 section (m) the following new subsection:

24 “(n) TREATMENT OF CERTAIN AMOUNTS RECEIVED  
 25 BY NONEXEMPT ELECTRIC COMPANIES.—

1           “(1) IN GENERAL.—With respect to any non-  
2 exempt electric company—

3           “(A) any amount received from any indi-  
4 vidual, organization, or entity that would not be  
5 a ‘contribution to the capital of the taxpayer’  
6 under section 118(b), or that, if the company  
7 were a regulated public utility under section  
8 118(c), would be a ‘contribution to the capital  
9 of the taxpayer’ under section 118(c), shall be  
10 treated as a contribution to the company’s cap-  
11 ital, and

12           “(B) capital credits, patronage dividends,  
13 and similar amounts include any amount paid  
14 to a patron to the extent that such amount is  
15 from income received from business done with  
16 or for other patrons to whom no amounts are  
17 paid, or to whom smaller amounts are paid,  
18 with respect to substantially identical trans-  
19 actions, and income shall be treated as received  
20 from business done with or for the nonexempt  
21 electric company’s patrons, if the income is re-  
22 ceived:

23           “(i) ELECTRIC INDUSTRY RESTRUC-  
24 TURING INCOME.—From any individual,  
25 organization, or entity not a patron for, or

1 in connection with, the nonexempt electric  
2 company selling, performing, or otherwise  
3 providing any goods or services as required  
4 by, in voluntary compliance with, or in  
5 order to conform to any electric industry  
6 restructuring law, including the following:

7 “(I) WHEELING INCOME.—The  
8 transmission or distribution of electric  
9 energy to, with, or for any patron, or  
10 the sale, performance, transfer, or  
11 other provision of any other goods or  
12 services related to the transmission or  
13 distribution of electric energy to, with,  
14 or for any patron.

15 “(II) REGIONAL TRANSMISSION  
16 ORGANIZATION INCOME.—The joining,  
17 participation in, transfer of ownership  
18 or control of property to, or provision  
19 of any other goods or services to or  
20 for a regional transmission organiza-  
21 tion, independent system operator, re-  
22 gional transmission group, or similar  
23 organization or entity, all as approved  
24 or authorized by the Federal Energy  
25 Regulatory Commission, the Public

1 Utility Commission of Texas, the  
2 Rural Utilities Service, or other ap-  
3 propriate entity.

4 “(III) UNBUNDLING INCOME.—  
5 The sale, performance, or other provi-  
6 sion to, with, or for any patron of any  
7 goods or services related to any meter-  
8 ing, billing, collection, customer serv-  
9 ice, or similar activity.

10 “(IV) ELECTRIC ENERGY SALES  
11 INCOME.—The sale or furnishing of  
12 electric energy to, with, or for any pa-  
13 tron, or the sale, performance, or  
14 other provision of any other goods or  
15 services related to the sale or fur-  
16 nishing of electric energy to, with, or  
17 for any patron.

18 “(V) REPLACEMENT ELECTRIC  
19 ENERGY SALES INCOME.—The sale or  
20 furnishing of electric energy other  
21 than to, with, or for any patron, or  
22 the sale, performance, or other provi-  
23 sion of any other goods or services re-  
24 lated to the sale of or furnishing of  
25 electric energy other than to, with, or

1 for any patron, but only to the extent  
2 that, after the nonexempt electric  
3 company mandatorily or voluntarily  
4 complies with any electric industry re-  
5 structuring law, the annual income re-  
6 ceived or accrued for, or in connection  
7 with, the sale or furnishing of electric  
8 energy to, with, or for any patron, or  
9 the sale, performance, or other provi-  
10 sion of any other goods or services to,  
11 with, or for any patron, is less than  
12 from the company's average annual  
13 income, adjusted for historical growth,  
14 received or accrued during the 3 cal-  
15 endar years preceding the company's  
16 compliance.

17 “(ii) **ATTRIBUTION INCOME.**—From  
18 any organization or entity in which the  
19 nonexempt electric company owns an inter-  
20 est.

21 “(iii) **WAIVER INCOME.**—From any  
22 patron that voluntarily waives any right to  
23 capital credits, patronage dividends, or  
24 similar amounts allocated or paid by the  
25 nonexempt electric company.

1           “(iv) INCREMENTAL COST ELECTRIC  
2 ENERGY INCOME.—From any patron for  
3 electric energy sold or furnished by the  
4 nonexempt electric company based upon  
5 the company’s incremental cost of gener-  
6 ating, purchasing, transmitting, or distrib-  
7 uting the electric energy.

8           “(v) NUCLEAR DECOMMISSIONING IN-  
9 COME.—Either—

10           “(I) from the transfer of any  
11 amount into a trust, fund, or instru-  
12 ment established to pay any nuclear  
13 decommissioning costs, if the transfer  
14 is in connection with the transfer of a  
15 nuclear powerplant or nuclear power-  
16 plant unit, or

17           “(II) from the distribution of any  
18 amount from such trust, fund, or in-  
19 strument, including income rep-  
20 resenting payments by the nonexempt  
21 electric company to the trust, fund, or  
22 instrument, and investment income  
23 earned by the trust, fund, or instru-  
24 ment.

1           “(vi) PROPERTY TRANSFER IN-  
2           COME.—From any individual, organization,  
3           or entity for the nonexempt electric com-  
4           pany selling, leasing, exchanging, or other-  
5           wise transferring on a mutually agreed  
6           upon basis any property, property right,  
7           asset, or service territory.

8           “(vii) CONDEMNATION INCOME.—  
9           From any organization or entity, including  
10          any municipality, resulting from the com-  
11          pulsory or involuntary requisition or con-  
12          demnation, or the threat or imminence of  
13          a compulsory or involuntary requisition or  
14          condemnation, of any property, asset, or  
15          service territory.

16          “(2) SPECIAL RULES.—For purposes of this  
17          subsection—

18                 “(A) WAIVER INCOME.—Regardless of any  
19                 contrary Federal, State, or local law, regulation,  
20                 holding, or order, neither a nonexempt electric  
21                 company’s receipt of income described in para-  
22                 graph (1)(B)(iii), nor a patron’s voluntary waiv-  
23                 er of a right described in such paragraph, shall  
24                 affect any determination that the company is  
25                 operating on a cooperative basis.

1           “(B) INCREMENTAL COST ELECTRIC EN-  
2           ERGY INCOME.—Regardless of any contrary  
3           Federal, State, or local law, regulation, holding,  
4           or order, neither a nonexempt electric com-  
5           pany’s receipt of income described in paragraph  
6           (1)(B)(iv), nor a patron’s payment of the  
7           amount described in such paragraph, shall af-  
8           fect any determination that the company is op-  
9           erating on a cooperative basis.

10          “(3) DEFINITIONS.—For purposes of this  
11          subsection—

12               “(A) ELECTRIC INDUSTRY RESTRUC-  
13               TURING LAW.—The term ‘electric industry re-  
14               structuring law’ means any Federal, State, or  
15               local law, regulation, holding, or order restruc-  
16               turing the retail or wholesale electric industry  
17               or providing for or facilitating the nondiscrim-  
18               inatory open access to, reliability of, or safety  
19               associated with the transmission or distribution  
20               of electric energy.

21               “(B) NONEXEMPT ELECTRIC COMPANY.—  
22               The term ‘nonexempt electric company’ means  
23               any corporation or organization described in  
24               section 1381(a)(2)(C) and engaged in fur-  
25               nishing electric energy.”.

1 **SEC. 5. EFFECTIVE DATE.**

2       The amendments made by this Act shall apply to  
3 amounts received on or after the date of the enactment  
4 of this Act.

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