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-CITE-

**26 USC Sec. 147**

02/01/2010

-EXPCITE-

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

-HEAD-

Sec. 147. Other requirements applicable to certain private activity  
bonds

-STATUTE-

(a) Substantial user requirement

(1) In general

Except as provided in subsection (h), a private activity bond shall not be a qualified bond for any period during which it is held by a person who is a substantial user of the facilities or by a related person of such a substantial user.

(2) Related person

For purposes of paragraph (1), the following shall be treated as related persons -

(A) 2 or more persons if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b),

(B) 2 or more persons which are members of the same controlled group of corporations (as defined in section

1563(a), except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein),

(C) a partnership and each of its partners (and their spouses and minor children), and

(D) an S corporation and each of its shareholders (and their spouses and minor children).

(b) Maturity may not exceed 120 percent of economic life

(1) General rule

Except as provided in subsection (h), a private activity bond shall not be a qualified bond if it is issued as part of an issue and -

(A) the average maturity of the bonds issued as part of such issue, exceeds

(B) 120 percent of the average reasonably expected economic life of the facilities being financed with the net proceeds of such issue.

(2) Determination of averages

For purposes of paragraph (1) -

(A) the average maturity of any issue shall be determined by taking into account the respective issue prices of the bonds issued as part of such issue, and

(B) the average reasonably expected economic life of the facilities being financed with any issue shall be determined by taking into account the respective cost of such facilities.

(3) Special rules

(A) Determination of economic life

For purposes of this subsection, the reasonably expected economic life of any facility shall be determined as of the later of -

(i) the date on which the bonds are issued, or

(ii) the date on which the facility is placed in service  
(or expected to be placed in service).

(B) Treatment of land

(i) Land not taken into account

Except as provided in clause (ii), land shall not be taken  
into account under paragraph (1)(B).

(ii) Issues where 25 percent or more of proceeds used to  
finance land

If 25 percent or more of the net proceeds of any issue is  
to be used to finance land, such land shall be taken into  
account under paragraph (1)(B) and shall be treated as having  
an economic life of 30 years.

(4) Special rule for pooled financing of 501(c)(3) organization

(A) In general

At the election of the issuer, a qualified 501(c)(3) bond  
shall be treated as meeting the requirements of paragraph (1)  
if such bond meets the requirements of subparagraph (B).

(B) Requirements

A qualified 501(c)(3) bond meets the requirements of this  
subparagraph if -

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

(ii) each loan described in clause (i) satisfies the  
requirements of paragraph (1) (determined by treating each  
loan as a separate issue),

(iii) before such bond is issued, a demand survey was  
conducted which shows a demand for financing greater than an  
amount equal to 120 percent of the lendable proceeds of such

issue, and

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

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

(5) Special rule for certain FHA insured loans

Paragraph (1) shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to finance mortgage loans insured under FHA 242 or under a similar Federal Housing Administration program (as in effect on the date of the enactment of the Tax Reform Act of 1986) where the loan term approved by such Administration plus the maximum maturity of debentures which could be issued by such Administration in satisfaction of its obligations exceeds the term permitted under paragraph (1).

(c) Limitation on use for land acquisition

(1) In general

Except as provided in subsection (h), a private activity bond shall not be a qualified bond if -

(A) it is issued as part of an issue and 25 percent or more of the net proceeds of such issue are to be used (directly or indirectly) for the acquisition of land (or an interest therein), or

(B) any portion of the proceeds of such issue is to be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes.

(2) Exception for first-time farmers

(A) In general

If the requirements of subparagraph (B) are met with respect to any land, paragraph (1) shall not apply to such land, and subsection (d) shall not apply to property to be used thereon for farming purposes, but only to the extent of expenditures (financed with the proceeds of the issue) not in excess of \$450,000.

(B) Acquisition by first-time farmers

The requirements of this subparagraph are met with respect to any land if -

(i) such land is to be used for farming purposes, and

(ii) such land is to be acquired by an individual who is a first-time farmer, who will be the principal user of such land, and who will materially and substantially participate on the farm of which such land is a part in the operation of such farm.

(C) First-time farmer

For purposes of this paragraph -

(i) In general

The term "first-time farmer" means any individual if such individual -

(I) has not at any time had any direct or indirect ownership interest in substantial farmland in the operation of which such individual materially participated, and

(II) has not received financing under this paragraph in an amount which, when added to the financing to be provided under this paragraph, exceeds the amount in effect under

subparagraph (A).

(ii) Aggregation rules

Any ownership or material participation, or financing received, by an individual's spouse or minor child shall be treated as ownership and material participation, or financing received, by the individual.

(iii) Insolvent farmer

For purposes of clause (i), farmland which was previously owned by the individual and was disposed of while such individual was insolvent shall be disregarded if section 108 applied to indebtedness with respect to such farmland.

(D) Farm

For purposes of this paragraph, the term "farm" has the meaning given such term by section 6420(c)(2).

(E) Substantial farmland

For purposes of this paragraph, the term "substantial farmland" means any parcel of land unless such parcel is smaller than 30 percent of the median size of a farm in the county in which such parcel is located.

(F) Used equipment limitation

For purposes of this paragraph, in no event may the amount of financing provided by reason of this paragraph to a first-time farmer for personal property -

(i) of a character subject to the allowance for depreciation,

(ii) the original use of which does not begin with such farmer, and

(iii) which is to be used for farming purposes, exceed \$62,500. A rule similar to the rule of subparagraph (C)(ii) shall apply for purposes of the preceding sentence.

(G) Acquisition from related person

For purposes of this paragraph and section 144(a), the acquisition by a first-time farmer of land or personal property from a related person (within the meaning of section 144(a)(3)) shall not be treated as an acquisition from a related person, if -

(i) the acquisition price is for the fair market value of such land or property, and

(ii) subsequent to such acquisition, the related person does not have a financial interest in the farming operation with respect to which the bond proceeds are to be used.

(H) Adjustments for inflation

In the case of any calendar year after 2008, the dollar amount in subparagraph (A) shall be increased by an amount equal to -

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting "calendar year 2007" for "calendar year 1992" in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of \$100, such amount shall be rounded to the nearest multiple of \$100.

(3) Exception for certain land acquired for environmental purposes, etc.

Any land acquired by a governmental unit (or issuing authority) in connection with an airport, mass commuting facility, high-speed intercity rail facility, dock, or wharf shall not be taken into account under paragraph (1) if -

(A) such land is acquired for noise abatement or wetland preservation, or for future use as an airport, mass commuting facility, high-speed intercity rail facility, dock, or wharf,

and

(B) there is not other significant use of such land.

(d) Acquisition of existing property not permitted

(1) In general

Except as provided in subsection (h), a private activity bond shall not be a qualified bond if issued as part of an issue and any portion of the net proceeds of such issue is to be used for the acquisition of any property (or an interest therein) unless the 1st use of such property is pursuant to such acquisition.

(2) Exception for certain rehabilitations

Paragraph (1) shall not apply with respect to any building (and the equipment therefor) if -

(A) the rehabilitation expenditures with respect to such building, equal or exceed

(B) 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the net proceeds of the issue.

A rule similar to the rule of the preceding sentence shall apply in the case of structures other than a building except that subparagraph (B) shall be applied by substituting "100 percent" for "15 percent".

(3) Rehabilitation expenditures

For purposes of this subsection -

(A) In general

Except as provided in this paragraph, the term "rehabilitation expenditures" means any amount properly chargeable to capital account which is incurred by the person acquiring the building for property (or additions or improvements to property) in connection with the rehabilitation of a building. In the case of an integrated operation contained in a building before its acquisition, such term includes



rehabilitating existing equipment in such building or replacing it with equipment having substantially the same function. For purposes of this subparagraph, any amount incurred by a successor to the person acquiring the building or by the seller under a sales contract with such person shall be treated as incurred by such person.

(B) Certain expenditures not included

The term "rehabilitation expenditures" does not include any expenditure described in section 47(c)(2)(B).

(C) Period during which expenditures must be incurred

The term "rehabilitation expenditures" shall not include any amount which is incurred after the date 2 years after the later of -

(i) the date on which the building was acquired, or

(ii) the date on which the bond was issued.

(4) Special rule for certain projects

In the case of a project involving 2 or more buildings, this subsection shall be applied on a project basis.

(e) No portion of bonds may be issued for skyboxes, airplanes, gambling establishments, etc.

A private activity bond shall not be a qualified bond if issued as part of an issue and any portion of the proceeds of such issue is to be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(f) Public approval required for private activity bonds

(1) In general

A private activity bond shall not be a qualified bond unless such bond satisfies the requirements of paragraph (2).

(2) Public approval requirement

(A) In general

A bond shall satisfy the requirements of this paragraph if such bond is issued as a part of an issue which has been approved by -

(i) the governmental unit -

(I) which issued such bond, or

(II) on behalf of which such bond was issued, and

(ii) each governmental unit having jurisdiction over the area in which any facility, with respect to which financing is to be provided from the net proceeds of such issue, is located (except that if more than 1 governmental unit within a State has jurisdiction over the entire area within such State in which such facility is located, only 1 such unit need approve such issue).

(B) Approval by a governmental unit

For purposes of subparagraph (A), an issue shall be treated as having been approved by any governmental unit if such issue is approved -

(i) by the applicable elected representative of such governmental unit after a public hearing following reasonable public notice, or

(ii) by voter referendum of such governmental unit.

(C) Special rules for approval of facility

If there has been public approval under subparagraph (A) of the plan for financing a facility, such approval shall constitute approval under subparagraph (A) for any issue -

(i) which is issued pursuant to such plan within 3 years after the date of the 1st issue pursuant to the approval, and

(ii) all or substantially all of the proceeds of which are to be used to finance such facility or to refund previous financing under such plan.

(D) Refunding bonds

No approval under subparagraph (A) shall be necessary with respect to any bond which is issued to refund (other than to advance refund) a bond approved under subparagraph (A) (or treated as approved under subparagraph (C)) unless the average maturity date of the issue of which the refunding bond is a part is later than the average maturity date of the bonds to be refunded by such issue. For purposes of the preceding sentence, average maturity shall be determined in accordance with subsection (b)(2)(A).

(E) Applicable elected representative

For purposes of this paragraph -

(i) In general

The term "applicable elected representative" means with respect to any governmental unit -

(I) an elected legislative body of such unit, or

(II) the chief elected executive officer, the chief elected State legal officer of the executive branch, or any other elected official of such unit designated for purposes of this paragraph by such chief elected executive officer or by State law.

If the office of any elected official described in subclause (II) is vacated and an individual is appointed by the chief elected executive officer of the governmental unit and confirmed by the elected legislative body of such unit (if any) to serve the remaining term of the elected official, the individual so appointed shall be treated as the elected official for such remaining term.

(ii) No applicable elected representative

If (but for this clause) a governmental unit has no applicable elected representative, the applicable elected

representative for purposes of clause (i) shall be the applicable elected representative of the governmental unit -

(I) which is the next higher governmental unit with such a representative, and

(II) from which the authority of the governmental unit with no such representative is derived.

(3) Special rule for approval of airports or high-speed intercity rail facilities

If -

(A) the proceeds of an issue are to be used to finance a facility or facilities located at an airport or high-speed intercity rail facilities, and

(B) the governmental unit issuing such bonds is the owner or operator of such airport or high-speed intercity rail facilities,

such governmental unit shall be deemed to be the only governmental unit having jurisdiction over such airport or high-speed intercity rail facilities for purposes of this subsection.

(4) Special rules for scholarship funding bond issues and volunteer fire department bond issues

(A) Scholarship funding bonds

In the case of a qualified scholarship funding bond, any governmental unit which made a request described in section 150(d)(2)(B) with respect to the issuer of such bond shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued.

Where more than one governmental unit within a State has made a request described in section 150(d)(2)(B), the State may also be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued.

(B) Volunteer fire department bonds

In the case of a bond of a volunteer fire department which meets the requirements of section 150(e), the political subdivision described in section 150(e)(2)(B) with respect to such department shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued.

(g) Restriction on issuance costs financed by issue

(1) In general

A private activity bond shall not be a qualified bond if the issuance costs financed by the issue (of which such bond is a part) exceed 2 percent of the proceeds of the issue.

(2) Special rule for small mortgage revenue bond issues

In the case of an issue of qualified mortgage bonds or qualified veterans' mortgage bonds, paragraph (1) shall be applied by substituting "3.5 percent" for "2 percent" if the proceeds of the issue do not exceed \$20,000,000.

(h) Certain rules not to apply to certain bonds

(1) Mortgage revenue bonds and qualified student loan bonds

Subsections (a), (b), (c), and (d) shall not apply to any qualified mortgage bond, qualified veterans' mortgage bond, or qualified student loan bond.

(2) Qualified 501(c)(3) bonds

Subsections (a), (c), and (d) shall not apply to any qualified 501(c)(3) bond and subsection (e) shall be applied as if it did not contain "health club facility" with respect to such a bond.

(3) Exempt facility bonds for qualified public-private schools

Subsection (c) shall not apply to any exempt facility bond issued as part of an issue described in section 142(a)(13) (relating to qualified public educational facilities).

-SOURCE-

(Added Pub. L. 99-514, title XIII, Sec. 1301(b), Oct. 22, 1986, 100

Stat. 2635; amended Pub. L. 100-647, title I, Sec. 1013(a)(11)-(13)(B), (29), (36), title VI, Sec. 6180(b)(4), (5), Nov. 10, 1988, 102 Stat. 3539, 3543, 3544, 3728; Pub. L. 101-239, title VII, Sec. 7816(s)(3), Dec. 19, 1989, 103 Stat. 2423; Pub. L. 101-508, title XI, Sec. 11813(b)(8), Nov. 5, 1990, 104 Stat. 1388-552; Pub. L. 104-188, title I, Sec. 1117(a), (b), Aug. 20, 1996, 110 Stat. 1764; Pub. L. 107-16, title IV, Sec. 422(d), (e), June 7, 2001, 115 Stat. 66; Pub. L. 110-234, title XV, Sec. 15341(a)-(d), May 22, 2008, 122 Stat. 1517; Pub. L. 110-246, Sec. 4(a), title XV, Sec. 15341(a)-(d), June 18, 2008, 122 Stat. 1664, 2279.)

-STATAMEND-

#### INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

#### 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.

-REFTEXT-

#### REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

-COD-

#### CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

-MISC1-

#### AMENDMENTS

2008 - Subsec. (c)(2)(A). Pub. L. 110-246, Sec. 15341(a), substituted "\$450,000" for "\$250,000".

Subsec. (c)(2)(C)(i)(II). Pub. L. 110-246, Sec. 15341(d), substituted "the amount in effect under subparagraph (A)" for "\$250,000".

Subsec. (c)(2)(E). Pub. L. 110-246, Sec. 15341(c), substituted "unless such parcel is smaller than 30 percent of the median size of a farm in the county in which such parcel is located." for "unless -

"(i) such parcel is smaller than 30 percent of the median size of a farm in the county in which such parcel is located, and

"(ii) the fair market value of the land does not at any time while held by the individual exceed \$125,000."

Subsec. (c)(2)(H). Pub. L. 110-246, Sec. 15341(b), added subpar. (H).

2001 - Subsec. (h). Pub. L. 107-16, Secs. 422(e), 901, temporarily substituted "certain bonds" for "mortgage revenue bonds, qualified student loan bonds, and qualified 501(c)(3) bonds" in heading. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (h)(3). Pub. L. 107-16, Secs. 422(d), 901, temporarily added par. (3). See Effective and Termination Dates of 2001 Amendment note below.

1996 - Subsec. (c)(2)(E)(i). Pub. L. 104-188, Sec. 1117(b), substituted "30 percent" for "15 percent".

Subsec. (c)(2)(G). Pub. L. 104-188, Sec. 1117(a), added subpar. (G).

1990 - Subsec. (d)(3)(B). Pub. L. 101-508 substituted "section 47(c)(2)(B)" for "section 48(g)(2)(B)".

1989 - Subsec. (c)(3). Pub. L. 101-239 inserted a comma after "mass commuting facility" in introductory provisions and in subpar. (A).

1988 - Subsec. (c)(3). Pub. L. 100-647, Sec. 6180(b)(4), inserted

"high-speed intercity rail facility" after "mass commuting facility" in introductory text and in subpar. (A).

Subsec. (e). Pub. L. 100-647, Sec. 1013(a)(11), struck out "treated as" after "shall not be".

Subsec. (f)(2)(D). Pub. L. 100-647, Sec. 1013(a)(29), substituted "the average maturity date of the issue of which the refunding bond is a part is later than the average maturity date of the bonds to be refunded by such issue. For purposes of the preceding sentence, average maturity shall be determined in accordance with subsection (b)(2)(A)" for "the maturity date of such bond is later than the maturity date of the bond to be refunded".

Subsec. (f)(2)(E)(i). Pub. L. 100-647, Sec. 1013(a)(36), inserted sentence at end relating to treatment of an individual appointed to fill a vacancy in the office of an elected official.

Subsec. (f)(3). Pub. L. 100-647, Sec. 6180(b)(5), inserted "or high-speed intercity rail facilities" after "airports" in heading and after "airport" in subpars. (A) and (B) and in last sentence.

Subsec. (f)(4). Pub. L. 100-647, Sec. 1013(a)(12), added par. (4).

Subsec. (g)(1). Pub. L. 100-647, Sec. 1013(a)(13)(A), substituted "proceeds" for "aggregate face amount".

Subsec. (g)(2). Pub. L. 100-647, Sec. 1013(a)(13)(B), substituted "proceeds" for "aggregate authorized face amount" and "do" for "does".

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110-234, title XV, Sec. 15341(e), May 22, 2008, 122 Stat.



1517, and Pub. L. 110-246, Sec. 4(a), title XV, Sec. 15341(e), June 18, 2008, 122 Stat. 1664, 2279, provided that: "The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [June 18, 2008]."

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.]

#### EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to bonds issued after Dec. 31, 2001, see section 422(f) of Pub. L. 107-16, set out as a note under section 142 of this title.

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 1996 AMENDMENT

Section 1117(c) of Pub. L. 104-188 provided that: "The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Aug. 20, 1996]."

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 45K of this

title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by 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.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 1013(a)(13)(C) of Pub. L. 100-647 provided that: "The amendments made by this paragraph [amending this section] shall apply to bonds issued after June 30, 1987."

Amendment by section 1013(a)(11), (12), (29), (36) 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.

Amendment by section 6180(b)(4), (5) of Pub. L. 100-647 applicable to bonds issued after Nov. 10, 1988, see section 6180(c) of Pub. L. 100-647, set out as a note under section 142 of this title.

#### EFFECTIVE DATE

Subsec. (f) applicable to bonds issued after Dec. 31, 1986, see section 1311(d) of Pub. L. 99-514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

#### SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5,

1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.



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