

Subtitle D of the Internal Revenue Code of 1939, referred to in subsec. (a)(6)(B), (D), was comprised of chapters 34 to 38, sections 3600 to 3781 of former Title 26, Internal Revenue Code. Chapters 35, 36, and 37 of subtitle D of the Internal Revenue Code of 1939 were comprised of sections 3640 to 3647, 3650 to 3762, and 3770 to 3781, respectively, of former Title 26.

Section 3777 of the Internal Revenue Code of 1939, referred to in subsec. (a)(6)(B), was classified to section 3777 of former Title 26, Internal Revenue Code. Section 3777 was repealed by subsec. (a)(6)(B) of this section.

Reorganization Plan Numbered 26 of 1950, referred to in subsec. (b)(3), is Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, which is set out in the Appendix to Title 5, Government Organization and Employees.

Reorganization Plan Numbered 1 of 1952, referred to in subsec. (b)(3), is Reorg. Plan No. 1 of 1952, eff. Mar. 14, 1952, 17 F.R. 2243, 66 Stat. 823, which is set out in Appendix to Title 5.

AMENDMENTS

1986—Subsecs. (a)(7), (e). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1976—Subsec. (a)(5). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

§ 7852. Other applicable rules

(a) Separability clause

If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(b) Reference in other laws to Internal Revenue Code of 1939

Any reference in any other law of the United States or in any Executive order to any provision of the Internal Revenue Code of 1939 shall, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, be deemed also to refer to the corresponding provision of this title.

(c) Items not to be twice included in income or deducted therefrom

Except as otherwise distinctly expressed or manifestly intended, the same item (whether of income, deduction, credit, or otherwise) shall not be taken into account both in computing a tax under subtitle A of this title and a tax under chapter 1 or 2 of the Internal Revenue Code of 1939.

(d) Treaty obligations

(1) In general

For purposes of determining the relationship between a provision of a treaty and any law of the United States affecting revenue, neither the treaty nor the law shall have preferential status by reason of its being a treaty or law.

(2) Savings clause for 1954 treaties

No provision of this title (as in effect without regard to any amendment thereto enacted after August 16, 1954) shall apply in any case where its application would be contrary to any treaty obligation of the United States in effect on August 16, 1954.

(e) Privacy Act of 1974

The provisions of subsections (d)(2), (3), and (4), and (g) of section 552a of title 5, United

States Code, shall not be applied, directly or indirectly, to the determination of the existence or possible existence of liability (or the amount thereof) of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense to which the provisions of this title apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 922; Pub. L. 94-455, title XII, §1202(g), Oct. 4, 1976, 90 Stat. 1688; Pub. L. 100-647, title I, §1012(aa)(1)(A), Nov. 10, 1988, 102 Stat. 3531.)

REFERENCES IN TEXT

The Internal Revenue Code of 1939, referred to in subsec. (b), is act Feb. 10, 1939, ch. 2, 53 Stat. 1. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. The Internal Revenue Code of 1954 was redesignated The Internal Revenue Code of 1986 by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

Chapters 1 and 2 of the Internal Revenue Code of 1939, referred to in subsec. (c), are chapters 1 and 2 of former Title 26, Internal Revenue Code. For history of such chapters, see References in Text note set out under section 7851 of this title.

The Privacy Act of 1974, referred to in subsec. (e), is Pub. L. 93-579, Dec. 31, 1974, 88 Stat. 1896, as amended, which enacted section 552a of Title 5, Government Organization and Employees, and enacted notes set out under section 552a of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 552a of Title 5 and Tables.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100-647 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “No provision of this title shall apply in any case where its application would be contrary to any treaty obligation of the United States in effect on the date of enactment of this title.”

1976—Subsec. (e). Pub. L. 94-455 added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(aa)(1)(B) of Pub. L. 100-647 provided that: “Section 7852(d)(1) of the 1986 Code, as added by subparagraph (A), shall apply to any taxable period with respect to which the time for assessment of any deficiency has not expired by reason of any law or rule of law before the date of the enactment of this Act [Nov. 10, 1988].”

Amendment by 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.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective Jan. 1, 1977, see section 1202(i) of Pub. L. 94-455, set out as a note under section 6103 of this title.

APPLICATION OF SUBSEC. (d) TO PUB. L. 87-834

Pub. L. 87-834, §31, Oct. 16, 1962, 76 Stat. 1069, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Section 7852(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to treaty obligations) shall not apply in respect of any amendment made by this Act [see Short Title of 1962 Amendments note set out under section 1 of this title].”

Subchapter C—Provisions Affecting More Than One Subtitle

Sec.
7871.

Indian tribal governments treated as States for certain purposes.

- Sec.
7872. Treatment of loans with below-market interest rates.
7873. Income derived by Indians from exercise of fishing rights.
7874. Rules relating to expatriated entities and their foreign parents.

AMENDMENTS

- 2004—Pub. L. 108-357, title VIII, § 801(b), Oct. 22, 2004, 118 Stat. 1566, added item 7874.
1988—Pub. L. 100-647, title III, § 3041(b), Nov. 10, 1988, 102 Stat. 3641, added item 7873.
1984—Pub. L. 98-369, div. A, title I, § 172(b), July 18, 1984, 98 Stat. 703, added item 7872.

§ 7871. Indian tribal governments treated as States for certain purposes

(a) General rule

An Indian tribal government shall be treated as a State—

(1) for purposes of determining whether and in what amount any contribution or transfer to or for the use of such government (or a political subdivision thereof) is deductible under—

(A) section 170 (relating to income tax deduction for charitable, etc., contributions and gifts),

(B) sections 2055 and 2106(a)(2) (relating to estate tax deduction for transfers of public, charitable, and religious uses), or

(C) section 2522 (relating to gift tax deduction for charitable and similar gifts);

(2) subject to subsection (b), for purposes of any exemption from, credit or refund of, or payment with respect to, an excise tax imposed by—

(A) chapter 31 (relating to tax on special fuels),

(B) chapter 32 (relating to manufacturers excise taxes),

(C) subchapter B of chapter 33 (relating to communications excise tax), or

(D) subchapter D of chapter 36 (relating to tax on use of certain highway vehicles);

(3) for purposes of section 164 (relating to deduction for taxes);

(4) subject to subsection (c), for purposes of section 103 (relating to State and local bonds);

(5) for purposes of section 511(a)(2)(B) (relating to the taxation of colleges and universities which are agencies or instrumentalities of governments or their political subdivisions);

(6) for purposes of—

(A) section 105(e) (relating to accident and health plans),

(B) section 403(b)(1)(A)(ii) (relating to the taxation of contributions of certain employers for employee annuities), and

(C) section 454(b)(2) (relating to discount obligations); and

(7) for purposes of—

(A) chapter 41 (relating to tax on excess expenditures to influence legislation), and

(B) subchapter A of chapter 42 (relating to private foundations).

(b) Additional requirements for excise tax exemptions

Paragraph (2) of subsection (a) shall apply with respect to any transaction only if, in addition to any other requirement of this title applicable to similar transactions involving a State or political subdivision thereof, the transaction involves the exercise of an essential governmental function of the Indian tribal government.

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(c) Additional requirements for tax-exempt bonds

(1) In general

Subsection (a) of section 103 shall apply to any obligation (not described in paragraph (2)) issued by an Indian tribal government (or subdivision thereof) only if such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of any essential governmental function.

(2) No exemption for private activity bonds

Except as provided in paragraph (3), subsection (a) of section 103 shall not apply to any private activity bond (as defined in section 141(a)) issued by an Indian tribal government (or subdivision thereof).

(3) Exception for certain private activity bonds

(A) In general

In the case of an obligation to which this paragraph applies—

(i) paragraph (2) shall not apply,

(ii) such obligation shall be treated for purposes of this title as a qualified small issue bond, and

(iii) section 146 shall not apply.

(B) Obligations to which paragraph applies

This paragraph shall apply to any obligation issued as part of an issue if—

(i) 95 percent or more of the net proceeds of the issue are to be used for the acquisition, construction, reconstruction, or improvement of property which is of a character subject to the allowance for depreciation and which is part of a manufacturing facility (as defined in section 144(a)(12)(C)),

(ii) such issue is issued by an Indian tribal government or a subdivision thereof,

(iii) 95 percent or more of the net proceeds of the issue are to be used to finance property which—

(I) is to be located on land which, throughout the 5-year period ending on the date of issuance of such issue, is part of the qualified Indian lands of the issuer, and

(II) is to be owned and operated by such issuer,

(iv) such obligation would not be a private activity bond without regard to subparagraph (C),

(v) it is reasonably expected (at the time of issuance of the issue) that the employment requirement of subparagraph (D)(i) will be met with respect to the facility to be financed by the net proceeds of the issue, and

(vi) no principal user of such facility will be a person (or group of persons) described in section 144(a)(6)(B).

For purposes of clause (iii), section 150(a)(5) shall apply.