

subsection (d) [amending this section] shall apply to loans originated and credit certificates provided after the date of the enactment of this Act [Aug. 10, 1993].”

#### EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-227, title I, §108(c)(1), Dec. 11, 1991, 105 Stat. 1688, provided that: “The amendment made by subsection (a) [amending this section] shall apply to bonds issued after December 31, 1991.”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11408(d), Nov. 5, 1990, 104 Stat. 1388-478, provided that:

“(1) BONDS.—The amendment made by subsection (a) [amending this section] shall apply to bonds issued after September 30, 1990.

“(2) CERTIFICATES.—The amendment made by subsection (b) [amending section 25 of this title] shall apply to elections for periods after September 30, 1990.

“(3) SIMPLIFICATION.—The amendment made by subsection (c) [amending this section] shall take effect as if included in the amendments made by section 4005 of the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100-647].”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(2), (3) 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.

Pub. L. 100-647, title IV, §4005(h), Nov. 10, 1988, 102 Stat. 3651, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 25, 26, 148, 6045, and 6654 of this title] shall apply to bonds issued, and non-issued bond amounts elected, after December 31, 1988.

“(2) SPECIAL RULES RELATING TO CERTAIN REQUIREMENTS AND REFUNDING BONDS.—In the case of a bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued before January 1, 1989—

“(A) the amendments made by subsections (b) and (c) [amending this section] shall apply to financing provided after the date of issuance of the refunding issue, and

“(B) the amendment made by subsection (f) [amending this section] shall apply to payments (including on loans made before such date of issuance) received on or after such date of issuance.

“(3) SUBSECTION (g).—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (g) [amending this section and sections 25, 26, 6045, and 6654 of this title] shall apply to financing provided, and mortgage credit certificates issued, after December 31, 1990.

“(B) EXCEPTION.—The amendments made by subsection (g) shall not apply to financing provided pursuant to a binding contract (entered into before June 23, 1988) with a homebuilder, lender, or mortgagor if the bonds (the proceeds of which are used to provide such financing) are issued—

“(i) before June 23, 1988, or

“(ii) before August 1, 1988, pursuant to a written application (made before July 1, 1988) for State bond volume authority.”

#### TRANSITION RULE

Pub. L. 110-245, title I, §103(e), June 17, 2008, 122 Stat. 1626, provided that: “In the case of any bond issued after December 31, 2007, and before the date of the enactment of this Act [June 17, 2008], subparagraph (B) of section 143(l)(4) of the Internal Revenue Code of 1986, as

amended by this section, shall be applied by substituting ‘30 years’ for ‘25 years’.”

#### TERMINATION DATE FOR OBLIGATIONS TREATED AS QUALIFIED MORTGAGE BONDS UNDER FORMER SECTION 103A

Pub. L. 100-647, title I, §1013(a)(27), Nov. 10, 1988, 102 Stat. 3543, provided that: “The date contained in [former] section 143(a)(1)(B) of the 1986 Code shall be treated as contained in section 103A(c)(1)(B) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act [Oct. 22, 1986], for purposes of any bond issued to refund a bond to which such [section] 103A(c)(1) applies.”

#### STUDY OF RECAPTURE PROVISIONS

Pub. L. 100-647, title IV, §4005(i), Nov. 10, 1988, 102 Stat. 3651, provided that: “The Comptroller General of the United States shall conduct a study of section 143(m) of the 1986 Code (as added by this section) and of alternatives to accomplish the purposes of such section. A report of such study shall be submitted not later than July 1, 1990, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.”

### § 144. Qualified small issue bond; qualified student loan bond; qualified redevelopment bond

#### (a) Qualified small issue bond

##### (1) In general

For purposes of this part, the term “qualified small issue bond” means any bond issued as part of an issue the aggregate authorized face amount of which is \$1,000,000 or less and 95 percent or more of the net proceeds of which are to be used—

(A) for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation, or

(B) to redeem part or all of a prior issue which was issued for purposes described in subparagraph (A) or this subparagraph.

##### (2) Certain prior issues taken into account

If—

(A) the proceeds of 2 or more issues of bonds (whether or not the issuer of each such issue is the same) are or will be used primarily with respect to facilities located in the same incorporated municipality or located in the same county (but not in any incorporated municipality),

(B) the principal user of such facilities is or will be the same person or 2 or more related persons, and

(C) but for this paragraph, paragraph (1) (or the corresponding provision of prior law) would apply to each such issue,

then, for purposes of paragraph (1), in determining the aggregate face amount of any later issue there shall be taken into account the aggregate face amount of tax-exempt bonds issued under all prior such issues and outstanding at the time of such later issue (not including as outstanding any bond which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue).

##### (3) Related persons

For purposes of this subsection, a person is a related person to another person if—

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

(B) such persons 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).

**(4) \$10,000,000 limit in certain cases**

**(A) In general**

At the election of the issuer with respect to any issue, this subsection shall be applied—

(i) by substituting “\$10,000,000” for “\$1,000,000” in paragraph (1), and

(ii) in determining the aggregate face amount of such issue, by taking into account not only the amount described in paragraph (2), but also the aggregate amount of capital expenditures with respect to facilities described in subparagraph (B) paid or incurred during the 6-year period beginning 3 years before the date of such issue and ending 3 years after such date (and financed otherwise than out of the proceeds of outstanding tax-exempt issues to which paragraph (1) (or the corresponding provision of prior law) applied), as if the aggregate amount of such capital expenditures constituted the face amount of a prior outstanding issue described in paragraph (2).

**(B) Facilities taken into account**

For purposes of subparagraph (A)(ii), the facilities described in this subparagraph are facilities—

(i) located in the same incorporated municipality or located in the same county (but not in any incorporated municipality), and

(ii) the principal user of which is or will be the same person or 2 or more related persons.

For purposes of clause (i), the determination of whether or not facilities are located in the same governmental unit shall be made as of the date of issue of the issue in question.

**(C) Certain capital expenditures not taken into account**

For purposes of subparagraph (A)(ii), any capital expenditure—

(i) to replace property destroyed or damaged by fire, storm, or other casualty, to the extent of the fair market value of the property replaced,

(ii) required by a change made after the date of issue of the issue in question in a Federal or State law or local ordinance of general application or required by a change made after such date in rules and regulations of general application issued under such a law or ordinance,

(iii) required by circumstances which could not be reasonably foreseen on such date of issue or arising out of a mistake of law or fact (but the aggregate amount of expenditures not taken into account under

this clause with respect to any issue shall not exceed \$1,000,000), or

(iv) described in clause (i) or (ii) of section 41(b)(2)(A) for which a deduction was allowed under section 174(a),

shall not be taken into account.

**(D) Limitation on loss of tax exemption**

In applying subparagraph (A)(ii) with respect to capital expenditures made after the date of any issue, no bond issued as a part of such issue shall cease to be treated as a qualified small issue bond by reason of any such expenditure for any period before the date on which such expenditure is paid or incurred.

**(E) Certain refinancing issues**

In the case of any issue described in paragraph (1)(B), an election may be made under subparagraph (A) of this paragraph only if all of the prior issues being redeemed are issues to which paragraph (1) (or the corresponding provision of prior law) applied. In applying subparagraph (A)(ii) with respect to such a refinancing issue, capital expenditures shall be taken into account only for purposes of determining whether the prior issues being redeemed qualified (and would have continued to qualify) under paragraph (1) (or the corresponding provision of prior law).

**(F) Aggregate amount of capital expenditures where there is urban development action grant**

In the case of any issue 95 percent or more of the net proceeds of which are to be used to provide facilities with respect to which an urban development action grant has been made under section 119 of the Housing and Community Development Act of 1974, capital expenditures of not to exceed \$10,000,000 shall not be taken into account for purposes of applying subparagraph (A)(ii). This subparagraph shall not apply to bonds issued after December 31, 2006.

**(G) Additional capital expenditures not taken into account**

With respect to bonds issued after December 31, 2006, in addition to any capital expenditure described in subparagraph (C), capital expenditures of not to exceed \$10,000,000 shall not be taken into account for purposes of applying subparagraph (A)(ii).

**(5) Issues for residential purposes**

This subsection shall not apply to any bond issued as part of an issue 5 percent or more of the net proceeds of which are to be used directly or indirectly to provide residential real property for family units.

**(6) Limitations on treatment of bonds as part of the same issue**

**(A) In general**

For purposes of this subsection, separate lots of bonds which (but for this subparagraph) would be treated as part of the same issue shall be treated as separate issues un-

less the proceeds of such lots are to be used with respect to 2 or more facilities—

- (i) which are located in more than 1 State, or
- (ii) which have, or will have, as the same principal user the same person or related persons.

**(B) Franchises**

For purposes of subparagraph (A), a person (other than a governmental unit) shall be considered a principal user of a facility if such person (or a group of related persons which includes such person)—

- (i) guarantees, arranges, participates in, or assists with the issuance (or pays any portion of the cost of issuance) of any bond the proceeds of which are to be used to finance or refinance such facility, and
- (ii) provides any property, or any franchise, trademark, or trade name (within the meaning of section 1253), which is to be used in connection with such facility.

**(7) Subsection not to apply if bonds issued with certain other tax-exempt bonds**

This subsection shall not apply to any bond issued as part of an issue (other than an issue to which paragraph (4) applies) if the interest on any other bond which is part of such issue is excluded from gross income under any provision of law other than this subsection.

**(8) Restrictions on financing certain facilities**

This subsection shall not apply to an issue if—

- (A) more than 25 percent of the net proceeds of the issue are to be used to provide a facility the primary purpose of which is one of the following: retail food and beverage services, automobile sales or service, or the provision of recreation or entertainment; or
- (B) any portion of the proceeds of the issue is to be used to provide the following: any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard, and ice skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility, or race-track.

**(9) Aggregation of issues with respect to single project**

For purposes of this subsection, 2 or more issues part or all of the net proceeds of which are to be used with respect to a single building, an enclosed shopping mall, or a strip of offices, stores, or warehouses using substantial common facilities shall be treated as 1 issue (and any person who is a principal user with respect to any of such issues shall be treated as a principal user with respect to the aggregated issue).

**(10) Aggregate limit per taxpayer**

**(A) In general**

This subsection shall not apply to any issue if the aggregate authorized face amount of such issue allocated to any test-period beneficiary (when increased by the

outstanding tax-exempt facility-related bonds of such beneficiary) exceeds \$40,000,000.

**(B) Outstanding tax-exempt facility-related bonds**

**(i) In general**

For purposes of applying subparagraph (A) with respect to any issue, the outstanding tax-exempt facility-related bonds of any person who is a test-period beneficiary with respect to such issue is the aggregate amount of tax-exempt bonds referred to in clause (ii)—

- (I) which are allocated to such beneficiary, and
- (II) which are outstanding at the time of such later issue (not including as outstanding any bond which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue).

**(ii) Bonds taken into account**

For purposes of clause (i), the bonds referred to in this clause are—

- (I) exempt facility bonds, qualified small issue bonds, and qualified redevelopment bonds, and
- (II) industrial development bonds (as defined in section 103(b)(2), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) to which section 141(a) does not apply.

**(C) Allocation of face amount of issue**

**(i) In general**

Except as otherwise provided in regulations, the portion of the face amount of an issue allocated to any test-period beneficiary of a facility financed by the proceeds of such issue (other than an owner of such facility) is an amount which bears the same relationship to the entire face amount of such issue as the portion of such facility used by such beneficiary bears to the entire facility.

**(ii) Owners**

Except as otherwise provided in regulations, the portion of the face amount of an issue allocated to any test-period beneficiary who is an owner of a facility financed by the proceeds of such issue is an amount which bears the same relationship to the entire face amount of such issue as the portion of such facility owned by such beneficiary bears to the entire facility.

**(D) Test-period beneficiary**

For purposes of this paragraph, except as provided in regulations, the term “test-period beneficiary” means any person who is an owner or a principal user of facilities being financed by the issue at any time during the 3-year period beginning on the later of—

- (i) the date such facilities were placed in service, or
- (ii) the date of issue.

**(E) Treatment of related persons**

For purposes of this paragraph, all persons who are related (within the meaning of para-

graph (3)) to each other shall be treated as 1 person.

**(11) Limitation on acquisition of depreciable farm property**

**(A) In general**

This subsection shall not apply to any issue if more than \$250,000 of the net proceeds of such issue are to be used to provide depreciable farm property with respect to which the principal user is or will be the same person or 2 or more related persons.

**(B) Depreciable farm property**

For purposes of this paragraph, the term “depreciable farm property” means property of a character subject to the allowance for depreciation which is to be used in a trade or business of farming.

**(C) Prior issues taken into account**

In determining the amount of proceeds of an issue to be used as described in subparagraph (A), there shall be taken into account the aggregate amount of each prior issue to which paragraph (1) (or the corresponding provisions of prior law) applied which were or will be so used.

**(12) Termination dates**

**(A) In general**

This subsection shall not apply to—

(i) any bond (other than a bond described in clause (ii)) issued after December 31, 1986, or

(ii) any bond (or series of bonds) issued to refund a bond issued on or before such date unless—

(I) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(II) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(III) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of clause (ii)(I), average maturity shall be determined in accordance with section 147(b)(2)(A).

**(B) Bonds issued to finance manufacturing facilities and farm property**

Subparagraph (A) 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 provide—

(i) any manufacturing facility, or

(ii) any land or property in accordance with section 147(c)(2).

**(C) Manufacturing facility**

For purposes of this paragraph—

**(i) In general**

The term “manufacturing facility” means any facility which is used in the manufacturing or production of tangible

personal property (including the processing resulting in a change in the condition of such property). A rule similar to the rule of section 142(b)(2) shall apply for purposes of the preceding sentence.

**(ii) Certain facilities included**

Such term includes facilities which are directly related and ancillary to a manufacturing facility (determined without regard to this clause) if—

(I) such facilities are located on the same site as the manufacturing facility, and

(II) not more than 25 percent of the net proceeds of the issue are used to provide such facilities.

**(iii) Special rules for bonds issued in 2009 and 2010**

In the case of any issue made after the date of enactment of this clause and before January 1, 2011, clause (ii) shall not apply and the net proceeds from a bond shall be considered to be used to provide a manufacturing facility if such proceeds are used to provide—

(I) a facility which is used in the creation or production of intangible property which is described in section 197(d)(1)(C)(iii), or

(II) a facility which is functionally related and subordinate to a manufacturing facility (determined without regard to this subclause) if such facility is located on the same site as the manufacturing facility.

**(b) Qualified student loan bond**

For purposes of this part—

**(1) In general**

The term “qualified student loan bond” means any bond issued as part of an issue the applicable percentage or more of the net proceeds of which are to be used directly or indirectly to make or finance student loans under—

(A) a program of general application to which the Higher Education Act of 1965 applies if—

(i) limitations are imposed under the program on—

(I) the maximum amount of loans outstanding to any student, and

(II) the maximum rate of interest payable on any loan,

(ii) the loans are directly or indirectly guaranteed by the Federal Government,

(iii) the financing of loans under the program is not limited by Federal law to the proceeds of tax-exempt bonds, and

(iv) special allowance payments under section 438 of the Higher Education Act of 1965—

(I) are authorized to be paid with respect to loans made under the program, or

(II) would be authorized to be made with respect to loans under the program if such loans were not financed with the proceeds of tax-exempt bonds, or

(B) a program of general application approved by the State if no loan under such program exceeds the difference between the total cost of attendance and other forms of student assistance (not including loans pursuant to section 428B(a)(1) of the Higher Education Act of 1965 (relating to parent loans) or subpart I<sup>1</sup> of part C of title VII of the Public Health Service Act (relating to student assistance)) for which the student borrower may be eligible. A program shall not be treated as described in this subparagraph if such program is described in subparagraph (A).

A bond shall not be treated as a qualified student loan bond if the issue of which such bond is a part meets the private business tests of paragraphs (1) and (2) of section 141(b) (determined by treating 501(c)(3) organizations as governmental units with respect to their activities which do not constitute unrelated trades or businesses, determined by applying section 513(a)).

**(2) Applicable percentage**

For purposes of paragraph (1), the term “applicable percentage” means—

- (A) 90 percent in the case of the program described in paragraph (1)(A), and
- (B) 95 percent in the case of the program described in paragraph (1)(B).

**(3) Student borrowers must be residents of issuing State, etc.**

A student loan shall be treated as being made or financed under a program described in paragraph (1) with respect to an issue only if the student is—

- (A) a resident of the State from which the volume cap under section 146 for such loan was derived, or
- (B) enrolled at an educational institution located in such State.

**(4) Discrimination on basis of school location not permitted**

A program shall not be treated as described in paragraph (1)(A) if such program discriminates on the basis of the location (in the United States) of the educational institution in which the student is enrolled.

**(c) Qualified redevelopment bond**

For purposes of this part—

**(1) In general**

The term “qualified redevelopment bond” means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used for 1 or more redevelopment purposes in any designated blighted area.

**(2) Additional requirements**

A bond shall not be treated as a qualified redevelopment bond unless—

- (A) the issue described in paragraph (1) is issued pursuant to—
  - (i) a State law which authorizes the issuance of such bonds for redevelopment purposes in blighted areas, and

- (ii) a redevelopment plan which is adopted before such issuance by the governing body described in paragraph (4)(A) with respect to the designated blighted area,

(B)(i) the payment of the principal and interest on such issue is primarily secured by taxes of general applicability imposed by a general purpose governmental unit, or

- (ii) any increase in real property tax revenues (attributable to increases in assessed value) by reason of the carrying out of such purposes in such area is reserved exclusively for debt service on such issue (and similar issues) to the extent such increase does not exceed such debt service,

(C) each interest in real property located in such area—

- (i) which is acquired by a governmental unit with the proceeds of the issue, and
- (ii) which is transferred to a person other than a governmental unit,

is transferred for fair market value,

(D) the financed area with respect to such issue meets the no additional charge requirements of paragraph (5), and

(E) the use of the proceeds of the issue meets the requirements of paragraph (6).

**(3) Redevelopment purposes**

For purposes of paragraph (1)—

**(A) In general**

The term “redevelopment purposes” means, with respect to any designated blighted area—

- (i) the acquisition (by a governmental unit having the power to exercise eminent domain) of real property located in such area,
- (ii) the clearing and preparation for redevelopment of land in such area which was acquired by such governmental unit,
- (iii) the rehabilitation of real property located in such area which was acquired by such governmental unit, and
- (iv) the relocation of occupants of such real property.

**(B) New construction not permitted**

The term “redevelopment purposes” does not include the construction (other than the rehabilitation) of any property or the enlargement of an existing building.

**(4) Designated blighted area**

For purposes of this subsection—

**(A) In general**

The term “designated blighted area” means any blighted area designated by the governing body of a local general purpose governmental unit in the jurisdiction of which such area is located.

**(B) Blighted area**

The term “blighted area” means any area which the governing body described in subparagraph (A) determines to be a blighted area on the basis of the substantial presence of factors such as excessive vacant land on which structures were previously located, abandoned or vacant buildings, substandard

<sup>1</sup> See References in Text note below.

structures, vacancies, and delinquencies in payment of real property taxes.

**(C) Designated areas may not exceed 20 percent of total assessed value of real property in government's jurisdiction**

**(i) In general**

An area may be designated by a governmental unit as a blighted area only if the designation percentage with respect to such area, when added to the designation percentages of all other designated blighted areas within the jurisdiction of such governmental unit, does not exceed 20 percent.

**(ii) Designation percentage**

For purposes of this subparagraph, the term "designation percentage" means, with respect to any area, the percentage (determined at the time such area is designated) which the assessed value of real property located in such area is of the total assessed value of all real property located within the jurisdiction of the governmental unit which designated such area.

**(iii) Exception where bonds not outstanding**

The designation percentage of a previously designated blighted area shall not be taken into account under clause (i) if no qualified redevelopment bond (or similar bond) is or will be outstanding with respect to such area.

**(D) Minimum designated area**

**(i) In general**

Except as provided in clause (ii), an area shall not be treated as a designated blighted area for purposes of this subsection unless such area is contiguous and compact and its area equals or exceeds 100 acres.

**(ii) 10-acre minimum in certain cases**

Clause (i) shall be applied by substituting "10 acres" for "100 acres" if not more than 25 percent of the financed area is to be provided (pursuant to the issue and all other such issues) to 1 person. For purposes of the preceding sentence, all related persons (as defined in subsection (a)(3)) shall be treated as 1 person. For purposes of this clause, an area provided to a developer on a short-term interim basis shall not be treated as provided to such developer.

**(5) No additional charge requirements**

The financed area with respect to any issue meets the requirements of this paragraph if, while any bond which is part of such issue is outstanding—

(A) no owner or user of property located in the financed area is subject to a charge or fee which similarly situated owners or users of comparable property located outside such area are not subject, and

(B) the assessment method or rate of real property taxes with respect to property located in the financed area does not differ

from the assessment method or rate of real property taxes with respect to comparable property located outside such area.

For purposes of the preceding sentence, the term "comparable property" means property which is of the same type as the property to which it is being compared and which is located within the jurisdiction of the designating governmental unit.

**(6) Use of proceeds requirements**

The use of the proceeds of an issue meets the requirements of this paragraph if—

(A) not more than 25 percent of the net proceeds of such issue are to be used to provide (including the provision of land for) facilities described in subsection (a)(8) or section 147(e), and

(B) no portion of the proceeds of such issue is to be used to provide (including the provision of land for) any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

**(7) Financed area**

For purposes of this subsection, the term "financed area" means, with respect to any issue, the portion of the designated blighted area with respect to which the proceeds of such issue are to be used.

**(8) Restriction on acquisition of land not to apply**

Section 147(c) (other than paragraphs (1)(B) and (2) thereof) shall not apply to any qualified redevelopment bond.

(Added Pub. L. 99-514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2621; amended Pub. L. 100-647, title I, §1013(a)(4)(A), (B)(i), (ii), (C), (5), title VI, §6176(a), Nov. 10, 1988, 102 Stat. 3537, 3538, 3726; Pub. L. 101-239, title VII, §7105, Dec. 19, 1989, 103 Stat. 2306; Pub. L. 101-508, title XI, §11409(a), Nov. 5, 1990, 104 Stat. 1388-478; Pub. L. 102-227, title I, §109(a), Dec. 11, 1991, 105 Stat. 1688; Pub. L. 103-66, title XIII, §13122(a), Aug. 10, 1993, 107 Stat. 432; Pub. L. 108-357, title III, §340, Oct. 22, 2004, 118 Stat. 1485; Pub. L. 109-222, title II, §208, May 17, 2006, 120 Stat. 351; Pub. L. 111-5, div. B, title I, §1301(a), Feb. 17, 2009, 123 Stat. 344.)

REFERENCES IN TEXT

Section 119 of the Housing and Community Development Act of 1974, referred to in subsec. (a)(4)(F), is classified to section 5318 of Title 42, The Public Health and Welfare.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (a)(10)(B)(ii)(II), is the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

The date of enactment of this clause, referred to in subsec. (a)(12)(C)(iii), is the date of enactment of Pub. L. 111-5, which was approved Feb. 17, 2009.

The Higher Education Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, which is classified generally to chapter 28 (§1001 et seq.) of Title 20, Education. Section 428B(a) of that Act as enacted in the general amendment of part B of title IV of that Act by Pub. L. 99-498, title IV, §402(a), Oct. 17, 1986, 100 Stat. 1386, which is classified to section

1078-2(a) of Title 20, did not contain a par. (1). Section 438 of that Act is classified to section 1087-1 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Public Health Service Act, referred to in subsec. (b)(1)(B), is act July 1, 1944, ch. 373, 58 Stat. 682. Subpart I of part C of title VII of the Act was classified generally to subpart I (§294 et seq.) of part C of subchapter V of chapter 6A of Title 42, The Public Health and Welfare, prior to the general revision of subchapter V of chapter 6A by Pub. L. 102-408, title I, §102, Oct. 13, 1992, 106 Stat. 1994. See subpart I (§292 et seq.) of part A of revised subchapter V of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

#### PRIOR PROVISIONS

A prior section 144, acts Aug. 16, 1954, ch. 736, 68A Stat. 41; Feb. 26, 1964, Pub. L. 88-272, title I, §112(c), title II, §232(c), 78 Stat. 24, 110; Dec. 10, 1971, Pub. L. 92-178, title II, §206, title III, §301(c), 85 Stat. 511, 520; Oct. 4, 1976, Pub. L. 94-455, title V, §501(b)(3)-(5), title XIX, §1906(b)(13)(A), 90 Stat. 1558, 1559, 1834, related to method for electing to take standard deduction, prior to repeal by Pub. L. 95-30, title I, §101(d)(1), May 23, 1977, 91 Stat. 133, applicable to taxable years beginning after Dec. 31, 1976.

#### AMENDMENTS

2009—Subsec. (a)(12)(C). Pub. L. 111-5 substituted dash for comma after “For purposes of this paragraph”, designated remainder of first sentence and second sentence of existing provisions as cl. (i) and inserted heading, substituted “The term” for “the term”, added cls. (ii) and (iii), and struck out former last sentence which read as follows: “For purposes of the 1st sentence of this subparagraph, the term ‘manufacturing facility’ includes facilities which are directly related and ancillary to a manufacturing facility (determined without regard to this sentence) if—

“(i) such facilities are located on the same site as the manufacturing facility, and

“(ii) not more than 25 percent of the net proceeds of the issue are used to provide such facilities.”

2006—Subsec. (a)(4)(F), (G). Pub. L. 109-222 substituted “December 31, 2006” for “September 30, 2009”.

2004—Subsec. (a)(4)(F). Pub. L. 108-357, §340(b), inserted at end “This subparagraph shall not apply to bonds issued after September 30, 2009.”

Subsec. (a)(4)(G). Pub. L. 108-357, §340(a), added subpar. (G).

1993—Subsec. (a)(12)(B). Pub. L. 103-66 amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: “In the case of any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide—

“(i) any manufacturing facility, or

“(ii) any land or property in accordance with section 147(c)(2), subparagraph (A) shall be applied by substituting ‘June 30, 1992’ for ‘December 31, 1986’.”

1991—Subsec. (a)(12)(B). Pub. L. 102-227 substituted “June 30, 1992” for “December 31, 1991”.

1990—Subsec. (a)(12)(B). Pub. L. 101-508 substituted “December 31, 1991” for “September 30, 1990”.

1989—Subsec. (a)(12)(B). Pub. L. 101-239 substituted “by substituting ‘September 30, 1990’ for ‘December 31, 1986’” for “by substituting ‘1989’ for ‘1986’”.

1988—Subsec. (a)(12)(A). Pub. L. 100-647, §1013(a)(4)(B)(ii), inserted sentence at end that for purposes of cl. (ii)(I), average maturity be determined in accordance with section 147(b)(2)(A).

Subsec. (a)(12)(A)(ii). Pub. L. 100-647, §1013(a)(4)(A), inserted “(or series of bonds)” before “issued to refund” in introductory text.

Subsec. (a)(12)(A)(ii)(I). Pub. L. 100-647, §1013(a)(4)(B)(i), amended subcl. (I) generally. Prior to

amendment, subcl. (I) read as follows: “the refunding bond has a maturity date not later than the maturity date of the refunded bond.”

Subsec. (a)(12)(A)(ii)(III), (IV). Pub. L. 100-647, §1013(a)(4)(C), redesignated subcl. (IV) as (III) and struck out former subcl. (III) which provided that this subsection apply when the interest rate on the refunding bond is lower than the interest rate on the refunded bond.

Subsec. (a)(12)(C). Pub. L. 100-647, §6176(a), inserted sentence at end defining “manufacturing facility”.

Subsec. (b)(1). Pub. L. 100-647, §1013(a)(5), in subpar. (B) struck out “to which part B of title IV of the Higher Education Act of 1965 (relating to guaranteed student loans) does not apply” after “by the State”, substituted “of the Higher Education Act of 1965” for “of such Act”, amended last sentence generally, and inserted a new flush sentence at end of par. (1). Prior to amendment, last sentence of subpar. (B) read as follows: “A bond issued as part of an issue shall be treated as a qualified student loan bond only if no bond which is part of such issue meets the private business tests of paragraphs (1) and (2) of section 141(b).”

#### EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-5, div. B, title I, §1301(b), Feb. 17, 2009, 123 Stat. 345, provided that: “The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Feb. 17, 2009].”

#### EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title XIII, §13122(b), Aug. 10, 1993, 107 Stat. 433, provided that: “The amendment made by subsection (a) [amending this section] shall apply to bonds issued after June 30, 1992.”

#### EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-227, title I, §109(b), Dec. 11, 1991, 105 Stat. 1688, provided that: “The amendment made by this section [amending this section] shall apply to bonds issued after December 31, 1991.”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11409(b), Nov. 5, 1990, 104 Stat. 1388-478, provided that: “The amendment made by this section [amending this section] shall apply to bonds issued after September 30, 1990.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(4)(A), (B)(i), (ii), (C), (5) 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.

Pub. L. 100-647, title VI, §6176(b), Nov. 10, 1988, 102 Stat. 3726, provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Nov. 10, 1988].

“(2) REFUNDINGS.—The amendment made by subsection (a) shall not apply to any bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued on or before the date of the enactment of this Act if—

“(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue, and

“(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond. For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b) of the 1986 Code.”

#### APPLICATION OF SUBSECTION (a)(12)(A)(ii)(I) TO REFUNDING BONDS ISSUED BEFORE JULY 1, 1987

Pub. L. 100-647, title I, §1013(a)(4)(B)(iii), Nov. 10, 1988, 102 Stat. 3538, provided that: “A refunding bond issued

before July 1, 1987, shall be treated as meeting the requirement of subclause (I) of section 144(a)(12)(A)(ii) of the 1986 Code if such bond met the requirement of such subclause as in effect before the amendments made by this subparagraph [amending this section].”

TERMINATION DATE FOR EXEMPTION FOR CERTAIN  
SMALL ISSUES UNDER SECTION 103(b)(6)

Pub. L. 100-647, title I, §1013(c)(12)(B), Nov. 10, 1988, 102 Stat. 3547, provided that: “The date applicable under section 144(a)(12)(B) of the 1986 Code shall be treated as contained in section 103(b)(6)(N)(iii) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act [Oct. 22, 1986], for purposes of any bond issued to refund a bond to which such section 103(b)(6)(N)(iii) applies.”

**§ 145. Qualified 501(c)(3) bond**

**(a) In general**

For purposes of this part, except as otherwise provided in this section, the term “qualified 501(c)(3) bond” means any private activity bond issued as part of an issue if—

(1) all property which is to be provided by the net proceeds of the issue is to be owned by a 501(c)(3) organization or a governmental unit, and

(2) such bond would not be a private activity bond if—

(A) 501(c)(3) organizations were treated as governmental units with respect to their activities which do not constitute unrelated trades or businesses, determined by applying section 513(a), and

(B) paragraphs (1) and (2) of section 141(b) were applied by substituting “5 percent” for “10 percent” each place it appears and by substituting “net proceeds” for “proceeds” each place it appears.

**(b) \$150,000,000 limitation on bonds other than hospital bonds**

**(1) In general**

A bond (other than a qualified hospital bond) shall not be treated as a qualified 501(c)(3) bond if the aggregate authorized face amount of the issue (of which such bond is a part) allocated to any 501(c)(3) organization which is a test-period beneficiary (when increased by the outstanding tax-exempt nonhospital bonds of such organization) exceeds \$150,000,000.

**(2) Outstanding tax-exempt nonhospital bonds**

**(A) In general**

For purposes of applying paragraph (1) with respect to any issue, the outstanding tax-exempt nonhospital bonds of any organization which is a test-period beneficiary with respect to such issue is the aggregate amount of tax-exempt bonds referred to in subparagraph (B)—

(i) which are allocated to such organization, and

(ii) which are outstanding at the time of such later issue (not including as outstanding any bond which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue).

**(B) Bonds taken into account**

For purposes of subparagraph (A), the bonds referred to in this subparagraph are—

(i) any qualified 501(c)(3) bond other than a qualified hospital bond, and

(ii) any bond to which section 141(a) does not apply if—

(I) such bond would have been an industrial development bond (as defined in section 103(b)(2), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) if 501(c)(3) organizations were not exempt persons, and

(II) such bond was not described in paragraph (4), (5), or (6) of such section 103(b) (as in effect on the date such bond was issued).

**(C) Only nonhospital portion of bonds taken into account**

**(i) In general**

A bond shall be taken into account under subparagraph (B) only to the extent that the proceeds of the issue of which such bond is a part are not used with respect to a hospital.

**(ii) Special rule**

If 90 percent or more of the net proceeds of an issue are used with respect to a hospital, no bond which is part of such issue shall be taken into account under subparagraph (B)(ii).

**(3) Aggregation rule**

For purposes of this subsection, 2 or more organizations under common management or control shall be treated as 1 organization.

**(4) Allocation of face amount of issue; test-period beneficiary**

Rules similar to the rules of subparagraphs (C), (D), and (E) of section 144(a)(10) shall apply for purposes of this subsection.

**(5) Termination of limitation**

This subsection shall not apply with respect to bonds issued after the date of the enactment of this paragraph as part of an issue 95 percent or more of the net proceeds of which are to be used to finance capital expenditures incurred after such date.

**(c) Qualified hospital bond**

For purposes of this section, the term “qualified hospital bond” means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used with respect to a hospital.

**(d) Restrictions on bonds used to provide residential rental housing for family units**

**(1) In general**

Except as otherwise provided in this subsection, a bond which is part of an issue shall not be a qualified 501(c)(3) bond if any portion of the net proceeds of the issue are to be used directly or indirectly to provide residential rental property for family units.

**(2) Exception for bonds used to provide qualified residential rental projects**

Paragraph (1) shall not apply to any bond issued as part of an issue if the portion of such issue which is to be used as described in paragraph (1) is to be used to provide—