Public Law 95-497
95th Congress

An Act

Relating to the application of certain provisions of the Internal Revenue Code of 1954 to specified transactions by certain public employee retirement systems created by the State of New York or any of its political subdivisions.

Oct. 21, 1978
[H.R. 12051]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Taxes.
New York public employees.
Retirement systems.
26 USC 41.
26 USC 503.

SECTION 1. QUALIFIED STATUS OF PARTICIPATING PENSION PLANS.

(a) GENERAL RULE.—A participating pension plan shall not be considered to fail to satisfy the requirements of section 401(a) of the Internal Revenue Code of 1954, and shall not be considered to have engaged in a prohibited transaction described in section 503(b) of such Code, merely because—

(1) during the period beginning on July 1, 1978, and ending on June 30, 1982, the plan acquires city indebtedness which meets the applicable requirements of section 2, or

(2) the plan continues to hold any city indebtedness acquired—

(A) pursuant to this Act or Public Law 94-236, or 90 Stat. 238.

(B) before November 26, 1975.

(b) ACQUISITION OF INDEBTEDNESS PURSUANT TO AGREEMENT.—The acquisition of city indebtedness by a participating pension plan under an agreement for the acquisition of city indebtedness meets the applicable requirements of section 2 if—

(1) the agreement is not disapproved by the Secretary under subsection (c), and

(2) the plan certifies to the Secretary (and furnishes to the Secretary and to the appropriate committees of the Congress such supporting information and documentation as the Secretary shall require) that the acquisition—

(A) is made under the agreement, and

(B) meets the applicable requirements of section 2 (determined without regard to the provisions of subsections (b), (c), and (f) of section 2).

(c) SIXTY-DAY PERIOD FOR DISAPPROVAL.—

(1) IN GENERAL.—Before entering into an agreement described in subsection (b), and before acquiring any city indebtedness not covered by such an agreement, the participating pension plan shall notify the Secretary of the proposed agreement or acquisition. If the Secretary determines (not later than 60 days after the date of such submission or such shorter period as the Secretary may establish) that such agreement or acquisition does not meet any requirement of section 2, the Secretary shall disapprove such agreement or acquisition (as the case may be). For purposes of this subsection, an amendment, or a waiver of any provision, of such an agreement shall be treated as a new agreement.

(2) NOTIFICATION.—The Secretary shall, not later than the 10th day after the close of the period applicable under paragraph (1), notify the appropriate committees of the Congress of the determinations he has made with respect to the submission and the reasons on which such determinations were based.

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SEC. 2. REQUIREMENTS.

(a) LIMITATIONS ON AMOUNT OF DEBT TO BE ACQUIRED.—

(1) PERCENTAGE LIMITATIONS.—An acquisition of city indebtedness by a participating pension plan does not meet the requirements of this section if—

(A) AGGREGATE LIMIT ON ACQUISITIONS BY CITY PLANS.—In the case of a city plan, the plan acquires any city indebtedness after June 30, 1979, and before the city plans meet the percentage limitation on holdings of city indebtedness applicable under this subparagraph for the 12-month period ending on the most recently preceding June 30. The percentage limitation on holdings of city indebtedness under this subparagraph is not met if the value of city indebtedness held by all city plans exceeds a percentage of the aggregate assets of all city plans equal to—

(i) 40 percent for the 12-month period ending on June 30, 1979,

(ii) 36 percent for the 12-month period ending on June 30, 1980,

(iii) 33 percent for the 12-month period ending on June 30, 1981, and

(iv) 30 percent for the 12-month period ending on June 30, 1982.

(B) LIMIT ON ACQUISITIONS BY EACH CITY PLAN.—In the case of a city plan, the plan acquires any city indebtedness which, when added to other city indebtedness held by such plan, would cause such holdings to exceed 50 percent of the assets of such plan at the time of the acquisition.

(C) LIMIT ON ACQUISITIONS BY STATE PLAN.—In the case of a State plan, the plan acquires any city indebtedness which, when added to other city indebtedness held by such plan, would cause such holdings to exceed 10 percent of the assets of such plan at the time of the acquisition.

(D) DETERMINATIONS OF WHETHER THE PERCENTAGE LIMITATIONS HAVE BEEN MET.—

(i) AGGREGATE LIMIT.—For the purpose of determining whether the percentage limitation on holdings of city indebtedness under subparagraph (A) has been met for any 12-month period described in that subparagraph, the plan shall use the arithmetic mean (expressed as a percentage) of 4 fractions, the numerators of which are the value of city indebtedness held by all city plans as of the close of each calendar quarter within the 12-month period for which the determination is being made and the denominators of which are the value of the assets of all city plans as of the close of each such calendar quarter. If the percentage limitation under subparagraph (A) is not met for a 12-month period on the basis of the 4 fractions for the 4 calendar quarters within that 12-month period, the plan shall make a redetermination for that 12-month period as of the close of the first calendar quarter, if necessary, the second calendar quarter and, if necessary, the third calendar quarter following the 12-month period using the 4 fractions for the 12-month

period and the fraction or fractions for the additional quarter or quarters. If the value of city indebtedness or plan assets is not available for any quarter at the time the determination of the fraction for that quarter is being made, the plan shall use a value derived from interpolations from the most recently available semi-annual valuations.

(ii) PLAN LIMIT.—In making a determination of whether or not an acquisition of city indebtedness meets the requirements of subparagraph (B) or (C), the plan shall make determinations based on the most current data available as to the holdings of city indebtedness and on the basis of the most recently available semiannual valuation of assets of the plan.

(2) METHOD OF VALUATION.—For purposes of this subsection—

(A) city indebtedness is to be valued by the plan at its face value, and

(B) all other assets are to be valued by the plan under methods determined by the Secretary to be consistent with the methods of valuing assets for purposes of section 412 of the Internal Revenue Code of 1954. 26 USC 412.

(b) STANDARDS.—

(1) OVERALL STANDARD.—The overall standard used by the Secretary under this Act in determining whether or not to disapprove an agreement for the acquisition of city indebtedness under section 1(c) shall be the extent to which the acquisition of city indebtedness under the agreement will, in the case of a city plan—

(A) maintain the ability of the city—

(i) to make future contributions to the plan or trust, and

(ii) to satisfy its future obligations to pay pension and retirement benefits to members and beneficiaries of such plan or trust, and

(B) protect the sources of funds to provide retirement benefits for members and beneficiaries of the plan or trust.

(2) FACTORS TO BE TAKEN INTO ACCOUNT.—In determining whether or not to disapprove such an agreement the Secretary shall take into account (among other factors) the terms of the obligations which are to be acquired under the agreement.

(3) FISCAL PARTICIPATION BY PRIVATE SOURCES OR PUBLIC CREDIT MARKETS.—The Secretary shall disapprove any such agreement unless he has received assurances to his satisfaction that there will be significant participation in the acquisition of city indebtedness by the State, an agency of the State, or private sources, or through public credit markets.

(c) REQUIREMENTS WITH RESPECT TO FISCAL CONDITION OF THE CITY.—

(1) SUBSTANTIAL PROGRESS TOWARD A BALANCED BUDGET BY 1982.—An acquisition of city indebtedness by a participating pension plan during any fiscal year beginning after June 30, 1979, does not meet the requirements of this section unless the Secretary has

determined for such fiscal year that the city is making substantial progress toward operating under expense budgets which do not show a deficit.

(2) PRINCIPLES TO BE APPLIED UNDER PARAGRAPH (1).—The Secretary shall make the determination required under paragraph (1) on the basis of—

(A) whether or not the requirements of paragraph (5) of section 103 of the New York City Loan Guarantee Act of 1978 (as such Act is in effect on the date of enactment of this Act) are being met, and

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(B) the annual audited financial statements of the city prepared in accordance with generally accepted accounting principles (including principles applicable to municipal governments which provide for a clear division between operating outlays and revenues on the one hand and capital expenditures and revenues on the other hand) and in accordance with generally accepted auditing standards.

(d) PLANS HAVING NEGATIVE CASH FLOW.—

(1) IN GENERAL.—An acquisition of any city indebtedness by a city plan does not meet the requirements of this section if the plan would have a negative cash flow for the fiscal year of acquisition.

(2) SPECIAL RULES.—For purposes of paragraph (1)—

(A) cash flow shall be determined by the plan for each fiscal year, and also whenever the plan enters into an agreement which must be submitted to the Secretary under section 1(c) (including any amendment of, or waiver under, such an agreement),

(B) cash flow shall be determined in the same manner as provided in paragraph (3) of subsection (e), and

(C) the effect of completed and proposed acquisitions during the plan year on the cash flow shall be taken into account.

(e) REPORTS.—

(1) ANNUAL REPORT BY PLANS ON RECEIPTS, DISBURSEMENTS, HOLDINGS, AND CASH FLOW.—

(A) ANNUAL REPORT.—An acquisition of any city indebtedness by any participating city pension plan does not meet the requirements of this section unless, for each preceding plan year beginning after June 30, 1978, and ending more than 8 months and 15 days before the date of the acquisition, the plan has submitted an annual report which meets the requirements of paragraph (2) to the Secretary and to the appropriate committees of the Congress.

(B) PROJECTED CASH FLOW.—An acquisition of city indebtedness by any participating city pension plan for any plan year does not meet the requirements of this section unless the plan has submitted to the Secretary and to the appropriate committees of the Congress a statement showing the projected cash flow for the plan year.

(2) ANNUAL REPORT BY INDEPENDENT PUBLIC ACCOUNTANT.—An annual report does not meet the requirements of this paragraph unless it—

(A) includes an analysis of compliance by the plan throughout the fiscal year with the requirements of subparagraphs (A) and (B) of subsection (a)(1),

(B) is prepared in accordance with generally accepted accounting principles, and

(C) meets the requirements of paragraph (3) of section 103(a) of the Employee Retirement Income Security Act of 1974, as in effect on the date of enactment of this Act (without regard to the last 4 sentences of subparagraph (A) of that paragraph). 29 USC 1023.

(3) RULES FOR DETERMINING CASH FLOW.—For purposes of paragraph (1)(B), the cash flow—

(A) shall take into account contributions and other income (such as dividends and interest) on the one hand and the payment of benefits and expenses on the other hand, and

(B) shall not take into account items properly chargeable to capital account (such as the proceeds from the sale or redemption of assets), other than—

(i) payment of principal during the period a debt is outstanding,

(ii) payment of principal at maturity or redemption, and

(iii) proceeds from the sale of obligations having a maturity of one year or less at the time of sale.

(f) CITY MUST COMPLY WITH REQUIREMENTS OF SECTION 103(7) OF NEW YORK CITY LOAN GUARANTEE ACT OF 1978.—An acquisition of city indebtedness by a city pension plan for any plan year does not meet the requirements of this section unless, at the time of the acquisition, the Secretary has determined that the requirements of paragraph (7) of section 103 of the New York City Loan Guarantee Act of 1978, as in effect on the date of enactment of this Act, have been met. *Ante*, p. 461.

SEC. 3. NOTIFICATION OF PLANS AND CITY OF ACQUISITIONS WHICH FAIL TO MEET REQUIREMENTS OF THE ACT; REGULATIONS.

(a) NOTIFICATION OF PLANS AND CITY.—

(1) NOTICE OF FAILURE TO MEET REQUIREMENTS.—Whenever the Secretary determines that an acquisition of city indebtedness has not met one of the requirements of section 2, he shall notify the participating plan or plans involved.

(2) NOTICE OF POSSIBLE PROSPECTIVE FAILURE.—The Secretary shall notify each participating pension plan and the city whenever he finds, based on information available to the Secretary, that a future acquisition of city indebtedness will fail to meet the requirements of section 2 because of the requirement of subsection (a)(1)(A) or (c) of that section, and he shall notify the participating pension plan concerned and the city whenever it appears that a future acquisition of city indebtedness by that plan will fail to meet the requirements of section 2 for any other reason.

(b) REGULATIONS.—The Secretary of the Treasury or his delegate is authorized to prescribe such regulations as may be necessary to carry out the provisions of this Act. Regulations.

SEC. 4. DEFINITIONS AND SPECIAL RULES.

For purposes of this Act—

(1) PARTICIPATING PENSION PLAN.—The term "participating pension plan" means any city plan or State plan.

(2) CITY PLAN.—The term "city plan" means any of the following:

(A) the New York City employees' retirement system,

(B) the teachers' retirement system for the city of New York,

(C) the New York City Police Pension Fund, article 2,

(D) the New York City Fire Department Pension Fund, article 1–B, and

(E) the board of education retirement system for the city of New York.

(3) STATE PLAN.—The term "State plan" means any of the following:

(A) the New York State employees' retirement system,

(B) the New York State policemen's and firemen's retirement system, and

(C) the New York State teachers' retirement system.

(4) APPROPRIATE COMMITTEES OF THE CONGRESS.—The term "appropriate committees of the Congress" means the Committee on Ways and Means of the House of Representatives and the Finance Committee of the Senate.

(5) REFERENCES TO PLAN INCLUDE REFERENCES TO TRUST.—A reference to a plan includes a reference to any trust forming a part thereof.

(6) CITY INDEBTEDNESS.—The term "city indebtedness" means any city obligation or any State financing agency obligation.

(7) CITY OBLIGATION.—The term "city obligation" means any indebtedness for money borrowed by the city.

(8) STATE FINANCING AGENCY OBLIGATION.—The term "State financing agency obligation" means any indebtedness for money borrowed by the State financing agency.

(9) STATE FINANCING AGENCY.—The term "State financing agency" means any agency or instrumentality of the State of New York duly authorized by such State to act on behalf of or in the interest of the city, and no other subdivision of the State, with respect to the city's financial affairs.

(10) CITY.—The term "city" means the city of New York.

(11) FISCAL YEAR.—The term "fiscal year" means a 1-year period beginning on July 1 or, where the Secretary determines it to be appropriate, the plan year of a participating pension plan.

(12) SECRETARY.—The term "Secretary" means the Secretary of the Treasury. Except as provided in section 3, no function, power, or duty of the Secretary under section 1, section 2, or this section may be delegated.

(13) ACQUISITION.—The term "acquisition" includes—

(A) a purchase or an exchange (whether pursuant to a rollover or otherwise), and

(B) to the extent provided in regulations prescribed by the Secretary, any modification in the terms of an obligation or in the rights of the holder of an obligation.

SEC. 5. RELATIONSHIP OF THIS ACT TO PUBLIC LAW 94-236.

Effective on the date of the enactment of this Act, the waiver of the requirements of sections 401(a) and 503(b) of the Internal Revenue Code of 1954 contained in subsection (a) of the first section of Public Law 94-236 shall not apply to acquisitions of city indebtedness on or after such date.

Effective date.

26 USC 401.
26 USC 503.
90 Stat. 238.

Approved October 21, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1605 (Comm. on Ways and Means).
CONGRESSIONAL RECORD, Vol. 124 (1978):
Oct. 3, considered and passed House.
Oct. 7, considered and passed Senate.