

106TH CONGRESS
1ST SESSION

S. 1226

To amend the Internal Revenue Code of 1986 to provide that interest on indebtedness used to finance the furnishing or sale of rate-regulated electric energy or natural gas in the United States shall be allocated solely to sources within the United States.

IN THE SENATE OF THE UNITED STATES

JUNE 16, 1999

Mr. MACK introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide that interest on indebtedness used to finance the furnishing or sale of rate-regulated electric energy or natural gas in the United States shall be allocated solely to sources within the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. ALLOCATION TO SOURCES WITHIN THE UNITED**
 2 **STATES OF INTEREST EXPENSE ON INDEBT-**
 3 **EDNESS FINANCING RATE-REGULATED ELEC-**
 4 **TRIC ENERGY OR NATURAL GAS INFRA-**
 5 **STRUCTURE INVESTMENTS.**

6 (a) IN GENERAL.—Subsection (e) of section 864 of
 7 the Internal Revenue Code of 1986 (relating to rules for
 8 allocating interest, etc.) is amended by redesignating para-
 9 graphs (6) and (7) as paragraphs (7) and (8), respectively,
 10 and by inserting after paragraph (5) the following new
 11 paragraph:

12 “(6) TREATMENT OF CERTAIN INTEREST EX-
 13 PENSE RELATING TO QUALIFIED INFRASTRUCTURE
 14 INDEBTEDNESS.—

15 “(A) IN GENERAL.—Interest on any quali-
 16 fied infrastructure indebtedness shall be allo-
 17 cated and apportioned solely to sources within
 18 the United States, and such indebtedness shall
 19 not be taken into account in allocating and ap-
 20 portioning other interest expense.

21 “(B) QUALIFIED INFRASTRUCTURE IN-
 22 DEBTEDNESS.—For purposes of this paragraph,
 23 the term ‘qualified infrastructure indebtedness’
 24 means any indebtedness incurred—

“(i) to carry on the trade or business of the furnishing or sale of electric energy or natural gas in the United States, or

“(ii) to acquire, construct, or otherwise finance property used predominantly in such trade or business.

“(C) RATE REGULATION.—

“(i) IN GENERAL.—If only a portion of the furnishing or sale referred to in subparagraph (B)(i) in a trade or business is rate regulated, the term ‘qualified infrastructure indebtedness’ shall not include nonqualified indebtedness.

“(ii) NONQUALIFIED INDEBTEDNESS.—For purposes of clause (i), the term ‘nonqualified indebtedness’ means so much of the indebtedness which would (but for clause (i)) be qualified infrastructure indebtedness as exceeds the amount which bears the same ratio to the aggregate indebtedness of the taxpayer as the value of the assets used in the furnishing or sale referred to in subparagraph (B)(i) which is rate-regulated bears to the value of the total assets of the taxpayer.

1 “(iii) RATE-REGULATED DEFINED.—

2 For purposes of this subparagraph, fur-
3 nishing or sale is rate-regulated if the
4 rates for the furnishing or sale, as the case
5 may be, have been established or approved
6 by a State or political subdivision thereof,
7 by an agency or instrumentality of the
8 United States, or by a public service or
9 public utility commission or other similar
10 body of the District of Columbia or of any
11 State or political subdivision thereof.

12 “(iv) ASSET VALUES.—For purposes
13 of clause (ii), assets shall be treated as
14 having a value equal to their adjusted
15 bases (within the meaning of section 1016)
16 unless the taxpayer elects to use fair mar-
17 ket value for all assets. Such an election,
18 once made, shall be irrevocable.

19 “(v) TIME FOR MAKING DETERMINA-
20 TION.—The determination of whether in-
21 debtedness is qualified infrastructure in-
22 debtedness or nonqualified indebtedness
23 shall be made at the time the indebtedness
24 is incurred.

1 “(vi) SEPARATE APPLICATION TO
2 ELECTRIC ENERGY AND NATURAL GAS.—

3 This subparagraph shall be applied sepa-
4 rately to electric energy and natural gas.”

5 (b) EFFECTIVE DATE.—

6 (1) IN GENERAL.—The amendment made by
7 this section shall apply to indebtedness incurred in
8 taxable years beginning after the date of enactment
9 of this Act.

10 (2) OUTSTANDING DEBT.—In the case of in-
11 debtedness outstanding as of the date of enactment
12 of this Act, the determination of whether such in-
13 debtedness constitutes qualified infrastructure in-
14 debtedness shall be made by applying the rules of
15 subparagraphs (B) and (C) of section 864(e)(6) of
16 the Internal Revenue Code of 1986, as added by this
17 section, on the date such indebtedness was incurred.

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