required to send money to the federal government, in accordance with the federal funding formula, Michigan sends significantly more money to Washington than it receives back. In 1993, for example, Michigan paid a total of $733.7 million to the Federal Highway Trust Fund, and only $520 million was returned; and

''Whereas, in addition, even more money designated for return to Michigan, and several other states, is being withheld by federal transportation authorities. This money is critical to our transportation infrastructure and a vital component of the state's economic well-being.

''Whereas, the current budget debate offers an opportunity to reexamine this critical aspect of public spending. This examination should include immediately correcting the gross inequities in allocating the funds generated by the federal gas tax; now, therefore, be it

''*Resolved by the Senate (the House of Representatives concurring),* That we respectfully, but urgently, ask the Congress of the United States to release to the states, including Michigan, any federal road funding due under the gas tax formula but currently being held back by the federal government; and be it further

''*Resolved,* That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Michigan congressional delegation with the request that each member review this issue, offering a formal response to this body, the Michigan State Senate.''

POM–599. A resolution adopted by the Legislature of the State of New Hampshire to the Committee on Environment and Public Works.

''HOUSE CONCURRENT RESOLUTION NO. 27

''Whereas, certain aspects of the Safe Drinking Water Act require municipalities to make costly changes to municipal water supply systems; and

''Whereas, the municipalities pass these costs on to the ratepayers through water bills; and

''Whereas, certain requirements under the current Safe Drinking Water Act affect water quality and result in higher costs to citizens and businesses; now, therefore, be it

''*Resolved by the House of Representatives, the Senate concurring,* That the general court of New Hampshire hereby urges the United States Congress to pass S.1316, reauthorizing only certain aspects of the Safe Drinking Water Act which will attempt to make it less costly for municipalities to implement, while preserving water quality; and That copies of this resolution, signed by the president of the senate and the speaker of the house, be forwarded by the house clerk to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the New Hampshire Congressional delegation.''

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on Armed Services:

John W. Hechinger, Sr., of the District of Columbia, to be a Member of the National Security Education Board for a term of four years.

(The above nomination was reported with the recommendation that he be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. MOYNIHAN:

S. 1879. A bill to amend the Internal Revenue Code of 1986 to provide for 501(c)(3) bonds a tax treatment similar to governmental bonds, and for other purposes; to the Committee on Finance.

S. 1880. A bill to amend the Internal Revenue Code of 1986 to correct the treatment of tax-exempt financing of professional sports facilities; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MOYNIHAN:

S. 1879. A bill to amend the Internal Revenue Code of 1986 to provide for 501(c)(3) bonds a tax treatment similar to governmental bonds, and for other purposes; to the Committee on Finance.

THE SECTION 501(C)(3) NON-PROFIT ORGANIZATIONS TAX-EXEMPT BOND REFOM ACT OF 1996

By Mr. MOYNIHAN:

S. 1880. A bill to amend the Internal Revenue Code of 1986 to correct the treatment of tax-exempt financing of professional sports facilities; to the Committee on Finance.

THE STOP TAX-EXEMPT ARENA DEBT ISSUANCE ACT

Mr. MOYNIHAN. Mr. President, I rise today to introduce two tax bills. The first, the section 501(c)(3) Nonprofit Organizations Tax-Exempt Bond Reform Act of 1996, has been introduced several times previously by this Senator, with several of my distinguished colleagues as cosponsors. It would undo what ought never have been done: the classification of bonds of private nonprofit higher education institutions and other nonprofit organizations as those of a private activity. I reintroduce this legislation today because of its critical importance, and because we have found a particularly appropriate offset: The Stop Tax-Exempt Arena Debt Issuance Act, which I introduce today for the first time.

The Stop Tax-Exempt Arena Debt Issuance Act would close a gaping loophole. Recently, a spate of tax-exempt bonds have been issued to finance professional sports facilities, even though Congress acted to proscribe this practice in 1986. The bill would eliminate this tax-subsidized financing of professional sports facilities.

Taken together, these two bills correct a serious misallocation of our limited resources under present law: a tax subsidy that inures largely to the benefit of wealthy sports franchise owners would be replaced with increased funding for educational and research facilities at private colleges and universities.

Let me briefly describe the two measures:

THE SECTION 501(C)(3) NONPROFIT ORGANIZATIONS TAX-EXEMPT BOND REFORM ACT OF 1996

The first bill would remove the ''private activity'' label from the tax-exempt bonds of private, nonprofit higher education institutions and other organizations, and thereby eliminate the arbitrary $150 million cap on the amount of tax-exempt bonds that such an institution may have outstanding.

The Tax Reform Act of 1986 imposed the ''private activity'' label on bonds issued on behalf of nonprofit institutions, collectively known as section 501(c)(3) organizations, obscuring the longstanding recognition in the Internal Revenue Code of the public purposes served by these private institutions. Prior to that time, the tax law historically had treated private nonprofit colleges and universities essentially the same as governmental entities. Governmental units and section 501(c)(3) organizations were both classified as ''exempt persons,'' and were afforded the benefits of tax-exempt bonds on the same basis. This was an explicit recognition in the Tax Code of the public purposes served by private nonprofit institutions of higher learning.

The 1986 act's elimination of the ''exempt person'' category and the classification of section 501(c)(3) organizations' bonds as ''private activity'' bonds was a serious error. It has relegated private higher education institutions to a diminished, restricted status. Most significant among the restrictions imposed in the 1986 act was the $150 million limitation on the amount of bonds that any nonprofit institution—other than a hospital—may have outstanding. We were successful in 1986 in keeping other ''private activity'' bond strictures from being imposed on nonprofits—the minimum tax and statewide volume caps, for example.

Now we must rectify our error, remove the ''private activity'' label, and restore equal access to tax-exempt financing. If we do not act soon, the vitality of our private institutions in higher education and research will be at risk. A distinguishing feature of American society is the singular degree to which we maintain an independent sector—''private universit[ies] in the public service,'' to paraphrase the motto of New York University. This is no longer so in most of the democratic world; it never was so in the rest. It is a treasure and a phenomenon that has clearly produced excellence—indeed, the envy of the world. We must insure the strength of the independent sector by restoring parity of treatment for tax-exempt finance. Otherwise, in 20 years, we will look up and find we have lost a unique feature of American democracy of inestimable value.

The sciences are now capital intensive undertakings. The need for capital for university research facilities is

acute and critical. In 1990, the National Science Foundation estimated that for every $1 spent for maintenance of university research facilities, an additional $4.25 was deferred. As for new construction, the Foundation reports that for every $1 spent, another $3.11 in needed new construction was deferred in 1990.

The practical effect of the $150 million cap is to deny tax-exempt financing to large, private, research-oriented educational institutions most in need of capital to carry out their research mission. This will have a predictable, inevitable impact over a generation: the distribution of major research among the leading institutions in this country will profoundly change. If I may use an example from California: with this kind of differential in capital costs, we could look up one day and find Stanford to be still an institution of the greatest quality as an undergraduate teaching facility—with a fine law school and excellent liberal arts degree program—but with all the big science projects at Berkeley, the State institution.

This is not hyperbole. Already, 31-private colleges and universities are at or near the $150 million cap, and foreclosed from using tax-exempt debt. A few years ago, as the $150 million cap was beginning to take effect, 19 of the universities that ranked in the top 50 in research undertaking were private institutions. Now, only 14 of those 19 private institutions remain in the top 50, and all but 1 are foreclosed from tax-exempt financing as a result of the $150 million per institution limit.

This legislation will restore the status of private nonprofit institutions of higher learning, making their access to tax-exempt financing equal to that of their public counterparts. The legislation also reestablishes recognition in the Tax Code of the essential public purposes served by private nonprofit institutions.

Mr. President, the capital needs of private universities merit the very serious attention of this body. The cost of these changes is modest, given their importance. The staff of the Joint Committee on Taxation has estimated the revenue loss previously at $308 million over 5 years. The Senate has twice passed legislation to reverse the $150 million bond cap mistake—in the Family Tax Fairness, Economic Growth, and Health Care Access Act of 1992 (H.R. 4210) and the Revenue Act of 1992 (H.R. 11)—only to have both bills vetoed by President Bush. We should correct this error before it is too late. If we do not, we will soon not recognize the higher education sector.

THE STOP TAX-EXEMPT ARENA DEBT ISSUANCE ACT—A BILL TO CORRECT THE TREATMENT OF TAX-EXEMPT FINANCING OF PROFESSIONAL SPORTS FACILITIES

Mr. President, the second bill is an especially appropriate offset for the first bill and is an important piece of legislation in its own right.

This legislation will close a big loophole, a loophole that ultimately injures State and local governments and other issuers of tax exempt bonds, that provides an unintended Federal subsidy (in fact, contravenes congressional intent), and that contributes to the enrichment of persons who need no Federal assistance whatsoever.

I refer to the large number of professional sports facilities subsidized in recent years through the issuance of tax-exempt bonds. It seems that nearly every day, another professional sports franchise owner demands a new stadium, one subsidized by Federal, State and local taxpayers.

Why do owners want new stadiums? Our existing stock of stadiums is not functionally obsolete. Many stadiums are new, and our older ones generally can and will continue to serve, and serve well, for the exhibition of professional sports for years to come. In fact many older, historic stadiums are beloved by fans. The reason for new stadiums is economics—the team owners' bottom line. The owner can generate more revenues with a new stadium replete with luxury skyboxes and other amenities.

Building new professional sports facilities is fine by me. Let the new stadiums be built. But, please, do not ask the American taxpayer to pay for them.

Prior to 1984, professional sports stadiums could be completely financed with tax-exempt, ''private activity'' bonds (or industrial development bonds as they were formerly known). In the Deficit Reduction Act of 1984, Congress stipulated that tax-exempt bond proceeds could not be used to finance the construction of luxury skyboxes. And in the Tax Reform Act of 1986, we fundamentally restructured the tax-exempt bond provisions of the Internal Revenue Code. As part of that effort, we repealed the ''private activity'' bond category for stadium bonds, intending to eliminate tax-exempt financing of professional sports facilities altogether.

Unfortunately, Congress did not address the issue of whether stadium bonds could be issued as governmental bonds because that possibility was too remote to have occurred to us. And in our silence, a loophole was born. Innovative bond counsel have devised aggressive schemes to finance stadiums with tax-exempt, governmental purpose bonds. So this legislation is corrective. It will put an end to a practice we thought we had stopped in 1986.

The history of the changes made by the 1986 act reveals why the use of tax-exempt financing for professional sports facilities is a loophole that should be closed. In May 1985, President Reagan issued a report recommending that tax-exempt bonds be limited to traditional governmental purposes. In December 1985, the House largely adopted the Reagan administration's recommendations for tax-exempt bond reform. The Senate was of course not inclined to go as far as the House. The 1986 act, as it emerged from conference, reflected a compromise between the House and Senate. We allowed States and local governments to continue to issue tax-exempt bonds for traditional governmental purposes, such as schools, roads, bridges. At the same time, we limited the issuance of tax-exempt bonds for private activities to a short list of projects with significant public benefits, even though carried out with private ownership. And we subjected private activity bonds to other significant limitations, chief among them being a unified, statewide volume limitation.

Why did Congress make these changes? Why did the Reagan administration propose curtailing the use of tax-exempt bonds? We were all concerned with the large and increasing volume of tax-exempt bonds, including an increasing percentage of industrial development bonds that were being issued at that time to subsidize private business activities.

The increasing proliferation of tax-exempt bonds led to a number of problems. First, it drove up interest costs. Larger interest costs drove up the cost of financing roads, bridges, and other items traditionally financed with tax-exempt bonds, and meant that State and local governments had to increase taxes or reduce services in order to pay for these improvements—or forego improvements.

Second, the proliferation of tax-exempt bonds led to mounting revenue losses to the U.S. Treasury. The Congressional Research Service recently reported that from 1980 to 1985, the annual amount of foregone tax revenue from tax exempt bonds had risen 236 percent to $18.2 billion.

Third, the use of taxpayer-subsidized financing for a rapidly growing number of private business activities resulted in an inefficient allocation of capital. Investment decisions were being made on the basis of which projects qualified for tax-exempt financing, rather than on the economic viability of the underlying project.

Fourth, taxpayers were able to shield a growing amount of their investment income from income tax by purchasing tax-exempt bonds. We had become very concerned with a number of tax sheltering activities during the 1980's and the undermining effect such activities had on our tax system.

So in 1986, we fundamentally restructured the tax exempt bond rules. And one of the things we did was prohibit the issuance of tax-exempt bonds to finance sports stadiums. Or so we thought.

Once again, under a loophole in the law, professional sports team owners are financing newer and more luxurious stadiums with tax-exempt stadium bonds. Cities are promising new stadiums, with dozens of luxury skyboxes, to entice professional sports teams to relocate. Should the taxpayers in the team's current home town be forced to pay for the team's new stadium in a new city? The answer is unmistakably no.

Mr. President, this is extraordinary. Particularly when compared to the limitations we place on private activity bonds, and these stadium bonds assuredly are private activity bonds in fact if not in name. Most States cannot issue more than $150 million of private activity bonds per year. However, no limit is imposed on the amount of bond financing that can be used to finance a professional sports facility. Where is the private activity bond prohibition against building luxury skyboxes with tax-exempt bond proceeds? Where is the private activity bond provision that subjects the interest on stadium bonds to the alternative minimum tax? Where are all of the other limitations on private activity bonds that we have judged are necessary? They apparently do not apply to these new stadium bonds.

And the situation is also unfair when compared to the restrictions we impose on the ability of our private, nonprofit educational institutions to issue tax-exempt debt. New York University can only issue $150 million in tax-exempt debt to finance its facilities in Manhattan. Stanford, Boston College, University of Miami, Northwestern University, Emory, Georgetown, University of Pennsylvania—these are a few of the institutions that can no longer issue tax-exempt debt to finance their laboratories, classrooms, and other facilities that are essential to our private institutions of higher education.

The Congressional Research Service issued a critical report late last month on the new stadium bonds, and concluded that the federal tax subsidy inherent in tax-exempt bond financing is not justified:

Proponents argue that these stadium's economic benefits justify the subsidies. Economic analysis suggests this is not the case. One study found that a new stadium had no discernible impact on economic development in 27 of 30 metropolitan areas, and had a negative impact in the other three areas. The reason for this can be illustrated with the Baltimore football stadium proposal. Economic benefits were overstated by 236%, primarily because the reduced spending on other activities that enables people to attend stadium events was not netted against stadium spending. And no account was taken of losses incurred by foregoing more productive investments. The state's $177 million stadium investment is estimated to create 1,394 jobs at a cost of $127,000 per job. The cost per job generated by the state's Sunny Day Fund economic development program is estimated to be $6,250. The economic case against federal subsidy of stadiums is stronger. Almost all stadium spending is spending that would have been made on other activities within the United States, which means benefits to the Nation as a whole are near zero.

The report continues by citing several problems caused by the change in treatment of tax-exempt bonds for stadiums made by the Tax Reform Act of 1986:

It continues stadium financing as an open-ended matching grant for which the magnitude of the federal subsidy in any given year is determined without the input of federal officials and federal taxpayers; it virtually requires state-local governments to offer more favorable lease terms to its professional tenants; and it requires state-local governments to finance their subsidy with general revenue sources rather than benefit-type payments such as stadium-related user charges and rents.

Finally, what makes the new spate of stadium bonds all the more egregious is the price that we paid to end this practice in the first place. The realities of the legislative process in 1986 required that we provide extraordinarily generous transition relief to those persons planning to build such facilities at that time. We wrote special rules that allowed the tax-exempt financing of ''virtually every stadium in the planning or gleam-in-the-eye stages,'' as described in the aforementioned Congressional Research Service report. First, we allowed all proposed sports stadiums with binding commitments to issue tax-exempt bonds, as they had planned. In addition, additional transitional relief was provided to allow the issuance of up to $2.7 billion in tax-exempt bonds for the construction and repair of 25 specifically described sports facilities that were too preliminary in their development to satisfy the transition rules.

Mr. President, the legislation I am introducing will do what we intended to do, and thought we did, in 1986. This legislation makes clear that professional sports facilities may not be financed with tax-exempt bonds.

There are a few technical issues on which I would like to solicit comments. First, the proposed effective date would be today. Perhaps it should be made effective on October 22, 1986, the day President Reagan signed the Tax Reform Act of 1986 into law and we prohibited the issuance of stadium bonds in the first place. After all, this bill is, in a sense, a ''technical correction.'' Nevertheless, I would like to consider the need for equitable relief for stadiums already in the planning stages.

Second, a number of sports facilities that are not built for a professional sports franchise will be used for the occasional charitable or isolated sporting event. Thus, charitable or de minimis use exceptions to this legislation may be appropriate.

Mr. President, these two bills, taken together, would correct a serious misallocation of our limited resources. Should we subsidize professional sports franchises and underwrite bidding wars among cities seeking (or fighting to keep) professional sports franchises, or should we act to prevent a significant decline in the ability of our nonprofit, private research universities to attract capital for classrooms and research facilities? To my mind, this is not a difficult choice.

Mr. President, I ask unanimous consent that the two bills be printed in the RECORD, along with explanatory statements.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1879

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Section 501(c)(3) Nonprofit Organizations Tax-Exempt Bond Reform Act of 1996''.

SEC. 2. TAX TREATMENT OF 501(c)(3) BONDS SIMILAR TO GOVERNMENTAL BONDS.

(a) IN GENERAL.—Subsection (a) of section 150 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by striking paragraphs (2) and (4), by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively, and by inserting after paragraph (1) the following new paragraph:

''(2) EXEMPT PERSON.—

''(A) IN GENERAL.—The term 'exempt person' means—

''(i) a governmental unit, or

''(ii) a 501(c)(3) organization, but only with respect to its activities which do not constitute unrelated trades or businesses as determined by applying section 513(a).

''(B) GOVERNMENTAL UNIT NOT TO INCLUDE FEDERAL GOVERNMENT.—The term 'governmental unit' does not include the United States or any agency or instrumentality thereof.

''(C) 501(c)(3) ORGANIZATION.—The term '501(c)(3) organization' means any organization described in section 501(c)(3) and exempt from tax under section 501(a).''

(b) REPEAL OF QUALIFIED 501(c)(3) BOND DESIGNATION.—Section 145 of the Internal Revenue Code of 1986 (relating to qualified 501(c)(3) bonds) is repealed.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 141(b) of the Internal Revenue Code of 1986 is amended—

(A) by striking ''government use'' in subparagraph (A)(ii)(I) and subparagraph (B)(ii) and inserting ''exempt person use'',

(B) by striking ''a government use'' in subparagraph (B) and inserting ''an exempt person use'',

(C) by striking ''related business use'' in subparagraph (A)(ii)(II) and subparagraph (B) and inserting ''related private business use'',

(D) by striking ''RELATED BUSINESS USE'' in the heading of subparagraph (B) and inserting ''RELATED PRIVATE BUSINESS USE'', and

(E) by striking ''GOVERNMENT USE'' in the heading thereof and inserting ''EXEMPT PERSON USE''.

(2) Subparagraph (A) of section 141(b)(6) of such Code is amended by striking ''a governmental unit'' and inserting ''an exempt person''.

(3) Paragraph (7) of section 141(b) of such Code is amended—

(A) by striking ''government use'' and inserting ''exempt person use'', and

(B) by striking ''GOVERNMENT USE'' in the heading thereof and inserting ''EXEMPT PERSON USE''.

(4) Section 141(b) of such Code is amended by striking paragraph (9).

(5) Paragraph (1) of section 141(c) of such Code is amended by striking ''governmental units'' and inserting ''exempt persons''.

(6) Section 141 of such Code is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

''(e) CERTAIN ISSUES USED TO PROVIDE RESIDENTIAL RENTAL HOUSING FOR FAMILY UNITS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of this title, the term 'private activity bond' includes any bond issued as part of an issue if any portion of the net proceeds of the issue are to be used (directly or indirectly) by an exempt person described in section 150(a)(2)(A)(ii) to provide

residential rental property for family units. This paragraph shall not apply if the bond would not be a private activity bond if the section 501(c)(3) organization were not an exempt person.

''(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—

''(A) a residential rental property for family units if the first use of such property is pursuant to such issue,

''(B) qualified residential rental projects (as defined in section 142(d)), or

''(C) property which is to be substantially rehabilitated in a rehabilitation beginning within the 2-year period ending 1 year after the date of the acquisition of such property.

''(3) SUBSTANTIAL REHABILITATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), rules similar to the rules of section 47(c)(1)(C) shall apply in determining for purposes of paragraph (2)(C) whether property is substantially rehabilitated.

''(B) EXCEPTION.—For purposes of subparagraph (A), clause (ii) of section 47(c)(1)(C) shall not apply, but the Secretary may extend the 24-month period in section 47(c)(1)(C)(i) where appropriate due to circumstances not within the control of the owner.

''(4) CERTAIN PROPERTY TREATED AS NEW PROPERTY.—Solely for purposes of determining under paragraph (2)(A) whether the 1st use of property is pursuant to tax-exempt financing—

''(A) IN GENERAL.—If—

''(i) the 1st use of property is pursuant to taxable financing,

''(ii) there was a reasonable expectation (at the time such taxable financing was provided) that such financing would be replaced by tax-exempt financing, and

''(iii) the taxable financing is in fact so replaced within a reasonable period after the taxable financing was provided,

then the 1st use of such property shall be treated as being pursuant to the tax-exempt financing.

''(B) SPECIAL RULE WHERE NO OPERATING STATE OR LOCAL PROGRAM FOR TAX-EXEMPT FINANCING.—If, at the time of the 1st use of property, there was no operating State or local program for tax-exempt financing of the property, the 1st use of the property shall be treated as pursuant to the 1st tax-exempt financing of the property.

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) TAX-EXEMPT FINANCING.—The term 'tax-exempt financing' means financing provided by tax-exempt bonds.

''(ii) TAXABLE FINANCING.—The term 'taxable financing' means financing which is not tax-exempt financing.''

(7) Section 141(f) of such Code, as redesignated by paragraph (6), is amended—

(A) by adding ''or'' at the end of subparagraph (E),

(B) by striking '', or'' at the end of subparagraph (F), and inserting in lieu thereof a period, and

(C) by striking subparagraph (G).

(8) The last sentence of section 144(b)(1) of such Code is amended by striking ''(determined'' and all that follows to the period.

(9) Clause (ii) of section 144(c)(2)(C) of such Code is amended by striking ''a governmental unit'' and inserting ''an exempt person''.

(10) Section 146(g) of such Code is amended—

(A) by striking paragraph (2), and

(B) by redesignating the remaining paragraphs after paragraph (1) as paragraphs (2) and (3), respectively.

(11) The heading of section 146(k)(3) of such Code is amended by striking ''GOVERNMENTAL'' and inserting ''EXEMPT PERSON''.

(12) The heading of section 146(m) of such Code is amended by striking ''GOVERNMENT'' and inserting ''EXEMPT PERSON''.

(13) Subsection (h) of section 147 of such Code is amended to read as follows:

''(h) CERTAIN RULES NOT TO APPLY TO 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.''

(14) Section 147 of such Code is amended by striking paragraph (4) of subsection (b) and redesignating paragraph (5) of such subsection as paragraph (4).

(15) Subparagraph (F) of section 148(d)(3) of such Code is amended—

(A) by striking ''or which is a qualified 501(c)(3) bond'', and

(B) by striking ''GOVERNMENTAL USE BONDS AND QUALIFIED 501(C)(3)'' in the heading thereof and inserting ''EXEMPT PERSON''.

(16) Subclause (II) of section 148(f)(4)(B)(ii) of such Code is amended by striking ''(other than a qualified 501(c)(3) bond)''.

(17) Clause (iv) of section 148(f)(4)(C) of such Code is amended—

(A) by striking ''a governmental unit or a 501(c)(3) organization'' each place it appears and inserting ''an exempt person'',

(B) by striking ''qualified 501(c)(3) bonds,'', and

(C) by striking the comma after ''private activity bonds'' the first place it appears.

(18) Subparagraph (A) of section 148(f)(7) of such Code is amended by striking ''(other than a qualified 501(c)(3) bond)''.

(19) Paragraph (2) of section 149(d) of such Code is amended—

(A) by striking ''(other than a qualified 501(c)(3) bond)'', and

(B) by striking ''CERTAIN PRIVATE'' in the heading thereof and inserting ''PRIVATE''.

(20) Section 149(e)(2) of such Code is amended—

(A) by striking ''which is not a private activity bond'' in the second sentence and inserting ''which is a bond issued for an exempt person described in section 150(a)(2)(A)(i)'', and

(B) by adding at the end the following new sentence: ''Subparagraph (D) shall not apply to any bond which is not a private activity bond but which would be such a bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person.''

(21) The heading of subsection (b) of section 150 of such Code is amended by striking ''TAX-EXEMPT PRIVATE ACTIVITY BONDS'' and inserting ''CERTAIN TAX-EXEMPT BONDS''.

(22) Paragraph (3) of section 150(b) of such Code is amended—

(A) by inserting ''owned by a 501(c)(3) organization'' after ''any facility'' in subparagraph (A),

(B) by striking ''any private activity bond which, when issued, purported to be a tax-exempt qualified 501(c)(3) bond'' in subparagraph (A) and inserting ''any bond which, when issued, purported to be a tax-exempt bond, and which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person'', and

(C) by striking the heading thereof and inserting ''BONDS FOR EXEMPT PERSONS OTHER THAN GOVERNMENTAL UNITS.—''.

(23) Paragraph (5) of section 150(b) of such Code is amended—

(A) by striking ''private activity'' in subparagraph (A),

(B) by inserting ''and which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person'' after ''tax-exempt bond'' in subparagraph (A),

(C) by striking subparagraph (B) and inserting the following new subparagraph:

''(B) such facility is required to be owned by an exempt person, and'', and

(D) by striking ''GOVERNMENTAL UNITS OR 501(C)(3) ORGANIZATIONS'' in the heading thereof and inserting ''EXEMPT PERSONS''.

(24) Section 150 of such Code is amended by adding at the end the following new subsection:

''(f) CERTAIN RULES TO APPLY TO BONDS FOR EXEMPT PERSONS OTHER THAN GOVERNMENTAL UNITS.—

''(1) IN GENERAL.—Nothing in section 103(a) or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person unless such bond satisfies the requirements of subsections (b) and (f) of section 147.

''(2) SPECIAL RULE FOR POOLED FINANCING OF 501(C)(3) ORGANIZATION.—

''(A) IN GENERAL.—At the election of the issuer, a bond described in paragraph (1) shall be treated as meeting the requirements of section 147(b) if such bond meets the requirements of subparagraph (B).

''(B) REQUIREMENTS.—A 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 section 147(b) (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).''

(25) Section 1302 of the Tax Reform Act of 1986 is repealed.

(26) Subparagraph (C) of section 57(a)(5) of such Code is amended by striking clause (ii) and redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(27) Paragraph (3) of section 103(b) of such Code is amended by inserting ''and section 150(f)'' after ''section 149''.

(28) Paragraph (3) of section 265(b) of such Code is amended—

(A) by striking clause (ii) of subparagraph (B) and inserting the following:

''(ii) CERTAIN BONDS NOT TREATED AS PRIVATE ACTIVITY BONDS.—For purposes of clause (i)(II), there shall not be treated as a private activity bond any obligation issued to refund (or which is part of a series of obligations issued to refund) an obligation issued before August 8, 1986, which was not 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) or a private loan bond (as defined in section 103(o)(2)(A), as so in effect, but without regard to any exemption from such definition other than section 103(o)(2)(A)).''; and

(B) by striking ''(other than a qualified 501(c)(3) bond, as defined in section 145)'' in subparagraph (C)(ii)(I).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to bonds (including refunding bonds) issued and capital expenditures made on or after the date of the enactment of this Act.

(2) EXCEPTION.—The amendments made by this section shall not apply to bonds issued before January 1, 1997, for purposes of applying section 148(f)(4)(D) of the Internal Revenue Code of 1986.

SECTION 501(c)(3) NONPROFIT ORGANIZATION TAX-EXEMPT BOND REFORM ACT OF 1996

PRESENT LAW

Interest on State and local governmental bonds generally is excluded from income if the bonds are issued to finance direct activities of these governments (sec. 103). Interest on bonds issued by these governments to finance activities of other persons, e.g., private activity bonds, is taxable unless a specific exception is included in the Code. One such exception is for private activity bonds issued to finance activities of private, charitable organizations described in Code section 501(c)(3) (''section 501(c)(3) organizations'') when the activities do not constitute an unrelated trade or business (sec. 141(e)(1)(G)).

Classification of section 501(c)(3) organization bonds as private activity bonds

Before enactment of the Tax Reform Act of 1986, States and local governments and section 501(c)(3) organizations were defined as ''exempt persons,'' under the Code bond provisions. As exempt persons, section 501(c)(3) organizations were not treated as ''private'' persons, and their bonds were not ''industrial development bonds'' or ''private loan bonds'' (the predecessor categories to current private activity bonds). Under present law, a bond is a private activity bond if its proceeds are used in a manner violating either (a) a private business test or (b) a private loan test. The private business test is a conjunctive two-pronged test. First, the test limits private business use of governmental bonds to no more than 10 percent of the proceeds.[1] Second, no more than 10 percent of the debt service on the bonds may be secured by or derived from private business users of the proceeds. The private loan test limits to the lesser of 5 percent or $5 million the amount of governmental bond proceeds that may be used to finance loans to persons other than governmental units.

Special restrictions on tax-exemption for section 501(c)(3) organization bonds

Present law treats section 501(c)(3) organizations as private persons; thus, bonds for their use may only be issued as private activity ''qualified 501(c)(3) bonds,'' subject to the restrictions of Code section 145. The most significant of these restrictions limits the amount of outstanding bonds from which a section 501(c)(3) organization may benefit to $150 million. In applying this ''$150 million limit,'' all section 501(c)(3) organizations under common management or control are treated as a single organization. The limit does not apply to bonds for hospital facilities, defined to include only acute care, primarily inpatient, organizations. A second restriction limits to no more than five percent the amount of the net proceeds of a bond issue that may be used to finance any activities (including all costs of issuing the bonds) other than the exempt purposes of the section 501(c)(3) organization.

Legislation enacted in 1988 imposed low-income tenant occupancy restrictions on existing residential rental property that is acquired by section 501(c)(3) organizations in tax-exempt-bond-financed transactions. These restrictions require that a minimum number of the housing units comprising the property be continuously occupied by tenants having family incomes of 50 percent (60 percent in certain cases) of area median income for periods of up to 15 years. These same low-income tenant occupancy requirements apply to for-profit developers receiving tax-exempt private activity bond financing.

Other restrictions

Several restrictions are imposed on private activity bonds generally that do not apply to bonds used to finance State and local government activities. Many of these restrictions also apply to qualified 501(c)(3) bonds. No more than two percent of the proceeds of a bond issue may be used to finance the costs of issuing the bonds, and these monies are not counted in determining whether the bonds satisfy the requirement that at least 95 percent of the net proceeds of each bond issue be used for the exempt activities qualifying the bonds for tax-exemption.

The weighted average maturity of a bond issue may not exceed 120 percent of the average economic life of the property financed with the proceeds. A public hearing must be held and an elected public official must approve the bonds before they are issued (or the bonds must be approved by voter referendum).

If property financed with private activity bonds is converted to a use not qualifying for tax-exempt financing, certain loan interest penalties are imposed.

Both governmental and private activity bonds are subject to numerous other Code restrictions, including the following:

1. The amount of arbitrage profits that may be earned on tax-exempt bonds is strictly limited, and most such profits must be rebated to the Federal Government;

2. Banks may not deduct interest they pay to the extent of their investments in most tax-exempt bonds; and

3. Interest on private activity bonds, other than qualified 501(c)(3) bonds, is a preference item in calculating the alternative minimum tax.

REASONS FOR CHANGE

A distinguishing feature of American society is the singular degree to which the United States maintains a private, non-profit sector of private higher education, health care, and other charitable institutions in the public service. It is important to assist these private institutions in their advancement of the public good. The restrictions of present law place these section 501(c)(3) organizations at a financial disadvantage relative to substantially identical governmental institutions, and are particularly inappropriate. For example, private, non-profit research universities are subject to the $150 million limitation on outstanding bonds, whereas State-sponsored universities competing for the same research projects do not operate under a comparable restriction. A public hospital generally has unlimited access to tax-exempt bond financing, while a private, non-profit hospital is subject to a $150 million limitation on outstanding bonds to the extent the bonds finance health care facilities that do not qualify under the present-law definition of hospital. These and other restrictions inhibit the ability of America's private, non-profit institutions to modernize their health care facilities and to build state-of-the-art research facilities for the advancement of science, medicine, and other educational endeavors.

Inhibiting the access of private, non-profit research institutions to sources of capital financing, in relation to their public counterparts, distorts the distribution of major research among the leading institutions, and over time will lead to the decline of research undertakings by private, non-profit universities. The tax-exempt bond rules should reduce these distortions by treating more equally State and local governments and those private organizations which are engaged in similar actions advancing the public good.

EXPLANATION OF PROVISION

The bill amends the tax-exempt bond provisions of the Code to conform generally the treatment of bonds for section 501(c)(3) organizations to that provided for bonds issued to finance direct State or local government activities, including construction of public hospitals and university facilities. Certain restrictions, described below, that have been imposed on qualified 501(c)(3) bonds (but not on governmental bonds) since 1986, and that address specialized policy concerns, are retained.

Repeal of private activity bond classification for bonds for section 501(c)(3) organizations

The concept of an ''exempt person'' that existed under the Code bond provisions before 1986, is reenacted. An exempt person is defined as (a) a State or local governmental unit or (b) a section 501(c)(3) organization, when carrying out its exempt activities under Code section 501(a). Thus, bonds for section 501(c)(3) organizations are generally no longer classified as private activity bonds. Financing for unrelated business activities of such organizations continue to be treated as a private activity for which tax-exempt financing is not authorized.

As exempt persons, section 501(c)(3) organizations are subject to the same limits as States and local governments on using their bond proceeds to finance private business activities or to make private loans. Thus, generally no more than 10 percent of the bond proceeds[2] can be used in a business use of a person other than an exempt person if the Code private payment test is satisfied, and no more than 5 percent ($5 million if less) can be used to make loans to such ''non-exempt'' persons.

Repeal of most additional special restrictions on section 501(c)(3) organization bonds

Present Code section 145, which establishes additional restrictions on qualified 501(c)(3) bonds, is repealed, along with the restriction on bond-financed costs of issuance for section 501(c)(3) organization bonds (sec. 147(h)). This eliminates the $150 million limit on non-hospital bonds for section 501(c)(3) organizations.

Retention of certain specialized requirements for section 501(c)(3) organization bonds

The bill retains certain specialized restrictions on bonds for section 501(c)(3) organizations. First, the bill retains the requirement that existing residential rental property acquired by a section 501(c)(3) organization in a tax-exempt-bond-financed transaction satisfy the same low-income tenant requirements as similar housing financing for for-profit

[1] No more than 5 percent of bond proceeds may be used in a private business use that is unrelated to the governmental purpose of the bond issue. The 10-percent debt service test, described below, likewise is reduced to 5 percent in the case of such ''disproportionate'' private business use.

[2] This limit would be reduced to 5 percent in the case of disproportionate private use as under the present-law governmental bond disproportionate private use limit.

developers. Second, the bill retains the present-law maturity limitations applicable to bonds for section 501(c)(3) organizations, and the public approval requirements applicable generally to private activity bonds. Third, the bill continues to apply the penalties on changes in use of tax-exempt-bond-financed section 501(c)(3) organization property to a use not qualified for such financing.

Finally, the bill makes no amendments, other than technical conforming amendments, to the tax-exempt arbitrage restrictions, the alternative minimum tax tax-exempt bond preference, or the provisions generally disallowing interest paid by banks on monies used to acquire or carry tax-exempt bonds.

EFFECTIVE DATE

The provision is generally effective with respect to bonds issued and to capital expenditures made after the date of enactment. The provision does not apply to bonds issued prior to January 1, 1997 for the purposes of applying the rebate requirements under Section 148(f)(4)(D).

S. 1880

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Stop Tax-Exempt Arena Debt Issuance Act''.

SEC. 2. TREATMENT OF TAX-EXEMPT FINANCING OF PROFESSIONAL SPORTS FACILITIES.

(a) IN GENERAL.—Section 141 of the Internal Revenue Code of 1986 (defining private activity bond and qualified bond) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

''(e) CERTAIN ISSUES USED FOR PROFESSIONAL SPORTS FACILITIES TREATED AS PRIVATE ACTIVITY BONDS.—

''(1) IN GENERAL.—For purposes of this title, the term 'private activity bond' includes any bond issued as part of an issue if the amount of the proceeds of the issue which are to be used (directly or indirectly) to provide professional sports facilities exceeds the lesser of—

''(A) 5 percent of such proceeds, or

''(B) $5,000,000.

''(2) BOND NOT TREATED AS A QUALIFIED BOND.—For purposes of this title, any bond described in paragraph (1) shall not be a qualified bond.

''(3) PROFESSIONAL SPORTS FACILITIES.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'professional sports facilities' means real property or related improvements used for professional sports exhibitions, games, or training, regardless if the admission of the public or press is allowed or paid.

''(B) USE FOR PROFESSIONAL SPORTS.—Any use of facilities which generates a direct or indirect monetary benefit (other than reimbursement for out-of-pocket expenses) for a person who uses such facilities for professional sports exhibitions, games, or training shall be treated as a use described in subparagraph (A).

''(4) ANTI-ABUSE REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including such regulations as may be appropriate to prevent avoidance of such purposes through related persons, use of related facilities or multiuse complexes, or otherwise.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued on or after June 14, 1996.

THE STOP TAX-EXEMPT ARENA DEBT ISSUANCE ACT

PRESENT LAW

Interest on State and local governmental bonds generally is excluded from income if the bonds are issued to finance direct activities of these governments (sec. 103). Interest on bonds issued by these governments to finance activities of other persons, e.g., private activity bonds, is taxable unless the bonds satisfy certain requirements. Private activity bonds must be within certain statewide volume limitations, must not violate the arbitrage and other applicable restrictions, and must finance activities within one of the categories specified in the Code. The Tax Reform Act of 1986 repealed the private activity bond category for sports facilities; therefore no private activity bonds may be issued for this purpose.

Bonds issued by State and local governments are considered to be government use bonds, unless the bonds are classified as private activity bonds. Bonds are deemed to be private activity bonds if both the (i) private business use test and (ii) private security or payment test are met. The private business use test is met if more than 10 percent of the bond proceeds, including facilities financed with the bond proceeds, is used in a non-governmental trade or business. The private security or payment test is met if more than 10 percent of the bond repayments is secured by privately used property, or is derived from the payments of private business users. Additionally, bonds are deemed to be private activity bonds if more than 5 percent of the bond proceeds or $5 million are used to finance loans to persons other than governmental units.

REASONS FOR CHANGE

The use of tax-exempt financing for professional sports facilities provides an indirect and inefficient federal tax subsidy. Congress intended to eliminate this subsidy for professional sports facilities in the Tax Reform Act of 1986, by repealing the private activity bond category for sports facilities. The use of government bonds to finance the identical underlying private business use is an unintended and improper use of a federal subsidy, and an abuse of the government bond rules. In addition, the use of tax-exempt bonds to finance professional sports facilities is particularly inappropriate where the facilities to be built are used to entice professional sports franchises to relocate.

EXPLANATION OF PROVISION

The bill would provide that bonds issued to finance professional sports facilities are private activity bonds, and that such bonds are not qualified bonds. Therefore, professional sports facilities will not qualify for tax-exempt bond financing.

A professional sports facility is defined to include real property and related improvements which are used for professional sports exhibitions, games, or training, whether or not admission of the public or press is allowed or paid. In addition, a facility that is used for purpose other than professional sports will nevertheless be treated as being used for professional sports if the facility generates a direct or indirect monetary benefit (other than reimbursement for out-of-pocket expenses) for a person who uses the facility for professional sports. These benefits are intended to include an interest in revenues from parking fees, food and beverage sales, advertising and sports facility naming rights, television rights, ticket sales, private suites and club seats, and concessions.

The Secretary of the Treasury is authorized to issue anti-abuse regulations to prevent transactions intended to improperly divert the indirect Federal subsidy for traditional governmental uses inherent in tax-exempt bonds for the benefit of professional sports facilities or professional sports teams. It is intended that no tax-exempt bond proceeds may finance a ball park used for professional sports exhibitions, even if the ball park is made a part of a larger multi-use complex used 365 days a year for other purposes. In addition, it is intended that reciprocal usage of sports facilities by professional sports franchises that divide their usage among several facilities in order to avoid the 5 percent use test be aggregated for purposes of this provision.

No inference is intended regarding the rules under present law regarding the issuance or holding of, or interest paid or accrued on, any bonds issued prior to the effective date of this bill to finance sports facilities.

EFFECTIVE DATE

The provision is effective with respect to bonds issued on or after June 14, 1996.

ADDITIONAL COSPONSORS

S. 1460

At the request of Mrs. BOXER, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 1460, a bill to amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes.

S. 1627

At the request of Mr. JOHNSTON, the names of the Senator from Louisiana [Mr. BREAUX], and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of S. 1627, a bill to designate the visitor center at Jean Lafitte National Historical Park in New Orleans, Louisiana as the ''Laura C. Hudson Visitor Center.''

S. 1632

At the request of Mr. LAUTENBERG, the names of the Senator from Hawaii [Mr. AKAKA], and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of S. 1632, a bill to prohibit persons convicted of a crime involving domestic violence from owning or possessing firearms, and for other purposes.

S. 1714

At the request of Mr. BURNS, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 1714, a bill to amend title 49, United States Code, to ensure the ability of utility providers to establish, improve, operate and maintain utility structures, facilities, and equipment for the benefit, safety, and well-being of consumers, by removing limitations on maximum driving and on-duty time pertaining to utility vehicle operators and drivers, and for other purposes.

S. 1844

At the request of Mr. MURKOWSKI, the name of the Senator from Colorado [Mr. CAMPBELL] was added as a cosponsor of S. 1844, a bill to amend the Land and Water Conservation Fund Act to direct a study of the opportunities for enhanced water based recreation and for other purposes.