

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)."

Statutory Notes and Related Subsidiaries

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—

(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) 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.

(4) Substantial rehabilitation**(A) In general**

Except as provided in subparagraph (B), rules similar to the rules of section 47(c)(1)(B) 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)(B) shall not apply, but the Secretary may extend the 24-month period in section 47(c)(1)(B)(i) where appropriate due to circumstances not within the control of the owner.

(e) Election out

This section shall not apply to an issue if—

- (1) the issuer elects not to have this section apply to such issue, and

(2) such issue is an issue of exempt facility bonds, or qualified redevelopment bonds, to which section 146 applies.

(Added Pub. L. 99-514, title XIII, § 1301(b), Oct. 22, 1986, 100 Stat. 2629; amended Pub. L. 100-647, title I, § 1013(a)(6)–(8), title V, § 5053(a), Nov. 10, 1988, 102 Stat. 3538, 3677; Pub. L. 101-239, title VII, § 7815(f), Dec. 19, 1989, 103 Stat. 2419; Pub. L. 101-508, title XI, § 11813(b)(7), Nov. 5, 1990, 104 Stat. 1388-551; Pub. L. 105-34, title II, § 222, Aug. 5, 1997, 111 Stat. 818; Pub. L. 115-97, title I, § 13402(b)(2), Dec. 22, 2017, 131 Stat. 2134.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (b)(2)(B)(ii)(I), is the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

The date of the enactment of this paragraph, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 105-34, which was approved Aug. 5, 1997.

PRIOR PROVISIONS

A prior section 145, act Aug. 16, 1954, ch. 736, 68A Stat. 42, made a cross reference to section 36 of this title, 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

2017—Subsec. (d)(4). Pub. L. 115-97 substituted “of section 47(c)(1)(B)” for “of section 47(c)(1)(C)” in subpars. (A) and (B) and “section 47(c)(1)(B)(i)” for “section 47(c)(1)(C)(i)” in subpar. (B).

1997—Subsec. (b)(5). Pub. L. 105-34 added par. (5).

1990—Subsec. (d)(4). Pub. L. 101-508 substituted “section 47(c)(1)(C)” for “section 48(g)(1)(C)” wherever appearing and “section 47(c)(1)(C)(i)” for “section 48(g)(1)(C)(i)”.

1989—Subsec. (d)(3), (4). Pub. L. 101-239 added par. (3) and redesignated former par. (3) as (4).

1988—Subsec. (b)(2)(B)(ii)(I). Pub. L. 100-647, § 1013(a)(6), substituted “section 103(b)(2)” for “section 103(b)”.

Subsec. (b)(2)(C)(i). Pub. L. 100-647, § 1013(a)(7), substituted “subparagraph (B)” for “subparagraph (B)(ii)”.

Subsec. (b)(4). Pub. L. 100-647, § 1013(a)(8), substituted “subparagraphs (C), (D), and (E)” for “subparagraphs (C) and (D)”.

Subsecs. (d), (e). Pub. L. 100-647, § 5053(a), added subsec. (d) and redesignated former subsec. (d) as (e).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to amounts paid or incurred after Dec. 31, 2017, see section 13402(c) of Pub. L. 115-97, set out as a note under section 47 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of

the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(6)–(8) 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 V, § 5053(c), Nov. 10, 1988, 102 Stat. 3678, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 148 of this title] shall apply to obligations issued after October 21, 1988.

“(2) EXCEPTION FOR CONSTRUCTION OR BINDING AGREEMENT.—

“(A) The amendments made by this section shall not apply to bonds (other than refunding bonds) with respect to a facility—

“(i)(I) the original use of which begins with the taxpayer, and the construction, reconstruction, or rehabilitation of which began before July 14, 1988, and was completed on or after such date, or

“(II) the original use of which begins with the taxpayer and with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before July 14, 1988, and some of such expenditures are incurred on or after such date, and

“(ii) described in an inducement resolution or other comparable preliminary approval adopted by an issuing authority (or by a voter referendum) before July 14, 1988.

For purposes of the preceding sentence, the term ‘significant expenditures’ means expenditures greater than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of the facility involved.

“(B) Subparagraph (A) shall not apply to any bond issued after December 31, 1989, and shall not apply unless it is reasonably expected (at the time of issuance of the bond) that the facility will be placed in service before January 1, 1990.

“(3) REFUNDINGS.—The amendments made by this section shall not apply to any bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued before July 15, 1988, 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,

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

“(C) the 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 subparagraph (A), average maturity shall be determined in accordance with section 147(b) of the 1986 Code.”

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

§ 146. Volume cap

(a) General rule

A private activity bond issued as part of an issue meets the requirements of this section if