

IRC Sec. 147

Current through PL 114-143, approved 4/11/16

IRC > INTERNAL REVENUE CODE > SUBTITLE A. INCOME TAXES > CHAPTER 1. NORMAL TAXES AND SURTAXES > SUBCHAPTER B. COMPUTATION OF TAXABLE INCOME > PART IV. TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS > SUBPART A. PRIVATE ACTIVITY BONDS

§ 147. Other requirements applicable to certain private activity bonds.

(a) Substantial user requirement.

(1)In general. Except as provided in subsection (h), a private activity bond shall not be a qualified bond for any period during which it is held by a person who is a substantial user of the facilities or by a related person of such a substantial user.

(2)Related person. For purposes of paragraph (1), the following shall be treated as related persons--

(A)2 or more persons if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b) [[IRC Sec. 267](#) or [707\(b\)](#)],

(B)2 or more persons which are members of the same controlled group of corporations (as defined in section 1563(a) [[IRC Sec. 1563\(a\)](#)], except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein),

(C)a partnership and each of its partners (and their spouses and minor children), and

(D)an S corporation and each of its shareholders (and their spouses and minor children).

(b) Maturity may not exceed 120 percent of economic life.

(1)General rule. Except as provided in subsection (h), a private activity bond shall not be a qualified bond if it is issued as part of an issue and--

(A)the average maturity of the bonds issued as part of such issue, exceeds

(B)120 percent of the average reasonably expected economic life of the facilities being financed with the net proceeds of such issue.

(2)Determination of averages. For purposes of paragraph (1)--

(A)the average maturity of any issue shall be determined by taking into account the respective issue prices of the bonds issued as part of such issue, and

(B)the average reasonably expected economic life of the facilities being financed with any issue shall be determined by taking into account the respective cost of such facilities.

(3)Special rules.

(A)Determination of economic life. For purposes of this subsection, the reasonably expected economic life of any facility shall be determined as of the later of--

(i)the date on which the bonds are issued, or

(ii)the date on which the facility is placed in service (or expected to be placed in service).

(B)Treatment of land.

(i)Land not taken into account. Except as provided in clause (ii), land shall not be taken into account under paragraph (1)(B).

IRC Sec. 147

(ii) Issues where 25 percent or more of proceeds used to finance land. If 25 percent or more of the net proceeds of any issue is to be used to finance land, such land shall be taken into account under paragraph (1)(B) and shall be treated as having an economic life of 30 years.

(4) Special rule for pooled financing of 501(c)(3) organization.

(A) In general. At the election of the issuer, a qualified 501(c)(3) bond shall be treated as meeting the requirements of paragraph (1) if such bond meets the requirements of subparagraph (B).

(B) Requirements. A qualified 501(c)(3) 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 paragraph (1) (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).

(5) Special rule for certain FHA insured loans. Paragraph (1) shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to finance mortgage loans insured under FHA 242 or under a similar Federal Housing Administration program (as in effect on the date of the enactment of the Tax Reform Act of 1986 [enacted Oct. 22, 1986]) where the loan term approved by such Administration plus the maximum maturity of debentures which could be issued by such Administration in satisfaction of its obligations exceeds the term permitted under paragraph (1).

(c) Limitation on use for land acquisition.

(1) In general. Except as provided in subsection (h), a private activity bond shall not be a qualified bond if--

(A) it is issued as part of an issue and 25 percent or more of the net proceeds of such issue are to be used (directly or indirectly) for the acquisition of land (or an interest therein), or

(B) any portion of the proceeds of such issue is to be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes.

(2) Exception for first-time farmers.

(A) In general [**Caution: For calendar years beginning in 2016, see § 3.21 of [Rev. Proc. 2015-53 \(26 USCS § 1\)](#) note**] for provision that the loan limit amount under this subparagraph for first time farmers is \$ 520,000.]. If the requirements of subparagraph (B) are met with respect to any land, paragraph (1) shall not apply to such land, and subsection (d) shall not apply to property to be used thereon for farming purposes, but only to the extent of expenditures (financed with the proceeds of the issue) not in excess of \$ 450,000.

(B) Acquisition by first-time farmers. The requirements of this subparagraph are met with respect to any land if--

IRC Sec. 147

(i) such land is to be used for farming purposes, and

(ii) such land is to be acquired by an individual who is a first-time farmer, who will be the principal user of such land, and who will materially and substantially participate on the farm of which such land is a part in the operation of such farm.

(C) First-time farmer. For purposes of this paragraph--

(i) In general. The term "first-time farmer" means any individual if such individual--

(I) has not at any time had any direct or indirect ownership interest in substantial farmland in the operation of which such individual materially participated, and

(II) has not received financing under this paragraph in an amount which, when added to the financing to be provided under this paragraph, exceeds the amount in effect under subparagraph (A).

(ii) Aggregation rules. Any ownership or material participation, or financing received, by an individual's spouse or minor child shall be treated as ownership and material participation, or financing received, by the individual.

(iii) Insolvent farmer. For purposes of clause (i), farmland which was previously owned by the individual and was disposed of while such individual was insolvent shall be disregarded if section 108 [[IRC Sec. 108](#)] applied to indebtedness with respect to such farmland.

(D) Farm. For purposes of this paragraph, the term "farm" has the meaning given such term by section 6420(c)(2) [[IRC Sec. 6420\(c\)\(2\)](#)].

(E) Substantial farmland. For purposes of this paragraph, the term "substantial farmland" means any parcel of land unless such parcel is smaller than 30 percent of the median size of a farm in the county in which such parcel is located.

(F) Used equipment limitation. For purposes of this paragraph, in no event may the amount of financing provided by reason of this paragraph to a first-time farmer for personal property--

(i) of a character subject to the allowance for depreciation,

(ii) the original use of which does not begin with such farmer, and

(iii) which is to be used for farming purposes, exceed \$ 62,500. A rule similar to the rule of subparagraph (C)(ii) shall apply for purposes of the preceding sentence.

(G) Acquisition from related person. For purposes of this paragraph and section 144(a) [[IRC Sec. 144\(a\)](#)], the acquisition by a first-time farmer of land or personal property from a related person (within the meaning of section 144(a)(3) [[IRC Sec. 144\(a\)\(3\)](#)]) shall not be treated as an acquisition from a related person, if--

(i) the acquisition price is for the fair market value of such land or property, and

(ii) subsequent to such acquisition, the related person does not have a financial interest in the farming operation with respect to which the bond proceeds are to be used.

(H) Adjustments for inflation. In the case of any calendar year after 2008, the dollar amount in subparagraph (A) shall be increased by an amount equal to--

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) [[IRC Sec. 1\(f\)\(3\)](#)] for the calendar year, determined by substituting "calendar year 2007" for "calendar year 1992" in subparagraph (B) thereof. If any amount as increased under the preceding sentence is not a multiple of \$ 100, such amount shall be rounded to the nearest multiple of \$ 100.

IRC Sec. 147

(3)Exception for certain land acquired for environmental purposes, etc. Any land acquired by a governmental unit (or issuing authority) in connection with an airport, mass commuting facility, high-speed intercity rail facility, dock, or wharf shall not be taken into account under paragraph (1) if--

(A)such land is acquired for noise abatement or wetland preservation, or for future use as an airport, mass commuting facility, high-speed intercity rail facility, dock, or wharf, and

(B)there is not other significant use of such land.

(d) Acquisition of existing property not permitted.

(1)In general. Except as provided in subsection (h), a private activity bond shall not be a qualified bond if issued as part of an issue and any portion of the net proceeds of such issue is to be used for the acquisition of any property (or an interest therein) unless the 1st use of such property is pursuant to such acquisition.

(2)Exception for certain rehabilitations. Paragraph (1) shall not apply with respect to any building (and the equipment therefor) if--

(A)the rehabilitation expenditures with respect to such building, equal or exceed

(B)15 percent of the portion of the cost of acquiring such building (and equipment) financed with the net proceeds of the issue. A rule similar to the rule of the preceding sentence shall apply in the case of structures other than a building except that subparagraph (B) shall be applied by substituting "100 percent" for "15 percent".

(3)Rehabilitation expenditures. For purposes of this subsection--

(A)In general. Except as provided in this paragraph, the term "rehabilitation expenditures" means any amount properly chargeable to capital account which is incurred by the person acquiring the building for property (or additions or improvements to property) in connection with the rehabilitation of a building. In the case of an integrated operation contained in a building before its acquisition, such term includes rehabilitating existing equipment in such building or replacing it with equipment having substantially the same function. For purposes of this subparagraph, any amount incurred by a successor to the person acquiring the building or by the seller under a sales contract with such person shall be treated as incurred by such person.

(B)Certain expenditures not included. The term "rehabilitation expenditures" does not include any expenditure described in section 47(c)(2)(B) [[IRC Sec. 47\(c\)\(2\)\(B\)](#)].

(C)Period during which expenditures must be incurred. The term "rehabilitation expenditures" shall not include any amount which is incurred after the date 2 years after the later of--

(i)the date on which the building was acquired, or

(ii)the date on which the bond was issued.

(4)Special rule for certain projects. In the case of a project involving 2 or more buildings, this subsection shall be applied on a project basis.

(e) No portion of bonds may be issued for skyboxes, airplanes, gambling establishments, etc. A private activity bond shall not be a qualified bond if issued as part of an issue and any portion of the proceeds of such issue is to be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises. The preceding sentence shall not apply to any fixed-wing aircraft equipped for, and exclusively dedicated to providing, acute care emergency medical services (within the meaning of section 4261(g)(2) [[IRC Sec. 4261\(g\)\(2\)](#)]).

(f) Public approval required for private activity bonds.

(1)In general. A private activity bond shall not be a qualified bond unless such bond satisfies the requirements of paragraph (2).

(2) Public approval requirement.

(A) In general. A bond shall satisfy the requirements of this paragraph if such bond is issued as a part of an issue which has been approved by--

(i) the governmental unit--

(I) which issued such bond, or

(II) on behalf of which such bond was issued, and

(ii) each governmental unit having jurisdiction over the area in which any facility, with respect to which financing is to be provided from the net proceeds of such issue, is located (except that if more than 1 governmental unit within a State has jurisdiction over the entire area within such State in which such facility is located, only 1 such unit need approve such issue).

(B) Approval by a governmental unit. For purposes of subparagraph (A), an issue shall be treated as having been approved by any governmental unit if such issue is approved--

(i) by the applicable elected representative of such governmental unit after a public hearing following reasonable public notice, or

(ii) by voter referendum of such governmental unit.

(C) Special rules for approval of facility. If there has been public approval under subparagraph (A) of the plan for financing a facility, such approval shall constitute approval under subparagraph (A) for any issue--

(i) which is issued pursuant to such plan within 3 years after the date of the 1st issue pursuant to the approval, and

(ii) all or substantially all of the proceeds of which are to be used to finance such facility or to refund previous financing under such plan.

(D) Refunding bonds. No approval under subparagraph (A) shall be necessary with respect to any bond which is issued to refund (other than to advance refund) a bond approved under subparagraph (A) (or treated as approved under subparagraph (C)) unless the average maturity date of the issue of which the refunding bond is a part is later than the average maturity date of the bonds to be refunded by such issue. For purposes of the preceding sentence, average maturity shall be determined in accordance with subsection (b)(2)(A).

(E) Applicable elected representative. For purposes of this paragraph--

(i) In general. The term "applicable elected representative" means with respect to any governmental unit--

(I) an elected legislative body of such unit, or

(II) the chief elected executive officer, the chief elected State legal officer of the executive branch, or any other elected official of such unit designated for purposes of this paragraph by such chief elected executive officer or by State law. If the office of any elected official described in subclause (II) is vacated and an individual is appointed by the chief elected executive officer of the governmental unit and confirmed by the elected legislative body of such unit (if any) to serve the remaining term of the elected official, the individual so appointed shall be treated as the elected official for such remaining term.

(ii) No applicable elected representative. If (but for this clause) a governmental unit has no applicable elected representative, the applicable elected representative for purposes of clause (i) shall be the applicable elected representative of the governmental unit--

(I) which is the next higher governmental unit with such a representative, and

(II) from which the authority of the governmental unit with no such representative is derived.

(3) Special rule for approval of airports or high-speed intercity rail facilities. If--

(A) the proceeds of an issue are to be used to finance a facility or facilities located at an airport or high-speed intercity rail facilities, and

(B) the governmental unit issuing such bonds is the owner or operator of such airport or high-speed intercity rail facilities, such governmental unit shall be deemed to be the only governmental unit having jurisdiction over such airport high-speed intercity rail facilities for purposes of this subsection.

(4) Special rules for scholarship funding bond issues and volunteer fire department bond issues.

(A) Scholarship funding bonds. In the case of a qualified scholarship funding bond, any governmental unit which made a request described in section 150(d)(2)(B) [[IRC Sec. 150\(d\)\(2\)\(B\)](#)] with respect to the issuer of such bond shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued. Where more than one governmental unit within a State has made a request described in section 150(d)(2)(B) [[IRC Sec. 150\(d\)\(2\)\(B\)](#)], the State may also be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued.

(B) Volunteer fire department bonds. In the case of a bond of a volunteer fire department which meets the requirements of section 150(e) [[IRC Sec. 150\(e\)](#)], the political subdivision described in section 150(e)(2)(B) [[IRC Sec. 150\(e\)\(2\)\(B\)](#)] with respect to such department shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued.

(g) Restriction on issuance costs financed by issue.

(1) In general. A private activity bond shall not be a qualified bond if the issuance costs financed by the issue (of which such bond is a part) exceed 2 percent of the proceeds of the issue.

(2) Special rule for small mortgage revenue bond issues. In the case of an issue of qualified mortgage bonds or qualified veterans' mortgage bonds, paragraph (1) shall be applied by substituting "3.5 percent" for "2 percent" if the proceeds of the issue do not exceed \$ 20,000,000.

(h) Certain rules not to apply to certain bonds.

(1) 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.

(2) Qualified 501(c)(3) bonds. Subsections (a), (c), and (d) shall not apply to any qualified 501(c)(3) bond and subsection (e) shall be applied as if it did not contain "health club facility" with respect to such a bond.

(3) Exempt facility bonds for qualified public-private schools. Subsection (c) shall not apply to any exempt facility bond issued as part of an issue described in section 142(a)(13) [[IRC Sec. 142\(a\)\(13\)](#)] (relating to qualified public educational facilities).

History

(Added Oct. 22, 1986, [P.L. 99-514](#), Title XIII, § 1301(b), [100 Stat. 2635](#); Nov. 10, 1988, P.L. 100-647, Title I, § 1013(a)(11)-(13)(B), (29), (36), Title VI, § 6180(b)(4), (5), [102 Stat. 3539](#), 3543, 3544, 3728; Dec. 19, 1989, [P.L. 101-239](#), Title VII, § 7816(s)(3), [103 Stat. 2423](#); Nov. 5, 1990, [P.L. 101-508](#), Title XI, § 11813(b)(8), [104 Stat. 1388-552](#); Aug. 20, 1996, [P.L. 104-188](#), Title I, § 1117(a), (b), [110 Stat. 1764](#); June 7, 2001, [P.L. 107-16](#), Title

IRC Sec. 147

IV, § 422(d), (e), [115 Stat. 66](#); May 22, 2008, [P.L. 110-234](#), Title XV, Subtitle C, Part III, § 15341(a)-(d), [122 Stat. 1517](#); June 18, 2008, [P.L. 110-246](#), § 4(a), Title XV, Subtitle C, Part III, § 15341(a)-(d), [122 Stat. 1664](#), 2279; Feb. 14, 2012, [P.L. 112-95](#), Title XI, § 1105(a), [126 Stat. 152](#).)

INTERNAL REVENUE CODE

Copyright © 2016 Matthew Bender & Company, Inc. a member of the LexisNexis Group™ All rights reserved.