

States Code, shall not be applied, directly or indirectly, to the determination of the existence or possible existence of liability (or the amount thereof) of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense to which the provisions of this title apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 922; Pub. L. 94-455, title XII, §1202(g), Oct. 4, 1976, 90 Stat. 1688; Pub. L. 100-647, title I, §1012(aa)(1)(A), Nov. 10, 1988, 102 Stat. 3531.)

REFERENCES IN TEXT

The Internal Revenue Code of 1939, referred to in subsec. (b), is act Feb. 10, 1939, ch. 2, 53 Stat. 1. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. The Internal Revenue Code of 1954 was redesignated The Internal Revenue Code of 1986 by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

Chapters 1 and 2 of the Internal Revenue Code of 1939, referred to in subsec. (c), are chapters 1 and 2 of former Title 26, Internal Revenue Code. For history of such chapters, see References in Text note set out under section 7851 of this title.

The Privacy Act of 1974, referred to in subsec. (e), is Pub. L. 93-579, Dec. 31, 1974, 88 Stat. 1896, as amended, which enacted section 552a of Title 5, Government Organization and Employees, and enacted notes set out under section 552a of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 552a of Title 5 and Tables.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100-647 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “No provision of this title shall apply in any case where its application would be contrary to any treaty obligation of the United States in effect on the date of enactment of this title.”

1976—Subsec. (e). Pub. L. 94-455 added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1012(aa)(1)(B), Nov. 10, 1988, 102 Stat. 3531, provided that: “Section 7852(d)(1) of the 1986 Code, as added by subparagraph (A), shall apply to any taxable period with respect to which the time for assessment of any deficiency has not expired by reason of any law or rule of law before the date of the enactment of this Act [Nov. 10, 1988].”

Amendment by 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.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective Jan. 1, 1977, see section 1202(i) of Pub. L. 94-455, set out as a note under section 6103 of this title.

APPLICATION OF SUBSEC. (d) TO PUB. L. 87-834

Pub. L. 87-834, §31, Oct. 16, 1962, 76 Stat. 1069, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Section 7852(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to treaty obligations) shall not apply in respect of any amendment made by this Act [see Short Title of 1962 Amendments note set out under section 1 of this title].”

**Subchapter C—Provisions Affecting More Than One Subtitle**

Sec. 7871. Indian tribal governments treated as States for certain purposes.

Sec. 7872. Treatment of loans with below-market interest rates.  
7873. Income derived by Indians from exercise of fishing rights.  
7874. Rules relating to expatriated entities and their foreign parents.

AMENDMENTS

2004—Pub. L. 108-357, title VIII, §801(b), Oct. 22, 2004, 118 Stat. 1566, added item 7874.

1988—Pub. L. 100-647, title III, §3041(b), Nov. 10, 1988, 102 Stat. 3641, added item 7873.

1984—Pub. L. 98-369, div. A, title I, §172(b), July 18, 1984, 98 Stat. 703, added item 7872.

**§ 7871. Indian tribal governments treated as States for certain purposes**

**(a) General rule**

An Indian tribal government shall be treated as a State—

(1) for purposes of determining whether and in what amount any contribution or transfer to or for the use of such government (or a political subdivision thereof) is deductible under—

(A) section 170 (relating to income tax deduction for charitable, etc., contributions and gifts),

(B) sections 2055 and 2106(a)(2) (relating to estate tax deduction for transfers of public, charitable, and religious uses), or

(C) section 2522 (relating to gift tax deduction for charitable and similar gifts);

(2) subject to subsection (b), for purposes of any exemption from, credit or refund of, or payment with respect to, an excise tax imposed by—

(A) chapter 31 (relating to tax on special fuels),

(B) chapter 32 (relating to manufacturers excise taxes),

(C) subchapter B of chapter 33 (relating to communications excise tax), or

(D) subchapter D of chapter 36 (relating to tax on use of certain highway vehicles);

(3) for purposes of section 164 (relating to deduction for taxes);

(4) subject to subsection (c), for purposes of section 103 (relating to State and local bonds);

(5) for purposes of section 511(a)(2)(B) (relating to the taxation of colleges and universities which are agencies or instrumentalities of governments or their political subdivisions);

(6) for purposes of—

(A) section 105(e) (relating to accident and health plans),

(B) section 403(b)(1)(A)(ii) (relating to the taxation of contributions of certain employers for employee annuities), and

(C) section 454(b)(2) (relating to discount obligations); and

(7) for purposes of—

(A) chapter 41 (relating to tax on excess expenditures to influence legislation), and

(B) subchapter A of chapter 42 (relating to private foundations).

**(b) Additional requirements for excise tax exemptions**

Paragraph (2) of subsection (a) shall apply with respect to any transaction only if, in addi-

tion to any other requirement of this title applicable to similar transactions involving a State or political subdivision thereof, the transaction involves the exercise of an essential governmental function of the Indian tribal government.

**(c) Additional requirements for tax-exempt bonds**

**(1) In general**

Subsection (a) of section 103 shall apply to any obligation (not described in paragraph (2)) issued by an Indian tribal government (or subdivision thereof) only if such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of any essential governmental function.

**(2) No exemption for private activity bonds**

Except as provided in paragraph (3), subsection (a) of section 103 shall not apply to any private activity bond (as defined in section 141(a)) issued by an Indian tribal government (or subdivision thereof).

**(3) Exception for certain private activity bonds**

**(A) In general**

In the case of an obligation to which this paragraph applies—

- (i) paragraph (2) shall not apply,
- (ii) such obligation shall be treated for purposes of this title as a qualified small issue bond, and
- (iii) section 146 shall not apply.

**(B) Obligations to which paragraph applies**

This paragraph shall apply to any obligation issued as part of an issue if—

- (i) 95 percent or more of the net proceeds of the issue are to be used for the acquisition, construction, reconstruction, or improvement of property which is of a character subject to the allowance for depreciation and which is part of a manufacturing facility (as defined in section 144(a)(12)(C)),
- (ii) such issue is issued by an Indian tribal government or a subdivision thereof,
- (iii) 95 percent or more of the net proceeds of the issue are to be used to finance property which—

(I) is to be located on land which, throughout the 5-year period ending on the date of issuance of such issue, is part of the qualified Indian lands of the issuer, and

(II) is to be owned and operated by such issuer,

(iv) such obligation would not be a private activity bond without regard to subparagraph (C),

(v) it is reasonably expected (at the time of issuance of the issue) that the employment requirement of subparagraph (D)(i) will be met with respect to the facility to be financed by the net proceeds of the issue, and

(vi) no principal user of such facility will be a person (or group of persons) described in section 144(a)(6)(B).

For purposes of clause (iii), section 150(a)(5) shall apply.

**(C) Private activity bond rules to apply**

An obligation to which this paragraph applies (other than an obligation described in paragraph (1)) shall be treated for purposes of this title as a private activity bond.

**(D) Employment requirements**

**(i) In general**

The employment requirements of this subparagraph are met with respect to a facility financed by the net proceeds of an issue if, as of the close of each calendar year in the testing period, the aggregate face amount of all outstanding tax-exempt private activity bonds issued to provide financing for the establishment which includes such facility is not more than 20 times greater than the aggregate wages (as defined by section 3121(a)) paid during the preceding calendar year to individuals (who are enrolled members of the Indian tribe of the issuer or the spouse of any such member) for services rendered at such establishment.

**(ii) Failure to meet requirements**

**(I) In general**

If, as of the close of any calendar year in the testing period, the requirements of this subparagraph are not met with respect to an establishment, section 103 shall cease to apply to interest received or accrued (on all private activity bonds issued to provide financing for the establishment) after the close of such calendar year.

**(II) Exception**

Subclause (I) shall not apply if the requirements of this subparagraph would be met if the aggregate face amount of all tax-exempt private activity bonds issued to provide financing for the establishment and outstanding at the close of the 90th day after the close of the calendar<sup>1</sup> year were substituted in clause (i) for such bonds outstanding at the close of such calendar year.

**(iii) Testing period**

For purposes of this subparagraph, the term “testing period” means, with respect to an issue, each calendar year which begins more than 2 years after the date of issuance of the issue (or, in the case of a refunding obligation, the date of issuance of the original issue).

**(E) Definitions**

For purposes of this paragraph—

**(i) Qualified Indian lands**

The term “qualified Indian lands” means land which is held in trust by the United States for the benefit of an Indian tribe.

**(ii) Indian tribe**

The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community which is recognized

<sup>1</sup> So in original. Probably should be “calendar”.

as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**(iii) Net proceeds**

The term “net proceeds” has the meaning given such term by section 150(a)(3).

**(d) Treatment of subdivisions of Indian tribal governments as political subdivisions**

For the purposes specified in subsection (a), a subdivision of an Indian tribal government shall be treated as a political subdivision of a State if (and only if) the Secretary determines (after consultation with the Secretary of the Interior) that such subdivision has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government.

**(e) Essential governmental function**

For purposes of this section, the term “essential governmental function” shall not include any function which is not customarily performed by State and local governments with general taxing powers.

**(f) Tribal economic development bonds**

**(1) Allocation of limitation**

**(A) In general**

The Secretary shall allocate the national tribal economic development bond limitation among the Indian tribal governments in such manner as the Secretary, in consultation with the Secretary of the Interior, determines appropriate.

**(B) National limitation**

There is a national tribal economic development bond limitation of \$2,000,000,000.

**(2) Bonds treated as exempt from tax**

In the case of a tribal economic development bond—

(A) notwithstanding subsection (c), such bond shall be treated for purposes of this title in the same manner as if such bond were issued by a State,

(B) the Indian tribal government issuing such bond and any instrumentality of such Indian tribal government shall be treated as a State for purposes of section 141, and

(C) section 146 shall not apply.

**(3) Tribal economic development bond**

**(A) In general**

For purposes of this section, the term “tribal economic development bond” means any bond issued by an Indian tribal government—

(i) the interest on which would be exempt from tax under section 103 if issued by a State or local government, and

(ii) which is designated by the Indian tribal government as a tribal economic development bond for purposes of this subsection.

**(B) Exceptions**

Such term shall not include any bond issued as part of an issue if any portion of the proceeds of such issue are used to finance—

(i) any portion of a building in which class II or class III gaming (as defined in

section 4 of the Indian Gaming Regulatory Act) is conducted or housed or any other property actually used in the conduct of such gaming, or

(ii) any facility located outside the Indian reservation (as defined in section 168(j)(6)).

**(C) Limitation on amount of bonds designated**

The maximum aggregate face amount of bonds which may be designated by any Indian tribal government under subparagraph (A) shall not exceed the amount of national tribal economic development bond limitation allocated to such government under paragraph (1).

(Added Pub. L. 97-473, title II, §202(a), Jan. 14, 1983, 96 Stat. 2608; amended Pub. L. 98-21, title I, §122(c)(6), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98-369, div. A, title IV, §474(r)(41), title X, §1065(b), July 18, 1984, 98 Stat. 847, 1048; Pub. L. 99-514, title I, §§112(b)(4), 123(b)(3), title XIII, §1301(j)(6), (7), title XVIII, §§1878(i), 1899A(65), Oct. 22, 1986, 100 Stat. 2109, 2113, 2658, 2905, 2962; Pub. L. 100-203, title X, §10632(a), (b), Dec. 22, 1987, 101 Stat. 1330-455; Pub. L. 103-66, title XIII, §13222(d), Aug. 10, 1993, 107 Stat. 481; Pub. L. 111-5, div. B, title I, §1402(a), Feb. 17, 2009, 123 Stat. 351.)

REFERENCES IN TEXT

Section 4 of the Indian Gaming Regulatory Act, referred to in subsec. (f)(3)(B)(i), is classified to section 2703 of Title 25, Indians.

AMENDMENTS

2009—Subsec. (f). Pub. L. 111-5 added subsec. (f).

1993—Subsec. (a)(6)(B) to (D). Pub. L. 103-66 redesignated former subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read as follows: “section 162(e) (relating to appearances, etc., with respect to legislation).”

1987—Subsec. (c)(2). Pub. L. 100-203, §10632(b)(2), substituted “Except as provided in paragraph (3), subsection (a)” for “Subsection (a)”.

Subsec. (c)(3). Pub. L. 100-203, §10632(b)(1), added par. (3).

Subsec. (e). Pub. L. 100-203, §10632(a), added subsec. (e).

1986—Subsec. (a)(4). Pub. L. 99-514, §1301(j)(6), substituted “(relating to State and local bonds)” for “(relating to interest on certain governmental obligations)”.

Subsec. (a)(6). Pub. L. 99-514, §123(b)(3), redesignated subpars. (C) to (E), as previously redesignated by section 112(b)(4) of Pub. L. 99-514, as (B) to (D), respectively, and struck out previously redesignated subpar. (B), which read as follows: “section 117(b)(2)(A) (relating to scholarships and fellowship grants).”

Pub. L. 99-514, §112(b)(4), redesignated subpars. (B) to (F) as (A) to (E), respectively, and struck out former subpar. (A) which read as follows: “section 24(c)(4) (defining State for purposes of credit for contribution to candidates for public offices).”

Pub. L. 99-514, §1878(i), made technical amendment to directory language of Pub. L. 98-369, §1065(b). See 1984 Amendment note below.

Subsec. (a)(6)(D). Pub. L. 99-514, §1899A(65), substituted “; and” for period at end.

Subsec. (c)(2). Pub. L. 99-514, §1301(j)(7), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Subsection (a) of section 103 shall not apply to any of the following issued by an Indian tribal government (or subdivision thereof):

“(A) An industrial development bond (as defined in section 103(b)(2)).

“(B) An obligation described in section 103(l)(1)(A) (relating to scholarship bonds).

“(C) A mortgage subsidy bond (as defined in paragraph (1) of section 103A(b) without regard to paragraph (2) thereof).”

1984—Subsec. (a)(6)(A). Pub. L. 98-369, §474(r)(41), substituted “section 24(c)(4)” for “section 41(c)(4)”.

Subsec. (a)(6)(B) to (F). Pub. L. 98-369, §1065(b), as amended by Pub. L. 99-514, §1878(i), added subpars. (B), (D), and (F), and redesignated former subpars. (B) and (C) as (C) and (E), respectively.

1983—Subsec. (a)(6). Pub. L. 98-21 redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A), which referred to section 37(e)(9)(A) (relating to certain public retirement systems).

#### EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-5, div. B, title I, §1402(c), Feb. 17, 2009, 123 Stat. 352, provided that: “The amendment made by subsection (a) [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

Amendment by Pub. L. 103-66 applicable to amounts paid or incurred after Dec. 31, 1993, see section 13222(e) of Pub. L. 103-66 set out as a note under section 162 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title X, §10632(c), Dec. 22, 1987, 101 Stat. 1330-457, provided that: “The amendments made by this section [amending this section] shall apply to obligations issued after October 13, 1987.”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 112(b)(4) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 123(b)(3) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(6), (7) of Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1878(i) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(41) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Pub. L. 98-369, div. A, title X, §1065(c), July 18, 1984, 98 Stat. 1048, provided that: “The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1984.”

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98-21, set out as a note under section 22 of this title.

#### EFFECTIVE DATE

Pub. L. 97-473, title II, §204, Jan. 14, 1983, 96 Stat. 2611, as amended by Pub. L. 98-369, div. A, title X, §1065(a), July 18, 1984, 98 Stat. 1048; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this title [enacting this section, amending sections 41, 103, 164, 170, 2055, 2106, 2522, 4227, 4484, 6420, 6421, 6424, 6427, and 7701 of this title, and enacting provisions set out as a note under section 1 of this title]—

“(1) insofar as they relate to chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 1 et seq.] (other than section 103 thereof), shall apply to taxable years beginning after December 31, 1982,

“(2) insofar as they relate to section 103 of such Code, shall apply to obligations issued after December 31, 1982,

“(3) insofar as they relate to chapter 11 of such Code [26 U.S.C. 2001 et seq.], shall apply to estates of decedents dying after December 31, 1982,

“(4) insofar as they relate to chapter 12 of such Code [26 U.S.C. 2501 et seq.], shall apply to gifts made after December 31, 1982, and

“(5) insofar as they relate to taxes imposed by subtitle D of such Code [26 U.S.C. 4041 et seq.], shall take effect on January 1, 1983.”

#### SHORT TITLE

For short title of title II of Pub. L. 97-473 as the “Indian Tribal Governmental Tax Status Act of 1982”, see Short Title of 1983 Amendments note set out under section 1 of this title.

#### APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 123(b)(3) of Pub. L. 99-514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(3), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

### § 7872. Treatment of loans with below-market interest rates

#### (a) Treatment of gift loans and demand loans

##### (1) In general

For purposes of this title, in the case of any below-market loan to which this section applies and which is a gift loan or a demand loan, the forgone interest shall be treated as—

(A) transferred from the lender to the borrower, and

(B) retransferred by the borrower to the lender as interest.

##### (2) Time when transfers made

Except as otherwise provided in regulations prescribed by the Secretary, any forgone interest attributable to periods during any calendar year shall be treated as transferred (and retransferred) under paragraph (1) on the last day of such calendar year.