

106TH CONGRESS
1ST SESSION

H. R. 2756

To prevent governmental entities from using tax-exempt financing to engage in unfair competition against private enterprise.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 5, 1999

Mr. HALL of Texas introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To prevent governmental entities from using tax-exempt financing to engage in unfair competition against private enterprise.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as “Fair Competition in Tax-
5 Exempt Financing Act of 1999”.

1 **SEC. 2. DENIAL OF TAX-EXEMPT FINANCING FOR CERTAIN**
2 **FACILITIES THAT USE TAX-EXEMPT FINANC-**
3 **ING TO COMPETE WITH EXISTING PRIVATE**
4 **SECTOR FACILITIES.**

5 (a) IN GENERAL.—Section 141 of the Internal Rev-
6 enue Code of 1986 (defining private activity bond and
7 qualified bond) is amended by redesignating subsection (e)
8 as subsection (f) and by inserting after subsection (d) the
9 following new subsection:

10 “(e) CERTAIN ISSUES USED FOR FACILITIES THAT
11 COMPETE WITH EXISTING PRIVATE SECTOR FACILI-
12 TIES.—

13 “(1) IN GENERAL.—For purposes of this title,
14 the term ‘private activity bond’ includes any bond
15 that is issued as part of an issue if the amount of
16 the proceeds of the issue which are to be used (di-
17 rectly or indirectly) to finance the construction, re-
18 construction, rehabilitation or expansion of a dis-
19 qualified facility exceeds the lesser of—

20 “(A) 5 percent of such proceeds, or

21 “(B) \$1,000,000.

22 “(2) BOND NOT TREATED AS A QUALIFIED
23 BOND.—For purposes of this title, any bond de-
24 scribed in paragraph (1) shall not be a qualified
25 bond.

1 “(3) DISQUALIFIED FACILITY.—For purposes
2 of this subsection—

3 “(A) IN GENERAL.—The term ‘disqualified
4 facility’ means real property or related improve-
5 ments which are to be used (directly or indi-
6 rectly) by one or more nongovernmental persons
7 in connection with a trade or business con-
8 ducted by such person or persons (whether or
9 not such use constitutes ‘private business use’
10 within the meaning of subsection (b)(6)) if—

11 “(i) on or before the date on which
12 the bonds are issued to finance the con-
13 struction, reconstruction, rehabilitation, or
14 expansion of such disqualified facility, a fa-
15 cility substantially similar in purpose or
16 use to the disqualified facility has been
17 placed in service by one or more non-
18 governmental persons within 5 miles of
19 such disqualified facility;

20 “(ii) such other facility was not fi-
21 nanced with bonds the interest on which
22 was or is exempt under section 103; and

23 “(iii) with respect to any calendar
24 year, the aggregate use of the disqualified
25 facility by one or more of the nongovern-

1 mental persons who have used or do use
2 the facility referred to in clause (i) in con-
3 nection with a trade or business conducted
4 by such person or persons exceeds 10 per-
5 cent of the days on which the disqualified
6 facility practically and ordinarily would be
7 used (by on custom and usage in the in-
8 dustry) by all persons.

9 “(B) The term ‘disqualified facility’ shall
10 not include any facility that constitutes an inte-
11 gral part of a school, a hospital or similar facil-
12 ity the principal purpose of which is to provide
13 on a regular basis educational instruction, in
14 accordance with an established curriculum, or
15 medical care.

16 “(C) TRADE OR BUSINESS.—For purposes
17 of subparagraph (A), the term ‘trade or busi-
18 ness’ includes the sponsorship of trade shows
19 and similar exhibitions and the leasing of space
20 to exhibitors, without regard to whether the
21 sponsor is organized as a not-for-profit organi-
22 zation, but only if one or more of the exhibitors
23 are engaged in the active conduct of a trade or
24 business for profit.

1 “(4) QUALIFIED REHABILITATIONS.—A bond
2 shall not be treated as a bond described in para-
3 graph (1) if it is issued as part of an issue substan-
4 tially all of the proceeds of which are used for the
5 reconstruction or rehabilitation of a facility, but only
6 if such facility is not materially expanded as the re-
7 sult of such rehabilitation.

8 “(5) ANTI-ABUSE REGULATIONS.—The Sec-
9 retary shall prescribe such regulations as may be ap-
10 propriate to carry out the purposes of this sub-
11 section, including such regulations as may be appro-
12 priate to prevent avoidance of such purposes through
13 multiple bond issues, related persons, use of related
14 facilities or multiuse complexes or otherwise.”

15 (b) EFFECTIVE DATE.—

16 (1) IN GENERAL.—Except as provided in this
17 subsection (b), the amendments made by this section
18 shall apply to bonds issued on or after August 2,
19 1999.

20 (2) EXCEPTION FOR CONSTRUCTION AND CER-
21 TAIN BINDING AGREEMENTS.—

22 (A) The amendments made by this section
23 shall not apply to bonds the proceeds of which
24 are used for the construction, reconstruction,
25 rehabilitation or expansion of a facility—

1 (i) if such construction, reconstruc-
2 tion, rehabilitation or expansion has phys-
3 ically commenced in a material fashion
4 (other than site testing, site preparation or
5 similar activities) before August 2, 1999,
6 and has resulted in significant expendi-
7 tures before such date, and was completed
8 on or after such date, or

9 (ii) if a State or political subdivision
10 thereof has entered into a binding contract
11 before August 2, 1999, that requires the
12 incurrence of significant expenditures for
13 such construction, reconstruction, rehabili-
14 tation or expansion (other than expendi-
15 tures related to the issuance of bonds or to
16 architectural or engineering plans), and
17 some or all of such expenditures are in-
18 curred on or after such date.

19 (B) For purposes of subparagraph (A), the
20 term “significant expenditures” means expendi-
21 tures equal to or exceeding 10 percent of the
22 reasonably anticipated cost of the construction,
23 reconstruction, rehabilitation.”

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