

105TH CONGRESS
2D SESSION

H. R. 4871

To amend the Internal Revenue Code of 1986 to provide that interest on indebtedness used to finance the furnishing or sale of rate-regulated electric energy or natural gas in the United States shall be allocated solely to sources within the United States.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 1998

Mr. McCrery (for himself and Mr. Jefferson) introduced the following bill;
which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide that interest on indebtedness used to finance the furnishing or sale of rate-regulated electric energy or natural gas in the United States shall be allocated solely to sources within the United States.

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

1 **SECTION 1. ALLOCATION TO SOURCES WITHIN THE UNITED**
2 **STATES OF INTEREST EXPENSE ON INDEBT-**
3 **EDNESS FINANCING RATE-REGULATED ELEC-**
4 **TRIC ENERGY OR NATURAL GAS INFRA-**
5 **STRUCTURE INVESTMENTS.**

6 (a) IN GENERAL.—Subsection (e) of section 864 of
7 the Internal Revenue Code of 1986 (relating to rules for
8 allocating interest, etc.) is amended by redesignating para-
9 graphs (6) and (7) as paragraphs (7) and (8), respectively,
10 and by inserting after paragraph (5) the following new
11 paragraph:

12 “(6) TREATMENT OF CERTAIN INTEREST EX-
13 PENSE RELATING TO QUALIFIED INFRASTRUCTURE
14 INDEBTEDNESS.—

15 “(A) IN GENERAL.—Interest on any quali-
16 fied infrastructure indebtedness shall be allo-
17 cated and apportioned solely to sources within
18 the United States, and such indebtedness shall
19 not be taken into account in allocating and ap-
20 portioning other interest expense.

21 “(B) QUALIFIED INFRASTRUCTURE IN-
22 DEBTEDNESS.—For purposes of this paragraph,
23 the term ‘qualified infrastructure indebtedness’
24 means any indebtedness incurred—

1 “(i) to carry on the trade or business
2 of the furnishing or sale of electric energy
3 or natural gas in the United States, or

4 “(ii) to acquire, construct, or other-
5 wise finance property used predominantly
6 in such trade or business.

7 “(C) RATE REGULATION.—

8 “(i) IN GENERAL.—If only a portion
9 of the furnishing or sale referred to in sub-
10 paragraph (B)(i) in a trade or business is
11 rate regulated, the term ‘qualified infra-
12 structure indebtedness’ shall not include
13 nonqualified indebtedness.

14 “(ii) NONQUALIFIED INDEBTED-
15 NESS.—For purposes of clause (i), the
16 term ‘nonqualified indebtedness’ means so
17 much of the indebtedness which would (but
18 for clause (i)) be qualified infrastructure
19 indebtedness as exceeds the amount which
20 bears the same ratio to the aggregate in-
21 debtedness of the taxpayer as the value of
22 the assets used in the furnishing or sale
23 referred to in subparagraph (B)(i) which is
24 rate-regulated bears to the value of the
25 total assets of the taxpayer.

1 “(iii) RATE-REGULATED DEFINED.—
2 For purposes of this subparagraph, fur-
3 nishing or sale is rate-regulated if the
4 rates for the furnishing or sale, as the case
5 may be, have been established or approved
6 by a State or political subdivision thereof,
7 by an agency or instrumentality of the
8 United States, or by a public service or
9 public utility commission or other similar
10 body of the District of Columbia or of any
11 State or political subdivision thereof.

12 “(iv) ASSET VALUES.—For purposes
13 of clause (ii), assets shall be treated as
14 having a value equal to their adjusted
15 bases (within the meaning of section 1016)
16 unless the taxpayer elects to use fair mar-
17 ket value for all assets. Such an election,
18 once made, shall be irrevocable.

19 “(v) TIME FOR MAKING DETERMINA-
20 TION.—The determination of whether in-
21 debtedness is qualified infrastructure in-
22 debtedness or nonqualified indebtedness
23 shall be made at the time the indebtedness
24 is incurred.

1 “(vi) SEPARATE APPLICATION TO
2 ELECTRIC ENERGY AND NATURAL GAS.—
3 This subparagraph shall be applied sepa-
4 rately to electric energy and natural gas.”

5 (b) EFFECTIVE DATE.—

6 (1) IN GENERAL.—The amendment made by
7 this section shall apply to indebtedness incurred in
8 taxable years beginning after the date of enactment
9 of this Act.

10 (2) OUTSTANDING DEBT.—In the case of in-
11 debtedness outstanding as of the date of enactment
12 of this Act, the determination of whether such in-
13 debtedness constitutes qualified infrastructure in-
14 debtedness shall be made by applying the rules of
15 subparagraphs (B) and (C) of section 864(e)(6) of
16 the Internal Revenue Code of 1986, as added by this
17 section, on the date such indebtedness was incurred.

○