

108TH CONGRESS
1ST SESSION

S. 1894

To amend the Internal Revenue Code of 1986 to provide for the deduction of interest paid in certain situations where the debt is guaranteed by a related foreign person.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2003

Mr. BINGAMAN (for himself, Mr. ALLEN, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide for the deduction of interest paid in certain situations where the debt is guaranteed by a related foreign person.

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. INTEREST PAYMENTS DEDUCTIBLE WHERE**
4 **DISQUALIFIED GUARANTEE HAS NO ECO-**
5 **NOMIC EFFECT.**

6 (a) IN GENERAL.—Section 163(j)(6)(D)(ii) of the In-
7 ternal Revenue Code of 1986 (relating to exceptions to
8 disqualified guarantee) is amended—

9 (1) by striking “or” at the end of subclause (I),

1 (2) by striking the period at the end of sub-
2 clause (II) and inserting “, or”,

3 (3) by inserting after subclause (II) the fol-
4 lowing new subclause:

5 “(III) in the case of a guarantee
6 by a foreign person, to the extent of
7 the amount that the taxpayer estab-
8 lishes to the satisfaction of the Sec-
9 retary that the taxpayer could have
10 borrowed from an unrelated person
11 without the guarantee.”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to guarantees issued on and after
14 the date of the enactment of this Act.

15 **SEC. 2. INTEREST PAID TO CERTAIN LENDERS NOT DIS-**
16 **QUALIFIED INTEREST.**

17 (a) IN GENERAL.—Section 163(j)(3)(B) of the Inter-
18 nal Revenue Code of 1986 (defining disqualified interest)
19 is amended by striking “and” at the end of clause (i) and
20 by inserting after clause (ii) the following new clause:

21 “(iii) the interest is not paid or ac-
22 crued to a qualified lender, and”.

23 (b) QUALIFIED LENDER.—Section 163(j)(6) of the
24 Internal Revenue Code of 1986 (relating to other defini-

1 tions and special rules) is amended by adding at the end
 2 the following new subparagraphs:

3 “(F) QUALIFIED LENDER.—A holder of
 4 debt shall be a qualified lender with respect to
 5 such debt if such person is—

6 “(i) a United States person subject to
 7 the income tax imposed by this chapter
 8 (determined without regard to section 511)
 9 and—

10 “(I) such person is a financial in-
 11 stitution, or

12 “(II) such debt is publicly issued
 13 debt, or

14 “(ii) a foreign person which is subject
 15 to either net basis or gross basis taxation
 16 and—

17 “(I) such person is a financial in-
 18 stitution required to include the inter-
 19 est on such debt in taxable income
 20 under section 882, or

21 “(II) such debt is publicly issued
 22 debt.

23 “(G) FINANCIAL INSTITUTION.—The term
 24 ‘financial institution’ means a person which
 25 is—

1 “(i) predominantly engaged in the ac-
2 tive conduct of a banking, financing, or
3 similar business within the meaning of sec-
4 tion 954(h),

5 “(ii) a corporation described in section
6 581 or 591 (relating to banks and other
7 savings institutions), or

8 “(iii) an insurance company subject to
9 tax under subchapter L or which would be
10 subject to tax under subchapter L if it
11 were a domestic corporation.

12 “(H) PUBLICLY ISSUED DEBT.—The term
13 ‘publicly issued debt’ means—

14 “(i) commercial paper described in
15 section 3(a)(3) or 4(2) of the Securities
16 Act of 1933,

17 “(ii) a debt instrument which is—

18 “(I) part of an issue of debt in-
19 struments meeting the requirements
20 of section 871(h) or 881(c) (relating
21 to the exemptions from withholding
22 tax for certain portfolio debt invest-
23 ments) without regard to section
24 871(h)(2)(B)(ii) and section
25 881(c)(2)(B)(ii), and

1 “(II) readily tradable on an es-
2 tablished securities market, or

3 “(iii) a debt instrument which is part
4 of an issue of debt instruments the initial
5 offering of which is registered with the Se-
6 curities and Exchange Commission or
7 would be required to be registered under
8 the Securities Act of 1933 but for an ex-
9 emption from registration—

10 “(I) under section 3 of the Secu-
11 rities Act of 1933,

12 “(II) under any law (other than
13 the Securities Act of 1933) because of
14 the identity of the issuer or the nature
15 of the security,

16 “(III) because the issue is in-
17 tended for distribution to persons who
18 are not United States persons, or

19 “(IV) pursuant to section
20 230.144A of title 17, Code of Federal
21 Regulations (relating to securities
22 placed with qualified institutional buy-
23 ers) or any successor rule or regula-
24 tion.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to debt issued on or after the date
3 of the enactment of this Act.

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