

117TH CONGRESS
1ST SESSION

H. R. 5366

To amend the Internal Revenue Code of 1986 to provide that certain contributions by government entities are treated as contributions to capital.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2021

Ms. KUSTER 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 certain contributions by government entities are treated as contributions to capital.

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. TREATMENT OF CERTAIN CONTRIBUTIONS BY**
4 **GOVERNMENT ENTITIES AS CONTRIBUTIONS**
5 **TO CAPITAL.**

6 (a) IN GENERAL.—Section 118 of the Internal Rev-
7 enue Code of 1986 is amended—

8 (1) by redesignating subsection (d) as sub-
9 section (e), and

1 (2) by striking subsections (b) and (c) and in-
2 serting the following:

3 “(b) CONTRIBUTIONS IN AID OF CONSTRUCTION,
4 ETC.—For purposes of subsection (a), except as provided
5 in subsection (c), the term ‘contribution to the capital of
6 the taxpayer’ does not include any contribution in aid of
7 construction or any other contribution as a customer or
8 potential customer.

9 “(c) SPECIAL RULES FOR WATER AND SEWERAGE
10 DISPOSAL UTILITIES.—

11 “(1) GENERAL RULE.—For purposes of this
12 section, the term ‘contribution to the capital of the
13 taxpayer’ includes any amount of money or other
14 property received from any person (whether or not
15 a shareholder) by a regulated public utility which
16 provides water or sewerage disposal services if—

17 “(A) such amount is a contribution in aid
18 of construction,

19 “(B) in the case of contribution of prop-
20 erty other than water or sewerage disposal fa-
21 cilities, such amount meets the requirements of
22 the expenditure rule of paragraph (2), and

23 “(C) such amount (or any property ac-
24 quired or constructed with such amount) is not

1 included in the taxpayer's rate base for rate-
2 making purposes.

3 “(2) EXPENDITURE RULE.—An amount meets
4 the requirements of this paragraph if—

5 “(A) an amount equal to such amount is
6 expended for the acquisition or construction of
7 tangible property described in section
8 1231(b)—

9 “(i) which is the property for which
10 the contribution was made or is of the
11 same type as such property, and

12 “(ii) which is used predominantly in
13 the trade or business of furnishing water
14 or sewerage disposal services,

15 “(B) the expenditure referred to in sub-
16 paragraph (A) occurs before the end of the sec-
17 ond taxable year after the year in which such
18 amount was received, and

19 “(C) accurate records are kept of the
20 amounts contributed and expenditures made,
21 the expenditures to which contributions are al-
22 located, and the year in which the contributions
23 and expenditures are received and made.

24 “(3) DEFINITIONS.—For purposes of this sub-
25 section—

1 “(A) CONTRIBUTION IN AID OF CONSTRUC-
2 TION.—The term ‘contribution in aid of con-
3 struction’ shall be defined by regulations pre-
4 scribed by the Secretary, except that such term
5 shall not include amounts paid as service
6 charges for starting or stopping services.

7 “(B) PREDOMINANTLY.—The term ‘pre-
8 dominantly’ means 80 percent or more.

9 “(C) REGULATED PUBLIC UTILITY.—The
10 term ‘regulated public utility’ has the meaning
11 given such term by section 7701(a)(33), except
12 that such term shall not include any utility
13 which is not required to provide water or sewer-
14 age disposal services to members of the general
15 public in its service area.

16 “(4) DISALLOWANCE OF DEDUCTIONS AND
17 CREDITS; ADJUSTED BASIS.—Notwithstanding any
18 other provision of this subtitle, no deduction or cred-
19 it shall be allowed for, or by reason of, any expendi-
20 ture which constitutes a contribution in aid of con-
21 struction to which this subsection applies. The ad-
22 justed basis of any property acquired with contribu-
23 tions in aid of construction to which this subsection
24 applies shall be zero.

1 “(d) STATUTE OF LIMITATIONS.—If the taxpayer for
2 any taxable year treats an amount as a contribution to
3 the capital of the taxpayer described in subsection (c),
4 then—

5 “(1) the statutory period for the assessment of
6 any deficiency attributable to any part of such
7 amount shall not expire before the expiration of 3
8 years from the date the Secretary is notified by the
9 taxpayer (in such manner as the Secretary may pre-
10 scribe) of—

11 “(A) the amount of the expenditure re-
12 ferred to in subparagraph (A) of subsection
13 (c)(2),

14 “(B) the taxpayer’s intention not to make
15 the expenditures referred to in such subpara-
16 graph, or

17 “(C) a failure to make such expenditure
18 within the period described in subparagraph
19 (B) of subsection (c)(2), and

20 “(2) such deficiency may be assessed before the
21 expiration of such 3-year period notwithstanding the
22 provisions of any other law or rule of law which
23 would otherwise prevent such assessment.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to contributions made after De-
3 cember 22, 2017.

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