

108TH CONGRESS
1ST SESSION

S. 160

To amend the Internal Revenue Code of 1986 to allow the expensing of broadband Internet access expenditures, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 14, 2003

Mr. BURNS (for himself, Mr. BAUCUS, Mr. HATCH, Mr. BUNNING, Mr. KENNEDY, Mrs. CLINTON, Mr. SCHUMER, and Mr. GRAHAM of South Carolina) 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 allow the expensing of broadband Internet access expenditures, and for other purposes.

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. EXPENSING OF BROADBAND INTERNET ACCESS**

4 **EXPENDITURES.**

5 (a) IN GENERAL.—Part VI of subchapter B of chap-

6 ter 1 of the Internal Revenue Code of 1986 (relating to

7 itemized deductions for individuals and corporations) is

8 amended by inserting after section 190 the following new

9 section:

1 **“SEC. 191. BROADBAND EXPENDITURES.**2 **“(a) TREATMENT OF EXPENDITURES.—**

3 **“(1) IN GENERAL.—**A taxpayer may elect to
4 treat any qualified broadband expenditure which is
5 paid or incurred by the taxpayer as an expense
6 which is not chargeable to capital account. Any ex-
7 penditure which is so treated shall be allowed as a
8 deduction.

9 **“(2) ELECTION.—**An election under paragraph
10 (1) shall be made at such time and in such manner
11 as the Secretary may prescribe by regulation.

12 **“(b) QUALIFIED BROADBAND EXPENDITURES.—**For
13 purposes of this section—

14 **“(1) IN GENERAL.—**The term ‘qualified
15 broadband expenditure’ means, with respect to any
16 taxable year, any direct or indirect costs incurred
17 and properly taken into account with respect to the
18 purchase or installation of qualified equipment (in-
19 cluding any upgrades thereto), together with any di-
20 rect or indirect costs incurred and properly taken
21 into account with respect to the connection of such
22 qualified equipment to any qualified subscriber, but
23 only if such costs are incurred after December 31,
24 2002, and before January 1, 2008.

25 **“(2) CERTAIN SATELLITE EXPENDITURES EX-
26 CLUDED.—**Such term shall not include any costs in-

1 curred with respect to the launching of any satellite
2 equipment.

3 “(3) LEASED EQUIPMENT.—Such term shall in-
4 clude so much of the purchase price paid by the les-
5 sor of equipment subject to a lease described in sub-
6 section (c)(2)(B) as is attributable to expenditures
7 incurred by the lessee which would otherwise be de-
8 scribed in paragraph (1).

9 “(4) LIMITATION WITH REGARD TO CURRENT
10 GENERATION BROADBAND SERVICES.—Only 50 per-
11 cent of the amounts taken into account under para-
12 graph (1) with respect to qualified equipment
13 through which current generation broadband serv-
14 ices are provided shall be treated as qualified
15 broadband expenditures.

16 “(c) WHEN EXPENDITURES TAKEN INTO AC-
17 COUNT.—For purposes of this section—

18 “(1) IN GENERAL.—Qualified broadband ex-
19 penditures with respect to qualified equipment shall
20 be taken into account with respect to the first tax-
21 able year in which—

22 “(A) current generation broadband services
23 are provided through such equipment to quali-
24 fied subscribers, or

1 “(B) next generation broadband services
2 are provided through such equipment to qual-
3 fied subscribers.

4 “(2) LIMITATION.—

5 “(A) IN GENERAL.—Qualified expenditures
6 shall be taken into account under paragraph (1)
7 only with respect to qualified equipment—

8 “(i) the original use of which com-
9 mences with the taxpayer, and

10 “(ii) which is placed in service,
11 after December 31, 2002.

12 “(B) SALE-LEASEBACKS.—For purposes of
13 subparagraph (A), if property—

14 “(i) is originally placed in service
15 after December 31, 2002, by any person,
16 and

17 “(ii) sold and leased back by such per-
18 son within 3 months after the date such
19 property was originally placed in service,
20 such property shall be treated as originally
21 placed in service not earlier than the date on
22 which such property is used under the leaseback
23 referred to in clause (ii).

24 “(d) SPECIAL ALLOCATION RULES.—

1 “(1) CURRENT GENERATION BROADBAND SERV-
2 ICES.—For purposes of determining the amount of
3 qualified broadband expenditures under subsection
4 (a)(1) with respect to qualified equipment through
5 which current generation broadband services are
6 provided, if the qualified equipment is capable of
7 serving both qualified subscribers and other sub-
8 scribers, the qualified broadband expenditures shall
9 be multiplied by a fraction—

10 “(A) the numerator of which is the sum of
11 the number of potential qualified subscribers
12 within the rural areas and the underserved
13 areas which the equipment is capable of serving
14 with current generation broadband services, and

15 “(B) the denominator of which is the total
16 potential subscriber population of the area
17 which the equipment is capable of serving with
18 current generation broadband services.

19 “(2) NEXT GENERATION BROADBAND SERV-
20 ICES.—For purposes of determining the amount of
21 qualified broadband expenditures under subsection
22 (a)(1) with respect to qualified equipment through
23 which next generation broadband services are pro-
24 vided, if the qualified equipment is capable of serv-
25 ing both qualified subscribers and other subscribers,

1 the qualified expenditures shall be multiplied by a
2 fraction—

3 “(A) the numerator of which is the sum
4 of—

5 “(i) the number of potential qualified
6 subscribers within the rural areas and un-
7 derserved areas, plus

8 “(ii) the number of potential qualified
9 subscribers within the area consisting only
10 of residential subscribers not described in
11 clause (i),

12 which the equipment is capable of serving with
13 next generation broadband services, and

14 “(B) the denominator of which is the total
15 potential subscriber population of the area
16 which the equipment is capable of serving with
17 next generation broadband services.

18 “(e) DEFINITIONS.—For purposes of this section—

19 “(1) ANTENNA.—The term ‘antenna’ means
20 any device used to transmit or receive signals
21 through the electromagnetic spectrum, including sat-
22 ellite equipment.

23 “(2) CABLE OPERATOR.—The term ‘cable oper-
24 ator’ has the meaning given such term by section

1 602(5) of the Communications Act of 1934 (47
2 U.S.C. 522(5)).

3 “(3) COMMERCIAL MOBILE SERVICE CAR-
4 RIER.—The term ‘commercial mobile service carrier’
5 means any person authorized to provide commercial
6 mobile radio service as defined in section 20.3 of
7 title 47, Code of Federal Regulations.

8 “(4) CURRENT GENERATION BROADBAND SERV-
9 ICE.—The term ‘current generation broadband serv-
10 ice’ means the transmission of signals at a rate of
11 at least 1,000,000 bits per second to the subscriber
12 and at least 128,000 bits per second from the sub-
13 scriber.

14 “(5) MULTIPLEXING OR DEMULTIPLEXING.—
15 The term ‘multiplexing’ means the transmission of 2
16 or more signals over a single channel, and the term
17 ‘demultiplexing’ means the separation of 2 or more
18 signals previously combined by compatible multi-
19 plexing equipment.

20 “(6) NEXT GENERATION BROADBAND SERV-
21 ICE.—The term ‘next generation broadband service’
22 means the transmission of signals at a rate of at
23 least 22,000,000 bits per second to the subscriber
24 and at least 5,000,000 bits per second from the sub-
25 scriber.

1 “(7) NONRESIDENTIAL SUBSCRIBER.—The
2 term ‘nonresidential subscriber’ means any person
3 who purchases broadband services which are deliv-
4 ered to the permanent place of business of such per-
5 son.

6 “(8) OPEN VIDEO SYSTEM OPERATOR.—The
7 term ‘open video system operator’ means any person
8 authorized to provide service under section 653 of
9 the Communications Act of 1934 (47 U.S.C. 573).

10 “(9) OTHER WIRELESS CARRIER.—The term
11 ‘other wireless carrier’ means any person (other than
12 a telecommunications carrier, commercial mobile
13 service carrier, cable operator, open video system op-
14 erator, or satellite carrier) providing current genera-
15 tion broadband services or next generation
16 broadband service to subscribers through the radio
17 transmission of energy.

18 “(10) PACKET SWITCHING.—The term ‘packet
19 switching’ means controlling or routing the path of
20 any digitized transmission signal which is assembled
21 into packets or cells.

22 “(11) PROVIDER.—The term ‘provider’ means,
23 with respect to any qualified equipment—

24 “(A) a cable operator,

25 “(B) a commercial mobile service carrier,

1 “(C) an open video system operator,
2 “(D) a satellite carrier,
3 “(E) a telecommunications carrier, or
4 “(F) any other wireless carrier,
5 providing current generation broadband services or
6 next generation broadband services to subscribers
7 through such qualified equipment.

8 “(12) PROVISION OF SERVICES.—A provider
9 shall be treated as providing services to 1 or more
10 subscribers if—

11 “(A) such a subscriber has been passed by
12 the provider's equipment and can be connected
13 to such equipment for a standard connection
14 fee,

15 “(B) the provider is physically able to de-
16 liver current generation broadband services or
17 next generation broadband services, as applica-
18 ble, to such a subscriber without making more
19 than an insignificant investment with respect to
20 such subscriber,

21 “(C) the provider has made reasonable ef-
22 forts to make such subscribers aware of the
23 availability of such services,

24 “(D) such services have been purchased by
25 1 or more such subscribers, and

1 “(E) such services are made available to
2 such subscribers at average prices comparable
3 to those at which the provider makes available
4 similar services in any areas in which the pro-
5 vider makes available such services.

6 “(13) QUALIFIED EQUIPMENT.—

7 “(A) IN GENERAL.—The term ‘qualified
8 equipment’ means equipment which provides
9 current generation broadband services or next
10 generation broadband services—

11 “(i) at least a majority of the time
12 during periods of maximum demand to
13 each subscriber who is utilizing such serv-
14 ices, and

15 “(ii) in a manner substantially the
16 same as such services are provided by the
17 provider to subscribers through equipment
18 with respect to which no deduction is al-
19 lowed under subsection (a)(1).

20 “(B) ONLY CERTAIN INVESTMENT TAKEN
21 INTO ACCOUNT.—Except as provided in sub-
22 paragraph (C) or (D), equipment shall be taken
23 into account under subparagraph (A) only to
24 the extent it—

1 “(i) extends from the last point of
2 switching to the outside of the unit, building,
3 dwelling, or office owned or leased by
4 a subscriber in the case of a telecommuni-
5 cations carrier,

6 “(ii) extends from the customer side
7 of the mobile telephone switching office to
8 a transmission/receive antenna (including
9 such antenna) owned or leased by a sub-
10 scriber in the case of a commercial mobile
11 service carrier,

12 “(iii) extends from the customer side
13 of the headend to the outside of the unit,
14 building, dwelling, or office owned or
15 leased by a subscriber in the case of a
16 cable operator or open video system oper-
17 ator, or

18 “(iv) extends from a transmission/re-
19 ceive antenna (including such antenna)
20 which transmits and receives signals to or
21 from multiple subscribers, to a trans-
22 mission/receive antenna (including such
23 antenna) on the outside of the unit, build-
24 ing, dwelling, or office owned or leased by
25 a subscriber in the case of a satellite car-

18 “(D) MULTIPLEXING AND
19 DEMULITPLEXING EQUIPMENT.—Multiplexing
20 and demultiplexing equipment shall be taken
21 into account under subparagraph (A) only to
22 the extent it is deployed in connection with
23 equipment described in subparagraph (B) and
24 is uniquely designed to perform the function of
25 multiplexing and demultiplexing packets or cells

1 of data and making associated application
2 adoptions, but only if such multiplexing or
3 demultiplexing equipment is located between
4 packet switching equipment described in sub-
5 paragraph (C) and the subscriber's premises.

6 “(14) QUALIFIED SUBSCRIBER.—The term
7 ‘qualified subscriber’ means—

8 “(A) with respect to the provision of cur-
9 rent generation broadband services—

10 “(i) any nonresidential subscriber
11 maintaining a permanent place of business
12 in a rural area or underserved area, or

13 “(ii) any residential subscriber resid-
14 ing in a dwelling located in a rural area or
15 underserved area which is not a saturated
16 market, and

17 “(B) with respect to the provision of next
18 generation broadband services—

19 “(i) any nonresidential subscriber
20 maintaining a permanent place of business
21 in a rural area or underserved area, or

22 “(ii) any residential subscriber.

23 “(15) RESIDENTIAL SUBSCRIBER.—The term
24 ‘residential subscriber’ means any individual who

1 purchases broadband services which are delivered to
2 such individual's dwelling.

3 “(16) RURAL AREA.—The term ‘rural area’
4 means any census tract which—

5 “(A) is not within 10 miles of any incor-
6 porated or census designated place containing
7 more than 25,000 people, and

8 “(B) is not within a county or county
9 equivalent which has an overall population den-
10 sity of more than 500 people per square mile of
11 land.

12 “(17) RURAL SUBSCRIBER.—The term ‘rural
13 subscriber’ means any residential subscriber residing
14 in a dwelling located in a rural area or nonresiden-
15 tial subscriber maintaining a permanent place of
16 business located in a rural area.

17 “(18) SATELLITE CARRIER.—The term ‘sat-
18 ellite carrier’ means any person using the facilities
19 of a satellite or satellite service licensed by the Fed-
20 eral Communications Commission and operating in
21 the Fixed-Satellite Service under part 25 of title 47
22 of the Code of Federal Regulations or the Direct
23 Broadcast Satellite Service under part 100 of title
24 47 of such Code to establish and operate a channel
25 of communications for distribution of signals, and

1 owning or leasing a capacity or service on a satellite
2 in order to provide such point-to-multipoint distribu-
3 tion.

4 “(19) SATURATED MARKET.—The term ‘satu-
5 rated market’ means any census tract in which, as
6 of the date of the enactment of this section—

7 “(A) current generation broadband services
8 have been provided by a single provider to 85
9 percent or more of the total number of potential
10 residential subscribers residing in dwellings lo-
11 cated within such census tract, and

12 “(B) such services can be utilized—

13 “(i) at least a majority of the time
14 during periods of maximum demand by
15 each such subscriber who is utilizing such
16 services, and

17 “(ii) in a manner substantially the
18 same as such services are provided by the
19 provider to subscribers through equipment
20 with respect to which no deduction is al-
21 lowed under subsection (a)(1).

22 “(20) SUBSCRIBER.—The term ‘subscriber’
23 means any person who purchases current generation
24 broadband services or next generation broadband
25 services.

1 “(21) TELECOMMUNICATIONS CARRIER.—The
2 term ‘telecommunications carrier’ has the meaning
3 given such term by section 3(44) of the Communica-
4 tions Act of 1934 (47 U.S.C. 153(44)), but—

5 “(A) includes all members of an affiliated
6 group of which a telecommunications carrier is
7 a member, and

8 “(B) does not include a commercial mobile
9 service carrier.

10 “(22) TOTAL POTENTIAL SUBSCRIBER POPU-
11 LATION.—The term ‘total potential subscriber popu-
12 lation’ means, with respect to any area and based on
13 the most recent census data, the total number of po-
14 tential residential subscribers residing in dwellings
15 located in such area and potential nonresidential
16 subscribers maintaining permanent places of busi-
17 ness located in such area.

18 “(23) UNDERSERVED AREA.—The term ‘under-
19 served area’ means any census tract which is located
20 in—

21 “(A) an empowerment zone or enterprise
22 community designated under section 1391,

23 “(B) the District of Columbia Enterprise
24 Zone established under section 1400,

1 “(C) a renewal community designated
2 under section 1400E, or

3 “(D) a low-income community designated
4 under section 45D.

5 “(24) UNDERSERVED SUBSCRIBER.—The term
6 ‘underserved subscriber’ means any residential sub-
7 scriber residing in a dwelling located in an under-
8 served area or nonresidential subscriber maintaining
9 a permanent place of business located in an under-
10 served area.

11 “(f) SPECIAL RULES.—

12 “(1) PROPERTY USED OUTSIDE THE UNITED
13 STATES, ETC., NOT QUALIFIED.—No expenditures
14 shall be taken into account under subsection (a)(1)
15 with respect to the portion of the cost of any prop-
16 erty referred to in section 50(b) or with respect to
17 the portion of the cost of any property taken into ac-
18 count under section 179.

19 “(2) BASIS REDUCTION.—

20 “(A) IN GENERAL.—For purposes of this
21 title, the basis of any property shall be reduced
22 by the portion of the cost of such property
23 taken into account under subsection (a)(1).

24 “(B) ORDINARY INCOME RECAPTURE.—

25 For purposes of section 1245, the amount of

1 the deduction allowable under subsection (a)(1)
2 with respect to any property which is of a char-
3 acter subject to the allowance for depreciation
4 shall be treated as a deduction allowed for de-
5 preciation under section 167.

6 “(3) COORDINATION WITH SECTION 38.—No
7 credit shall be allowed under section 38 with respect
8 to any amount for which a deduction is allowed
9 under subsection (a)(1).”.

10 (b) SPECIAL RULE FOR MUTUAL OR COOPERATIVE
11 TELEPHONE COMPANIES.—Section 501(c)(12)(B) of the
12 Internal Revenue Code of 1986 (relating to list of exempt
13 organizations) is amended by striking “or” at the end of
14 clause (iii), by striking the period at the end of clause (iv)
15 and inserting “, or”, and by adding at the end the fol-
16 lowing:

17 “(v) from the sale of property subject
18 to a lease described in section
19 191(c)(2)(B), but only to the extent such
20 income does not in any year exceed an
21 amount equal to the qualified broadband
22 expenditures which would be taken into ac-
23 count under section 191 for such year if
24 the mutual or cooperative telephone com-
25 pany was not exempt from taxation and

3 (c) CONFORMING AMENDMENTS.—

17 “(29) to the extent provided in section
18 191(f)(2).”.

“Sec. 191. Broadband expenditures.”.

23 (d) DESIGNATION OF CENSUS TRACTS.—

24 (1) IN GENERAL.—The Secretary of the Treas-
25 ury shall, not later than 90 days after the date of

1 the enactment of this Act, designate and publish
2 those census tracts meeting the criteria described in
3 paragraphs (16), (22), and (23) of section 191(e)
4 of the Internal Revenue Code of 1986 (as added by
5 this section). In making such designations, the Sec-
6 retary of the Treasury shall consult with such other
7 departments and agencies as the Secretary deter-
8 mines appropriate.

9 (2) SATURATED MARKET.—

10 (A) IN GENERAL.—For purposes of desig-
11 nating and publishing those census tracts meet-
12 ing the criteria described in subsection (e)(19)
13 of such section 191—

14 (i) the Secretary of the Treasury shall
15 prescribe not later than 30 days after the
16 date of the enactment of this Act the form
17 upon which any provider which takes the
18 position that it meets such criteria with re-
19 spect to any census tract shall submit a
20 list of such census tracts (and any other
21 information required by the Secretary) not
22 later than 60 days after the date of the
23 publication of such form, and

24 (ii) the Secretary of the Treasury
25 shall publish an aggregate list of such cen-

1 sus tracts and the applicable providers not
2 later than 30 days after the last date such
3 submissions are allowed under clause (i).

4 (B) NO SUBSEQUENT LISTS REQUIRED.—
5 The Secretary of the Treasury shall not be re-
6 quired to publish any list of census tracts meet-
7 ing such criteria subsequent to the list de-
8 scribed in subparagraph (A)(ii).

9 (C) AUTHORITY TO DISREGARD FALSE
10 SUBMISSIONS.—In addition to imposing any
11 other applicable penalties, the Secretary of the
12 Treasury shall have the discretion to disregard
13 any form described in subparagraph (A)(i) on
14 which a provider knowingly submitted false in-
15 formation.

16 (e) OTHER REGULATORY MATTERS.—

17 (1) PROHIBITION.—No Federal or State agency
18 or instrumentality shall adopt regulations or rate-
19 making procedures that would have the effect of
20 confiscating any deduction or portion thereof allowed
21 under section 191 of the Internal Revenue Code of
22 1986 (as added by this section) or otherwise sub-
23 verting the purpose of this section.

24 (2) TREASURY REGULATORY AUTHORITY.—It is
25 the intent of Congress in providing the election to

1 deduct qualified broadband expenditures under sec-
2 tion 191 of the Internal Revenue Code of 1986 (as
3 added by this section) to provide incentives for the
4 purchase, installation, and connection of equipment
5 and facilities offering expanded broadband access to
6 the Internet for users in certain low income and
7 rural areas of the United States, as well as to resi-
8 dential users nationwide, in a manner that main-
9 tains competitive neutrality among the various class-
10 es of providers of broadband services. Accordingly,
11 the Secretary of the Treasury shall prescribe such
12 regulations as may be necessary or appropriate to
13 carry out the purposes of section 191 of such Code,
14 including—

15 (A) regulations to determine how and when
16 a taxpayer that incurs qualified broadband ex-
17 penditures satisfies the requirements of section
18 191 of such Code to provide broadband serv-
19 ices, and

20 (B) regulations describing the information,
21 records, and data taxpayers are required to pro-
22 vide the Secretary to substantiate compliance
23 with the requirements of section 191 of such
24 Code.

1 (f) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to expenditures incurred after De-
3 cember 31, 2002.

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