

Reform nuclear facility depreciation

Present Law

Capitalization of construction costs and depreciation

In general, a business taxpayer recovers the costs of property used in its trade or business through depreciation deductions claimed over a statutorily specified period. For nuclear plants used by electric utilities, the depreciation period is 15 years. Subject to the normalization rules discussed below, the depreciation method for nuclear plants is generally the 150 percent declining balance method.

Direct costs incurred during the construction of depreciable property, including a nuclear plant, are capitalized. Indirect costs, including allocable construction period interest on borrowings, are also capitalized. Recovery of capitalized costs through depreciation deductions commences only when the depreciable property is placed in service.

Inclusion of construction work in process in utility rate base

In order to prevent spikes in electricity rates when nuclear plants being constructed are ultimately placed in service, state energy regulators may require that construction costs for new nuclear electricity plants be included in the rate base as those costs are incurred. As a result, ratepayers begin paying towards the cost of the new nuclear plants while the plants are under construction.

Normalization

For public utility property, including a nuclear plant used by an electric utility, accelerated depreciation (i.e., depreciation more rapid than straight line depreciation) is permitted only if the taxpayer uses a normalization method of accounting for ratemaking purposes. Under a normalization method of accounting, a utility calculates its ratemaking tax expense using depreciation that is no more accelerated than its ratemaking depreciation (which is typically straight line).

Reasons for Change

The general tax policy rationale for delaying the commencement of depreciation deductions until depreciable property is placed in service is to match income and expenses (i.e., to ensure that deductions for property are being claimed at the same time as income from the property is being recognized). The matching policy is defeated in cases where rate regulators require nuclear utility plant construction costs to be included in the rate base prior to the time the plant is placed in service because the utility will be recognizing income with respect to the facility before it is able to claim corresponding depreciation deductions. To correct this mismatch, utility taxpayers should be permitted to begin depreciating immediately any construction costs that are included in the rate base prior to the time a nuclear plant is placed in service.

Description of Proposal

In the case of an electing utility, nuclear plant construction costs (both direct and indirect) that are required by a state utility regulator to be included in the rate base prior to the year in which a nuclear facility is placed in service will become subject to depreciation in the year the costs are included in the rate base. Under this provision, the costs included in the rate base each year (prior to the year the facility is placed in service) will be treated as a separate depreciable asset for purposes of calculating depreciation deductions. As under the general depreciation rules, a utility will not be permitted to use accelerated depreciation unless it uses a normalization method of accounting.

Effective Date

This provision will apply to construction costs included in the taxpayer's rate base in taxable years ending after the date of enactment with respect to nuclear plants placed in service after the date of enactment. Under a transition rule, the provision will also apply to construction costs for such nuclear plants included in the rate base in earlier taxable years; those additional costs will be added to the basis of the depreciable asset taken into account in the taxpayer's first taxable year ending after the date of enactment.

SEC. __. SPECIAL RULES FOR DEPRECIATION PERIOD FOR NEW NUCLEAR POWER PLANTS.

(a) Depreciation of Amounts Included in Rate Base Before Nuclear Plant Placed in Service.— Subsection (i) of section 168 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(20) SPECIAL RULES FOR ADVANCED NUCLEAR POWER FACILITIES.—

“(A) IN GENERAL.— In the case of an electing taxpayer, the amount of any advanced nuclear power facility (within the meaning of section 45J(d)(1)) which is required to be included in the cost of service for ratemaking purposes with respect to the taxpayer in a year prior to the year such nuclear power facility is placed in service—

“(i) shall be treated as a separate tangible asset of the taxpayer for purposes of this section, and

“(ii) shall be treated as placed in service in the taxable year in which such amount is required to be included in the cost of service for ratemaking purposes.

“(B) REDUCTION IN BASIS.—The basis of any advanced nuclear power facility shall be reduced by any amount to which subparagraph (A) applies.”

(b) EFFECTIVE DATES.—

(1) In General.—Except as provided in paragraph (2) the amendment made by subsection (a) shall apply to amounts included in the taxpayer's rate base in taxable years ending after the date of enactment of this Act, with respect to an advanced nuclear power facility placed in service after such date.

(2) Transition Rule.—The amendment made by subsection (a) shall also apply to amounts included in the taxpayer's rate base in taxable years ending on or before the date of enactment of this Act with respect to such a facility. Any amounts described in the preceding sentence shall be included in the amount described in section 168(i)(20)(A) of the Internal Revenue Code of 1986 for the taxpayer's first taxable year ending after the date of enactment of this Act.