

**Allocation of Nuclear Production Tax Credit**  
**Southern States Energy Board Policy Position**

**Present Law**

Whereas, under present law,

In order to create an incentive for the construction of advanced nuclear power facilities, the 2005 Energy Policy Act provided a production tax credit of 1.8 cents per kilowatt-hour for electricity produced by the taxpayer at an advanced nuclear power facility during the first eight years after the facility is placed in service. However, available tax credits are subject to an overall national limitation of 6,000 megawatts of capacity to be allocated by the Secretary of the Treasury (the “Secretary”). (Internal Revenue Code (IRC) §45J).

Because the §45J production tax credits are general business tax credits under IRC §38, they are subject to the limitation that a taxpayer may not claim credits in excess of the amount by which the taxpayer’s net income tax exceeds the greater of (1) the tentative minimum tax for the taxable year or (2) 25 percent of so much of the taxpayer’s regular tax liability as exceeds \$25,000.

**Reasons for Change**

Whereas, the Southern States Energy Board understands,

In some cases, qualifying advanced nuclear power facilities will be jointly owned by taxable entities and by non-taxable public entities (e.g., a Federal, state, or local governmental entity). Because public entities are not subject to tax, current law does not permit them to claim the production tax credit that was intended to create an incentive for constructing advanced nuclear power facilities. To address this concern, a public entity should be permitted to transfer to taxable co-owners of the facility any production tax credits allocable to the public entity’s share of the facility.

**Description of Proposal**

Therefore, the Southern States Energy Board supports the following proposal:

For an advanced nuclear power facility owned by a public-private partnership (or co-owned by a qualified public entity and a non-public entity), a qualified public entity that is a partner (or co-owner) would be permitted to transfer its nuclear production tax credits to any non-public entity that is a member of the partnership (or a co-owner). For this purpose, a “qualified public entity” is (1) a Federal, state, or local government (or political subdivision or agency or instrumentality thereof), (2) a mutual or cooperative electric company, or (3) a not-for-profit electric company which has or had received a loan or loan guarantee under the Rural Electrification Act of 1936.

The IRC §38 rules limiting business credits generally to taxable entities would not apply to any qualified public entity that transfers its nuclear production tax

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credits under this provision. However, the general business credit use limitation  
would apply to the non-public transferee of the credits.

Both the transferor public entity and the transferee non-public entity would be  
required to provide a verification of the credit transfer in the manner and at the  
time prescribed by the Secretary.

**Effective Date**

The provision would apply to taxable years beginning after the date of enactment.

SEE Exhibit "A"

**EXHIBIT A**

**SEC. \_\_\_\_ . MODIFICATION OF CREDIT FOR PRODUCTION FROM ADVANCED NUCLEAR POWER FACILITIES.**

- (a) Allocation of Credit to Private Partners of Tax-Exempt Entities--
  - (1) IN GENERAL- Section 45J of the Internal Revenue Code of 1986 (relating to credit for production from advanced nuclear power facilities) is amended--
    - (A) by redesignating subsection (e) as subsection (f); and
    - (B) by inserting after subsection (d) the following new subsection:
  - (e) Special Rule for Public-Private Partnerships--
    - (1) IN GENERAL- In the case of an advanced nuclear power facility which is owned by a public-private partnership or co-owned by a qualified public entity and a non-public entity, any qualified public entity which is a member of such partnership or a co-owner of such facility may transfer such entity's credit under subsection (a) to any non-public entity which is a member of such partnership or which is a co-owner of such facility, except that the aggregate allocations of such credit claimed by such non-public entity shall be subject to the limitations under subsections (b) and (c) and section 38.
    - (2) QUALIFIED PUBLIC ENTITY- For purposes of this subsection, the term 'qualified public entity' means--
      - (A) a Federal, State, or local government entity, or any political subdivision or agency or instrumentality thereof,
      - (B) a mutual or cooperative electric company described in section 501(c)(12) or section 1381(a)(2), or
      - (C) a not-for-profit electric utility which has or had received a loan or loan guarantee under the Rural Electrification Act of 1936.
    - (3) VERIFICATION OF TRANSFER OF ALLOCATION- A qualified public entity that makes a transfer under paragraph (1), and a nonpublic entity that receives an allocation under such a transfer, shall provide verification of such transfer in such manner and at such time as the Secretary shall prescribe.'
    - (2) COORDINATION WITH GENERAL BUSINESS CREDIT- Subsection (c) of section 38 of such Code (relating to limitation based on amount of tax) is amended by adding at the end the following new paragraph:
      - (6) SPECIAL RULE FOR CREDIT FOR PRODUCTION FROM ADVANCED NUCLEAR POWER FACILITIES--
        - (A) IN GENERAL- In the case of the credit for production from advanced nuclear power facilities determined under section 45J(a), paragraph (1) shall not apply with respect to any qualified public entity (as defined in section 45J(e)(2)) which transfers the entity's allocation of such credit to a non-public partner or a co-owner of such facility as provided in section 45J(e)(1).
        - (B) VERIFICATION OF TRANSFER- Subparagraph (A) shall not apply to any qualified public entity unless such entity provides verification of a transfer of credit allocation as required under section 45J(e)(3).'
    - (3) SPECIAL RULE FOR PROCEEDS OF TRANSFERS FOR MUTUAL OR COOPERATIVE ELECTRIC COMPANIES- Section 501(c)(12) of such Code is amended by adding at the end the following new subparagraph:
      - (1) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2), income received or accrued from a transfer described in section 45J(e)(1) shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.'
- (b) Effective Date-The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.