

**DESCRIPTION OF H.R. 5879,  
A BILL TO AMEND THE INTERNAL REVENUE CODE OF 1986  
TO MODIFY THE CREDIT FOR PRODUCTION FROM  
ADVANCED NUCLEAR POWER FACILITIES**

Scheduled for Markup  
by the  
HOUSE COMMITTEE ON WAYS AND MEANS  
on September 14, 2016

Prepared by the Staff  
of the  
JOINT COMMITTEE ON TAXATION



September 13, 2016  
JCX-76-16

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## INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 5879, a bill to amend the Internal Revenue Code of 1986 to modify the credit for production from advanced nuclear power facilities, on September 14, 2016. This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 5879, a Bill to Amend the Internal Revenue Code of 1986 to Modify the Credit for Production From Advanced Nuclear Power Facilities* (JCX-76-16), September 13, 2016. This document can also be found on the Joint Committee on Taxation website at [www.jct.gov](http://www.jct.gov). All section references herein are to the Internal Revenue Code of 1986, as amended, unless otherwise stated.

## A. Advanced Nuclear Power Production Credit

### Present Law

Taxpayers producing electricity at a qualifying advanced nuclear power facility may claim a credit equal to 1.8 cents per kilowatt-hour of electricity produced for the eight-year period starting when the facility is placed in service.<sup>2</sup> The aggregate amount of credit that a taxpayer may claim in any year during the eight-year period is subject to limitation based on allocated capacity and an annual limitation as described below.

An advanced nuclear facility is any nuclear facility for the production of electricity, the reactor design for which was approved after 1993 by the Nuclear Regulatory Commission. For this purpose, a qualifying advanced nuclear facility does not include any facility for which a substantially similar design for a facility of comparable capacity was approved before 1994.

A qualifying advanced nuclear facility is an advanced nuclear facility for which the taxpayer has received an allocation of megawatt capacity from the Secretary of the Treasury (“the Secretary”) and is placed in service before January 1, 2021. The taxpayer may only claim credit for production of electricity equal to the ratio of the allocated capacity that the taxpayer receives from the Secretary to the rated nameplate capacity of the taxpayer’s facility. For example, if the taxpayer receives an allocation of 750 megawatts of capacity from the Secretary and the taxpayer’s facility has a rated nameplate capacity of 1,000 megawatts, then the taxpayer may claim three-quarters of the otherwise allowable credit, or 1.35 cents per kilowatt-hour, for each kilowatt-hour of electricity produced at the facility (subject to the annual limitation described below). The credit is restricted to 6,000 megawatts of national capacity. Once that limitation has been reached, the Secretary may make no additional allocations. Treasury guidance required allocation applications to be filed before February 1, 2014.<sup>3</sup>

A taxpayer operating a qualified facility may claim no more than \$125 million in tax credits per 1,000 megawatts of allocated capacity in any one year of the eight-year credit period. If the taxpayer operates a 1,350 megawatt rated nameplate capacity system and has received an allocation from the Secretary for 1,350 megawatts of capacity eligible for the credit, the taxpayer’s annual limitation on credits that may be claimed is equal to 1.35 times \$125 million, or \$168.75 million. If the taxpayer operates a facility with a nameplate rated capacity of 1,350 megawatts, but has received an allocation from the Secretary for 750 megawatts of credit eligible capacity, then the two limitations apply such that the taxpayer may claim a credit effectively equal to one cent per kilowatt-hour of electricity produced (calculated as described above) subject to an annual credit limitation of \$93.75 million in credits (three-quarters of \$125 million).

The credit is part of the general business credit.

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<sup>2</sup> Sec. 45J. The 1.8-cents credit amount is reduced, but not below zero, if the annual average contract price per kilowatt-hour of electricity generated from advanced nuclear power facilities in the preceding year exceeds eight cents per kilowatt-hour. The eight-cent price comparison level is indexed for inflation after 1992.

<sup>3</sup> I.R.S. Notice 2013-68.

## **Description of Proposal**

The proposal modifies the national megawatt capacity limitation for the advanced nuclear power production credit. To the extent any amount of the 6,000 megawatts of authorized capacity remains unutilized, the proposal requires the Secretary to allocate such capacity first to facilities placed in service before the year 2021, to the extent such facilities did not receive an allocation equal to their full nameplate capacity, and then to facilities placed in service after such date in the order in which such facilities are placed in service. The proposal provides that the present law placed-in-service sunset date of January 1, 2021, does not apply with respect to allocations of such unutilized national megawatt capacity.

The proposal also allows qualified public entities to elect to forgo credits to which they otherwise would be entitled in favor of an eligible project partner. Qualified public entities are defined as (1) a Federal, State, or local government of any political subdivision, agency, or instrumentality thereof; (2) a mutual or cooperative electric company; or (3) a not-for-profit electric utility which has or had received a loan or loan guarantee under the Rural Electrification Act of 1936.<sup>4</sup> An eligible project partner under the proposal generally includes any person who designed or constructed the nuclear power plant, participates in the provision of nuclear steam or nuclear fuel to the power plant, or has an ownership interest in the facility. In the case of a facility owned by a partnership, where the credit is determined at the partnership level, any electing qualified public entity is treated as the taxpayer with respect to such entity's distributive share of such credits, and any other partner is an eligible project partner.

## **Effective Date**

The proposal requiring the allocation of unutilized national megawatt capacity limitation is effective on the date of enactment. The proposal allowing an election by qualified public entities to forgo credits in favor of an eligible project partner is effective for taxable years beginning after the date of enactment.

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<sup>4</sup> 7 U.S.C. sec. 901 *et seq.*

**B. Estimated Revenue Effect**

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<b>Fiscal Years</b>											
<b>[Millions of Dollars]</b>											
<b><u>2017</u></b>	<b><u>2018</u></b>	<b><u>2019</u></b>	<b><u>2020</u></b>	<b><u>2021</u></b>	<b><u>2022</u></b>	<b><u>2023</u></b>	<b><u>2024</u></b>	<b><u>2025</u></b>	<b><u>2026</u></b>	<b><u>2017-21</u></b>	<b><u>2017-26</u></b>
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**NOTE:** Details do not add to totals due to rounding.

[1] Loss of less than \$500,000.