

107TH CONGRESS  
1ST SESSION

# H. R. 2080

To amend the Internal Revenue Code of 1986 to deny accelerated depreciation for electric generating facilities having excess profits in order to prevent taxpayers operating such facilities from having both excess profits and tax incentives.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 2001

Mr. McDERMOTT introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to deny accelerated depreciation for electric generating facilities having excess profits in order to prevent taxpayers operating such facilities from having both excess profits and tax incentives.

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. DENIAL OF ACCELERATED DEPRECIATION FOR**  
4 **ELECTRIC GENERATING FACILITIES HAVING**  
5 **EXCESS PROFITS.**

6 (a) IN GENERAL.—Section 168 of the Internal Rev-  
7 enue Code of 1986 (relating to accelerated cost recovery

1 system) is amended by adding at the end the following  
2 new subsection:

3 “(k) DENIAL OF ACCELERATED DEPRECIATION FOR  
4 CERTAIN ELECTRIC GENERATING FACILITIES.—

5 “(1) IN GENERAL.—If there are excess profits  
6 with respect to an electric generating facility for any  
7 taxable year—

8 “(A) the depreciation deduction provided  
9 by section 167(a) for such taxable year with re-  
10 spect to any property which is part of such fa-  
11 cility shall be determined under the alternative  
12 depreciation system of subsection (g) (as if such  
13 system applied to such property for all previous  
14 taxable years), and

15 “(B) any previously allowed accelerated  
16 benefits with respect to any such property shall  
17 be recaptured by including the amount of such  
18 benefits in the gross income of the taxpayer for  
19 such taxable year.

20 “(2) EXCESS PROFITS.—There are excess prof-  
21 its with respect to an electric generating facility for  
22 any taxable year if the facility has a pretax rate of  
23 return for such taxable year in excess of 15 percent.

24 “(3) PRETAX RATE OF RETURN.—The pretax  
25 rate of return for any taxable year with respect to

1 any electric generating facility is the percentage ob-  
2 tained by dividing—

3 “(A) the taxpayer’s net income from such  
4 facility for such taxable year, by

5 “(B) the average of the taxpayer’s net in-  
6 vestment in the facility as of the beginning of  
7 each month in the taxable year.

8 “(4) NET INVESTMENT.—The net investment in  
9 any facility is the excess of the aggregate adjusted  
10 bases of the property which is part of such facility  
11 over the taxpayer’s indebtedness allocable to such fa-  
12 cility. For purposes of the preceding sentence, in-  
13 debtedness that is incurred to construct, improve, or  
14 acquire property, and that is secured by an interest  
15 in such property shall be allocated to such property.  
16 All other indebtedness of the taxpayer shall be allo-  
17 cated among the items of property held by the tax-  
18 payer based on their respective adjusted bases.

19 “(5) NET INCOME.—

20 “(A) IN GENERAL.—The net income of the  
21 taxpayer from the operation of an electric gen-  
22 erating facility is the excess of—

23 “(i) gross income from the sale of  
24 electricity produced at such facility, over

1                   “(ii) the deductions allowable by this  
2                   subtitle which are directly allocable to the  
3                   operations of such facility.

4                   “(B) SALES TO RELATED PERSONS.—If a  
5                   sale of electricity is to a related person (within  
6                   the meaning of section 482), the sale shall be  
7                   treated for purposes of this paragraph as being  
8                   made at the price at which the electricity is  
9                   first sold to a person who is not a related per-  
10                  son (as so defined), minus transmission costs.

11                  “(C) DETERMINATION ADJUSTED BASIS,  
12                  ETC.—For purposes of this paragraph and  
13                  paragraph (4), adjusted bases and depreciation  
14                  deductions shall be determined as if the alter-  
15                  native system of subsection (g) applied to the  
16                  facility for all taxable years and only interest on  
17                  indebtedness allocable to the facility shall be  
18                  taken into account.

19                  “(6) PREVIOUSLY ALLOWED ACCELERATED  
20                  BENEFITS.—The previously allowed accelerated ben-  
21                  efits with respect to property are the excess of—

22                         “(A) depreciation deduction allowable  
23                         under section 167(a) with respect to such prop-  
24                         erty for all prior taxable years, over

1           “(B) the amount that would have been so  
2           allowable if such deductions had been deter-  
3           mined under the alternative depreciation system  
4           of subsection (g) for all prior taxable years.

5           “(7) TREATMENT OF RECAPTURED AMOUNT.—  
6           The adjusted basis of any property with respect to  
7           which there is an amount included in gross income  
8           under paragraph (1)(B) shall be increased by the  
9           amount so included.

10           “(8) EXEMPTIONS FOR FACILITIES USING RE-  
11           NEWABLE ENERGY.—This subsection shall not apply  
12           to any facility producing electricity from renewable  
13           sources. For purposes of the preceding sentence, re-  
14           newable sources are wind, sun, or water power.”

15           (b) EFFECTIVE DATE.—The amendment made by  
16           this section shall apply to taxable years beginning after  
17           December 31, 2000.

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