

COMMISSIONER OF INTERNAL REVENUE

Washington, DC 20224

OCT 4 1979

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Mr. Mitchell Rogovin, Director  
NRC/TMI Special Inquiry Group  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Mitch:

This is in response to your letter of August 15, 1979, concerning the Special Inquiry into the accident at Three Mile Island.

You asked for an explanation of a statement in Rev. Rul. 79-98, 1979-12 I.R.B. 8, dealing with the date when an electrical generating unit is first placed in service for depreciation and investment credit purposes.

Property is first placed in service when it is in a state of readiness and availability for a specifically assigned function; in the case of an electric generating unit when it is able to produce electric power. This is a standard established by the Income Tax Regulations and is the same for nuclear or fossil-fueled units. The Service has issued two other revenue rulings to provide guidance as to when an electric generating unit will be considered first placed in service under differing factual situations. They are Rev. Rul. 76-256, 1976-2, C.B. 46, and Rev. Rul. 76-428, 1976-2, C.B. 47. In Rev. Rul. 79-98, that you have cited, the procedures for placing the unit in service called for power escalation up to its rated capacity. If a generating unit produces power and no failure results in escalating power output to rated capacity, the unit could be considered placed in service and qualify for the appropriate tax benefits. Where a generating unit successfully achieves power escalation, the probability of a major failure is minimized. The expression "to eliminate any defects" implies minor defects.

This is illustrated by the language included in Rev. Rul. 76-256 where it is stated that subsequent testing of the unit was performed to determine and eliminate latent defects, if any.

Mr. Mitchell Rogovin, Director

The concept in all three Revenue Rulings is to recognize that generating units will meet the regulation standards for being placed in service, although some additional testing is performed. Testing in some form is an ongoing process during the life of a generating unit. Because of the ongoing testing, a more stringent rule for reaching the placed in service status would be difficult to administer.

With regard to your second question of whether a utility's declaration of "commercial operation" for a unit has any bearing on the allowability to the taxpayer of claimed investment credit and initial depreciation deduction, the term "commercial operation" is used by regulatory bodies and is not a tax term. Our understanding is that it is not well defined, even for regulatory purposes, but that the term is more restrictive than that of the standard used by the Service as expressed in the regulations and Revenue Rulings for property to be placed in service.

The Service will not be able to furnish an agent to engage in a non-tax examination. However, we can suggest former agents who have the required knowledge. If you desire this assistance, please contact Mr. Bernard L. Meehan of the National Office, Examination Division. His telephone number is 566-6849.

With kind regards,

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Meehan', written in a cursive style.