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Date:
April 24, 2007

LEGEND:

Parent =

Taxpayer A =

Taxpayer B =

Taxpayer C =

Company =
State A =
State B =
Plant =
Director =

Location =
Commission A =
Commission B =
Commission C =
Commission D =
Taxpayer D =

Taxpayer E =

Taxpayer F =

X =
Y =
Z =

Dear :

This letter responds to your request, dated May 17, 2006, for various rulings on the tax consequences of the transaction described below under section 468A of the Internal Revenue Code.

Taxpayers represent the following facts and information relating to the ruling request:

Taxpayer B is wholly owned by Parent. Taxpayer B owns all of the common stock of Taxpayer C. Taxpayer B is an electric public utility company engaged in the generation, transmission, distribution, and sale of electric energy in State A. Taxpayer B is subject to the jurisdiction of Commission A and Commission B with respect to the nuclear decommissioning costs included in its cost of service for regulatory purposes. Taxpayer C is an electric public utility company engaged in the generation, transmission, distribution, and sale of electric energy in State B. Taxpayer C is subject to the jurisdiction of Commission C and Commission B with respect to the nuclear decommissioning costs included in its cost of service for regulatory purposes. Taxpayer A is a newly-formed generation company and is a wholly-owned subsidiary of Company, which is wholly-owned by Parent. Taxpayer B has an ownership interest of percent in the Plant; Taxpayer C has a percent ownership interest in the Plant. Plant is situated at Location. Companies A and B are severally obligated to pay all expenditures for the construction, operation, and maintenance of Plant and are entitled to the proportionate share of the electric power produced thereby. Both Taxpayer B and Taxpayer C have obligations to decommission the Plant and have established several funds for that purpose. Taxpayer B has established Taxpayer D as a fund qualified under § 468A as well as one or more nonqualified funds. Taxpayer C has established Taxpayer E as a fund qualified under § 468A as well as one or more nonqualified funds.

Both Taxpayer B and Taxpayer C have received revised schedules of ruling amounts through 2005. On X, Taxpayer B contributed the entire 12-month ruling

amount specified in its most recent schedule of ruling amounts to Taxpayer D. On X, Taxpayer C contributed the entire 12-month ruling amount specified in its most recent schedule of ruling amounts to Taxpayer E.

On Y, Taxpayer B and Taxpayer C transferred their interests in Plant to Taxpayer A. Taxpayer A assumed certain obligations with respect to Plant, including the obligation to decommission Plant. Also on Y, Taxpayer B transferred Taxpayer D, as well as all nonqualified decommissioning funds relating to the Plant, to Taxpayer A and Taxpayer C transferred Taxpayer E as well as all nonqualified decommissioning funds relating to the Plant, to Taxpayer A. The assets in Taxpayer D and Taxpayer E were transferred to Taxpayer F, a fund established by Taxpayer A and qualified under § 468A. The transfers of the interests in Plant were approved by Commission C and Commission D. In addition, Commission B approved the transfer of the interest of Taxpayer C in the Plant.

As a result of the contributions of the entire 2005 ruling amounts on X by Taxpayer B to Taxpayer D, and by Taxpayer C to Taxpayer E, excess contributions were made to those Funds. On Z, Taxpayer A withdrew from Taxpayer F the excess contributions made by Taxpayer B and Taxpayer C, along with earnings on those excess contributions from the day after X until Z.

Taxpayer has requested the following rulings:

Requested Ruling #1: Taxpayer A, Taxpayer B, Taxpayer C, Taxpayer D, Taxpayer E, and Taxpayer F will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the transfer of assets of Taxpayer D and Taxpayer E into Taxpayer F and Taxpayer F will have a basis in the assets received from Taxpayer D and Taxpayer E equal to the basis of those assets immediately prior to the transfer.

Requested Ruling #2: No portion of Taxpayer D or Taxpayer E is disqualified by receipt of the excess contributions from Taxpayer B and Taxpayer C, respectively, and that no portion of Taxpayer F is disqualified by the withdrawal of such excess contributions and the earnings thereon.

Law and Analysis:

Requested Ruling #1

Section 1.468A-5(a) sets out the qualification requirements for nuclear decommissioning funds. It provides, in part, that a qualified nuclear decommissioning

fund must be established and maintained pursuant to an arrangement that qualifies as a trust under state law.

Section 1.468A-5(a)(1)(iii) provides that an electing taxpayer can establish and maintain only one qualified nuclear decommissioning fund for each nuclear power plant. If a nuclear power plant is subject to the ratemaking jurisdiction of two or more public utility commissions and any such public utility commission requires a separate fund to be maintained for the benefit of ratepayers whose rates are established or approved by the public utility commission, the separate funds maintained for such plant (whether or not established and maintained pursuant to a single trust agreement) shall be considered a single nuclear decommissioning fund.

Section 1.468A-6 provides rules applicable to the transfer of an interest in a nuclear power plant (and transfer of the qualified nuclear decommissioning fund) where certain requirements are met. Specifically, section 1.468A-6(b) provides that section 1.468A-6 applies if--

(1) Immediately before the disposition, the transferor maintained a qualified nuclear decommissioning fund with respect to the interest disposed of; and

(2) Immediately after the disposition--

(i) The transferee maintains a qualified nuclear decommissioning fund with respect to the interest acquired;

(ii) The interest acquired is a qualifying interest of the transferee in the nuclear power plant;

(iii) Either a proportionate amount (which could include all) of the assets of the transferor's Qualified nuclear decommissioning fund is transferred to a qualified nuclear decommissioning fund of the transferee, or the transferor's entire qualified nuclear decommissioning fund is transferred to the transferee, provided in the latter case (or if the transferee receives all of the assets in the transferor's qualified nuclear decommissioning fund, but not the transferor's qualified nuclear decommissioning fund) that the transferee acquires the transferor's entire qualifying interest in the plant; and

(iv) The transferee continues to satisfy the requirements of section 1.468A-5(a)(iii), which permits an electing taxpayer to maintain only one qualified nuclear decommissioning fund for each plant.

Section 1.468A-6(c) provides that a disposition that satisfies the requirements of section 1.468A-6(b) will have the following tax consequences at the time it occurs:

(1) Neither the transferor nor the transferor's qualified nuclear decommissioning fund will recognize gain or loss or otherwise take any income into account by reason of the transfer of a proportionate amount of the assets of the transferor's qualified nuclear decommissioning fund to the transferee's qualified nuclear decommissioning fund (or by reason of the transfer of the transferor's entire qualified nuclear decommissioning fund to the transferee). For purposes of the regulations under section 468A, this transfer (or the transfer of the transferor's qualified nuclear decommissioning fund) will not be considered a distribution of assets by the transferor's qualified nuclear decommissioning fund.

(2) Neither the transferee nor the transferee's qualified nuclear decommissioning fund will recognize gain or loss or otherwise take any income into account by reason of the transfer of a proportionate amount of the assets of the transferor's qualified nuclear decommissioning fund to the transferee's qualified nuclear decommissioning fund (or by reason of the transfer of the transferor's entire qualified nuclear decommissioning fund to the transferee). For purposes of the regulations under section 468A, this transfer (or the transfer of the transferor's qualified nuclear decommissioning fund) will not constitute a payment or a contribution of assets by the transferee to its qualified nuclear decommissioning fund.

(3) Transfers of assets of a qualified nuclear decommissioning fund to which this section applies do not affect basis. Thus, the transferee's qualified nuclear decommissioning fund will have a basis in the assets received from the transferor's qualified nuclear decommissioning fund that is the same as the basis of those assets in the transferor's qualified nuclear decommissioning fund immediately before the distribution.

Under section 1.468A-6(g), the Service may treat any disposition of an interest in a nuclear power plant occurring after December 27, 1994, as satisfying the requirements of the regulations if the Service determines that such treatment is necessary or appropriate to carry out the purposes of section 468A.

Requested Ruling #2

Section 468A(a) and section 1.468A-2(a) provide that a taxpayer that elects the application of section 468A may deduct in the taxable year the election is made any payments made by the taxpayer to a qualified nuclear decommissioning fund in that year.

Former section 468A(b) and section 1.468A-(2)(b)(1) provide that, for purposes of section 1.468A-2(a), the amount that a taxpayer may pay into a qualified nuclear decommissioning fund for any taxable year shall not exceed the lesser of the amount of nuclear decommissioning costs allocable to the fund which is included in the taxpayer's cost of service for ratemaking purposes for the taxable year, or the ruling amount applicable to fund for that the taxable year. Section 1.468A-2(b)(1) provides further that if the amount of cash payments made (or deemed made) to a qualified nuclear decommissioning fund during any taxable year exceeds the limitation of section 1.468A-2(b)(1), the excess is not deductible by the electing taxpayer.

Section 1.468A-5(a)(2) prohibits a nuclear decommissioning fund from accepting any contribution for which a deduction is not permitted under section 468A(a) and section 1.468A-2(a). Section 1.468A-5(c)(1) provides that, if at any time during a taxable year of a nuclear decommissioning fund the fund does not satisfy the requirements of section 1.468A-5(a), the Service may, in its discretion, disqualify all or any portion of the fund as of the date that the fund does not satisfy the requirements of section 1.468A-5(a).

Section 1.468A-2(c)(2) provides that the amount of any cash payment made by an electing taxpayer to a qualified nuclear decommissioning fund on or before the 15th day of the third calendar month after the close any taxable year shall be deemed made during that taxable year if the electing taxpayer irrevocably designates the amount as relating to that taxable year on its timely filed Federal income tax return for that taxable year.

Section 1.468A-5(c)(2)(ii) defines an excess contribution for purposes of section 1.468A-5(c)(2) as the amount by which cash payments made (or deemed made) to a qualified nuclear decommissioning fund during any taxable year exceed the payment limitation in former section 468A(b) and section 1.468A-2(b).

Section 1.468A-5(c)(2)(i) provides that a qualified nuclear decommissioning fund will not be disqualified under section 1.468A-5(c)(1) by reason of an excess contribution or the withdrawal of that excess contribution by an electing taxpayer if the amount of the excess contribution is withdrawn by the electing taxpayer on or before the date prescribed by law (including extensions) for filing the return of the fund for the taxable year for which the excess contribution relates.

Section 1.468A-2(d)(2)(ii) provides that the amount of a withdrawal of an excess contribution (as defined in section 1.468A-5(c)(2)(ii)) by an electing taxpayer pursuant to the rules of section 1.468A-5(c)(2) shall not be included in the gross income of the electing taxpayer.

Conclusions:

Taxpayer A, Taxpayer B, Taxpayer C, Taxpayer D, Taxpayer E, and Taxpayer F will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the transfer of assets of Taxpayer D and Taxpayer E into Taxpayer F and Taxpayer F will have a basis in the assets received from Taxpayer D and Taxpayer E equal to the basis of those assets immediately prior to the transfer.

With respect to the excess contributions and the subsequent withdrawal of those excess contributions, the Service will not disqualify any part of Taxpayer D, Taxpayer E, or Taxpayer F as a result of these transactions.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above.

Effective January 1, 2006, amendments were made to § 468A by the Energy Tax Incentives Act of 2005, Pub. L. 109-58, 119 Stat. 594. Regulations based on these amendments are being developed but have not yet been proposed. The discussion above is based on the law in effect prior to January 1, 2006. However, this ruling will be modified or revoked by the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2007-1, 2007-1 I.R.B. 1, 49. However, when the criteria in section 11.05 of Rev. Proc. 2007-1, 2007-1 I.R.B. 50, are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

This ruling is directed only to the Taxpayers who requested it. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent. In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the Taxpayer. We are also sending a copy of this letter ruling to the Director. Pursuant to § 1.468A-7(a), a copy of this letter must be attached (with the required Election Statement) to the Taxpayers' federal income tax return for each tax year, if any, in which the Taxpayer claims a deduction for payments made to the Fund.

Sincerely,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
(Passthroughs & Special Industries)