Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200742007**
Release Date: 10/19/2007

Index Number: 468A.04-02

Person To Contact:
ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-112436-07

Date:
July 12, 2007

Legend:

Taxpayer =

Company =

Holding Company =

NewCo =

State A =

State B =

Plant =

Commission A =

Commission B =

Commission C =

Commission D =

a =

Dear :

This letter responds to your request for private letter ruling dated . You requested that we rule on certain tax consequences, under section 468A of the Internal Revenue Code, to Company, NewCo, and the qualified nuclear decommissioning fund with respect to Plant, of the reorganization discussed below.

Facts:

Taxpayer has represented the following facts and information relating to the ruling request:

Taxpayer, a registered public utility holding company, is the parent of an affiliated group of subsidiary corporations. Company is a subsidiary of Taxpayer. Company, a regulated public utility corporation organized in State A, is engaged in the generation, transmission, and distribution or electricity to customers in States A and B. Company is the owner and operator of Plant, as well as the concomitant obligation to decommission Plant. Company represents that it has a qualifying interest in Plant, as defined in § 1.468A-1(b)(2) of the Treasury regulations, of 100 percent. Company has established a qualified nuclear decommissioning trust (the QDT) to fulfill its obligation to decommission Plant.

At the suggestion of the staff of Commission B, Taxpayer and Company propose to undertake a two-step process of restructuring on a. Under step one, Holding Company will form a new limited liability company, NewCo. NewCo will elect to be classified as a corporation for federal income tax purposes. NewCo will be a regulated public utility subject to the same regulatory jurisdiction as Company. Under step two, Company, including its ownership interest in Plant and the related QDT, will merge into NewCo, with NewCo the surviving entity. Taxpayer represents that this conversion will qualify as a tax-free reorganization under § 368(a)(1)(F) of the Internal Revenue Code. NewCo will be a regulated public utility subject to the jurisdiction of Commissions A, B and D.

Taxpayer has requested the following rulings:

Requested Ruling #1: The QDT will not be disqualified by reason of either the merger of Company into NewCo or the transfer of the QDT from Company to NewCo in the course of the proposed restructuring. Thus, the QDT will continue to be treated as a QDT that satisfies the requirements of § 468A and § 1.468A-6 of the regulations thereunder.

Requested Ruling #2: The QDT will not recognize any gain or loss or otherwise take any income or deduction into account as a result of either the merger of Company into NewCo or the transfer of the QDT from Company to NewCo in the course of the proposed restructuring.

Requested Ruling #3: Neither Taxpayer, Company, nor NewCo will recognize any gain or loss or take any income or deduction into account as a result of the transfer of the QDT from Company to NewCo in the course of the proposed restructuring.

Requested Ruling #4: Pursuant to § 1.468A-6(c), after the restructuring, the QDT will have a tax basis in each of their assets that is the same as the tax basis in those assets immediately prior to the proposed restructuring.

Law and Analysis:

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.

Conclusions:

Based on the information submitted by Taxpayer, we reach the following conclusions:

The conversion of Company into NewCo and the transfer of the QDT from Company to NewCo in the course of the proposed restructuring qualify as dispositions under the general provisions of § 1.468A-6. Accordingly, pursuant to § 1.468A-6(c)(1) and § 1.468A-6(c)(2), the QDT will not be disqualified by reason of the conversion of Company into NewCo and the transfer of the QDT from Company to NewCo in the course of the proposed restructuring. In addition, Taxpayer, Company, NewCo, and the QDT will not recognize any gain or loss or otherwise take any income or deduction into account solely by reason of the conversion of Company into NewCo and the transfer of the QDT from Company to NewCo in the course of the proposed restructuring. Further, pursuant to § 1.468A-6(c)(3), after the restructuring, the QDT will have a basis in the assets held equal to the basis of such assets in the qualified nuclear decommissioning fund immediately prior to the transfer of the QDT from Company to NewCo.

While it owns interests in Plant, NewCo is eligible to maintain the qualified nuclear decommissioning fund.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. This includes, but is not limited to, any opinion on the tax consequences of the proposed restructuring outside of the transfer of the QDT.

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 letter ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that this ruling may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, the original of this letter is being sent to Taxpayer's authorized representative. We are also sending a copy of this letter ruling to Taxpayer and to the Industry Director, Natural Resources (LM:NR).

Sincerely,

PETER C. FRIEDMAN
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
Passthroughs and Special Industries