Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-144197-07

Date:
February 27, 2008

Legend:

Taxpayer =

Company =

Generating =

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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 Taxpayer, Company, and their qualified nuclear decommissioning funds, of the election by Company to be treated as an entity disregarded for federal tax purposes and the resulting deemed transfer of ownership of certain nuclear power facilities from Company to Taxpayer.

Facts:

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

Taxpayer, a holding company, is the single member of Company, a single member limited liability company (LLC). Company, prior to a, had elected to be classified as an association taxable as a corporation. Company is the single member of Generating, a single member LLC that has elected to be disregarded for federal tax purposes. Taxpayer, through its various subsidiaries, is engaged in the generation, sale, and delivery of electricity at wholesale and retail. Company owns, through Generating or other disregarded entities, the following percentages in the nuclear power facilities at issue:

Effective on a, Company has elected to be disregarded for federal tax purposes. As a result, on that date, ownership of the nuclear power facilities and related qualified nuclear decommissioning trusts (QDT) will be deemed transferred to Taxpayer.

Taxpayer has requested the following rulings:

Requested Ruling #1: None of the Taxpayer, Company, or the QDTs that have been transferred will recognize any gain or loss or take any income or deduction into account as a result of the deemed transfer of the QDTs from Company to Taxpayer.

Requested Ruling #2: Immediately following the deemed transfer, the transferred QDTs will be treated as satisfying the requirements of § 468A and § 1.468A-6T.

Requested Ruling #3: The tax basis in the assets of the QDTs will remain the same immediately before and after the deemed transfer.

Law and Analysis:

Section 1.468A-5T(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-5T(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-6T 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-6T(b) provides that section 1.468A-6T 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;

(3) In connection with the disposition, either—

(i) The transferee acquires part or all of the transferor's qualifying interest in the plant and a proportionate amount of the assets of the transferor's fund is transferred to a fund of the transferee; or

(ii) The transferee acquires the transferor's entire qualifying interest in the plant and the transferor's entire fund is transferred to the transferee; and

(4) The transferee continues to satisfy the requirements of § 1.468A-5T(a)(1)(iii), which permits an electing taxpayer to maintain only one qualified nuclear decommissioning fund for each plant.

Section 1.468A-6T(c) provides that a disposition that satisfies the requirements of section 1.468A-6T(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-6T(f), the Service may treat any disposition of an interest in a nuclear power plant 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 and expressly conditioned on Taxpayer's representation that Generation and Nuclear are disregarded entities for federal tax purposes, we reach the following conclusions:

The deemed transfer of the QDTs from Company to Taxpayer qualify as dispositions under the general provisions of section 1.468A-6T. Accordingly, pursuant to § 1.468A-6T(c)(1) and § 1.468A-6T(c)(2), Taxpayer, Company, and the qualified nuclear decommissioning funds will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the deemed transfer of the interests in the qualified nuclear decommissioning trust funds. Further, pursuant to § 1.468A-6T(c)(3), after the deemed transfer, Taxpayer's qualified nuclear decommissioning funds will have a basis in the assets held equal to the basis of such assets in the qualified nuclear decommissioning funds immediately prior to the transfer of the interests in the qualified nuclear decommissioning funds.

While it owns interests in the Plants, through its divisions or otherwise, Taxpayer is eligible to maintain the qualified nuclear decommissioning funds.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. In addition, no opinion is expressed or implied concerning whether Generation or Nuclear are properly disregarded for tax purposes and treated as divisions of Holding Company.

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. We are also sending a copy of this letter ruling to Taxpayer's authorized representatives and to the Industry Director, Natural Resources and Construction (LM:NRC).

Sincerely,

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