Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200841005**
Release Date: 10/10/2008

Index Number: 468A.04-02

Person To Contact:
ID No.
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Refer Reply To:
CC:PSI:B06 – PLR-101827-08

Date:
July 14, 2008

Legend:

Transferor =

Intermediate =

Parent =

Transferee Parent =

Taxpayer =

Plant =

Dear :

This letter responds to your request for private letter ruling dated January 11, 2008. You requested that we rule on the tax consequences, under section 468A of the Internal Revenue Code, to Transferor, Transferee, and their qualified nuclear decommissioning funds, of the transfer by Transferor to Transferee of Plant.

Facts:

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

Transferor is a single-member limited liability company (LLC) that is disregarded for federal tax purposes. Transferor is wholly owned by Intermediate, a single-member LLC that has elected to be treated as a corporation for federal tax purposes. Intermediate is wholly owned by Parent. Parent files a consolidated tax return for an affiliated group and the activities of Transferor and Intermediate are reflected on that return. Transferor is principally engaged in the generation and sale of electricity at wholesale. Transferor has established a Qualified Nuclear Decommissioning Fund (QDF) for each nuclear reactor in Plant.

Transferee is a single-member LLC disregarded for federal tax purposes. Transferee is wholly owned by Transferee Parent, an LLC that is disregarded for federal tax purposes. Transferee Parent is wholly owned by Taxpayer. Taxpayer files a corporate tax return that will include the activities of Transferee and Transferee Parent. Taxpayer specializes in nuclear facility decommissioning services and it

Plant consists of two nuclear reactors.

On , Transferor and Transferee Parent executed a term sheet describing the principal terms of the transfer of Plant, Transferor's related QDFs, and the obligation to decommission Plant from Transferor to Transferee. Transferee will establish and maintain a QDF for each reactor in Plant under an arrangement that qualifies as a trust under applicable State law. On , the parties executed definitive agreements related to the transfer. Under these agreements, the Transferor will transfer to Transferee Plant (including the licenses granted by the Nuclear Regulatory Commission (NRC)), the related QDFs, and the obligation to decommission Plant, and decontaminate the land underneath Plant.[1] The transaction will close and the transfer will take place when all regulatory approvals of the transfer, including that of the NRC, are obtained.

[1] Transferor will retain ownership of the land underneath Plant but will lease the land to Transferee and Transferee will assume the obligation to decontaminate the land.

Following the transfer, Transferor will retain access to the site of Plant as necessary to operate various other equipment and improvements to the facility. In addition, Transferor will have access to the site and personnel of Transferee to monitor the decommissioning and site restoration but has no authority to manage or direct these decommissioning activities by Transferee.

Taxpayer has requested the following rulings:

Requested Ruling #1: Pursuant to § 1.468A-6T, the transfer will be treated as a transfer of the assets of Transferor's QDF in connection with the sale, exchange or other disposition by Transferor of all or a portion of Transferor's interest in Plant to Transferee.

Requested Ruling #2: Transferor's QDFs will not become disqualified by reason of the transfer of the assets in those funds to Transferee's QDFs.

Requested Ruling #3: Transferor's QDFs will not recognize any gain or loss upon the transfer of the assets in those funds to the Transferee's QDFs.

Requested Ruling #4: Transferor will not recognize any income upon the transfer of the assets from Transferor's QDFs to the Transferee's QDFs.

Requested Ruling #5: Transferee's QDFs, established to hold the assets transferred from Transferor's QDFs, will be treated as satisfying the requirements of § 468A and § 1.468A-6T.

Requested Ruling #6: Transferee will not recognize gain or loss or otherwise take any income or deduction into account by reason of the transfer of assets of Transferor's QDFs to the Transferee's QDFs.

Requested Ruling #7: Transferee's QDFs will not recognize gain or loss or otherwise take any income or deduction into account by reason of the transfer of assets of Transferor's QDFs to the Transferee's QDFs.

Requested Ruling #8: On the date of closing Transferee's QDFs will retain the same basis in the assets received from Transferor's QDFs as Transferor's QDFs had in such assets immediately prior to the transfer.

Requested Ruling #9: Following the transfer, payments of reasonable compensation by Transferee's QDFs to Transferee and its affiliates as compensation for the performance of reasonable and necessary services in

connection with the entombment, decontamination, dismantlement, removal, and disposal of structures, systems, and components of Plant as well as any other services constituting “nuclear decommissioning costs” within the meaning of § 1.468A-1T(b)(6) will not constitute self-dealing.

Requested Ruling #10: Transferee and its affiliates will report as taxable income amounts received from Transferee’s QDFs as payments for (or reimbursements of) qualifying decommissioning expenditures, or any actual or deemed distributions from Transferee’s QDFs.

Requested Ruling #11: Transferee and its affiliates will be entitled to current deductions for amounts paid or incurred in connection with the provision of decommissioning services.

Requested Ruling #12: Transferor and its affiliates will not report as taxable income amounts Transferee receives from Transferee’s QDFs as payments for (or reimbursements of) qualifying decommissioning expenditures, or any actual or deemed distributions from Transferee’s QDFs.

Requested Ruling #13: Transferor and its affiliates will not be entitled to current deductions for amounts Transferee pays or incurs in connection with Transferee’s provision of decommissioning services.

Law and Analysis:

Section 468A(a) of the Code provides that a taxpayer may elect to deduct payments made to a nuclear decommissioning reserve fund that meets the requirements of section 468A (i.e. a fund that is a "qualified nuclear decommissioning fund").

Section 468A(c)(1) provides that any amount distributed from a qualified nuclear decommissioning fund during any taxable year is includible in the taxable income of the taxpayer for that year.

Section 468A(c)(2) provides that, in addition to contributions to a qualified nuclear decommissioning fund that are deductible under § 468A(a), there is allowable as a deduction the amount of “nuclear decommissioning costs” with respect to which economic performance occurs (within the meaning of § 461(h)(2)) during the taxable year. Nuclear decommissioning costs are defined in § 1.468A-1T(b)(6) as all otherwise deductible expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal, and disposal of the structures, systems, and components of a nuclear power plant that has permanently ceased the production of

electric energy. This term includes all otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all otherwise deductible expenses. Such term does not include otherwise deductible expenses to be incurred in connection with the disposal of spent nuclear fuel under the Nuclear Waste Policy Act of 1982 (Public Law 97-425). An expense is considered “otherwise deductible” for purposes of § 1.468A-1T(b)(6) if it would be deductible under Chapter 1 of the Code without regard to § 280B.

Section 468A(e)(5) provides that, for purposes of section 4951, a qualified nuclear decommissioning fund is treated as a trust described in section 501(c)(21).

Section 1.468A-1T(b)(4) provides that a "qualified nuclear decommissioning fund" is a fund that satisfies the requirements of section 1.468A-5T.

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.

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. For purposes of § 1.468A-6T, a nuclear power plant includes a plant that previously qualified as a nuclear power plant and that has permanently ceased to produce electricity.

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.

Section 1.468A-5T(a)(3) provides that the assets of a qualified nuclear decommissioning fund are to be used exclusively (A) to satisfy, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear plant to which the fund relates, (B) to pay administrative and other incidental costs of the trust fund, and (C) to the extent not currently required for the purposes described in (A) and (B) above, to make investments.

Section 1.468A-5T(b)(1) provides that, except as otherwise provided in section 1.468A-5T(b), the excise taxes imposed by section 4951 shall apply to each act of self-dealing between a disqualified person and a nuclear decommissioning fund.

Section 1.468A-5T(b)(2) defines “self-dealing” for purposes of § 468A and the temporary regulations thereunder as any act described in section 4951(d) except

(i) A payment by a nuclear decommissioning fund for the purpose of satisfying, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates;

(ii) A withdrawal of an excess contribution by the electing taxpayer pursuant to the rules of paragraph (c)(2) of this section;

(iii) A withdrawal by the electing taxpayer of amounts that have been treated as distributed under paragraph (c)(3) of this section;

(iv) A payment of amounts remaining in a nuclear decommissioning fund to the electing taxpayer after the termination of such fund (as determined under paragraph (d) of this section);

(v) Any act described in section 4951(d)(2) (B) or (C);

(vi) Any act that is described in §53.4951-1(c) and is undertaken to facilitate the temporary investment of assets or the payment of reasonable administrative expenses of the nuclear decommissioning fund; or

(vii) A payment by a nuclear decommissioning fund for the performance of trust functions and certain general banking services by a bank or trust company that is a disqualified person if the banking services are reasonable and necessary to carry out the purposes of the fund and the compensation paid to the bank or trust company for

such services, taking into account the fair interest rate for the use of the funds by the bank or trust company, is not excessive.

Section 1.468A-5T(b)(3) provides that the term “disqualified person” includes each person described in § 4951(e)(4) and § 53.4951-1(d).

Section 1.468A-5T(c)(1)(i) provides that if at any time during the taxable year a qualified nuclear decommissioning fund does not satisfy a requirement of section 1.468A-5(a), the Service may, in its discretion, disqualify all or a portion of the fund as of the date that the fund does not satisfy such requirements.

Section 1.468A-5T(c)(3) provides that, if all or any portion of a qualified nuclear decommissioning fund is disqualified under section 1.468A-5T(c)(1), the portion of the qualified nuclear decommissioning fund that is disqualified is treated as distributed to the electing taxpayer on the date of the disqualification. Such a distribution shall be treated for purposes of section 1001 as a disposition of property held by the qualified nuclear decommissioning fund. In addition, the electing taxpayer must include in gross income for the taxable year that includes the date of disqualification an amount equal to the product of the fair market value of the assets of the fund determined as of the date of disqualification (reduced by certain amounts including any tax that is (1) imposed on the income of the fund, (2) is attributable to income taken into account before the date of the disqualification or as a result of the disqualification, and (3) has not been paid as of the date of the disqualification) and the fraction of the qualified nuclear decommissioning fund that was disqualified under section 1.468A-5T(c)(1).

Section 4951 of the Code imposes a tax on each act of self-dealing between a disqualified person and a trust described in section 501(c)(21).

Section 4951(d)(1) of the Code describes self-dealing as any act between the fund and a disqualified person including, direct or indirect sale, exchange, or leasing of real or personal property, lending of money or other extension of credit, furnishing of goods, services, or facilities, payment of compensation, or payment or reimbursement of expenses, and transfer to, or use by or for the benefit of a disqualified person of the fund's income or assets.

Section 4951(d)(2)(C) of the Code states that for purposes of paragraph (1) the payment of compensation (and the payment or reimbursement of expenses) by such trust to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the trust shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive.

Section 4951(e)(4) of the Code describes a “disqualified person” as including contributors to the fund, trustees of the fund, owners of 10% or more of a contributor to the fund, officers, directors, and employees of contributors to the

fund, spouses, ancestors, lineal descendants, and spouses of lineal descendants of the preceding persons, corporations of which the preceding persons own more than 35% of total combined voting power, partnerships of which those persons own more than 35% of the profits interest, and trusts and estates in which those persons own more than 35% of the beneficial interests.

Conclusions:

Based on the information submitted by Taxpayer and expressly conditioned (1) on the transaction taking place with no material change to the terms and conditions described in material submitted to this office and; (2) on NRC approval of the transfer of the Plant and related licenses to Transferee, we reach the following conclusions:

Requested Ruling #1: The transfer will be treated as a transfer of the assets of Transferor's QDF in connection with the sale, exchange or other disposition by Transferor of all or a portion of Transferor's interest in Plant to Transferee.

Requested Ruling #2: Transferor's QDFs will not become disqualified by reason of the transfer of the assets in those funds to Transferee's QDFs.

Requested Ruling #3: Transferor's QDFs will not recognize any gain or loss upon the transfer of the assets in those funds to the Transferee's QDFs.

Requested Ruling #4: Transferor will not recognize any income upon the transfer of the assets from Transferor's QDFs to the Transferee's QDFs.

Requested Ruling #5: Transferee's QDFs, established to hold the assets transferred from Transferor's QDFs, will be treated as satisfying the requirements of § 468A and § 1.468A-6T.

Requested Ruling #6: Transferee will not recognize gain or loss or otherwise take any income or deduction into account by reason of the transfer of assets of Transferor's QDFs to the Transferee's QDFs.

Requested Ruling #7: Transferee's QDFs will not recognize gain or loss or otherwise take any income or deduction into account by reason of the transfer of assets of Transferor's QDFs to the Transferee's QDFs.

Requested Ruling #8: On the date of closing Transferee's QDFs will retain the same basis in the assets received from Transferor's QDFs as Transferor's QDFs had in such assets immediately prior to the transfer.

Requested Ruling #9: Based on the facts and circumstances, we conclude first, that the Transferee is a disqualified person and, second, that the payments of

compensation by the qualified nuclear decommissioning funds to the Transferee and its affiliates for the performance of personal services are not acts of self-dealing because they are reasonable in amount and necessary to carrying out the exempt purposes of the qualified nuclear decommissioning funds. Accordingly, we find that payments of reasonable compensation by the Transferee's qualified nuclear decommissioning funds to the Transferee and its affiliates for the performance of reasonable and necessary services in connection with the entombment, decontamination, dismantlement, removal and disposal of structures, systems and components of the plants (and any other services which would constitute "nuclear decommissioning costs" under section 1.468A-1T(b)(6)) will not constitute self-dealing.

Requested Ruling #10: Transferee, as owner of the QDFs after the transfer, will report as taxable income any actual or deemed distributions from Transferee's QDFs. If Transferee pays amounts to any other person, whether the affiliates of Transferee or to an unrelated person, in connection with the provision of decommissioning services (or for any other reason), the person receiving the payment will report taxable income in the amount of the payment.

Requested Ruling #11: Transferee will be entitled to current deductions for amounts paid or incurred in connection with the provision of decommissioning services in the year in which economic performance occurs. The person receiving these amounts, whether the affiliates of Transferee or an unrelated person, will report income, as discussed in Ruling 10, above, and will be entitled to a deduction in the year in which economic performance occurs under §§ 1.468A-2T(d) and (e). For example, if the QDF pays $100,000 in 2009, to a company affiliated with Transferee for decommissioning services performed in 2009, the Transferee has deemed income of $100,000 under § 1.468A-2T(d) and a deduction of the same amount when economic performance occurs under § 1.468A-2T(e). In addition, the affiliated company has $100,000 in income and may deduct such amounts as it pays for salaries, equipment, rent, or any other expenses that satisfy the rules of Chapter 1 of the Code.

Requested Ruling #12: Transferor and its affiliates will not report as taxable income amounts Transferee receives from Transferee's QDTs as payments for (or reimbursements of) qualifying decommissioning expenditures, or any actual or deemed distributions from Transferee's QDTs.

Requested Ruling #13: Transferor and its affiliates will not be entitled to deductions for amounts Transferee pays or incurs in connection with Transferee's provision of decommissioning services.

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

Specifically, we do not rule or provide any opinion on whether any particular payments by Transferee's QDFs to Transferee and its affiliates qualify as "nuclear decommissioning costs" within the meaning of § 1.468A-1T(b)(6) or whether those payments are "reasonable." In addition, no opinion is expressed or implied concerning whether any of the entities described herein as "disregarded for tax purposes" are properly disregarded for tax purposes.

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, a copy of this letter is being sent to Taxpayer's authorized representative. We are also sending a copy of this letter ruling 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

cc: