Internal Revenue Service

Number: **200848005**
Release Date: 11/28/2008

Index Number: 468A.04-02

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-111295-08
Date:

August 18, 2008

In re: Transferee Schedule of Ruling Amounts and Rulings on Transfer

LEGEND:

Company A =

Former Name =
Company B =
Plant =
State A =
State B =
Year =
Taxpayer =

Partner =

DeliverCo =
Director =

Location =
Commission =
Method =
Transfer Date =
Amount =
X =

Dear :

This letter responds to your request, dated March 5, 2008, as supplemented by letter dated May 1, 2008, for an allocation of the previously-approved schedule of ruling amounts for the year due to a transfer of the Plant as described below, under 1.468A-6T of the temporary Income Tax Regulations, for the Taxpayer's nuclear decommissioning fund ("Fund") with respect to the Plant, as well as for a series of rulings regarding the consequences of that transfer. Finally, Taxpayer requests a revised schedule of ruling amounts pursuant to ' 1.468A-3T(e).

The Taxpayers have represented the following facts and information relating to the ruling request:

Company A, a limited liability company organized under the laws of State A, is engaged in the generation and sale of electric energy in State A. During Year, Company A has been indirectly owned, through one or more limited liability companies each of which is disregarded for federal tax purposes, by Company B. During Year, prior to Transfer Date, Company A was considered the owner of percent of Plant and its qualified nuclear decommissioning fund (Fund) under the laws of State A. However, during that time Company A was an entity disregarded for federal tax purposes and thus Company A was not considered to be the owner of Plant for federal tax purposes. Company B, a limited liability company organized under the laws of State B, was regarded as a partnership during Year until Transfer Date. This partnership was owned percent by Taxpayer and percent by Partner. During this period when Company B was a partnership for federal tax purposes, Company B was considered the owner of Plant and its Fund.

Effective Transfer Date, as part of a liquidation which Taxpayers A and B represent qualifies under § 332, Partner assigned all of its assets and liabilities to its parent, Taxpayer. At the same time, Company B became a disregarded entity when its membership was reduced to a single member, Taxpayer. Thus, on Transfer Date, the partnership terminated and Plant and its Fund were transferred to Company B. Because Company B is a disregarded entity, Taxpayer became owner of Plant and its Fund for federal tax purposes on that date.

Company A, under its Former Name, received a revised schedule of ruling amounts for Plant by letter dated September 29, 2006. That schedule provided a ruling amount for Year, of Amount. Company A and Taxpayer request that the Service issue an allocation of the scheduled ruling amount for Year so that the transferee (Taxpayer) may deduct that portion of the Amount which is the product of multiplying Amount by that fraction in which X is the numerator (the number of days in Year following the Transfer Date) and 365 is the denominator.

In addition, with respect to the transfer, Taxpayers have requested the following rulings:

> Requested Ruling #1: Pursuant to § 1.468A-6T, the Fund will not be disqualified by reason of either the termination of the partnership or the transfer of Plant and its Fund to Taxpayer on the Date of Transfer.
>
> Requested Ruling #2: Neither Taxpayer nor the Fund will recognize any gain or loss or otherwise take any income or deduction into account by reason of the transfer.
>
> Requested Ruling #3: The transfer of the Fund from Company A to Taxpayer will not constitute a payment or contribution of assets by Taxpayer to its Fund.
>
> Requested Ruling #4: Immediately after the transfer, the Fund will have a basis in the assets in the Fund that is the same as the basis of those assets in the Fund held by Company A immediately prior to the transfer.

Section 1.468A-3T(f)(1)(ii)(B) requires a mandatory revised schedule of ruling amounts where, as here, a taxpayer requests a ruling amount for Year determined under a formula prescribed by § 1.468A-6T. For the taxable years after Year, detailed in the revised schedule below, Taxpayer requests that we issue a schedule of ruling amounts that is equivalent to the schedule of ruling amounts approved in the letter dated September 29, 2006. Taxpayer represents that, other than the change of ownership detailed above, no facts presented in the earlier letter upon which the prior schedule of ruling amounts was based, have changed. We repeat the relevant facts herein.

Although Taxpayer is not a regulated utility, DeliverCo collects the decommissioning costs approved by Commission by means of a non-bypassable charge imposed upon retail customers. The amounts collected by DeliverCo are paid to Company A, the owner of Plant for purposes of the law of State A. Because Company A is disregarded for Federal tax purposes, these amounts are considered paid to Taxpayer and then contributed by Taxpayer to Fund. Based on the assumptions used by Commission it is estimated that assets in the Fund will earn an after-tax rate of return of percent for the years , percent for the years percent for the years , and percent thereafter. The total cost of decommissioning Plant is estimated to be $ in dollars, escalated at a percent per year through the beginning of decommissioning in , resulting in an estimated total future cost of decommissioning Plant of $.

The funding period for Plant extends from through . The estimated useful life of Plant is years ( ) and the estimated period for which the Fund will be in effect is also years ( ).

Law and Analysis:

Section 468A(a) of the Internal Revenue Code provides that a taxpayer may elect to deduct the amount of payments made to a qualified decommissioning fund. However, section 468A(b) limits the amount paid into such fund for any taxable year to the lesser of the amount of nuclear decommissioning costs allocable to this fund which is included in the taxpayer's cost of service for ratemaking purposes for the tax year or the ruling amount applicable to this year.

Section 468A(d)(1) of the Code provides that no deduction shall be allowed for any payment to the nuclear decommissioning fund unless the taxpayer requests and receives from the Secretary a schedule of ruling amounts. The "ruling amount" for any tax year is defined under section 468A(d)(2) as the amount which the Secretary determines to be necessary to fund that portion of nuclear decommissioning costs which bears the same ratio to the total nuclear power plant as the period for which the nuclear decommissioning fund is in effect bears to the estimated useful life of the plant. This term is further defined to include the amount necessary to prevent excessive funding of nuclear decommissioning costs or funding of these costs at a rate more rapid than level funding, taking into account such discount rates as the Secretary deems appropriate.

Section 468A(g) of the Code provides that a taxpayer shall be deemed to have made a payment to the nuclear decommissioning fund on the last day of the tax year if the payment is made on account of this tax year and is made within 2 ½ months after the close of the tax year. Additionally, a taxpayer that files for a schedule of ruling amounts and receives such schedule of ruling amounts after the 2 ½ month deadline for making a payment to a nuclear decommissioning fund, must make such payment to the fund within 30 days after the date that the taxpayer receives the schedule of ruling amounts for the tax year.

Section 1.468A-1T(a) of the regulations provides that an eligible taxpayer may elect to deduct nuclear decommissioning costs under section 468A of the Code. An "eligible taxpayer," as defined under section 1.468A-1(b)(1) of the regulations, is a taxpayer that has a "qualifying interest" in, among other things, a direct ownership interest, including an interest as a tenant in common or joint tenant.

Section 1.468A-2T(b)(1) provides that the maximum amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any tax year shall not exceed the ruling amount applicable to the nuclear decommissioning fund for such taxable year. The limitation on the amount of cash payments for purposes of § 1.468A-2T(b)(1) does not apply to any “special transfer” permitted under § 1.468A-8T.

Section 1.468A-3T(a)(1) provides that, in general, a schedule of ruling amounts for a nuclear decommissioning fund is a ruling specifying annual payments that, over the tax years remaining in the "funding period" as of the date the schedule first applies, will result in a projected balance of the nuclear decommissioning fund as of the last day of the funding period equal to (and in no event more than) the "amount of decommissioning costs allocable to the fund".

Section 1.468A-3T(a)(2) provides that, to the extent consistent with the principles and provisions of this section, each schedule of ruling amounts shall be based on reasonable assumptions concerning the after-tax rate of return to be earned by the amounts collected for decommissioning, the total estimated cost of decommissioning the nuclear plant, and the frequency of contributions to a nuclear decommissioning fund for a taxable year. Under ' 1.468A-3T(a)(3), the Internal Revenue Service shall provide a schedule of ruling amounts identical to the schedule proposed by the taxpayer, but no such schedule shall be provided by the Service unless the taxpayer's proposed schedule is consistent with the principles and provisions of that section.

Section 1.468A-3T(a)(4) provides that the taxpayer bears the burden of demonstrating that the proposed schedule of ruling amounts is consistent with the principles of the regulations and that it is based on reasonable assumptions. That section also provides additional guidance regarding how the Service will determine whether a proposed schedule of ruling amounts is based on reasonable assumptions. For example, if a public utility commission established or approved the currently applicable rates for the furnishing or sale by the taxpayer of electricity from the plant, the taxpayer can generally satisfy this burden of proof by demonstrating that the schedule of ruling amounts is calculated using the assumptions used by the public utility commission in its most recent order. In addition, a taxpayer that owns an interest in a deregulated nuclear plant may submit assumptions used by a public utility commission that formerly had regulatory jurisdiction over the plant as support for the assumptions used in calculating the taxpayer’s proposed schedule of ruling amounts, with the understanding that the assumptions used by the public utility commission may be given less weight if they are out of date or were developed in a proceeding for a different taxpayer. The use of other industry standards, such as the assumptions underlying the taxpayer's most recent financial assurance filing with the NRC, are described by the temporary regulations as an alternative means of demonstrating that the taxpayer has calculated its proposed schedule of ruling amounts on a reasonable basis. Section 1.468A-3T(a)(4) further provides that consistency with financial accounting statements

is not sufficient, in the absence of other supporting evidence, to meet the taxpayer's burden of proof.

Section 1.468A-3T(a)(6) provides that the IRS may, in its discretion, provide a schedule of ruling amounts that is determined on a basis other than § 1.468A-3T if the taxpayer explains the need for the special treatment and sets forth an alternative basis for determining the schedule of ruling amounts. In addition, the IRS must determine that the special treatment is consistent with the purpose of § 468A.

Section 1.468A-3T(b)(1) provides that, in general, the ruling amount for any tax year in the funding period shall not be less than the ruling amount for any earlier tax year. Under ' 1.468A-3T(c)(1), the funding period begins on the first day of the first tax year for which a deductible payment is made to the nuclear decommissioning fund and ends on the last day of the taxable year that includes the last day of the estimated useful life of the nuclear power plant to which the fund relates.

Section 1.468A-3T(c)(2) provides rules for determining the estimated useful life of a nuclear plant for purposes of § 468A. In general, under § 1.468A-3T(c)(2)(i)(A), if the plant was included in rate base for ratemaking purposes for a period prior to January 1, 2006, the date used in the first such ratemaking proceeding as the estimated date on which the nuclear plant will no longer be included in the taxpayer's rate base is the end of the estimated useful life of the nuclear plant. Section 1.468A-3T(c)(2)(i)(B) provides that, If the nuclear plant is not described in § 1.468A-3T(c)(2)(i)(A), the last day of the estimated useful life of the nuclear plant is determined as of the date the plant is placed in service. Under § 1.468A-3T(c)(2)(i)(C), any reasonable method may be used in determining the estimated useful life of a nuclear power plant that is not described in § 1.468A-3T(c)(2)(i)(A).

Section 1.468A-3T(d)(1) provides that the amount of decommissioning costs allocable to a nuclear decommissioning fund is the taxpayer's share of the total estimated cost of decommissioning the nuclear power plant. Section 1.468A-3T(d)(3) provides that a taxpayer's share of the total estimated cost of decommissioning a nuclear power plant equals the total estimated cost of decommissioning such plant multiplied by the taxpayer's qualifying interest in the plant.

Section 1.468A-3T(e)(2) enumerates the information required to be contained in a request for a schedule of ruling amounts filed by a taxpayer in order to receive a ruling amount for any taxable year.

Section 1.468A-3T(f)(2) provides that any taxpayer that has previously obtained a schedule of ruling amounts can request a revised schedule of ruling amounts. Such a request must be made in accordance with the rules of ' 1.468A-3T(e). The Internal

Revenue Service shall not provide a revised schedule of ruling amounts applicable to a taxable year in response to a request for a schedule of ruling amounts that is filed after the deemed payment deadline date for such taxable year.

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.

Section 1.468A-6T(e) provides the rules for determining the transferor's schedule of ruling amounts where a transferor transfers or disposes of all or a portion of its qualifying interest in a nuclear power plant in a transaction to which § 1.468A-6T applies. Section 1.468A-6T(e)(1)(i) provides that, if the transferor does not file a request for a revised schedule of ruling amounts on or before the deemed payment date for the year of the transfer, then the transferor's schedule of ruling amounts with respect to that plant for the year of transfer is the ruling amount contained in the transferor's current schedule of ruling amounts multiplied by that portion of the transferor's interest that is transferred or disposed of and by a fraction, the numerator of which is the

number of days in the taxable year that precede the date of transfer and the denominator of which is the number of days in that taxable year. In this case, because the partnership and its taxable year terminated on the Transfer Date, application of the rules in § 1.468A-6T(e) would result in the transferor receiving nearly the entire amount of the ruling amount for that year.

Taxpayers have requested, under the provisions of § 1.468A-3T(a)(6), that we calculate the transferee's ruling amount on the basis of the number of days in the calendar year in which the Transfer Date occurs rather than on the basis of the number of days in the partnership taxable year. We agree that the Taxpayers' request for an alternative basis for determining the schedule of ruling amounts is consistent with the principles and provisions of § 468A and the temporary regulations thereunder. Therefore we grant the requested ruling.

Accordingly, we rule that the transferee's ruling amount for Year is $, calculated by multiplying Amount, Transferor's scheduled ruling amount for Year, by Taxpayers' ownership interest (100 percent) and by a fraction, the numerator or which is X and the denominator of which is 365.

Further, based on the information submitted by Taxpayer, we reach the following conclusions regarding the effect of the transfer:

Requested Ruling #1: Pursuant to § 1.468A-6T, the Fund will not be disqualified by reason of either the termination of the partnership or the transfer of Plant and its Fund to Taxpayer on the Date of Transfer.

Requested Ruling #2: Pursuant to § 1.468A-6T(c)(2), neither Taxpayer nor the Fund will recognize any gain or loss or otherwise take any income or deduction into account by reason of the transfer.

Requested Ruling #3: Pursuant to § 1.468A-6T(b), the transfer of the Fund from Company A to Taxpayer will not constitute a payment or contribution of assets by Taxpayer to its Fund.

Requested Ruling #4: Pursuant to § 1.468A-6T(c)(3), immediately after the transfer, the Fund will have a basis in the assets in the Fund that is the same as the basis of those assets in the Fund held by Company A immediately prior to the transfer.

Furthermore, regarding Taxpayer's request for a revised schedule of ruling amounts, we have examined the representations and information submitted by the Taxpayers in relation to the requirements set forth in ' 468A and the regulations thereunder. Based solely upon these representations of the facts, we reach the following conclusions:

1. Taxpayer has a qualifying interest in the Plant and is, therefore, an eligible taxpayer under § 1.468A-1T(b)(1) of the regulations.

2. Taxpayer, as owner of the Plant, has calculated its share of the total decommissioning costs under § 1.468A-3T(d)(3) of the regulations.

3. Taxpayer has proposed a schedule of ruling amounts which meets the requirements of §§ 1.468A-3T(a)(1) and (2) of the regulations. The annual payments specified in the proposed schedule of ruling amounts are based on the reasonable assumptions and determinations used by Commission, and will result in a projected fund balance at the end of the funding period equal to or less than the amount of decommissioning costs allocable to the Fund.

4. Pursuant to § 1.468A-3T(a)(4), Taxpayer has demonstrated that, by following the assumptions approved by Commission, the proposed schedule of ruling amounts is consistent with the principles of section 468A and the regulations thereunder and that such schedule is based on reasonable assumptions.

5. The maximum amount of cash payments made (or deemed made) to the Fund during any tax year is restricted to the ruling amount applicable to the Fund, as set forth under § 1.468A-2T(b)(1) of the regulations.

Based solely on the determinations above, we conclude that the Taxpayer's proposed schedule of ruling amounts satisfies the requirements of § 468A of the Code.

APPROVED SCHEDULE OF RULING AMOUNTS

YEAR	AMOUNT

Approval of the transferee schedule of ruling amounts is contingent on there being no change in the facts and circumstances, known or assumed, at the time the ruling dated September 29, 2006, was issued, or of the facts and circumstances described in this ruling. Approval of the revised schedule of ruling amounts is contingent on there being no change in the facts and circumstances described in this ruling. If any of the events described in section 1.468A-3T(f)(1) of the temporary regulations occur in future years, Taxpayer must request a review and revision of the schedule of ruling amounts. Generally, a taxpayer is required to file such a request on or before the deemed payment deadline date for the first tax year in which the rates

reflecting such action became effective. When no such event occurs, the Taxpayer must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline of the tenth taxable year following the close of the tax year in which the most recent schedule of ruling amounts was received.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. In particular, no opinion is expressed or implied concerning whether the liquidation described above qualifies under any section of the Code.

The approved schedule of ruling amounts is relevant only to those payments made to the Fund. Payments allocable to any funds other than the Fund, cannot qualify for purposes of the deduction under the provisions of section 468A of the Code. Payments made to such Fund can qualify only to the extent that they do not exceed the lesser of the decommissioning costs applicable to such Fund or the ruling amounts applicable to this Fund in the tax year.

This ruling is directed only to the taxpayer 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 your authorized representative. We are also sending a copy of this letter ruling to the Director. Pursuant to § 1.468A-7T(a) of the temporary regulations, a copy of this letter must be attached (with the required Election Statement) to the Taxpayer's federal income tax return for each tax year in which the Taxpayer claims a deduction for payments made to the Fund.

Sincerely,

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