Internal Revenue Service

Department of the Treasury
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Person To Contact:
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Date:
September 02, 2008

Legend:

Taxpayer =

Company A =

Company B = ,

Company C =

Company D =

State A =

State B =

Plant 1 =

Plant 2 =

Location =

Commission A =

Commission B =

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, of the reorganization discussed below.

Facts:

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

Taxpayer, a corporation organized in State A, is the parent of an affiliated group of subsidiary corporations. Company A, also organized in State A, is wholly-owned by Taxpayer and is a member of the affiliated group. Company B, a limited liability company (LLC) organized under the laws of State A and wholly-owned by Taxpayer, has elected to be treated as a corporation for federal income tax purposes. Prior to a, Company C was an LLC organized under the laws of State A that had elected to be treated as a corporation for federal income tax purposes. Company C was wholly-owned by Company B. Company B and Company C are also members of the affiliated group of Taxpayer. Company D, an LLC disregarded for federal income tax purposes, was wholly-owned by Company C prior to a.

Company C, through the disregarded Company D, was the owner of Plant 1 and Plant 2 (the Plants). Plant 2 is a nuclear power plant located at Location. Plant 1, also located at Location, has been permanently shut down since October 1974 and is maintained in SAFSTOR status. Company C (through and including the disregarded Company D) is engaged in the generation of electricity produced by Plant 2 and the sale of that electricity at wholesale to a subsidiary, which then resells the electricity to various wholesale customers. Company C (through and including the disregarded Company D) is subject to the jurisdiction of Commission A with regard to the operation and maintenance of the Plants and to the jurisdiction of Commission B with regard to the rates charged to wholesale customers for electricity produced by Plant 2.

Company C, through the disregarded Company D, acquired the Plants, along with a qualified nuclear decommissioning trust (QDT) fund and a nonqualified nuclear decommissioning trust (NQDT) fund for each Plant 1 and Plant 2. The four funds are held in a master trust.

On a, Company C merged with its parent, Company B. Taxpayer represents that this merger is a statutory merger which qualifies as a tax-free liquidation of a subsidiary into a parent under § 368(a)(1)(A). Under the terms of this merger/liquidation, effective a, Company B becomes the owner of the Plants and their funds for tax purposes and Company D becomes the direct and disregarded subsidiary of Company B.

Taxpayer has requested the following rulings:

Requested Ruling #1: The QDTs were not disqualified by reason of the merger/liquidation of Company C into Company B and the QDTs will therefore continue to be treated as QDTs that satisfy the requirements of § 468A and § 1.468A-6T of the temporary Income Tax Regulations.

Requested Ruling #2: The QDTs will not recognize any gain or loss or otherwise take any income or deduction into account as a result of the merger/liquidation.

Requested Ruling #3: Neither Taxpayer, Company A, Company B, nor Company C will recognize any gain or loss or take any income or deduction into account as a result of the transfer of the QDTs from Company C to Company B in the merger/liquidation.

Requested Ruling #4: Pursuant to § 1.468A-6T(c), after the restructuring, the QDTs 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 merger/liquidation.

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.

Conclusions:

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

Ruling #1: The QDTs were not disqualified by reason of the merger/liquidation of Company C into Company B and the QDTs will therefore continue to be treated as QDTs that satisfy the requirements of § 468A and § 1.468A-6T of the temporary Income Tax Regulations.

Ruling #2: Pursuant to § 1.468A-6T(c)(1) and (2), the QDTs will not recognize any gain or loss or otherwise take any income or deduction into account as a result of the merger/liquidation.

Ruling #3: Pursuant to § 1.468A-6T(c)(1) and (2), neither Taxpayer, Company A, Company B, nor Company C will recognize any gain or loss or take any income or deduction into account as a result of the transfer of the QDTs from Company C to Company B in the merger/liquidation.

Ruling #4: Pursuant to § 1.468A-6T(c)(3), after the restructuring, the QDTs 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 merger/liquidation.

While it owns interests in the Plants, Company B 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 particular, we express no opinion on the tax results of the merger/liquidation described above under any section of the Code other than § 468A.

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