Internal Revenue Service

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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-139616-08
Date:
December 09, 2008

Re: Schedule of Deductions

LEGEND:

Taxpayer	=	(EIN:)
Parent	=	(EIN:)
Seller	=	(EIN:)
Year	=	
x	=	
Plant	=	
Date	=	
PLR	=	
Location	=	
Independent Study	=	
Method	=	
Fund	=	
Director	=	

Dear :

This letter responds to your request, dated , for an initial schedule of deduction amounts pursuant to section 1.468A-8T(c)(1) of the Income Tax Regulations. The previous owner of the Plant was granted schedules of ruling amounts, most recently on . Taxpayer submitted supplemental information by letter on . Information was submitted pursuant to § 1.468A-3T(e)(2).

Taxpayer represents the facts and information relating to its requests as follows:

Taxpayer is an indirect wholly-owned subsidiary of Parent that elects to be taxed as a corporation for federal income tax purposes. Parent files a consolidated federal income tax return with its affiliated corporations including Taxpayer.

In Year, Taxpayer acquired from Seller a x percent interest in the assets and decommissioning Fund for the Plant. On Date, PLR was issued stating that with respect to the transfer to Taxpayer of the assets of Seller's Fund that the Service will allow the transfer and qualification of the Fund.

The Plant is situated at Location. The estimated base cost for decommissioning Plant is based on an Independent Study and the proposed method of decommissioning the Plant is Method.

Based upon the assumptions derived from the Independent Study, it is estimated that Fund assets will earn an after-tax rate of return of percent. The total cost of decommissioning Taxpayer's interest in the Plant is estimated to be $ (in dollars). This base cost of decommissioning Plant is escalated at a percent yearly rate, resulting in a total future cost of decommissioning Taxpayer's interest in the Plant of $ (in through dollars). Under ratemaking assumptions used during the first proceeding before Commission, the Plant would no longer be included in rate base in .

In the prior schedule of ruling amounts, issued under § 468A of the Code as in effect prior to 2006, Taxpayer represented that the funding period and level funding limitation period begin on and end on . As elected in the initial and subsequent requests for a schedule of ruling amounts, the Seller calculated the qualifying percentage, pursuant to § 1.468A-8(b)(7)(iii) of the regulations as in effect prior to December 31, 2007. Thus, the percentage of the total estimated costs qualifying for deduction in the schedule of ruling amounts under prior law was percent.

Section 468A(a), as amended by the Energy Tax Incentives Act of 2005 (the Act), Pub. L. 109-58, 119 Stat. 594, allows an electing taxpayer to deduct payments made to a nuclear decommissioning reserve fund.

Prior to the changes made by the Act, deductible contributions were limited to the amount necessary for an electing taxpayer to fund the plant's post-1983 nuclear decommissioning costs (determined as if decommissioning costs accrued ratably over the estimated useful life of the plant), provided that the taxpayer elected to establish a fund in 1984. Prior law also did not allow an electing taxpayer to establish a fund later than 1984 to contribute to that fund any amount in excess of that amount necessary to

fund the ratable portion of the plant's nuclear decommissioning costs beginning in the year the fund is established.

Section 468A(f)(1) now allows a taxpayer to contribute to a nuclear decommissioning fund the entire cost of decommissioning the plant, including both the pre-1984 amount that was denied under the law prior to the Act as well as any amount attributable to any year after 1983 in which a taxpayer had not established a fund under § 468A. Section 468A(f)(2)(A) provides that the deduction for the contribution of the previously-excluded amount is allowed ratably over the remaining useful life of the nuclear plant.

Section 468A(h) provides that a taxpayer shall be deemed to have made a payment to the nuclear decommissioning fund on the last day of a taxable year if the payment is made on account of such taxable year and is made within 2½ months after the close of the tax year. This section applies to payments made pursuant to either a schedule of ruling amounts or a schedule of deduction amounts.

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

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-8T(a)(1) provides that, under the provisions of § 468A(f), as described above, a taxpayer may make a special transfer of cash or property to the

nuclear decommissioning fund. This special transfer is not subject to the § 468A(b) limitation. The amount of the special transfer is the present value of the pre-2005 nonqualifying percentage of the estimated future costs of decommissioning the nuclear plant that was disallowed under § 468A prior to the Act.

Section 1.468A-8T(a)(2) defines the pre-2005 nonqualifying percentage as equal to 100 percent reduced by the sum of the qualifying percentage used in determining the taxpayer's last schedule of ruling amounts for the fund under § 468A as it existed prior to the Act and the percentage transferred in any previous special transfer.

Section 1.468A-8T(a)(3) provides that the taxpayer is not required to transfer the entire amount eligible for the special transfer in one year but must take any prior special transfers into account in calculating the pre-2005 qualifying percentage. Further, pursuant to § 1.468A-8T(c)(2), a taxpayer making a special transfer in more than one year must request a new schedule of deduction amounts in connection with each special transfer.

Section 1.468A-8T(b) provides that the deduction for the special transfer is allowed ratably over the remaining useful life of the nuclear plant. Under § 1.468A-8T(b)(1)(iii), the deduction for property contributed in a special transfer is limited to the lesser of the fair market value of the property or the taxpayer's basis in the property. Under § 1.468A-8T(b)(4), the taxpayer recognizes no gain or loss on the special transfer of property, the taxpayer's basis in the fund is not increased by reason of the special transfer of property, and the fund's basis in the property transferred in the special transfer is the same as the transferee's basis in that property immediately prior to the special transfer.

Section 1.468A-8T(c) provides that taxpayer may not make a special transfer to a qualified nuclear decommissioning fund unless the taxpayer requests from the IRS a schedule of deduction amounts in connection with such transfer. A request for a schedule of deduction amounts may be made in connection with a request for a schedule of ruling amounts but in such case, the calculations for both the schedule of ruling amounts and the schedule of deduction amounts must be separately stated.

As stated above, prior to the changes made by the Act, deductible contributions were limited to the lesser of (1) the amount necessary to fund the plant's post-1983 nuclear decommissioning costs, or (2) the amount necessary to fund the plant's decommissioning costs for that portion of the plant's estimated useful life for which a fund had been established. Under that prior law, Taxpayer was allowed to contribute percent of the amounts necessary to fully decommission its share of the Plant. Section 468A(f)(1) allows a taxpayer to contribute to the nuclear decommissioning fund the pre-1984 amount that was denied under the law prior to the Act. Taxpayer is able to contribute the additional percent of the amounts necessary to decommission its

ownership share of Plant. This special transfer will occur after the end of but before , and will be deemed to have occurred in .

We have examined the representations and information submitted by the Taxpayer in relation to the requirements set forth in § 468A and the regulations thereunder. Based solely upon these representations of the facts, we conclude that because the useful life of the Plant (as defined by § 1.468A-3T(c)(2)) was estimated to have ended in , Taxpayer may make a special transfer of $ in , and may deduct the amount contributed in , as set forth below.

SCHEDULE OF DEDUCTION AMOUNTS

YEAR	DEDUCTION AMOUNT
	$

The special transfer amount stated above is the maximum amount permitted to be transferred to the fund under § 468A(f)(1). If Taxpayer transfers a lesser amount to the fund, the Taxpayer may deduct that lesser amount ratably over the period of years described above. Further, in the event that Taxpayer transfers a lesser amount for , in order to make an additional special transfer in a later year (including a special transfer of the difference between the special transfer amount stated above and the lesser amount transferred in), Taxpayer must request a new schedule of deduction amounts and in that request must take the transfer into account and recalculate the pre-2005 qualifying percentage in such request.

We note that, if Taxpayer elects to make a special transfer of property for all or a portion of this special transfer, the amount of the deduction is the lesser of the fair market value of the property transferred or the basis of the property in the hands of the Taxpayer immediately prior to the transfer. In either event, the deduction of the Taxpayer with respect to the property is limited to the Taxpayer's basis in the property.

Section 1.468A-3T(f)(1)(iii) requires that a taxpayer requesting a schedule of deduction amounts under § 1.468A-8T must also request a revised schedule of ruling amounts for the applicable fund. However, § 1.468A-3T(f)(1)(v) provides that if a taxpayer is required to request a revised schedule of ruling amounts and each ruling amount in the revised schedule would equal zero, a taxpayer may, instead of requesting a revised schedule of ruling amounts, begin treating the ruling amount as equal to zero dollars. Taxpayer has no schedule of ruling amounts in effect for the current or future years and therefore its annual ruling amount is zero. Pursuant to § 1.468A-3T(f)(1)(v), Taxpayer will continue to treat its annual ruling amount as equal to zero dollars and, accordingly, has not made a request for a revised schedule of ruling amounts.

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

Specifically, no determination is made whether the independent decommissioning study conforms to industry standards and practices.

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 representatives. We are also sending a copy of this letter ruling to the Director. Pursuant to § 1.468A-7T(a), 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
(Passthroughs & Special Industries)

cc: