Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:
ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B06 – PLR-149295-09
Date:
March 25, 2010

Legend:

Parent	=
Company A	=
Company B	=
Company C	=
Company D	=
Company E	=
Taxpayer	=
State A	=
State B	=
State C	=
Plant	=

Location =

Commission A =

Commission B =

$X =

Director =

Dear :

This letter responds to your request for letter ruling dated October 27, 2009, as modified by your letter dated January 20, 2010. You requested that we rule on certain tax consequences, under section 468A of the Internal Revenue Code, of the transaction discussed below.

Facts:

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

Parent, a corporation organized in State A, is the parent of an affiliated group of subsidiary corporations. Taxpayer, also organized in State A, is wholly-owned by Parent and is a member of the affiliated group. Company A, a corporation formed in State A, is owned in part by Parent and in part by a wholly-owned indirect subsidiary of Parent. Company A is also a member of the affiliated group. Company B, a corporation organized under the laws of State C, is wholly-owned by Company A, is also a member of the affiliated group.

Company B is the owner of Plant. Plant is a nuclear power plant located at Location. Company B is subject to the jurisdiction of Commission A with regard to the operation and maintenance of Plant, and to the jurisdiction of Commission B with regard to the rates charged to wholesale customers for electricity produced by Plant. Company B maintains a nuclear decommissioning trust that is composed of a both a fund that is qualified under § 468A (QDT) and a fund that is not qualified under § 468A (NQDT) with respect to Plant.

Parent will undertake the following transactions. Parent will cause those subsidiaries that own a portion of Company A to convert to limited liability companies

(LLC). These conversions will result in Parent being the direct owner of all of the stock of Company A. Company A will then convert, under the laws of State A, into an LLC and will be disregarded for federal tax purposes. Company B will then be a wholly-owned direct subsidiary of Parent.

Parent will form Company C under the laws of State B. Company C is an LLC under the laws of State B and will elect to be treated as a corporation for Federal tax purposes. Company B will merge into Company C. Taxpayer represents that this will be a tax-free reorganization under § 368(a)(1)(F). Parent will form Company D, wholly-owned subsidiary of Parent, as an LLC under the laws of State A and Company D will elect to be disregarded for Federal tax purposes. Parent will distribute its interest in Company D to Company C in a transaction that Taxpayer represents will be a tax-free contribution of assets under § 351. By operation of the laws of State B, Company C will contribute most of its assets, including ownership of Plant, to Company D.

Taxpayer will form a new subsidiary, Company E, under the laws of State C. Taxpayer will contribute approximately $X to Company E in exchange for all of the stock of Company E. Taxpayer represents that this contribution will be a tax-free contribution of assets under § 351. Company D will merge into Company E, with Company E surviving. Company E will tender to Company C approximately $X as consideration for the merger. After these transactions, Company E will hold Plant, the associated decommissioning liability, and the decommissioning trust, consisting of both the QDT and the NQDT.

Taxpayer has requested the following rulings:

Requested Ruling #1: The QDT will not be disqualified by reason of the transfer of the QDT described above and will continue to be treated as satisfying the requirements of § 468A and § 1.468A-6T of the temporary Income Tax Regulations.

Requested Ruling #2: The QDT will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the transfer of the QDT described above.

Requested Ruling #3: Pursuant to § 1.468A-6T(c), the basis of the QDT assets will be unchanged by the transfer of the QDT described above.

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 QDT will not be disqualified by reason of the transfer of the QDT described above and will continue to be treated as satisfying the requirements of § 468A and § 1.468A-6T.

Ruling #2: Pursuant to 1.468A-6T(c), the QDT will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the transfer of the QDT described above.

Ruling #3: Pursuant to § 1.468A-6T(c), the basis of the QDT assets will be unchanged by the transfer of the QDT described above.

While it owns a qualified interest in Plant, Company E is eligible to maintain the qualified nuclear decommissioning fund.

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 any of the mergers or contributions 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. We are also sending a copy of this letter ruling to Taxpayer' authorized representatives and to the Director.

Sincerely,

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