Internal Revenue Service

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Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

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Date:
December 05, 2012

LEGEND:

Parent	=
Taxpayer	=
Company A	=
Company B	=
Date X	=
State	=
Plant A	=
Plant B	=
Plant C	=
Plant D	=
A	=
B	=
C	=
D	=
Director	=
Location A	=
Location B	=
Location C	=
X	=
Y	=

Dear :

This letter responds to your request, dated July 19, 2012, for various rulings on the tax consequences of the transaction described below under section 468A of the Internal Revenue Code.

Taxpayer represents the following facts and information relating to the ruling request:

Taxpayer is wholly owned by Parent. Parent, through its subsidiaries, is engaged in the generation, delivery, and sale of electricity at wholesale and retail. Taxpayer owns all of the common stock of Company A. Company A has ownership interests in four nuclear power plants: Plant A (A percent), Plant B (B percent), Plant C (C percent), and Plant D (D percent). In addition, Company A maintains separate funds qualified under § 468A for each of these plants. Plants A and B are located at Location A, Plant B is located at Location C, and Plant D is located at Location C.

Company A has received from the Service initial schedules of deduction amounts for each of the plants. The schedules of deduction amounts for Plant B and Plant C provide for deductions beyond the year of the transfer described below.

On Date X, Company A will convert to Company B, a limited liability company organized under the laws of State (the restructuring). Company B will be disregarded for Federal income tax purposes. As a result of this conversion, Taxpayer will be treated as the owner of the respective interests in the Plants as well as the qualified funds maintained with respect to the plants. Taxpayer represents that this restructuring will be treated as a tax-free liquidation under § 332 and that Company B, and therefore Taxpayer, will have a carryover basis in the assets and liabilities of Company A after the restructuring under § 334. Taxpayer will not increase its tax basis in any assets due to its acceptance of the liability for decommissioning the plants as a result of the restructuring.

Taxpayer has requested the following rulings:

Requested Ruling #1: The qualified funds maintained with respect to the Plants will not be disqualified by reason of the restructuring described above.

Requested Ruling #2: The funds will continue to be treated as qualified funds that satisfy the requirements of § 468A and § 1.468A-5 after the restructuring described above.

Requested Ruling #3: The funds will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the restructuring.

Requested Ruling #4: Neither Taxpayer nor Company A will be required to recognize any gain or loss or take any income or deduction into account as a result of the transfers of the funds as part of the restructuring.

Requested Ruling #5: Pursuant to § 1.468A-6(c), after the restructuring, the funds 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 restructuring.

Requested Ruling #6: Pursuant to §§ 1.468A-6(c)(1)(ii) and 1.468A-8(b)(4)(1), Company A may claim the unamortized special transfer deduction amounts of $X (with respect to Plant B) and $Y (with respect to Plant C) on its federal income tax return for the year in which the restructuring occurs.

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

Section 1.468A-5(a) of the Income Tax regulations 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-5(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-6 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-6(b) provides that section 1.468A-6 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 (all such assets if the transferee acquires the transferor's entire qualifying interest in the 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 section 1.468A-5(a)(iii), which permits an electing taxpayer to maintain only one qualified nuclear decommissioning fund for each plant.

Section 1.468A-6(c) provides that a disposition that satisfies the requirements of section 1.468A-6(b) will have the following tax consequences at the time it occurs:

(1)(i) 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.

(ii) Notwithstanding § 1.468A-6(c)(1)(i), if the transferor has made a special transfer under § 1.468A-8 prior to the transfer of the fund or fund assets, any deduction with respect to that special transfer allowable under § 468A(f)(2) for a taxable year ending after the date of the transfer of the fund or fund assets is allowed under § 468A(f)(2)(C) for the taxable year that includes the date of the transfer of the fund or fund assets.

(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-6(f), the Service may treat any disposition of an interest in a nuclear power plant occurring after December 27, 1994, 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-8(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-8(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-8(b) provides that the deduction for the special transfer is allowed ratably over the remaining useful life of the nuclear plant. However, under

§ 1.468A-8(b)(4)(i), if a special transfer is made to a qualified nuclear decommissioning fund, there is a subsequent transfer of the fund or the assets of the fund, and § 1.468A-6 applies to that transfer, any amount of the deduction under § 1.468A-8(b) allocable to taxable years ending after the date of the transfer will be allowed as a current deduction to the transferor for the taxable year that includes the date of the fund transfer.

Section 1.468A-8(b)(4)(ii) provides that, if a deduction is allowed to the transferor under § 1.468A-8(b)(4)(i) and the transferee is related to the transferor, the IRS will not approve the transferee's schedule of ruling amounts for taxable years beginning after the date of the transfer unless the ruling amounts are deferred in a manner that results in the recapture of the acceleration amount, as defined in § 1.468A-8(b)(4)(ii)(A).

Section 1.468A-8(b)(4)(ii)(E) provides that a transferee and transferor are related if their relationship is specified in § 267(b) or section 707(b)(1) or they are treated as a single taxpayer under §§ 41(f)(1)(A) or (B).

Conclusions:

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

Ruling #1: The qualified funds maintained with respect to the Plants will not be disqualified by reason of the restructuring described above.

Ruling #2: The funds will continue to be treated as qualified funds that satisfy the requirements of § 468A and § 1.468A-5 after the restructuring described above.

Ruling #3: The funds will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the restructuring.

Ruling #4: Neither Taxpayer nor Company A will be required to recognize any gain or loss or take any income or deduction into account solely as a result of the transfers of the funds as part of the restructuring.

Ruling #5: Pursuant to § 1.468A-6(c), after the restructuring, the funds 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 restructuring.

Ruling #6: Pursuant to §§ 1.468A-6(c)(1)(ii) and 1.468A-8(b)(4)(1), Company A may claim the unamortized special transfer deduction amounts of $X (with respect to Plant B) and $Y (with respect to Plant C) on its federal income tax return for the year in which the restructuring occurs.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. Specifically, we express no opinion on whether the restructuring qualifies as a tax-free liquidation under § 332. In addition, the rulings above are specifically conditioned on the Taxpayer having a carryover basis in the assets and liabilities of Company A after the restructuring and the Taxpayer not increasing its tax basis in any assets due to its assumption of the liability for decommissioning the plants as a result of the restructuring.

We note that the deduction of $X (with respect to Plant B) and $Y (with respect to Plant C), are amounts allocable to taxable years ending after the date of the transfer which are being allowed as a current deduction to the transferor for the taxable year that includes the date of the fund transfer. Because Company A is related (as defined in § 1.468A-8(b)(4)(ii)(E)) to Company B, under § 1.468A-8(b)(4)(ii) the IRS will not approve a future schedule of ruling amounts for the transferee for taxable years beginning after the date of the transfer unless the ruling amounts are deferred in a manner that results in the recapture of the acceleration amount, as defined in § 1.468A-8(b)(4)(ii)(A).

This ruling is directed only to the Taxpayers 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 the Taxpayer.

Sincerely,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
(Passthroughs & Special Industries)