Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
ID No.

Telephone Number:

Refer Reply To:
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Date:
December 9, 2014

Legend:

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

Dear :

This letter responds to your request for private letter ruling dated July 10, 2014. You requested that we rule on certain tax consequences, under section 468A of the Internal Revenue Code, of the restructuring 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. Company A owns one hundred percent of the membership interests in Company B, a limited liability company organized in State B. Company B owns one hundred percent of the membership interests in Company C, a limited liability company organized in State B. Company C owns one hundred percent of the membership interests in Company D, also a limited liability company organized in State B. Companies B, C, and D are entities disregarded for federal tax purposes.

Company D owns, as a tenant in common, an X percent interest in Plant A and Plant B. Plant A and Plant B are nuclear power plants located at Location. Company D holds the operating licenses issued by the Nuclear Regulatory Commission for both Plant A and Plant B. Company D maintains separate nuclear decommissioning trusts that are qualified under § 468A (QDT) with respect to Plant A and Plant B. While Company D holds the licenses for Plant A and Plant B, because Companies B, C, and D are disregarded entities for federal tax purposes, Company A is considered to indirectly hold the ownership interests in the Plants.

Taxpayer will undertake a series of transactions with respect to its ownership structure. As part of that series of transactions, Company B will make an election to be treated as an association taxable as a corporation under § 301.7701-3. Because Company B will no longer be disregarded for federal tax purposes, the assets and liabilities formerly considered indirectly held by Company A due to Company B's status as a disregarded entity are deemed transferred to Company B. These assets include the ownership interests in Plant A and Plant B, as well as the related QDTs maintained with respect to the plants. The operating licenses as well as the direct ownership interest in the plants and the associated QDPs will be held by Company D at all relevant times.

Taxpayer has requested the following rulings:

Requested Ruling #1: The QDTs will not be disqualified by reason of the transfer caused by Company B electing to be treated as a corporation.

Requested Ruling #2: The QDTs will continue to be treated as satisfying the requirements of § 468A and § 1.468A-5 and -6 of the Income Tax Regulations after the transfer caused by Company B electing to be treated as a corporation.

Requested Ruling #3: The QDTs will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the transfer caused by Company B electing to be treated as a corporation.

Requested Ruling #4: Neither Company A nor Company B will be required to recognize gain or loss or take any income or deduction into account as a result of the transfers of the QDTs as a result of the transfer caused by Company B electing to be treated as a corporation.

Requested Ruling #5: Pursuant to § 1.468A-6(c), the basis of the assets of the QDTs will be unchanged by the transfer caused by Company B electing to be treated as a corporation.

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.

Conclusions:

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

Ruling #1: The QDTs will not be disqualified by reason of the transfer caused by Company B electing to be treated as a corporation.

Ruling #2: The QDTs will continue to be treated as satisfying the requirements of § 468A and § 1.468A-5 and -6 of the Income Tax Regulations after the transfer caused by Company B electing to be treated as a corporation.

Ruling #3: The QDTs will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the transfer caused by Company B electing to be treated as a corporation.

Ruling #4: Neither Company A nor Company B will be required to recognize gain or loss or take any income or deduction into account as a result of the transfers of the QDTs as a result of the transfer caused by Company B electing to be treated as a corporation.

Ruling #5: Pursuant to § 1.468A-6(c), the basis of the assets of the QDTs will be unchanged by the transfer caused by Company B electing to be treated as a corporation.

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 the tax consequences of any portion of the reorganization described by Taxpayer. In addition, the rulings above are specifically conditioned on Company A not increasing their tax basis in any assets due to their assumption of the liability for decommissioning the plants as a result of the deemed transfer described above.

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