Internal Revenue Service

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Person To Contact:
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Telephone Number:

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CC:ITA:B03
PLR-117939-18

Date: November 30, 2018

TY:

LEGEND:

Taxpayer =

Property =

Project =

Parent =

State =

Plant =

Joint Owner =

Contract A =

Group =

Contract B =

Act =

County =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Year 1 =

Year 2 =

Year 3

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Year 9 =

Year 10 =

Year 11 =

Year 12 =

C =

D =

E% =

F% =

G =

$H =

I =

J =

K =

$L =

Dear :

This is in response to a letter sent on your behalf by your representatives dated (and subsequent correspondence). In the letter, your representatives requested a ruling that Taxpayer is allowed a loss deduction under section 165 of the Internal Revenue Code ("Code") as a result of the abandonment of the Project in the taxable year ending on Date 1.

FACTS

Taxpayer represents the facts and information related to its request for a ruling as follows:

Parent is a State public utility holding company and the common parent of an affiliated group of corporations filing a consolidated return. Parent's largest subsidiary is Taxpayer.

Taxpayer is a regulated utility, a calendar year corporation, and uses an overall accrual method of accounting. Taxpayer generates, transmits, and distributes electricity to customers in its franchised service territory in State. One of Taxpayer's baseload generating stations is Plant. Since Year 1, Plant includes a nuclear electric generation unit (Unit C), which is co-owned with Joint Owner as tenants in common under a joint ownership arrangement. Joint Owner is a state-owned utility that is unrelated to Taxpayer.

Taxpayer decided to undertake Project in order to meet customers' future electrical consumption needs, and thus, in Year 2, Taxpayer on behalf of itself and as agent for Joint Owner (1) applied to the U.S. Nuclear Regulatory Agency (NRC) for combined operating licenses (COLs) to construct and operate D new nuclear units, and (2) entered into Contract A with Group for the engineering, design, procurement, and construction of D new nuclear electric generation units at Plant (the New Units). When Contract A was first announced, Taxpayer expected the New Units to be completed and placed in service in Year 3 and Year 4.

Taxpayer and Joint Owner entered into Contract B in Year 5. Contract B specifically provided that 1) Taxpayer was Joint Owner's agent with respect to all aspects of the acquisition, design, engineering, licensing, and construction of the New Units, 2) Taxpayer owned E% of the New Units while Joint Owner owned the remaining F%, and, 3) these ownership percentage interests were applicable to respective rights and obligations for the New Units, including payments under Contract B as well as entitlement to electricity generated by the New Units once they became operational. Contract B also provided that Taxpayer and Joint Owner held title to the New Units as tenants in common with separate, undivided ownership interests, and that both parties agreed that their relationship with regard to the Project was one of independent, unrelated entities and that there was no intent to create a partnership or joint venture for federal income tax purposes. Thus, Taxpayer owned a separate and discrete interest in the New Units and related Property, none of which were placed in service for purposes of section 168 of the Code prior to abandonment (and will never be placed in service). The Project included, but was not limited to, certain buildings, equipment and related parts, land improvements, and supplies. Taxpayer represents that Taxpayer and Joint Owner had executed two agreements prior to Contract B which governed their relationship with respect to the New Units, and that the roles, ownership, and other terms relevant to this ruling request under the prior two agreements were consistent with Contract B.

The construction of the Project and Taxpayer's related recovery of financing costs through rates was subject to review and approval by the State Public Service Commission (PSC) as provided for in state law under the Act. Under the Act, the PSC approved the initial construction milestone schedule and related forecasted capital costs in Year 6. Approvals by the PSC related to the Project were strictly related to recovery of costs through rates charged to customers for electricity.

Taxpayer encountered difficulties throughout the duration of the Project, resulting in Taxpayer requesting and receiving approval from the PSC for updates and revisions to the capital cost schedule and/or the construction milestone schedule G times during the life of the Project. Group did not adhere to certain budgets and interim construction schedules because of many factors, including: (1) unanticipated difficulties encountered in project engineering and the construction of project components, (2) constrained financial resources of the contractors, (3) regulatory, legal, training, and construction processes associated with securing approvals, permits and licenses and necessary amendments to them within projected timeframes, (4) the availability of labor and materials at estimated costs, and (5) the efficiency of project labor. There were also contractor and supplier performance issues, difficulties in meeting critical regulatory requirements, contract disputes, and changes in key contractors or subcontractors.

In Year 7, the NRC approved and issued COLs for the New Units. Also in Year 8, Contract A was amended (Year 8 Amendment) to establish new guaranteed substantial completion dates, substantially increased penalties for missing those dates, and provided Taxpayer and Joint Owner the option to fix the total amount to be paid to the Group for its work on the Project. Subsequently, in Year 9, the PSC approved Taxpayer's requested updates resulting from the Year 8 Amendment to the capital cost schedule and/or the construction milestone schedule, including revised contractual substantial completion dates, increases in capital and other costs, and approved the election of the fixed price option. The construction schedule approved by the PSC provided for contractually guaranteed substantial completion dates in Year 4 and Year 10.

In Year 11, a member of the group notified Taxpayer that the contractually guaranteed substantial completion dates reflected in the Year 8 Amendment would not be met, and provided revised estimated completion dates in Year 10. Subsequently in Year 11, the members of Group and certain of their affiliates filed petitions for protection under Chapter 11 of the U.S. Bankruptcy Code, citing a liquidity crisis attributable, in part, to the Project and other nuclear construction projects as a material factor. As part of their filing, members of Group publicly announced their inability to complete the Project under the terms of Contract A and their intention to reject Contract A.

Taxpayer and Joint Owner evaluated the various elements of the Project, including forecasted costs and completion dates, while construction continued. Taxpayer determined that the cost to complete the Project would substantially exceed earlier estimates and that the time for completion would substantially extend beyond the projected dates. Taxpayer recognized that given the public announcements by members of Group that they could not perform under the terms of Contract A, Group would likely exercise rights under the bankruptcy laws and reject Contract A, in which case Taxpayer would lose the benefit of the fixed-price terms and penalties payable to Taxpayer under the terms of Contract A, and would become responsible for its share of any cost overruns. These costs increases and other costs identified by Taxpayer were so large that they would not be fully recoverable from Group or under a payment guarantee by the parent of one of the members of Group (Parent Guarantee). Moreover, Taxpayer also considered that the new expected completion dates would not be within the statutory deadlines to qualify for nuclear production tax credits under section 45J of the Code (totaling approximately $H).

While Taxpayer was still considering its options regarding the Project, on Date 2, Joint Owner unilaterally determined that it would suspend all construction related to the Project. Following Joint Owner's decision, the Group members' bankruptcy petition, and Taxpayer's internal cost and deadline evaluation, Taxpayer decided to stop construction, abandon the Project, and pursue rate recovery of costs incurred to date under the abandonment provisions of the Act or through a general rate case or other regulatory means. Taxpayer concluded it would not be prudent to continue or to merely suspend construction.

On Date 2, Taxpayer gave Group the required notice of termination of Contract A, which notified Group of Taxpayer's determination to stop construction of the Project, and the Board of Directors of Taxpayer resolved to abandon the Project. After the notice of termination period ended, Contract A (including all amendments) with Group was officially terminated. On Date 3, the Board of Directors of Taxpayer reaffirmed its intent to irrevocably abandon the Project and ratified the actions of management toward that end.

A series of correspondence with Joint Owner documented that Contract B with Joint Owner was mutually terminated effective Date 4, or alternatively that Taxpayer had terminated the contract on Date 5, under other contract provisions. Also, during Year 11 and consistent with its decision to irrevocably abandon the Property, Taxpayer offered Joint Owner a forbearance (a formalized waiver directed specifically to Joint Owner) with respect to the Property to reaffirm its irrevocable waiver of any and all rights to the Property and to forbear from any claim against Joint Owner arising from the ownership, operation, sale or use of the Property in any manner whatsoever. The forbearance was offered exclusively for the benefit of Joint Owner to allow Joint Owner the option to dispose of the Property without a competing ownership claim by Taxpayer, as Taxpayer had irrevocably decided to abandon the Property. Taxpayer represents that this offer of forbearance did not represent a sale, exchange, or other transfer of the Property and did not include any consideration whatsoever in exchange for the forbearance with respect to the Property. To date, Joint Owner continues to evaluate its alternatives, including abandonment, but has not yet announced a decision, and Joint Owner has not accepted the offer of forbearance. The offer of forbearance was a voluntary action on the part of Taxpayer, and is not required for state or contract law purposes.

Taxpayer's management made public its decision and intent to abandon the Project and the Property beginning in Year 11, which garnered significant media coverage. Taxpayer's management made several appearances before regulators and governmental bodies at which proceedings the Taxpayer continued to explain that, due to all the factors cited in its evaluation, such as Group's bankruptcy, delays, the actions of Joint Owner, and the inability to find an interested party to step into Joint Owner's position, Taxpayer had abandoned the Project. Specifically, on Date 6, Taxpayer filed a petition with the PSC which included Taxpayer's plans of abandonment of the Project for purposes of rate recovery (Abandonment Petition). Through its Abandonment Petition, Taxpayer sought recovery of costs expended on the construction of the Project, including certain costs incurred subsequent to Taxpayer's last revised rates update, and certain other costs under the abandonment provisions of the Act. The Abandonment Petition included Taxpayer's plan of abandonment and certain proposed actions which would mitigate related customer rate increases.

In connection with the Abandonment Petition, Taxpayer's senior management provided a briefing to the PSC regarding the Project and the decision to abandon construction, and Taxpayer's management met with various stakeholders and members of State's legislature, including legislative leaders, to discuss the abandonment of the Project and to hear their concerns. In response to those concerns, and to allow for adequate time for governmental officials to conduct their reviews, Taxpayer voluntarily withdrew the abandonment petition from the PSC on Date 7. For several months in Year 11, interested parties, including State's legislature, Attorney General, and Governor, held and participated in private and public meetings to voice concerns with respect to allowing Taxpayer to collect revised rates from the public. Although Taxpayer filed another abandonment petition supporting its position on Date 7, customer rate recovery with respect to the Project remains unsettled at this point. Taxpayer has not filed any petitions with PSC to pursue completion of the Project or any alternatives inconsistent with abandonment.

Taxpayer's management removed the costs of the abandoned Project from construction work in progress (CWIP) and reported such costs (net of required estimated impaired amounts) as regulatory assets pursuant to generally accepted accounting principles (GAAP). As a regulated utility, Taxpayer must obtain approval from the Federal Energy Regulatory Commission (FERC) to transfer amounts held in the CWIP to the "unrecovered plant and regulatory study costs" account. That request cannot be made until a recoverable amount is known, which can only happen after the recoverable amount is determined by the PSC in an abandonment proceeding or otherwise. Pending FERC approval, Taxpayer reclassified the balance from CWIP to a regulatory asset per GAAP accounting. This reclassification first occurred with Taxpayer's filing of its Date 9 financial statements with the U.S. Securities and Exchange Commission on Form 10-Q. Thus, Taxpayer cites this reclassification and other accounting and reporting entries, and related disclosures as evidence that management intends for the Project never to be resurrected or otherwise converted for future use or value to Taxpayer.

In Year 11, Taxpayer undertook various affirmative acts to demonstrate its irrevocable intent to abandon the Project and the Property. These affirmative acts included, but were not limited to: (1) complete and permanent cessation of construction of the New Units; 2) Board of Directors' resolutions to irrevocably abandon the Property and the Project; 3) Taxpayer's request to the NRC to permanently withdraw and terminate the COLs (rather than a request to have the partially completed New Units placed in “deferred status”); and, 4) termination of Taxpayer’s employees dedicated to the engineering, procurement, and construction of the Property and the Project, including the New Units.

In Year 11, construction ceased and demobilization of construction crews, vendors, and contractors began. Taxpayer terminated the employment of over I individuals including over J who were employed by Taxpayer, Group and other subcontractors. Taxpayer employed less than K people dedicated to the Project at the end of Year 11 and their work is limited to winding down the Project and ensuring site safety and security. These wind-down activities performed by Taxpayer include monitoring contractors and vendors for retrieval and removal of equipment from the site, and supervising contractors retained solely to perform certain land stabilization and reclamation activities as required by permits to return the site to a satisfactory state. Such wind-down activities would not be consistent with a construction site. And since Year 11, Taxpayer has only undertaken activities related to environmental, security, and personnel safety considerations for the site as required by the NRC under the terms of the COLs, or otherwise by law.

Insurance policies were cancelled in Year 11 relating to builder’s risk property insurance for installed work and property stored onsite and excess property insurance for the amount in excess of the builder’s risk property insurance liability limits. Certain insurance policies remained in effect after Year 11 related to worker’s compensation, general liability and excess liability insurance for anyone performing any work on at Project site. These insurance policies are necessary as wind-down procedures continued during Year 11. Taxpayer has no reasonable prospect of recovery from insurance for the termination of the Project and abandonment of the Property and Project.

In Year 11, Taxpayer notified 1) the U.S. Department of Energy of its withdrawal of its loan guarantee application (allowed Taxpayer to borrow money with a federal guarantee to help fund construction); 2) County of State of Taxpayer’s termination of its Fee in Lieu of Tax Agreement with County (the Agreement provided that if or when the Project was to be completed, Taxpayer would pay a lower property tax rate on the Property and the New Units than it would otherwise have paid); 3) the Internal Revenue Service of the release of the Taxpayer’s prior allocations of its nuclear production tax credits under section 45J of the Code given that the New Units would not be operational before the end of Year 10 due to the abandonment of the Project; 4) the State Department of Revenue of the abandonment and returned exemption certificates (under which certain vendors, contractors and subcontractors were not required to collect sales taxes); 5) Joint Owner of its intention to terminate two off-site warehouse leases which were used by Taxpayer, Joint Owner and certain subcontractors to store some equipment and parts related to the Project; and, 6) its bond trustee of the removal of Project costs from bondable additions related to its first mortgage bonded debt.

Consistent with the Taxpayer's intent to abandon in Year 11, many permits related to the Project were terminated during Year 11, including the industrial storm water permit for batch plants, National Pollutant Discharge Elimination System permits for the Project, a storm water permit for construction activities and land disturbances, and a railroad crossing permit for a temporary road over a rail line. Taxpayer represents that various permits currently remain in effect at the site of the Project but that all actions which Taxpayer could reasonably take toward the closure or termination of these permits have been taken through Date 1, and that there is no future economic benefit to Taxpayer that would result from these permits prior to their closure or termination. Taxpayer represents that no permits related to the Project that existed in Year 12 will be sold or otherwise exchanged for consideration by Taxpayer.

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ADDITIONAL TAXPAYER REPRESENTATIONS

1) The Property and the New Units were not placed in service for purposes of section 168 of the Code prior to abandonment in Year 11, and thus will never be placed in service by Taxpayer.

2) Taxpayer has identified certain property related to the Project that will be held for sale to unrelated parties. None of the property held for sale is included in the abandoned Property subject to this ruling request.

3) Taxpayer has identified certain property related to the Project that will be transferred for use in the operation of Unit C. None of the transferred property is included in the abandoned Property subject to this ruling request.

4) As an unrelated party to Taxpayer, Joint Owner made a unilateral decision to abruptly suspend construction of the Project as of Date 2, and, to the best knowledge of the Taxpayer, is still considering all options for its discrete ownership interest, including potential abandonment.

5) Due to Taxpayer's irrevocable decision to abandon in Year 11 and the economic considerations involved, Taxpayer will not contemplate resurrecting or otherwise continuing the Project as the usefulness of the Property and the New Units in the Taxpayer's business ceased in Year 11.

6) While the rate recovery of costs associated with the abandonment of the Property and the Project remains unsettled, the rate recovery process will not require Taxpayer to contemplate resurrecting or otherwise continuing the Project in any way that would be contrary to the decision to abandon.

7) Taxpayer does not expect any proposed legislation to require it to resurrect or otherwise continue the Project in any way that would be contrary to its decision to abandon the Project.

8) Taxpayer represents that it has no contractual obligations that could require it to resurrect or otherwise continue the Project in any way that would be contrary to its decision to abandon the Project.

9) Taxpayer negotiated a settlement regarding the Parental Guarantee, and Taxpayer sold its right to receive all future settlement payments and the related bankruptcy claims in Year 11 to an unrelated party. No remaining recovery from any member of Group, the parent of Group members, or other contractors or vendors remained pending as of the end of Year 11.

10) Taxpayer has no reasonable prospect of recovery from insurance or otherwise for the termination and abandonment of the Project and the Property.

11) Other than regulatory matters including, but not limited to, NRC withdrawal of the COLs, resolving joint ownership issues with Joint Owner, removal of contractor-owned construction equipment from the site, and the safety, security, and environmental considerations for the site, Taxpayer represents that it has, to the best of its knowledge and belief, performed all relevant acts within its control to irrevocably abandon the Property and the Project in Year 11.

12) Taxpayer represents that the abandonment provisions of the Act relate solely to rate recovery and do not include any approvals for a utility to abandon property. The abandonment provisions of the Act generally provide that in the event of abandonment, costs incurred may be included by a utility in rate base for recovery purposes, subject to review and approval of the decision to abandon being prudent and costs incurred being prudent.

13) Taxpayer sustained a loss of approximately $L related to the Project in the taxable year ended on Date 1.

Based on the facts and representations above, Taxpayer requests a ruling that Taxpayer sustained a deductible abandonment loss under section 165 of the Code related to the termination and abandonment of the Property and the Project during the taxable year ended on Date 1. The scope of this ruling request is limited to the issue of whether an abandonment of the Property and the Project was sustained in the taxable year ended on Date 1, and Taxpayer is not requesting a ruling addressing which specific assets were abandoned or the amount properly allocable to the loss sustained.

LAW AND ANALYSIS

Section 165(a) of the Code provides that there shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

Section 1.165-1(b) of the Income Tax Regulations provides that to be allowable as a deduction under section 165(a), a loss must be evidenced by closed and completed transactions, fixed by identifiable events, and, except as otherwise provided, actually sustained during the taxable year. Only a bona fide loss is allowable. Substance and not mere form shall govern in determining a deductible loss.

Section 1.165-1(d)(1) of the regulations provides that a loss shall be allowed only for the taxable year in which the loss is sustained. For this purpose, a loss shall be treated as sustained during the taxable year in which the loss occurs as evidenced by closed and completed transactions and as fixed by identifiable events occurring in such taxable year.

Section 1.165-2(a) of the regulations allows a deduction under section 165(a) for a loss incurred in a business or in a transaction entered into for profit and arising from the sudden termination of the usefulness in such business or transaction of any nondepreciable property, when such business or transaction is discontinued or when such property is permanently discarded from use therein. The taxable year in which a loss is sustained is not necessarily the taxable year in which the overt act of abandonment, or the loss of title to the property occurs.

Section 1.165-1(d)(2)(i) of the regulations provides that if a casualty or other event occurs which may result in a loss and, in the year of such casualty or event, there exists a claim for reimbursement with respect to which there is a reasonable prospect of recovery, no portion of the loss with respect to which reimbursement may be received is sustained, for purposes of section 165, until it can be ascertained with reasonable certainty whether or not such reimbursement will be received. Whether or not such reimbursement will be received may be ascertained with reasonable certainty, for example, by a settlement of the claim, by an adjudication of the claim, or by an abandonment of the claim. When a taxpayer claims that the taxable year in which a loss is sustained is fixed by his abandonment of the claim for reimbursement, he must be able to produce objective evidence of his having abandoned the claim, such as the execution of a release.

Rev. Rul. 2004-58, 2004-1 C.B. 1043, states that to establish the abandonment of an asset for purposes of section 165, a taxpayer must show both and intention to abandon the asset and an affirmative act of abandonment. A.J. Industries, Inc. v. United States, 503 F.2d 660 (9th Cir. 1974). A deduction is not allowable if a taxpayer intends to hold and preserve property for possible future use or to realize potential future value from the property. The “identifiable event” required by section 1.165-1(b) and (d)(1) must be observable to outsiders and constitute some step which irrevocably cuts ties to the asset. A taxpayer need not relinquish legal title to property in all cases to establish abandonment, provided there is an intent to abandon and an affirmative act of abandonment.

The abandonment of real property interests where ownership has not been transferred has been addressed in a variety of circumstances. An abandonment was found where the taxpayer filled and sealed a water well excavation in Rev. Rul. 56-599, 1956-2 C.B. 122; dismantled an asphalt plant, moved it to another location and did not reassemble it, Seminole Rock & Sand Co. v. Commissioner, 19 T.C. 259 (1952), acq., 1953-1 C.B. 6; stopped working on a mine, reduced the work force and budget to maintain it, sold the mine equipment for salvage, decided to abandon the mine by vote of board of directors, and wrote the mine off the company books, A.J. Industries, Inc. v. United States, 503 F.2d 660 (9th Cir. 1974); and locked and boarded hotel, placed barricades around it, cut off utilities, terminated insurance, discontinued maintenance, and made no efforts to sell or lease it, Hanover v. Commissioner, T.C. Memo. 1979-332.

Rev. Rul. 87-117, 1987-2 C.B. 61, holds that for purposes of section 165(a), the fact that a public utility company that has abandoned a partially constructed nuclear power plant obtains a rate increase that is based in part on the costs of the abandoned plant does not cause it to have been "compensated for by insurance or otherwise as that phrase is used in section 165(a)."

Legal restrictions upon the physical disposition of property such as a nuclear plant will not in themselves preclude a finding of abandonment if all other facts and circumstances demonstrate an intention to irrevocably abandon property and the requisite overt acts related to abandonment have occurred. The acts necessary to evidence the intent to abandon property need only be appropriate to the particular circumstances. A nuclear power plant is a heavily regulated asset, and one which Taxpayer cannot simply walk away from, board up, or dismantle. Similarly, the construction and future operation of a nuclear power plant is heavily regulated, requiring federal and state licensing and, supervision and approval of costs and construction milestones.

In the present case, Taxpayer has indicated that it intended to abandon the Project in Year 11, by ceasing any further construction and potential future operation of the New Units. Further, Taxpayer demonstrated its intent to abandon in Year 11, and has taken numerous affirmative steps to abandon the New Units and, in part, by 1) terminating Contract A with Group A, and Contract B with Joint Owner and all construction of the Property and the New Units; 2) withdrawing its application to the NRC for COLs to construct and operate the New Units; 3) terminating its loan guarantee application to the Department of Energy; 4) terminating various permits and its Fee in Lieu of Tax agreement; 5) notifying the Internal Revenue Service of the release of its prior allocations of nuclear production tax credits under section 45J of the Code; 6) notifying its bond trustee of the removal of Project costs from bondable additions related to its first mortgage bonded debt; 7) passing corporate resolutions to effectuate the abandonment of the Property and the Project; 8) terminating all insurance policies except those necessary to cover wind-down procedures, 9) publicly announcing its decision concerning the abandonment of the plant and explaining it in several appearances before regulators and governmental bodies; 10) following GAAP procedures in a manner consistent with abandonment for financial reporting purposes; and 11) severing almost all operational employees who were working on the construction of the Project either directly or through Group A, or other subcontractors.

Taxpayer has also demonstrated the presence of identifiable events in Year 11, such as the construction contractor (Group) bankruptcy, and the presence of closed and completed transactions in Year 11, such as the terminations of Contract A and Contract B.

Further, whether rate increases received by a public utility pursuant to an abandonment of assets constitute compensation by insurance or otherwise has previously been considered by the Internal Revenue Service in Rev. Rul. 87-117. According to the facts in Rev. Rul. 87-117:

> Taxpayer, a public utility company engaged in the business of generating and distributing electricity, abandoned a partially competed nuclear electric generating plant. The state commission with ratemaking authority over taxpayer, in determining to grant taxpayer a subsequent rate increase, permitted taxpayer to amortize the cost of the abandoned plant over a specified period and to include such costs in the taxpayer's cost of service for ratemaking purposes.

Rev. Rul. 87-117 further provides:

> Although a utility commission may give consideration to the fact that a utility suffered a loss in determining whether a rate increase is warranted, the rate is not structured to reimburse the utility for its loss. Rather the rate increase is structured to enable the utility to perform its functions of serving its customers at a fair charge, while at the same time maintaining its financial integrity and its ability to attract capital at reasonable terms by paying its investors a reasonable rate of return on their investment. Moreover, the increased revenue is taxable income to Taxpayer without regard to Taxpayer's basis in the nuclear power plant. This is unlike insurance, where the payment is treated as a sale or exchange and serves to reduce basis before any gain or income is recognized.

In this case, unlike the facts of Rev. Rul. 87-117, the State A PSC has not reached any final decisions on any of Taxpayer's Abandonment Petitions filed to date. However, Taxpayer represents that the abandonment provisions of the Act relate solely to rate recovery and do not include any approvals related to a utilities ability to abandon property. Thus, PSC's future decisions should relate solely to rate recovery and any rate increases granted to Taxpayer should be similar in nature to those considered in Rev. Rul. 87-117, which were not considered to be compensation by insurance or otherwise.

CONCLUSION

Based on the above, it is held that Taxpayer sustained an abandonment loss within the meaning of section 165(a) of the Code related to the abandonment of the Property and the Project in the taxable year ending on Date 1. Taxpayer demonstrated the requisite intent to abandon the Property and the Project, and effectuated that intent through numerous affirmative acts of abandonment.

This holding is limited to the issue of whether an abandonment of the Property and the Project occurred and does not consider which specific assets are abandoned or the amount properly allocated to the loss that was sustained.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal income tax consequences of any aspect of any transaction or item discussed or referenced in this ruling.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that 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 Taxpayer's authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer 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.

Sincerely,

Brinton Warren
Chief, Branch 3
(Income Tax & Accounting)