

Internal Revenue Service

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Washington, DC 20224

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Person To Contact:

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Legend:

Taxpayer A =

Buyer =

Taxpayer B =

Seller =

State =

Plant =

Commission A =

Commission B =

Commission C =

Commission D =

Commission E =

a =

b =

x =

Dear :

This letter responds to your request for private letter ruling dated August 12, 2005, as well as information supplied subsequent to that date. You requested that we rule on certain tax consequences, under section 468A of the Internal Revenue Code, to Taxpayers A and B, Buyer, and Seller, as well as the qualified nuclear decommissioning fund with respect to Plant, of the transaction discussed below.

Facts:

Taxpayers have represented the following facts and information relating to the ruling request:

Taxpayer A is the parent of an affiliated group of subsidiary corporations including Buyer, an indirect, wholly-owned subsidiary of Taxpayer A. Through its various subsidiaries, Taxpayer A is engaged in the generation, transmission, distribution, and sale of electric energy. Taxpayer B is the parent of an affiliated group of corporations including Seller, a wholly-owned subsidiary of Taxpayer B. Seller is a public utility corporation regulated by Commissions A, B, C, D, and E. Seller has a qualifying interest in Plant, as defined in § 1.468A-1(b)(2) of the Treasury regulations, of x percent, as well as the concomitant obligation to decommission that portion of the Plant. Seller has established a qualified nuclear decommissioning trust (the QDT), as well as a non-qualified decommissioning trust (NQDT), to fulfill its obligation to decommission Plant. Seller's QDT is a "nuclear decommissioning reserve fund" within the meaning of § 468A(a) and § 1.468A-5; Seller's NQDT is a trust organized under the laws of State and is classified as a grantor trust under § 671.

For consideration, Seller proposes to transfer Plant, the obligation to decommission Plant, as well as the assets in the QDT established by Seller to pay for that decommissioning, to Buyer. The closing date for the transaction is intended to be date a, but will be no later than date b. Buyer will establish a qualified nuclear decommissioning trust meeting the requirements of § 468A(a) and § 1.468A-5 prior to the transfer and all the assets in Seller's QDT will be transferred directly to Buyer's QDT. Buyer will also establish a nonqualified nuclear decommissioning trust prior to the transfer and it is expected that all amounts in the Seller's NQDT will be transferred to the Buyer's NQDT.¹ Buyer's NQDT will qualify as a grantor trust under § 671 and Buyer will be the grantor of that trust. Seller will make no contributions to Seller's QDT after

¹ All amounts in the NQDT may not be transferred, depending on the value of the assets in the Seller's NQDT at the time of transfer.

the closing date of the transaction. In addition, Buyer will not make any contributions to Buyer's QDT during Buyer's taxable year ending on date a.

In addition, Taxpayer B has specifically represented that:

On Seller's U.S. federal income tax return for the taxable year including the closing date of the transaction, Seller will recognize gain or loss on the sale of Plant and related assets (excluding the assets in Seller's QDT) to Buyer in an amount equal to the difference between Seller's tax basis in each asset and the amount realized with respect to that asset, taking into account the allocation of consideration pursuant to § 1060 and the regulations thereunder. Seller will treat as the amount realized from the sale of the purchased assets (excluding Seller's QDT) the cash received from Buyer and liabilities and obligations assumed by Buyer, including the liability to decommission Plant (reduced by the amount of the decommissioning liability to be funded by the QDT), to the extent such liabilities and obligations are taken into account as liabilities for federal income tax purposes. On the Seller's U.S. federal income tax return for the taxable year that includes the closing date of the transaction, Seller will claim a current deduction in an amount equal to the total of any amounts treated as realized by Seller as a result of Buyer's assumption of the decommissioning liability for Plant. For U.S. federal income tax purposes, Seller will treat any net operating loss arising in the taxable year including the closing date of the transaction which is attributable to the decommissioning obligations assumed by Buyer as a specified liability loss under § 172(f).

Finally, Taxpayer A has represented that:

On Buyer's U.S. federal income tax return for the taxable year including the closing date of the transaction, Buyer will not include any gain in income or otherwise take any income into account by reason of the transfer of all or a portion of the assets of Seller's NQDT. Buyer will include distributions from Buyer's QDT in income in accordance with §§ 1.468A-2(d) and 1.468A-5(d), including any amount Buyer is required to repay to Seller if the amounts transferred by Seller for decommissioning purposes exceed the amounts ultimately necessary to decommission Plant.

Taxpayers have requested the following rulings:

Requested Ruling #1: The transfer of assets from Seller's QDT to Buyer's QDT is a disposition that is treated as satisfying the requirements of § 1.468A-6(b) pursuant to the Service's exercise of discretion under § 1.468A-6(g)(1), and, accordingly, Buyer's QDT will be treated as a QDT that satisfies the requirements of § 468A and the regulations thereunder.

Requested Ruling #2: Neither Buyer nor the Buyer's QDT will recognize any gain or loss or otherwise take any income or deduction into account as a result of the transfer of assets from Seller's QDT to Buyer's QDT, and Buyer's QDT will

have a tax basis in the assets that is the same as the tax basis that Seller's QDT had in those assets immediately prior to the proposed transaction.

Requested Ruling #3: Neither Seller nor Seller's QDT will recognize any gain or loss or otherwise take any income or deduction into account as a result of the transfer of assets from Seller's QDT to Buyer's QDT.

Law and Analysis:

Section 1.468A-5(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-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;

(iii) Either a proportionate amount (which could include all) of the assets of the transferor's qualified nuclear decommissioning fund is transferred to a qualified nuclear decommissioning fund of the transferee, or the transferor's entire qualified nuclear decommissioning fund is transferred to the transferee, provided in the latter case (or if the transferee receives all of the assets in the transferor's qualified nuclear decommissioning fund,

but not the transferor's qualified nuclear decommissioning fund) that the transferee acquires the transferor's entire qualifying interest in the plant; and

(iv) 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) 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-6(g), 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 and specific factual representations submitted by Taxpayers, we reach the following conclusions:

The transfer of assets from Seller's QDT to Buyer's QDT qualifies as a disposition under the provisions of section 1.468A-6. Accordingly, pursuant to § 1.468A-6(c)(1) and § 1.468A-6(c)(2), Buyer, Buyer's QDT, Seller, and Seller's QDT will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the transfer of the assets from Seller's QDT to Buyer's QDT. Further, pursuant to § 1.468A-6(c)(3), after the transaction, Buyer's QDT will have a basis in the assets held equal to the basis of such assets in Seller's QDT immediately prior to the transaction.

While it owns interests in Plant, Buyer 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.

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's authorized representative. We are also sending a copy of this letter ruling to Taxpayer and to the Industry Director, Natural Resources (LM:NR).

Sincerely,

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

cc: