

Instructions for Form 1120-ND

(Revised August 1998)

Return for Nuclear Decommissioning Funds and Certain Related Persons

Section references are to the Internal Revenue Code unless otherwise noted.



Department of the Treasury
Internal Revenue Service

General Instructions

Purpose of Form

Nuclear decommissioning funds file Form 1120-ND to report contributions received, income earned, the administrative expenses of operating the fund, and the tax on modified gross income. If there are initial taxes on self-dealing with the fund, the return is also used to report and pay the section 4951 taxes on self-dealing.

Who Must File

All section 468A nuclear decommissioning funds must file Form 1120-ND. A disqualified person engaging in self-dealing must file Form 1120-ND to report the initial tax under section 4951.

Initial taxes on self-dealing. A disqualified person or a trustee who participates in an act of self-dealing must file Form 1120-ND. See the instructions on page 3 for computing the amount of tax for trustees and disqualified persons.

Complete the following items if you are computing tax due to acts of self-dealing:

- The heading (omitting the checkboxes for final return, change in address, and amended return);
- The signature and, if applicable, the paid preparer's section;
- Item 5, Schedule M, Other Information; and
- The appropriate lines in Part II, Sections A and B.

Each person liable for filing a return to pay any tax reportable on this form must file a separate return.

When To File

In general, a fund must file its income tax return by the 15th day of the 3rd month after the close of the fund's tax year. The return of a trustee or self-dealer who owes tax under section 4951 must be filed by the 15th day of the 3rd month after the close of the tax year of the trustee or self-dealer.

If the due date falls on a Saturday, Sunday, or legal holiday, file on the next business day.

Private delivery services. You can use certain private delivery services designated by the IRS to meet the "timely

mailing as timely filing/paying" rule for tax returns and payments. See the Instructions for Form 1120 for details.

Extension. File **Form 7004**, Application for Automatic Extension of Time To File Corporation Income Tax Return, to request a 6-month extension of time to file.

A self-dealer or trustee filing to report section 4951 taxes must file **Form 2758**, Application for Extension of Time To File Certain Excise, Income, Information, and Other Returns, to request an extension of time to file Form 1120-ND.

An extension of time to file does not extend the time for payment of tax.

Electing taxpayer. The term "electing taxpayer" means an eligible taxpayer that elects the application of section 468A under the rules contained in Regulations section 1.468A-7.

Also, report acts of self-dealing based on the tax year of the self-dealer. See Rev. Rul. 75-391, 1975-2 C.B. 446, for details.

Where To File

File your return at the applicable IRS address listed below.

| If the fund's principal office is located in | Use the following Internal Revenue Service Center address |
|--|---|
| Florida, Georgia, South Carolina | Atlanta, GA 39901 |
| Kansas, New Mexico, Oklahoma, Texas | Austin, TX 73301 |
| Indiana, Kentucky, Michigan, Ohio, West Virginia | Cincinnati, OH 45999 |
| New Jersey, New York (New York City and counties of Nassau, Rockland, Suffolk, and Westchester) | Holtsville, NY 00501 |
| New York (all other counties), Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont | Andover, MA 05501 |
| Illinois, Iowa, Minnesota, Missouri, Wisconsin | Kansas City, MO 64999 |
| Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Tennessee | Memphis, TN 37501 |

Alaska, Arizona, California (counties of Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba), Colorado, Idaho, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming

Ogden, UT 84201

California (all other counties), Hawaii

Fresno, CA 93888

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia

Philadelphia, PA 19255

Who Must Sign

The return must be signed and dated by an authorized trustee. The return of any person who engaged in any act of self-dealing must be signed and dated by that person or the individual authorized to sign on behalf of that person.

If a trustee completes Form 1120-ND, the Paid Preparer's space should remain blank. Anyone who prepares Form 1120-ND but does not charge the fund should not sign the return. Generally, anyone who is paid to prepare the return must sign it and fill in the Paid Preparer's Use Only area.

The paid preparer must complete the required preparer information and:

- Sign the return, by hand, in the space provided for the preparer's signature (signature stamps and labels are not acceptable).
- Give a copy of the return to the taxpayer.

Accounting Method

The fund must use the same method of accounting as that of the electing taxpayer.

Rounding Off to Whole Dollars

The fund may show amounts on the return and accompanying schedules as whole dollars. To do so, drop amounts less than 50 cents and increase any amount from 50 cents to 99 cents to the next higher dollar.

Depository Method of Tax Payment

The fund must pay the tax due in full no later than the 15th day of the 3rd month after the end of the tax year.

Electronic Deposit Requirement

See the Instructions for Form 1120 about the requirement to deposit certain taxes, including fund income tax, electronically.

Deposits With Form 8109

If the fund does not use EFTPS, deposit fund income tax payments (and estimated tax payments) with Form 8109. Do not send deposits directly to an IRS office. Mail or deliver the completed Form 8109 with the payment to a qualified depository for Federal taxes or to the Federal Reserve bank (FRB) servicing the fund's geographic area. Make checks or money orders payable to that depository or FRB. To help ensure proper crediting, write the fund's EIN, the tax period to which the deposit applies, and "Form 1120-ND" on your check or money order. Be sure to darken the "1120" box on the coupon. Records of these deposits will be sent to the IRS.

A penalty may be imposed if the deposits are mailed or delivered to an IRS office rather than to an authorized depository or FRB. For more information on deposits, see the coupon booklet (Form 8109) and **Pub. 583**, Starting a Business and Keeping Records.

Caution: *If the fund owes tax when it files Form 1120-ND, do not include the payment with the return. Instead, mail or deliver the payment with Form 8109 to a qualified depository or FRB, or use EFTPS, if applicable.*

Estimated Tax Payments

Generally, a fund must make installment payments of estimated tax if it expects its estimated tax to be \$500 or more. The installments are due by the 15th day of the 4th, 6th, 9th, and 12th month of the tax year. If any date falls on a Saturday, Sunday, or legal holiday, the installment is due on the next regular business day.

Figure the fund's expected modified gross income for the tax year. Then multiply the fund's expected modified gross income by 20% and see **Form 1120-W**, Estimated Tax for Corporations, to determine the fund's required installments. For more information on estimated tax payments, including penalties that apply if the fund fails to make the required payments, see the instructions for line 15 on page 3.

If the fund overpaid estimated tax, it may be able to get a "quick" refund by filing **Form 4466**, Corporation Application for Quick Refund of Overpayment of Estimated Tax. The overpayment must be at least 10% of the fund's expected income tax liability and at least \$500. File Form 4466 before the 16th day of the 3rd

month after the end of the tax year, but before the fund files its income tax return. Do not file Form 4466 before the end of the fund's tax year.

Interest and Penalties

Interest. Interest is charged on taxes paid late even if an extension of time to file is granted. Interest is also charged on penalties imposed for failure to file, negligence, fraud, gross valuation overstatements, and substantial understatements of tax from the due date (including extensions) to the date of payment. The interest charge is figured at a rate determined under section 6621.

Penalty for late filing of return. A fund that does not file its tax return by the due date, including extensions, may be penalized 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax. The minimum penalty for a return that is more than 60 days late is the smaller of the tax due or \$100. The penalty will not be imposed if the fund can show that the failure to file on time was due to reasonable cause. Funds that file late must attach a statement explaining the reasonable cause.

Penalty for late payment of tax. A fund that does not pay the tax when due may have to pay a penalty of 1/2 of 1% of the unpaid tax for each month or part of a month the tax is not paid, up to a maximum of 25% of the unpaid tax. The penalty will not be imposed if the fund can show that the failure to pay was due to reasonable cause.

Other penalties. Other penalties can be imposed for negligence, substantial understatement of tax, and fraud. See sections 6662 and 6663.

Other Forms That May Be Required

The fund may have to file the following:

Forms W-2 and W-3. Wage and Tax Statement; and Transmittal of Wage and Tax Statements.

Form 1099-MISC. Miscellaneous Income. For more information, see the instructions for Forms 1099, 1098, 5498, and W-2G.

Attachments. Attach schedules in alphabetical order and other forms in numerical order after Form 1120-ND.

To help us in processing the return, complete every applicable entry space on Form 1120-ND. Do not write "See attached" instead of completing the entry spaces. If you need more space on the forms or schedules, attach separate sheets. Use the same size and format as on the printed forms. But show the fund's totals on the printed forms. Attach these separate sheets after all the schedules and forms. Be sure to put the fund's name and EIN on each sheet.

Specific Instructions

Period covered. Enter the tax year in the space provided at the top of the form. For a calendar year, enter the four digits of the calendar year in the first entry space. For a fiscal tax year, enter the month, day, and four-digit year in the spaces provided for the beginning and end of the year.

Name and address. The fund name must be entered on every Form 1120-ND. If this return is filed to report the income, deductions, and tax liability of the fund, enter the address of the fund in the address section. If the return is filed by a trustee or disqualified person to report section 4951 taxes, enter that person's name and address in the address section.

Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the fund, trustee, or disqualified person has a P.O. box, show the box number instead of the street address.

Note: *If a change in address occurs after the return is filed, use **Form 8822**, Change of Address, to notify the IRS of the new address.*

Item A. Show the correct EIN in item A, page 1, Form 1120-ND. If the fund does not have an EIN, it should apply for one on **Form SS-4**, Application for Employer Identification Number. Form SS-4 can be obtained at most IRS and Social Security Administration (SSA) offices. If the fund has not received its EIN by the time the return is due, write "Applied for" in the space provided for the EIN. See **Pub. 583** for additional details.

Item B. If the return is filed by a trustee or disqualified person to report section 4951 taxes, enter the identifying number of the trustee or disqualified person. For an individual trustee or disqualified person, enter the individual's social security number. If the trustee or disqualified person is not an individual, enter the EIN. Do not complete item B if Form 1120-ND is filed to report the income, deductions, and income tax liability of the fund.

Item C. Check only the box that applies.

1. When filed to report the income, deductions, and income tax liability of the fund, check the "Fund" box.

2. When filed by a trustee who is liable for taxes under section 4951, check the "Trustee" box.

3. When filed by a disqualified person who is liable for section 4951 tax, check the "Disqualified person" box.

Item D. If the fund ceases to exist, file Form 1120-ND and check the "Final return" box.

If the fund has changed its address since it last filed its return, check the box for "Change of address."

If the fund is filing to correct a previously filed return, check the box for "Amended return."

Part I—Computation of Fund Income Tax

Income

Line 1—Taxable interest. Enter the total taxable interest income received or accrued for the year, including any original issue discount. Do not include tax-exempt interest on line 1; but report it as an item of information on line 2e, Schedule M, Form 1120-ND.

Line 2—Capital gain net income. Every sale, exchange, or actual or deemed distribution of assets held by the fund must be reported in detail on Schedule D (Form 1120), Capital Gains and Losses, even though no gain or loss is indicated. The amount realized on an actual or deemed distribution is the fair market value of the assets as of the date of distribution.

Line 3—Other income. Enter any other taxable income not reported on line 1 or line 2 and explain its nature on an attached schedule. If the fund had only one item of other income, describe it in parentheses on line 3.

Deductions

Note: A deduction is not allowed for certain expenses allocable to tax-exempt income. See section 265. In addition, a deduction is not allowed for distributions made to electing taxpayers. Report such payments as an item of information on line 2d, Schedule M, Form 1120-ND. Liabilities are not treated as incurred prior to the time economic performance takes place. See section 461(h).

Line 5—Trustee fees. Enter the total deductible fees paid or incurred to the trustee(s) for administering the fund during the tax year.

Line 6—Taxes. Enter deductible taxes paid or incurred during the tax year, including state and local income taxes. Do not deduct Federal income taxes or taxes not imposed on the fund.

Line 8—Other deductions. Attach a schedule listing by type and amount all allowable deductions that are not deducted elsewhere on Form 1120-ND. Include investment advisory fees, actuarial expenses, and other administrative expenses paid or incurred during the tax year, but do not include decommissioning costs.

Line 11—Net operating loss deduction. Enter the amount of any net operating loss deduction allowed by Regulations section 1.468A-4(b)(4), and explain its computation on an attached schedule.

Line 14—Payments. No payments are allowed other than those on lines 14a through 14d and the credit for backup withholding.

Backup withholding. If the fund had income tax withheld from any payment it received because, for example, it failed to give its correct EIN, include the amount withheld in the total for line 14f. This type

of withholding is called “backup withholding.” Show the amount withheld above line 14f and write “backup withholding.”

Line 15—Estimated tax penalty. A fund that does not make estimated tax deposits when due may be subject to an underpayment penalty for the period of underpayment. Generally, a fund is subject to the penalty if its tax liability is \$500 or more, and it did not timely pay the smaller of (a) 100% of its current year tax liability or (b) 100% of its prior year tax. See section 6665 for details and exceptions, including special rules for large corporations (funds).

Form 2220, Underpayment of Estimated Tax by Corporations, is used to see if the fund owes a penalty and to figure the amount of the penalty. Generally, the fund does not have to file this form because the IRS can figure the amount of any penalty and bill the fund for it. However, even if the fund does not owe the penalty, you must complete and attach Form 2220 if either of the following applies:

- The annualized income or adjusted seasonal installment method is used.
- The fund is a “large corporation” computing its first required installment based on the prior year’s tax.

If you attach Form 2220, check the box on line 15, and enter the amount of the penalty on that line.

Schedule L—Balance Sheets

The balance sheets should agree with the fund’s books and records.

Part II—Initial Taxes on Self-Dealing (Section 4951)

Initial taxes on self-dealers. An initial tax of 10% of the amount involved (see definition on page 4) is imposed on each act of self-dealing between a disqualified person and a nuclear decommissioning fund for each tax year (or part of a tax year) in the taxable period. The tax is required to be paid by any disqualified person (other than a trustee acting only as a trustee of the trust) who participates in the act of self-dealing.

Initial taxes on trustee. A tax of 2½% of the amount involved is imposed on a trustee who participates in the act of self-dealing. The tax is not imposed if the trustee unwillingly or due to reasonable cause participated in the act. The tax is computed on all acts of self-dealing that occur within the taxable period. The tax is required to be paid by the trustee who participates in the act.

Exceptions. The initial tax on the act of self-dealing of a disqualified person or a trustee is not imposed if the acts of self-dealing are corrected within the taxable period. The terms self-dealing, taxable period, amount involved, correction, correct, and disqualified person are defined below.

Definitions

Self-dealing. When determining if an act is an act of self-dealing, treat the transfer of personal property by a disqualified person to the fund as a sale or exchange if the property is subject to a mortgage or similar lien. Otherwise, the term “self-dealing” means any direct or indirect—

- Sale, exchange, or leasing of real or personal property between the fund and a disqualified person;
- Lending of money or other extensions of credit between the fund and a disqualified person;
- Furnishing of goods, services, or facilities between the fund and a disqualified person;
- Payment of compensation (or payment or reimbursement of expenses) by the fund to a disqualified person; and
- Transfers to, or use by or for the benefit of, a disqualified person of the income or assets of the fund.

Exceptions. Acts of self-dealing do not include—

1. The payment by the fund for the purposes of satisfying, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant.

2. The withdrawal of excess contributions by the electing taxpayer in accordance with Regulations section 1.468A-5(c)(2).

3. The withdrawal of amounts that have been treated as distributions to the electing taxpayer under Regulations section 1.468A-5(c)(3).

4. The payment of amounts remaining in the fund to the electing taxpayer after the termination of the fund upon the substantial completion of decommissioning.

5. The furnishing of goods, services, or facilities by a disqualified person to the fund if the furnishing is without charge and if the goods, services, or facilities so furnished are exclusively used for the purposes specified in section 468A(e)(4).

6. The payment of compensation (and the payment or reimbursement of expenses) by the fund to a disqualified person for personal services that are reasonable and necessary to carry out the purposes of the fund and the compensation (or payment or reimbursement of expenses) is not excessive.

7. A payment by the fund for the performance of trust functions and certain general banking services by a bank or trust company that is a disqualified person, if the banking services are reasonable and necessary to carry out the purposes of the fund and the compensation paid to the bank or trust company is not excessive (considering the fair market interest rate for the use of the funds by the bank or trust company).

The allowable general banking services are:

- Checking accounts, as long as the bank does not charge interest on any overwithdrawals;
- Savings accounts, as long as the fund may withdraw its money after giving no more than 30 days notice, without losing interest for the period the money was on deposit; and
- Safekeeping activities (for example, rental of a safe deposit box).

Taxable period. For an act of self-dealing, the term "taxable period" means the period beginning on the date of the act of self-dealing and ending on the date of the earliest of—

- The date of mailing of a notice of deficiency under section 6212 for the section 4951 tax,
- The date on which the tax imposed by section 4951 is assessed, or
- The date correction of the act of self-dealing is completed.

Amount involved. The term "amount involved" means the greater of the amount of money given (or received) and the fair market value of the other property given (or received). When services described in section 4951(d)(2)(C) are involved, the amount involved is only the excess compensation.

Note: *Fair market value is determined as of the date on which the act of self-dealing occurs and at the highest market value during the taxable period.*

Correction and correct. The terms "correction" and "correct" mean the undoing of an act of self-dealing, to the extent possible, but in any case returning the fund to a financial position no worse than it would have been if the disqualified person acted under the highest fiduciary relationship.

Disqualified person. The term "disqualified person" means a person who is:

1. A contributor to the fund.
2. A trustee of the fund.
3. An owner of more than 10% of (a) the total combined voting power of a corporation, (b) the profits interest of a partnership, or (c) the beneficial interest of a trust or unincorporated business that is a contributor to the fund.
4. An officer, director, or employee of a person who is a contributor to the fund.
5. The spouse, ancestor, or a lineal descendant, or a spouse of a lineal descendant of an individual described in items 1 through 4 above.
6. A corporation of which persons described in items 1 through 5 above own more than 35% of the total combined voting power.
7. A partnership of which persons described in items 1 through 5 above own more than 35% of the profits interests.
8. A trust or estate of which persons described in items 1 through 5 above own more than 35% of the beneficial interest.

For purposes of items 3(a) and 6, indirect stockholders would be taken into account under section 267(c), except that,

for purposes of this paragraph, section 267(c)(4) will be treated as providing that the members of the family of an individual are only those individuals described in item 5. For purposes of items 3(b), 3(c), 7, and 8, the ownership of profits or beneficial interests will be determined by the rules of constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) will be treated as providing that the members of the family of an individual are only those individuals described in item 5.

Dispositions of an Interest in a Nuclear Power Plant

There are Federal income tax consequences when there is a transfer of assets of a nuclear decommissioning fund in connection with the sale, exchange, or other disposition of a transferor of all or a portion of its qualifying interest in a nuclear power plant to another taxpayer (transferee). If the requirements of Regulations section 1.468A-6(b) are met, the Federal income tax consequences are the following:

1. No gain or loss. If there is a disposition of an interest (wholly or partially) in a nuclear power plant, neither the transferor nor the transferee (or either's fund) will recognize gain, loss, or otherwise take any income or deduction into account because of the transfer of all or some of the assets of the transferor's fund. Also, the transfer is not considered a payment or contribution of assets by the transferor's fund (or by the transferee to its fund).

2. Basis. Transfers of assets of a fund to which Regulations section 1.468A-6 applies do not affect basis. The transferee's fund will have a basis in the assets received from the transferor equal to the transferor's basis in those assets immediately prior to the transfer.

3. Tax year of disposition.

A. Transferee. If a transferee does not file a request for a schedule of ruling amounts by the deemed payment deadline (2½ months after the end of the tax year of the disposition), the transferee's ruling amount for the interest acquired is determined by taking the amount contained in the transferor's current schedule of ruling amounts for that tax year and that plant multiplied by the product of:

- (1) The portion of the transferor's qualifying interest that is transferred, and
- (2) A fraction, the numerator of which is the number of days in the tax year of the transferor including and following the date of the disposition, and the denominator of which is the number of days in that tax year.

B. Transferor. If a transferor does not file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for the tax year of the transferor in which the disposition of its interest in the nuclear power plant occurred (that is, the date that is 2½

months after the close of that tax year), the transferor's ruling amount with respect to that plant for that year will equal the sum of—

(1) The ruling amount contained in the transferor's current schedule of ruling amounts with respect to that plant for that tax year multiplied by the portion of qualifying interest that is retained, if any, and

(2) The ruling amount contained in the transferor's current schedule of ruling amounts with respect to that plant for that tax year multiplied by the product of—

(a) The portion of the transferor's qualifying interest that is disposed of and

(b) A fraction, the numerator of which is the number of days in the tax year that precede the date of the disposition, and the denominator of which is the number of days in that tax year.

4. Tax year after the year of disposition.

A transferee of, or a transferor who retains, a qualifying interest in a nuclear power plant, must file a request for a revised schedule of ruling amounts for the interest by the deemed payment deadline (defined above). If the transferee (or the transferor) does not timely file such a request, the transferee's (or the transferor's) ruling amounts for the interest for that tax year will be zero.

For more information, see Regulations section 1.468A-6.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us this information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

| | |
|--|-----------------|
| Recordkeeping | 23 hr., 12 min. |
| Learning about the law or the form | 3 hr., 7 min. |
| Preparing the form | 5 hr., 30 min. |
| Copying, assembling, and sending the form to the IRS | 32 min. |

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send the tax form to this office. Instead, see **Where To File**, on page 1.