Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200238046**
Release Date: 9/20/2002
Index Number: 468A.00-00

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:6-PLR-103906-02
Date:
June 20, 2002

Legend:

Taxpayer =

Utility =

Holding Company =

Plant =
Commission A =
Commission B =
State =
Resolution =
Plan =
Energy =
Nuclear =

a =
b =
c =

Dear :

This letter responds to your request for private letter ruling dated January 15, 2002, and subsequent submissions. You requested that we rule on certain tax consequences, under section 468A of the Internal Revenue Code, to Taxpayer and Holding Company (through its divisions Energy and Nuclear) and their qualified nuclear decommissioning funds, of the transfer of the Plant in the context of a reorganization.

Facts:

Taxpayer has represented the following facts and information relating to the ruling request:

Taxpayer, in it's regulated electric utility business principally operated by Utility, generates electricity and provides electric and gas transmission and distribution services in State. Utility is under the regulatory jurisdiction of Commission A and Commission B.

Utility owns a percent of the Plant, which consists of b units. As required by Commission A in Resolution, Utility has established and maintained two separate qualified nuclear decommissioning trusts for Plant, one for amounts subject to the jurisdiction of Commission A and one for amounts subject to the jurisdiction of Commission B.

In response to changes in the electric industry, Utility has proposed Plan. Pursuant to Plan, Utility will separate its operations into generation, electric transmission, gas transmission, and distribution segments. Initially, in c, Holding Company was organized as a wholly-owned subsidiary of Utility. Simultaneously, three wholly-owned subsidiaries of Holding Company, including Energy, were organized as limited liability companies. Taxpayer represents that the three subsidiaries will be treated as disregarded entities pursuant to section 301.7701-3 of the regulations. After the formation of Energy, but on or before the effective date of Plan, Nuclear will be organized as a wholly-owned subsidiary of Energy in the form of a limited liability company. Taxpayer represents that Nuclear will be treated as a disregarded entity pursuant to section 301.7701-3 of the regulations.

Plan calls for the generation segment of Utility's business to be distributed to Energy and its subsidiaries, and for the gas and electric transmission segments to be distributed to the other two subsidiaries of Holding Company. Only the distribution segment will remain with Utility. Plant and associated assets, including both of the qualified nuclear decommissioning funds, will be distributed to Nuclear. Nuclear will be liable for all expenses related to decommissioning Plant. Nuclear will lease Plant to Energy, and Energy will operate and maintain Plant during the lease. Subsequent to the transfer of Plant to Nuclear the stock of Holding Company will be distributed to Taxpayer. On, or shortly after, the effective date of Plan, Utility will be spun off to Taxpayer's shareholders.

Following the transfer of Plant to Nuclear, Nuclear will be subject solely to the regulatory jurisdiction of Commission B. However, because under the terms of the trust agreement Commission A will continue, after the transfer of the funds to Nuclear, to have jurisdiction and oversight over the qualified nuclear decommissioning fund that contains amounts contributed during the period of Commission A's original jurisdiction over Utility, Commission A requires that the fund continue after the transfer to be kept

separate from, and not commingled with, the qualified nuclear decommissioning fund that contains amounts contributed during the period of Commission B's original jurisdiction over Utility.

Utility and Energy have requested, but have not yet received, approvals from various entities including Commission B and the Nuclear Regulatory Commission relating to several facets of Plan.

The taxpayer has requested the following rulings:

Requested Ruling #1: Utility, Holding Company (through its divisions Energy and Nuclear), and the qualified nuclear decommissioning funds will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the transfer of the interests in the qualified nuclear decommissioning trust funds, and Holding Company's qualified nuclear decommissioning funds (through its division, Nuclear) will have a basis in the assets held equal to the basis of such assets in Utility's qualified nuclear decommissioning funds immediately prior to the transfer of the interests in the qualified nuclear decommissioning funds.

Requested Ruling #2: While it owns interests in the Plant, Holding Company (through its divisions) is eligible to maintain the qualified nuclear decommissioning funds under section 1.468A-5.

Requested Ruling #3: While it owns interests in the Plant, and for so long as Commission A requires that the Commission A jurisdictional decommissioning trust not be commingled with the Commission B jurisdictional decommissioning trust, Holding Company (through its divisions) may maintain separate trusts for the Commission A and Commission B jurisdictional share of the qualified nuclear decommissioning trusts in accordance with section 1.468A-5(a)(1)(iii).

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 submitted by Taxpayer and expressly conditioned on Taxpayer's representation that Energy and Nuclear are disregarded entities under section 301.7701-3, we reach the following conclusions:

The transfer of the qualified nuclear decommissioning funds from Utility to Nuclear qualify as dispositions under the general provisions of section 1.468A-6. Accordingly, Utility, Holding Company (through its divisions Energy and Nuclear), and the qualified nuclear decommissioning funds will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the transfer of the interests in the qualified nuclear decommissioning trust funds, and Holding Company's qualified nuclear decommissioning funds (through its division, Nuclear) will have a basis in the assets held equal to the basis of such assets in Utility's qualified nuclear decommissioning funds immediately prior to the transfer of the interests in the qualified nuclear decommissioning funds.

While it owns interests in the Plant through its divisions or otherwise, Holding Company is eligible to maintain the qualified nuclear decommissioning funds.

While it owns interests in the Plant and Commission A requires that the Commission A jurisdictional qualified nuclear decommissioning trust not be commingled with the Commission B jurisdictional qualified nuclear decommissioning trust, Holding Company (through its divisions) may maintain separate trusts for the Commission A and Commission B jurisdictional share of the qualified nuclear decommissioning trusts.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. In particular, no opinion is expressed or implied concerning whether Holding Company, Energy or Nuclear are an “eligible taxpayer” as defined in section 1.468A-1(b)(1). In addition, no opinion is expressed or implied concerning whether Energy or Nuclear are properly disregarded for tax purposes and treated as divisions of Holding Company.

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: