

Internal Revenue Service

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Person To Contact:

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Refer Reply To:

CC:PSI:6 – PLR-152203-03

Date:

December 31, 2003

In Re:

Re: Request for Extension of Time to Elect Application of Section 468A

Taxpayer =

N =

P =

X =

Y =

Plant =

Location =

Q =

Dear :

This letter responds to your request dated September 4, 2003, submitted by P on behalf of Taxpayer, requesting under § 301.9100-3 of the Procedure and Administration Regulations an extension of time to elect application of section 468A of the Internal Revenue Code with respect to Taxpayer's interest in Plant and the related Nuclear Decommissioning Reserve Fund (Fund).

Taxpayer is wholly owned by N. N is wholly owned by P. P is principally engaged in the generation and sale of electricity at wholesale. Plant is a nuclear

generating unit located on Location. P owns a Q percent interest as tenant in common in the Plant. A Fund has been established for the Plant.

In the course of preparing its x Federal consolidated income tax return, P discovered that Taxpayer had inadvertently failed to attach to the y Federal consolidated income tax return the Election Statement for Plant and the revised schedule of ruling amounts as required by § 1.468A-7(a) of the Income Tax Regulations. P represents that Taxpayer's failure to attach the Election Statement was due to P's restructuring during y. P immediately consulted with its outside tax counsel and commenced preparing this ruling request.

Section 468A(a) of the Internal Revenue Code provides that a taxpayer may pay into a Nuclear Decommissioning Reserve Fund if the taxpayer elects application of section 468A.

Section 1.468A-1 provides that, in general, an eligible taxpayer that elects the application of section 468A pursuant to the rules contained in § 1.468A-7 is allowed a deduction (as determined under § 1.468A-2) for the taxable year in which the taxpayer makes a cash payment to a nuclear decommissioning fund.

Section 1.468A-7(a) provides that an eligible taxpayer is allowed a deduction for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment) to a nuclear decommissioning fund only if the taxpayer elects the application of section 468A. A separate election is required for each nuclear decommissioning fund and for each taxable year with respect to which payments are to be deducted under section 468A. In the case of an affiliated group of corporations that join in the filing of a consolidated return for a taxable year, the common parent must make a separate election on behalf of each member whose payments to a nuclear decommissioning fund during such taxable year are to be deducted under section 468A. The election under section 468A for any taxable year is irrevocable and must be made by attaching a statement ("Election Statement") and a copy of the schedule of ruling amounts provided to the taxpayer's Federal income tax return (or, in the case of an affiliated group of corporations that join in the filing of a consolidated return, the consolidated return) for such taxable year. The return to which the Election Statement and a copy of the schedule of ruling amounts is attached generally must be filed on or before the time prescribed by law (including extensions) for filing the return for the taxable year with respect to which payments are to be deducted under section 468A.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal

Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of section 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

Based solely on the facts and the representations made, the requirements of §§ 301.9100-1 and 301.9100-3 have been met. P is granted a period of 120 days from the date of this letter to file the Election Statement with the affiliated group of corporations' amended y Federal consolidated income tax return.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office a copy of this letter is being sent to your authorized representative. A copy of this letter is also being sent to the Industry Director, Natural Resources and Construction (LM:NRC).

Sincerely yours,

HEATHER C. MALOY
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures:

Copy of this letter
Copy for section 6110 purposes