

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Date:

November 09, 2005

Legend:

Taxpayer =

Company =

Holding Company =

NewCo =

State A =

State B =

Plant =

Commission A =

Commission B =

Commission C =

Commission D =

a =

Dear _____ :

This letter responds to your request for private letter ruling dated July 27, 2005. You requested that we rule on certain tax consequences, under section 468A of the Internal Revenue Code, to Taxpayer and NewCo and the qualified nuclear decommissioning fund with respect to Plant, of the reorganization discussed below.

Facts:

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

Taxpayer, a registered public utility holding company, is the parent of an affiliated group of subsidiary corporations. Company is a subsidiary of Taxpayer. Company, a regulated public utility corporation organized in State A, is engaged in the generation, transmission, and distribution of electricity to customers in State A. Company is the owner and operator of Plant, as well as the concomitant obligation to decommission Plant. Company represents that it has a qualifying interest in Plant, as defined in § 1.468A-1(b)(2) of the Treasury regulations, of 100 percent. Company has established a qualified nuclear decommissioning trust (the QDT) to fulfill its obligation to decommission Plant.

Taxpayer and Company propose to undertake a two-step process of restructuring on a. Under step one, Company will convert into Holding Company, a corporation organized under the laws of State B. Taxpayer represents that this conversion will qualify as a tax-free reorganization under § 368(a)(1)(F) of the Internal Revenue Code. In step 2, Holding Company will contribute, *inter alia*, Plant and the concomitant QDT to NewCo, a limited liability company (LLC) formed under the laws of State B. Holding Company will own all of the common membership interest in NewCo. Taxpayer represents that step 2 of the restructuring will qualify as a tax-free exchange under § 351. The restructuring will take place after necessary regulatory approval is obtained from Commissions A, B, C, and D. NewCo will be a regulated public utility subject to the jurisdiction of Commissions B and D.

Taxpayer has requested the following rulings:

Requested Ruling #1: The QDT will not be disqualified by reason of either the conversion of Company into Holding Company or the transfer of the QDT from Holding Company to NewCo in the course of the proposed restructuring. Thus, the QDT will continue to be treated as a QDT that satisfies the requirements of § 468A and § 1.468A-6 of the regulations thereunder.

Requested Ruling #2: The QDT will not recognize any gain or loss or otherwise take any income or deduction into account as a result of the conversion of

Company into Holding Company or the transfer of the QDT from Holding Company to NewCo in the course of the proposed restructuring.

Requested Ruling #3: Neither Taxpayer, Company, Holding Company, nor NewCo will recognize any gain or loss or take any income or deduction into account as a result of the transfer of the QDT from Holding Company to NewCo in the course of the proposed restructuring.

Requested Ruling #4: Pursuant to § 1.468A-6(c), after the restructuring, the QDT will have a tax basis in each of their assets that is the same as the tax basis in those assets immediately prior to the proposed restructuring.

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, we reach the following conclusions:

The conversion of Company into Holding Company and the transfer of the QDT from Holding Company to NewCo in the course of the proposed restructuring qualify as dispositions under the general provisions of § 1.468A-6. Accordingly, pursuant to § 1.468A-6(c)(1) and § 1.468A-6(c)(2), the QDT will not be disqualified by reason of the conversion of Company into Holding Company and the transfer of the QDT from Holding Company to NewCo in the course of the proposed restructuring. In addition, Taxpayer, Company, Holding Company, NewCo, and the qualified nuclear decommissioning trust 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. Further, pursuant to § 1.468A-6(c)(3), after the restructuring, NewCo's qualified nuclear decommissioning fund will have a basis in the assets held equal to the basis of such assets in the qualified nuclear decommissioning fund immediately prior to the transfer of the interests in the qualified nuclear decommissioning funds.

While it owns interests in Plant, NewCo 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: