

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8758]

RIN 1545-AU28

Nuclear Decommissioning Funds; Revised Schedules of Ruling Amounts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to requests for revised schedules of ruling amounts for nuclear decommissioning reserve funds. The regulations amend existing regulations to ease the burden on affected taxpayers by permitting electing taxpayers with qualifying interests in nuclear power plants to adjust their ruling amounts under a formula or method rather than by filing a request for a revised schedule of ruling amounts.

DATES: The final regulations are effective January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Peter Friedman, (202) 622-3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

The collection of information contained in these final regulations has been reviewed and approved by the Office of

Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under the control number 1545-1511.

Responses to this collection of information are voluntary.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated average annual burden per recordkeeper is 5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20024, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information 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 26 U.S.C. 6103.

### **Background**

This document contains final regulations under section 468A of the Internal Revenue Code. Section 468A was added to the Internal Revenue Code by section 91(c) of the Tax Reform Act of 1984 (Public Law 98-369). Significant amendments were made to section 468A by section 1917 of the Energy Policy Act of 1992

(Public Law 102-486).

Section 468A(a) allows an electing taxpayer to deduct the amount of payments made by the taxpayer to a nuclear decommissioning reserve fund. Section 468A(b) limits the amount of these payments for any taxable year to the lesser of the ruling amount or the amount of decommissioning costs included in the taxpayer's cost of service for ratemaking purposes for that taxable year.

Section 468A(d) provides that no deduction shall be allowed unless the taxpayer requests, and receives, a schedule of ruling amounts from the Secretary. A ruling amount is, with respect to any taxable year, the amount determined by the Secretary as necessary to (1) fund that portion of the nuclear decommissioning costs of the taxpayer with respect to the nuclear power plant which bears the same ratio to the total nuclear decommissioning costs with respect to the nuclear power plant as the period for which the nuclear decommissioning fund is in effect bears to the estimated useful life of such nuclear power plant; and (2) prevent any excessive funding of such costs or the funding of such costs at a rate more rapid than level funding, taking into account such discount rates as the Secretary deems appropriate. Section 468A(d)(3) provides that the Secretary shall, at least once during the useful life of the nuclear power plant (or more frequently, upon the request of the taxpayer), review and, if necessary, revise the schedule of ruling amounts.

Section 1.468A-3 sets forth the rules relating to the

determination of ruling amounts. The regulations permit the use of a formula or method for determining a schedule of ruling amounts (in lieu of a schedule of ruling amounts specifying a dollar amount for each taxable year), but only if the public utility commission establishing or approving the amount of decommissioning costs to be included in cost of service for ratemaking does not estimate the cost of decommissioning in future dollars.

The regulations contain provisions for the review and revision of schedules of ruling amounts and set forth circumstances under which a taxpayer must request a revision to its schedule of ruling amounts. In general, a schedule of ruling amounts must be reviewed at 10 year intervals. If the schedule is determined under a formula or method, however, the period between reviews may not exceed 5 years.

The regulations provide that a taxpayer may request an elective review of its schedule of ruling amounts. A taxpayer seeking to maximize its deductions under section 468A generally needs to request an elective review of its schedule of ruling amounts each time a public utility commission changes previously established amounts of decommissioning costs. A notice of proposed rulemaking (REG-209828-96) relating to these rules was published in the Federal Register on December 23, 1996 (61 F.R. 67510). The notice proposes to amend §1.468A-3(a)(4) by eliminating the restriction on the use of a formula or method for determining a schedule of ruling amounts and to revise the

mandatory review requirements.

Written comments were received in response to the notice of proposed rulemaking, and a public hearing was held on May 13, 1997. After considering the written comments and the statements made at the public hearing, the proposed rules are adopted as modified by this Treasury Decision.

**Explanation of Provisions**

The final regulations provide that a taxpayer may request approval of a formula or method for determining a schedule of ruling amounts (rather than a schedule specifying a dollar amount for each taxable year) that is consistent with the principles and provisions of the rules relating to the determination of ruling amounts.

The final regulations ease the filing burden on taxpayers by permitting them to adjust their ruling amounts under a formula or method (rather than by filing a request for a revised schedule of ruling amounts). Thus, a taxpayer may maximize its deductions under section 468A without requesting a revised schedule of ruling amounts each time a public utility commission changes the amount of decommissioning costs included in the taxpayer's cost of service if, under the taxpayer's formula or method, the commission's action results in a corresponding change in ruling amounts. The commentators all agreed with the expanded availability of ruling amounts based on formulas or methods.

In addition, the final regulations modify the mandatory review provisions applicable to schedules of ruling amounts

determined under a formula or method. The proposed regulations eliminate the rule requiring review of those schedules after 5 years but make those schedules subject to the general rule requiring review at 10 year intervals. In addition, the proposed regulations require taxpayers to request a revised schedule of ruling amounts if, beginning with the second taxable year during which the most recently issued formula or method is in effect, the ruling amount for a taxable year (1) differs by more than 25 percent from the ruling amount for any preceding taxable year during which such formula or method was in effect; or (2) differs by more than 10 percent from the ruling amount for the immediately preceding taxable year. The commentators generally favored either a retention of the 5 year review period without limits on differences in ruling amounts or an increase in the percentage by which ruling amounts are permitted to differ. In response to these suggestions, the final regulations retain the 5 year review requirement, increase the overall percentage by which ruling amounts may differ, and eliminate the 10 percent limitation on changes from one year to the next.

Some commentators suggested that all elements of a formula should be permitted to be variable. Nothing in the proposed regulations was meant to suggest otherwise. In order to afford different taxpayers maximum flexibility in using a formula, the regulations do not specify which elements must be fixed and which must be variable. Instead, the formula, itself, will determine whether an element is fixed or variable. A fixed element is one

that is assumed to retain the same value regardless of action by the applicable public utility commission.

Some commentators suggested that a taxpayer that recently received a schedule of ruling amounts should be permitted to vary this schedule using a formula or method that has not been approved by the Service. This suggestion is inconsistent with the Service's obligation to issue and review schedules of ruling amounts and is not adopted.

Several commentators requested that the existing user fee for obtaining a schedule of ruling amounts under section 468A is excessive and should be waived or reduced. Because this subject is not within the scope of this regulations project, it is not addressed in the final regulations.

Finally, some commentators suggested that the regulations should address the situation where a taxpayer, based on a good faith but erroneous calculation of the percentage limitations, fails to comply with the mandatory review provisions. Partly in response to this suggestion, the percentage limitation has been simplified.

**Effective date**

These regulations are applicable for requests for schedules of ruling amounts made on or after January 20, 1998.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been

determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in the regulation will not have a significant impact on a substantial number of small entities. This certification is based on the fact that taxpayers with qualifying interests in a nuclear power plant are generally large entities. Thus, because the regulation applies only to these taxpayers and does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Peter Friedman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects**

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 602 are amended as follows:



PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.468A-2 is amended as follows:

1. The text of paragraph (f)(3) following the heading is designated as paragraph (f)(3)(i).

2. Paragraph (f)(3)(ii) is added.

The addition reads as follows:

§1.468A-2 Treatment of electing taxpayer.

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \* (i) \* \* \*

(ii) The requirement of this paragraph (f)(3) does not apply if the taxpayer determines its schedule of ruling amounts under a formula or method obtained under §1.468A-3(a)(4) and the cost of service amount is a variable element of that formula or method.

\* \* \* \* \*

Par. 3. Section 1.468A-3 is amended as follows:

1. Paragraph (a)(4) is revised.

2. Paragraph (e)(5) is added.

3. Paragraphs (i)(1)(ii)(A), (i)(1)(iii)(A)(3), and (i)(1)(iii)(B) are revised.

4. Paragraph (i)(1)(iii)(C) is added.

The revisions and additions read as follows:

§1.468A-3 Ruling amount.

(a) \* \* \*

(4) The Internal Revenue Service will approve, at the request of the taxpayer, a formula or method for determining a schedule of ruling amounts (rather than a schedule specifying a dollar amount for each taxable year) that is consistent with the principles and provisions of this section. See paragraph (i)(1)(ii) of this section for a special rule relating to the mandatory review of ruling amounts that are determined pursuant to a formula or method.

\* \* \* \* \*

(e) \* \* \*

(5) A formula or method obtained under paragraph (a)(4) of this section may provide for changes in an estimated date described in paragraph (e)(1) or (2) of this section to reflect changes in the ratemaking assumptions used to determine rates (whether interim or final) that are established or approved by the applicable public utility commission after the filing of the request for approval of a formula or method.

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(ii)(A) Any taxpayer that has obtained a formula or method for determining a schedule of ruling amounts for any taxable year under paragraph (a)(4) of this section must file a request for a revised schedule on or before the earlier of the deemed payment deadline for the fifth taxable year that begins after its taxable

year in which the most recent formula or method was approved or the deemed payment deadline for the first taxable year that begins after a taxable year in which there is a substantial variation in the ruling amount determined under the most recent formula or method. There is a substantial variation in the ruling amount determined under the formula or method in effect for a taxable year if the ruling amount for the year and the ruling amount for any earlier year since the most recent formula or method was approved differ by more than 50 percent of the smaller amount.

\* \* \* \* \*

(iii) \* \* \*

(A) \* \* \*

(3) Reduces the amount of decommissioning costs to be included in cost of service for any taxable year;

(B) The taxpayer's most recent request for a schedule of ruling amounts did not provide notice to the Internal Revenue Service of such action by the public utility commission; and

(C) In the case of a taxpayer that determines its schedule of ruling amounts under a formula or method obtained under paragraph (a)(4) of this section, the item increased, adjusted, or reduced is a fixed (rather than a variable) element of that formula or method.

\* \* \* \* \*

Par. 4. Section 1.468A-8 is amended by adding paragraph (b)(12) to read as follows:

§1.468A-8 Effective date and transitional rules.

\* \* \* \* \*

(b) \* \* \*

(12) Use of formula or method. Section 1.468A-2(f)(3)(ii) and §1.468A-3(a)(4) (to the extent it permits a formula or method when the applicable public utility commission estimates the cost of decommissioning in future dollars), (e)(5), (i)(1)(ii)(A) (to the extent it requires the taxpayer to file a request for a revised schedule because of a substantial variation in ruling amounts), and (i)(1)(iii)(C) apply only to requests for a formula or method submitted on or after January 20, 1998, and to formulas and methods obtained in response to those requests.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. In §602.101(c), the entry for 1.468A-3 in the table is revised to read as follows:

§602.101 OMB Control numbers.

\* \* \* \* \*

(c) \* \* \*

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CFR part or section where <u>identified or described</u>	Current OMB <u>control No.</u>
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1.468A-3.....	1545-1269
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/s/ Michael P. Dolan

Deputy Commissioner of Internal Revenue

Approved:

/s/ Donald C. Lubick

Acting Assistant Secretary of the Treasury (Tax Policy)