

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:6 PLR-120650-03
Date:
July 25, 2003

Re: Revised Schedule of Ruling Amounts

LEGEND:

Taxpayer =

Plant =

Location =

Method =

Commission =

Order =

Fund =

A =

B =

C =

D =

E =

F =

G =

H =

I =

J =

K =

L =

M =

N =

O =

P =

Q =

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Dear

This letter responds to the request of Taxpayer, dated March 17, 2003, submitted by your authorized representative for a revised schedule of ruling amounts pursuant to section 1.468A-3(i) of the Income Tax Regulations. Taxpayer was previously granted a revised schedule of ruling amounts on October 22, 1998. Information was submitted pursuant to section 1.468A-3(h)(2).

We understand the facts as presented by Taxpayer to be as follows:

Taxpayer has a qualifying interest in A percent of the Plant, consisting of a direct ownership interest in B percent of the Plant plus a leasehold interest in C percent of the Plant. The Plant is situated in Location. The proposed method of decommissioning the Plant is Method.

The Commission authorized decommissioning costs in Order in the amount of D. The decommissioning costs were based on a total cost of decommissioning the Plant of E of which Taxpayer's share is F. These amounts escalated at G percent annually result in a future decommissioning cost of H and I, respectively.

The estimated date on which the Plant will no longer be included in Taxpayer's rate base for ratemaking purposes, as determined under the ratemaking assumptions that were used to determine the latest rates approved by the Commission, is J. However, the date was K in the first ratemaking proceeding in which the Plant was included in Taxpayer's rate base. The funding period and level funding limitation period for the Plant extends L. The estimated period for which the Fund will be in effect is M and the estimated useful life of the Plant is N. Therefore, the Taxpayer's qualifying percentage is O percent. The after-tax rate of return to be earned on the assets of the fund is P percent.

The Plant was sold to an unrelated third party on Q.

Section 468A of the Code provides that a taxpayer may elect to deduct the amount of payments made to a qualified decommissioning fund. However, section 468A(b) limits the amount paid into such fund for any taxable year to the lesser of the amount of nuclear decommissioning costs allocable to this fund which is included in the taxpayer's cost of service for ratemaking purposes for the tax year or the ruling amount applicable to this year.

Section 468A(d)(1) of the Code provides that no deduction shall be allowed for any payment to the nuclear decommissioning fund unless the taxpayer requests and receives from the Secretary a schedule of ruling amounts. The "ruling amount" for any tax year is defined under section 468A(d)(2) as the amount which the Secretary determines to be necessary to fund that portion of nuclear decommissioning costs which bears the same ratio to the total nuclear decommissioning costs with respect to

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the nuclear power plant as the period for which the nuclear decommissioning fund is in effect bears to the estimated useful life of the plant. This term is further defined to include the amount necessary to prevent excessive funding of nuclear decommissioning costs or funding of these costs at a rate more rapid than level funding, taking into account such discount rates as the Secretary deems appropriate.

Section 468A(g) of the Code provides that a taxpayer shall be deemed to have made a payment to the nuclear decommissioning fund on the last day of a taxable year if the payment is made on account of such taxable year and is made within 2 ½ months after the close of the tax year.

Section 1.468A-1(a) of the regulations provides that an eligible taxpayer may elect to deduct nuclear decommissioning costs under section 468A of the Code. An "eligible taxpayer," as defined under section 1.468A-1(b)(1) of the regulations, is a taxpayer that has a "qualifying interest" in, among other things, a direct ownership interest.

Section 1.468A-1(b)(2)(ii) of the regulations provides that the term "qualifying interest" means a leasehold interest in any portion of a nuclear power plant if: (A) The holder of the leasehold interest is subject to the jurisdiction of a public utility commission with respect to such portion of the nuclear power plant; (B) The holder of the leasehold interest is primarily liable under Federal or State law for decommissioning such portion of the nuclear power plant; and (C) No other person establishes a nuclear decommissioning fund with respect to such portion of the nuclear power plant.

Section 1.468A-2(b)(1) of the regulations provides that the maximum amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any tax year shall not exceed the lesser of the cost of service amount applicable to the nuclear decommissioning fund for such tax year; or the ruling amount applicable to the nuclear decommissioning fund for such tax year.

Section 1.468A-3(a)(1) of the regulations provides that, in general, a schedule of ruling amounts for a nuclear decommissioning fund is a ruling specifying annual payments that, over the tax years remaining in the "funding period" as of the date the schedule first applies, will result in a projected balance of the nuclear decommissioning fund as of the last day of the funding period equal to (and in no event more than) the "amount of decommissioning costs allocable to the fund".

Section 1.468A-3(a)(2) of the regulations provides that, to the extent consistent with the principles and provisions of this section, each schedule of ruling amounts shall be based on the reasonable assumptions and determinations used by the applicable public utility commission in establishing or approving the amount of decommissioning costs to be included in the cost of service for ratemaking purposes. Under sections 1.468A-3(a)(3), the Internal Revenue Service shall provide a schedule of ruling amounts identical to the schedule proposed by the taxpayer, but no such schedule shall be provided by the Service unless the taxpayer's proposed schedule is consistent with the principles and provisions of that section.

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Section 1.468A-3(b)(1) of the regulations provides that, in general, the amount for any tax year in the level funding limitation period shall not be less than the ruling amount for any earlier tax year. Under section 1.468A-3(b)(2), the level funding limitation period begins on the first day of the first tax year for which a deductible payment is made to the nuclear decommissioning fund and ends on the last day on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes.

Section 1.468A-3(d)(1) of the regulations provides that the amount of decommissioning costs allocable to a nuclear decommissioning fund is the taxpayer's share of the total estimated cost of decommissioning the nuclear power plant multiplied by the qualifying percentage.

Section 1.468A-3(d)(2) of the regulations provides that, in general, the total estimated cost of decommissioning a nuclear power plant is the reasonably estimated cost of decommissioning used by the applicable public utility commission in establishing or approving the amount of these costs to be included in cost of service for ratemaking purposes.

Section 1.468A-3(d)(3) of the regulations provides that a taxpayer's share of the total estimated cost of decommissioning a nuclear power plant equals the total estimated cost of decommissioning such plant multiplied by the taxpayer's qualifying interest in the plant. Under section 1.468A-3(d)(4), the qualifying percentage for any nuclear decommissioning fund is equal to a fraction, the numerator of which is the number of tax years in the estimated period for which the nuclear decommissioning fund is to be in effect and the denominator of which is the number of tax years in the estimated useful life of the applicable plant.

Section 1.468A-3(d)(4)(ii) of the regulations provides that the estimated period for which a nuclear decommissioning fund is to be in effect begins on the later of (1) the first day of the first taxable year for which a deductible payment is made to the nuclear decommissioning fund (or deemed made); or (2) the first day of the taxable year that includes the date that the nuclear power plant begins commercial operations (as determined by the applicable public utility commission at the time the plant was first included in the taxpayer's rate base); and ends on the last day of the taxable year that includes the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes. According to § 1.468A-3(e)(3), the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes is determined under the ratemaking assumptions used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

Section 1.468A-3(d)(4)(iii) of the regulations provides that the estimated useful life of a nuclear power plant begins on the first day of the taxable year that includes the date that the plant begins commercial operations (as determined by the applicable public utility commission at the time the plant was first included in the taxpayer's rate

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base); and ends on the last day of the taxable year that includes the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes. According to § 1.468A-3(e)(3), the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes is determined under the ratemaking assumptions used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

Section 1.468A-3(g) of the regulations provides that the Internal Revenue Service shall not provide a taxpayer with a schedule of ruling amounts for any nuclear decommissioning fund unless the public utility commission that establishes or approves the rates for electric energy generated by the plant has determined the amount of decommissioning costs to be included in the taxpayer's cost of service for ratemaking purposes and has disclosed the after-tax rate of return and any other assumptions and determinations used in establishing or approving the amount.

We have examined the representations and the data submitted by the Taxpayer in relation to the requirements set forth in the Code and the regulations. Based solely upon these representations of the facts, we reach the following conclusions:

1. The Taxpayer has a qualifying interest in the Plant and is, therefore, an eligible taxpayer under section 1.468A-1(b)(1) of the regulations.
2. The Commission has determined the amount of decommissioning costs to be included in the Taxpayer's cost of service for ratemaking purposes as required by section 1.468A-3(g) of the regulations.
3. The Taxpayer has proposed a schedule of ruling amounts which meets the requirements of sections 1.468A-3(a)(1) and (2) of the regulations. The annual payments specified in the proposed schedule of ruling amounts are based on the reasonable assumptions and determinations used by the Commission and will result, after adjustments made pursuant to section 1.468A-3(d)(2), in a projected fund balance at the end of the funding period equal to or less than the amount of decommissioning costs allocable to the Fund.
4. The maximum amount of cash payments made (or deemed made) to the Fund during any tax year is restricted to the lesser amount of the decommissioning costs applicable to such Fund or the ruling applicable to this Fund, as set forth under section 1.468A-2(b)(1) of the regulations.
5. Taxpayer has previously determined under section 1.468A-3(d)(4) of the regulations that the qualifying percentage is 0

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percent.

Based solely on the determinations above, we conclude that the Taxpayer's proposed schedule of ruling amounts in regard to the Commissions, satisfies the requirements of Section 468A of the Code. Accordingly, the schedule of ruling amounts requested by the Taxpayer under section 468A(d)(1) is approved as follows:

APPROVED SCHEDULE OF RULING AMOUNTS FOR TAXABLE YEAR

Approval of the schedule of ruling amounts is contingent on there being no change in the facts and circumstances, known or assumed, at the time the current ruling is issued.

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

The approved schedule of ruling amounts is relevant only to those payments made to the Fund. Payments allocable to any funds other than the Fund, cannot qualify for purposes of the deduction under the provisions of section 468A of the Code. Payments made to such Fund can qualify only to the extent that they do not exceed the lesser of the decommissioning costs applicable to such Fund or the ruling amounts applicable to this Fund in the tax year.

This ruling is directed only to the Taxpayer who requested it. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent. In accordance with the power of attorney on file with this office, copies of this letter are being sent to your authorized representatives. We are also sending a copy of this letter ruling to the Industry Director, Natural Resources and Construction (LM:NRC). Pursuant to section 1.468A-7(a) of the regulations, a copy of this letter must be attached (with the required Election Statement) to the Taxpayer's federal income tax return for each tax year in which the Taxpayer claims a deduction for payments made to the Fund.

Sincerely yours,

Peter C. Friedman
PETER C. FRIEDMAN
Senior Technician Reviewer, Branch 6
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

cc: