

Second Floor, Room 2615, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Peter C. Friedman, (202) 622-3110 (not a toll-free number); concerning submissions and the hearing, Evangelista Lee, (202) 622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent 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, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by February 21, 1997. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the collection will have a practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information is in § 1.468A-3. This information is required by the IRS to ensure compliance with the provisions of section 468A relating to deductions for payments made to nuclear decommissioning re-

**Notice of Proposed Rulemaking
and Notice of Public Hearing**

**Nuclear Decommissioning Funds;
Revised Schedules of Ruling
Amounts**

REG-209828-96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to requests for revised schedules of ruling amounts for nuclear decommissioning reserve funds. The proposed regulations would amend existing regulations to ease the burden on affected 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. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments must be received by March 24, 1997. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for May 13, 1997, at 10 a.m., must be received by April 22, 1997.

ADDRESSES: Send submissions to CC:DOM:CORP:R [REG-209828-96], room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R [REG-209828-96], Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. A public hearing will be held in the NYU Classroom,

serve funds. This information will be used by the IRS to support the issuance to taxpayers of schedules of ruling amounts under section 468A. The collection of information is voluntary to obtain a benefit. The likely recordkeepers are businesses or other for-profit institutions. Estimated total annual recordkeeping burden: **100 hours**. Estimated average annual burden per recordkeeper: **5 hours**. Estimated number of recordkeepers: **20**.

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.

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 proposed 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 such 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. Section 1.468A-3(a)(4) permits 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.

Section 1.468A-3(i) contains provisions for the review and revision of schedules of ruling amounts. Section 1.468A-3(i)(1) sets 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 ten-year intervals. If the schedule is determined under a formula or method, however, the period between reviews may not exceed five years.

Section 1.468A-3(i)(2) provides that a taxpayer may request an elective review of its schedule of ruling amounts so long as such request is made in accordance with the rules of § 1.468A-3(h). 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. These proposed regulations 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. In addition, these proposed regulations revise the mandatory review requirements of § 1.468A-3(i)(1).

Explanation of Provisions

The proposed 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 proposed regulation would 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, under the proposed regulations, 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.

In addition, the proposed regulations modify the mandatory review provisions applicable to schedules of ruling amounts determined under a formula or method. One modification eliminates the rule requiring review of those schedules after five years; the schedules will, however, be subject to the general rule requiring review at ten-year intervals. In addition, a taxpayer using a formula or method will be required 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. Under these circumstances a taxpayer must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for the next taxable year.

Proposed Effective Date

The regulations are proposed to be effective for requests for schedules of ruling amounts made on or after the date that the final regulations are filed with the Federal Register.

Special Analyses

It has been determined that this notice of proposed rulemaking 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, and because the regulation 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 13, 1997, in room 2615. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit comments by March 24, 1997, and submit an outline of the topics to be discussed and the time to be devoted to each topic by April 22, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

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

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be 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) is redesignated 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 \$11-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 of ruling amounts on or before the deemed payment deadline for a taxable year if the period for which the most recently issued formula or method has been in effect (the ruling period) began at least two taxable years before such year and —

(1) The ruling amount for the preceding taxable year and the ruling amount for any earlier taxable year in the ruling period differ by more than 25 percent of the smaller amount; or

(2) The ruling amounts for the two most recent taxable years differ by more than 10 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.

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Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on December 20, 1996, 8:45 a.m., and published in the issue of the Federal Register for December 23, 1996, 61 F.R. 67510)