

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:Br.6-PLR-100586-02
Date:
March 7, 2002

Re: Revised Schedule of Ruling Amounts

LEGEND:

Taxpayer =

State =

Plant =

Location =

Commission =

Docket =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

q =

r =

Dear :

This letter responds to the request of Taxpayer, dated December 27, 2001, submitted by your authorized representative, for a revised schedule of ruling amounts pursuant to section 1.468A-3(i)(2) of the Income Tax Regulations. The request for revised schedule of ruling amounts is the result of the Commission decreasing the

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decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes. Taxpayer was previously granted a schedule of ruling amounts on a. Information was submitted pursuant to section 1.468A-3(h)(2).

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

In b, c investor-owned utilities organized Taxpayer as a utility company under State law. On d, the Plant began commercial operation under a temporary operating license. The Plant received a full-term operating license on e. This license was to expire on f, but has since been extended to g. Taxpayer sells all of the electrical power generated by the Plant to the c utility owners. The method of decommissioning the Plant is the prompt removal/dismantling, the cost of which is based on a site-specific decommissioning study.

On h, Commission issued Docket, accepting as filed a settlement agreement, including a revised decommissioning funding schedule, submitted pursuant to the proposed sale of Plant and dated i. The settlement agreement estimated the cost of decommissioning the Plant at j. This amount escalated at an annual rate of k percent results in a future decommissioning cost of l.

The funding period and level funding limitation period extends m. As elected in the original schedule of ruling amounts issued with respect to this Plant, the qualifying percentage is calculated pursuant to section 1.468A-8(b)(7)(ii) of the regulations. The estimated period for which the qualified nuclear decommissioning fund ("Fund") is to be in effect is n. The estimated useful life of the Plant is o. Therefore, the qualifying percentage is p percent.

No proceedings are currently pending before the Commission that may result in an increase or decrease in the amount of decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes.

On q, Taxpayer entered into an agreement to sell its interest in the Plant to an unrelated party. On the basis of the expected date of sale, Taxpayer has agreed to limit the revised schedule of ruling amounts to the years r.

Section 468A(a) 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

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determines to be necessary to fund that portion of nuclear decommissioning costs which bears the same ratio to the total 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 the tax year if the payment is made on account of this tax year and is made within 2 ½ months after the close of the tax year. Additionally, a taxpayer that files for a schedule of ruling amounts and receives such schedule of ruling amounts after the 2 ½ month deadline for making a payment to a nuclear decommissioning fund, must make such payment to the fund within 30 days after the date that the taxpayer receives the schedule of ruling amounts for 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, including an interest as a tenant in common or joint tenant.

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 (i) the cost of service amount applicable to the nuclear decommissioning fund for such tax year; or (ii) the ruling amount applicable to the nuclear decommissioning fund for such tax year. If the amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any tax year exceeds the limitation of paragraph (b)(1), the excess is not deductible by the electing taxpayer. In addition, under section 1.468A-5(c) there are rules which provide that the Internal Revenue Service may disqualify a nuclear decommissioning fund if the amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any tax year exceeds the limitation of paragraph (b)(1).

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

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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 this section.

Section 1.468A-3(b)(1) of the regulations provides that, in general, the ruling 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 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)(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(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.

Section 1.468A-8(b)(7)(ii)(B) of the regulations provides that the estimated period for which the nuclear decommissioning fund is in effect and the estimated useful life of the nuclear power plant for purposes of calculating the qualifying percentage under section 1.468A-(d)(4) ends on the earlier of the last day of the tax year in which it is estimated that decommissioning will be begin or the last day of the tax year that includes the expiration date of the Nuclear Regulatory Commission operating license as in effect on July 18, 1984, without regard to any extensions or amendments thereto.

Section 1.468A-6(e)(1) provides that, if a transferor does not file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for the

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taxable year of the transferor in which the disposition of its interest in the nuclear power plant occurs (that is, the date that is two and one-half months after the close of that year), the transferor's ruling amount with respect to that plant for that year will be the ruling amount contained in the transferor's current schedule of ruling amounts with respect to that plant for that taxable year multiplied by a fraction, the numerator of which is the number of days in that taxable year that precede the date of distribution, and the denominator of which is the number of days in that taxable year.

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 prior to the sale and is, therefore, an eligible taxpayer under section 1.468A-1(b)(1) of the regulations.
2. The Commission has permitted 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 calculated the total decommissioning costs under section 1.468A-3(d)(3) of the regulations.
4. The Taxpayer has determined that \underline{p} percent is the qualifying percentage as calculated under section 1.468A-8(b)(7)(ii) of the regulations.

Based on the above determinations, we conclude that the Taxpayer's proposed schedule of ruling amounts with regard to the Commission satisfies the requirements of section 468A of the Code.

APPROVED SCHEDULE OF RULING AMOUNTS

1

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 this ruling is

¹ The amount for any year shall be adjusted as necessary for the year of disposition of the Plant pursuant to section 1.468A-6(e).

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issued. If any of the events described in § 1.468A-3(i)(1)(iii) of the regulations occur in future years, the Taxpayer must request a review and revision of the schedule of ruling amounts. Generally, the Taxpayer is required to file such a request on or before the deemed payment deadline date for the first taxable year in which the rates reflecting such action became effective. When no such event occurs, the Taxpayer must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline of the tenth taxable year following the close of the tax year in which the most recent schedule of ruling amounts was received.

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 § 468A of the Code. As stated above, payments made to the Fund can qualify only to the extent they are made while Taxpayer is the owner of the Plant and only to the extent that they do not exceed the lesser of the decommissioning costs applicable to the Fund or the ruling amounts applicable to the Fund in the taxable year.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this ruling 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 legal representatives. Pursuant to § 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 taxable year in which the Taxpayer claims a deduction for payments made to the Fund.

Sincerely yours,
PETER C. FRIEDMAN
Senior Technician Reviewer, Branch 6
Office of Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
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