

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:6 – PLR-114157-04

Date:

April 26, 2004

Re:

Taxpayer =

Plant =

Commission =

a =

b =

c =

A =

d =

Dear :

This letter responds to your request dated March 5, 2004, submitted by Taxpayer, requesting under § 301.9100-3 of the Procedure and Administration Regulations an extension of time to elect application of section 468A of the Internal Revenue Code with respect to Taxpayer's interest in Plant and the related Nuclear Decommissioning Reserve Fund (Fund).

Commission reduced Taxpayer's annual decommissioning cost collections, effective a. Consequently, Taxpayer was required to request a revised schedule of ruling amounts (SRA) for the Plant for the b taxable year on or before c. Taxpayer transferred the Plant to A, on d. Taxpayer inadvertently failed to file its request for a revised SRA by the c deadline.

Accordingly, on March 5, 2004, Taxpayer filed this request for an extension of time under section 301.9100-3 to request a revised SRA for the b taxable year and to make an election under section 468A.

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

Section 468A(d)(1) 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 the nuclear power plant as the period for which the fund is in effect bears to the estimated useful life of the plant. This term is limited to include only that amount necessary to prevent excessive funding of nuclear decommissioning costs and is limited to only funding those costs at a rate that is not more rapid than level funding, taking into account such discount rates as the Secretary deems appropriate.

Section 1.468A-3(i)(1)(ii)(B) of the Income Tax Regulations provides that any taxpayer that has determined its ruling amount for any taxable year under a formula prescribed by § 1.468A-6 must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for its first taxable year that begins after the disposition.

Section 1.468A-7(a) provides, in general, that an eligible taxpayer is allowed a deduction for the tax year in which the taxpayer makes a cash payment (or is deemed to make a cash payment) to a nuclear decommissioning fund only if the taxpayer elects the application of section 468A of the Code. A separate election is required for each nuclear decommissioning fund and for each tax year with respect to which payments are to be deducted under section 468A. In the case of an affiliated group of corporations that join in filing a consolidated return for a tax year, the common parent must make a separate election on behalf of each member whose payments to a nuclear decommissioning fund during such tax year are to be deducted under section 468A. The election under section 468A for any tax year is irrevocable and must be made by attaching a statement ("Election Statement") and a copy of the schedule of ruling amounts, provided pursuant to the rules of § 1.468A-3, to the taxpayer's federal income tax return (or, in the case of an affiliated group of corporation that join in filing a consolidated return, the consolidated return) for such tax year. The return to which the Election Statement and a copy of the schedule of ruling amounts is attached must be

filed on or before the time prescribed by law (including extensions) for filing the return for the tax year with respect to which payments are to be deducted under section 468A.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of section 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

Based solely on the facts and the representations made, the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Taxpayer is granted a period of 60 days from the date of this letter to file the Election Statement with the affiliated group of corporations' amended b Federal consolidated income tax return.

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

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it 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 representatives. A copy of this letter is also being sent to the Industry Director, Natural Resources and Construction (LM:NRC).

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures:

Copy of this letter
Copy for section 6110 purposes