Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-119283-18

Date:
November 08, 2018

Legend

Taxpayer/Seller	=
X	=
Y	=
Parent	=
Buyer	=
Unit	=
Site	=
Operator	=
Trustee	=
State A	=
State B Commission	=
Year	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
a	=
b	=
c	=
Director	=

Dear :

This letter responds to your request for private letter ruling dated June 8, 2018. You requested rulings regarding the tax consequences under section

468A of the Internal Revenue Code to Taxpayer's qualified nuclear decommissioning fund.

Taxpayer has represented that, at the time that the private letter ruling was submitted, the facts were as follows:

Taxpayer is a limited liability company organized under the laws of State A. From its inception in Year through Date 1, Taxpayer was classified as an entity disregarded from its sole owner, X. Effective Date 2, Taxpayer became a partnership when Y acquired an equity interest in Taxpayer. X, Y, and Taxpayer are included in the consolidated federal income tax return of Parent, which files its return on a calendar-year basis using the accrual method of accounting.

Taxpayer is the owner of the Unit. The Unit is located in Site and operated by Operator, a corporate affiliate of Taxpayer. With respect to the Unit, Taxpayer is subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC), the State B Commission, and the Nuclear Regulatory Commission (NRC). On Date 3, Taxpayer provided a certification to the NRC that the Unit had permanently ceased operation and that all nuclear fuel had been removed from the reactor. The Unit entered the decommissioning phase on Date 4.

Taxpayer owns and maintains the Nuclear Decommissioning Trust (NDT) that is dedicated to the decommissioning of the Unit. The NDT currently holds assets in two sub-trusts that are trusts under state law: one that satisfies the requirements for a qualified decommissioning fund within the meaning of § 468A (the Qualified Fund) and one that does not satisfy those requirements (the Non-Qualified Fund). As of Date 6, the assets of the NDT had a fair market value of approximately $a held entirely in the Qualified Fund.

On Date 5, Taxpayer agreed to sell the Unit to Buyer (transaction referred to as the Sale). Taxpayer previously requested and obtained a private letter ruling from the Internal Revenue Service (Service) addressing this transaction. As a condition of the Sale, Buyer has requested that it receive the assets of the NDT entirely in a Non-Qualified Fund.

Accordingly, prior to the target closing date of the Sale, Taxpayer will transfer all of the assets held in the Qualified Fund to a Non-Qualified Fund in the NDT (the Fund Transfer). On that date, the fair market value of the assets of the Qualified Fund are expected to be approximately b (a reduced by c of tax imposed upon the gain on the deemed disposition of the investment assets held by the Qualified Fund), to the Non-Qualified Fund in the NDT (referred to as the Fund Transfer). The transferred assets will remain within the NDT and at all times in the custody and control of the Trustee. Taxpayer will include approximately b in gross income as a result of the Fund Transfer.

Requested Rulings

1. The Qualified Fund will be disqualified in its entirety by reason of the Fund Transfer.

2. The disqualification of the Qualified Fund will be effective on the date of the Fund Transfer and the entire value of the Qualified Fund, reduced by any tax imposed upon the Qualified Fund, shall be deemed to be distributed to Taxpayer with the tax consequences described in Treasury Regulations § 1.468A-5(c)(3).

3. The Fund Transfer will not constitute an act of self-dealing under § 468A and Treasury Regulations § 1.468A-5(b).

Law and Analysis

Section 468A(a) of the Code provides that a taxpayer may elect to deduct payments made to a nuclear decommissioning reserve fund that meets the requirements of § 468A (i.e. a fund that is a "qualified nuclear decommissioning fund").

Section 468A(e)(1) requires each taxpayer who elects the application of § 468A to establish a Nuclear Decommissioning Reserve Fund for each nuclear power plant to which that election applies.

Section 1.468A-1(b)(4) defines the terms "nuclear decommissioning fund" and "qualified nuclear decommissioning fund" as a fund that satisfies the requirements of § 1.468A-5. The term "nonqualified fund" means a fund that does not satisfy those requirements.

Section 1.468A-5(a) sets out the qualification requirements for a qualified nuclear decommissioning fund. It provides, in part, that a qualified nuclear decommissioning fund must be established and maintained pursuant to an arrangement that qualifies as a trust under state law.

Section 1.468A-5(a)(1)(i) provides that a qualified nuclear decommissioning fund must be established exclusively for the purpose of funding the costs associated with decommissioning one or more nuclear facilities. Under this provision a single trust agreement may establish multiple funds for the exclusive purpose of providing funds for the decommissioning of a nuclear power plant. Thus, for example, a fund to be used for decommissioning that does not qualify as a nuclear decommissioning fund under § 1.468A-5(a) may be established and maintained under a trust agreement that governs a nuclear decommissioning fund.

Section 1.468A-5(a)(2) provides that except as otherwise provided in § 1.468A-8 (relating to special transfers under § 468A(f)), a qualified nuclear decommissioning fund is not permitted to accept any contributions in cash or property other than cash payments with respect to which a deduction is allowed under § 468A(a) and § 1.468A-2(a).

Section 1.468A-5(a)(3)(i) provides that the assets of a qualified nuclear decommissioning fund are to be used exclusively (A) to satisfy, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear plant to which the fund relates; (B) to pay administrative and other incidental costs of the fund; and (C) to the extent not currently required for the purposes described in (A) and (B) above, to make investments.

According to § 1.468A-5(b)(1), except as otherwise provided in § 1.468A-5(b), the excise taxes imposed by § 4951 apply to each act of self-dealing between a disqualified person and a nuclear decommissioning fund.

For purposes of § 4951 (and subject to the qualifications of § 4951(d)(2), not here applicable), § 4951(d)(1)(E) defines the term "self-dealing" as any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a trust described in § 501(c)(21).

For purposes of § 1.468A-5(b), § 1.468A-5(b)(2)(iii) defines the term “self-dealing” as any act described in § 4951(d), except a withdrawal by the electing taxpayer of amounts that have been treated as distributed under § 1.468A-5(c)(3).

Pursuant to § 1.468A-5(c)(1)(i), except as otherwise provided in § 1.468A-5(c)(2), the Service may, in its discretion, disqualify all or any portion of a nuclear decommissioning fund if at any time during its tax year (A) the fund does not satisfy the requirements of § 1.468A-5(a); or (B) the fund and a disqualified person engage in an act of self-dealing (as defined in § 1.468A-5(b)(2)).

If all or any portion of a nuclear decommissioning fund is disqualified under § 1.468A-5(c)(1), then, pursuant to § 1.468A-5(c)(3), the portion of the nuclear decommissioning fund that is disqualified is treated as distributed to the electing taxpayer on the date of disqualification. The effects of disqualification are further explained by § 1.468A-5(c)(3) and (4).

Section 1.468A-5(c)(3) provides that, if all or any portion of a qualified nuclear decommissioning fund is disqualified under § 1.468A-5(c)(1), the portion of the qualified nuclear decommissioning fund that is disqualified is treated as distributed to the electing taxpayer on the date of the disqualification. Such a distribution shall be treated for purposes of § 1001 as a disposition of property held by the qualified nuclear

decommissioning fund. In addition, the electing taxpayer must include in gross income for the taxable year that includes the date of disqualification an amount equal to the product of the fair market value of the assets of the fund determined as of the date of disqualification (reduced by certain amounts including any tax that is (1) imposed on the income of the fund, (2) is attributable to income taken into account before the date of the disqualification or as a result of the disqualification, and (3) has not been paid as of the date of the disqualification) and the fraction of the qualified nuclear decommissioning fund that was disqualified under § 1.468A-5(c)(1).

Requested Ruling 1

Pursuant to the authority granted under § 1.468A-5(c)(1), the Service will exercise its discretion to disqualify Taxpayer's Nuclear Decommissioning Trust in its entirety upon any transfer of assets from the Taxpayer's Qualified Fund to Taxpayer's Non-Qualified Fund.

Requested Ruling 2

In accordance with § 1.468A-5(c)(3) all assets held in Taxpayer's Qualified Fund will be deemed to be distributed to Taxpayer on the date of the Fund Transfer. The deemed distribution of assets will be treated as a disposition under § 1001 from Taxpayer's Qualified Fund, and Taxpayer shall include in gross income for the tax year that includes such distribution the amount of assets deemed distributed, net of taxes paid by Taxpayer's Qualified Fund upon such deemed distribution.

Requested Ruling 3

The Fund Transfer is neither a payment of decommissioning costs, a payment of administrative expenses, nor a permitted investment of assets under § 1.468A-5(a)(3)(i). Thus, if the Fund Transfer would effect a disqualification of the Qualified Fund under § 1.468A-5(c), which would be treated as a distribution to Taxpayer, then, according to the definition provided by § 1.468A-5(b)(2)(iii), it will not constitute an act of self-dealing under § 4951.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. In addition, this ruling concerns only the Federal income tax consequences of a disqualification and we express no opinion on the permissibility of the disqualification under any other statute, rule, or administrative decision. This ruling is specifically conditioned on the approval of the transaction by a regulatory body having jurisdiction over such transaction.

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, a copy of this letter is being sent to your authorized representatives. We are also sending a copy of this letter ruling to the Director.

Sincerely,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
(Passthroughs & Special Industries)

cc: