

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Refer Reply To:
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PLR-125519-18
Date:
November 29, 2018

In Re: Request to disqualify qualified nuclear decommissioning fund

LEGEND

- Taxpayer =
- Parent =
- Trustee =
- Plant =
- Date 1 =
- Date 2 =
- State =
- a =
- b =
- c =
- Location =
- e =

Dear :

This letter replies to a letter, dated Date 1, in which Taxpayer requests permission to terminate its nuclear decommissioning qualified fund under § 468A of the Internal Revenue Code (Code) and § 1.468A-5 of the Income Tax Regulations (Regulations). The request is submitted in respect of Taxpayer’s qualified and nonqualified nuclear decommissioning funds.

The facts and representations submitted are summarized as follows:

Taxpayer is a U.S. tax-exempt corporation incorporated pursuant to the laws of State. Taxpayer is a wholly-owned subsidiary of Parent, a tax-exempt instrumentality that is a political subdivision of State.

On Date 2, Taxpayer entered into a trust agreement with Trustee, pursuant to which Taxpayer established both a qualified and nonqualified nuclear decommissioning fund to hold monies for decommissioning the Plant, a nuclear generating facility near Location. Taxpayer established a trust for the collective investment of both the qualified and nonqualified nuclear decommissioning funds. Currently, approximately a dollars are in the trust, of which b percent is in the nonqualified fund and c percent is in the qualified fund. Taxpayer owns e percent of the Plant.

The trust agreement included provisions regarding the termination of the qualified fund and transfer of its assets. First, the trust agreement provides that the “assets of the Qualified fund shall be used as authorized by Section 468A of the Code and the regulations thereunder, and the provisions of the Trust relating to the Qualified Fund shall not be amended so as to violate Section 468A or the regulations thereunder.” Next, the trust agreement provides that the “applicable portion of the Qualified Fund shall terminate upon its disqualification from the application of Section 468A of the Code, whether pursuant to an administrative action on the part of the Internal Revenue Service or the decision of any court of any competent jurisdiction.” Finally, the trust agreement provides that, upon termination of any fund, the Trustee shall liquidate the assets of the fund and distribute such assets to Taxpayer.

Upon termination of the qualified fund, Taxpayer has represented that it will direct the Trustee to transfer the qualified fund assets into the non-qualified fund, and retain all such assets in the trust. In sum then, the assets would remain in the trust, but be transferred from the qualified fund to the nonqualified fund within the trust.

Currently, Taxpayer must submit annual status reports to the Nuclear Regulatory Commission. Taxpayer’s funds for the Plant were sufficient as of _____, but Taxpayer anticipates that the Nuclear Regulatory Commission will make changes to the minimum decommissioning fund formula, which Taxpayer anticipates would increase the minimum amount required in the future compared to the current formula.

The Taxpayer requests the IRS exercise its discretion to disqualify Taxpayer's qualified nuclear decommissioning fund for the Plant in accordance with § 468A of the Code and § 1.468A-5 of the Regulations. Subsequently, as a result of the requested disqualification, Taxpayer will transfer all of its assets from the qualified nuclear decommissioning fund into the nonqualified nuclear decommissioning fund.

Law and Analysis

Section 1.468A-1(b)(3) provides that a "qualified nuclear decommissioning fund" is a fund that satisfies the requirements of § 1.468A-5, and a "nonqualified nuclear decommissioning fund" is a fund that does not satisfy those requirements.

Section 1.468A-5(a)(2) provides that 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 § 468(a) and § 1.468A-2(a).

Section 1.468A-5(c)(1) provides that, except as otherwise provided in § 1.468A-5(c)(2), if at any time during a taxable year of a nuclear decommissioning fund, the nuclear decommissioning fund does not satisfy the requirements of § 1.468A-5(a), the Internal Revenue Service may, in its discretion, disqualify all or any portion of the fund as of the date that the fund does not satisfy the requirements of § 1.468A-5(a), or as of any subsequent date.

Section 1.468A-5(c)(3) provides that, if all or any portion of a nuclear decommissioning fund is disqualified under § 1.468A-5(c)(1), the portion of the nuclear decommissioning fund that is disqualified is treated as distributed to the electing taxpayer on the date of disqualification. Such a distribution shall be treated for purposes of section 1001 as a disposition of property held by the nuclear decommissioning fund. Section 1001(a) provides that the gain from the sale or other disposition of property is the excess of the amount realized from the disposition over the adjusted basis of the property. Amount realized is generally the amount of cash and other property received by a taxpayer for the property.

In addition, § 1.468A-5(c)(3) provides that 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 distributable assets of the nuclear decommissioning fund determined as of the date of the disqualification (reduced by certain amounts including any tax that is imposed on the income of the fund, is attributable to income taken into account before the date of the disqualification or as a result of the disqualification, and has not been paid as of the date of the disqualification)

multiplied by the fraction of the nuclear decommissioning fund that was disqualified under § 1.468A-5(c)(1).

Section 1.468A-5(c)(4) provides that contributions made to a disqualified fund after the date of disqualification are not deductible under § 468A(a) and § 1.468A-2(a).

Taxpayer requests that, pursuant to § 468A and § 1.468A-5 of the Regulations, the IRS exercise its discretion to disqualify Taxpayer's qualified nuclear decommissioning fund for the Plant.

Based on the Taxpayer's representation that the Parent Board has approved the transfer of asset from the qualified to the non-qualified decommissioning fund, the Service will, upon transfer of the assets from the qualified to the non-qualified decommissioning fund, exercise its discretion under the authority of § 1.468A-5(c)(1) to disqualify Taxpayer's qualified nuclear decommissioning fund in its entirety.

Pursuant to § 1.468A-5(c)(3), Taxpayer's qualified nuclear decommissioning fund will be treated as disposing of its assets via a deemed distributed to Taxpayer's nonqualified nuclear decommissioning fund for purposes of section 1001 on the date of the disqualification. Accordingly, the assets of Taxpayer's qualified nuclear decommissioning funds transferred to its nonqualified decommissioning funds will be deemed to be distributed on the date of the transfer and be included in Taxpayer's gross income, net of taxes paid upon such deemed distribution.

Because the entire qualified nuclear decommissioning fund is being disqualified, we conclude that in determining the amount of gain or loss to Taxpayer from the transfer of assets from its qualified nuclear decommissioning fund to its nonqualified nuclear decommissioning fund under § 1001(a), Taxpayer must include in gross income the fair market value of the assets as of the date of qualified nuclear decommissioning fund's disqualification and deemed transfer of the assets. See § 1.468A-5(c)(1), (3); see also § 1.468A-4(c)(2). Taxpayer's nonqualified nuclear decommissioning fund will take a fair market value basis in the assets deemed distributed.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. This ruling concerned only the Federal income tax consequences of the disqualification of the qualified nuclear decommissioning fund 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 asset transfer by

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalties of perjury statement executed

by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney, we are sending copies of this letter to Taxpayer's authorized representatives. We are also sending a copy of this letter to the appropriate Industry Director, LB&I. A copy of this ruling must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

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

cc: