Internal Revenue Service

Department of the Treasury
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Person To Contact:
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Date:
April 08, 2019

In Re: Transfer of Assets of a Qualified Fund
Under Section 468A

Legend

Date 1	=
Seller Parent	=
Seller	=
Unit	=
Buyer Parent	=
Buyer	=
Buyer Affiliate	=
Joint Venture Partner	=
State 1	=
State 2	=
State 3	=
State 4	=
Regulator	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
a	=
b	=

Dear :

This letter responds to your request for private letter ruling dated Date 1. You requested rulings regarding the tax consequences under section 468A of the Internal Revenue Code and Section 1.468A-6 of the Treasury Regulations to the transfer of assets of Seller Parent's qualified nuclear decommissioning fund.

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

Seller Parent is incorporated in State 1 and acts as a holding company. Seller Parent's headquarters are in State 2. Seller Parent and its subsidiaries and affiliates, with which it files a consolidated federal income tax return, operate on a calendar year basis and use the accrual method of accounting.

Seller Parent and its subsidiaries and affiliates engage in two business segments: and . Seller Parent engages in .

Among other assets, Seller owns Unit, which is located in State 3. The Unit is a nuclear electric generating station that consists of a reactor capable of generating electrical power. The operating license for the Unit is issued by Regulator and expires on Date 2. The Unit was scheduled to cease electricity production on Date 3.

On Date 4, Seller Parent filed a report with Regulator that detailed plans for decommissioning the Unit. Seller Parent selected a method of decommissioning with a planned license termination in Date 5 and site restoration on Date 6.

Seller Parent maintains two separate nuclear decommissioning trust funds for the Unit: one that meets the requirements for a qualified fund within the meaning of Section 468A, and one that does not meet the requirements of Section 468A. As of Date 7, the value of the qualified decommissioning fund was a.

Buyer Parent is with headquarters in State 4. Buyer Parent files its federal income tax return on a calendar year basis using the accrual method of accounting.

Buyer Parent is a company that, with its affiliates, specializes in .

Buyer seeks to acquire the Unit, and through its indirectly wholly-owned affiliate, Buyer Affiliate, and a joint venture with Joint Venture Partner, decommission the Unit. Buyer Parent would use a different decommissioning method than the one Seller Parent

used in its report to Regulator, and Buyer Parent's method would accelerate the decommissioning time by approximately years.

Seller Parent and Buyer Parent entered into an Asset Purchase and Sale Agreement, dated Date 7 ("Purchase Agreement") regarding the sale of the Unit and transfer of the assets of the Seller Parent qualified and nonqualified funds. In addition, Seller Parent and Buyer Parent have entered into other ancillary agreements. In relevant part, Seller Parent agrees to transfer all rights, title, and interest in the Unit and assets in the Seller Parent's qualified and nonqualified decommissioning funds to Buyer Parent in exchange for b, and Buyer Parent agrees to generally assume all liabilities with respect to the ownership of the Unit, including the decommissioning of the Unit. Subsequent to the execution of the purchase agreement, Seller Parent and Buyer Parent filed the application with the Regulator.

In connection with this transaction, Seller Parent and Buyer Parent represent that Seller Parent, Buyer, and other relevant affiliates filed an application with Regulator requesting approval for the transfer of the Unit's operating license from Seller Parent to Buyer Parent and for the transfer of assets from Seller Parent's qualified and nonqualified decommissioning funds to Buyer Parent's qualified and nonqualified decommissioning funds. The application provided information with respect to the purpose of the transaction necessitating the license transfer and the technical and financial qualifications of Buyer Affiliate and Buyer for being licensees under the license. A Regulator license may only be transferred with written consent of the Regulator. Approval by the Regulator is a condition to closing the transaction.

Prior to the closing date of the transaction, Buyer Parent represented that it will establish two separate nuclear decommissioning trust funds for the Unit: one that meets the requirements for a qualified fund within the meaning of Section 468A, and one that does not meet the requirements of Section 468A.

If approved, Seller Parent represents that immediately before the closing of the transaction:

1. Seller Parent will have a qualifying interest in the Unit within the meaning of Section 1.468A-1(b)(2);
2. Seller Parent will have maintained its qualified decommissioning fund as a trust under applicable state law for the exclusive purpose of providing funds for decommissioning;
3. Seller Parent will have maintained its qualified decommissioning fund as a separate and the sole qualified fund for the Unit;
4. Seller Parent will not have made any contributions to its qualified decommissioning fund other than those for which a deduction will be allowed under Section 468A and the regulations thereunder;

5. The assets of the Seller Parent's qualified decommissioning fund will have been used exclusively to: (a) satisfy, in whole or in part, liability for decommissioning costs of the Unit; (b) pay administrative costs and other incidental expenses of the Seller Parent's qualified decommissioning fund; and (c) make investments, to the extent the assets of the Seller Parent's qualified decommissioning fund were not needed to satisfy the purposes of (a) and (b) above;
6. The trust agreement for the Seller Parent's qualified decommissioning fund provides that the assets in the Seller Parent's qualified decommissioning fund must be used as authorized in Section 468A and the regulations thereunder, including the prohibition against self-dealing, and that the agreement cannot be amended to violate such provisions; and
7. Seller Parent's qualified decommissioning fund did not engage in self-dealing.

Provided Regulator approves the transfer of the Unit's operating license and transfer of assets of the Seller Parent qualified and nonqualified decommissioning funds to the corresponding Buyer Parent qualified and nonqualified decommissioning funds, Buyer Parent represents that immediately after the closing of the transaction:

1. Buyer Parent will maintain its qualified decommissioning fund as a trust under applicable state law for the exclusive purpose of providing funds for decommissioning;
2. Buyer Parent will maintain its qualified decommissioning fund as a separate and the sole qualified fund for the Unit;
3. Buyer Parent will not make any contributions to its qualified decommissioning fund other than those for which a deduction is allowed under Section 468A and the regulations thereunder;
4. The assets of the Buyer Parent's qualified decommissioning fund will be used exclusively to: (a) satisfy, in whole or in part, liability for decommissioning costs of the Unit; (b) pay administrative costs and other incidental expenses of the Buyer Parent's qualified decommissioning fund; and (c) make investments, to the extent the assets of the Buyer Parent's qualified decommissioning fund were not needed to satisfy the purposes of (a) and (b) above; and
5. The trust agreement for the Buyer Parent's qualified decommissioning fund will provide that the assets in the Buyer Parent's qualified decommissioning fund must be used as authorized in Section 468A and the regulations thereunder, including the prohibition against self-dealing, and that the agreement cannot be amended to violate such provisions.

Requested Rulings

Subject to the approval from Regulator, Seller Parent and Buyer Parent request the following rulings, effective as of the closing of the transaction:

1. Whether Buyer Parent's qualified decommissioning fund will be treated as a qualified fund that satisfies the requirements of Section 468A and Section 1.468A-5;
2. Whether Seller Parent's qualified decommissioning fund will be disqualified by reason of the transaction;
3. Whether Seller Parent's qualified decommissioning fund will recognize gain or loss or otherwise take any income or deduction into account as a result of the transfer of assets from Seller Parent's qualified decommissioning fund to the Buyer Parent's qualified decommissioning fund as part of the transaction;
4. Whether Buyer Parent's qualified decommissioning fund will recognize any gain or loss or otherwise take any income or deduction into account as a result of the transfer of assets from Seller Parent's qualified decommissioning fund to the Buyer Parent's qualified decommissioning fund as part of the transaction;
5. Whether either Seller Parent or Buyer Parent will be required to recognize gain or loss or otherwise take any income or deduction into account as a result of the transfer of assets from Seller Parent's qualified decommissioning fund to the Buyer Parent's qualified decommissioning fund as part of the transaction; and
6. Whether, pursuant to Section 1.468A-6(c)(3), after the transaction, Buyer Parent's qualified decommissioning fund will have a tax basis in each of the assets transferred that is the same as Seller Parent's qualified decommissioning fund's tax basis in those assets immediately prior to the transaction.

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 section 468A (i.e., a fund that is a "qualified nuclear decommissioning fund" or a "Qualified Fund").

Section 468A(c)(1)(B) authorizes the Treasury Department to prescribe regulations regarding the disposition of an interest in a nuclear power plant and the tax treatment of the transfer of the assets of the related qualified 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)(1) defines the term "eligible taxpayer" as a taxpayer that possesses a qualifying interest in a nuclear power plant.

Section 1.468A-1(b)(2) provides that a "qualifying interest" means: (A) a direct ownership interest; and (B) a leasehold interest in any portion of a nuclear power plant if the holder of the leasehold interest is primarily liable under Federal or state law for

decommissioning such portion of the power plant, and no other person establishes a qualified fund with respect to such portion of the nuclear power plant.

Section 1.468A-1(b)(3) proves that a “direct ownership interest” of a nuclear power plant does not include ownership of stock of a corporation that owns a nuclear power plant or ownership of an interest in a partnership that owns a nuclear power plant.

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 nuclear decommissioning funds. 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)(1)(iii) provides that an electing taxpayer can establish and maintain only one qualified nuclear decommissioning fund for each nuclear power plant. If a nuclear power plant is subject to the ratemaking jurisdiction of two or more public utility commissions and any such public utility commission requires a separate fund to be maintained for the benefit of ratepayers whose rates are established or approved by the public utility commission, the separate funds maintained for such plant (whether or not established and maintained pursuant to a single trust agreement) shall be considered a single 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.

Section 1.468A-5(c)(1)(i) provides that, 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 engages in an act of self-dealing (as defined in § 1.468A-5(b)(2)).

Section 1.468A-6 provides rules applicable to the transfer of all or a portion of a taxpayer's qualifying interest in a nuclear power plant (and transfer of the qualified nuclear decommissioning fund), including a plant that has permanently ceased to produce electricity, where certain requirements are met. Specifically, § 1.468A-6(b) provides that § 1.468A-6 applies if —

> (1) Immediately before the disposition, the transferor maintained a qualified nuclear decommissioning fund with respect to the interest disposed of; and
>
> (2) Immediately after the disposition—
>
> (i) The transferee maintains a qualified nuclear decommissioning fund with respect to the interest acquired; and
>
> (ii) The interest acquired is a qualifying interest of the transferee in the nuclear power plant;
>
> (3) In connection with the disposition, either —
>
> (i) The transferee acquires part or all of the transferor's qualifying interest in the nuclear power plant and a proportionate amount of the assets of the transferor's fund (all such assets if the transferee acquires the transferor's entire qualifying interest in the plant) is transferred to a fund of the transferee; or
>
> (ii) The transferee acquires the transferor's entire qualifying interest in the plant and the transferor's entire fund is transferred to the transferee; and
>
> (4) The transferee continues to satisfy the requirements of § 1.468A-5(a)(1)(iii), which permits an electing taxpayer to maintain only one qualified nuclear decommissioning fund for each plant.

Section 1.468A-6(c) provides that a disposition that satisfies the requirements of § 1.468A-6(b) will have the following tax consequences at the time it occurs:

(1)

(i) Neither the transferor nor the transferor's qualified nuclear decommissioning fund will recognize gain or loss or otherwise take any income into account by reason of the transfer of a proportionate amount of the assets of the transferor's qualified nuclear decommissioning fund to the transferee's qualified nuclear decommissioning fund (or by reason of the transfer of the transferor's entire qualified nuclear decommissioning fund to the transferee). For purposes of the regulations under § 468A, this transfer (or the transfer of the transferor's qualified nuclear decommissioning fund) will not be considered a distribution of assets by the transferor's qualified nuclear decommissioning fund.
(ii) Notwithstanding § 1.468A-6(c)(1)(i), if the transferor has made a special transfer under § 1.468A-8 prior to the transfer of the fund or fund assets, any deduction with respect to that special transfer allowable under § 468A(f)(2) for a taxable year ending after the date of the transfer of the fund or fund assets is allowed under § 468A(f)(2)(C) for the taxable year that includes the date of the transfer of the fund or fund assets.

(2) Neither the transferee nor the transferee's qualified nuclear decommissioning fund will recognize gain or loss or otherwise take any income into account by reason of the transfer of a proportionate amount of the assets of the transferor's qualified nuclear decommissioning fund to the transferee's qualified nuclear decommissioning fund (or by reason of the transfer of the transferor's entire qualified nuclear decommissioning fund to the transferee). For purposes of the regulations under § 468A, this transfer (or the transfer of the transferor's qualified nuclear decommissioning fund) will not constitute a payment or a contribution of assets by the transferee to its qualified nuclear decommissioning fund.

(3) Transfers of assets of a qualified nuclear decommissioning fund to which this section applies do not affect basis. Thus, the transferee's qualified nuclear decommissioning fund will have a basis in the assets received from the transferor's qualified nuclear decommissioning fund that is the same as the basis of those assets in the transferor's qualified nuclear decommissioning fund immediately before the distribution.

Under § 1.468A-6(f), the Service may treat any disposition of an interest in a nuclear power plant occurring after December 27, 1994, as satisfying the requirements of the regulations if the Service determines that such treatment is necessary or appropriate to carry out the purposes of § 468A.

Conclusions

Based on the information submitted by Seller Parent and Buyer Parent, we reach the following conclusions:

1) The Buyer Parent's qualified decommissioning fund will be treated as a qualified fund that satisfies the requirements of § 468A and § 1.468A-5.

2) The Seller Parent's qualified decommissioning fund will not be disqualified by reason of the transaction.

3) The Seller Parent's qualified decommissioning fund will not recognize gain or loss or otherwise take any income or deduction into account as a result of the transfer of assets from Seller Parent's qualified decommissioning fund to the Buyer Parent's qualified decommissioning fund as part of the transaction.

4) The Buyer Parent's qualified decommissioning fund will not recognize any gain or loss or otherwise take any income or deduction into account as a result of the transfer of assets from Seller Parent's qualified decommissioning fund to the Buyer Parent's qualified decommissioning fund as part of the transaction.

5) Neither Seller Parent nor Buyer Parent will be required to recognize gain or loss or otherwise take any income or deduction into account as a result of the transfer of assets from Seller Parent's qualified decommissioning fund to the Buyer Parent's qualified decommissioning fund as part of the transaction.

6) After the transaction, Buyer Parent's qualified decommissioning fund will have a tax basis in each of the assets transferred that is the same as Seller Parent's qualified decommissioning fund's tax basis in those assets immediately prior to the transaction.

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