Internal Revenue Service

Number: **201933008**
Release Date: 8/16/2019

Index Number: 468A.00-00

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-133721-18

Date:
May 08, 2019

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

Legend

Date 1	=
Seller Parent	=
Seller	=
Unit Owner	=
Seller Operator	=
Unit	=
Purchaser	=
Purchaser Subsidiary	=
Purchaser DRE	=
Purchaser Operator	=
Joint Venture	=
State 1	=
State 2	=
State 3	=
State 4	=
State 5	=
Location	=
Region	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=

Date 7 =
a =
b =
c =
d =
e =
f =
g =

Dear :

This letter responds to your request for private letter ruling dated Date 1. You requested rulings regarding the federal income tax consequences under Section 468A of the Internal Revenue Code and Section 1.468A-6 of the Treasury Regulations regarding the transfer of a qualified nuclear decommissioning reserve fund maintained for the decommissioning of the Unit. The transfer of the qualified nuclear decommissioning reserve fund is in conjunction with the transfer of the entity that owns the Unit, Unit Owner, from Seller to Purchaser.

Seller 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 the common parent of an affiliated group of corporations filing a consolidated federal income tax return. Seller Parent and its subsidiaries and affiliates operate on a calendar year basis and use the accrual method of accounting.

Seller is a wholly-owned indirect subsidiary of Seller Parent incorporated in State 1. Seller owns all of the equity of Unit Owner, a State 2 corporation which owns the Unit, the associated nuclear decommissioning trust, and the nuclear decommissioning liability for the Unit.

Unit Owner owns Unit, which is located in State 2. The Unit is a nuclear power plant. Unit is operated by Seller Operator, a corporate affiliate of Unit Owner, with offices located in State 4 and State 5. Electricity generated by the Unit is sold to wholesale customers or into the Region power market.

The operating license for the Unit is issued by the United States Nuclear Regulatory Commission (“NRC”) and expires on Date 2. Unit Owner and Seller Operator are both named on the license, with Unit Owner obligated to undertake the decommissioning of the Unit, and Seller Operator charged with the safe operation of the Unit, possession and handling of special nuclear material and compliance with the NRC regulations.

The Unit is expected to cease production on Date 3 and all nuclear fuel will be transferred from the reactor to wet storage in the spent fuel pool before Date 4. Once certified to the NRC that the reactor has been defueled, the Unit will enter the decommissioning phase of its life cycle, and the operating license will be amended by the NRC to a status of "possession-only" license.

Unit Owner maintains a master nuclear decommissioning trust that is dedicated to the decommissioning of the Unit (the "Trust"). The agreement between Unit Owner and the trustee regarding the purposes and operation of the trust authorizes the deposit and holding of assets in two sub-trusts that are trusts under state law: one that meets the requirements for a nuclear decommissioning reserve fund within the meaning of § 468A ("Qualified Fund") and one that does not meet those requirements ("Non-qualified Fund"). The assets of the Trust had a fair market value on Date 5 of a, net of accrued income tax on net realized gains. The values of the assets of the Qualified Fund on Date 5 were b, and assets valued at c were held in the Non-qualified Fund.

Purchaser is a corporation with headquarters in State 3. Purchaser files its federal income tax return on a calendar year basis using the accrual method of accounting. Purchaser is an company that, with its affiliates, specializes in .

Purchaser Subsidiary is a of Purchaser. Purchaser DRE is a wholly-owned subsidiary of Purchaser Subsidiary and is a State 1 disregarded limited liability company. Purchaser DRE's sole member is Purchaser Subsidiary.

Purchaser seeks to acquire the Unit, and through its indirectly wholly-owned affiliate, Purchaser Operator, operate or hold for decommissioning the Unit as licensed by the NRC. Purchaser represents that it expects Purchaser Operator to engage with Joint Venture, a U.S.-based joint venture of Purchaser and a Location corporation, to perform the decommissioning of the Unit.

Seller and Purchaser entered into an Equity Purchase and Sale Agreement, dated Date 6 ("Purchase Agreement") for the purchase by the Purchaser of all of the equity of Unit Owner in a transaction that will be treated as the sale of assets for U.S. federal income tax purposes (the "Transaction"). The Transaction is expected to close in Date 7 ("Closing"). The terms of the Purchase Agreement require that on the date of Closing, Seller will sell all membership interests in Unit Owner to Purchaser DRE in consideration for d.

Immediately prior to the Closing, Seller represents that Unit Owner will effectuate a statutory conversion under State 2 law from its current status as a corporation to a limited liability company (the "Conversion"). For federal income tax purposes, Seller

represents that the Conversion is treated as Unit Owner liquidating into its sole parent, Seller. As a result, the Unit and Trust, which includes the Qualified Fund, will be transferred from Unit Owner to Seller for U.S. federal income tax purposes ("Conversion Transfer"). Prior to the Conversion, Unit Owner is for U.S. federal income tax purposes the owner of both the Unit and the Qualified Fund. Immediately after the Conversion, Seller will be for U.S. federal income tax purposes the owner of both the Unit and the Qualified Fund. Because of the Conversion, the assets of Unit Owner, including the Unit and the Qualified Fund, will be deemed distributed to Seller in a deemed liquidation for U.S. federal income tax purposes. Unit Owner represents that it will not elect to be treated as an association taxable as a corporation under § 301.7701-3 and will not be treated as separate from its owner, Seller. Subsequent to the Closing, Unit Owner represents it will change its name.

As of the Closing, the nuclear decommissioning liability associated with the Unit is expected to be approximately e, and the Trust is expected to hold assets valued at approximately f, of which g will reside in the Qualified Fund. The transfer of the Trust to Purchaser (including the beneficial interests in the Trust and the Qualified Fund) shall be referred to as the "Fund Transfer."

Seller Operator, on behalf of itself and Unit Owner, Purchaser, and Purchaser Subsidiary represent that such entities will submit an application to the NRC for approval of the indirect transfer of control of the License for the Unit from Seller to Purchaser and the transfer of operational authority from Seller Operator to Purchaser Operator (the "NRC Application"). The NRC Application will also seek approval of an amendment to the License to reflect the change in from of Unit Owner from a State 2 corporation to a State 2 limited liability company, and the post-transfer name change of the same entity. Upon the Closing of the Transaction, Unit Owner will be a disregarded entity of Purchaser, and will be a licensee and will have all rights and obligations under the NRC License for the Unit, and Purchaser Operator will conduct licensed activities at the Unit. After Closing, neither Seller nor any of its affiliates will be a licensee or have any authorized rights or obligations under the NRC License for the Unit. As part of the NRC Application, Seller Operator, Unit Owner, Purchaser, and Purchaser Operator plan to provide information in respect of the purposes for the Transaction necessitating the License transfer and the technical financial qualifications of Unit Owner and Purchaser Operator for being licensees under the License.

Upon the Closing of the Transaction, Seller and Purchaser represent that the risk and responsibility for decommissioning the site will be transferred to Purchaser. Unit Owner will retain full responsibility for funding Purchaser Operator's costs of decommissioning the Unit. As part of the Transaction, Seller represents that Unit Owner will retain full control and title to the asset of the Trust and Qualified Fund that are intended to be sufficient to satisfy the expected decommissioning costs.

Unit Owner and Seller, regarding their respective transfers, represent that immediately before the relevant transfer, each entity:

1. Will have a qualifying interest in the Unit within the meaning of § 1.468A-1(b)(2);
2. Will have maintained its Qualified Fund as a trust under applicable state law for the exclusive purpose of providing funds for decommissioning;
3. Will have maintained the Qualified Fund as a separate and the sole qualified fund for the Unit;
4. Will not have made any contributions to the Qualified Fund other than those for which a deduction will be allowed under § 468A;
5. The assets of the Qualified 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 Qualified Fund; and (c) make investments, to the extent the assets of the Qualified Fund were not needed to satisfy the purposes of (a) and (b) above;
6. The trust agreement for the Qualified Fund provides that the assets in the Qualified Fund must be used as authorized in § 468A and the regulations thereunder, including the prohibition against self-dealing, and that the agreement cannot be amended to violate such provisions; and
7. The Qualified Fund did not engage in self-dealing.

Seller and Purchaser, as transferees in respect of the Qualified Fund, represent that immediately after each relevant transfer, each entity:

1. Will have a qualifying interest in the Unit within the meaning of Treas. Reg. § 1.468A-1(b)(2);
2. Will maintain the Qualified Fund as a trust under applicable state law for the exclusive purpose of providing funds for decommissioning;
3. Will maintain its Qualified Fund as a separate and the sole qualified fund for the Unit;
4. Will not make any contributions to the Qualified Fund other than those for which a deduction is allowed under § 468A and the regulations thereunder;
5. The assets of the Qualified 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 Qualified Fund; and (c) make investments, to the extent the assets of the Qualified Fund were not needed to satisfy the purposes of (a) and (b) above; and
6. The trust agreement for the Qualified Fund will provide that the assets in the Qualified Fund must be used as authorized in § 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 the NRC, Seller and Purchaser request the following rulings, effective as of the Fund Transfer:

1. The Qualified Fund will not be disqualified by reason of the Fund Transfer.
2. Seller, Purchaser, and the Qualified Fund will not recognize gain or loss under § 468A by reason of the Fund Transfer.
3. After the Fund Transfer, the Qualified Fund will continue to be treated as satisfying the requirements of § 468A.
4. Following the Fund Transfer, the tax basis in the Qualified Fund will be the same as the tax basis in those assets immediately before the Fund Transfer.

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" or a "Qualified Fund").

Section 468A(c) provides that any amount distributed or deemed distributed from a Qualified Fund, other than for purposes of paying costs described in § 468A(e)(4)(B), during any taxable year is includible in the gross income of the taxpayer for that year.

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 468A(e)(2) provides that the rate of tax on the income of a Qualified Fund is twenty (20) percent. Section 468A(e)(4) provides, in pertinent part, that the assets in a Qualified Fund shall be used exclusively for satisfying the liability of any person contributing to the Qualified Fund for the decommissioning of a nuclear power plant or unit thereof.

Section 468A(e)(5) provides that, for purposes of § 4951, a Qualified Fund is treated in the same manner as a trust described in § 501(c)(21).

Section 468A(e)(6) provides that the United States Secretary of the Treasury may disqualify a Qualified Fund that violates any provision of the §§ 468A or 4951.

Section 468A(e)(7) provides that a taxpayer shall terminate the Qualified Fund upon substantial completion of the decommissioning of the related nuclear power plant.

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-1(b)(5) provides that a nuclear power plant is any nuclear power reactor that is used predominantly in the trade or business of the burnishing or sale of electric energy.

Section 1.468-1(b)(6) provides that decommissioning costs mean all otherwise deductible expenses to be incurred in connection with entombment, decontamination, removal, and disposal of the structure, systems, and components of a nuclear power plant that has permanently cease the production of electric energy. Decommissioning costs also include costs incurred in connection with the construction, operation, and ultimate decommissioning of a unit used solely to store spent nuclear fuel generated by the nuclear plant, pending acceptance by the government for permanent storage or disposal.

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 and Purchaser, we reach the following conclusions:

1) The Qualified Fund will not be disqualified by reason of the Fund Transfer.

2) Seller, Purchaser, and/or the Qualified Fund will not recognize gain or loss under § 468A by reason of the transfer of the Qualified Fund.

3) After the Fund Transfer, the Qualified Fund will continue to be treated as satisfying the requirements of § 468A.

4) Following the Fund Transfer, the tax basis in the Qualified Fund will be the same as the tax basis in those assets immediately before the Fund Transfer.

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)

cc: