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Date:
August 06, 2020

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

LEGEND

Seller Parent =
Seller 1 =
Seller 2 =
Seller 3 =
Buyer =
Buyer DRE =
Operator =
Plant =
State A =
State B =
State C =
State D =
Date 1 =
Date 2 =
a =
b =
Director =

Dear :

This letter responds to your request, dated December 26, 2019, for a letter ruling regarding the federal income tax consequences under section 468A of the Internal Revenue Code (Code) with respect to the transfer of the assets of nuclear decommissioning funds. The relevant facts as represented in your submission are set forth below.

FACTS

Seller Parent and its subsidiaries are principally involved in the generation, transmission, and distribution of electricity. Seller Parent is a State A corporation that

files a consolidated federal income tax return with its affiliated companies on a calendar year basis using an accrual method of accounting. Among its affiliates are its wholly-owned subsidiaries Seller 1, Seller 2, and Seller 3. Seller 1 is a State B corporation and public utility that provides transmission, distribution, and retail electric services in State B. Seller 2 and Seller 3 are State C corporations and public utilities that provide distribution and retail electric services in State C. Seller 1, Seller 2, and Seller 3 (collectively, Sellers) together own 100% of the interests in the Plant, a nuclear reactor. Seller 2 owns a%, and Seller 1 and Seller 3 each own b%.

Operator, a State B corporation and wholly-owned subsidiary of Seller Parent, is currently the lead licensee and operator of the Plant under a license (NRC License) issued by the Nuclear Regulatory Commission (NRC). The Sellers are also listed as licensees on the NRC License.

Buyer DRE is a State D limited liability company that is a wholly-owned, indirect subsidiary of the Buyer and is disregarded as a separate entity from the Buyer for federal income tax purposes. The Buyer is a State D corporation that files a consolidated federal income tax return with its affiliated companies on a calendar year basis using an accrual method of accounting. The Buyer and its affiliates specialize in providing nuclear services, including the decommissioning of commercial nuclear power generation facilities.

Each Seller represents that it maintains a nuclear decommissioning fund (Seller NDF) that meets the requirements of § 468A. The Sellers intend to sell the Plant and its associated facilities to Buyer DRE and to transfer all of the assets of the Seller NDFs to a new nuclear decommissioning fund (Buyer NDF) established by Buyer DRE (Transaction). The Buyer NDF will be established prior to the closing of the Transaction and will meet the requirements for a qualified fund under § 468A.

The Sellers, Operator, and Buyer DRE entered into an Asset Purchase and Sale Agreement (Purchase Agreement), dated Date 1. The Sellers agreed to sell and transfer to Buyer DRE (and Buyer DRE agreed to acquire) all right, title, and interest in the Plant, associated real property and improvements, the assets in the Seller NDFs, the NRC License, machinery, equipment, vehicles, tools, certain permits, contracts, insurance policies, and records (Assets). Buyer DRE agreed to assume all liabilities with respect to ownership of the Plant, including all liabilities for its decommissioning. The parties agreed to treat the sale of the Assets as the sale by the Sellers and the purchase by Buyer DRE for federal income tax purposes. The Buyer and the Sellers intend to enter into other ancillary agreements (prior to the closing of the Transaction) under which neither the Sellers nor Operator will receive any current or residual right to the Plant, associated real property, or assets of the Buyer NDF.

On Date 2, Buyer DRE and Operator (on behalf of the Sellers) filed an application with the NRC (NRC Application) requesting approval to transfer the NRC License and the assets of the Seller NDFs to Buyer DRE in connection with the

Transaction, and to amend the operating license in connection with the transfer. On the same date, Seller 1 filed an application with the State B Public Utility Commission to transfer its Plant assets (including its Seller NDF) to the Buyer. Approval of both of these applications is a condition to closing the Transaction under the Purchase Agreement, as is a favorable ruling from the Internal Revenue Service (Service) pursuant to this ruling request.

Assuming that the NRC approves the Transaction and the transfer of the NRC License, and that the State B Public Utility Commission approves the Transaction with respect to Seller 1 and the transfer of its Seller NDF, each Seller represents with respect to its Seller NDF that immediately prior to the closing of the Transaction – (1) it will have a qualifying interest in the Plant within the meaning of § 1.468A-1(b)(2); (2) it will have maintained its Seller NDF as a trust under applicable state law for the exclusive purpose of providing funds for decommissioning; (3) it will have maintained its Seller NDF as a separate and its sole qualified fund for the Plant; (4) it will not have made any contributions to its Seller NDF other than those for which a deduction will be allowed under § 468A and the regulations thereunder; (5) the assets of its Seller NDF will have been used exclusively to – (a) satisfy, in whole or in part, liability for the decommissioning costs of the Plant; (b) pay administrative costs and other incidental expenses of its Seller NDF; and (c) make investments, to the extent the assets of its Seller NDF were not needed to satisfy the purposes in (a) or (b) above; (6) the trust agreement for its Seller NDF provides that the assets in the Seller NDF 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) its Seller NDF did not engage in self-dealing.

Assuming that the NRC approves the Transaction and the transfer of the NRC License, the Buyer represents that immediately after the closing of the Transaction – (1) it will have a qualifying interest in the Plant within the meaning of § 1.468A-1(b)(2); (2) it will maintain the Buyer NDF as a trust under applicable state law for the exclusive purpose of providing funds for decommissioning; (3) it will maintain the Buyer NDF as a separate and the sole qualified fund for the Plant; (4) it will not make any contributions to the Buyer NDF other than those for which a deduction is allowed under § 468A and the regulations thereunder; (5) the assets of the Buyer NDF will be used exclusively to – (a) satisfy, in whole or in part, liability for the decommissioning costs of the Plant; (b) pay administrative costs and other incidental expenses of the Buyer NDF; and (c) make investments, to the extent the assets of the Buyer NDF are not needed to satisfy the purposes in (a) or (b) above; and (6) the trust agreement for the Buyer NDF will provide that the assets in the Buyer NDF 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.

RULINGS REQUESTED

Taxpayer requests the following rulings:

1. The Buyer NDF will be treated as a qualified fund that satisfied the requirements of § 468A and § 1.468A-5.

2. None of the Seller NDFs will be disqualified by reason of the Transaction.

3. None of the Seller NDFs will recognize gain or loss or otherwise take any income or deduction into account as a result of the transfer of assets from the Seller NDF to the Buyer NDF as part of the Transaction.

4. The Buyer NDF will not recognize gain or loss or otherwise take any income or deduction into account as a result of the transfer of assets from the Seller NDF to the Buyer NDF as part of the Transaction.

5. Neither the Buyer nor any of the Sellers 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 the Seller NDF to the Buyer NDF as part of the Transaction.

6. After the Transaction, the Buyer NDF will have a tax basis in each of the assets transferred that is the same as each Seller NDF's tax basis in those assets immediately prior to the Transaction.

LAW AND ANALYSIS

Section 468A(a) provides that a taxpayer that elects to apply § 468A shall be allowed as a deduction for any taxable year the amount of payments made by the taxpayer to a nuclear decommissioning reserve fund during such taxable year.

Section 1.468A-1(b)(1) provides that an "eligible taxpayer" is a taxpayer that possesses a qualifying interest in a nuclear power plant.

Section 1.468A-1(b)(5) defines the term "nuclear power plant" as any nuclear power reactor used predominantly in the trade or business of the furnishing or sale of electric energy. Each unit (i.e. nuclear reactor) located on a multi-unit site is a separate nuclear power plant.

Under § 1.468A-1(b)(2), the definition of the term "qualifying interest" includes a direct ownership interest.

Under § 1.468A-1(b)(3), a direct ownership interest in a nuclear power plant does not include stock of a corporation that owns such plant, or an interest in a partnership that owns such plant.

Section 468A(e)(1) requires each taxpayer who elects to apply § 468A to establish a nuclear decommissioning reserve fund for each nuclear power plant to which such 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.

Section 1.468A-5(a)(1)(i) provides that a nuclear decommissioning fund must be established and maintained at all times in the United States pursuant to an arrangement that qualifies as a trust under state law. Such trust must be established for the exclusive purpose of providing funds for the decommissioning of one or more nuclear power plants, but a single trust agreement may establish multiple funds for such purpose.

Section 1.468A-5(a)(1)(iii) provides that an electing taxpayer can maintain only one nuclear decommissioning fund for each nuclear power plant with respect to which the taxpayer elects to apply § 468A.

Section 1.468A-5(a)(2) provides that except as otherwise provided in § 1.468A-8 (relating to special transfers under § 468A(f)), a 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 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 power plant to which such fund relates; (B) to pay administrative costs and other incidental expenses of such fund; and (C) to the extent that the assets of such fund are not currently required for the purposes described in (A) and (B) of this section, 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 taxable 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)).

Section 1.468A-6 describes the federal income tax consequences of a transfer of the assets of a nuclear decommissioning fund in connection with a sale, exchange, or other disposition by a taxpayer (transferor) of all or a portion of its qualifying interest in a nuclear power plant to another taxpayer (transferee).

Section 1.468A-6(a) provides that for purposes of § 1.468A-6, a nuclear power plan includes a plant that previously qualified as a nuclear power plant and that has permanently ceased to produce electricity.

Section 1.468A-6(b) provides that § 1.468A-6 applies if – (1) immediately before the disposition, the transferor maintained a nuclear decommissioning fund with respect to the interest disposed of; and (2) immediately after the disposition – (i) the transferee maintains a 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; and (3) in connection with the disposition, either – (i) the transferee acquires part or all of the transferor's qualifying interest in the plant and a proportionate amount of the assets of the transferor's nuclear decommissioning fund (all such assets if the transferee acquires the transferor's entire qualifying interest in the plant) is transferred to a nuclear decommissioning fund of the transferee; or (ii) the transferee acquires the transferor's entire qualifying interest in the plant and the transferor's entire nuclear decommissioning 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 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) Except as provided in § 1.468A-6(c)(1)(ii), neither the transferor nor the transferor's nuclear decommissioning fund will recognize gain or loss or otherwise take any income or deduction into account by reason of the transfer of a proportionate amount of the assets of the transferor's fund to the transferee's fund (or by reason of the transfer of the transferor's entire fund to the transferee). For purposes of §§ 1.468A-1 through 1.468A-9, this transfer (or the transfer of the transferor's fund) will not be considered a distribution of assets by the transferor's fund.

(1)(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 a nuclear decommissioning fund (or its 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 its assets (the unamortized special transfer deduction) is allowed under § 468A(f)(2)(C) for the taxable year that includes the date of the transfer of the fund or its assets. If the taxpayer transfers only a portion of its interest in a nuclear power plant, only the corresponding portion of the unamortized special transfer deduction qualifies for the acceleration under § 468A(f)(2)(C).

(2) Neither the transferee nor the transferee's nuclear decommissioning fund will recognize gain or loss or otherwise take any income or deduction into account by reason of the transfer of a proportionate amount of the assets of the transferor's fund to the transferee's fund (or by reason of the transfer of the transferor's fund to the transferee). For purposes of §§ 1.468A-1 through 1.468A-9, this transfer (or the transfer of the transferor's fund) will not constitute a payment or a contribution of assets by the transferee to its fund.

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

Under § 1.468A-6(f), the Service may treat a disposition as satisfying the requirements of § 1.468A-6 if it determines that this treatment is necessary or appropriate to carry out the purposes of § 468A and §§ 1.468A-1 through 1.468A-9.

RULINGS

Based solely on the information submitted and representations made, we reach the following conclusions, effective as of the closing of the Transaction:

1. The Buyer NDF will be treated as a qualified fund that satisfies the requirements of § 468A and § 1.468A-5.

2. None of the Seller NDFs will be disqualified by reason of the Transaction.

3. None of the Seller NDFs will recognize gain or loss or otherwise take any income or deduction into account as a result of the transfer of assets from the Seller NDF to the Buyer NDF as part of the Transaction.

4. The Buyer NDF will not recognize gain or loss or otherwise take any income or deduction into account as a result of the transfer of assets from the Seller NDF to the Buyer NDF as part of the Transaction.

5. Neither the Buyer nor any of the Sellers 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 the Seller NDF to the Buyer NDF as part of the Transaction.

6. After the Transaction, the Buyer NDF will have a tax basis in each of the assets transferred that is the same as each Seller NDF'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 matters described above. 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. This ruling is based upon information and representations submitted by the taxpayer and accompanied by penalties of perjury statements executed by the appropriate parties. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination. This ruling is specifically conditioned on the approval of the Transaction by the regulatory bodies with jurisdiction over the Transaction.

In accordance with the power of attorney on file with this office, copies of this letter ruling are being sent to your authorized representatives. A copy of this letter ruling is also being sent to the Director.

Sincerely,

Patrick S. Kirwan
Chief, Branch 6
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

cc: