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Person To Contact:
, ID No.

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PLR-114115-20

Date:
December 21, 2020

In Re: Revised Schedule of Ruling Amounts

LEGEND:

Taxpayer	=
Company A	=
Company B	=
State A	=
State B	=
Plant	=
Location	=
Independent Study	=
Agreement	=
Method	=
Date 1	=
Date 2	=
Date 3	=
Commission A	=
Commission B	=
Year 1	=
Year 2	=
Year 3	=

Year 4 =
Year 5 =
Year 6 =
Year 7 =
a =
b =
c =
d =
e =
f =
Fund =
Director =

Dear :

This letter responds to your request, dated June 12, 2020, for a revised schedule of ruling amounts under § 468A of the Internal Revenue Code and § 1.468A-3(f)(2) of the Income Tax Regulations. Taxpayer was previously granted schedules of ruling amounts with respect to the Plant, most recently on Date 1.

Taxpayer represents the facts and information relating to its request for a revised schedule of ruling amounts as follows:

Taxpayer, a limited liability company organized in State A, is a wholly-owned direct subsidiary of Company A and is treated as a disregarded entity for federal income tax purposes. Taxpayer is not a member of any consolidated group and files its separate tax return on a calendar year basis using the accrual method of accounting.

Taxpayer purchased the Plant in Year 1, together with a percent of the rights in the master decommissioning trust for the Plant, which included the Fund. Taxpayer is subject to the regulatory jurisdiction of Commission A and Commission B. The Plant's last day of estimated useful life, for purposes of the regulations under §468A, and the expiration of its original operating license occurred in Year 3. The Plant is expected to cease operation on Date 2. The nuclear fuel will be transferred from the reactor to storage before Date 3. The method for decommissioning the Plant is Method.

In Year 4, Taxpayer executed Agreement with State B to prematurely shut down the Plant in Year 6. Consequently, Taxpayer revised its decommissioning cost estimate to reflect the Plant's accelerated shutdown. Taxpayer's proposed revised schedule of ruling amounts was derived from a revised decommission cost estimate based on Independent Study. The total remaining estimated base cost of decommissioning the Taxpayer's a percent interest in the Plant is $b (Year 2 dollars). The total estimated future cost of decommissioning Taxpayer's interest in the Plant is $c (Year 5 – Year 7 dollars). The methodology used to convert the Year 2 dollars to Year 5 - Year 7 dollars was by escalating the estimated costs at a rate of c percent annually to the year of

estimated expenditure. The assumed after-tax rate of return to be earned by the assets in the Fund is d percent. Taxpayer estimates that it will first incur substantial decommissioning costs for the Plant in Year 6 and that decommissioning will be substantially complete in Year 7.

Section 468A(a), as amended by the Energy Tax Incentives Act of 2005 (the Act), Pub. L. 109-58, 119 Stat. 594, allows an electing taxpayer to deduct payments made to a nuclear decommissioning reserve fund.

Section 468A(b) limits the amount that may be paid into the nuclear decommissioning fund in any year to the ruling amount applicable to that year. Prior to the changes made by the Act, the deduction was limited to the lesser of the amount included in the utility's cost of service for ratemaking purposes or the ruling amount. Generally, as a result, only regulated utilities could take advantage of § 468A. The Act amendment of § 468A eliminated the cost-of-service limitation. Accordingly, decommissioning costs of an unregulated nuclear power plant may now be funded by deductible contributions to a qualified nuclear decommissioning fund.

Section 468A(d)(1) provides that no deduction shall be allowed for any payment to the nuclear decommissioning fund unless the taxpayer requests and receives from the Secretary a schedule of ruling amounts. The "ruling amount" for any tax year is defined under § 468A(d)(2) as the amount which the Secretary determines to be necessary to fund the total nuclear decommissioning cost of that nuclear power plant over the estimated useful life of the plant. This term is further defined to include the amount necessary to prevent excessive funding of nuclear decommissioning costs or funding of these costs at a rate more rapid than level funding, taking into account such discount rates as the Secretary deems appropriate.

Section 468A(h) provides that a taxpayer shall be deemed to have made a payment to the nuclear decommissioning fund on the last day of a taxable year if the payment is made on account of such taxable year and is made within 2½ months after the close of the tax year. This section applies to payments made pursuant to either a schedule of ruling amounts or a schedule of deduction amounts.

Section 1.468A-1(a) provides that an eligible taxpayer may elect to deduct nuclear decommissioning costs under § 468A. An "eligible taxpayer," as defined under § 1.468A-1(b)(1), is a taxpayer that has a "qualifying interest" in any portion of a nuclear power plant. A qualifying interest is, among other things, a direct ownership interest.

Section 1.468A-1(b)(6) provides that "nuclear decommissioning costs" or "decommissioning costs" include all otherwise deductible expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a nuclear power plant, whether that nuclear power plant will continue to produce electric energy or has permanently ceased to produce electric energy. The term includes all otherwise deductible

expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all otherwise deductible expenses to be incurred with respect to the plant after the actual decommissioning occurs, such as physical security and radiation monitoring expenses. The term also includes costs incurred in connection with the construction, operation, and ultimate decommissioning of a facility used solely to store, pending acceptance by the government for permanent storage or disposal, spent nuclear fuel generated by the nuclear power plant or plants located on the same site as the storage facility.

Section 1.468A-2(b)(1) provides that the maximum amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any tax year shall not exceed the ruling amount applicable to the nuclear decommissioning fund for such taxable year. The limitation on the amount of cash payments for purposes of § 1.468A-2(b)(1) does not apply to any "special transfer" permitted under § 1.468A-8.

Section 1.468A-3(a)(1) provides that, in general, a schedule of ruling amounts for a nuclear decommissioning fund is a ruling specifying annual payments that, over the tax years remaining in the "funding period" as of the date the schedule first applies, will result in a projected balance of the nuclear decommissioning fund as of the last day of the funding period equal to (and in no event more than) the amount of decommissioning costs allocable to the fund.

Section 1.468A-3(a)(2) provides that, to the extent consistent with the principles and provisions of this section, each schedule of ruling amounts must be based on reasonable assumptions concerning the after-tax rate of return to be earned by the assets of the qualified nuclear decommissioning fund, the total estimated cost of decommissioning the nuclear power plant, and the frequency of contributions to a nuclear decommissioning fund for a taxable year. Under § 1.468A-3(a)(3), the Internal Revenue Service shall provide a schedule of ruling amounts identical to the schedule proposed by the taxpayer, but no such schedule shall be provided by the Service unless the taxpayer's proposed schedule is consistent with the principles and provisions of that section.

Section 1.468A-3(a)(4) provides that the taxpayer bears the burden of demonstrating that the proposed schedule of ruling amounts is consistent with the principles of the regulations and that it is based on reasonable assumptions. That section also provides additional guidance regarding how the Service will determine whether a proposed schedule of ruling amounts is based on reasonable assumptions. For example, if a public utility commission established or approved the currently applicable rates for the furnishing or sale by the taxpayer of electricity from the plant, the taxpayer can generally satisfy this burden of proof by demonstrating that the schedule of ruling amounts is calculated using the assumptions used by the public utility commission in its most recent order. In addition, a taxpayer that owns an interest in a deregulated nuclear plant may submit assumptions used by a public utility commission that formerly had regulatory jurisdiction over the plant as support for the assumptions

used in calculating the taxpayer's proposed schedule of ruling amounts, with the understanding that the assumptions used by the public utility commission may be given less weight if they are out of date or were developed in a proceeding for a different taxpayer. The use of other industry standards, such as the assumptions underlying the taxpayer's most recent financial assurance filing with the NRC, are described by the regulations as an alternative means of demonstrating that the taxpayer has calculated its proposed schedule of ruling amounts on a reasonable basis. Section 1.468A-3(a)(4) further provides that consistency with financial accounting statements is not sufficient, in the absence of other supporting evidence, to meet the taxpayer's burden of proof.

Section 1.468A-3(b)(1) provides that, in general, the ruling amount for any tax year in the funding period shall not be less than the ruling amount for any earlier tax year. Section 1.468A-3(b)(3) provides that the ruling amount specified in a schedule of ruling amounts for the last taxable year in the funding period may be less than the ruling amount specified in such schedule for an earlier taxable year if, when annualized under the rules provided § 1.468A-3(b)(3), the amount specified for the last taxable year is not less than the amount specified for such earlier taxable year.

Under § 1.468A-3(c)(1), the funding period begins on the first day of the first tax year for which a deductible payment is made to the nuclear decommissioning fund and ends on the last day of the taxable year that includes the last day of the estimated useful life of the nuclear power plant to which the fund relates.

Section 1.468A-3(c)(2) provides rules for determining the estimated useful life of a nuclear plant for purposes of § 468A. In general, under § 1.468A-3(c)(2)(i)(A), if the plant was included in rate base for ratemaking purposes for a period prior to January 1, 2006, the date used in the first such ratemaking proceeding as the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base is the end of the estimated useful life of the nuclear power plant.

Section 1.468A-3(c)(2)(i)(B) provides that, if the nuclear power plant is not described in § 1.468A-3(c)(2)(i)(A), the last day of the estimated useful life of the nuclear power plant is determined as of the date the plant is placed in service. Under § 1.468A-3(c)(2)(i)(C), any reasonable method may be used in determining the estimated useful life of a nuclear power plant that is not described in § 1.468A-3(c)(2)(i)(A).

Section 1.468A-3(d)(1) provides that the amount of decommissioning costs allocable to a nuclear decommissioning fund is the taxpayer's share of the total estimated cost of decommissioning the nuclear power plant. Section 1.468A-3(d)(3) provides that a taxpayer's share of the total estimated cost of decommissioning a nuclear power plant equals the total estimated cost of decommissioning such plant multiplied by the taxpayer's qualifying interest in the plant.

Section 1.468A-3(e) provides the rules regarding the manner of requesting a schedule of ruling amounts. Section 1.468A-3(e)(1)(v) provides that the Service will not

provide or revise a ruling amount applicable to a taxable year in response to a request for a schedule of ruling amounts filed after the deemed payment date (as defined in § 1.468A-2(c)(1)) for such taxable year.

Section 1.468A-3(e)(2) enumerates the information required to be contained in a request for a schedule of ruling amounts filed by a taxpayer in order to receive a ruling amount for any taxable year.

Section 1.468A-3(e)(3) provides that the Service may prescribe administrative procedures that supplement the provisions of § 1.468A-3(e)(1) and (2). In addition, that section provides that the Service may, in its discretion, waive the requirements of § 1.468A-3(e)(1) and (2) under appropriate circumstances.

Section 1.468A-3(f)(1)(i) provides that any taxpayer that has obtained a schedule of ruling amounts pursuant to § 1.468A-3(e) must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline date for the 10th taxable year that begins after the taxable year in which the most recent schedule of ruling amounts was received. If the taxpayer calculated its most recent schedule of ruling amounts on any basis other than an order issued by a public utility commission, the taxpayer must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline date for the 5th taxable year that begins after the taxable year in which the most recent schedule of ruling amounts was received.

Section 1.468A-3(f)(2) provides that any taxpayer that has previously obtained a schedule of ruling amounts may request a revised schedule of ruling amounts. Such a request must be made in accordance with the rules of § 1.468A-3(e). The Service shall not provide a revised schedule of ruling amounts applicable to a taxable year in response to a request for a schedule of ruling amounts that is filed after the deemed payment deadline date for such taxable year.

We have examined the representations and information submitted by Taxpayer in relation to the requirements set forth in § 468A and the regulations thereunder. Based solely upon these representations of the facts, we reach the following conclusions:

1) Taxpayer has a qualifying interest in the Plant and is, therefore, an eligible taxpayer under § 1.468A-1(b)(1).

2) Taxpayer, as an owner of the Plant, has calculated its share of the total decommissioning costs under § 1.468A-3(d)(3).

3) The proposed schedule of ruling amounts was derived by following the assumptions contained in the Independent Study that Taxpayer has represented was prepared by the leading decommissioning analyst in the United States. Thus, Taxpayer has demonstrated, pursuant to § 1.468A-3(a)(4), that the proposed schedule of ruling

amounts is based on reasonable assumptions and is consistent with the principles of § 468A and the regulations thereunder.

4) The maximum amount of cash payments made (or deemed made) to the Fund during any tax year is restricted to the ruling amount applicable to the Fund, as set forth under § 1.468A-2(b)(1).

Based solely on the determinations above, we conclude that Taxpayer's proposed schedule of ruling amounts satisfies the requirements of § 468A. We have approved the following revised schedule of ruling amounts.

APPROVED SCHEDULE OF RULING AMOUNTS

YEAR	Schedule of Ruling Amount
Year 5	f

If any of the events described in § 1.468A-3(f)(1) occur in future years, Taxpayer must request a review and revision of the schedule of ruling amounts by the date provided in this regulation. When no such event occurs, Taxpayer must file a request for a revised schedule of ruling amounts by the date provided in § 1.468A-3(f)(1)(i).

Except as specifically determined above, no opinion is expressed or implied concerning the federal income tax consequences of the transaction described above. Specifically, no determination is made as to whether the Independent Study conforms to industry standards and practices or whether any particular item contained in that study constitutes a nuclear decommissioning cost under § 1.468A-1(b)(6).

This ruling is directed only to 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 to the Director.

Pursuant to § 1.468A-7(a), a copy of this letter must be attached (with the required Election Statement) to Taxpayer's federal income tax return for each tax year in which Taxpayer claims a deduction for payments made to the Fund.

This letter ruling is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to Taxpayer.

Sincerely yours,

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

cc: