

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-112096-21
Date:
November 29, 2021

Re:

LEGEND

Parent =
Taxpayer =
Utility =

Company =
Facility =

System =
Unit 1 =
Unit 2 =
Unit 1 Lessor A =

Unit 1 Lessor B =

Unit 1 Lessor C =

Unit 1 Lessor D =

Unit 2 Lessor =

Commission 1 =

Commission 2 =
Commission 3 =
Director =
State A =
State B =
Master Trust =
Agreement

Commission 3 =
Filing

Certificate =
Statute =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Date 9 =
Date 10 =

a =
b =
c =
d =
e =
f =
g =
h =
i =
j =
k =
l =
m =
n =

Dear :

This letter responds to your request, dated May 28, 2021 and revised on November 1, 2021, submitted by Parent on behalf of Taxpayer, for a letter ruling regarding certain federal income tax consequences under section 468A of the Internal Revenue Code (Code) with respect to certain planned transactions involving nuclear

decommissioning funds. This letter 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 you. The relevant facts as represented in your submission are set forth below.

FACTS

Taxpayer is a public utility operating company principally engaged in the generation, transmission, and distribution of electrical energy in State A. Taxpayer is a State A corporation and a wholly-owned subsidiary of Parent. Parent is a holding company and a State A corporation. Taxpayer joins in the filing of Parent's consolidated federal income tax return. Parent files its federal income tax return with its affiliated companies, including Taxpayer, electronically on a calendar year basis using the accrual method of accounting. Taxpayer is regulated by Commission 1, Commission 2, and Commission 3.

The Facility is a nuclear powered electrical energy generating station located in State B. Taxpayer holds Commission 1 licenses for Unit 1 and Unit 2 (together, Units) at the Facility because of its entitlement to an a% share of the electrical generating capacity of the Units. Taxpayer's entitlement to a share of the Units' output is based in part on its undivided ownership interests in each of the Units, and is based in part on its possessory interests pursuant to four leases (Unit 1 Leases) for an aggregate undivided in common interest in b% of Unit 1 (Unit 1 Interests), and pursuant to one lease (Unit 2 Lease; together with the Unit 1 Leases, Leases) for an undivided in common interest in c% of Unit 2 (Unit 2 Interest; together with the Unit 1 Interests, Leased Interests).

Fee ownership of the Unit 1 Interests is held in trust for the benefit of the following persons (collectively, Unit 1 Lessors) in the following percentages: Unit 1 Lessor A (d%), Unit 1 Lessor B (e%), Unit 1 Lessor C (f%), Unit 1 Lessor D (g%). Fee ownership of the c% Unit Two Interest is held in trust for the benefit of Unit 2 Lessor (together with the Unit 1 Lessors, Lessors).

Utility also holds Commission 1 licenses for the Units and is named on these licenses for its current ownership of an h% share of the undivided in common ownership interests in each of the Units. Utility is engaged, among other things, in the generation, transmission, and distribution of electrical energy in State B. Utility has no affiliation with Taxpayer or Parent. Taxpayer, Utility, and other Facility tenants in common owners and licensees finance their ownership interests separately from each other, and each owns and operates its independently-owned and operated electric power system.

Taxpayer established nuclear decommissioning trusts for Unit 1 and Unit 2 that it represents meet the requirements of §§ 468A and 1.468A-5 and are maintained by Taxpayer for purposes of decommissioning its a% interests in each Unit pursuant to the Master Trust Agreement (Unit 1 QNDT and Unit 2 QNDT, respectively; together, QNDTs). The Internal Revenue Service (Service) has issued a Schedule of Ruling Amounts most recently on Date 1 for Unit 1 and on Date 2 for Unit 2. No other person

has established nuclear decommissioning trust funds for the Leased Interests. The current balance of the Unit 1 QNDT is \$i and the current balance of the Unit 2 QNDT is \$j.

The term of each of the four Unit 1 Leases for the Unit 1 Interests expires on Date 3. The term of the Unit 2 Lease for the Unit 2 Interest expires on Date 4. Taxpayer will abandon the fee ownership interests associated with the Leased Interests at the termination of the Unit 1 Leases and the Unit 2 Lease, respectively.

Utility has entered into Purchase Agreements with each of the Lessors pursuant to which Utility will acquire the Leased Interests from the Lessors when regulatory approval and other conditions to closing have been met, but in any event prior to the expiration of the Leases. Accordingly, at the expiration of the Unit 1 Leases and the Unit 2 Lease, Utility will assume both ownership of the Leased Interests and the entitlement to the associated electric generation and capacity from Unit 1 and Unit 2. Taxpayer represents that thus, the authority to possess the Leased Interests under the Commission 1 licenses for these interests will effectively transfer from Taxpayer to Utility at the end of the term of each of the respective Unit 1 Leases and the Unit 2 Lease. Taxpayer will remain a Commission 1 licensee for its share of the undivided in common ownership interests in the Units following the expiration of the term of each of the Unit 1 Leases and the Unit 2 Lease. Taxpayer represents that following the effective transfer of the Leased Interests, it will continue to own a qualifying direct ownership interest in Unit 1 of k% and a qualifying direct ownership interest in Unit 2 of l%, within the meaning of § 1.468A-1(b)(2)(a).

Utility has also entered into an Asset Purchase and Sale Agreement (APSA) with Taxpayer, dated as of Date 5. Pursuant to the ASPA, Taxpayer will transfer to Utility assets associated with the Leased Interests in three closings.

Taxpayer and Utility will execute a Decommissioning Agreement upon the receipt of approvals from Commission 1 and Commission 3 and the receipt of a favorable ruling from the Service, pursuant to which Taxpayer will retain all liability for paying decommissioning costs associated with the Leased Interests at Commission 1 license termination, notwithstanding no longer being entitled to the electrical output from the Leased Interests after the expiration of the Leases. The Decommissioning Agreement expressly provides that Utility is not obligated under any circumstances to contribute to Taxpayer's nuclear decommissioning trusts for the Leased Interests or to otherwise contribute to the payment of any decommissioning costs associated with the Leased Interests.

Under the terms of the Decommissioning Agreement, Taxpayer is required to maintain the nuclear decommissioning trusts for the Leased Interests in accordance with all applicable laws, including the requirements of Commission 1, Commission 2, and Commission 3. Taxpayer is also required to maintain nuclear decommissioning trust fund balances that are adequate to provide for the payment of decommissioning

costs associated with the Leased Interests, as well as being adequate to fund the decommissioning of Taxpayer's remaining interests in Unit 1 and Unit 2 until decommissioning is complete in compliance with all applicable laws and any requirements of Commission 3.

On Date 6, Taxpayer filed Commission 3 Filing, which sought the approval of Commission 3 to decertify and abandon the Leased Interests at the end of the terms of the Leases. Because the Leased Interests are included in the Certificate issued by Commission 3 for all of Taxpayer's interest in the Facility, Taxpayer requested decertification through the abandonment process in accordance with State A Statute. Taxpayer requested approval to sell and transfer Taxpayer's assets and fuel supply associated with the Leased Interests to Utility.

On Date 7, Taxpayer represents that Commission 3 issued an order dismissing Taxpayer's request to decertify and abandon the Leased Interests essentially on the grounds that Commission 3 approval is unnecessary because such approval had already been granted in the context of Taxpayer's original sale and leaseback transactions and Commission 3 lacks jurisdiction over the proposed sale of certain Taxpayer-owned assets associated with the Leased Interests.

On Date 8, Company, on behalf of Utility and Taxpayer, submitted a request to Commission 1 for consent to transfers from Taxpayer to Utility of the Leased Interests. On Date 9, Company informed Commission 1 of the Date 7 decision of Commission 3 described above. On Date 10, Commission 1 issued an order approving the partial license transfers with respect to the Leased Interests from Taxpayer to Utility.

RULING REQUESTED

Taxpayer's retention of the QNDTs following the termination of the Leases and the partial reduction of Taxpayer's qualified interests in the Units will not result in the disqualification of m% of the Unit 1 QNDT or n% of the Unit 2 QNDT under § 1.468A-5(c).

LAW AND ANALYSIS

Section 468A(a) provides that a taxpayer that elects the application of § 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) provides that the term "nuclear power plant" means any nuclear power reactor used predominantly in the trade or business of the furnishing or sale of electric energy. This section further provides that each unit (i.e., nuclear reactor)

located on a multi-unit site is a separate nuclear power plant. It also provides that the term “nuclear power plant” includes the portion of the common facilities of a multi-unit site allocable to a unit on that site.

Section 1.468A-1(b)(2) provides that the term “qualifying interest” means – (i) a direct ownership interest; and (ii) a leasehold interest in any portion of a nuclear power plant if – (A) the holder of such leasehold interest is primarily liable under federal or state law for decommissioning such portion of the nuclear power plant; and (B) no other person establishes a nuclear decommissioning fund with respect to such portion of the nuclear power plant.

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 such election applies.

Section 1.468A-1(b)(4) provides that the terms “nuclear decommissioning fund” and “qualified nuclear decommissioning fund” mean a fund that satisfies the requirements of § 1.468A-5 (Qualified Fund). It further provides that the term “nonqualified fund” means a fund that does not satisfy those requirements.

Section 1.468A-5(a)(1)(i) provides that a Qualified 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. It further provides that 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)(ii) provides that a separate Qualified Fund is required for each electing taxpayer and for each nuclear power plant with respect to which an electing taxpayer possesses a qualifying interest.

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

Section 1.468A-5(a)(3)(i) provides that the assets of a Qualified 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 § 1.468A-5(a)(3)(i)(A) and (B), to make investments.

Section 468A(e)(6) provides that in any case in which a Qualified Fund violates any provision of §§ 468A or 4951, the Secretary may disqualify such fund from the

application of § 468A and the fund shall be treated as having distributed all of its funds on the date such determination takes effect.

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 Qualified 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)).

RULING

Based upon the information submitted and the representations made, we conclude that Taxpayer's retention of the QNDTs following the termination of the Leases and the partial reduction of Taxpayer's qualifying interests in the Units will not result in the disqualification of any portion of either the Unit 1 QNDT or the Unit 2 QNDT under § 1.468A-5(c).

Except as specifically determined above, no opinion is expressed or implied concerning the federal income or other tax consequences of the matters described above. This ruling is directed only to the taxpayer that 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 party. While this office has not verified any of the material submitted in support of the request for a ruling, they are subject to verification on examination.

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

Sincerely,

Patrick S. Kirwan

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

Enclosure

Copy for § 6110 purposes

cc: