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Person To Contact:
, ID No.

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Refer Reply To:
CC:CORP:B01
PLR-119073-23

Date:
September 05, 2024

TY:

LEGEND

Seller =

Purchaser =

Parent =

DRE 1 =

DRE 2 =

Center =
Unit 1 =
Unit 2 =
Unit 3 =
Unit 4 =
Facility =
Entity 1 =
State A =
State B =
State B Commission =
State C =

Business =

Date 1 =
Date 2 =
a =
b =
c =
d =
Year 1 =
Year 2 =
Year 3 =
Method =
Trustee =

Dear :

This letter is in response to your joint letter dated September 26, 2023, and supplemented by additional letters requesting rulings on certain federal income tax consequences of a proposed transaction described below. The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by appropriate parties. While this office has not verified any of the materials submitted in support of the request for rulings, it is subject to verification on examination.

FACTS

Parent, a State A corporation, indirectly owns a% of the ownership interest in Seller. Entity 1, a State C limited company owns the remaining b% ownership interest in Seller.

Seller is a State A limited liability company taxed as a partnership for federal income tax purposes and files its federal income tax return using the accrual method of accounting. DRE 1, a State A limited liability company, is a wholly owned direct subsidiary of Seller that is disregarded as an entity separate from Seller for federal income tax purposes (a "disregarded entity").

Purchaser, a State A corporation, is a diversified company that is in the nuclear reactor decommissioning business. Purchaser owns DRE 2, a State A limited liability company that is a disregarded entity of Purchaser.

Seller, through DRE 1, owns and operates the Center, which includes Unit 1, Unit 2, Unit 3, and Unit 4 (collectively, the "Units"), as well as an associated Facility for the handling and storing of radioactive materials. With respect to the Units, Seller is subject to the jurisdiction of the Nuclear Regulatory Commission ("NRC") and the State B Commission. Unit 2 was shut down in Year 1; Unit 3 was shut down in Year 2, and Unit 4 was shut down in Year 3. In connection with the Transaction, as defined below, Unit 1 was shut down on Date 1. Since being shut down, Unit 2, Unit 3 and Unit 4 have been maintained in Method, as allowed by the NRC, and Unit 1 has been maintained in a condition substantially the same as Method while awaiting official designation.

Until Date 1, Seller, through DRE 1, utilized Unit 1 and the Facility in the operation of Business. Prior to being shut down, Unit, 2, Unit 3, and Unit 4 were also used in the operation of the Business.

On Date 2, Seller and Purchaser, through DRE 1 and DRE 2 respectively, and the predecessor of Parent executed an Asset Purchase and Sale Agreement ("Purchase Agreement") providing for the acquisition by Purchaser (through DRE 2) of the Center and associated assets, including the Units and the assets comprising the NDT (as described below) ("Transaction"). The Purchase Agreement provides that, on the closing date of the Transaction, Seller will sell, assign, convey, transfer, and deliver to Purchaser the Center and associated assets in consideration for $c and the assumption by Purchaser of the associated nuclear decommissioning liability associated with the Units and the Facility ("NDL"). The Purchase Agreement further required the parties to treat the Transaction as an asset purchase for U.S. federal income tax purposes.

Purchaser, through DRE 2, (i) intends to become the licensee of the Units as granted by the NRC and the State B Commission and (ii) expects to perform the decommissioning of the Units.

Prior to the closing date of the Transaction, Parent will establish a trust fund under the laws of State C for the exclusive purpose of funding the decommissioning of the Units and other related uses permitted under NRC and State B Commission regulations ("NDT"). Parent will transfer approximately $d (the "NDT Amount") to the NDT. The NDT Amount has been calculated by Seller and Purchaser (experts in the nuclear industry and nuclear decommissioning industry respectively) based on the combination of the most recent decommissioning cost studies for the Units and Facility as well as funds required to provide spent nuclear fuel management. Furthermore, the NDT Amount has been accepted by the NRC and State B Commission, which are charged with ensuring sufficient funds are available to decommission the Units. In order to receive a disbursement from the NDT, Purchaser must provide to Trustee a certificate that includes, among other requirements, a description of the nature of the decommissioning costs to be paid and a statement of compliance with 10 CFR § 50.82(a)(8).

The NDT is not a nuclear decommissioning reserve fund as described in section 468A of the Code. Furthermore, the NDT is not a nonqualified nuclear decommissioning fund as described in Treas. Reg. § 1.338-6(c)(5)(ii).

REPRESENTATIONS

Seller has made the following representations with respect to the Transaction:

1. The NDT is a grantor trust under Section 671 and Seller is the grantor of the trust.
2. Seller uses the accrual method of accounting for purposes of Sections 446 and 461.
3. Tax avoidance is not one of Seller's principal purposes for the Transaction.
4. The NDT has at all times been maintained in the United States.
5. DRE 1 is an entity disregarded as separate from Seller for U.S. federal income tax purposes.

Purchaser has made the following representations with respect to the Transaction:

1. Following the closing of the Transaction, the NDT will be a grantor trust under Section 671 and Purchaser will be the grantor of the trust.
2. Following the closing of the Transaction, the NDT will at all times be maintained in the United States.
3. The NDT will be utilized solely in a manner consistent with 10 CFR §§ 50.75(h)(1) and 50.82(a)(8).
4. DRE 2 is an entity disregarded as separate from Purchaser for U.S. federal income tax purposes.

Seller and Purchaser have jointly made the following representations with respect to the Transaction:

1. The Center and its associated assets acquired by Purchaser, including the Units, are of a character such that goodwill or going concern value could under certain circumstances attach to such assets.
2. All assets of the NDT constitute property other than (i) cash and (ii) other Class I assets as defined by Treas. Reg. § 1.338-6(b)(1).

RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Transaction:

1. The Transaction is an "applicable asset acquisition" as defined in Treas. Reg. § 1.1060-1(b) and for purposes of Section 1060 of the Code, and the allocation

rules provided in Treas. Reg. § 1.1060-1(c) and Section 1.338-6(b) will apply with respect to the assets acquired in the Transaction.
2. Seller's amount realized in connection with the Transaction will include the liabilities assumed by Purchaser, including the NDL associated with the Units and the Facility.
3. To the extent that it is included in Seller's amount realized from the Transaction, Seller will be entitled to treat the NDL as satisfying economic performance under Treas. Reg. § 1.461-4(d)(5).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Transaction under any provision of the Code and regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Transaction that is not specifically covered by the above rulings.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting 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.

A copy of this letter must be attached to any 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 (PLR-119073-23) of this letter ruling.

Sincerely,

Gregory J. Galvin

Gregory J. Galvin
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: