Internal Revenue
bulletin

Bulletin No. 2011-7
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HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

T.D. 9508, page 495.
REG–132724–10, page 498.

Temporary and proposed regulations provide guidance about the treatment of fails charges for purposes of sections 871 and 881 of the Code, which generally require gross-basis taxation of foreign persons not otherwise subject to U.S. net-basis taxation and the withholding of such tax under sections 1441 and 1442.

T.D. 9512, page 473.

Final regulations under section 468A of the Code provide guidance regarding contributions to qualified nuclear decommissioning trusts, including changes made to that section by the Energy Policy Act of 2005.

Announcement 2011–9, page 499.

This announcement contains corrections to Rev. Proc. 2011–11, 2011–4 I.R.B. 329, published January 24, 2011, clarifying that the guidance is for calendar year 2011.

EMPLOYEE PLANS

Announcement 2011–16, page 500.

Correction to Revenue Ruling 2011–3 — 2011 covered compensation tables; permitted disparity. Revenue Ruling 2011–3 as it appears in the Internal Revenue Bulletin (IRB) that was published on January 24, 2011 (2011–4 I.R.B. 326) contains a typographical error in Attachment I. Revenue Ruling 2011–3 as it appears in the IRB has been corrected.

ADMINISTRATIVE

Notice 2011–11, page 497.

This notice provides temporary relief by allowing certain tax return preparers who have made a good faith effort to obtain a PTIN to prepare tax returns for compensation even though they have not received a PTIN.

Announcement 2011–9, page 499.

This announcement contains corrections to Rev. Proc. 2011–11, 2011–4 I.R.B. 329, published January 24, 2011, clarifying that the guidance is for calendar year 2011.

Announcement 2011–10, page 499.

This document contains corrections to final regulations (T.D. 9505, 2010–48 I.R.B. 755) providing guidance relating to certain provisions of the Code that apply to hybrid defined benefit pension plans.

Announcement 2011–11, page 500.

This document contains a correction to proposed regulations (REG–132554–08, 2010–48 I.R.B. 783) providing guidance relating to certain provisions of the Code that apply to hybrid defined benefit pension plans.

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 468A.—Special Rules for Nuclear Decommissioning Costs

26 CFR 1.468A–0: Nuclear decommissioning costs; general rules.

T.D. 9512

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1 and 602

Nuclear Decommissioning Funds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 468A of the Internal Revenue Code relating to deductions for contributions to trusts maintained for decommissioning nuclear power plants. These final regulations affect taxpayers that own an interest in a nuclear power plant and reflect recent statutory changes. The corresponding temporary regulations are removed.

DATES: *Effective Date:* These regulations are effective on December 23, 2010.

Applicability Dates: For dates of applicability, see §§1.468A–9, 1.468A–3, and 1.468A–8.

FOR FURTHER INFORMATION CONTACT: Patrick S. Kirwan, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2091. The collections of information in these final regulations are contained in §§1.468A–3, 1.468A–4, 1.468A–7, and 1.468A–8. Responses to these collections of information are required to obtain a tax benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 31, 2007, the IRS and Treasury Department issued a notice of proposed rulemaking (REG–147290–05, 2008–1 C.B. 576 [72 FR 74213]) regarding section 468A of the Internal Revenue Code of 1986 (Code). This proposed rulemaking consisted of a general updating of the prior regulations under section 468A and, in particular, reflected the changes to section 468A made by section 1310 of the Energy Policy Act of 2005 (the Energy Policy Act), Public Law 109–58 (119 Stat. 594).

Written, electronic, and oral comments responding to the notice of proposed rulemaking were received. A public hearing was held on June 17, 2008. After consideration of all of the comments received as well as those comments made at the hearing, these final regulations generally adopt the rules of the proposed regulations with certain clarifications and modifications. The significant comments and modifications are discussed in this preamble.

1. Definitional Matters

A. Definition of Nuclear Decommissioning Costs

One commentator on the proposed regulations suggested that the definition of "nuclear decommissioning costs" be expanded to explicitly include two types of costs that have generally been recognized by the IRS in letter rulings to be included within the ambit of nuclear decommissioning costs. Those two types of costs are (1) costs to decommission structures, systems, and components from a nuclear power plant that continues to produce electric energy; and (2) costs to store spent nuclear fuel pending delivery to a permanent repository. The IRS and Treasury agree that changes such as those proposed by this commentator bring clarity to the final regulations. Accordingly, §1.468A–1(b)(6) of the final regulations provides that costs for the final decommissioning of structures, systems, and components from a nuclear power plant that continues to produce electric energy and costs associated with facilities to store spent nuclear fuel pending delivery to a permanent repository are included within the definition of nuclear decommissioning costs.

B. Estimated Useful Life

Several commentators observed that the term "estimated useful life" was used for two different purposes in the proposed regulations, and that the date on which such estimated useful life would end might differ, depending on the purpose for which the term was used. Estimated useful life of a nuclear power plant is used to calculate the schedule of ruling amounts in §1.468A–3(c)(1). In addition, the same term is used in §1.468A–8(b)(1) and (c)(1) to determine the years over which a taxpayer may deduct a special transfer made under §1.468A–8. One commentator suggested that the IRS add a provision recognizing that the term is used for more than one purpose and that the date of the end of such period may differ depending on the use of the term. The IRS and Treasury agree with this suggestion and have incorporated that change in §1.468A–3(c)(2)(iii) of the final regulations.

2. Matters Relating to Special Transfers and Schedules of Deduction Amounts

A. General Comment

One commentator suggested that the proposed requirement that a taxpayer

obtain a schedule of deduction amounts with respect to a special transfer was not required by the statute and indeed such requirement constituted an impermissible overreaching by the IRS and Treasury. The commentator suggested that, in lieu of a schedule of deduction amounts, the final regulations simply provide that the IRS will rule on the maximum special transfer amount and allow the taxpayer to calculate the *pro rata* portion of that amount over the remaining estimated useful life of the nuclear power plant. The commentator expressed concern that the ruling from the IRS might provide a schedule of deduction amounts in excess of the actual appropriate deductible amounts or, alternatively, that the schedule would not allow a taxpayer to deduct more than a *pro rata* share of the amount that the taxpayer may choose to contribute, even if that amount is less than the maximum special transfer amount. The IRS and Treasury do not believe that these concerns justify a change in the regulations. Section 468A permits deduction of the amount of a special transfer and requires the taxpayer to obtain from the Secretary a new schedule of ruling amounts in connection with the transfer. The IRS and Treasury believe that the schedule of deduction amounts is an appropriate adjunct to the schedule of ruling amounts required in connection with the special transfer. Moreover, concerns regarding the deduction amounts provided in the schedule of deduction amounts are unwarranted. When the IRS issues a schedule of deduction amounts, that schedule allocates the requested special transfer amount (or the maximum allowable special transfer amount if the taxpayer has requested an excessive amount) over the remaining estimated useful life of the nuclear power plant. Thus, the schedule will not provide for deductions in excess of the actual appropriate deductible amounts. With respect to the commentator's alternative concern, the IRS and Treasury believe that the rule limiting deductions to a *pro rata* share of the amount of the special transfer (rather than a *pro rata* share of the maximum amount that could have been transferred) is consistent with section 468A(f)(2)(A), which provides that the deduction allowed "for any transfer" shall be allowed ratably over the remaining useful life.

B. Deemed Payment Date for Special Transfers

Several commentators observed that the proposed regulations did not specify the deemed payment date for special transfers. While taxpayers generally assumed that the deemed payment date for special transfers was the same as that for the contributions of ruling amounts, they requested that the IRS resolve the ambiguity. The IRS and Treasury agree that this possible ambiguity should be resolved and, therefore, clarifying changes are included in §§1.468A–7(b)(4) and 1.468A–8(a).

C. Extension of Deadline for Actual Payment of Special Transfers

Several commentators requested that the IRS and Treasury provide certain transitional relief for taxpayers seeking to make special transfers relating to taxable years in which taxpayers did not have the benefit of the clarifications provided in these regulations. The transitional relief requested included an extension of the time to request a ruling regarding the special transfer for a taxable year as well as a rule allowing the special transfer to relate back to that year. The final regulations provide the requested transitional relief. Under §1.468A–8 (d)(1) the ruling request for a special transfer relating to a taxable year beginning in 2006, 2007, 2008, or 2009 is timely if filed with the IRS within 60 days after the date of publication of these final regulations in the **Federal Register**. Under §1.468A–8(a), a special transfer that the taxpayer designates as relating to such a year is deemed made during the year provided that the special transfer amount is transferred to the qualified fund within 90 days after the taxpayer receives a ruling from the Secretary allowing such special transfer.

One commentator noted that the proposed regulations do not address the case of a taxpayer that has requested a schedule of deduction amounts from the IRS but has not received the necessary ruling prior to the payment deadline. Under §1.468A–3(g), a taxpayer that has requested a ruling from the IRS on a schedule of ruling amounts may contribute the ruling amount proposed in its ruling request in those circumstances. The commentator requested a similar rule for special transfers. The final regulations provide such a rule for special transfers in §1.468A–8(c).

D. Special Transfers with Respect to Nuclear Power Plants that have been Transferred

A commentator suggested that the owner of a nuclear power plants that had a qualifying percentage of less than 100 percent under pre–2005 law should be allowed to make a special transfer so that the entire cost of decommissioning the plant can be covered by the qualified fund even if the current owner purchased the plant and was not the owner prior to the enactment of section 468A. The final regulations clarify that when §1.468A–6 (relating to nonrecognition of gain or loss on certain fund transfers) applies to the transfer of a qualified fund (or part or all of its assets) the transferee succeeds to the transferor's qualifying percentage. If §1.468A–6 does not apply to the transfer and the transferee's fund is treated as a completely new fund, the transferee cannot make a special transfer but the entire cost of decommissioning the plant can be funded by increasing annual deductible contributions over the remaining useful life of the plant through a schedule of ruling amounts that is determined without regard to the qualifying percentage limitation that applied under pre–2005 law.

E. Special Transfer over More Than One Year

A commentator suggested that the regulations should allow a taxpayer making a special transfer over several years to get a single ruling for the entire special transfer. It has been the ruling policy of the IRS to provide, in a single ruling, multiple schedules of deduction amounts where a taxpayer requests rulings on special transfers made over several years. The final regulations incorporate this ruling policy in §1.468A–8(c)(2).

F. Acceleration of Special Transfer Deduction

Although deductions for special transfers are generally allowed ratably over the plant's remaining useful life, a special rule applies if the fund is transferred before the end of the remaining useful life. In that

case, the entire remaining deduction for the special transfer is allowed in the year the fund is transferred. This acceleration allows the taxpayer to close its books on the asset. Section 1.468A–8T(b)(3)(ii) of the temporary regulations provides that, in the case of a transfer of a qualified nuclear decommissioning fund to a related person, the transferee's ruling amounts will be adjusted to the extent necessary to offset the benefit provided by the acceleration of deductions. One commentator suggested that the acceleration of the special transfer deduction should be viewed as on offset to the timing detriment the transferor previously incurred because it was unable to fully fund decommissioning costs under pre–2005 law. The commentator further suggested that transfers to affiliates should not be treated less favorably than transfers to non-affiliates. The IRS and Treasury recognize that the transferor may have incurred a timing detriment, but section 468A clearly provides that this detriment is to be offset ratably over the remaining estimated useful life of the plant rather than all at once. While the statute provides for acceleration of the deduction when the fund is transferred, the IRS and Treasury continue to believe that such acceleration provides an inappropriate benefit to a taxpayer that directly or indirectly retains an interest in the plant and that failure to recapture the benefit in those circumstances would frustrate the intent of Congress in providing for the ratable deduction of the special transfer amount. Thus, the final regulations retain the limitation on the acceleration of the deduction for special transfers where the plant is transferred to an affiliated party.

G. Basis of Property Contributed in a Special Transfer

Taxpayers may make special transfers of property other than cash. Section 468A(f)(2)(D) provides that no gain or loss is recognized on the transfer and that for transfers of appreciated property the amount of the deduction shall not exceed the adjusted basis of the property. The legislative history (footnote 16 of H. Rep. 109–45) includes the following discussion relating to such transfers:

> A taxpayer recognizes no gain or loss on the contribution of property to a qualified fund under this special rule. The qualified fund will take a transferred (carryover) basis in such property. Correspondingly, a taxpayer's deduction (over the estimated life of the powerplant) is to be based on the adjusted tax basis of the property contributed rather than the fair market value of such property.

Although the legislative history does not distinguish between appreciated property and property with a value less than its basis (built-in loss property), the statutory language makes it clear that the rule basing the deduction on the property's adjusted tax basis applies only to appreciated property. Accordingly, the proposed regulations provided that the deduction for property contributed in a special transfer is limited to the lesser of fair market value or the transferor's adjusted basis in the property. One commentator disagreed with this rule and recommended that the regulations allow a deduction equal to basis for contributions of built-in loss property. The commentator noted that section 362, a nonrecognition provision similar to section 468A, provides for a stepped-down basis in the hands of the transferee for built-in loss property. The commentator argued for adoption of rules similar to those in section 362 so that the transferor would get a deduction of its adjusted basis in the property and the qualified fund would get a "stepped-down" basis of the fair market value at the time of transfer. The commentator also noted the unfairness of limiting the deduction for built-in loss property to fair market value where the transferee is taxed at a higher rate than the qualified fund.

The IRS and Treasury recognize that the transferor and the fund could achieve generally the same result as the commentator proposes by selling the loss property and contributing the proceeds to the qualified fund which could use the proceeds to repurchase the property. To eliminate the need for such transactions, the final regulations provide that the transferor may deduct the adjusted basis of built-in loss property contributed to a fund if the fund elects to treat the fair market value of the property as its adjusted basis. Further, the final regulations provide that this election may be made and a deduction equal to basis will be allowed for built-in loss property contributed before December 23, 2010. In such cases, the election may be made and the deduction equal to basis may be claimed by filing an amended tax return.

H. Miscellaneous Special Transfer Issues

(i) One commentator noted that the schedule of deduction amounts is calculated based on the "pre–2005 nonqualifying amount" and recommends that this be changed to the pre–2006 nonqualifying amount. The commentator correctly notes that, while the changes to section 468A were made by the Energy Policy Act of 2005, those changes were effective for tax years beginning after December 31, 2005. The modifier "pre–2005" refers to the state of section 468A prior to the changes made by the Energy Policy Act of 2005. The pre–2005 nonqualifying amount referred to in the proposed regulations was fixed years before and was not determined by reference to the effective date of the Energy Policy Act of 2005. Thus, the modifier "pre–2005 nonqualifying amount" is retained in the final regulations.

(ii) Section 1.468A–3(f)(1)(iii) of the proposed regulations requires that a taxpayer request a new schedule of ruling amounts when requesting a schedule of deduction amounts. The revised schedule of ruling amounts must apply beginning with the first taxable year for which a deduction is allowed under the schedule of deduction amounts. One commentator suggested that the new schedule of ruling amounts should not apply until the following year because the special transfer may actually occur at any time during the first taxable year in which a deduction is allowed under the schedule of deduction amounts (and under the deemed payment rules may occur during the first two-and-a-half months of the following taxable year). Section 1.468A–3(f)(1)(iii) of the final regulations adopts this suggestion.

(iii) Section 1.468A–8(a)(2) of the proposed regulations provides that the present value of estimated future decommissioning costs is determined as of the first day of the taxable year of the taxpayer in which the special transfer is made. One commentator noted that the special transfer may be made after the first day of the taxable year and suggested that the regulations permit determinations of present value as of an alternative date. The final regulations permit the use of an alternative date that is

not later than the date on which the special transfer is made if the taxpayer establishes that the determination of present value as of such date is reasonable and consistent with the principles and provisions of §1.468A–8.

3. Transfers of Nuclear Power Plants and their Associated Qualified Funds

A. Ambiguity Relating to a Plant that has Ceased Producing Electric Energy

The proposed regulations, at §1.468A–6(a), provide that, for purposes of determining the tax consequences of the transfer of a qualified fund associated with a nuclear power plant, a nuclear power plant includes a plant that previously qualified as a nuclear power plant but that has permanently ceased producing electric energy. One commentator notes that this provision apparently allows the tax-free transfer of a qualified fund associated with a plant that has permanently ceased producing electric energy if all the other requirements of §1.468A–6 are satisfied. That was the intended effect of the provision and it is retained in the final regulations.

B. Tax-Free Transfer of a Qualified Fund

The proposed regulations, at §1.468A–6(b)(3)(i), require that, in order to qualify as a tax-free transfer of a qualified fund, the transferee of a nuclear power plant and its associated qualified fund must acquire that portion of the qualified fund equal to the proportionate amount of the nuclear power plant acquired. One commentator expressed disagreement with this rule, arguing that the rule as it exists requires a choice between potential disqualification of the entire fund and over-funding the qualified fund.

The commentator's position would allow for the removal of assets at transfer when their value is high and perhaps leave the fund without sufficient assets to provide for decommissioning. This is contrary to the general rule of section 468A, which does not permit withdrawals from a qualified fund except to pay for decommissioning and the cost of administering the fund. The IRS and Treasury believe a primary purpose of section 468A is to ensure that adequate assets will be available to decommission the nuclear power plant. Given the long life of nuclear power plants and the variability of investment returns, what may appear to be overfunding in one decade may be inadequate in the next. Moreover, the IRS and Treasury believe that overfunding can be adequately addressed by reducing future payments to the qualified funds.

4. Miscellaneous Matters

A. Minor Changes in Wording to Reflect Deregulation in Certain Jurisdictions

The proposed regulations, in §§1.468A–3(a)(2)(i) and 1.468A–3(e)(2)(vi)(H), refer to "amounts collected for" the qualified fund. One commentator noted that in certain jurisdictions that have undergone deregulation, amounts are no longer collected for the qualified funds. The final regulations refer, instead, to the "assets of" the qualified fund.

B. New Schedule of Ruling Amounts When License is Extended

Section 1.468A–3(f)(1)(iv) of the proposed regulations requires that a taxpayer request a revised schedule of ruling amounts by the deemed payment deadline for the year in which the operating license for the nuclear power plant is extended by the Nuclear Regulatory Commission (NRC). One commentator requested that the deadline for requesting a revised schedule of ruling amounts be extended to the deemed payment deadline for the year following the year in which the operating license is extended by the NRC. The commentator argued that the NRC could act late in the year and give the taxpayer little time to prepare the request for the revised schedule of ruling amounts. The IRS and Treasury believe that the deadline in the proposed regulations provides sufficient time to prepare and submit a request for a revised schedule of ruling amounts and it is retained in the final regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The proposed regulations do not impose a collection of information on small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Patrick S. Kirwan, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.468A–5 also issued under 26 U.S.C. 468A(e)(5). * * *

§§1.468A–0T through 1.468A–9T [Removed]

Par. 2. Sections 1.468A–0T through 1.468A–9T are removed.

Par. 3. Sections 1.468A–0 through 1.468A–9 are added to read as follows:

§1.468A–0 Nuclear decommissioning costs; table of contents.

This section lists the paragraphs contained in §§1.468A–1 through 1.468A–9.

§1.468A–1 Nuclear decommissioning costs; general rules.

(a) Introduction.

(b) Definitions.

(c) Special rules applicable to certain experimental nuclear facilities.

§1.468A–2 Treatment of electing taxpayer.

(a) In general.
(b) Limitation on payments to a nuclear decommissioning fund.
(1) In general.
(2) Excess contributions not deductible.
(c) Deemed payment rules.
(1) In general.
(2) Cash payment by customer.
(d) Treatment of distributions.
(1) In general.
(2) Exceptions to inclusion in gross income.
(i) Payment of administrative costs and incidental expenses.
(ii) Withdrawals of excess contributions.
(iii) Actual distributions of amounts included in gross income as deemed distributions.
(e) Deduction when economic performance occurs.

§1.468A–3 Ruling amount.

(a) In general.
(b) Level funding limitation.
(c) Funding period.
(d) Decommissioning costs allocable to a fund.
(1) General rule.
(2) Total estimated cost of decommissioning.
(3) Taxpayer's share.
(e) Manner of requesting schedule of ruling amounts.
(1) In general.
(2) Information required.
(3) Administrative procedures.
(f) Review and revision of schedule of ruling amounts.
(1) Mandatory review.
(2) Elective review.
(3) Determination of revised schedule of ruling amounts.
(g) Special rule permitting payments to a nuclear decommissioning fund before receipt of an initial or revised ruling amount applicable to a taxable year.

§1.468A–4 Treatment of nuclear decommissioning fund.

(a) In general.
(b) Modified gross income.
(c) Special rules.
(1) Period for computation of modified gross income.
(2) Gain or loss upon distribution of property by a fund.
(3) Denial of credits against tax.
(4) Other corporate taxes inapplicable.
(d) Treatment as corporation for purposes of subtitle F.

§1.468A–5 Nuclear decommissioning fund—miscellaneous provisions.

(a) Qualification requirements.
(1) In general.
(2) Limitation on contributions.
(3) Limitation on use of fund.
(i) In general.
(ii) Definition of administrative costs and expenses.
(4) Trust provisions.
(b) Prohibitions against self-dealing.
(1) In general.
(2) Self-dealing defined.
(3) Disqualified person defined.
(c) Disqualification of nuclear decommissioning fund.
(1) In general.
(2) Exception to disqualification.
(i) In general.
(ii) Excess contribution defined.
(iii) Taxation of income attributable to an excess contribution.
(3) Effect of disqualification.
(4) Further effects of disqualification.
(d) Termination of nuclear decommissioning fund upon substantial completion of decommissioning.
(1) In general.
(2) Additional rules.
(3) Substantial completion of decommissioning defined.

§1.468A–6 Disposition of an interest in a nuclear power plant.

(a) In general.
(b) Requirements.
(c) Tax consequences.
(1) The transferor and its Fund.
(2) The transferee and its Fund.
(3) Basis.
(d) Determination of proportionate amount.
(e) Calculation of schedule of ruling amounts and schedule of deduction amounts for dispositions described in this section.
(1) Transferor.
(i) Taxable year of disposition.
(ii) Taxable years after the disposition.
(2) Transferee.
(i) Taxable year of disposition.
(ii) Taxable years after the disposition.
(3) Examples.
(f) Anti-abuse provision.

§1.468A–7 Manner of and time for making election.

(a) In general.
(b) Required information.

§1.468A–8 Special transfers to qualified funds pursuant to section 468A(f).

(a) General rule.
(1) In general.
(2) Pre–2005 nonqualifying amount.
(i) In general.
(ii) Pre–2005 nonqualifying amount of transferee.
(3) Transfers in multiple years.
(4) Deemed payment rules.
(i) In general.
(ii) Special rule for certain transfers.
(b) Deduction for amounts transferred.
(1) In general.
(2) Amount of deduction.
(i) General Rule.
(ii) Election.
(A) In general.
(B) Manner of making election.
(C) Election allowed for property transferred prior to December 23, 2010.
(3) Denial of deduction for previously deducted amounts.
(4) Transfers of qualified nuclear decommissioning funds.
(5) Special rules.
(i) Gain or loss not recognized on transfers to fund.
(ii) Taxpayer basis in fund.
(iii) Fund basis in transferred property.
(A) In general.
(B) Basis in case of election.
(c) Schedule of deductions required.
(1) In general.
(2) Transfers in multiple taxable years.
(3) Transfer of partial interest in fund.
(4) Special transfer permitted before receipt of schedule.
(d) Manner of requesting schedule of deduction amounts.
(1) In general.
(2) Information required.
(3) Statement required.
(4) Administrative procedures.

§1.468A–9 Effective/applicability date.

§1.468A–1 Nuclear decommissioning costs; general rules.

(a) *Introduction*. Section 468A provides an elective method for taking into account nuclear decommissioning costs for Federal income tax purposes. In general, an eligible taxpayer that elects the application of section 468A pursuant to the rules contained in §1.468A–7 is allowed a deduction (as determined under §1.468A–2) for the taxable year in which the taxpayer makes a cash payment to a nuclear decommissioning fund. Taxpayers using an accrual method of accounting that do not elect the application of section 468A are not allowed a deduction for nuclear decommissioning costs prior to the taxable year in which economic performance occurs with respect to such costs (see section 461(h)).

(b) *Definitions*. The following terms are defined for purposes of section 468A and §§1.468A–1 through 1.468A–9:

(1) The term *eligible taxpayer* means any taxpayer that possesses a qualifying interest in a nuclear power plant (including a nuclear power plant that is under construction).

(2) 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 the 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.

(3) The term *direct ownership interest* includes an interest held as a tenant in common or joint tenant, but does not include stock in a corporation that owns a nuclear power plant or an interest in a partnership that owns a nuclear power plant. Thus, in the case of a partnership that owns a nuclear power plant, the election under section 468A must be made by the partnership and not by the partners. In the case of an unincorporated organization described in §1.761–2(a)(3) that elects under section 761(a) to be excluded from the application of subchapter K, each taxpayer that is a co-owner of the nuclear power plant is eligible to make a separate election under section 468A.

(4) The terms *nuclear decommissioning fund* and *qualified nuclear decommissioning fund* mean a fund that satisfies the requirements of §1.468A–5. The term *nonqualified fund* means a fund that does not satisfy those requirements.

(5) The term *nuclear power plant* means any nuclear power reactor that is used predominantly in the trade or business of the furnishing or sale of electric energy. Each unit (that is, nuclear reactor) located on a multi-unit site is a separate nuclear power plant. The term *nuclear power plant* also includes the portion of the common facilities of a multi-unit site allocable to a unit on that site.

(6) The term *nuclear decommissioning costs* or *decommissioning costs* includes 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. Such 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. Such 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. Such term does not include otherwise deductible expenses to be incurred in connection with the disposal of spent nuclear fuel under the Nuclear Waste Policy Act of 1982 (Public Law 97–425). An expense is otherwise deductible for purposes of this paragraph (b)(6) if it would be deductible under chapter 1 of the Internal Revenue Code without regard to section 280B.

(7) The term *public utility commission* means any State or political subdivision thereof, any agency, instrumentality or judicial body of the United States, or any judicial body, commission or other similar body of the District of Columbia or of any State or any political subdivision thereof that establishes or approves rates for the furnishing or sale of electric energy.

(8) The term *ratemaking proceeding* means any proceeding before a public utility commission in which rates for the furnishing or sale of electric energy are established or approved. Such term includes a generic proceeding that applies to two or more taxpayers that are subject to the jurisdiction of a single public utility commission.

(9) The term *special transfer* means any transfer of funds to a qualified nuclear decommissioning fund pursuant to §1.468A–8.

(c) *Special rules applicable to certain experimental nuclear facilities*. (1) The owner of a qualifying interest in an experimental nuclear facility possesses a qualifying interest in a nuclear power plant for purposes of paragraph (b) of this section if such person is engaged in the trade or business of the furnishing or sale of electric energy.

(2) An owner of stock in a corporation that owns an experimental nuclear facility possesses a qualifying interest in a nuclear power plant for purposes of paragraph (b)(1) of this section if—

(i) Such stockholder satisfies the conditions of paragraph (c)(1) of this section; and

(ii) The corporation that directly owns the facility is not engaged in the trade or business of the furnishing or sale of electric energy.

(3) For purposes of this paragraph (c), an experimental nuclear facility is a nuclear power reactor that is used predominantly for the purpose of conducting experimentation and research.

§1.468A–2 Treatment of electing taxpayer.

(a) *In general*. An eligible taxpayer that elects the application of section 468A pursuant to the rules contained in §1.468A–7 (an electing taxpayer) is allowed a deduction for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment as provided in paragraph (c) of this section) to a nuclear decommissioning fund and for any taxable year in which a deduction is allowed for

a special transfer described in §1.468A–8. The amount of the deduction for any taxable year equals the total amount of cash payments made (or deemed made) by the electing taxpayer to a nuclear decommissioning fund (or nuclear decommissioning funds) during such taxable year under this section, plus any amount allowable as a deduction in that taxable year for a special transfer described in §1.468A–8. The amount of a special transfer permitted under §1.468A–8 is not treated as a cash payment for purposes of this paragraph (a), and a taxpayer making a special transfer is allowed a ratable deduction in each taxable year during the remaining useful life of the nuclear power plant for the special transfer. A payment may not be made (or deemed made) to a nuclear decommissioning fund before the first taxable year in which all of the following conditions are satisfied:

(1) The construction of the nuclear power plant to which the nuclear decommissioning fund relates has commenced.

(2) A ruling amount is applicable to the nuclear decommissioning fund (see §1.468A–3).

(b) *Limitation on payments to a nuclear decommissioning fund*—(1) *In general*. For purposes of paragraph (a) of this section, the maximum amount of cash payments made (or deemed made) to a nuclear decommissioning fund under paragraph (a) of this section during any taxable year shall not exceed the ruling amount applicable to the nuclear decommissioning fund for such taxable year (as determined under §1.468A–3).

(2) *Excess contributions not deductible*. If the amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year exceeds the limitation of paragraph (b)(1) of this section, the excess is not deductible by the electing taxpayer. In addition, see paragraph (c) of §1.468A–5 for rules which provide that the Internal Revenue Service may disqualify a nuclear decommissioning fund if the amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year exceeds the limitation of paragraph (b)(1) of this section.

(3) *Special transfer disregarded*. The amount of a special transfer permitted under §1.468A–8 is not treated as a cash payment for purposes of this paragraph (b).

(c) *Deemed payment rules*—(1) *In general*. The amount of any cash payment made by an electing taxpayer to a nuclear decommissioning fund on or before the 15th day of the third calendar month after the close of any taxable year (the deemed payment deadline date) shall be deemed made during such taxable year if the electing taxpayer irrevocably designates the amount as relating to such taxable year on its timely filed Federal income tax return for such taxable year (see §1.468A–7(b)(4)(iii) and (iv) for rules relating to such designation).

(2) *Cash payment by customer*. The amount of any cash payment made by a customer of an electing taxpayer to a nuclear decommissioning fund of such electing taxpayer shall be deemed made by the electing taxpayer if the amount is included in the gross income of the electing taxpayer in the manner prescribed by section 88 and §1.88–1.

(d) *Treatment of distributions*—(1) *In general*. Except as otherwise provided in paragraph (d)(2) of this section, the amount of any actual or deemed distribution from a nuclear decommissioning fund shall be included in the gross income of the electing taxpayer for the taxable year in which the distribution occurs. The amount of any distribution of property equals the fair market value of the property on the date of the distribution. See §1.468A–5(c) and (d) for rules relating to the deemed distribution of the assets of a nuclear decommissioning fund in the case of a disqualification or termination of the fund. A distribution from a nuclear decommissioning fund shall include an expenditure from the fund or the use of the fund's assets—

(i) To satisfy, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the fund relates; and

(ii) To pay administrative costs and other incidental expenses of the fund.

(2) *Exceptions to inclusion in gross income*—(i) *Payment of administrative costs and incidental expenses*. The amount of any payment by a nuclear decommissioning fund for administrative costs or other incidental expenses of such fund (as defined in §1.468A–5(a)(3)(ii)) shall not be included in the gross income of the electing taxpayer unless such amount is paid to the electing taxpayer (in which case the amount of the payment is included in the gross income of the electing taxpayer under section 61).

(ii) *Withdrawals of excess contributions*. The amount of a withdrawal of an excess contribution (as defined in §1.468A–5(c)(2)(ii)) by an electing taxpayer pursuant to the rules of §1.468A–5(c)(2) shall not be included in the gross income of the electing taxpayer. See paragraph (b)(2) of this section, which provides that the payment of such amount to the nuclear decommissioning fund is not deductible by the electing taxpayer.

(iii) *Actual distributions of amounts included in gross income as deemed distributions*. If the amount of a deemed distribution is included in the gross income of the electing taxpayer for the taxable year in which the deemed distribution occurs, no further amount is required to be included in gross income when the amount of the deemed distribution is actually distributed by the nuclear decommissioning fund. The amount of a deemed distribution is actually distributed by a nuclear decommissioning fund as the first actual distributions are made by the nuclear decommissioning fund on or after the date of the deemed distribution.

(e) *Deduction when economic performance occurs*. An electing taxpayer using an accrual method of accounting is allowed a deduction for nuclear decommissioning costs no earlier than the taxable year in which economic performance occurs with respect to such costs (see section 461(h)(2)). The amount of nuclear decommissioning costs that is deductible under this paragraph (e) is determined without regard to section 280B (see §1.468A–1(b)(6)). A deduction is allowed under this paragraph (e) whether or not a deduction was allowed with respect to such costs under section 468A(a) and paragraph (a) of this section for an earlier taxable year.

§1.468A–3 Ruling amount.

(a) *In general*. (1) Except as otherwise provided in paragraph (g) of this section or in §1.468A–8 (relating to deductions for special transfers into a nuclear decommissioning fund), an electing taxpayer is allowed a deduction under section 468A(a) for the taxable year in which the taxpayer makes a cash payment (or

is deemed to make a cash payment) to a nuclear decommissioning fund only if the taxpayer has received a schedule of ruling amounts for the nuclear decommissioning fund that includes a ruling amount for such taxable year. Except as provided in paragraph (a)(4) or (5) of this section, a schedule of ruling amounts for a nuclear decommissioning fund (*schedule of ruling amounts*) is a ruling (within the meaning of §601.201(a)(2) of this chapter) specifying the annual payments (ruling amounts) that, over the taxable 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 greater than) the amount of decommissioning costs allocable to the fund. The projected balance of a nuclear decommissioning fund as of the last day of the funding period shall be calculated by taking into account the fair market value of the assets of the fund as of the first day of the first taxable year to which the schedule of ruling amounts applies and the estimated rate of return to be earned by the assets of the fund after payment of the estimated administrative costs and incidental expenses to be incurred by the fund (as defined in §1.468A–5(a)(3)(ii)), including all Federal, State and local income taxes to be incurred by the fund (the after-tax rate of return). See paragraph (c) of this section for a definition of funding period and paragraph (d) of this section for guidance with respect to the amount of decommissioning costs allocable to a fund.

(2) Each schedule of ruling amounts must be consistent with the principles and provisions of this section and must be based on reasonable assumptions concerning—

(i) The after-tax rate of return to be earned by the assets of the qualified nuclear decommissioning fund;

(ii) The total estimated cost of decommissioning the nuclear power plant (see paragraph (d)(2) of this section); and

(iii) The frequency of contributions to a nuclear decommissioning fund for a taxable year (for example, monthly, quarterly, semi-annual or annual contributions).

(3) The Internal Revenue Service (IRS) shall provide a schedule of ruling amounts that is identical to the schedule of ruling amounts proposed by the taxpayer in connection with the taxpayer's request for a schedule of ruling amounts (see paragraph (e)(2)(viii) of this section), but no schedule of ruling amounts shall be provided unless the taxpayer's proposed schedule of ruling amounts is consistent with the principles and provisions of this section and is based on reasonable assumptions. If a proposed schedule of ruling amounts is not consistent with the principles and provisions of this section or is not based on reasonable assumptions, the taxpayer may propose an amended schedule of ruling amounts that is consistent with such principles and provisions and is based on reasonable assumptions.

(4) The taxpayer bears the burden of demonstrating that the proposed schedule of ruling amounts is consistent with the principles and provisions of this section and is based on reasonable assumptions. 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 an alternative means of demonstrating that the taxpayer has calculated its proposed schedule of ruling amounts on a reasonable basis. Consistency with financial accounting statements is not sufficient, in the absence of other supporting evidence, to meet the taxpayer's burden of proof under this paragraph (a)(4).

(5) The IRS will approve, at the request of the taxpayer, a formula or method for determining a schedule of ruling amounts (rather than providing a schedule specifying a dollar amount for each taxable year) if the formula or method is consistent with the principles and provisions of this section and is based on reasonable assumptions. See paragraph (f)(1)(ii) of this section for a special rule relating to the mandatory review of ruling amounts that are determined pursuant to a formula or method.

(6) The IRS may, in its discretion, provide a schedule of ruling amounts that is determined on a basis other than the rules of paragraphs (a) through (d) of this section if—

(i) In connection with its request for a schedule of ruling amounts, the taxpayer explains the need for special treatment and sets forth an alternative basis for determining the schedule of ruling amounts; and

(ii) The IRS determines that special treatment is consistent with the purpose of section 468A.

(b) *Level funding limitation*. (1) Except as otherwise provided in paragraph (b)(3) of this section, the ruling amount specified in a schedule of ruling amounts for any taxable year in the funding period (as defined in paragraph (c) of this section) shall not be less than the ruling amount specified in such schedule for any earlier taxable year.

(2) The ruling amount specified in a schedule of ruling amounts for a taxable year after the end of the funding period may be less than the ruling amount specified in such schedule for an earlier taxable year.

(3) 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, the amount specified for the last taxable year is not less than the amount specified for such earlier taxable year. The amount specified for the last taxable year is annualized by—

(i) Determining the number of days between the beginning of the taxable year and the end of the plant's estimated useful life;

(ii) Dividing the amount specified for the last taxable year by such number of days; and

(iii) Multiplying the result by the number of days in the last taxable year (generally 365).

(c) *Funding period*—(1) *In general*. For purposes of this section, the funding period for a nuclear decommissioning fund is the period that—

(i) Begins on the first day of the first taxable year for which a deductible payment is made (or deemed made) to such nuclear decommissioning fund (see §1.468A–2(a) for rules relating to the first taxable year for which a payment may be made (or deemed made) to a nuclear decommissioning fund); and

(ii) 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 nuclear decommissioning fund relates.

(2) *Estimated useful life*. The last day of the estimated useful life of a nuclear power plant is determined under the following rules:

(i) Except as provided in paragraph (c)(2)(ii) of this section—

(A) The last day of the estimated useful life of a nuclear power plant that has been included in rate base for ratemaking purposes in any ratemaking proceeding that established rates for a period before January 1, 2006, is 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 for ratemaking purposes;

(B) The last day of the estimated useful life of a nuclear power plant that is not described in paragraph (c)(2)(i)(A) of this section is the last day of the estimated useful life of the plant determined as of the date it is placed in service;

(C) A taxpayer with an interest in a plant that is not described in paragraph (c)(2)(i)(A) of this section may use any reasonable method for determining the last day of such estimated useful life; and

(D) A reasonable method for purposes of paragraph (c)(2)(i)(C) of this section may include use of the period for which a public utility commission has included a comparable nuclear power plant in rate base for ratemaking purposes.

(ii) If it can be established that the estimated useful life of the nuclear power plant will end on a date other than the date determined under paragraph (c)(2)(i) of this section, the taxpayer may use such other date as the last day of the estimated useful life but is not required to do so. If the last day of the estimated useful life was determined under paragraph (c)(2)(i)(A) of this section and the most recent ratemaking proceeding used an alternative date as the estimated date on which the nuclear power plant will no longer be included rate base, the most recent ratemaking proceeding will generally be treated as establishing such alternative date as the last day of the estimated useful life.

(iii) The estimated useful life of a nuclear power plant determined for purposes of paragraph (c)(1) of this section may end on a different date from the estimated useful life of a nuclear power plant determined for purposes of §1.468A–8(b)(1) and (c)(1).

(d) *Decommissioning costs allocable to a fund*. The amount of decommissioning costs allocable to a nuclear decommissioning fund is determined for purposes of this section by applying the following rules and definitions:

(1) *General rule*. 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 to which the fund relates.

(2) *Total estimated cost of decommissioning*. Under paragraph (a)(2) of this section, the taxpayer must demonstrate the reasonableness of the assumptions concerning the total estimated cost of decommissioning the nuclear power plant.

(3) *Taxpayer's share*. The taxpayer's share of the total estimated cost of decommissioning a nuclear power plant equals the total estimated cost of decommissioning such nuclear power plant multiplied by the percentage of such nuclear power plant that the qualifying interest of the taxpayer represents. (See §1.468A–1(b)(2) for circumstances in which a taxpayer possesses a qualifying interest in a nuclear power plant).

(e) *Manner of requesting schedule of ruling amounts*—(1) *In general*. (i) In order to receive a ruling amount for any taxable year, a taxpayer must file a request for a schedule of ruling amounts that complies with the requirements of this paragraph (e), the applicable procedural rules set forth in §601.201(e) of this chapter (Statement of Procedural Rules), and the requirements of any applicable revenue procedure that is in effect on the date the request is filed.

(ii) A separate request for a schedule of ruling amounts is required for each nuclear decommissioning fund established by a taxpayer. (See paragraph (a) of §1.468A–5 for rules relating to the number of nuclear decommissioning funds that a taxpayer can establish.)

(iii) Except as provided by §§1.468A–5(a)(1)(iv) (relating to certain unincorporated organizations that may be taxable as corporations) and 1.468A–8 (relating to a special transfer under section 468A(f)(1)), a request for a schedule of ruling amounts must not contain a request for a ruling on any other issue, whether the issue involves section 468A or another section of the Internal Revenue Code.

(iv) In the case of an affiliated group of corporations that join in the filing of a consolidated return, the common parent of the group may request a schedule of ruling amounts for each member of the group that possesses a qualifying interest in the same nuclear power plant by filing a single submission with the IRS.

(v) The IRS will not provide or revise a ruling amount 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 (as defined in §1.468A–2(c)(1)) for such taxable year. In determining the date when a request is filed, the principles of sections 7502 and 7503 shall apply.

(vi) Except as provided in paragraph (e)(1)(vii) of this section, a request for a schedule of ruling amounts shall be considered filed only if such request complies substantially with the requirements of this paragraph (e).

(vii) If a request does not comply substantially with the requirements of this paragraph (e), the IRS will notify the taxpayer of that fact. If the information or materials necessary to comply substantially with the requirements of this paragraph (e) are provided to the IRS within 30 days after this notification, the request will be considered filed on the date of the original submission. In addition, the request will be considered filed on the date of the original submission in a case in which the information and materials are provided more than 30 days after the notification if the IRS determines that the electing taxpayer made a good faith effort to provide the applicable information or materials within 30 days after notification and also determines that treating the request as filed on the date of the original submission is consistent with the purposes of section 468A. In any other case in which the information or materials

necessary to comply substantially with the requirements of this paragraph (e) are not provided within 30 days after the notification, the request will be considered filed on the date that all information or materials necessary to comply with the requirements of this paragraph (e) are provided.

(2) *Information required.* A request for a schedule of ruling amounts must contain the following information:

(i) The taxpayer's name, address, and taxpayer identification number.

(ii) Whether the request is for an initial schedule of ruling amounts, a mandatory review of the schedule of ruling amounts (see paragraph (f)(1) of this section), or an elective review of the schedule of ruling amounts (see paragraph (f)(2) of this section).

(iii) The name and location of the nuclear power plant with respect to which a schedule of ruling amounts is requested.

(iv) A description of the taxpayer's qualifying interest in the nuclear power plant and the percentage of such nuclear power plant that the qualifying interest of the taxpayer represents.

(v) Where applicable, an identification of each public utility commission that establishes or approves rates for the furnishing or sale by the taxpayer of electric energy generated by the nuclear power plant, and, for each public utility commission identified—

(A) Whether the public utility commission has determined the amount of decommissioning costs to be included in the taxpayer's cost of service for ratemaking purposes;

(B) The amount of decommissioning costs that are to be included in the taxpayer's cost of service for each taxable year under the current determination and amounts that otherwise are required to be included in the taxpayer's income under section 88 and the regulations thereunder;

(C) A description of the assumptions, estimates and other factors used by the public utility commission to determine the amount of decommissioning costs;

(D) A copy of such portions of any order or opinion of the public utility commission as pertain to the public utility commission's most recent determination of the amount of decommissioning costs to be included in cost of service; and

(E) A copy of each engineering or cost study that was relied on or used by the public utility commission in determining the amount of decommissioning costs to be included in the taxpayer's cost of service under the current determination.

(vi) A description of the assumptions, estimates and other factors that were used by the taxpayer to determine the amount of decommissioning costs, including each of the following if applicable:

(A) A description of the proposed method of decommissioning the nuclear power plant (for example, prompt removal/dismantlement, safe storage entombment with delayed dismantlement, or safe storage mothballing with delayed dismantlement).

(B) The estimated year in which substantial decommissioning costs will first be incurred.

(C) The estimated year in which the decommissioning of the nuclear power plant will be substantially complete (see §1.468A–5(d)(3) for a definition of substantial completion of decommissioning).

(D) The total estimated cost of decommissioning expressed in current dollars (that is, based on price levels in effect at the time of the current determination).

(E) The total estimated cost of decommissioning expressed in future dollars (that is, based on anticipated price levels when expenses are expected to be paid).

(F) For each taxable year in the period that begins with the year specified in paragraph (e)(2)(vi)(B) of this section (the estimated year in which substantial decommissioning costs will first be incurred) and ends with the year specified in paragraph (e)(2)(vi)(C) of this section (the estimated year in which the decommissioning of the nuclear power plant will be substantially complete), the estimated cost of decommissioning expressed in future dollars.

(G) A description of the methodology used in converting the estimated cost of decommissioning expressed in current dollars to the estimated cost of decommissioning expressed in future dollars.

(H) The assumed after-tax rate of return to be earned by the assets of the qualified nuclear decommissioning fund.

(I) A copy of each engineering or cost study that was relied on or used by the taxpayer in determining the amount of decommissioning costs.

(vii) A proposed schedule of ruling amounts for each taxable year remaining in the funding period as of the date the schedule of ruling amounts will first apply.

(viii) A description of the assumptions, estimates and other factors that were used in determining the proposed schedule of ruling amounts, including, if applicable—

(A) The funding period (as such term is defined in paragraph (c) of this section);

(B) The assumed after-tax rate of return to be earned by the assets of the nuclear decommissioning fund;

(C) The fair market value of the assets (if any) of the nuclear decommissioning fund as of the first day of the first taxable year to which the schedule of ruling amounts will apply;

(D) The amount expected to be earned by the assets of the nuclear decommissioning fund (based on the after-tax rate of return applicable to the fund) over the period that begins on the first day of the first taxable year to which the schedule of ruling amounts will apply and ends on the last day of the funding period;

(E) The amount of decommissioning costs allocable to the nuclear decommissioning fund (as determined under paragraph (d) of this section);

(F) The total estimated cost of decommissioning (as determined under paragraph (d)(2) of this section); and

(G) The taxpayer's share of the total estimated cost of decommissioning (as such term is defined in paragraph (d)(3) of this section).

(ix) If the request is for a revised schedule of ruling amounts, the after-tax rate of return earned by the assets of the nuclear decommissioning fund for each taxable year in the period that begins with the date of the initial contribution to the fund and ends with the first day of the first taxable year to which the revised schedule of ruling amounts applies.

(x) If applicable, an explanation of the need for a schedule of ruling amounts determined on a basis other than the rules of paragraphs (a) through (d) of this section and a description of an alternative basis for determining a schedule of ruling amounts (see paragraph (a)(5) of this section).

(xi) A chart or table, based upon the assumed after-tax rate of return to be earned by the assets of the nuclear decommissioning fund, setting forth the years the fund will be in existence, the annual contribution to the fund, the estimated annual earn-

ings of the fund and the cumulative total balance in the fund.

(xii) If the request is for a revised schedule of ruling amounts, a copy of the schedule of ruling amounts that the revised schedule would replace.

(xiii) If the request for a schedule of ruling amounts contains a request, pursuant to §1.468A–5(a)(1)(iv), that the IRS rule whether an unincorporated organization through which the assets of the fund are invested is an association taxable as a corporation for Federal tax purposes, a copy of the legal documents establishing or otherwise governing the organization.

(xiv) Any other information required by the IRS that may be necessary or useful in determining the schedule of ruling amounts.

(3) *Administrative procedures*. The IRS may prescribe administrative procedures that supplement the provisions of paragraph (e)(1) and (2) of this section. In addition, the IRS may, in its discretion, waive the requirements of paragraph (e)(1) and (2) of this section under appropriate circumstances.

(f) *Review and revision of schedule of ruling amounts*—(1) *Mandatory review*. (i) Any taxpayer that has obtained a schedule of ruling amounts pursuant to paragraph (e) of this section 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.

(ii)(A) Any taxpayer that has obtained a formula or method for determining a schedule of ruling amounts for any taxable year under paragraph (a)(5) of this section must file a request for a revised schedule on or before the earlier of the deemed payment deadline for the 5th taxable year that begins after its taxable year in which the most recent formula or method was approved or the deemed payment deadline for the first taxable year that begins after a taxable year in which there is a substantial variation in the ruling amount determined under the most recent formula or method. There is a substantial variation in the ruling amount determined under the formula or method in effect for a taxable year if the ruling amount for the year and the ruling amount for any earlier year since the most recent formula or method was approved differ by more than 50 percent of the smaller amount.

(B) Any taxpayer that has determined its ruling amount for any taxable year under a formula prescribed by §1.468A–6 (which prescribes ruling amounts for the taxable year in which there is a disposition of a qualifying interest in a nuclear power plant) must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for its first taxable year that begins after the disposition.

(iii) A taxpayer requesting a schedule of deduction amounts for a nuclear decommissioning fund under §1.468A–8 must also request a revised schedule of ruling amounts for the fund. The revised schedule of ruling amounts must apply beginning with the first taxable year following the first year in which a deduction is allowed under the schedule of deduction amounts.

(iv) If the operating license of the nuclear power plant to which a nuclear decommissioning fund relates is renewed, the taxpayer maintaining the fund must request a revised schedule of ruling amounts. The request for the revised schedule must be submitted on or before the deemed payment deadline for the taxable year that includes the date on which the operating license is renewed.

(v) A request for a schedule of ruling amounts required by this paragraph (f)(1) must be made in accordance with the rules of paragraph (e) of this section. If a taxpayer does not properly file a request for a revised schedule of ruling amounts by the date provided in paragraph (f)(1) (i), (ii) or (iv) of this section (whichever is applicable), the taxpayer's ruling amount for the first taxable year to which the revised schedule of ruling amounts would have applied and for all succeeding taxable years until a new schedule is obtained shall be zero dollars, unless, in its discretion, the IRS provides otherwise in such new schedule of ruling amounts. Thus, if a taxpayer is required to request a revised schedule of ruling amounts under any provision of this section, and each ruling amount in the revised schedule would equal zero dollars, the taxpayer may, instead of requesting a new schedule of ruling amounts, begin treating the ruling amounts under its most recent schedule as equal to zero dollars.

(2) *Elective review*. Any taxpayer that has obtained a schedule of ruling amounts pursuant to paragraph (e) of this section can request a revised schedule of ruling amounts. Such a request must be made in accordance with the rules of paragraph (e) of this section; thus, the IRS will not provide a revised ruling amount 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 (see paragraph (e)(1)(vi) of this section).

(3) *Determination of revised schedule of ruling amounts*. A revised schedule of ruling amounts for a nuclear decommissioning fund shall be determined under this section without regard to any schedule of ruling amounts for such nuclear decommissioning fund that was issued prior to such revised schedule. Thus, a ruling amount specified in a revised schedule of ruling amounts for any taxable year in the funding period can be less than one or more ruling amounts specified in a prior schedule of ruling amounts for a prior taxable year.

(g) *Special rule permitting payments to a nuclear decommissioning fund before receipt of an initial or revised ruling amount applicable to a taxable year*. (1) If an electing taxpayer has filed a timely request for an initial or revised ruling amount for a taxable year beginning on or after January 1, 2006, and does not receive the ruling amount on or before the deemed payment deadline date for such taxable year, the taxpayer may make a payment to a nuclear decommissioning fund on the basis of the ruling amount proposed in the taxpayer's request. Thus, under the preceding sentence, an electing taxpayer may make a payment to a nuclear decommissioning fund for such taxable year that does not exceed the ruling amount proposed by the taxpayer for such taxable year in a timely filed request for a schedule of ruling amounts.

(2) If an electing taxpayer makes a payment to a nuclear decommissioning fund

for any taxable year pursuant to paragraph (g)(1) of this section and the ruling amount that is provided by the IRS is greater than the ruling amount proposed by the taxpayer for such taxable year, the taxpayer is not allowed to make an additional payment to the fund for such taxable year after the deemed payment deadline date for such taxable year.

(3) If the payment or transfer that an electing taxpayer makes to a nuclear decommissioning fund for any taxable year pursuant to paragraph (g)(1) of this section exceeds the ruling amount that is provided by the IRS for such taxable year, the following rules apply:

(i) The amount of the excess is an excess contribution (as defined in §1.468A–5(c)(2)(ii)) for such taxable year.

(ii) The amount of the excess contribution is not deductible (see §1.468A–2(b)(2)) and must be withdrawn by the taxpayer pursuant to the rules of §1.468A–5(c)(2)(i).

(iii) The taxpayer must withdraw the after-tax earnings on the excess contribution.

(iv) If the taxpayer claimed a deduction for the excess contribution, the taxpayer should file an amended return for the taxable year.

§1.468A–4 Treatment of nuclear decommissioning fund.

(a) *In general*. A nuclear decommissioning fund is subject to tax on all of its modified gross income (as defined in paragraph (b) of this section). The rate of tax is 20 percent for taxable years beginning after December 31, 1995. This tax is in lieu of any other tax that may be imposed under subtitle A of the Internal Revenue Code (Code) on the income earned by the assets of the nuclear decommissioning fund.

(b) *Modified gross income*. For purposes of this section, the term *modified gross income* means gross income as defined under section 61 computed with the following modifications:

(1) The amount of any payment or special transfer to the nuclear decommissioning fund with respect to which a deduction is allowed under section 468A(a) or section 468A(f) is excluded from gross income.

(2) A deduction is allowed for the amount of administrative costs and other incidental expenses of the nuclear decommissioning fund (including taxes, legal expenses, accounting expenses, actuarial expenses and trustee expenses, but not including decommissioning costs) that are otherwise deductible and that are paid by the nuclear decommissioning fund to any person other than the electing taxpayer. An expense is otherwise deductible for purposes of this paragraph (b)(2) if it would be deductible under chapter 1 of the Code in determining the taxable income of a corporation. For example, because Federal income taxes are not deductible under chapter 1 of the Code in determining the taxable income of a corporation, the tax imposed by section 468A(e)(2) and paragraph (a) of this section is not deductible in determining the modified gross income of a nuclear decommissioning fund. Similarly, because certain expenses allocable to tax-exempt interest income are not deductible under section 265 in determining the taxable income of a corporation, such expenses are not deductible in determining the modified gross income of a nuclear decommissioning fund.

(3) A deduction is allowed for the amount of an otherwise deductible loss that is sustained by the nuclear decommissioning fund in connection with the sale, exchange or worthlessness of any investment. A loss is otherwise deductible for purposes of this paragraph (b)(3) if such loss would be deductible by a corporation under section 165(f) or (g) and sections 1211(a) and 1212(a).

(4) A deduction is allowed for the amount of an otherwise deductible net operating loss of the nuclear decommissioning fund. For purposes of this paragraph (b), the net operating loss of a nuclear decommissioning fund for a taxable year is the amount by which the deductions allowable under paragraphs (b)(2) and (3) of this section exceed the gross income of the nuclear decommissioning fund computed with the modification described in paragraph (b)(1) of this section. A net operating loss is otherwise deductible for purposes of this paragraph (b)(4) if such a net operating loss would be deductible by a corporation under section 172(a).

(c) *Special rules*—(1) *Period for computation of modified gross income*. The modified gross income of a nuclear decommissioning fund must be computed on the basis of the taxable year of the electing taxpayer. If an electing taxpayer changes its taxable year, each nuclear decommissioning fund of the electing taxpayer must change to the new taxable year. See section 442 and §1.442–1 for rules relating to the change to a new taxable year.

(2) *Gain or loss upon distribution of property by a fund*. A distribution of property by a nuclear decommissioning fund (whether an actual distribution or a deemed distribution) shall be considered a disposition of property by the nuclear decommissioning fund for purposes of section 1001. In determining the amount of gain or loss from such disposition, the amount realized by the nuclear decommissioning fund shall be the fair market value of the property on the date of disposition.

(3) *Denial of credits against tax*. The tax imposed on the modified gross income of a nuclear decommissioning fund under paragraph (a) of this section is not to be reduced or offset by any credits against tax provided by part IV of subchapter A of chapter 1 of the Code other than the credit provided by section 31(c) for amounts withheld under section 3406 (back-up withholding).

(4) *Other corporate taxes inapplicable*. Although the modified gross income of a nuclear decommissioning fund is subject to tax at the rate specified by section 468A(e)(2) and paragraph (a) of this section, a nuclear decommissioning fund is not subject to the other taxes imposed on corporations under subtitle A of the Code. For example, a nuclear decommissioning fund is not subject to the alternative minimum tax imposed by section 55, the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, and the alternative tax imposed on a corporation under section 1201(a).

(d) *Treatment as corporation for purposes of subtitle F*. For purposes of subtitle F of the Code and §§1.468A–1 through 1.468A–9, a nuclear decommissioning fund is to be treated as if it were a corporation and the tax imposed by section 468A(e)(2) and paragraph (a) of this section is to be treated as a tax imposed by section 11. Thus, for example, the following rules apply:

(1) A nuclear decommissioning fund must file a return with respect to the tax

imposed by section 468A(e)(2) and paragraph (a) of this section for each taxable year (or portion thereof) that the fund is in existence even though no amount is included in the gross income of the fund for such taxable year. The return is to be made on Form 1120–ND in accordance with the instructions relating to such form. For purposes of this paragraph (d)(1), a nuclear decommissioning fund is in existence for the period that—

(i) Begins on the date that the first deductible payment is actually made to such nuclear decommissioning fund; and

(ii) Ends on the date of termination (see §1.468A–5(d)), the date that the entire fund is disqualified (see §1.468A–5(c)), or the date that the electing taxpayer disposes of its entire qualifying interest in the nuclear power plant to which the nuclear decommissioning fund relates (other than in connection with the transfer of the entire fund to the person acquiring such interest), whichever is applicable.

(2) For each taxable year of the nuclear decommissioning fund, the return described in paragraph (d)(1) of this section must be filed on or before the 15th day of the third month following the close of such taxable year unless the nuclear decommissioning fund is granted an extension of time for filing under section 6081. If such an extension is granted for any taxable year, the return for such taxable year must be filed on or before the extended due date for such taxable year.

(3) A nuclear decommissioning fund must provide its employer identification number on returns, statements and other documents as required by the forms and instructions relating thereto. The employer identification number is obtained by filing a Form SS–4, *Application for Employer Identification Number*, in accordance with the instructions relating thereto.

(4) A nuclear decommissioning fund must deposit all payments of tax imposed by section 468A(e)(2) and paragraph (a) of this section (including any payments of estimated tax) with an authorized government depositary in accordance with §1.6302–1.

(5) A nuclear decommissioning fund is subject to the addition to tax imposed by section 6655 in case of a failure to pay estimated income tax. For purposes of section 6655 and this section—

(i) The tax with respect to which the amount of the underpayment is computed in the case of a nuclear decommissioning fund is the tax imposed by section 468A(e)(2) and paragraph (a) of this section; and

(ii) The taxable income with respect to which the nuclear decommissioning fund's status as a large corporation is measured is modified gross income (as defined by paragraph (b) of this section).

§1.468A–5 Nuclear decommissioning fund qualification requirements; prohibitions against self-dealing; disqualification of nuclear decommissioning fund; termination of fund upon substantial completion of decommissioning.

(a) *Qualification requirements*—(1) *In general.* (i) 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. Thus, for example—

(A) Two or more nuclear decommissioning funds can be established and maintained pursuant to a single trust agreement; and

(B) One or more funds that are to be used for the decommissioning of a nuclear power plant and that do not qualify as nuclear decommissioning funds under this paragraph (a) can be established and maintained pursuant to a trust agreement that governs one or more nuclear decommissioning funds.

(ii) A separate nuclear decommissioning fund is required for each electing taxpayer and for each nuclear power plant with respect to which an electing taxpayer possesses a qualifying interest. The Internal Revenue Service (IRS) will issue a separate schedule of ruling amounts with respect to each nuclear decommissioning fund, and each nuclear decommissioning fund must file a separate income tax return even if other nuclear decommissioning funds or nonqualified funds are established and maintained pursuant to the trust agreement governing such fund or the assets of other nuclear decommissioning funds or nonqualified funds are pooled with the assets of such fund.

(iii) An electing taxpayer can maintain only one nuclear decommissioning fund for each nuclear power plant with respect to which the taxpayer elects the application of section 468A. 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 for purposes of section 468A and §§1.468A–1 through 1.468A–4, this section and §§1.468A–7 through 1.468A–9. Thus, for example, the IRS will issue one schedule of ruling amounts with respect to such nuclear power plant, the nuclear decommissioning fund must file a single income tax return (see §1.468A–4(d)(1)), and, if the IRS disqualifies the nuclear decommissioning fund, the assets of each separate fund are treated as distributed on the date of disqualification (see paragraph (c)(3) of this section).

(iv) If assets of a nuclear decommissioning fund are (or will be) invested through an unincorporated organization, within the meaning of §301.7701–2 of this chapter, the IRS will rule, if requested, whether the organization is an association taxable as a corporation for Federal tax purposes. A request for this ruling may be made by the electing taxpayer as part of its request for a schedule of ruling amounts or as part of a request under §1.468A–8 for a schedule of deduction amounts.

(2) Limitation on contributions. Except as otherwise provided in §1.468A–8 (relating to special transfers under section 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 section 468A(a) and §1.468A–2(a). Thus, for example, except in the case of a special transfer pursuant to §1.468A–8, securities may not be contributed to a nuclear decommissioning fund even if the taxpayer or a fund established by the taxpayer previously held such securities for the purpose of provid-

ing funds for the decommissioning of a nuclear power plant.

(3) *Limitation on use of fund*—(i) *In general*. 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 the nuclear decommissioning fund relates;

(B) To pay administrative costs and other incidental expenses of the nuclear decommissioning fund; and

(C) To the extent that the assets of the nuclear decommissioning fund are not currently required for the purposes described in paragraph (a)(3)(i)(A) or (B) of this section, to make investments.

(ii) *Definition of administrative costs and expenses*. For purposes of paragraph (a)(3)(i) of this section, the term *administrative costs and other incidental expenses of a nuclear decommissioning fund* means all ordinary and necessary expenses incurred in connection with the operation of the nuclear decommissioning fund. Such term includes the tax imposed by section 468A(e)(2) and §1.468A–4(a), any State or local tax imposed on the income or the assets of the fund, legal expenses, accounting expenses, actuarial expenses and trustee expenses. Such term does not include decommissioning costs or the payment of insurance premiums on a policy to pay for the nuclear decommissioning costs of a nuclear power plant. Such term also does not include the excise tax imposed on the trustee or other disqualified person under section 4951 or the reimbursement of any expenses incurred in connection with the assertion of such tax unless such expenses are considered reasonable and necessary under section 4951(d)(2)(C) and it is determined that the trustee or other disqualified person is not liable for the excise tax.

(4) *Trust provisions*. Each qualified nuclear decommissioning fund trust agreement must provide that assets in the fund must be used as authorized by section 468A and §§1.1468A–1 through 1.1468A–9 and that the agreement may not be amended so as to violate section 468A or §§1.468A–1 through 1.468A–9.

(b) *Prohibitions against self-dealing*—(1) *In general*. Except as otherwise provided in this paragraph (b), the excise taxes imposed by section 4951 shall apply to each act of self-dealing between a disqualified person and a nuclear decommissioning fund.

(2) *Self-dealing defined*. For purposes of this paragraph (b), the term *self-dealing* means any act described in section 4951(d), except—

(i) A payment by a nuclear decommissioning fund for the purpose of satisfying, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates;

(ii) A withdrawal of an excess contribution by the electing taxpayer pursuant to the rules of paragraph (c)(2) of this section;

(iii) A withdrawal by the electing taxpayer of amounts that have been treated as distributed under paragraph (c)(3) of this section;

(iv) A payment of amounts remaining in a nuclear decommissioning fund to the electing taxpayer after the termination of such fund (as determined under paragraph (d) of this section);

(v) Any act described in section 4951(d)(2)(B) or (C);

(vi) Any act that is described in §53.4951–1(c) of this chapter and is undertaken to facilitate the temporary investment of assets or the payment of reasonable administrative expenses of the nuclear decommissioning fund; or

(vii) A payment by a nuclear decommissioning fund for the performance of trust functions and certain general banking services by a bank or trust company that is a disqualified person if the banking services are reasonable and necessary to carry out the purposes of the fund and the compensation paid to the bank or trust company for such services, taking into account the fair interest rate for the use of the funds by the bank or trust company, is not excessive.

(3) *Disqualified person defined*. For purposes of this paragraph (b), the term *disqualified person* includes each person described in section 4951(e)(4) and §53.4951–1(d).

(4) *General banking services*. The general banking services allowed by paragraph (b)(2)(vii) of this section are—

(i) Checking accounts, as long as the bank does not charge interest on any overwithdrawals;

(ii) Savings accounts, as long as the fund may withdraw its funds on no more than 30 days' notice without subjecting itself to a loss of interest on its money for the time during which the money was on deposit; and

(iii) Safekeeping activities (see §53.4941(d)–3(c)(2), *Example 3*, of this chapter).

(c) *Disqualification of nuclear decommissioning fund*—(1) *In general*—(i) *Disqualification events*. Except as otherwise provided in paragraph (c)(2) of this section, the IRS may, in its discretion, disqualify all or any portion of a nuclear decommissioning fund if at any time during a taxable year of the fund—

(A) The fund does not satisfy the requirements of paragraph (a) of this section; or

(B) The fund and a disqualified person engage in an act of self-dealing (as defined in paragraph (b)(2) of this section).

(ii) *Date of disqualification*. (A) Except as otherwise provided in this paragraph (c)(1)(ii), the date on which a disqualification under this paragraph (c) will take effect (date of disqualification) is the date that the fund does not satisfy the requirements of paragraph (a) of this section or the date on which the act of self-dealing occurs, whichever is applicable.

(B) If the IRS determines, in its discretion, that the disqualification should take effect on a date subsequent to the date specified in paragraph (c)(1)(ii)(A) of this section, the date of disqualification is such subsequent date.

(iii) *Notice of disqualification*. The IRS will notify the electing taxpayer of the disqualification of a nuclear decommissioning fund and the date of disqualification by registered or certified mail to the last known address of the electing taxpayer (the notice of disqualification). For further guidance regarding the definition of last known address, see §301.6212–2 of this chapter.

(2) *Exception to disqualification*—(i) *In general*. A nuclear decommissioning fund will not be disqualified under paragraph (c)(1) of this section by reason of an excess contribution or the withdrawal of such excess contribution by an electing taxpayer if the amount of the excess contribution is withdrawn by the electing taxpayer on or before the date prescribed by law (including extensions) for filing the return of the

nuclear decommissioning fund for the taxable year to which the excess contribution relates. In the case of an excess contribution that is the result of a payment made pursuant to §1.468A–3(g)(1), a nuclear decommissioning fund will not be disqualified under paragraph (c)(1) of this section if the amount of the excess contribution is withdrawn by the electing taxpayer on or before the later of—

(A) The date prescribed by law (including extensions) for filing the return of the nuclear decommissioning fund for the taxable year to which the excess contribution relates; or

(B) The date that is 30 days after the date that the taxpayer receives the ruling amount for such taxable year.

(ii) *Excess contribution defined.* For purposes of this section, an excess contribution is the amount by which cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year exceed the payment limitation contained in section 468A(b) and §1.468A–2(b). The amount of a special transfer permitted under §1.468A–8 is not treated as a cash payment for this purpose.

(iii) *Taxation of income attributable to an excess contribution.* The income of a nuclear decommissioning fund attributable to an excess contribution is required to be included in the gross income of the nuclear decommissioning fund under §1.468A–4(b).

(3) *Disqualification treated as distribution.* If all or any portion of a nuclear decommissioning fund is disqualified under paragraph (c)(1) of this section, the portion of the nuclear decommissioning fund that is disqualified is treated as distributed to the electing taxpayer on the date of disqualification. Such a distribution shall be treated for purposes of section 1001 as a disposition of property held by the nuclear decommissioning fund (see §1.468A–4(c)(2)). In addition, the electing taxpayer must include in gross income for the taxable year that includes the date of disqualification an amount equal to the fair market value of the distributable assets of the nuclear decommissioning fund multiplied by the fraction of the nuclear decommissioning fund that was disqualified under paragraph (c)(1) of this section. For this purpose, the fair market value of the distributable assets of the nuclear decommissioning fund is equal to the fair market value of the assets of the fund determined as of the date of disqualification, reduced by—

(i) The amount of any excess contribution that was not withdrawn before the date of disqualification if no deduction was allowed with respect to such excess contribution;

(ii) The amount of any deemed distribution that was not actually distributed before the date of disqualification (as determined under §1.468A–2(d)(2)(iii)) if the amount of the deemed distribution was included in the gross income of the electing taxpayer for the taxable year in which the deemed distribution occurred; and

(iii) The amount of any tax that—

(A) Is imposed on the income of the fund;

(B) Is attributable to income taken into account before the date of disqualification or as a result of the disqualification; and

(C) Has not been paid as of the date of disqualification.

(4) *Further effects of disqualification.* Contributions made to a disqualified fund after the date of disqualification are not deductible under section 468A(a) and §1.468A–2(a), or, if the fund is disqualified only in part, are deductible only to the extent provided in the notice of disqualification. In addition, if any assets of the fund that are deemed distributed under paragraph (c)(3) of this section are held by the fund after the date of disqualification (or if additional assets are acquired with nondeductible contributions made to the fund after the date of disqualification), the income earned by such assets after the date of disqualification must be included in the gross income of the electing taxpayer (see section 671) to the extent that such income is otherwise includible under chapter 1 of the Internal Revenue Code (Code). An electing taxpayer can establish a nuclear decommissioning fund to replace a fund that has been disqualified in its entirety only if the IRS specifically consents to the establishment of a replacement fund in connection with the issuance of an initial schedule of ruling amounts for such replacement fund.

(d) *Termination of nuclear decommissioning fund upon substantial completion of decommissioning*—(1) *In general.* Upon substantial completion of the decommissioning of a nuclear power plant to which a nuclear decommissioning fund relates, such nuclear decommissioning fund shall be considered terminated and treated as having distributed all of its assets on the date the termination occurs (the termination date). Such a distribution shall be treated for purposes of section 1001 as a disposition of property held by the nuclear decommissioning fund (see §1.468A–4(c)(2)). In addition, the electing taxpayer shall include in gross income for the taxable year in which the termination occurs an amount equal to the fair market value of the assets of the fund determined as of the termination date, reduced by—

(i) The amount of any deemed distribution that was not actually distributed before the termination date if the amount of the deemed distribution was included in the gross income of the electing taxpayer for the taxable year in which the deemed distribution occurred; and

(ii) The amount of any tax that—

(A) Is imposed on the income of the fund;

(B) Is attributable to income taken into account before the termination date or as a result of the termination; and

(C) Has not been paid as of the termination date.

(2) *Additional rules.* Contributions made to a nuclear decommissioning fund after the termination date are not deductible under section 468A(a) and §1.468A–2(a). In addition, if any assets are held by the fund after the termination date, the income earned by such assets after the termination date must be included in the gross income of the electing taxpayer (see section 671) to the extent that such income is otherwise includible under chapter 1 of the Code. Finally, under §1.468A–2(e), an electing taxpayer using an accrual method of accounting is allowed a deduction for nuclear decommissioning costs that are incurred during any taxable year even if such costs are incurred after substantial completion of decommissioning (for example, expenses incurred to monitor or safeguard the plant site).

(3) *Substantial completion of decommissioning and termination date.* (i) The substantial completion of the decommissioning of a nuclear power plant occurs on the date that the maximum acceptable radioactivity levels mandated by the Nuclear Regulatory Commission with respect

to a decommissioned nuclear power plant are satisfied (the substantial completion date). Except as otherwise provided in paragraph (d)(3)(ii) of this section, the substantial completion date is also the termination date.

(ii) If a significant portion of the total estimated decommissioning costs with respect to a nuclear power plant are not incurred on or before the substantial completion date, an electing taxpayer may request, and the IRS will issue, a ruling that designates a date subsequent to the substantial completion date as the termination date. The termination date designated in the ruling will not be later than the last day of the third taxable year after the taxable year that includes the substantial completion date. The request for a ruling under this paragraph (d)(3)(ii) must be filed during the taxable year that includes the substantial completion date and must comply with the procedural rules in effect at the time of the request.

§1.468A–6 Disposition of an interest in a nuclear power plant.

(a) *In general*. This section describes the Federal income tax consequences of a transfer of the assets of a nuclear decommissioning fund (Fund) within the meaning of §1.468A–1(b)(4) 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). This section also explains how a schedule of ruling amounts will be determined for the transferor and transferee. For purposes of this section, a nuclear power plant includes a plant that previously qualified as a nuclear power plant and that has permanently ceased to produce electricity.

(b) *Requirements*. This section applies if—

(1) Immediately before the disposition, the transferor maintained a Fund with respect to the interest disposed of;

(2) Immediately after the disposition—

(i) The transferee maintains a Fund with respect to the interest acquired;

(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 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 Fund for each plant.

(c) *Tax consequences*. A disposition that satisfies the requirements of paragraph (b) of this section will have the following tax consequences at the time it occurs:

(1) *The transferor and its Fund*. (i) Except as provided in paragraph (c)(1)(ii) of this section, neither the transferor nor the transferor's 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.

(ii) Notwithstanding paragraph (c)(1)(i) of this section, 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 section 468A(f)(2) for a taxable year ending after the date of the transfer of the Fund or Fund assets (the unamortized special transfer deduction) is allowed under section 468A(f)(2)(C) for the taxable year that includes the date of the transfer of the Fund or Fund 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 section 468A(f)(2)(C).

(2) *The transferee and its Fund*. Neither the transferee nor the transferee's 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) *Basis*. Transfers of assets of a 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.

(d) *Determination of proportionate amount*. For purposes of this section, a transferor of a qualifying interest in a nuclear power plant is considered to transfer a proportionate amount of the assets of its Fund to a Fund of a transferee of the interest if, on the date of the transfer of the interest, the percentage of the fair market value of the Fund's assets attributable to the assets transferred equals the percentage of the transferor's qualifying interest that is transferred.

(e) *Calculation of schedule of ruling amounts and schedule of deduction amounts for dispositions described in this section*—(1) *Transferor*. If a transferor disposes of all or a portion of its qualifying interest in a nuclear power plant in a transaction to which this section applies, the transferor's schedule of ruling amounts with respect to the interests disposed of and retained (if any) and, if applicable, the amount allowable as a deduction for a special transfer under §1.468A–8 will be determined under the following rules:

(i) *Taxable year of disposition; ruling amount*. If the transferor does not file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for the taxable year of the transferor in which the disposition of its interest in the nuclear power plant occurs (that is, the date that is two and one-half months after the close of that year), the transferor's ruling amount with respect to that plant for that year will equal the sum of—

(A) The ruling amount contained in the transferor's current schedule of ruling amounts with respect to that plant for that taxable year multiplied by the portion of the qualifying interest that is retained (if any); and

(B) The ruling amount contained in the transferor's current schedule of ruling amounts with respect to that plant for that taxable year multiplied by the product of—

(*1*) The portion of the transferor's qualifying interest that is disposed of; and

(*2*) A fraction, the numerator of which is the number of days in that taxable year that precede the date of disposition, and the denominator of which is the number of days in that taxable year.

(ii) *Taxable year of disposition; deduction under §1.468A–8.* If the transferor has elected to make a special transfer under section 468A(f), the amount allowable as a deduction under §1.468A–8 for the taxable year in which it transfers a portion of its interest in the nuclear plant is equal to the deduction amount for that taxable year from its existing schedule of deduction amounts multiplied by the percentage of its interest that it retains. This deduction is in addition to the deduction described in paragraph (c)(1)(ii) of this section.

(iii) *Taxable years after the year of disposition.* A transferor that retains a qualifying interest in a nuclear power plant must file a request for a revised schedule of ruling amounts (and, if applicable, a revised schedule of deduction amounts) with respect to that interest on or before the deemed payment deadline for the first taxable year of the transferor beginning after the disposition. See §§1.468A–3(f)(1)(ii)(B) and 1.468A–8(c)(3). If the transferor does not timely file such a request, the transferor's ruling amount and the transferor's deduction amount under §1.468A–8 with respect to that interest for the affected year or years will be zero, unless the Internal Revenue Service (IRS) waives the application of this paragraph (e)(1)(iii) upon a showing of good cause for the delay.

(2) *Transferee.* If a transferee acquires all or a portion of a transferor's qualifying interest in a nuclear power plant in a transaction to which this section applies, the transferee's schedule of ruling amounts with respect to the interest acquired will be determined under the following rules:

(i) *Taxable year of disposition.* If the transferee does not file a request for a schedule of ruling amounts on or before the deemed payment deadline for the taxable year of the transferee in which the disposition occurs (that is, the date that is two and one-half months after the close of that year), the transferee's ruling amount with respect to the interest acquired in the nuclear power plant for that year is equal to the amount contained in the transferor's current schedule of ruling amounts for that plant for the taxable year of the transferor in which the disposition occurred, multiplied by the product of—

(A) The portion of the transferor's qualifying interest that is transferred; and

(B) A fraction, the numerator of which is the number of days in the taxable year of the transferor including and following the date of disposition, and the denominator of which is the number of days in that taxable year.

(ii) *Taxable years after the year of disposition.* A transferee of a qualifying interest in a nuclear power plant must file a request for a revised schedule of ruling amounts with respect to that interest on or before the deemed payment deadline for the first taxable year of the transferee beginning after the disposition. See §1.468A–3(f)(1)(ii)(B). If the transferee does not timely file such a request, the transferee's ruling amount with respect to that interest for the affected year or years will be zero, unless the IRS waives the application of this paragraph (e)(2)(ii) upon a showing of good cause for the delay.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (e):

Example 1. (i) X Corporation is a calendar year taxpayer engaged in the sale of electric energy generated by a nuclear power plant. The plant is owned entirely by X. On May 27, 2010, X transfers a 60-percent qualifying interest in the plant to Y Corporation, a calendar year taxpayer. Before the transfer, X had received a schedule of ruling amounts containing an annual ruling amount of $10 million for the taxable years 2005 through 2025. For 2010, neither X nor Y files a request for a revised schedule of ruling amounts.

(ii) Under paragraph (e)(1)(i) of this section, X's ruling amount for 2010 is calculated as follows: ($10,000,000 x .40) + ($10,000,000 x .60 x 146/365)=$6,400,000. Under paragraph (e)(2)(i) of this section, Y's ruling amount for 2010 is calculated as follows: $10,000,000 x .60 x 219/365=$3,600,000. Under paragraphs (e)(1)(iii) and (e)(2)(ii) of this section, X and Y must file requests for revised schedules of ruling amounts by March 15, 2012.

Example 2. Y Corporation, the sole owner of a nuclear power plant, is a calendar year taxpayer. In year 1, Y elects to make a special transfer under section 468A(f)(1) to the nuclear decommissioning fund Y maintains with respect to the plant. The amount of the special transfer is $100x, and the remaining useful life of the plant is 20 years. Y obtains a schedule of deduction amounts under §1.468A–8T(c) permitting a $5x deduction each year over the 20-year remaining useful life, and deducts $5x of the special transfer amount in year 1, year 2, year 3, and year 4. On the first day of year 5, Y transfers a 25% interest in the plant to an unrelated party. Under paragraph (c)(1)(ii) of this section, Y may deduct in Year 5 the unamortized special transfer deduction corresponding to the portion of the plant transferred (25 percent of $80x or $20x). In addition, under paragraph (e)(1)(ii) of this section, Y may deduct the portion of the deduction amount for year 5 from the schedule of deduction amounts corresponding to its retained interest in the plant (75 percent of $5x or $3.75x). Pursuant to paragraph (e)(1)(iii) of this section, Y must file a request for a revised schedule of ruling amounts by March 15 of year 7.

(f) *Anti-abuse provision.* The IRS may treat a disposition as satisfying the requirements of this section if the IRS determines that this treatment is necessary or appropriate to carry out the purposes of section 468A and §§1.468A–1 through 1.468A–9.

§1.468A–7 Manner of and time for making election.

(a) *In general.* An eligible taxpayer is allowed a deduction for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment) to a nuclear decommissioning fund or for a special transfer under §1.468A–8 only if the taxpayer elects the application of section 468A. A separate election is required for each nuclear decommissioning fund and for each taxable year with respect to which payments are to be deducted under section 468A or a special transfer is made under §1.468A–8. In the case of an affiliated group of corporations that join in the filing of a consolidated return for a taxable year, the common parent must make a separate election on behalf of each member whose payments to a nuclear decommissioning fund during such taxable year are to be deducted under section 468A and each member that makes a special transfer under §1.468A–8 with respect to such year. The election under section 468A for any taxable year is irrevocable and must be made by attaching a statement (Election Statement) and a copy of the schedule of ruling amounts provided pursuant to the rules of §1.468A–3 to the taxpayer's Federal income tax return (or, in the case of an affiliated group of corporations that join in the filing of a consolidated return, the consolidated return) for such taxable year. The return to which the Election Statement and a copy of the schedule of ruling amounts

is attached must be filed on or before the time prescribed by law (including extensions) for filing the return for the taxable year with respect to which payments are to be deducted under section 468A.

(b) *Required information*. The Election Statement must include the following information:

(1) The legend "Election Under Section 468A" typed or legibly printed at the top of the first page.

(2) The electing taxpayer's name, address and taxpayer identification number (or, in the case of an affiliated group of corporations that join in the filing of a consolidated return, the name, address and taxpayer identification number of each electing taxpayer).

(3) The taxable year for which the election is made.

(4) For each nuclear decommissioning fund for which an election is made—

(i) The name and location of the nuclear power plant to which the fund relates;

(ii) The name and employer identification number of the nuclear decommissioning fund;

(iii) The total amount of actual cash payments made to the nuclear decommissioning fund during the taxable year that were not treated as deemed cash payments under §1.468A–2(c)(1) for a prior taxable year;

(iv) The total amount of cash payments deemed made to the nuclear decommissioning fund under §1.468A–2(c)(1) for the taxable year;

(v) The total amount of any special transfers (whether in cash or property) made to the nuclear decommissioning fund under §1.468A–8 during the taxable year that were not treated as deemed transfers under §1.468A–8(a)(4) for a prior taxable year;

(vi) The total amount of any special transfers (whether in cash or property) deemed made to the nuclear decommissioning fund under §1.468A–8(a)(4) for the taxable year; and

(vii) For each item of property included in the amounts described in paragraph (b)(4)((v) or (vi) of this section, the amount of the item of property and whether the basis of the item of property is determined under §1.468A–8(b)(5)(iii)(A) or §1.468A–8(b)(5)(iii)(B).

§1.468A–8 Special transfers to qualified funds pursuant to section 468A(f).

(a) *General rule*—(1) *In general*. Under section 468A(f), a taxpayer maintaining a qualified nuclear decommissioning fund with respect to a nuclear power plant may transfer cash or property into the fund (a special transfer). The special transfer is not subject to the ruling amount limitation in section 468A(b) and is not treated as a cash payment for purposes of that limitation. Thus, a taxpayer may, in the same taxable year, pay the ruling amount and make a special transfer into the fund. A special transfer may be made in cash, property, or both cash and property. The amount of a special transfer (that is, the amount of cash and the fair market value of property transferred) may not exceed the present value of the pre–2005 nonqualifying amount of nuclear decommissioning costs with respect to the nuclear power plant. The taxpayer is entitled to a deduction against income for a special transfer, as described in paragraph (b) of this section. A special transfer may not be made to a nuclear decommissioning fund before the first taxable year in which a deduction amount is applicable to the nuclear decommissioning fund (see paragraph (c) of this section).

(2) *Pre–2005 nonqualifying amount*—(i) *In general*. The present value of the pre–2005 nonqualifying amount of nuclear decommissioning costs with respect to a nuclear power plant is the amount equal to the pre–2005 nonqualifying percentage of the present value of the estimated future decommissioning costs (as defined in §1.468A–1(b)(6)) with respect to the nuclear power plant as of the first day of the taxable year of the taxpayer in which the special transfer is made or deemed made (or a later date that is on or before the date on which the special transfer is expected to be made if the taxpayer establishes to the satisfaction of the IRS that the determination of present value as of such date is reasonable and consistent with the principles and provisions of this section). For this purpose, the pre–2005 nonqualifying percentage for the plant is 100 percent reduced by the sum of—

(A) The qualifying percentage (within the meaning of §1.468A–3(d)(4) as in effect on December 31, 2005) used in determining the taxpayer's last schedule of ruling amounts for the nuclear decommissioning fund under the law in effect before the enactment of the Energy Policy Act of 2005 (that is, the percentage of the plant's total nuclear decommissioning costs that were permitted to be funded through the fund under the law in effect before the enactment of the Energy Policy Act of 2005); and

(B) The percentage of decommissioning costs transferred in any previous special transfer (that is, the amount transferred as a percentage of the present value of the estimated future costs of decommissioning as of the first day of the taxable year in which such previous transfer was made).

(ii) *Pre–2005 nonqualifying amount of transferee*. If there is a transfer of a nuclear decommissioning fund or part or all of its assets and §1.468A–6 applies to the transfer, the pre–2005 nonqualifying amount determined with respect to the transferee is equal to the pre–2005 nonqualifying amount (or a proportionate part of the pre–2005 nonqualifying amount) that would have been determined with respect to the transferor but for such transfer.

(3) *Transfers in multiple years*. A taxpayer making a special transfer is not required to transfer the entire eligible amount in a single year. The requirements of paragraph (c) of this section apply separately to each year in which a special transfer is made. In calculating the amount of any subsequent transfer, the taxpayer must reduce the pre–2005 nonqualifying percentage under paragraph (a)(2) of this section to take into account all previous transfers. For example, if a taxpayer has a pre–2005 nonqualifying percentage of 40 percent, and transfers half of the eligible amount in a special transfer, any subsequent transfer must be calculated on the basis of a pre–2005 nonqualifying percentage of 20 percent.

(4) *Deemed payment rules*—(i) *In general*. The amount of any special transfer (whether in cash or property) described in §1.468A–8 and made by an electing taxpayer to a nuclear decommissioning fund on or before the 15th day of the third calendar month after the close of any taxable year (the deemed payment deadline date) shall be deemed made during such taxable year if the electing taxpayer irrevocably designates the amount as relating to such taxable year on its timely filed Federal income tax return for such taxable year or,

in the case of special transfers described in paragraph (a)(4)(ii) of this section, on an amended return for such taxable year (see §1.468A–7(b)(4)(v) and (vi) for rules relating to such designation).

(ii) *Special rule for certain special transfers*. Special transfers that the electing taxpayer designates as relating to a taxable year beginning after December 31, 2005, and ending before January 1, 2010, which are actually made within 90 days after the electing taxpayer receives a ruling from the Secretary relating to the special transfer are deemed made during the taxable year designated as the year to which the special transfer relates.

(b) *Deduction for amounts transferred*—(1) *In general*. (i) Except as provided in this paragraph (b), the deduction for any special transfer is allowed ratably over the remaining useful life of the nuclear power plant. The amount of the deduction for any taxable year is the deduction amount for such year specified in the schedule of deduction amounts required under paragraph (c) of this section.

(ii) For purposes of this paragraph (b), the remaining useful life of the nuclear power plant is the period beginning on the first day of the taxable year during which the transfer is made and ending on the last day of the taxable year that includes the last day of the estimated useful life of the nuclear power plant. The last day of the estimated useful life of the nuclear power plant is determined for this purpose under the rules of §1.468A–3(c)(2).

(2) *Amount of deduction*. (i) *General rule*. Except as provided in this paragraph (b)(2), the deduction for property contributed in a special transfer is limited to the lesser of the fair market value of the property contributed or the taxpayer's basis in that property.

(ii) *Election*—(A) *In general*. If the fair market value of the property contributed is less than the taxpayer's adjusted basis in such property as of the date the property is contributed and the fund elects to treat the fair market value of the property as its adjusted basis in the property, the taxpayer may deduct an amount equal to the adjusted basis of the contributed property.

(B) *Manner of making election*. The election described in paragraph (b)(2)(ii)(A) of this section is made for property contributed in a special transfer by attaching a description of the property and a statement that the fund is making an election under §1.468A–8(b)(2)(ii) with respect to the property to the return of the fund for the taxable year in which the property is contributed to the fund.

(*C*) *Election allowed for property transferred prior to December 23, 2010*. The election described in paragraph (b)(2)(ii)(A) of this section may be made and a deduction equal to adjusted basis will be allowed for property contributed in a special transfer prior to December 23, 2010. The election in such a case may be made on an amended return of the fund for the taxable year in which the property is contributed to the fund and the transferor may amend previously filed returns to claim a deduction calculated by reference to the adjusted basis of the property.

(3) *Denial of deduction for previously deducted amounts*. If a deduction (other than a deduction under section 468A) has been allowed to the taxpayer (or a predecessor) on account of expected decommissioning costs for a nuclear power plant (a nonconforming deduction) or an amount otherwise includible in income has been excluded from the gross income of the taxpayer (or a predecessor) on account of such expected decommissioning costs (a nonconforming exclusion), the deduction allowed for a special transfer to the nuclear decommissioning fund maintained with respect to the plant is reduced. In the case of a single special transfer of the full eligible amount, the reduction is equal to the aggregate amount of all nonconforming deductions and nonconforming exclusions. In the case of a transfer of less than the full eligible amount, the reduction is a ratable portion of such aggregate amount.

(4) *Transfers of qualified nuclear decommissioning funds*. (i) If a special transfer is made to any qualified nuclear decommissioning fund, there is a subsequent transfer of the fund or the assets of the fund (a fund transfer), and §1.468–6 applies to the fund transfer, any amount of the deduction under paragraph (b) of this section allocable to taxable years ending after the date of the fund transfer will be allowed as a current deduction to the transferor for the taxable year that includes the date of the fund transfer. See §468A–6(c) for additional rules concerning transfers of decommissioning funds, including the transfer of a portion of the taxpayer's interest in a nuclear power plant. If a taxpayer transfers only part of the fund or the fund's assets, the rules in this paragraph (b)(4) apply only to the corresponding portion of the deduction under paragraph (b) of this section.

(ii) If a deduction is allowed to the transferor under paragraph (b)(4)(i) of this section and the transferee is related to the transferor, the Internal Revenue Service (IRS) will not approve the transferee's schedule of ruling amounts for taxable years beginning after the date of the transfer unless the ruling amounts are deferred in a manner that results in recapture of the acceleration amount. For this purpose—

(A) The acceleration amount is the difference between the deduction allowed under this paragraph (b)(4) and the present value as of the beginning of the acceleration period of the deductions that, but for the transfer, would have been allowed under this paragraph (b) for taxable years during the acceleration period;

(B) The acceleration amount is recaptured if the aggregate present value of the ruling amounts at the beginning of the acceleration period is equal to the amount by which the aggregate present value of the ruling amounts that would have been approved but for this paragraph (b)(4)(ii) exceeds the acceleration amount;

(C) The acceleration period is the period from the first day of the transferor's first taxable year beginning after the date of the transfer until the end of the plant's remaining useful life;

(D) Present values will be determined using the assumptions that are used in determining the transferee's first schedule of ruling amounts; and

(E) A transferor and a transferee are related if their relationship is specified in section 267(b) or section 707(b)(1) or they are treated as a single taxpayer under section 41(f)(1)(A) or (B).

(5) *Special rules*—(i) *Gain or loss not recognized on transfers to fund*. No gain or loss will be recognized on any special transfer.

(ii) *Taxpayer basis in fund*. Notwithstanding any other provision of the Internal Revenue Code (Code) and regulations, the taxpayer's basis in the fund is not increased by reason of the special transfer.

(iii) *Fund basis in transferred property*—(A) *In general*. Except as provided in paragraph (b)(5)(iii)(B) of this section,

the fund's basis in any property transferred in a special transfer is the same as the transferor's basis in the property immediately before the transfer.

(*B*) *Basis in case of election*. If a fund makes the election described in paragraph (b)(2)(ii) of this section, the fund's basis in the property transferred is the fair market value of the property on the date of transfer.

(c) *Schedule of deductions required*—(1) *In general*. A taxpayer may not make a special transfer to a qualified nuclear decommissioning fund unless the taxpayer requests from the IRS a schedule of deduction amounts in connection with such transfer. A schedule of deduction amounts for a nuclear decommissioning fund (schedule of deduction amounts) is a ruling (within the meaning of §601.201(a)(2) of this chapter) specifying the annual deductions (deduction amounts) that, over the taxable years in the remaining useful life of the nuclear power plant, will result in the deduction of the entire amount of the special transfer. Such a request may be combined with a request for a schedule of ruling amounts under §1.468A–3(a). In the case of a combined request, the schedule of deduction amounts requested under this paragraph (c)(1) must be stated separately from the schedule of ruling amounts requested under §1.468A–3(a) and approval of the schedule of deduction amounts under this section will constitute a separate ruling. A request for a schedule of deduction amounts must comply with all provisions of paragraph (d) of this section.

(2) *Transfers in multiple taxable years*. A taxpayer making a special transfer in more than one taxable year pursuant to paragraph (a)(3) of this section must request a separate schedule of deduction amounts in connection with each special transfer. More than one schedule of deduction amounts can be requested in a single ruling request to the Secretary and the Secretary will provide, in a single ruling, separate schedules of deduction amounts for each of a series of special transfers provided that each request for a separate schedule of deduction amounts complies with all requirements of this paragraph.

(3) *Transfer of partial interest in fund*. If a taxpayer transfers part of a fund or a fund's assets and is allowed a deduction under paragraph (b)(3) of this section, the taxpayer must request a new schedule of deduction amounts in connection with the transfer.

(4) *Special transfer permitted before receipt of schedule*. If an electing taxpayer has filed a timely request for a schedule of deduction amounts in connection with a special transfer for a taxable year and does not receive the schedule of deduction amounts before the deemed payment deadline for such taxable year, the taxpayer may make a special transfer to the nuclear decommissioning fund on the basis of the special transfer amount proposed in the taxpayer's request. If the schedule of deduction amounts provided by the Secretary is based on a special transfer amount that differs from the special transfer amount proposed in the taxpayer's request, rules similar to the rules of §1.468A–3(g)(2) and (3) shall apply.

(d) *Manner of requesting schedule of deduction amounts*—(1) *In general*. (i) In order to receive a deduction amount for any taxable year, a taxpayer must file a request for a schedule of deduction amounts that complies with the requirements of this paragraph (d), the applicable procedural rules set forth in §601.201(e) of this chapter (Statement of Procedural Rules) and the requirements of any applicable revenue procedure that is in effect on the date the request is filed.

(ii) A separate request for a schedule of deduction amounts is required for each nuclear decommissioning fund established by a taxpayer (see §1.468A–5(a) for rules relating to the number of nuclear decommissioning funds that a taxpayer can establish).

(iii) Except as provided by §1.468A–5(a)(1)(iv) (relating to certain unincorporated organizations that may be taxable as corporations) and §1.468A–3 (relating to a request for a schedule of ruling amounts), a request for a schedule of deduction amounts must not contain a request for a ruling on any other issue, whether the issue involves section 468A or another section of the Code.

(iv) In the case of an affiliated group of corporations that join in the filing of a consolidated return, the common parent of the group may request a schedule of deduction amounts for each member of the group that possesses a qualifying interest in the same nuclear power plant by filing a single submission with the IRS.

(v) Except as provided in paragraph (d)(1)(vi) of this section, the IRS will not provide or revise a deduction amount applicable to a taxable year in response to a request for a schedule of deduction amounts that is filed after the deemed payment deadline date (as defined in paragraph (a)(4) of this section) for such taxable year.

(vi) For special transfers relating to taxable years beginning after December 31, 2005, and before January 1, 2010, the IRS will not provide a deduction amount in response to a request for a schedule of deduction amounts that is filed after February 22, 2011.

(vii) Except as provided in paragraph (d)(1)(viii) of this section, a request for a schedule of deduction amounts shall be considered filed only if such request complies substantially with the requirements of this paragraph (d). In determining the date when a request is filed, the principles of sections 7502 and 7503 shall apply.

(viii) If a request does not comply substantially with the requirements of this paragraph (d), the IRS will notify the taxpayer of that fact. If the information or materials necessary to comply substantially with the requirements of this paragraph (d) are provided to the IRS within 30 days after this notification, the request will be considered filed on the date of the original submission. In addition, the request will be considered filed on the date of the original submission in a case in which the information and materials are provided more than 30 days after the notification if the IRS determines that the electing taxpayer made a good faith effort to provide the applicable information or materials within 30 days after notification and also determines that treating the request as filed on the date of the original submission is consistent with the purposes of section 468A. In any other case in which the information or materials necessary to comply substantially with the requirements of this paragraph (d) are not provided within 30 days after the notification, the request will be considered filed on the date that all information or materials necessary to comply with the requirements of this paragraph (d) are provided.

(2) *Information required*. A request for a schedule of deduction amounts must contain the following information:

(i) The taxpayer's name, address and taxpayer identification number.

(ii) Whether the request is for an initial schedule of deduction amounts or a schedule of deduction amounts for a subsequent special transfer.

(iii) The name and location of the nuclear power plant with respect to which a schedule of deduction amounts is requested.

(iv) A description of the taxpayer's qualifying interest in the nuclear power plant and the percentage of such nuclear power plant that the qualifying interest of the taxpayer represents.

(v) The present value of the estimated future decommissioning costs (as defined in §1.468A–1(b)(6)) with respect to the taxpayer's qualifying interest in the nuclear power plant as of the first day of the taxable year of the taxpayer in which a transfer is made under this section.

(vi) A description of the assumptions, estimates and other factors that were used by the taxpayer to determine the amount of decommissioning costs, including each of the following if applicable:

(A) A description of the proposed method of decommissioning the nuclear power plant (for example, prompt removal/dismantlement, safe storage entombment with delayed dismantlement, or safe storage mothballing with delayed dismantlement).

(B) The estimated year in which substantial decommissioning costs will first be incurred.

(C) The estimated year in which the decommissioning of the nuclear power plant will be substantially complete (see §1.468A–5(d)(3) for a definition of substantial completion of decommissioning).

(D) The total estimated cost of decommissioning expressed in current dollars (that is, based on price levels in effect at the time of the current determination).

(E) The total estimated cost of decommissioning expressed in future dollars (that is, based on anticipated price levels when expenses are expected to be paid).

(F) For each taxable year in the period that begins with the year specified in paragraph (d)(2)(vi)(B) of this section (the estimated year in which substantial decommissioning costs will first be incurred) and ends with the year specified in paragraph (d)(2)(vi)(C) of this section (the estimated year in which the decommissioning of the nuclear power plant will be substantially complete), the estimated cost of decommissioning expressed in future dollars.

(G) A description of the methodology used in converting the estimated cost of decommissioning expressed in current dollars to the estimated cost of decommissioning expressed in future dollars.

(H) The assumed after-tax rate of return to be earned by the amounts collected for decommissioning.

(I) A copy of each engineering or cost study that was relied on or used by the taxpayer in determining the amount of decommissioning costs.

(vii) The taxpayer's pre–2005 nonqualifying percentage (as defined in paragraph (a)(2) of this section).

(viii) The estimated useful life of the nuclear power plant (as such term is defined in paragraph (b)(1)(ii) or (iii) of this section).

(ix) If the request is for a subsequent schedule of deduction amounts, the amount of the previous special transfer and the present value of the estimated future decommissioning costs (as defined in §1.468A–1(b)(6)) with respect to the taxpayer's qualifying interest in the nuclear power plant as of the first day of the taxable year of the taxpayer in which the previous special transfer was made.

(x) If the request is for a subsequent schedule of deduction amounts, a copy of all schedules of deduction amounts that relate to the nuclear power plant to which the request relates and that were previously issued to the taxpayer making the request.

(xi) If the request for a schedule of deduction amounts contains a request, pursuant to §1.468A–5(a)(1)(iv), that the IRS rule whether an unincorporated organization through which the assets of the fund are invested is an association taxable as a corporation for federal tax purposes, a copy of the legal documents establishing or otherwise governing the organization.

(xii) Any other information required by the IRS that may be necessary or useful in determining the schedule of deduction amounts.

(3) *Statement required.* A taxpayer requesting a schedule of deduction amounts under this paragraph (d) must submit a statement that any nonconforming deductions and nonconforming exclusions have reduced the deduction allowed for the special transfer in accordance with paragraph (b)(2) of this section.

(4) *Administrative procedures.* The IRS may prescribe administrative procedures that supplement the provisions of paragraphs (d)(1) and (2) of this section. In addition, the IRS may, in its discretion, waive the requirements of paragraphs (d)(1) and (2) of this section under appropriate circumstances.

§1.468A–9 Effective/applicability date.

Sections 1.468A–1 through 1.468A–8 are effective on December 23, 2010 and apply with respect to taxable years ending after such date. Special rules that are provided for taxable years ending on or before such date, such as the special rule for certain special transfers contained in §1.468A–8(a)(4)(ii), apply with respect to such taxable years. In addition, a taxpayer may apply the provisions of §§1.468A–1 through 1.468A–8 with respect to a taxable year ending on or before December 23, 2010 if all such provisions are consistently applied.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In §602.101, paragraph (b) is amended as follows:

1. The following entries to the table are removed:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
1.468A–3T	1545–1269 1545–1378 1545–1511
* * * * *	
1.468A–4T	1545–0954
* * * * *	
1.468A–7T	1545–0954 1545–1511
* * * * *	
1.468A–3T(h), 1.468A–7T, and 1.468A–8T(d)	1545–2091
* * * * *	

2. The following entries are revised in the table:

§602.101 OMB Control numbers. (b) * * *

* * * * *

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
1.468A–7	1545–0954 1545–1511
* * * * *	

3. The following entry is added in numerical order to the table:

§602.101 OMB Control numbers. (b) * * *

* * * * *

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
1.468A–3(h), 1.468A–7, and 1.468A–8(d)	1545–2091
* * * * *	

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Michael Mundaca,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on December 22, 2010, 8:45 a.m., and published in the issue of the Federal Register for December 23, 2010, 75 F.R. 80697)

Approved November 1, 2010.

Section 863.—Special Rules for Determining Source

26 CFR 1.863–10T: Source of income from a qualified fails charge (temporary).

T.D. 9508

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Source of Income from Qualified Fails Charges

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary Regulations.

SUMMARY: This document contains temporary regulations which set forth the source of income attributable to qualified fails charges. The temporary regulations provide guidance about the treatment of fails charges for purposes of sections 871 and 881, which generally require gross-basis taxation of foreign persons not otherwise subject to U.S. net-basis taxation and the withholding of such tax under sections 1441 and 1442. The text of the temporary regulations also serves as the text of the proposed regulations (REG–132724–10) set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on December 8, 2010.

Applicability Date: These regulations apply to qualified fails charges paid or accrued on or after December 8, 2010.

FOR FURTHER INFORMATION CONTACT: Sheila Ramaswamy or Anthony J. Marra, Office of Associate Chief Counsel (International) (202) 622–3870 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

In response to persistent delivery failures in delivery-versus-payment transactions involving U.S. Treasury securities (Treasury securities), a trading practice governing failed deliveries of Treasury securities was published in 2008 by the Treasury Market Practices Group (TMPG) and the Securities Industry and Financial Markets Association (SIFMA). This trading practice, which was recommended by the Federal Reserve Bank of New York in addition to TMPG and SIFMA, has subsequently been voluntarily adopted by almost every participant in the Treasury securities market. Transactions that involve delivery-versus-payment include a sale, a purchase, a sale and repurchase transaction (commonly known as a "repo"), a securities lending transaction, and an option.

The trading practice addresses the problem that in certain situations, including a low interest rate environment, a party to a delivery-versus-payment transaction may lack the economic incentive to deliver Treasury securities in a timely manner. Under the trading practice, the parties to a contract that provides for delivery-versus-payment of Treasury securities agree that if one party fails to deliver Treasury securities at the time specified in the contract, the failing party will pay an amount (a "fails charge") to the party entitled to receive the Treasury securities. The fails charge is calculated using a formula that takes into account current interest rates and trade proceeds, and accrues each day that the failure to deliver continues. The trading practice is generally expected to impose a fails charge whenever the interest rate on a repo that can be settled with any of a variety of securities (referred to in the market as the "general collateral rate") falls below a certain level.

As noted in this preamble, the delivery-versus-payment market encompasses a variety of transactions, each of which can generate a fails charge. Some transactions, such as a repo, where delivery is required both at inception and at settlement, can produce more than one fails charge. In back-to-back transactions, it can also be difficult to determine whether a party that incurs a fails charge is acting as an intermediary or a principal. As a result, there is considerable uncertainty about the treatment of fails charges for purposes of sections 871 and 881, which generally impose gross-basis taxation at a rate of 30 percent on certain U.S. source income of foreign persons that is not effectively connected with the conduct of a trade or business in the United States and the withholding of such tax under sections 1441 and 1442.

Notice 2009–61, 2009–32 I.R.B. 181, issued in July, 2009, addressed the issue temporarily by providing that the Internal Revenue Service (IRS) will not challenge the position taken by a taxpayer or a withholding agent that a fails charge that is paid on or before December 31, 2010 is not subject to U.S. gross-basis taxation. Notice 2009–61 further announced that the Treasury Department and the IRS were considering issuing prospective guidance on the circumstances, if any, that would cause a fails charge to be subject to U.S. gross-basis taxation. These temporary regulations provide further guidance on the treatment of fails charges. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin. See §601.601(d)(2).

Explanation of Provisions

In order to provide certainty and consistency in the treatment of fails charges for purposes of sections 871, 881, 1441 and 1442, these temporary regulations establish source rules for qualified fails charges that arise in the delivery-versus-payment market for Treasury securities. The temporary regulations provide that the source of income from a qualified fails charge is generally determined by reference to the residence of the taxpayer that is the recipient of the qualified fails charge income, with two exceptions. Qualified fails charge income earned by a qualified business unit (QBU) of a taxpayer is sourced to the country in which the QBU is engaged in a trade or business, and qualified fails charge income that arises from a transaction that is effectively connected to a United States trade or business is sourced in the United States and treated as effectively connected to the conduct of a United States trade or business.

The temporary regulations provide a source rule only for income from a qualified fails charge. In order to be a qualified fails charge, the fails charge must satisfy two requirements. First, it must be paid pursuant to a trading practice or similar guidance approved by a U.S. government agency or the Treasury Market Practices Group (which is sponsored by the Federal

Reserve Bank of New York), or published in separate guidance by the IRS. Second, the transaction that generates the fails charge must be with respect to a bill, note, or other evidence of indebtedness issued by the United States Treasury Department. These temporary regulations do not address the source of any other type of damages payment, including a fails charge that is not a qualified fails charge.

Although there is not currently a fails charge trading practice relating to securities other than Treasury securities, one may be considered in the future for agency securities (including mortgage-backed securities). If a fails charge trading practice pertaining to agency securities is endorsed by the Treasury Market Practices Group or an agency of the United States government and widely adopted, the Treasury Department and the IRS will consider whether fails charges paid with respect to such a trading practice should be sourced under these regulations.

Effective/Applicability Date

These regulations apply to qualified fails charges paid or accrued on or after December 8, 2010.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Sheila Ramaswamy and Anthony J. Marra, Office of the Associate Chief Counsel (International). However, other persons from the Office of Associate Chief Counsel (International) and the Treasury Department have participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1— INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 863(a) and 7805

* * *

Par. 2. Section 1.863–10T is added to read as follows:

§1.863–10T Source of income from a qualified fails charge (temporary).

(a) *In general*. Unless paragraph (b) or (c) of this section applies, the source of income from a qualified fails charge shall be determined by reference to the residence of the taxpayer as determined under section 988(a)(3)(B)(i).

(b) *Qualified business unit exception*. The source of income from a qualified fails charge shall be determined by reference to the residence of a qualified business unit of a taxpayer if—

(1) The taxpayer's residence, determined under section 988(a)(3)(B)(i), is the United States;

(2) The qualified business unit's residence, determined under section 988(a)(3)(B)(ii), is outside the United States;

(3) The qualified business unit is engaged in the conduct of a trade or business in the country where it is a resident; and

(4) The transaction to which the qualified fails charge relates is attributable to the qualified business unit. A transaction will be treated as attributable to a qualified business unit if it satisfies the principles of §1.864–4(c)(5)(iii) (substituting "qualified business unit" for "U.S. office").

(c) *Effectively connected income exception*. Income from a qualified fails charge that arises from a transaction that under the principles described in §1.864–4(c) is effectively connected with a United States trade or business shall be sourced in the United States and the income from the qualified fails charge shall be treated as effectively connected to the conduct of a United States trade or business to the same extent as the transaction from which it arises.

(d) *Definitions*.—(1) *Qualified fails charge*. For purposes of this section, a qualified fails charge is a payment that

(i) Compensates a party to a transaction that provides for delivery of a Treasury security in exchange for the payment of cash (delivery-versus-payment settlement) for another party's failure to deliver the specified Treasury security on the settlement date specified in the relevant agreement; and

(ii) Is made pursuant to:

(A) A trading practice or similar guidance approved or adopted by either an agency of the United States government or the Treasury Market Practices Group, or

(B) Any trading practice, program, policy or procedure approved by the Commissioner in guidance published in the Internal Revenue Bulletin.

(2) *Treasury security*. For purposes of this section, a Treasury security is any bill, note, or other evidence of indebtedness issued by the United States Treasury Department.

(e) *Effective/applicability date*. This section applies to qualified fails charges paid or accrued on or after December 8, 2010.

(f) *Expiration date*. This section expires on December 6, 2013.

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Approved December 2, 2010.

Michael Mundaca,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on December 7, 2010, 8:45 a.m., and published in the issue of the Federal Register for December 8, 2010, 75 F.R. 76262)

Part III. Administrative, Procedural, and Miscellaneous

Relief for Tax Return Preparers Who Have Pending PTIN Applications

Notice 2011–11

All individuals who are compensated for preparing, or assisting in the preparation of, all or substantially all of a tax return or claim for refund of tax must have a preparer tax identification number (PTIN) pursuant to section 1.6109–2. Notice 2011–6, 2011–3 I.R.B. 315, 316, provides that, unless otherwise provided in Notice 2011–6 or other guidance, all tax returns, claims for refund, and other tax forms submitted to the IRS are considered tax returns or claims for refund for purposes of section 1.6109–2. The IRS expects tax return preparers to comply with the new requirement to obtain a preparer tax identification number as soon as possible. Tax return preparers who use the new online application system available through the IRS website at *http://www.irs.gov/taxpros* generally will receive their PTIN number when the application process has been completed. The IRS estimates that tax return preparers who apply for a PTIN using the paper Form W–12, *IRS Paid Preparer Tax Identification Number (PTIN) Application*, generally will receive their PTIN four to six weeks after the application and payment is received.

The IRS recognizes, however, that some tax return preparers are experiencing or may experience difficulty in obtaining a PTIN. If tax return preparers using the online system are unsuccessful in obtaining a PTIN, the IRS system will notify them that their application was not processed and provide appropriate instructions. Complying with these instructions prior to the preparation of a tax return or claim for refund for compensation will establish that these individuals are making a good faith effort to comply with the new PTIN requirement.

Tax return preparers who applied for a PTIN using paper Form W–12 prior to the date of publication of this notice in the Internal Revenue Bulletin and have not received a PTIN generally will receive a PTIN or an acknowledgment of receipt of the PTIN application within six weeks of the IRS' receipt of the PTIN application or within six weeks of the date of publication of this notice, whichever is later. Tax return preparers who apply for a PTIN using paper Form W–12 after the date of this notice generally will receive a PTIN or an acknowledgment of receipt of the PTIN application within six weeks from the date the application is submitted. For individuals who do not attempt to submit a PTIN application via the online system, the submission of a processable paper Form W–12 and payment generally constitutes a good faith attempt to comply with the requirement to obtain a PTIN.

Accordingly, the IRS will permit any tax return preparer receiving (1) notice from the IRS that the IRS was unable to process their online PTIN application or (2) an acknowledgment of receipt of the paper PTIN application to prepare and file tax returns or claims for refund for compensation after the tax return preparer complies with all instructions provided in the notification or acknowledgment letter. These tax return preparers may use a PTIN issued before September 28, 2010 (or their social security number if the tax return preparer does not have a previously issued PTIN), as their preparer tax identification number during the 2011 filing season or until they receive a new PTIN, whichever is earlier. Once a new PTIN is obtained, the new PTIN must be used. Tax return preparers who rely on the relief provided by this notice to prepare tax returns or claims for refund for compensation will be required to pay the $64.25 PTIN application fee for the 2011 filing season even though the processing of the application may be delayed. Payment must be submitted as instructed by the IRS. Tax return preparers who rely on the relief provided by this notice are required to keep a copy of the notification or acknowledgement letter as documentation of their good faith effort in the event that the preparer is contacted by the IRS during the 2011 filing season or in the future.

The relief provided for in this notice only applies during the 2011 filing season and does not apply to individuals who engage in conduct that constitutes a willful violation of the applicable duties and restrictions prescribed in Circular 230 or disreputable conduct under section 10.51 of Circular 230.

The principal author of this notice is Matthew D. Lucey of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, contact Matthew D. Lucey at (202) 622–4940 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Source of Income From Qualified Fails Charges

REG–132724–10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the Bulletin, the IRS and the Treasury Department are issuing temporary regulations (T.D. 9508) under section 863(a) of the Internal Revenue Code. These regulations set forth the source of income attributable to qualified fails charges. This action is necessary to provide guidance about the treatment of fails charges for purposes of sections 871 and 881, which generally require gross-basis taxation of foreign persons not otherwise subject to U.S. net-basis taxation and the withholding of such tax under sections 1441 and 1442. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 8, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–132724–10), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–132724–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–132724–10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sheila Ramaswamy or Anthony J. Marra, Office of Associate Chief Counsel (International) (202) 622–3870; concerning submissions of comments or a request for a public hearing, Richard Hurst at (202) 622–7180.

Background and Explanation of Provisions

The temporary regulations published in this issue of the Bulletin provide guidance for the treatment of fails charges for purposes of sections 871, 881, 1441 and 1442 by establishing source rules for qualified fails charges that arise in the delivery-versus-payment market for Treasury securities. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. In addition to the specific requests for comments made elsewhere in this preamble or the preamble to the temporary regulations, the IRS and the Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. A public hearing may be scheduled if requested in writing by any person who timely submitted written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Sheila Ramaswamy and Anthony J. Marra, Office of the Associate Chief Counsel (International). However, other persons from the Office of Associate Chief Counsel (International) and the Treasury Department have participated in their development.

* * * * *

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1— INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 863(a) and 7805

* * *

Par. 2. Section 1.863–10 is added to read as follows:

§1.863–10 Source of income from a qualified fails charge.

[The text of proposed §1.863–10 is the same as the text of §1.863–10T published elsewhere in this issue of the Bulletin].

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on December 7, 2010, 8:45 a.m., and published in the issue of the Federal Register for December 8, 2010, 75 F.R. 76321)

Correction to Revenue Procedure 2011–11; Maximum Vehicle Values

Announcement 2011–9

Revenue Procedure 2011–11 as published on January 24, 2011 (2011–4 I.R.B. 329) contains an error in Section 1. Purpose. Revenue Procedure 2011–11 provides guidance for the maximum values of employer-provided vehicles first made available for personal use in calendar year 2011. This announcement corrects section 1.01 of Rev. Proc. 2011–11.

This correction clarifies that the maximum vehicle values set forth in Rev. Proc. 2011–11 are for the calendar year 2011.

Section 1.01 of Rev. Proc. 2011–11 now reads as follows:

> This revenue procedure provides (1) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2011 for which the vehicle cents-per-mile valuation rule provided under section 1.61–21(e) of the Income Tax Regulations may be applicable is $15,300 for a passenger automobile and $16,200 for a truck or van; (2) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2011 for which the fleet-average valuation rule provided under section 1.61–21(d) of the regulations may be applicable is $20,300 for a passenger automobile and $21,200 for a truck or van.

Drafting Information

The principal author of this announcement is Don M. Parkinson of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this announcement, please contact Don M. Parkinson at (202) 622–6040 (not a toll-free call).

Hybrid Retirement Plans; Correction

Announcement 2011–10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (T.D. 9505, 2010–48 I.R.B. 755) that were published in the **Federal Register** on Tuesday, October 19, 2010 (75 FR 64123) providing guidance relating to certain provisions of the Internal Revenue Code that apply to hybrid defined benefit pension plans.

DATES: This correction is effective on December 28, 2010, and is applicable on October 19, 2010.

FOR FURTHER INFORMATION CONTACT: Neil S. Sandhu, Lauson C. Green, or Linda S. F. Marshall at (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (T.D. 9505) that are the subject of this document are under section 411 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (T.D. 9505) contain errors that may prove to be misleading and are in need of clarification.

* * * * *

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.411(b)(5)–1 is amended by:

1. Revising the paragraph (b)(1)(ii)(A).

2. Revising the first sentence of paragraph (b)(1)(iv) *Example 4*.(iii).

3. Revising the first sentence of paragraph (c)(5) *Example 2*.(iv).

4. Revising the third sentence of paragraph (c)(5) *Example 3*.(i).

5. Revising the paragraph (d)(1)(iii).

6. Revising the first sentence of paragraph (f)(2)(iii).

The revisions read as follows:

§1.411(b)(5)–1 Reduction in rate of benefit accrual under a defined benefit plan.

* * * * *

(b) * * *

(1) * * *

(ii) * * * (A) *In general.* Except as provided in paragraphs (b)(1)(ii)(B), (C), and (D) of this section, the safe harbor provided by section 411(b)(5)(A) and paragraph (b)(1)(i) of this section is available with respect to an individual only if the individual's accumulated benefit under the plan is expressed in terms of only one safe-harbor formula measure and no similarly situated, younger individual who is or could be a participant has an accumulated benefit that is expressed in terms of any measure other than that same safe-harbor formula measure. Thus, for example, if a plan provides that the accumulated benefit of participants who are age 55 or over is expressed under the terms of the plan as a life annuity payable at normal retirement age (or current age, if later) as described in paragraph (b)(1)(i)(A) of this section and the plan provides that the accumulated benefit of participants who are younger than age 55 is expressed as the current balance of a hypothetical account as described in paragraph (b)(1)(i)(B) of this section, then the safe harbor described in section 411(b)(5)(A) and paragraph (b)(1)(i) of this section does not apply to individuals who are or could be participants who are age 55 or over.

* * * * *

(iv) * * *

Example 4. * * *

(iii) * * * If, instead of the facts in paragraph (i) of this *Example 4*, the plan had been amended to provide only participants who have not yet attained age 55 by January 1, 2012, with a benefit that is the greater of the benefit under the average annual compensation formula and a benefit that is based on the balance of a hypothetical account, then the safe harbor would not be satisfied with respect to individuals who have attained age 55 by January 1, 2012. * * *

* * * * *

(c) * * *

(5) * * *

Example 2. * * *

(iv) * * * The plan provides that, as of a participant's annuity starting date, the plan will determine whether the benefit attributable to the opening hypothetical account balance payable in the particular optional form of benefit selected is equal to or greater than the benefit accrued under the plan through the date of conversion and payable in the same generalized optional form of benefit with the same annuity starting date. * * *

* * * *

Example 3. * * * (i) * * * Under the terms of Plan E, the benefit attributable to A's opening hypothetical account balance is increased so that A's straight life annuity commencing on January 1, 2015, is $1,000 per month. * * *

* * * *

(d) * * *

(1) * * *

(iii) *Market rate of return for single rates*. Except as otherwise provided in this paragraph (d)(1), an interest crediting rate is not in excess of a market rate of return only if the plan terms provide that the interest credit for each plan year is determined using one of the following specified interest crediting rates:

* * * *

(f) * * *

(2) * * *

(iii) * * * For the periods after the statutory effective date set forth in paragraph (f)(1) of this section and before the regulatory effective date set forth in paragraph (f)(2)(i) of this section, the safe harbor and other relief of section 411(b)(5) apply and the market rate of return and other requirements of section 411(b)(5) must be satisfied. * * *

Guy R. Traynor,
Acting Chief,
Publications and Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).

(Filed by the Office of the Federal Register on December 27, 2010, 8:45 a.m., and published in the issue of the Federal Register for December 28, 2010, 75 F.R. 81456)

Additional Rules Regarding Hybrid Retirement Plans; Correction

Announcement 2011–11

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (REG–132554–08, 2010–48 I.R.B. 783) that was published in the **Federal Register** on Tuesday, October 19, 2010 (75 FR 64197) providing guidance relating to certain provisions of the Internal Revenue Code that apply to hybrid defined benefit pension plans.

FOR FURTHER INFORMATION CONTACT: Neil S. Sandhu, Lauson C. Green, or Linda S. F. Marshall at (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 411 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–132554–08) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–132554–08), which was the subject of FR Doc. 2010–25942, is corrected as follows:

§1.411(b)(5)–1 [Corrected]

On page 64214, column 3, §1.411(b)(5)–1(e)(2)(iii)(A), line 19, the language "change the rate of interest crediting" is corrected to read "change the interest crediting rate".

Guy R. Traynor,
Acting Chief,
Publications and Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).

(Filed by the Office of the Federal Register on December 27, 2010, 8:45 a.m., and published in the issue of the Federal Register for December 28, 2010, 75 F.R. 81543)

Correction to Revenue Ruling 2011–3 — 2011 Covered Compensation Tables; Permitted Disparity

Announcement 2011–16

Revenue Ruling 2011–3 as it appears in the Internal Revenue Bulletin (IRB) that was published on January 24, 2011 (2011–4 I.R.B. 326) contains a typographical error in Attachment I. The error appears in the third column of Attachment I that provides the 2011 Covered Compensation Table II. The dollar amount in column three for the 1966 Calendar Year of Birth is $100,220; the correct dollar amount for 1966 is $101,220. Revenue Ruling 2011–3 as it appears in the IRB has been corrected and can be accessed at *www.irs.gov*.

Drafting Information

The principal author of this announcement is Kathleen Herrmann of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this announcement, please contact the Employee Plans taxpayer assistance answering service at 1–877–829–5500 (a toll-free number) or e-mail Ms. Herrmann at *RetirementPlanQuestions@irs.gov*.

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D. —Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z —Corporation.

Numerical Finding List[1]

Bulletin 2011–1 through 2011–7

Announcements:

Notices:

Proposed Regulations:

Revenue Procedures:

Revenue Rulings:

Treasury Decisions:

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2010–27 through 2010–52 is in Internal Revenue Bulletin 2010–52, dated December 27, 2010.

Finding List of Current Actions on Previously Published Items[1]

Bulletin 2011–1 through 2011–7

Announcements:

85-88
Obsoleted by
Rev. Proc. 2011-10, 2011-2 I.R.B. *294*

2008-11
Modified by
Ann. 2011-6, 2011-4 I.R.B. *433*

2009-62
Obsoleted by
Rev. Proc. 2011-10, 2011-2 I.R.B. *294*

Notices:

2010-59
Modified by
Notice 2011-5, 2011-3 I.R.B. *314*

2010-71
Modified and superseded by
Notice 2011-9, 2011-6 I.R.B. *459*

2010-79
Clarified and modified by
Notice 2011-4, 2011-2 I.R.B. *282*

Proposed Regulations:

REG-132554-08
Corrected by
Ann. 2011-11, 2011-7 I.R.B. *500*

Revenue Procedures:

72-50
Modified and superseded by
Rev. Proc. 2011-10, 2011-2 I.R.B. *294*

76-34
Modified and supersed by
Rev. Proc. 2011-10, 2011-2 I.R.B. *294*

83-23
Modified and superseded by
Rev. Proc. 2011-15, 2011-3 I.R.B. *322*

94-17
Modified and superseded by
Rev. Proc. 2011-15, 2011-3 I.R.B. *322*

97-27
Clarified and modified by
Rev. Proc. 2011-4, 2011-1 I.R.B. *330*

2001-10
Modified by
Rev. Proc. 2011-4, 2011-4 I.R.B. *330*

Revenue Procedures— Continued:

2002-28
Modified by
Rev. Proc. 2011-4, 2011-4 I.R.B. *330*

2003-21
Modified and superseded by
Rev. Proc. 2011-15, 2011-3 I.R.B. *322*

2004-34
Modified by
Rev. Proc. 2011-14, 2011-4 I.R.B. *330*
Modified and clarified by
Rev. Proc. 2011-18, 2011-5 I.R.B. *443*

2006-44
Modified by
Ann. 2011-6, 2011-4 I.R.B. *433*

2006-56
Modified by
Rev. Proc. 2011-14, 2011-4 I.R.B. *330*

2008-52
Modified by
Notice 2011-4, 2011-2 I.R.B. *282*
Rev. Proc. 2011-17, 2011-5 I.R.B. *441*
Superseded in part by
Rev. Proc. 2011-14, 2011-4 I.R.B. *330*

2009-39
Superseded in part by
Rev. Proc. 2011-14, 2011-4 I.R.B. *330*

2009-44
Modified by
Ann. 2011-6, 2011-4 I.R.B. *433*

2010-1
Superseded by
Rev. Proc. 2011-1, 2011-1 I.R.B. *1*

2010-2
Superseded by
Rev. Proc. 2011-2, 2011-1 I.R.B. *283*

2010-3
Superseded by
Rev. Proc. 2011-3, 2011-1 I.R.B. *111*

2010-4
Superseded by
Rev. Proc. 2011-4, 2011-1 I.R.B. *123*

2010-5
Superseded by
Rev. Proc. 2011-5, 2011-1 I.R.B. *167*

2010-6
Superseded by
Rev. Proc. 2011-6, 2011-1 I.R.B. *195*

2010-7
Superseded by
Rev. Proc. 2011-7, 2011-1 I.R.B. *233*

Revenue Procedures— Continued:

2010-8
Superseded by
Rev. Proc. 2011-8, 2011-1 I.R.B. *237*

2010-9
Superseded by
Rev. Proc. 2011-9, 2011-2 I.R.B. *283*

2010-15
Updated by
Rev. Proc. 2011-13, 2011-3 I.R.B. *318*

2011-1
Corrected by
Ann. 2011-7, 2011-5 I.R.B. *446*

2011-8
Corrected by
Ann. 2011-8, 2011-5 I.R.B. *446*

2011-11
Corrected by
Ann. 2011-9, 2011-7 I.R.B. *499*

Revenue Rulings:

81-100
Modified by
Rev. Rul. 2011-1, 2011-2 I.R.B. *251*

2004-67
Modified by
Rev. Rul. 2011-1, 2011-2 I.R.B. *251*

2008-40
Modified by
Rev. Rul. 2011-1, 2011-2 I.R.B. *251*

2011-3
Corrected by
Ann. 2011-16, 2011-7 I.R.B. *500*

Treasury Decisions:

9505
Corrected by
Ann. 2011-10, 2011-7 I.R.B. *499*

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