Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201334003**
Release Date: 8/23/2013

Index Number: 468A.04-02

Person To Contact:
ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B06 – PLR-109824-13

Date:
April 30, 2013

Legend:

Taxpayer =

Company A =
Holdco =

Subsidiary =

State A =
State B =
Plant =
Location =
Commission A =
Commission B =
Commission C =
Director =

Dear :

This letter responds to your request for private letter ruling dated . You requested that we rule on certain tax consequences, under section 468A of the Internal Revenue Code, of the restructuring discussed below.

Facts:

Taxpayer has represented the following facts and information relating to the ruling request:

Taxpayer, a corporation organized in State A, is the parent of an affiliated group of subsidiary corporations. Subsidiary, organized in State B, is wholly-owned by Taxpayer and is a member of the affiliated group. Company A, a limited liability company (LLC) disregarded for federal income tax purposes, is wholly-owned by Taxpayer. Holdco, an LLC organized in State A, is an indirect, wholly-owned subsidiary of Taxpayer. Holdco has elected to be treated as a corporation for federal income tax purposes.

Subsidiary is the owner of Plant. The Plant is a nuclear power plant located at Location. Subsidiary is subject to the jurisdiction of Commission A with regard to the operation and maintenance of Plant, and to the jurisdiction of Commission B and Commission C with regard to the rates charged to wholesale customers for electricity produced by Plant. Subsidiary maintains a nuclear decommissioning trust that is qualified under § 468A (QDT) with respect to Plant.

Taxpayer will undertake a series of transactions with respect to Plant and its QDT which it characterizes as a “separation reorganization” (step one) followed by the “Holdco contribution” (step two). For step one, Subsidiary will be merged with and into Company A, with Company A surviving. In step 2, Company A will merge into Holdco with Holdco surviving. Taxpayer represents that the merger of Company A into Holdco will be treated as a non-taxable capital contribution under § 351. As a result of these transactions, Plant, as well as its QDT will be owned, for federal tax purposes, by Holdco. Taxpayer represents that neither Company A nor Holdco will increase its cost basis in any assets due to its acceptance of the liability for decommissioning the plants as a result of the transactions described above.

Taxpayer has requested the following rulings:

Requested Ruling #1: The QDT will not be disqualified by reason of the transfer described above in step one.

Requested Ruling #2: The QDT will continue to be treated as satisfying the requirements of § 468A and § 1.468A-5 and -6 of the Income Tax Regulations after the transfer described above in step one.

Requested Ruling #3: The QDT will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the transfer described above in step one.

Requested Ruling #4: Neither Taxpayer nor Company A will be required to recognize gain or loss or take any income or deduction into account as a result of the transfers of the QDT as a result of the transfer described above in step one.

Requested Ruling #5: Pursuant to § 1.468A-6(c), the basis of the assets of the QDT will be unchanged by the transfers described above in step one.

Requested Ruling #6: The QDT will not be disqualified by reason of the transfers to Holdco described above in step two.

Requested Ruling #7: The QDT will continue to be treated as satisfying the requirements of § 468A and § 1.468A-5 and -6 after the transfers to Holdco described above in step two.

Requested Ruling #8: The QDT will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the transfers to Holdco described above in step two.

Requested Ruling #9: Neither Taxpayer, Subsidiary, nor Holdco will be required to recognize any gain or loss or take any income or deduction into account as a result of the transfers of the QDT to Holdco described above in step two.

Requested Ruling #10: Pursuant to § 1.468A-6, the basis of the assets of the QDT will be unchanged as a result of the transfers to Holdco described above in step two.

Law and Analysis:

Section 468A(a) of the Code provides that a taxpayer may elect to deduct payments made to a nuclear decommissioning reserve fund that meets the requirements of section 468A (i.e. a fund that is a “qualified nuclear decommissioning fund”).

Section 1.468A-1(b)(4) provides that a “qualified nuclear decommissioning fund” is a fund that satisfies the requirements of section 1.468A-5.

Section 1.468A-5(a) of the Income Tax regulations sets out the qualification requirements for nuclear decommissioning funds. It provides, in part, that a qualified nuclear decommissioning fund must be established and maintained pursuant to an arrangement that qualifies as a trust under state law.

Section 1.468A-5(a)(1)(iii) provides that an electing taxpayer can establish and maintain only one qualified nuclear decommissioning fund for each nuclear power plant. 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.

Section 1.468A-6 provides rules applicable to the transfer of an interest in a nuclear power plant (and transfer of the qualified nuclear decommissioning fund) where certain requirements are met. Specifically, section 1.468A-6(b) provides that section 1.468A-6 applies if--

(1) Immediately before the disposition, the transferor maintained a qualified nuclear decommissioning fund with respect to the interest disposed of; and

(2) Immediately after the disposition--

(i) The transferee maintains a qualified nuclear decommissioning 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 fund) 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 section 1.468A-5(a)(iii), which permits an electing taxpayer to maintain only one qualified nuclear decommissioning fund for each plant.

Section 1.468A-6(c) provides that a disposition that satisfies the requirements of section 1.468A-6(b) will have the following tax consequences at the time it occurs:

(1)(i) Neither the transferor nor the transferor's qualified nuclear decommissioning fund will recognize gain or loss or otherwise take any income into account by reason of the transfer of a proportionate amount of the assets of the transferor's qualified nuclear decommissioning fund to the transferee's qualified nuclear decommissioning fund (or by reason of the transfer of the transferor's entire qualified nuclear decommissioning fund to the transferee). For purposes of the regulations under section 468A, this transfer (or the transfer of the transferor's qualified nuclear decommissioning fund) will not be considered a distribution of assets by the transferor's qualified nuclear decommissioning fund.

(ii) Notwithstanding § 1.468A-6(c)(1)(i), if the transferor has made a special transfer under § 1.468A-8 prior to the transfer of the fund or fund assets, any deduction with respect to that special transfer allowable under § 468A(f)(2) for a taxable year ending after the date of the transfer of the fund or fund assets is allowed under § 468A(f)(2)(C) for the taxable year that includes the date of the transfer of the fund or fund assets.

(2) Neither the transferee nor the transferee's qualified nuclear decommissioning fund will recognize gain or loss or otherwise take any income into account by reason of the transfer of a proportionate amount of the assets of the transferor's qualified nuclear decommissioning fund to the transferee's qualified nuclear decommissioning fund (or by reason of the transfer of the transferor's entire qualified nuclear decommissioning fund to the transferee). For purposes of the regulations under section 468A, this transfer (or the transfer of the transferor's qualified nuclear decommissioning fund) will not constitute a payment or a contribution of assets by the transferee to its qualified nuclear decommissioning fund.

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

Under section 1.468A-6(f), the Service may treat any disposition of an interest in a nuclear power plant occurring after December 27, 1994, as satisfying the requirements of the regulations if the Service determines that such treatment is necessary or appropriate to carry out the purposes of section 468A.

Conclusions:

Based on the information submitted by Taxpayer, we reach the following conclusions:

Ruling #1: The QDT will not be disqualified by reason of the transfer described above in step one.

Ruling #2: The QDT will continue to be treated as satisfying the requirements of § 468A and § 1.468A-5 and -6 of the Income Tax Regulations after the transfer described above in step one.

Ruling #3: The QDT will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the transfer described above in step one.

Ruling #4: Neither Taxpayer nor Company A will be required to recognize gain or loss or take any income or deduction into account as a result of the transfers of the QDT as a result of the transfer described above in step one.

Ruling #5: Pursuant to § 1.468A-6(c), the basis of the assets of the QDT will be unchanged by the transfer described above in step one.

Ruling #6: The QDT will not be disqualified by reason of the transfer to Holdco described above in step two.

Ruling #7: The QDT will continue to be treated as satisfying the requirements of § 468A and § 1.468A-5 and -6 after the transfer to Holdco described above in step two.

Ruling #8: The QDT will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the transfer to Holdco described above in step two.

Ruling #9: Neither Taxpayer, Subsidiary, nor Holdco will be required to recognize any gain or loss or take any income or deduction into account as a result of the transfer of the QDT to Holdco described above in step two.

Ruling #10: Pursuant to § 1.468A-6, the basis of the assets of the QDT will be unchanged as a result of the transfer to Holdco described above in step two.

While it owns a qualified interest in Plant, Holdco is eligible to maintain a qualified nuclear decommissioning fund for Plant.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above.

Specifically, we express no opinion on the tax consequences of either of the steps described above and whether the contribution to Holdco in step two qualifies as tax-free under § 351. In addition, the rulings above are specifically conditioned on Company A and Holdco not increasing their cost basis in any assets due to their assumption of the liability for decommissioning the plants as a result of the transactions described above. In the event that Company A or Holdco increase their cost basis in any assets due to the assumption of the liability for decommissioning Plant as a result of the transactions described related to the QDT, any amount contributed to the QDT based on this ruling would be considered an excess contribution under § 1.468A-5(c)(2)(ii) and could result in the disqualification of the QDT under § 1.468A-5(c).

This letter ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that this ruling may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, the original of this letter is being sent to Taxpayer. We are also sending a copy of this letter ruling to Taxpayer' authorized representatives and to the Director.

Sincerely,

PETER C. FRIEDMAN
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
Passthroughs and Special Industries

cc: