Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-116142-21

Date:
January 31, 2022

In Re:

LEGEND:

Taxpayer =

Parent =

State A =

Commission A =

Commission B =

Plant =

Dear :

This letter responds to your request dated August 9, 2021, for a ruling regarding the application of § 468A of the Internal Revenue Code to the facts set forth below.

FACTS:

Taxpayer represents the facts and information related to its request as follows:

Taxpayer, a State A corporation, is a wholly-owned subsidiary of Parent. Parent is incorporated in State A. Taxpayer is included in Parent's consolidated tax return, filed (electronically) on a calendar year basis, using the accrual method of accounting.

Taxpayer is a public utility, subject the jurisdiction of Commission A and Commission B. Taxpayer has majority ownership in Plant, containing three separate nuclear reactors, and for each reactor, maintains a Qualified (under § 468A) Nuclear Decommissioning Reserve Fund (QNDRF) and a non-Qualified Nuclear Decommissioning Reserve Fund (non-QNDRF).

The Nuclear Waste Policy Act of 1982 states that the United States Government is responsible for the permanent disposal of high-level radioactive waste and spent nuclear fuel. Taxpayer, as a condition of its Nuclear Regulatory Commission license, enters into contracts with the United States Department of Energy (DOE) to provide for the disposal of its nuclear waste.

Spent nuclear fuel is a highly-radioactive byproduct of nuclear power generation that must cool in a spent fuel pool for three to five years before it is moved to either temporary or permanent dry storage. After the cooling period, Taxpayer moves the nuclear waste to dry storage in an Independent Spent Fuel Storage Installation (ISFSI). Taxpayer is responsible for the storage and related costs of nuclear waste until it is accepted by the DOE.

Currently the DOE is not accepting nuclear waste for disposal. Taxpayer has thus constructed an ISFSI at Plant site to store nuclear waste. Over the years of operation of Plant, Taxpayer has collected amounts from ratepayers to pay for, inter alia, the costs of storing the spent nuclear waste and contributed these monies to a QNDRF.

RULING REQUESTED:

Whether amounts that are to be used to pay for ISFSI-related costs constitute “nuclear decommissioning costs” as defined in § 468A and the regulations thereunder and may therefore be paid from the applicable QNDRF where the deductibility of such costs may be limited as a result of potential DOE reimbursements being considered compensated for by insurance or otherwise.

LAW AND ANALYSIS:

Section 468A(a) of the Internal Revenue Code (Code) allows taxpayers with a qualifying interest in a nuclear power plant to currently deduct the future costs of decommissioning the nuclear power plant by making contributions to a Fund prior to when economic performance occurs.

Treasury Regulation Section 1.468A-1(b)(6) provides that “nuclear decommissioning costs” means 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 (Pub.L. 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.

Section 1.468A-1(b)(6)(ii) of the regulations provide that the term nuclear decommissioning costs or decommissioning costs, as applicable to this title, also includes expenses incurred in connection with the construction, operation, and ultimate decommissioning of a facility used solely to store, pending delivery to a permanent repository or disposal, spent nuclear fuel generated by one or more nuclear power plants (for example, an ISFSI). 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 (Pub. L. 97-425).

It is important to note that the regulations discussed above require that amounts expended or to be expended for purposes related to nuclear decommissioning be "otherwise deductible" for those expenses to be considered "nuclear decommissioning costs" except for those amounts to be expended in connection with the construction, operation, and ultimate decommissioning of a facility used solely to store, pending delivery to a permanent repository or disposal, spent nuclear fuel generated by one or more nuclear power plants (that is, directly related to an ISFSI). This is a deliberate choice in drafting the regulations. Section 1.A. of Treasury Decision 9906 confirmed that the requirement that an expense be "otherwise deductible" is not applicable to costs related to storing spent nuclear fuel generated by a nuclear power plant or plants (T.D. 9906, 85 FR 55185, 55186-87).

RULING:

Based upon the facts submitted and the representations made by the taxpayer, we reach the following conclusion:

Amounts currently held in a QNDRF to be used to pay for ISFSI-related costs constitute "nuclear decommissioning costs" as defined in § 468A and the regulations thereunder and may therefore be paid from that QNDRF where the deductibility of such costs may

be limited as a result of potential DOE reimbursements being considered compensated for by insurance or otherwise.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal income tax consequences of the above-described facts under any other provision of the Code or regulations. In particular, we express no opinion regarding the deductibility of any amount under any provision of the Code or the timing of that deduction for any amounts expended related to an ISFSI under the situation described above.

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

This ruling is based upon information and representations submitted by Taxpayer and accompanied by penalty of perjury statements executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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

cc: