

Internal Revenue Service

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Person To Contact:

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Telephone Number:

Refer Reply To:

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Date:

April 05, 2007

Legend:

Seller =

Buyer =

Seller's Parent =

Buyer's Subsidiary =

Intermediate =

Buyer's Parent =

State A =

State Commission =

Plant =

Location =

State B =

a =

b =

c =

d =

e =

f =

Dear

This letter responds to your March 16, 2007, modifications to your letter dated September 13, 2006, requesting a private letter ruling concerning the tax consequences of the sale by Seller to Buyer of a nuclear power plant and associated assets, including the liability to decommission the plant. Specifically, you have requested rulings regarding the tax consequences under section 468A of the Internal Revenue Code to Seller's qualified nuclear decommissioning fund.

Seller and Buyer, in a jointly-filed ruling request, have represented the following facts and information relating to the ruling request:

Seller's Parent is a publicly traded State A corporation that is the common parent company of the affiliated group of companies that includes Seller, a State A corporation that operates as a public utility and is wholly owned by Seller's Parent. Seller's Parent files its federal income tax return on a calendar-year basis and uses the accrual method of accounting. As a public utility, Seller is regulated by the State Commission and the Federal Energy Regulatory Commission. As the owner of the Plant, Seller is also regulated by the Nuclear Regulatory Commission ("NRC").

Seller owns an a percent interest in the Plant which is located in Location and consists of a fully licensed and operational nuclear reactor and associated electric generation equipment. Seller's license to operate the Plant previously expired in b; however, the NRC recently agreed to extend the operating license until c.

Seller has established, with respect to the decommissioning of Plant, a nuclear decommissioning trust fund ("Seller's Qualified Decommissioning Fund") that satisfies the requirements to be treated as a "nuclear decommissioning reserve fund" within the meaning of section 468A(a) and section 1.468A-5. In addition, Seller maintains two additional nuclear decommissioning trust funds, one to satisfy State Commission requirements (the "Seller's State Commission Nonqualified Decommissioning Fund") and another to satisfy the requirements of the Federal Energy Regulatory Commission, neither of which meet the requirements of section 468A(a) and section 1.468A-5.

Buyer is a State B limited liability company. Buyer's Subsidiary is also a State B limited liability company, and is wholly-owned by Buyer. Buyer, in turn, is an indirect wholly-owned subsidiary of Intermediate, a State B corporation which is a wholly-owned subsidiary of Buyer's Parent, the common parent company of the affiliated group of companies that includes Buyer's Subsidiary, Buyer, and Intermediate. Buyer has elected to be treated as a corporation for U.S. federal income tax purposes.

Pursuant to a competitive auction process in which multiple parties placed bids to purchase the Plant, Seller and Buyer's Subsidiary (collectively, the "Parties") entered into an Asset Sale Agreement dated d (the "ASA") to effectuate the transfer of the Plant and certain other related assets. The terms of the ASA were negotiated between the

Parties on an arm's length basis, with each party represented by its own independent advisors.

Buyer, through Buyer's Subsidiary, will operate the Plant under the jurisdiction of (i) the Federal Energy Regulatory Commission as to terms and conditions of wholesale power sales and (ii) the NRC as to the requirements associated with the ownership and operation (including decommissioning) of the Plant.

Under the ASA, the following are to take place on the closing date (the "Closing Date"):

1. Buyer will pay to Seller the sum of e (as adjusted pursuant to the ASA) in exchange for the assets that comprise the Plant, including all of the nuclear fuel, equipment, spare parts, fixtures, inventory and other property necessary for the operation and maintenance of the Plant.
2. Buyer will assume all of Seller's liabilities and obligations for decommissioning the Plant. Buyer has agreed to provide and maintain sufficient financial guarantees (whether in the form of a corporate guaranty or other arrangements satisfactory to the NRC) to meet the license obligations set forth by the NRC with respect to the Plant (including Buyer's obligation to decommission the Plant at the end of its useful life). As a result, after the closing Seller will not have any further liability with respect to the decommissioning of the Plant
3. Seller shall transfer or cause to be transferred to Seller's State Commission Nonqualified Decommissioning Fund the necessary amounts to cause such fund to hold assets with a fair market value equal to f (as adjusted pursuant to the ASA) (the "Decommissioning Target"). The Decommissioning Target is the negotiated present value amount that Seller and Buyer have agreed is necessary to fund the future decommissioning costs of the Plant.
4. Seller's State Commission Nonqualified Decommissioning Fund will transfer to Buyer (or to a trust fund established and maintained by Buyer) assets in an amount equal to the Decommissioning Target.
5. Seller's Qualified Decommissioning Fund shall distribute to Seller all of the remaining assets held in such fund.

None of the assets held by Seller's Qualified Decommissioning Fund will be transferred by Seller's Qualified Decommissioning Fund to a trust fund established by the Buyer that is intended to be a qualified nuclear decommissioning fund that meets the requirements of section 1.468A-5(a).

The sale of the assets and the simultaneous assumption by Buyer of the liabilities and obligations set forth in the ASA will be reported as an asset purchase transaction for federal income tax purposes. Subsequent to the sale, Seller will no longer be engaged in the trade or business of owning a nuclear power facility.

Requested Ruling: *The Service, pursuant to the exercise of its discretion as provided in Treasury Regulation section 1.468A-5(c)(1), will disqualify the Seller's Qualified Decommissioning Fund in its entirety as of the Closing Date but prior to any transfer or distribution of assets by Seller's Qualified Decommissioning Fund that occur on the Closing Date and, consequently, the entire amount of assets held by the Seller's Qualified Decommissioning Fund will be deemed to be distributed to Seller on the Closing Date (with the resulting tax consequences described in section 1.468A-5(c)(3)).*

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)(3) provides that a "qualified nuclear decommissioning fund" is a fund that satisfies the requirements of section 1.468A-5, and a "nonqualified nuclear decommissioning fund" is a fund that does not satisfy those requirements.

Section 1.468A-5(a) sets out the qualification requirements for a qualified nuclear decommissioning fund. 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)(i) provides that a qualified nuclear decommissioning fund must be established exclusively for the purpose of funding the cost associated with decommissioning one or more nuclear facilities.

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.

Section 1.468A-5(a)(2) provides that a qualified 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 section 1.468A-2(a).

Section 1.468A-5(a)(3) provides that the assets of a qualified 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 plant to which the fund relates, (B) to pay administrative and other incidental costs of the trust fund,

and (C) to the extent not currently required for the purposes described in (A) and (B) above, to make investments.

Section 1.468A-5(c)(1)(i) provides that if at any time during the taxable year a qualified nuclear decommissioning fund does not satisfy a requirement of section 1.468A-5(a), the Service may, in its discretion, disqualify all or a portion of the fund as of the date that the fund does not satisfy such requirements.

Section 1.468A-5(c)(3) provides that, if all or any portion of a qualified nuclear decommissioning fund is disqualified under section 1.468A-5(c)(1), the portion of the qualified nuclear decommissioning fund that is disqualified is treated as distributed to the electing taxpayer on the date of the disqualification. Such a distribution shall be treated for purposes of section 1001 as a disposition of property held by the qualified nuclear decommissioning fund. 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 product of the fair market value of the assets of the fund determined as of the date of disqualification (reduced by certain amounts including any tax that is (1) imposed on the income of the fund, (2) is attributable to income taken into account before the date of the disqualification or as a result of the disqualification, and (3) has not been paid as of the date of the disqualification) and the fraction of the qualified nuclear decommissioning fund that was disqualified under section 1.468A-5(c)(1).

On the Closing Date, Seller will no longer own the Plant, bear any liability or responsibility for the decommissioning of the Plant, or be engaged in the trade or business of owning a nuclear power facility; consequently, Seller's previously Qualified Decommissioning Fund will no longer satisfy the requirements of sections 1.468A-5(a)(1), 1.468A-5(a)(2) and 1.468A-5(a)(3).

Accordingly, pursuant to the authority granted under section 1.468A-5(c)(1), the Service will exercise its discretion to disqualify the Seller's Qualified Decommissioning Fund in its entirety as of the Closing Date or upon any transfer of assets by the Seller's Qualified Decommissioning Fund to the Seller or the Seller's State Commission Nonqualified Decommissioning Fund. In accordance with section 1.468A-5(c)(3) all assets held in Seller's Qualified Decommissioning Fund will be deemed to be distributed to Seller on the Closing Date. The deemed distribution of assets will be treated as a disposition under section 1001 for Seller's Qualified Decommissioning Fund, and Seller shall include in gross income for the tax year that includes such distribution the amount of assets deemed distributed, net of taxes paid by Seller's Qualified Decommissioning Fund upon such deemed distribution.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement 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.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. More specifically, no opinion is expressed or implied as to whether the actions of the Seller constitute self-dealing under section 4951 of the Code. This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent.

Effective January 1, 2006, amendments were made to § 468A by the Energy Tax Incentives Act of 2005, Pub. L. 109-58, 119 Stat. 594. Regulations based on these amendments are being developed but have not yet been proposed. This ruling may be modified or revoked by the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2006-1, 2006-1 I.R.B. 1, 49. However, when the criteria in section 11.05 of Rev. Proc. 2006-1, 2006-1 I.R.B. 49 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

In accordance with powers of attorney on file with this office, we are sending copies of this ruling to both Buyer and Seller (or their authorized representatives). We are also sending a copy of this letter ruling to the Industry Director, Natural Resources (LM:NR).

Sincerely,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
(Passthroughs & Special Industries)