

§ 301.9100-3 of the Procedure and Administration Regulations an extension of time to elect application of § 468A of the Internal Revenue Code with respect to Taxpayer's interest in Plant and the related Nuclear Decommissioning Reserve Fund (Fund), and to Taxpayer's supplementary request dated D2, requesting under § 301.9100-3 of the Procedure and Administration Regulations an extension of time to file a request for a revised schedule of ruling amounts for Plant under § 1.468A-3(i)(1)(i) of the Income Tax Regulations for the period beginning D3.

Taxpayer owns a percent of Plant. Taxpayer is a single, integrated electric utility engaged in the generation, purchase, transmission, distribution, and retail sale of electricity. Taxpayer was granted an initial Schedule of Ruling Amounts which was attached to Taxpayer's Year 1 Federal income tax return. In Year 6, Taxpayer requested and was granted a revised Schedule of Ruling Amounts because the public utility commission having jurisdiction over Taxpayer increased the amount of decommissioning costs to be included in Taxpayer's cost of service. A copy of the revised Schedule of Ruling Amounts was attached to Taxpayer's Year 6 Federal income tax return. During due diligence for the sale of Taxpayer by Parent to Company A, Company A discovered that Taxpayer had failed to attach to the Federal income tax return for Years 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, and 13, the Election Statement for Plant and the revised schedule of ruling amounts as required by § 1.468(A)-7(a) of the Income Tax Regulations. Taxpayer represents that its failure to attach the Election Statement was due to Taxpayer's misinterpretation of instructions by outside counsel. Taxpayer represents it understood the instructions to only require attachment of the Election Statement and ruling to the Federal income tax return for Year 1, and no further election would be required on subsequent returns. Once the failure was pointed out, Taxpayer commenced preparing this ruling request.

Taxpayer further represents that due to split tax years for the calendar Years 8, 12, and 13, as a result of a merger in Year 8, deconsolidation from Parent's consolidated tax return in Year 12, and reconsolidation with Parent's consolidated tax return in Year 13, Taxpayer's 10th taxable year after its most recent Schedule of Ruling amounts is Year 14. The due date for this tax return was D4. Thus, Taxpayer is in violation of § 1.468A-(3)(i)(1)(i). Taxpayer represents that its violation of § 1.468A-(3)(i)(1)(i) is inadvertent. The regulation was noted during Taxpayer's preparation of the above ruling request, but presumed that the 10-year requirement would need to be met by Year 16 (the 10th calendar year after its most recent Schedule of Ruling amounts). Only later did Taxpayer recognize that the regulation imposed a requirement for the 10th taxable year, at which point Taxpayer supplemented the above ruling request to include a request for extension of time to request a revised schedule of ruling amounts for Plant under § 1.468A-(3)(i)(1)(i).

Section 468A provides that a taxpayer may pay into a Nuclear Decommissioning Reserve Fund if the taxpayer elects application of § 468A.

Section 1.468A-1 provides that, in general, an eligible taxpayer that elects the application of § 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.

Section 1.468A-7(a) provides that 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 only if the taxpayer elects the application of § 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 § 468A. 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 § 468A. The election under § 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 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 generally 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 § 468A.

Section 1.468A-3(i) provides that any taxpayer that has obtained a schedule of ruling amounts pursuant to section 1.468A-3(h) 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.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and

that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

Based solely on the facts and the representations made, the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Taxpayer has 60 days from the date of this letter ruling to file a request for a revised schedule of ruling amounts, and 120 days from the date of this letter ruling to file the Election statements with Taxpayer's amended Federal income tax returns.

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

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

We are sending a copy of this letter to the Industry Director, Natural Resources and Construction (LM:NRC).

Sincerely yours,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures:

Copy of this letter
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