Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B6
PLR-137408-13

Date:
December 4, 2013

LEGEND:

Taxpayer	=
Parent	=
Plant A	=
Plant B	=
Location	=
Commission	=
Date 1	=
Date 2	=
Date 3	=
P	=
D	=
Fund	=
Director	=

Dear :

This letter responds to your request, dated August 23, 2013, for a ruling concerning whether certain payments made to employees and certain payments of transitional decommissioning costs constitute “nuclear decommissioning costs” as defined in § 468A of the Internal Revenue Code and § 1.468A-1(b)(6) of the Income Tax Regulations.

Taxpayer represents the facts and information relating to its request for rulings as follows:

Taxpayer, a corporation, is a wholly-owned subsidiary of Parent. Taxpayer owns a P percent interest in both Plant A and Plant B and is responsible for D percent of the cost of decommissioning each Plant. The Plants are at Location and the amended operating license of Plant A is scheduled to expire on Date 1 and the operating license of Plant B is scheduled to expire on Date 2. On Date 3 Taxpayer notified the Nuclear Regulatory Commission that both Plants had permanently ceased operations. With respect to nuclear decommissioning costs that are included in the Taxpayer's cost of service for ratemaking purposes as well as for other matters, Taxpayer is subject to regulation by Commission. Taxpayer maintains a separate Fund for each of the Plants. Commission has authorized collections of amounts for decommissioning from ratepayers and the Service has approved schedules of ruling amounts for contributions to these Funds.

In the transition of the Plants from operational status to a safe shutdown and then to physical dismantlement of the Plants and restoration of the site as required by Commission and the Nuclear Regulatory Commission, the operational workforce of the Plants will be reduced overall. The Taxpayer has broadly described the types of tasks to be performed by employees during the decommissioning process as follows: (1) to plan and design all of the logistical and technical aspects required to take a nuclear power plant from an operational-ready status to safe shutdown and non-operational status to a fully dismantled and restored site; (2) to ensure the safe and orderly transition of the Plants from an operational-ready status to safe shutdown and non-operational status; (3) maintain the Plants in a safe condition during the actual dismantlement of the Plants; and (4) dismantle, remove, and restore the site to its regulatory and legally required condition. When employees are no longer needed for operation and or any phase of the decommission process, those employees are released from service with the Taxpayer. Rules of the Commission allow the collection of decommissioning amounts for the severance and other assistance payments to separated employees who become unemployed as a result of decommissioning.

In addition to the severance payments described above, Taxpayer will incur transitional decommissioning costs. These costs are described by the Taxpayer broadly as follows: (1) preparation for physical decommissioning of the units; (2) consolidation and restoration of the facilities of the Plants and the site upon which they are located; (3) security for the Plants and the surrounding site; (4) communication with affected communities regarding the permanent retirement of the Plants and plans for decommissioning of the Plants; and (5) staffing costs incurred as a result of the permanent retirement and prior to the commencement of physical dismantlement of major components of the Plants.

Many of the costs described above will be paid, in the first instance, by Taxpayer for reasons of administrative necessity. These costs will then be reimbursed to Taxpayer by the Fund.

Taxpayer requests the following rulings:

(1) Severance payments constitute "nuclear decommissioning costs" within the meaning of § 468A and § 1.468A-1(b)(6), and therefore can be paid out of the Funds for the related Plant.
(2) Transitional decommissioning costs constitute "nuclear decommissioning costs" within the meaning of § 468A and § 1.468A-1(b)(6), and therefore can be paid out of the Funds for the related
(3) Reimbursement by the Funds to the Taxpayer of severance payments and transitional decommissioning costs represent a permissible use of the Funds under § 468A(c)(4) and §§ 1.468A-5(a)(3)(i) and 1.468A-5(b)(2)(i), and is not a prohibited self-dealing transaction under § 1.468A-5(b)(1).

Section 468A(a) was added to the Code in 1984 by Deficit Reduction Act of 1984, Pub. L. No. 98-369. Section 468A(a) allows owners/operators of nuclear power plants to currently deduct the future costs of decommissioning a nuclear power plant by making contributions to a Fund prior to when economic performance occurs.

Section 468A(c)(1) and § 1.468A-2(d)(1) generally require the owner/operator to include in gross income amounts that are distributed from a Fund. In addition to any deduction under section 468A(a) for contributions to a Fund, section 468A(c)(2) recognizes that an owner/operator may deduct otherwise deductible nuclear decommissioning costs, (such as under § 162), for which economic performance (within the meaning of section 461(h)) occurs during a taxable year.

Section 468A(e)(4) limits the use of the amounts in a Fund to satisfying any liability of any person contributing to the Fund for the decommissioning of a nuclear power plant, the payment of administrative and other incidental expenses of the Fund, and making investments.

Section 1.468A-1(b)(6) states, in part, 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 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."

Section 162 generally allows a deduction for the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

Section 468A(e)(5) provides that, under regulations prescribed by the Secretary, for purposes of § 4951 the Fund shall be treated in the same manner as a trust described in § 501(c)(21). This section is implemented by §1.468A-5(b). Section 1.468A-5(b)(1) states that the excise taxes imposed by § 4951 apply to each act of self-dealing between the Fund and a disqualified person.

In part, § 1.468A-5(b)(2) defines "self-dealing" for purposes of § 468A and the regulations thereunder as 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.

Section 1.468A-5(b)(3) provides that the term "disqualified person" includes each person described in § 4951(e)(4) and § 53.4951-1(d). Section 4951(e)(4) of the Code provides the term "disqualified person," with respect to a trust, includes a contributor to the trust and a trustee of the trust.

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).

We have examined the representations and information submitted by the Taxpayer in relation to the requirements set forth in § 468A and the regulations

thereunder. Based solely upon these representations of the facts, we conclude that severance payments and transitional decommissioning costs are nuclear decommissioning costs within the meaning of § 468A and § 1.468A-1(b)(6). The expenses, as broadly described by Taxpayer, are incurred in connection with the entombment, decontamination, dismantlement, removal, and disposal of the structures, systems, and components of a nuclear power plant. We note that we are not ruling on any particular expense but on broad categories of expense and emphasize that each specific expense must satisfy the tests in § 468A and the regulations thereunder.

Regarding the reimbursement by the Funds of severance payments and transitional decommissioning costs paid initially by the Taxpayer, we conclude that such reimbursements are within the exception to the self-dealing rules contained in § 1.468A-5(b)(2)(i). That section defines "self-dealing" for purposes of § 468A and the regulations thereunder as 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." Here the reimbursement of severance payments and transitional decommissioning costs made by the Funds are made for the purpose of satisfying the liability of Taxpayer for decommissioning costs of the nuclear power plant to which the Fund relates and are therefore not "self-dealing." Thus, the reimbursement by the Funds to the Taxpayer of severance payments and transitional decommissioning costs represent a permissible use of the Funds. This reimbursement constitutes an amount distributed from a Fund as described in § 468A(c)(1) and § 1.468A-2(d)(1). We note that this ruling applies only to reimbursement of the amounts paid for the severance payments and the transitional decommissioning costs by the Taxpayer, and not any additional amounts such as "service fees" or any other amounts not solely to reimburse Taxpayer for decommissioning costs actually paid.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. Specifically, no determination is made whether the independent decommissioning study conforms to industry standards and practices.

This ruling is directed only to the Taxpayer who requested it. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent. In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives. We are also sending a copy of this letter ruling to the Director.

Sincerely,

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