

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B6
PLR-125134-14
Date:
December 3, 2014

LEGEND:

- Taxpayer =
- Parent =
- Plant =
- Director =
- Location =
- X =
- Commission =
- State =
- Date A =
- Date B =
- Method =
- Fund =

Dear :

This letter responds to your request, dated June 27, 2014, for a ruling, under section 468A of the Code, regarding whether certain costs incurred in connection with the ongoing decommissioning of Plant constitute “nuclear decommissioning costs” as defined in § 1.468A-1(b)(6) of the Income Tax Regulations.

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

Taxpayer, a wholly-owned indirect subsidiary of Parent incorporated under the laws of State, is included in a consolidated return filed by Parent. Taxpayer has an ownership interest of X percent in the Plant. Taxpayer is regulated by Commission as a

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public utility and Commission granted Taxpayer a market-based rate tariff for its wholesale power sales.

The Plant is situated at Location. Plant commenced commercial operation on Date A. On Date B, Taxpayer shut down Plant. Taxpayer maintains Fund, a nuclear decommissioning fund qualified under § 468A. Since Date B, Taxpayer's primary activities have been related to the decommissioning of Plant.

Taxpayer is using Method to decommission Plant. All nuclear fuel assemblies have been removed from the reactor and those assemblies are being stored in a spent fuel pool for cooling. Subsequently, the spent fuel will be inserted into storage casks and the casks will be transferred to an on-site Independent Spent Fuel Storage Installation (ISFSI). An ISFSI consists of a concrete storage pad that holds the storage casks. Taxpayer's current ISFSI will require expansion to accommodate the addition of the spent fuel from Plant. Under the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101, et seq, the Department of Energy (DOE) is required to take and dispose of spent nuclear fuel in a permanent geologic repository. No repository has been established and the government has not yet begun accepting spent fuel. Utilities have recovered ISFSI-related costs from the DOE in legal actions. Taxpayer expects to seek recovery of its ISFSI-related costs from the DOE.

The Taxpayer anticipates incurring three broad categories of expenses in the process of decommissioning Plant. These are summarized as follows:

1. License Termination Costs

- a. Transitional costs incurred in preparing for decommissioning including, but not limited to, planning, design, security, staffing, retention, and communication with affected communities.
- b. Ongoing operation and maintenance costs including, but not limited to, salaries, security, taxes, insurance, regulatory fees, corporate support, legal, accounting, information technology, and other administrative costs.
- c. Physical dismantlement costs including, but not limited to, dismantlement and removal of plant systems, site decontamination and disposal of hazardous and industrial waste.
- d. Severance Costs including, all severance costs for employees once their tasks in connection with the decommissioning of Plant are completed.

2. Greenfield Costs

- a. Demolition of clean structures
- b. Site restoration
- c. Severance costs including all severance costs for employees once their tasks in connection with the greenfield phase are completed.

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3. Spent Fuel Management Costs

- a. Planning for spent fuel management
- b. ISFSI expansion costs including design and construction costs
- c. Purchase of dry storage systems for fuel assemblies
- d. Spent fuel transfer costs
- e. Ongoing operation and maintenance costs including, but not limited to, surveillance, maintenance, security, regulatory fees and permits, salaries, taxes, insurance, corporate support, legal, accounting, information technology, and other administrative costs.
- f. Deconstruction and removal of the ISFSI
- g. Severance costs including all severance costs for employees once their tasks in connection with the spent fuel management are completed

Taxpayer would like to pay the costs summarized above from the Fund. Taxpayer requests the following rulings:

1. To the extent otherwise deductible, all License Termination Costs described above constitute “nuclear decommissioning costs” within meaning of § 468A and § 1.468A-1(b)(6) and therefore can be paid out of the Fund.

2. 1. To the extent otherwise deductible, all Greenfield Costs described above constitute “nuclear decommissioning costs” within meaning of § 468A and § 1.468A-1(b)(6) and therefore can be paid out of the Fund.

3. To the extent otherwise deductible, all Spent Fuel Management Costs described above constitute “nuclear decommissioning costs” within meaning of § 468A and § 1.468A-1(b)(6) and therefore can be paid out of the Fund.

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 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.

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

Section 1.468A-1(b)(6) states 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

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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 § 280B.”

The definition of “nuclear decommissioning costs” contained in § 1.468A-1(b)(6) is quite broad. As noted above, it includes 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” as well as “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.” Further, the definition 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.” Thus, with respect to the License Termination Costs, Greenfield Costs, and Spent Fuel Management Costs summarized above, these costs are related to the decommissioning of Plant and are within the definition of nuclear decommissioning costs. We do not rule that any particular cost is “otherwise deductible” under chapter 1 of the Code; Taxpayer has assumed that fact within its requested rulings. Taxpayer represents that these costs are otherwise deductible under sections of the Code including § 162 and § 165. We rule only that these general categories of costs are nuclear decommissioning costs and that therefore these costs may be paid out of Fund.

We note that, while the regulations are broadly worded and have been interpreted broadly by the Service, those regulations do require that, to be included within the ambit of nuclear decommissioning costs, all costs must be “otherwise deductible.” Section 468A does not provide an independent basis for the deduction of any amounts except for those amounts contributed to a qualified fund as provided in §

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468A(a). Those 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 must also be “otherwise deductible.” In the absence of a national repository for spent nuclear fuel, operators of nuclear plants must safely store such fuel as part of their obligations under their license. However, the costs of constructing the necessary facilities may not be “otherwise deductible” if there is a reasonable chance of recovery of these amounts and therefore these costs may not be deductible. The regulations do not include such costs within the definition of “nuclear decommissioning costs” and these costs may not be paid out of a qualified fund.

We rule as follows:

1. To the extent otherwise deductible, all License Termination Costs described above constitute “nuclear decommissioning costs” within meaning of § 468A and § 1.468A-1(b)(6) and therefore may be paid out of the Fund.
2. To the extent otherwise deductible, all Greenfield Costs described above constitute “nuclear decommissioning costs” within meaning of § 468A and § 1.468A-1(b)(6) and therefore can be paid out of the Fund.
3. To the extent otherwise deductible, all Spent Fuel Management Costs described above constitute “nuclear decommissioning costs” within meaning of § 468A and § 1.468A-1(b)(6) and therefore can be paid out of the Fund.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. Each specific cost must be shown to be related to the decommissioning of Plant and that relationship is subject to verification on audit. We rule only that, as categories, the License Termination, Greenfield, and Spent Fuel Management costs as described above are sufficiently related to the decommissioning of Plant to be considered nuclear decommissioning costs and paid out of Fund. Further, we do not rule regarding the current deductibility of any costs identified as Spent Fuel Management Costs that may be subject to recovery by the Taxpayer.

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 designated representatives. We are also sending a copy of this letter ruling to the Director. Pursuant to § 1.468A-7(a), a copy of this letter must be attached (with the

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required Election Statement) to the Taxpayer's federal income tax return for each tax year in which the Taxpayer claims a deduction for payments made to the Fund.

Sincerely,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

cc: