**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:ECE:B02
PLR-112695-25

In Re:

Date:
January 30, 2026

**Legend**

| | |
|---|---|
| Taxpayer | = |
| Parent | = |
| State | = |
| Commission A | = |
| Commission B | = |
| Plant | = |
| Date 1 | = |
| Date 2 | = |
| Date 3 | = |
| Date 4 | = |
| Date 5 | = |
| Year A | = |
| Year B | = |

Dear :

This letter responds to a letter dated Date 1, submitted on Taxpayer's behalf by its authorized representatives, requesting a ruling regarding the application of § 168(i)(9) and (10)[1] to the relevant facts that are represented in Taxpayer's submission and set forth below:

**Background**

Taxpayer is a State corporation and a regulated public utility that provides electricity generation, transmission, and distribution services, as well as natural gas

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Internal Revenue Code (Title 26 U.S.C.) or the Income Tax Regulations (26 C.F.R. part 1).

utility services, throughout State. It is the primary operating subsidiary of Parent and joins Parent and Parent's other subsidiaries in the filing of a consolidated federal income tax return on a calendar year basis using the accrual method of accounting.

Commission A and Commission B regulate the rates Taxpayer may charge for the services it provides. Generally, both commissions set rates using the cost-of-service, rate-of-return ratemaking method, which allows a utility to recover the costs of providing services and earn a reasonable return on invested capital (rate base). Commission A regulates Taxpayer's electricity transmission rates, which are reviewed and updated annually to reflect any changes in Taxpayer's costs of service. Commission B regulates the rates for Taxpayer's remaining utility services, determining rates in general rate case proceedings conducted every four years, with other proceedings conducted as necessary to address issues not addressed in those proceedings.

Taxpayer owns and operates Plant, a plant consisting of Unit 1 and Unit 2, which have been in operation since Year A and Year B, respectively. Unit 1 and Unit 2 are licensed to operate until Date 2 and Date 3, respectively.

State provides a framework . This framework consists largely of three interrelated steps.

Finally, it prescribes a special ratemaking method to be used in lieu of cost-of-service, rate-of-return ratemaking in setting rates .

Under the special ratemaking method, Plant's revenue requirement is determined by estimating its market revenues and production tax credits (if any) and then subtracting its estimated costs of service.

**Rulings Requested**

1. The assets that Taxpayer acquires

   , the costs of which must be capitalized and depreciated for federal income tax purposes and not included in Taxpayer's rate base are not public utility property (as defined in § 168(i)(10)).
2. To claim accelerated depreciation under § 168, Taxpayer is not required to use a normalization method of accounting for Plant property acquired that is not public utility property (as defined in § 168(i)(10)).

**Law and Analysis**

Section 168(f)(2) provides that the depreciation deduction determined under § 168 shall not apply to any public utility property (within the meaning of § 168(i)(10)) if the taxpayer does not use a normalization method of accounting.

Section 168(i)(10) defines the term “public utility property,” in relevant part, as property used predominantly in the trade or business of the furnishing or sale of electrical energy, if the rates for such furnishing or sale, as the case may be, have been established or approved by a public utility commission of any state or political subdivision thereof.

Prior to the Revenue Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388-400 (1990), § 168(i)(10) defined public utility property by cross-reference to § 167(l)(3)(A). Section 167(l)(3)(A), as then in effect, contained the same definition of public utility property that is currently in § 168(i)(10). Section 1.167(l)-1(b) provides that under § 167(l)(3)(A), property is public utility property during any period in which it used predominantly in a § 167(l) public utility activity. The term “section 167(l) public utility activity” means, in relevant part, the trade or business of the furnishing or sale of electrical energy, if the rates for such furnishing or sale, as the case may be, are regulated, i.e., have been established or approved by a regulatory body described in § 167(l)(3)(A). The term “regulated body described in section 167(l)(3)(A)” means a state (including the District of Columbia) or political subdivision thereof, any agency or instrumentality of the United States, or a public service or public utility commission or other body of any state or political subdivision thereof similar to such a commission. The term “established or approved” includes the filing of a schedule of rates with a regulatory body which has the power to approve such rates, though such body has taken no action on the filed schedule or generally leaves undisturbed rates filed by the taxpayer.

Further, prior to the Revenue Reconciliation Act of 1990, § 46(f) required a taxpayer claiming the investment tax credit with respect to public utility property to use the normalization method of accounting. The definitions of public utility property contained in § 168(i)(10) and former § 46(f)(5) are essentially identical. However, § 1.46-3(g)(2)(iii) expands the term “regulated rates” to embody the notion of rates established or approved on a rate-of-return basis, which notion is not provided for in the § 167(l) regulations. Nevertheless, § 1.167(l)-1(h)(6) requires the deferred tax reserve to be excluded from the rate base to which a rate of return is applied. This requirement and its use of the terms “rate base” and “rate of return” imply rate-of-return ratemaking as these terms are concepts of rate-of-return ratemaking and their use is logical only in that context. Thus, under the § 168(i)(9) normalization rules for depreciation, a facility must meet three requirements to be considered public utility property:

1. It must be used predominantly in the trade or business of the furnishing or sale of electrical energy, water, or sewage disposal services, or the other services enumerated in § 168(i)(10)(B) through (D);
2. The rates for such furnishing or sale must be established or approved by a state or political subdivision thereof, any agency or instrumentality of the United States, or by a public service or public utility commission or similar body of any state or political subdivision thereof; and

3. The rates so established or approved must be determined on a rate-of-return basis.

Taxpayer will use Plant predominantly in the trade or business of the furnishing or sale of electrical energy. Commission B, the public utility commission of State, will establish or approve the rates Taxpayer may charge for Plant's electricity. As a result, Plant satisfies the first and second requirements to be considered public utility property.

Commission B will set rates using the special ratemaking method .

Because Commission B will set rates using the special ratemaking method rather than the cost-of-service, rate-of-return method, applying the normalization rules to the special ratemaking method would not be appropriate . Plant thus fails the third requirement to be considered public utility property.

Accordingly, we rule that:

1. The assets that Taxpayer acquires , the costs of which must be capitalized and depreciated for federal income tax purposes and not included in Taxpayer's rate base are not public utility property (as defined in § 168(i)(10)).
2. To claim accelerated depreciation under § 168, Taxpayer is not required to use a normalization method of accounting for Plant property acquired that is not public utility property (as defined in § 168(i)(10)).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that 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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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.

Sincerely,

Maggie Stehn
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Energy, Credits, and Excise Tax)

Enclosure:
Copy for § 6110 purposes

cc: