

**§ 1.468A-6T**

**26 CFR Ch. I (4-1-10 Edition)**

in which the deemed distribution occurred; and

(ii) The amount of any tax that—

(A) Is imposed on the income of the fund;

(B) Is attributable to income taken into account before the termination date or as a result of the termination; and

(C) Has not been paid as of the termination date.

(2) *Additional rules.* Contributions made to a nuclear decommissioning fund after the termination date are not deductible under section 468A(a) and § 1.468A-2T(a). In addition, if any assets are held by the fund after the termination date, the income earned by such assets after the termination date must be included in the gross income of the electing taxpayer (see section 671) to the extent that such income is otherwise includible under chapter 1 of the Code. Finally, an electing taxpayer using an accrual method of accounting is allowed a deduction for nuclear decommissioning costs that are incurred during any taxable year (see § 1.468A-2T(e)) even if such costs are incurred after substantial completion of decommissioning (for example, expenses incurred to monitor or safeguard the plant site).

(3) *Substantial completion of decommissioning and termination date.* (i) The substantial completion of the decommissioning of a nuclear power plant occurs on the date that the maximum acceptable radioactivity levels mandated by the Nuclear Regulatory Commission with respect to a decommissioned nuclear power plant are satisfied (the substantial completion date). Except as otherwise provided in paragraph (d)(3)(ii) of this section, the substantial completion date is also the termination date.

(ii) If a significant portion of the total estimated decommissioning costs with respect to a nuclear power plant are not incurred on or before the substantial completion date, an electing taxpayer may request, and the IRS will issue, a ruling that designates a date subsequent to the substantial completion date as the termination date. The termination date designated in the ruling will not be later than the last day of the third taxable year after the tax-

able year that includes the substantial completion date. The request for a ruling under this paragraph (d)(3)(ii) must be filed during the taxable year that includes the substantial completion date and must comply with the procedural rules in effect at the time of the request.

[T.D. 9374, 72 FR 74177, Dec. 31, 2007]

**§ 1.468A-6T Disposition of an interest in a nuclear power plant (temporary).**

(a) *In general.* This section describes the Federal income tax consequences of a transfer of the assets of a nuclear decommissioning fund (Fund) within the meaning of § 1.468A-1T(b)(4) in connection with a sale, exchange, or other disposition by a taxpayer (transferor) of all or a portion of its qualifying interest in a nuclear power plant to another taxpayer (transferee). This section also explains how a schedule of ruling amounts will be determined for the transferor and transferee. For purposes of this section, a nuclear power plant includes a plant that previously qualified as a nuclear power plant and that has permanently ceased to produce electricity.

(b) *Requirements.* This section applies if—

(1) Immediately before the disposition, the transferor maintained a Fund with respect to the interest disposed of; and

(2) Immediately after the disposition—

(i) The transferee maintains a Fund with respect to the interest acquired;

(ii) The interest acquired is a qualifying interest of the transferee in the nuclear power plant;

(3) In connection with the disposition, either—

(i) The transferee acquires part or all of the transferor's qualifying interest in the plant and a proportionate amount of the assets of the transferor's Fund (all such assets if the transferee acquires the transferor's entire qualifying interest in the plant) is transferred to a Fund of the transferee; or

(ii) The transferee acquires the transferor's entire qualifying interest in the plant and the transferor's entire Fund is transferred to the transferee; and

(4) The transferee continues to satisfy the requirements of §1.468A-5T(a)(1)(iii), which permits an electing taxpayer to maintain only one Fund for each plant.

(c) *Tax consequences.* A disposition that satisfies the requirements of paragraph (b) of this section will have the following tax consequences at the time it occurs:

(1) *The transferor and its Fund.* (i) Except as provided in paragraph (c)(1)(ii) of this section, neither the transferor nor the transferor's Fund will recognize gain or loss or otherwise take any income or deduction into account by reason of the transfer of a proportionate amount of the assets of the transferor's Fund to the transferee's Fund (or by reason of the transfer of the transferor's entire Fund to the transferee). For purposes of the regulations under section 468A, this transfer (or the transfer of the transferor's Fund) will not be considered a distribution of assets by the transferor's Fund.

(ii) Notwithstanding paragraph (c)(1)(i) of this section, if the transferor has made a special transfer under §1.468A-8T prior to the transfer of the Fund or Fund assets, any deduction with respect to that special transfer allowable under section 468A(f)(2) for a taxable year ending after the date of the transfer of the Fund or Fund assets (the *unamortized special transfer deduction*) is allowed under section 468A(f)(2)(C) for the taxable year that includes the date of the transfer of the Fund or Fund assets. If the taxpayer transfers only a portion of its interest in a nuclear power plant, only the corresponding portion of the unamortized special transfer deduction qualifies for the acceleration under section 468A(f)(2)(C).

(2) *The transferee and its Fund.* Neither the transferee nor the transferee's Fund will recognize gain or loss or otherwise take any income or deduction into account by reason of the transfer of a proportionate amount of the assets of the transferor's Fund to the transferee's Fund (or by reason of the transfer of the transferor's Fund to the transferee). For purposes of the regulations under section 468A, this transfer (or the transfer of the transferor's Fund) will not constitute a payment or

a contribution of assets by the transferee to its Fund.

(3) *Basis.* Transfers of assets of a Fund to which this section applies do not affect basis. Thus, the transferee's Fund will have a basis in the assets received from the transferor's Fund that is the same as the basis of those assets in the transferor's Fund immediately before the disposition.

(d) *Determination of proportionate amount.* For purposes of this section, a transferor of a qualifying interest in a nuclear power plant is considered to transfer a proportionate amount of the assets of its Fund to a Fund of a transferee of the interest if, on the date of the transfer of the interest, the percentage of the fair market value of the Fund's assets attributable to the assets transferred equals the percentage of the transferor's qualifying interest that is transferred.

(e) *Calculation of schedule of ruling amounts and schedule of deduction amounts for dispositions described in this section—(1) Transferor.* If a transferor disposes of all or a portion of its qualifying interest in a nuclear power plant in a transaction to which this section applies, the transferor's schedule of ruling amounts with respect to the interests disposed of and retained (if any) and, if applicable, the amount allowable as a deduction for a special transfer under §1.468A-8T will be determined under the following rules:

(i) *Taxable year of disposition; ruling amount.* If the transferor does not file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for the taxable year of the transferor in which the disposition of its interest in the nuclear power plant occurs (that is, the date that is two and one-half months after the close of that year), the transferor's ruling amount with respect to that plant for that year will equal the sum of—

(A) The ruling amount contained in the transferor's current schedule of ruling amounts with respect to that plant for that taxable year multiplied by the portion of the qualifying interest that is retained (if any); and

(B) The ruling amount contained in the transferor's current schedule of ruling amounts with respect to that

plant for that taxable year multiplied by the product of—

(1) The portion of the transferor's qualifying interest that is disposed of; and

(2) A fraction, the numerator of which is the number of days in that taxable year that precede the date of disposition, and the denominator of which is the number of days in that taxable year.

(ii) *Taxable year of disposition; deduction under § 1.468A-8T.* If the transferor has elected to make a special transfer under section 468A(f), the amount allowable as a deduction under § 1.468A-8T for the taxable year in which it transfers a portion of its interest in the nuclear plant is equal to the deduction amount for that taxable year from its existing schedule of deduction amounts multiplied by the percentage of its interest that it retains. This deduction is in addition to the deduction described in paragraph (c)(1)(ii) of this section.

(iii) *Taxable years after the year of disposition.* A transferor that retains a qualifying interest in a nuclear power plant must file a request for a revised schedule of ruling amounts (and, if applicable, a revised schedule of deduction amounts) with respect to that interest on or before the deemed payment deadline for the first taxable year of the transferor beginning after the disposition. See § 1.468A-3T(f)(1)(ii)(B) and § 1.468A-8T(c)(3). If the transferor does not timely file such a request, the transferor's ruling amount and the transferor's deduction amount under § 1.468A-8T with respect to that interest for the affected year or years will be zero, unless the Internal Revenue Service (IRS) waives the application of this paragraph (e)(1)(iii) upon a showing of good cause for the delay.

(2) *Transferee.* If a transferee acquires all or a portion of a transferor's qualifying interest in a nuclear power plant in a transaction to which this section applies, the transferee's schedule of ruling amounts with respect to the interest acquired will be determined under the following rules:

(i) *Taxable year of disposition.* If the transferee does not file a request for a schedule of ruling amounts on or before the deemed payment deadline for the taxable year of the transferee in which

the disposition occurs (that is, the date that is two and one-half months after the close of that year), the transferee's ruling amount with respect to the interest acquired in the nuclear power plant for that year is equal to the amount contained in the transferor's current schedule of ruling amounts for that plant for the taxable year of the transferor in which the disposition occurred, multiplied by the product of—

(A) The portion of the transferor's qualifying interest that is transferred; and

(B) A fraction, the numerator of which is the number of days in the taxable year of the transferor including and following the date of disposition, and the denominator of which is the number of days in that taxable year.

(ii) *Taxable years after the year of disposition.* A transferee of a qualifying interest in a nuclear power plant must file a request for a revised schedule of ruling amounts with respect to that interest on or before the deemed payment deadline for the first taxable year of the transferee beginning after the disposition. See § 1.468A-3T(f)(1)(ii)(B). If the transferee does not timely file such a request, the transferee's ruling amount with respect to that interest for the affected year or years will be zero, unless the IRS waives the application of this paragraph (e)(2)(ii) upon a showing of good cause for the delay.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (e):

*Example 1.* (i) X Corporation is a calendar year taxpayer engaged in the sale of electric energy generated by a nuclear power plant. The plant is owned entirely by X. On May 27, 2007, X transfers a 60-percent qualifying interest in the plant to Y Corporation, a calendar year taxpayer. Before the transfer, X had received a schedule of ruling amounts containing an annual ruling amount of \$10 million for the taxable years 2005 through 2025. For 2007, neither X nor Y files a request for a revised schedule of ruling amounts.

(ii) Under paragraph (e)(1)(i) of this section, X's ruling amount for 2007 is calculated as follows:  $(\$10,000,000 \times .40) + (\$10,000,000 \times .60 \times 146/365) = \$6,400,000$ . Under paragraph (e)(2)(i) of this section, Y's ruling amount for 2007 is calculated as follows:  $\$10,000,000 \times .60 \times 219/365 = \$3,600,000$ . Under paragraphs (e)(1)(iii) and (e)(2)(ii) of this section, X and Y must file requests for revised schedules of ruling amounts by March 15, 2009.

*Example 2.* Y Corporation, the sole owner of a nuclear power plant, is a calendar year taxpayer. In year 1, Y elects to make a special transfer under section 468A(f)(1) to the nuclear decommissioning fund Y maintains with respect to the plant. The amount of the special transfer is \$100×, and the remaining useful life of Plant is 20 years. Y obtains a schedule of deduction amounts under § 1.468A-8T(c) permitting a \$5× deduction each year over the 20-year remaining useful life, and deducts \$5× of the special transfer amount in year 1, year 2, year 3, and year 4. On the first day of year 5, Y transfers a 25% interest in Plant to an unrelated party. Under paragraph (c)(1)(ii) of this section, Y may deduct in year 5 the unamortized special transfer deduction corresponding to the portion of the plant transferred (25 percent of \$80× or \$20×). In addition, under paragraph (e)(1)(ii) of this section, Y may deduct the portion of the deduction amount for year 5 from the schedule of deduction amounts corresponding to its retained interest in the plant (75 percent of \$5× or \$3.75×). Pursuant to paragraph (e)(1)(iii) of this section, Y must file a request for a revised schedule of ruling amounts by March 15 of year 6.

(f) *Anti-abuse provision.* The IRS may treat a disposition as satisfying the requirements of this section if the IRS determines that this treatment is necessary or appropriate to carry out the purposes of section 468A and the regulations.

[T.D. 9374, 72 FR 74177, Dec. 31, 2007]

**§ 1.468A-7T Manner of and time for making election (temporary).**

(a) *In general.* 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 section 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 section 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 section 468A. The election under section 468A for any taxable year is irrevocable and must be made by at-

taching a statement (Election Statement) and a copy of the schedule of ruling amounts provided pursuant to the rules of § 1.468A-3T 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 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 section 468A.

(b) *Required information.* The Election Statement must include the following information:

(1) The legend "Election Under Section 468A" typed or legibly printed at the top of the first page.

(2) The electing taxpayer's name, address and taxpayer identification number (or, in the case of an affiliated group of corporations that join in the filing of a consolidated return, the name, address and taxpayer identification number of each electing taxpayer).

(3) The taxable year for which the election is made.

(4) For each nuclear decommissioning fund for which an election is made—

(i) The name and location of the nuclear power plant to which the fund relates;

(ii) The name and employer identification number of the nuclear decommissioning fund;

(iii) The total amount of actual cash payments made to the nuclear decommissioning fund during the taxable year that were not treated as deemed cash payments under § 1.468A-2T(c)(1) for a prior taxable year;

(iv) The total amount of cash payments deemed made to the nuclear decommissioning fund under § 1.468A-2T(c)(1) for the taxable year; and

(v) The total amount of any special transfers made under § 1.468A-8T during the taxable year.

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