

§ 1.468A-6

26 CFR Ch. I (4-1-01 Edition)

which a nuclear decommissioning fund relates, such nuclear decommissioning fund shall be considered terminated and treated as having distributed all of its assets on the date the termination occurs. Such a distribution shall be treated for purposes of section 1001 as a disposition of property held by the nuclear decommissioning fund (see paragraph (c)(2) of §1.468A-4). In addition, the electing taxpayer shall include in gross income for the taxable year in which the termination occurs an amount equal to the fair market value of the assets of the fund determined as of the date of termination, reduced by—

(i) The amount of any deemed distribution that was not actually distributed before the date of termination if the amount of the deemed distribution was included in the gross income of the electing taxpayer for the taxable year 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 date the termination occurs or as a result of the termination; and

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

Contributions made to a nuclear decommissioning fund after the termination date are not deductible under section 468A(a) and paragraph (a) of §1.468A-2. 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 Internal Revenue 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 paragraph (e) of §1.468A-2) even if such costs are incurred after substantial completion of decommissioning (*e.g.*, expenses incurred to monitor or safeguard the plant site).

(2) *Substantial completion of decommissioning defined.* (i) Except as otherwise provided in paragraph (d)(2)(ii) of this

section, 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”).

(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 Internal Revenue Service shall issue, a ruling that designates the date on which substantial completion of decommissioning occurs. The date designated in the ruling shall not be later than the last day of the third taxable year after the taxable year that includes the substantial completion date. The request for a ruling under this paragraph (d)(2)(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. 8184, 53 FR 6815, Mar. 3, 1988, as amended by T.D. 8461, 57 FR 62200, Dec. 30, 1992; T.D. 8580, 59 FR 66474, Dec. 27, 1994; 60 FR 8932, Feb. 16, 1995; T.D. 8939, 66 FR 2818, Jan. 12, 2001]

§ 1.468A-6 Disposition of an interest in a nuclear power plant.

(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-1(b)(3) 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.

(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;

(iii) Either a proportionate amount (which could include all) of the assets of the transferor's Fund is transferred to a Fund of the transferee, or the transferor's entire Fund is transferred to the transferee, provided in the latter case (or if the transferee receives all of the assets in the transferor's Fund, but not the transferor's Fund) that the transferee acquires the transferor's entire qualifying interest in the plant; and

(iv) The transferee continues to satisfy the requirements of §1.468A-5(a)(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.* 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.

(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 that are transferred equals the percentage of the transferor's qualifying interest that is transferred.

(e) *Calculation of schedule of ruling 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 accordance with this section, the transferor's schedule of ruling amounts with respect to the interests disposed of and retained (if any) will be determined in accordance with paragraphs (e)(1) (i) and (ii) of this section.

(i) *Taxable year of disposition.* If a 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 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 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-3(i)(1)(ii)(B). If the transferor does not timely file such a request, the transferor's ruling amount with respect to that interest for the affected year or years will be zero, unless the Internal Revenue Service waives the application of this paragraph (e)(1)(ii) 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 under this section, the transferee's schedule of ruling amounts with respect to the interest acquired will be determined under paragraphs (e)(2) (i) and (ii) of this section.

(i) *Taxable year of disposition.* If a 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 the amount described in the following sentence. This amount is 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-3(i)(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 Internal Revenue Service waives the application of this paragraph (e)(2)(ii) upon a showing of good cause for the delay.

(3) *Example.* The following example illustrates the provisions of this paragraph (e).

Example. (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, 1995, 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 1993 through 2013. For 1995, 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 1995 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 1995 is calculated as follows: $\$10,000,000 \times 60\% \times 219/365 = \$3,600,000$. Under paragraphs (e)(1)(ii) and (e)(2)(ii) of this section, X and Y must file requests for revised schedules of ruling amounts by March 15, 1997.

(f) *Calculation of the qualifying percentage after dispositions described in this section—(1) In general.* If a transferee acquires an interest in a nuclear power plant in a transaction that satisfies the requirements of this section, the transferee's qualifying percentage (within the meaning of § 1.468A-3(d)(4)) for the interest acquired is the transferor's qualifying percentage for that interest immediately before the disposition. If the Internal Revenue Service has not approved a qualifying percentage for the transferor with respect to the interest transferred, the qualifying percentage for that interest is determined under § 1.468A-3(d)(4).

(2) *Special rule.* The Internal Revenue Service may, in its discretion, determine a qualifying percentage for an interest in a nuclear power plant acquired by a transferee on a basis other

than the rule set forth in paragraph (f)(1) of this section if—

(i) In connection with its first request for a schedule of ruling amounts after the disposition, the transferee requests special treatment, explains the need for such treatment, and sets forth an alternative basis for determining the qualifying percentage; and

(ii) The Internal Revenue Service determines that the special treatment is consistent with the purposes of section 468A.

(g) *Other—(1) Anti-abuse provision.* The Internal Revenue Service may treat a disposition occurring on or after December 27, 1994 as satisfying the requirements of this section if the Internal Revenue Service determines that this treatment is necessary or appropriate to carry out the purposes of section 468A and the regulations thereunder.

(2) *Relief provision.* Upon request of the electing taxpayer, the Internal Revenue Service may treat a disposition occurring after July 17, 1984, and before December 27, 1994 as satisfying the requirements of this section if the Internal Revenue Service determines that this treatment is necessary or appropriate to carry out the purposes of section 468A and the regulations thereunder.

(h) *Effective date.* Section 1.468A-6 is effective for a disposition of an interest in a nuclear power plant on or after December 27, 1994.

[T.D. 8580, 59 FR 66474, Dec. 27, 1994]

§ 1.468A-7 Manner of and time for making election.

(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 attaching a statement (“Election Statement”) and a copy of the schedule of ruling amounts provided pursuant to the rules of § 1.468A-3 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. Except as otherwise provided in paragraph (b)(3) of § 1.468A-8, 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 paragraph (c)(1) of § 1.468A-2 for a prior taxable year;

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