§ 1.468A–5 Nuclear decommissioning fund qualification requirements; prohibitions against self-dealing; disqualification of nuclear decommissioning fund; termination of fund upon substantial completion of decommissioning.

(a) *Qualification requirements*—(1) *In general.* (i) A nuclear decommissioning fund must be established and maintained at all times in the United States pursuant to an arrangement that qualifies as a trust under State law. Such trust must be established for the exclusive purpose of providing funds for the decommissioning of one or more nuclear power plants, but a single trust agreement may establish multiple funds for such purpose. Thus—

(A) Two or more nuclear decommissioning funds can be established and maintained pursuant to a single trust agreement; and

(B) One or more funds that are to be used for the decommissioning of a nuclear power plant and that do not qualify as nuclear decommissioning funds under this paragraph (a) can be established and maintained pursuant to a trust agreement that governs one or more nuclear decommissioning funds.

(ii) A separate nuclear decommissioning fund is required for each electing taxpayer and for each nuclear power plant with respect to which an electing taxpayer possesses a qualifying interest. The Internal Revenue Service shall issue a separate schedule of ruling amounts with respect to each nuclear decommissioning fund and each nuclear decommissioning fund must file a separate income tax return even if other nuclear decommissioning funds or nonqualified decommissioning funds are established and maintained pursuant to the trust agreement governing such fund or the assets of other nuclear decommissioning funds or nonqualified decommissioning funds are pooled with the assets of such fund.

(iii) An electing taxpayer can maintain only one nuclear decommissioning fund for each nuclear power plant with respect to which the taxpayer elects the application of section 468A. If a nuclear power plant is subject to the ratemaking jurisdiction of two or more public utility commissions and any such public utility commission requires a separate fund to be maintained for the benefit of ratepayers whose rates are established or approved by the public utility commission, the separate funds maintained for such plant (whether or not established and maintained pursuant to a single trust agreement) shall be considered a single nuclear decommissioning fund for purposes of section 468A and §§ 1.468A–1 through 1.468A–5, 1.468A–7 and 1.468A–8. Thus, for example, the Internal Revenue Service shall issue one schedule of ruling amounts with respect to such nuclear power plant (see paragraph (f) of § 1.468A–3), the nuclear decommissioning fund must file a single income tax return (see paragraph (d)(1) of § 1.468A–4), and, if the Internal Revenue Service disqualifies the nuclear decommissioning fund, the assets of each separate fund are treated as distributed on the date of disqualification (see paragraph (c)(3) of this section).

(iv) If assets of a nuclear decommissioning fund are (or will be) invested through an unincorporated organization, within the meaning of § 301.7701–2 of this chapter, the Internal Revenue Service will rule, if requested, whether the organization is an association taxable as a corporation for federal tax purposes. A request for a ruling may be made by the electing taxpayer as part of its request for a schedule of ruling amounts.

(2) *Limitation on contributions.* Except as otherwise provided in paragraph (b)(2)(ii) of § 1.468A–8 (relating to a special transitional rule), a nuclear decommissioning fund is not permitted to accept any contributions in cash or property other than cash payments with respect to which a deduction is allowed under section 468A(a) and paragraph (a) of § 1.468A–2. Thus, for example, unless the exception contained in paragraph (b)(2)(ii) of § 1.468A–8 applies, securities may not be contributed to a nuclear decommissioning fund even if the taxpayer or a fund established by the taxpayer previously held such securities for the purpose of providing funds for the decommissioning of a nuclear power plant.

(3) *Limitation on use of fund*—(i) *In general.* The assets of a nuclear decommissioning fund are to be used exclusively—

(A) To satisfy, 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;

(B) To pay administrative costs and other incidental expenses of the nuclear decommissioning fund; and

(C) To the extent that the assets of the nuclear decommissioning fund are not currently required for the purposes described in paragraph (a)(3)(i) (A) or (B) of this section, to make investments.

(ii) *Definition of administrative costs and expenses.* For purposes of paragraph (a)(3)(i) of this section, the term ''administrative costs and other incidental expenses of a nuclear decommissioning fund'' means all ordinary and necessary expenses incurred in connection with the operation of the nuclear decommissioning fund. Such term includes the tax imposed by section 468A(e)(2) and §1.468A–4(a), any State or local tax imposed on the income or the assets of the fund, legal expenses, accounting expenses, actuarial expenses and trustee expenses. Such term does not include decommissioning costs. Such term also does not include the excise tax imposed on the trustee or other disqualified person under section 4951 or the reimbursement of any expenses incurred in connection with the assertion of such tax unless such expenses are considered reasonable and necessary under section 4951(d)(2)(C) and it is determined that the trustee or other disqualified person is not liable for the excise tax.

(4) *Trust provisions.* By December 31, 1996, each qualified nuclear decommissioning fund trust agreement must provide that assets in the fund must be used as authorized by section 468A and the regulations thereunder and that the agreement may not be amended so as to violate section 468A or the regulations thereunder.

(b) *Prohibitions against self-dealing*—(1) *In general.* Except as otherwise provided in this paragraph (b), the excise taxes imposed by section 4951 shall apply to each act of self-dealing between a disqualified person and a nuclear decommissioning fund.

(2) *Self-dealing defined.* For purposes of this paragraph (b), the term ''self-dealing'' means 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;

(ii) A withdrawal of an excess contribution by the electing taxpayer pursuant to the rules of paragraph (c)(2) of this section;

(iii) A withdrawal by the electing taxpayer of amounts that have been treated as distributed under paragraph (c)(3) of this section;

(iv) A payment of amounts remaining in a nuclear decommissioning fund to the electing taxpayer after the termination of such fund (as determined under paragraph (d) of this section);

(v) Any act described in section 4951(d)(2) (B) or (C);

(vi) Any act described in §53.4951–1(c) of this chapter only if undertaken to facilitate the temporary investment of assets or the payment of reasonable administrative expenses of the nuclear decommissioning fund; or

(vii) A payment by a nuclear decommissioning fund for the performance of trust functions and certain general banking services by a bank or trust company which is a disqualified person, where the banking services are reasonable and necessary to carry out the purposes of the fund, if the compensation paid to the bank or trust company, taking into account the fair interest rate for the use of the funds by the bank or trust company, for such services is not excessive. The general banking services allowed by this paragraph (b)(2)(vii) are—

(A) Checking accounts, as long as the bank does not charge interest on any overwithdrawals,

(B) Savings accounts, as long as the fund may withdraw its funds on no more than 30 days' notice without subjecting itself to a loss of interest on its money for the time during which the money was on deposit, and

(C) Safekeeping activities. (See example 3 of §53.4941(d)–3(c)(2).)

(3) *Disqualified person defined.* For purposes of this paragraph (b), the term ''disqualified person'' includes

each person described in section 4951(e)(4) and paragraph (d) of §53.4951–1.

(c) *Disqualification of nuclear decommissioning fund*—(1) *In general.* Except as otherwise provided in paragraph (c)(2) of this section, if at any time during a taxable year of a nuclear decommissioning fund—

(i) The nuclear decommissioning fund does not satisfy the requirements of paragraph (a) of this section, or

(ii) The nuclear decommissioning fund and a disqualified person engage in an act of self-dealing (as defined in paragraph (b)(2) of this section), the Internal Revenue Service may, in its discretion, disqualify all or any portion of the fund as of the date that the fund does not satisfy the requirements of paragraph (a) of this section or the date on which the act of self-dealing occurs, whichever is applicable, or as of any subsequent date (''date of disqualification''). The Internal Revenue Service shall notify the electing taxpayer of the disqualification of a nuclear decommissioning fund and the date of disqualification by registered or certified mail to the last known address of the electing taxpayer (the ''notice of disqualification''). For further guidance regarding the definition of last known address, see §301.6212–2 of this chapter.

(2) *Exception to disqualification*—(i) *In general.* A nuclear decommissioning fund will not be disqualified under paragraph (c)(1) of this section by reason of an excess contribution or the withdrawal of such excess contribution by an electing taxpayer if the amount of the excess contribution is withdrawn by the electing taxpayer on or before the date prescribed by law (including extensions) for filing the return of the nuclear decommissioning fund for the taxable year to which the excess contribution relates. In the case of an excess contribution that is the result of a payment made pursuant to paragraph (j)(1) of §1.468A–3, a nuclear decommissioning fund will not be disqualified under paragraph (c)(1) of this section if the amount of the excess contribution is withdrawn by the electing taxpayer on or before the later of—

(A) The date prescribed by law (including extensions) for filing the return of the nuclear decommissioning fund for the taxable year to which the excess contribution relates; or

(B) The date that is 30 days after the date that the taxpayer receives the ruling amount for such taxable year.

(ii) *Excess contribution defined.* For purposes of this section, an excess contribution is the amount by which cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year exceed the payment limitation contained in section 468A(b) and paragraph (b) of §1.468A–2.

(iii) *Taxation of income attributable to an excess contribution.* The income of a nuclear decommissioning fund attributable to an excess contribution is required to be included in the gross income of the nuclear decommissioning fund under paragraph (b) of §1.468A–4.

(3) *Effect of disqualification.* If all or any portion of a nuclear decommissioning fund is disqualified under paragraph (c)(1) of this section, the portion of the nuclear decommissioning fund that is disqualified is treated as distributed to the electing taxpayer on the date of disqualification. 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 must include in gross income for the taxable year that includes the date of disqualification an amount equal to the product of—

(i) The fair market value of the assets of the fund determined as of the date of disqualification, reduced by—

(A) The amount of any excess contribution that was not withdrawn before the date of disqualification if no deduction was allowed with respect to such excess contribution;

(B) The amount of any deemed distribution that was not actually distributed before the date of disqualification (as determined under paragraph (d)(2)(iii) of §1.468A–2) 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

(C) The amount of any tax that—

(*1*) Is imposed on the income of the fund;

(*2*) Is attributable to income taken into account before the date of disqualification or as a result of the disqualification; and

(*3*) Has not been paid as of the date of disqualification; and

(ii) The fraction of the nuclear decommissioning fund that was disqualified under paragraph (c)(1) of this section.

Contributions made to a disqualified fund after the date of disqualification are not deductible under section 468A(a) and paragraph (a) of §1.468A–2, or, if the fund is disqualified only in part, are deductible only to the extent provided in the notice of disqualification. In addition, if any assets of the fund that are deemed distributed under this paragraph (c)(3) are held by the fund after the date of disqualification (or if additional assets are acquired with nondeductible contributions made to the fund after the date of disqualification), the income earned by such assets after the date of disqualification 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. An electing taxpayer can establish a nuclear decommissioning fund to replace a fund that has been disqualified in its entirety only if the Internal Revenue Service specifically consents to the establishment of a replacement fund in connection with the issuance of an initial schedule of ruling amounts for such replacement fund.

(d) *Termination of nuclear decommissioning fund upon substantial completion of decommissioning*—(1) *In general.* Upon substantial completion of the decommissioning of a nuclear power plant to 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