

the amount of decommissioning costs included in cost of service for such taxable year is \$400,000. If X made a contribution of \$500,000 to a nuclear decommissioning fund for the 1991 taxable year, X must withdraw \$100,000 from the nuclear decommissioning fund on or before the date prescribed by law (including extensions) for filing the return of the nuclear decommissioning fund for the 1991 taxable year (see paragraph (c)(2) of § 1.468A-5).

(iii) In addition, under paragraph (f)(1)(i) of this section, the amount of decommissioning costs included in cost of service for the 1990 taxable year is \$500,000, and, under paragraph (f)(1)(ii) of this section, the amount of decommissioning costs included in cost of service for the 1992 taxable year is \$300,000. Because the cost of service amount for the 1991 taxable year (\$400,000) is less than the cost of service amount for the 1990 taxable year (\$500,000), paragraph (f)(3) of this section applies and X must file a request for a revised schedule of ruling amounts for the period beginning with the 1992 taxable year on or before March 15, 1993.

(iv) Alternatively, if X does not elect the application of paragraph (f)(2) section, the amount of decommissioning costs included in cost of service for the 1990 and 1991 taxable years is \$500,000, and, under paragraph (f)(1)(ii) of this section, the amount of decommissioning costs included in cost of service for the 1992 taxable year may not exceed \$300,000. Because the cost of service amount for the 1992 taxable year is less than the cost of service amount for the 1991 taxable year, paragraph (f)(3) of this section applies and X must file a request for a revised schedule of ruling amounts for the period beginning with the 1992 taxable year on or before March 15, 1993.

[T.D. 8184, 53 FR 6806, Mar. 3, 1988, as amended by T.D. 8461, 57 FR 62199, Dec. 30, 1992; T.D. 8758, 63 FR 2894, Jan. 20, 1998]

§ 1.468A-3 Ruling amount.

(a) *In general.* (1) Except as otherwise provided in paragraph (j) of this section, an electing taxpayer is allowed a deduction under section 468A(a) 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 has received a schedule of ruling amounts for the nuclear decommissioning fund that includes a ruling amount for such taxable year. Except as provided in paragraph (a) (4) or (5) of this section, a schedule of ruling amounts for a nuclear decommissioning fund (“schedule of ruling amounts”) is a ruling (within the mean-

ing of paragraph (a)(2) of § 601.201 specifying the annual payments (“ruling amounts”) that, over the taxable years remaining in the “funding period” as of the date the schedule first applies, will result in a projected balance of the nuclear decommissioning fund as of the last day of the funding period equal to (and in no event greater than) the “amount of decommissioning costs allocable to the fund.” The projected balance of a nuclear decommissioning fund as of the last day of the funding period shall be calculated by taking into account the fair market value of the assets of the fund as of the first day of the first taxable year to which the schedule of ruling amounts applies and the estimated rate of return to be earned by the assets of the fund after payment of the estimated administrative costs and incidental expenses to be incurred by the fund (as defined in paragraph (a)(3)(ii) of § 1.468A-5), including all Federal, State and local income taxes to be incurred by the fund (the “after-tax rate of return”). See paragraph (c) of this section for a definition of funding period and paragraph (d) of this section for guidance with respect to the amount of decommissioning costs allocable to a fund.

(2) To the extent consistent with the principles and provisions of this section, each schedule of ruling amounts shall be based on the reasonable assumptions and determinations used by the applicable public utility commission(s) in establishing or approving the amount of decommissioning costs to be included in cost of service for rate-making purposes, taking into account amounts that are otherwise required to be included in the taxpayer’s income under section 88 and the regulations thereunder. Thus, for example, each schedule of ruling amounts shall be based on the public utility commission’s reasonable assumptions concerning—

(i) The after-tax rate of return to be earned by the amounts collected for decommissioning;

(ii) The total estimated cost of decommissioning the nuclear power plant (see paragraph (d)(2) of this section); and

(iii) The frequency of contributions to a nuclear decommissioning fund for

a taxable year (*e.g.*, monthly, quarterly, semi-annual or annual contributions).

(3) The Internal Revenue Service shall provide a schedule of ruling amounts that is identical to the schedule of ruling amounts proposed by the taxpayer in connection with the taxpayer's request for a schedule of ruling amounts (see paragraph (h)(2)(viii) of this section), but no schedule of ruling amounts shall be provided unless the taxpayer's proposed schedule of ruling amounts is consistent with the principles and provisions of this section. If a proposed schedule of ruling amounts is not consistent with the principles and provisions of this section, the taxpayer may propose an amended schedule of ruling amounts that is consistent with such principles and provisions.

(4) The Internal Revenue Service will approve, at the request of the taxpayer, a formula or method for determining a schedule of ruling amounts (rather than a schedule specifying a dollar amount for each taxable year) that is consistent with the principles and provisions of this section. See paragraph (i)(1)(ii) of this section for a special rule relating to the mandatory review of ruling amounts that are determined pursuant to a formula or method.

(5) The Internal Revenue Service may, in its discretion, provide a schedule of ruling amounts that is determined on a basis other than the rules of paragraphs (a) through (g) of this section if—

(i) In connection with its request for a schedule of ruling amounts, the taxpayer explains the need for special treatment and sets forth an alternative basis for determining the schedule of ruling amounts; and

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

(b) *Level funding limitation.* (1) Except as otherwise provided in paragraph (b)(4) of this section and paragraph (b)(6) of §1.468A-8 (relating to a special transitional rule), the ruling amount specified in a schedule of ruling amounts for any taxable year in the level funding limitation period shall not be less than the ruling amount

specified in such schedule for any earlier taxable year.

(2) For purposes of this section, the level funding limitation period for a nuclear decommissioning fund is the period that—

(i) Begins on the first day of the first taxable year for which a deductible payment is made (or deemed made) to such nuclear decommissioning fund (see paragraph (a) of §1.468A-2 for rules relating to the first taxable year for which a payment may be made (or deemed made) to a nuclear decommissioning fund); and

(ii) Ends on the last day of the taxable year that includes the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for rate-making purposes (see paragraphs (e) (2) and (4) of this section).

(3) The ruling amount specified in a schedule of ruling amounts for a taxable year after the end of the level funding limitation period may be less than the ruling amount specified in such schedule for an earlier taxable year.

(4) The ruling amount specified in a schedule of ruling amounts for the last taxable year in the level funding limitation period may be less than the ruling amount specified in such schedule for any earlier taxable year if the applicable public utility commission assumes for cost of service purposes that decommissioning costs will be included in cost of service for only a portion of the last taxable year in the level funding limitation period. The ruling amount for the last taxable year in the level funding limitation period, however, may not be less than the amount that bears the same relationship to the ruling amount for the preceding taxable year as the period for which decommissioning costs will be included in cost of service for such last taxable year bears to one year.

(c) *Funding period*—(1) *General rule.* For purposes of this section, the funding period for a nuclear decommissioning fund is the period that—

(i) Begins on the first day of the first taxable year for which a deductible payment is made (or deemed made) to such nuclear decommissioning fund

(see paragraph (a)(1) § 1.468A-2 for rules relating to the first taxable year for which a payment may be made (or deemed made) to a nuclear decommissioning fund); and

(ii) Ends on the later of—

(A) The last day of the taxable year that includes the estimated date on which decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's cost of service for ratemaking purposes (see paragraph (e)(1) of this section); or

(B) The last day of the taxable year that includes the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes (see paragraph (e)(2) of this section).

(2) *Examples.* The following examples illustrate the application of the principles of paragraphs (a), (b) and (c) of this section:

Example (1). (i) X corporation is a calendar year, accrual method taxpayer engaged in the sale of electric energy generated by power plants owned by X. On March 15, 1995, X commences the construction of a nuclear power plant in State A. On May 15, 1995, the public utility commission of State A issues a final rate order for the four-year period beginning on January 1, 1995, that authorizes X to collect decommissioning costs from ratepayers residing in State A. For the 1995 taxable year, X is authorized to collect decommissioning costs of \$500,000, and, for each taxable year during the remainder of the period to which the rate order applies, X is authorized to collect decommissioning costs in an amount equal to 105 percent of the amount authorized to be collected for the preceding taxable year.

(ii) In determining the amount of decommissioning costs to be collected from ratepayers residing in State A, the public utility commission assumes that (A) decommissioning costs will be included in cost of service for each taxable year in the period that begins with 1995 and ends with 2025 and (B) decommissioning costs collected pursuant to subsequent rate orders will increase in the same manner as amounts collected pursuant to the rate order issued on May 15, 1995. In addition, in determining the rate of return to be earned by X with respect to the nuclear power plant, the public utility commission assumes that the nuclear power plant will be included in rate base for each year in the period that begins with 2000 and ends with 2025.

(iii) X requests a schedule of ruling amounts in accordance with the rules of paragraph (h) of this section for the period beginning with the 1995 taxable year. In determining the level funding limitation period and the funding period, the Internal Revenue Service shall assume that a deductible payment will be made to a nuclear decommissioning fund for the 1995 taxable year. Thus, under paragraph (b) of this section, the level funding limitation period begins on January 1, 1995, and ends on December 31, 2025. Under paragraph (c)(1) of this section, the funding period begins on January 1, 1995, and ends on December 31, 2025.

(iv) In its request for a schedule of ruling amounts, X proposes a ruling amount for each taxable year in the funding period that corresponds to the projected cost of service amount for such taxable year. If (A) the assumptions and determinations used by the public utility commission in establishing the amount of decommissioning costs to be included in cost of service are reasonable and (B) the amounts collected pursuant to the proposed schedule, combined with the after-tax earnings on such amounts, will result in a projected balance of the nuclear decommissioning fund as of December 31, 2025, equal to the amount of decommissioning costs allocable to the fund, then, under paragraph (a)(3) of this section, each ruling amount in the initial schedule of ruling amounts shall equal the ruling amount proposed by X in connection with its request for a schedule of ruling amounts. Thus, the ruling amount for the 1995 taxable year would be \$500,000, and the ruling amount for each subsequent taxable year would be 105 percent of the ruling amount for the preceding taxable year.

Example (2). (i) Assume the same facts as in Example (1), except that on May 15, 1995, the public utility commission of State A issues a final rate order for the four-year period beginning on January 1, 1995, that authorizes X to collect decommissioning costs of \$600,000 per year from ratepayers residing in State A. In determining the amount of decommissioning costs to be collected from ratepayers residing in State A, the public utility commission assumes that decommissioning costs of \$600,000 will be collected for each taxable year in the period that begins with 1995 and ends with 2004 and that decommissioning costs of \$200,000 will be collected for each taxable year in the period that begins with 2005 and ends with 2025.

(ii) X requests a schedule of ruling amounts in accordance with the rules of paragraph (h) of this section for the period beginning with the 1995 taxable year. In determining the level funding limitation period and the funding period, the Internal Revenue Service shall assume that a deductible payment will be made to a nuclear decommissioning fund for the 1995 taxable

year. Thus, under paragraph (b) of this section, the level funding limitation period begins on January 1, 1995, and ends on December 31, 2025. Under paragraph (c)(1) of this section, the funding period begins on January 1, 1995, and ends on December 31, 2025.

(iii) In its request for a schedule of ruling amounts, X proposes a ruling amount for each taxable year in the funding period that corresponds to the projected cost of service amount for such taxable year. A schedule of ruling amounts based on the projected cost of service amount would be inconsistent with the level funding limitation of paragraph (b) of this section because the projected cost of service amount for 2005 is less than the projected cost of service amount for 2004. Consequently, under paragraph (a)(3) of this section, no schedule of ruling amounts shall be provided to X unless X proposes an amended schedule of ruling amounts that is consistent with the level funding limitation and the other principles and provisions of this section.

(iv) Assume that X proposes an amended schedule of ruling amounts that provides for ruling amounts of \$400,000 for each taxable year in the funding period. If (A) the schedule of ruling amounts proposed by X is based on the reasonable assumptions and determinations used by the public utility commission in establishing the amount of decommissioning costs to be included in cost of service and (B) the amounts collected pursuant to the proposed schedule, combined with the after-tax earnings on such amounts, will result in a projected balance of the nuclear decommissioning fund as of December 31, 2025, equal to the amount of decommissioning costs allocable to the fund, then, under paragraph (a)(3) of this section, each ruling amount in the initial schedule of ruling amounts shall equal the ruling amount proposed by X in connection with its request for a schedule of ruling amounts. Thus, the ruling amount for the 1995 taxable year and for each subsequent taxable year through 2025 would be \$400,000.

(v) Under section 468A(b) and paragraph (b)(1) of § 1.468A-2, the maximum amount of cash payments that X can make to a nuclear decommissioning fund for any taxable year shall not exceed the lesser of (A) the cost of service amount for such taxable year or (B) the ruling amount for such taxable year. If the projected cost of service amount that was assumed in determining rates under the rate order that was issued on May 15, 1995, is the actual cost of service amount for each taxable year in the funding period and the ruling amounts provided in the initial schedule of ruling amounts are not changed by a subsequent schedule of ruling amounts, then X would be allowed to make a deductible contribution of \$400,000 to a nuclear decommissioning fund for each taxable year in the period that begins with 1995 and ends with

2004 and to make a deductible contribution of \$200,000 to such nuclear decommissioning fund for each taxable year in the period that begins with 2005 and ends with 2025.

Example (3). (i) Y corporation is a calendar year, accrual method taxpayer engaged in the sale of electric energy generated by power plants owned by Y. On June 1, 1990, a nuclear power plant owned by Y began commercial operations in State B. In the first ratemaking proceeding in which the nuclear power plant was included in rate base, the public utility commission of State B assumed that the nuclear power plant would be included in rate base for each year in the period that began with 1990 and ended with 2020. In addition, for each taxable year in the period that began with 1990 and ended with 2017, Y made a deductible contribution of \$750,000 to a nuclear decommissioning fund established by Y. The \$750,000 contribution equalled the cost of service amount and the ruling amount for each taxable year in the 28-year period.

(ii) On August 30, 2017, the public utility commission of State B issues a final rate order for the six-year period beginning on January 1, 2018, that authorizes Y to collect decommissioning costs of: (A) \$500,000 for 2018, 2019 and 2020; (B) \$1,500,000 for 2021; (C) \$1,000,000 for 2022; and (D) \$750,000 for 2023. In determining the amount of decommissioning costs to be collected from ratepayers residing in State B, the public utility commission assumes that decommissioning costs will no longer be included in cost of service after 2023. In addition, in determining the rate of return to be earned by Y with respect to the nuclear power plant, the public utility commission assumes that the nuclear power plant will no longer be included in rate base after 2020.

(iii) Under paragraph (i)(1)(iii) of this section, Y is required to request a revised schedule of ruling amounts on or before March 15, 2019. Assume that Y makes a timely request for a revised schedule of ruling amounts in accordance with the rules of paragraph (h) of this section. In its request, Y proposes a ruling amount for each taxable year in the period that begins with 2018 and ends with 2023 that corresponds to the amount of decommissioning costs to be included in cost of service under the rate order of August 30, 2017.

(iv) Under paragraph (b) of this section, the level funding limitation period begins on January 1, 1990, and ends on December 31, 2020. Under paragraph (c)(1) of this section, the funding period begins on January 1, 1990, and ends on December 31, 2023.

(v) If (A) the assumptions and determinations used by the public utility commission in establishing the amount of decommissioning costs to be included in cost of service are reasonable and (B) the projected balance of the nuclear decommissioning fund as of

December 31, 2023 (taking into account the fair market value of the assets of the fund as of January 1, 2018, and the estimated after-tax rate of return to be earned by the assets of the fund) will equal the amount of decommissioning costs allocable to the fund, then, under paragraph (a)(3) of this section, each ruling amount in the revised schedule of ruling amounts shall equal the ruling amount proposed by Y in connection with its request for a schedule of ruling amounts. Thus, the ruling amount for 2018, 2019 and 2020 would be \$500,000, the ruling amount for 2021 would be \$1,500,000, the ruling amount for 2022 would be \$1,000,000 and the ruling amount for 2023 would be \$750,000.

(vi) Although the ruling amount specified in the revised schedule of ruling amounts for 2018, 2019 and 2020 is less than a ruling amount specified in a prior schedule of ruling amounts for years prior to 2018, the revised schedule of ruling amounts is consistent with the level funding limitation. Under paragraph (i)(3) of this section, a ruling amount specified in a revised schedule of ruling amounts for any taxable year in level funding limitation period may be less than one or more ruling amounts specified in a prior schedule of ruling amounts for a prior taxable year. In addition, although the ruling amount specified in the revised schedule of ruling amounts for 2022 and 2023 is less than a ruling amount specified in such schedule for a prior taxable year, the revised schedule of ruling amounts is consistent with the level funding limitation because the level funding limitation period ends on December 31, 2020.

(d) *Decommissioning costs allocable to a fund.* The amount of decommissioning costs allocable to a nuclear decommissioning fund is determined for purposes of this section by applying the following rules and definitions:

(1) *General rule.* The amount of decommissioning costs allocable to a nuclear decommissioning fund is the taxpayer's share of the total estimated cost of decommissioning the nuclear power plant to which the fund relates, multiplied by the qualifying percentage.

(2) *Total estimated cost of decommissioning.* (i) Except as otherwise provided in paragraph (d)(2)(ii) of this section, the total estimated cost of decommissioning a nuclear power plant is the reasonably estimated cost of decommissioning used by the applicable public utility commission in establishing or approving the amount of decommissioning costs to be included in cost of service for ratemaking pur-

poses. If, in establishing or approving the amount of decommissioning costs to be included in cost of service, the public utility commission uses an estimated cost of decommissioning that is equal to a generic estimate of the cost of decommissioning as determined by the Nuclear Regulatory Commission (or an estimated cost that is based on the generic estimate adjusted for inflation), the Internal Revenue Service may, at its discretion, accept such amount as a reasonable estimate of the cost of decommissioning. In addition, if the estimated costs used by the applicable public utility commission are expected to be paid in any taxable year other than the taxable year that includes the last day of the funding period or the immediately succeeding taxable year, such costs must be adjusted (increased or decreased, as the case may be) by discounting or compounding such costs at the after-tax rate of return from the date such costs are expected to be paid to the last day of the funding period.

(ii) If, in establishing or approving the amount of decommissioning costs to be included in cost of service, the applicable public utility commission assumes a projected balance of amounts set aside for decommissioning (whether or not such amounts are provided by a nuclear decommissioning fund) that is less than the total estimated cost of decommissioning assumed by the public utility commission, the total estimated cost of decommissioning for purposes of determining the schedule of ruling amounts shall equal the projected balance of amounts set aside for decommissioning that was assumed by the public utility commission.

(3) *Taxpayer's share.* The taxpayer's share of the total estimated cost of decommissioning a nuclear power plant equals the total estimated cost of decommissioning such nuclear power plant multiplied by the percentage of such nuclear power plant that the qualifying interest of the taxpayer represents (see paragraph (b)(2) of § 1.468A-1 for circumstances in which a taxpayer possesses a qualifying interest in a nuclear power plant).

(4) *Qualifying percentage.* (i) Except as otherwise provided in paragraph

(b)(7)(iii) of § 1.468A-8 (relating to a special transitional rule), the qualifying percentage for any nuclear decommissioning fund is equal to the fraction, the numerator of which is the number of taxable years in the estimated period for which the nuclear decommissioning fund is to be in effect and the denominator of which is the number of taxable years in the estimated useful life of the applicable nuclear power plant.

(ii) Except as otherwise provided in paragraph (b)(7)(i) of (ii) of § 1.468A-8 (relating to special transitional rules), the estimated period for which a nuclear decommissioning fund is to be in effect—

(A) Begins on the later of—

(1) The first day of the first taxable year for which a deductible payment is made (or deemed made) to such nuclear decommissioning fund; or

(2) The first day of the taxable year that includes the date the nuclear power plant to which such nuclear decommissioning fund relates begins commercial operations; and

(B) Ends on the last day of the taxable year that includes the estimated date on which the nuclear power plant to which such nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes (see paragraph (e)(3) and (4) of this section).

(iii) Except as otherwise provided in paragraph (b)(7)(ii) of § 1.468A-8 (relating to a special transitional rule), the estimated useful life of a nuclear power plant.

(A) Begins on the first day of the taxable year that includes the date that the nuclear power plant begins commercial operations; and

(B) Ends on the last day of the taxable year that includes the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes (see paragraph (e)(3) and (4) of this section).

(e) *Determination of estimated dates.* (1) For purposes of paragraph (c)(1)(ii)(A) of this section (relating to the funding period), the estimated date on which decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates will no

longer be included in the taxpayer's cost of service for ratemaking purposes is determined under the ratemaking assumptions that were used to determine the last rates (whether interim or final) that were established or approved by the applicable public utility commission prior to the filing of the current request for a schedule of ruling amounts.

(2) For purposes of paragraphs (b)(2)(ii) and (c)(1)(ii)(B) of this section (relating to the level funding limitation period and the funding period), the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes is determined under the ratemaking assumptions that were used to determine the last rates (whether interim or final) that were established or approved by the applicable public utility commission prior to the filing of the current request for a schedule of ruling amounts.

(3) For purposes of paragraph (d)(4)(ii)(B) and (iii)(B) of this section (relating to the qualifying percentage), the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes is determined under the ratemaking assumptions used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

(4) For purposes of this section, in the case of a taxpayer whose interest in the nuclear power plant is described in paragraph (b)(2)(ii) of § 1.468A-1, the date corresponding to "the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base" will be determined upon the basis of all the facts and circumstances in a manner consistent with the provisions of this section and section 468A of the Code.

(5) A formula or method obtained under paragraph (a)(4) of this section may provide for changes in an estimated date described in paragraph

(e)(1) or (2) of this section to reflect changes in the ratemaking assumptions used to determine rates (whether interim or final) that are established or approved by the applicable public utility commission after the filing of the request for approval of a formula or method.

(f) *Special rules in the case of rates established or approved by two or more public utility commissions.* If two or more public utility commissions establish or approve rates for electric energy generated by a single nuclear power plant, the following rules shall apply in determining the schedule of ruling amounts for the nuclear decommissioning fund that relates to such nuclear power plant.

(1) A schedule of ruling amounts shall be separately determined pursuant to the rules of paragraphs (a) through (e) of this section for each public utility commission that has determined the amount of decommissioning costs to be included in cost of service for ratemaking purposes with respect to such nuclear power plant (see paragraph (g) of this section).

(2) The separate determination with respect to a public utility commission shall be based on the reasonable assumptions and determinations used by such public utility commission and shall take into account only that portion of the total estimated cost of decommissioning the nuclear power plant that is properly allocable to the ratepayers whose rates are established or approved by such public utility commission.

(3) The ruling amount applicable to the nuclear decommissioning fund for any taxable year is the sum of the ruling amounts for such taxable year determined under the separate schedules of ruling amounts.

(4) The schedule of ruling amounts for the nuclear decommissioning fund is the schedule of the ruling amounts determined under paragraph (f)(3) of this section.

(g) *Requirement of determination by public utility commission of decommissioning costs to be included in cost of service.* The Internal Revenue Service shall not provide a taxpayer with a schedule of ruling amounts for any nuclear decommissioning fund unless a

public utility commission that establishes or approves rates for electric energy generated by the nuclear power plant to which the nuclear decommissioning fund relates has—

(1) Determined the amount of decommissioning costs of such nuclear power plant to be included in the taxpayer's cost of service for ratemaking purposes; and

(2) Disclosed the after-tax return and any other assumption and determinations used in establishing or approving such amount for any taxable year beginning on or after January 1, 1987.

(h) *Manner of requesting schedule of ruling amounts—*(1) *In general.* (i) In order to receive a ruling amount for any taxable year, a taxpayer must file a request for a schedule of ruling amounts that complies with the requirements of this paragraph (h), the applicable procedural rules set forth in paragraph (e) of §601.201 (Statement of Procedural Rules) and the requirements of any applicable revenue procedure that is in effect on the date the request is filed.

(ii) A separate request for a schedule of ruling amounts is required for each nuclear decommissioning fund established by a taxpayer (see paragraph (a) of §1.468A-5 for rules relating to the number of nuclear decommissioning funds that a taxpayer can establish).

(iii) Except as provided by §1.468A-5 (a)(1)(iv) (relating to certain unincorporated organizations that may be taxable as corporations), a request for a schedule of ruling amounts must not contain a request for a ruling on any other issue, whether the issue involves section 468A or another section of the Internal Revenue Code.

(iv) In the case of an affiliated group of corporations that join in the filing of a consolidated return, the common parent of the group may request a schedule of ruling amounts for each member of the group that possesses a qualifying interest in the same nuclear power plant by filing a single submission with the Internal Revenue Service.

(v) Except as otherwise provided in paragraph (b)(1) of §1.468A-8, the Internal Revenue Service shall not provide or revise a ruling amount applicable to a taxable year in response to a request

for a schedule of ruling amounts that is filed after the deemed payment deadline date (as defined in paragraph (c)(1) of § 1.468A-2) for such taxable year. In determining the date when a request is filed, the principles of sections 7502 and 7503 shall apply.

(vi) Except as provided in paragraph (h)(1)(vii) of this section, a request for a schedule of ruling amounts shall be considered filed only if such request complies substantially with the requirements of this paragraph (h).

(vii)(A) If a request does not comply substantially with the requirements of this paragraph (h), the Internal Revenue Service will notify the taxpayer of that fact. If the information or materials necessary to comply substantially with the requirements of this paragraph (h) are provided to the Internal Revenue Service within 30 days after this notification, the request will be considered filed on the date of the original submission. If the information or materials necessary to comply substantially with the requirements of this paragraph (h) are not provided within 30 days after this notification, the request will be considered filed on the date that all information or materials necessary to comply with the requirements of this paragraph (h) are provided.

(B) The Internal Revenue Service may waive the requirements of paragraph (h)(1)(vii)(A) of this section if the Service determines that the electing taxpayer is making a good faith effort to comply with the deadline and if the waiver is consistent with the purposes of section 468A.

(2) *Information required.* A request for a schedule of ruling amounts must contain the following information:

(i) The taxpayer's name, address and taxpayer identification number.

(ii) Whether the request is for an initial schedule of ruling amounts, a mandatory review of the schedule of ruling amounts (see paragraph (i)(1) of this section) or an elective review of the schedule of ruling amounts (see paragraph (i)(2) of this section).

(iii) The name and location of the nuclear power plant with respect to which a schedule of ruling amounts is requested.

(iv) A description of the taxpayer's qualifying interest in the nuclear power plant and the percentage of such nuclear power plant that the qualifying interest of the taxpayer represents.

(v) An identification of each public utility commission that establishes or approves rates for the furnishing or sale by the taxpayer of electric energy generated by the nuclear power plant, and, for each public utility commission identified—

(A) Whether the public utility commission has determined the amount of decommissioning costs to be included in the taxpayer's cost of service for ratemaking purposes; and

(B) Whether a proceeding is pending before the public utility commission that may result in an increase or decrease in the amount of decommissioning costs to be included in cost of service.

(vi) For each public utility commission that has determined the amount of decommissioning costs to be included in the taxpayer's cost of service for ratemaking purposes—

(A) The amount of decommissioning costs that are to be included in the taxpayer's cost of service for each taxable year under the current determination and amounts that otherwise are required to be included in the taxpayer's income under section 88 and the regulations thereunder;

(B) A description of the assumptions, estimates and other factors that were used in determining the amounts described in paragraph (h)(2)(vi)(A) of this section, including each of the following if applicable—

(1) A description of the proposed method of decommissioning the nuclear power plant (for example, prompt removal/dismantlement, safe storage entombment with delayed dismantlement, or safe storage mothballing with delayed dismantlement);

(2) The estimated year in which substantial decommissioning costs will first be incurred;

(3) The estimated year in which the decommissioning of the nuclear power plant will be substantially complete (see paragraph (d)(2) of § 1.468A-5 for a definition of substantial completion of decommissioning);

(4) The total estimated cost of decommissioning expressed in current dollars (*i.e.*, based on price levels in effect at the time of the current determination);

(5) The total estimated cost of decommissioning expressed in future dollars (*i.e.*, based on anticipated price levels when expenses are expected to be paid);

(6) For each taxable year in the period that begins with the year specified in paragraph (h)(2)(vi)(B)(2) of this section (“the estimated year in which substantial decommissioning costs will first be incurred”) and ends with the year specified in paragraph (h)(2)(vi)(B)(3) of this section (“the estimated year in which the decommissioning of the nuclear power plant will be substantially complete”), the estimated cost of decommissioning expressed in future dollars;

(7) A description of the methodology used in converting the estimated cost of decommissioning expressed in current dollars to the estimated cost of decommissioning expressed in future dollars;

(8) The assumed after-tax rate of return to be earned by the amounts collected for decommissioning (if two or more after-tax rates of return are assumed by the public utility commission, each assumed after-tax rate of return and the amounts collected for decommissioning to which each assumed after-tax rate of return applies);

(9) The proposed period over which decommissioning costs will be included in the cost of service of the taxpayer and the projected amount that will be included in cost of service for each taxable year in the proposed period;

(10) The estimated date on which the nuclear power plant will no longer be included in the taxpayer’s rate base for ratemaking purposes as determined under the ratemaking assumptions that were used to determine the last rates (whether interim or final) that were established or approved by the applicable public utility commission prior to the filing of the current request for a schedule of ruling amounts (or a corresponding date in the case of a taxpayer whose interest in the nuclear power plant is described in para-

graph (b)(2)(ii) of §1.468A-1; see paragraph (e)(4) of this section); and

(11) The estimated date on which the nuclear power plant will no longer be included in the taxpayer’s rate base for ratemaking purposes as determined under the ratemaking assumptions that were used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer’s rate base (or a corresponding date in the case of a taxpayer whose interest in the nuclear power plant is described in paragraph (b)(2)(ii) of §1.468A-1; see paragraph (e)(4) of this section);

(C) A copy of such portions of any order or opinion of the public utility commission as pertain to the commission’s most recent determination of the amount of decommissioning costs to be included in cost of service; and

(D) A copy of each engineering or cost study that was relied on or used by the taxpayer or the public utility commission in determining the amount of decommissioning costs to be included in the taxpayer’s cost of service under the current determination.

(vii) For each proceeding pending before a public utility commission that may result in an increase or decrease in the amount of decommissioning costs to be included in the taxpayer’s cost of service—

(A) A description of the stage of the proceeding;

(B) The amount of decommissioning costs that are proposed to be included in the taxpayer’s cost of service for each taxable year;

(C) A description of the assumptions, estimates and other factors that were used in determining the amount of decommissioning costs that are proposed to be included in the taxpayer’s cost of service for each taxable year, including each of the items described in paragraph (h)(2)(vi)(B) of this section if applicable; and

(D) A copy of each engineering or cost study that was relied on or used by the taxpayer or the public utility commission in determining the amount of decommissioning costs that are proposed to be included in the taxpayer’s cost of service.

(viii) A proposed schedule of ruling amounts for each taxable year remaining in the funding period as of the date the schedule of ruling amounts will first apply.

(ix) A description of the assumptions, estimates and other factors that were used in determining the proposed schedule of ruling amounts, including each of the following if applicable—

(A) The level funding limitation period (as such term is defined in paragraph (b)(2) of this section);

(B) The funding period (as such term is defined in paragraph (c) of this section);

(C) The assumed after-tax rate of return to be earned by the assets of the nuclear decommissioning fund;

(D) The fair market value of the assets (if any) of the nuclear decommissioning fund as of the first day of the first taxable year to which the schedule of ruling amounts will apply;

(E) The amount expected to be earned by the assets of the nuclear decommissioning fund (based on the after-tax rate of return applicable to the fund) over the period that begins on the first day of the first taxable year to which the schedule of ruling amounts will apply and ends on the last day of the funding period;

(F) The amount of decommissioning costs allocable to the nuclear decommissioning fund (as determined under paragraph (d) of this section);

(G) The total estimated cost of decommissioning (as such term is defined in paragraph (d)(2) of this section);

(H) The taxpayer's share of the total estimated cost of decommissioning (as such term is defined in paragraph (d)(3) of this section);

(I) The qualifying percentage (as such term is defined in paragraph (d)(4)(i) of this section);

(J) The estimated period for which the nuclear decommissioning fund is to be in effect (as such term is defined in paragraph (d)(4)(ii) of this section); and

(K) The estimated useful life of the nuclear power plant (as such term is defined in paragraph (d)(4)(iii) of this section).

(x) If the request is for a revised schedule of ruling amounts, the after-tax rate of return earned by the assets of the nuclear decommissioning fund

for each taxable year in the period that begins with the date of the initial contribution to the fund and ends with the first day of the first taxable year to which the revised schedule of ruling amounts applies.

(xi) If applicable, an explanation of the need for a schedule of ruling amounts determined on a basis other than the rules of paragraphs (a) through (g) of this section and a description of an alternative basis for determining a schedule of ruling amounts (see paragraph (a)(5) of this section).

(xii) A chart or table, based upon the assumed after-tax rate of return to be earned by the assets of the nuclear decommissioning fund, setting forth the years the fund will be in existence, the annual contribution to the fund, the estimated annual earnings of the fund and the cumulative total balance in the fund.

(xiii) If the request is for a revised schedule of ruling amounts, a copy of the most recently issued schedule of ruling amounts for the nuclear power plant to which the request relates that has been issued to the taxpayer (or a predecessor in interest) making the request.

(xiv) If the request for a schedule of ruling amounts contains a request, pursuant to §1.468A-5 (a)(1)(iv), that the Service rule whether an unincorporated organization through which the assets of the fund are invested is an association taxable as a corporation for federal tax purposes, a copy of the legal documents establishing or otherwise governing the organization.

(xv) Any other information required by the Internal Revenue Service that may be necessary or useful in determining the schedule of ruling amounts.

(3) *Administrative procedures.* The Internal Revenue Service may prescribe administrative procedures that supplement the provisions of paragraph (h) (1) and (2) of this section. In addition, the Internal Revenue Service may, in its discretion, waive the requirements of paragraph (h) (1) and (2) of this section under appropriate circumstances.

(i) *Review and revision of schedule of ruling amounts—(1) Mandatory review.*

(i) Any taxpayer that has obtained a schedule of ruling amounts pursuant to paragraph (h) of this section must file

a request for a revised schedule of ruling amounts on or before the deemed payment deadline date for the 10th taxable year that begins after the taxable year in which the most recent schedule of ruling amounts was received. The first taxable year to which the revised schedule of ruling amounts applies shall be the 10th taxable year that begins after the taxable year in which the most recent schedule of ruling amounts was received.

(ii)(A) Any taxpayer that has obtained a formula or method for determining a schedule of ruling amounts for any taxable year under paragraph (a)(4) of this section must file a request for a revised schedule on or before the earlier of the deemed payment deadline for the fifth taxable year that begins after its taxable year in which the most recent formula or method was approved or the deemed payment deadline for the first taxable year that begins after a taxable year in which there is a substantial variation in the ruling amount determined under the most recent formula or method. There is a substantial variation in the ruling amount determined under the formula or method in effect for a taxable year if the ruling amount for the year and the ruling amount for any earlier year since the most recent formula or method was approved differ by more than 50 percent of the smaller amount.

(B) Any taxpayer that has determined its ruling amount for any taxable year under a formula prescribed by § 1.468A-6 (which prescribes ruling amounts for the taxable year in which there is a disposition of a qualifying interest in a nuclear power plant) must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for its first taxable year that begins after the disposition.

(iii) A taxpayer is required to request a revised schedule of ruling amounts for a nuclear decommissioning fund if—

(A) Any public utility commission that establishes or approves rates for the furnishing or sale of electric energy generated by a nuclear power plant to which the nuclear decommissioning fund relates—

(1) Increases the proposed period over which decommissioning costs of such nuclear power plant will be included in cost of service for ratemaking purposes;

(2) Adjusts the estimated date on which such nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes; or

(3) Reduces the amount of decommissioning costs to be included in cost of service for any taxable year;

(B) The taxpayer's most recent request for a schedule of ruling amounts did not provide notice to the Internal Revenue Service of such action by the public utility commission; and

(C) In the case of a taxpayer that determines its schedule of ruling amounts under a formula or method obtained under paragraph (a)(4) of this section, the item increased, adjusted, or reduced is a fixed (rather than a variable) element of that formula or method.

(iv) If a taxpayer is required to request a revised schedule of ruling amounts by reason of an action described in paragraph (i)(1)(iii) of this section, the taxpayer must file the request for a revised schedule of ruling amounts on or before the deemed payment deadline date for the first taxable year in which rates that reflect such action become effective. The first taxable year to which the revised schedule of ruling amounts applies shall be the first taxable year in which such rates become effective.

(v) A request for a schedule of ruling amounts required by this paragraph (i)(1) must be made in accordance with the rules of paragraph (h) of this section. If a taxpayer does not properly file a request for a revised schedule of ruling amounts by the date provided in paragraph (i)(1) (i), (ii) or (iv) of this section (whichever is applicable), the taxpayer's ruling amount for the first taxable year to which the revised schedule of ruling amounts would have applied and for all succeeding taxable years until a new schedule is obtained shall be zero, unless, in its discretion, the Internal Revenue Service provides otherwise in such new schedule of ruling amounts.

(vi) See paragraph (f)(3) of §1.468A-2 for the application of the rules in paragraph (i)(1) (iii), (iv), and (v) of this section in the case of certain retroactive adjustments to interim rate orders.

(2) *Elective review.* Any taxpayer that has obtained a schedule of ruling amounts pursuant to paragraph (h) of this section can request a revised schedule of ruling amounts. Such a request must be made in accordance with the rules of paragraph (h) of this section; thus, the Internal Revenue Service shall not provide a revised ruling amount applicable to a taxable year in response to a request for a schedule of ruling amounts that is filed after the deemed payment deadline date for such taxable year (see paragraph (h)(1)(vi) of this section).

(3) *Determination of revised schedule of ruling amounts.* A revised schedule of ruling amounts for a nuclear decommissioning fund shall be determined under this section without regard to any schedule of ruling amounts for such nuclear decommissioning fund that was issued prior to such revised schedule. Thus, a ruling amount specified in a revised schedule of ruling amounts for any taxable year in the level funding limitation period can be less than one or more ruling amounts specified in a prior schedule of ruling amounts for a prior taxable year.

(j) *Special rule permitting payments to a nuclear decommissioning fund before receipt of an initial or revised ruling amount applicable to a taxable year.* (1) If an electing taxpayer has filed a timely request for an initial or revised ruling amount for a taxable year beginning on or after January 1, 1987, and does not receive the ruling amount on or before the deemed payment deadline date for such taxable year, the taxpayer may make a payment to a nuclear decommissioning fund on the basis of the ruling amount proposed in the taxpayer's request. Thus, under the preceding sentence, an electing taxpayer may make a payment to a nuclear decommissioning fund for such taxable year that does not exceed the lesser of—

(i) The cost of service amount applicable to the nuclear decommissioning fund for such taxable year; or

(ii) The ruling amount proposed by the taxpayer for such taxable year in a

timely filed request for a schedule of ruling amounts.

(2) If an electing taxpayer makes a payment to a nuclear decommissioning fund for any taxable year pursuant to paragraph (j)(1) of this section and the ruling amount that is provided by the Internal Revenue Service is greater than the ruling amount proposed by the taxpayer for such taxable year, the taxpayer is not allowed to make an additional payment to the fund for such taxable year after the deemed payment deadline date for such taxable year.

(3) If—(i) An electing taxpayer makes a payment to a nuclear decommissioning fund for any taxable year pursuant to paragraph (j)(1) of this section,

(ii) The ruling amount that is provided by the Internal Revenue Service is less than the ruling amount proposed by the taxpayer for such taxable year, and

(iii) As a result, there is an excess contribution (as defined in paragraph (c)(2)(ii) of §1.468A-5) for such taxable year,

Then the amount of the excess contribution is not deductible (see paragraph (b)(1) of §1.468A-2) and must be withdrawn by the taxpayer pursuant to the rules of paragraph (c)(2)(i) of §1.468A-5. Thus, an electing taxpayer that files a return based on a payment made pursuant to paragraph (j)(1) of this section should file an amended return if an excess contribution results when the ruling amount is issued for such taxable year.

[T.D. 8184, 53 FR 6808, Mar. 3, 1988, as amended by T.D. 8461, 57 FR 62199, Dec. 30, 1992; T.D. 8580, 59 FR 66474, Dec. 27, 1994; 60 FR 8932, Feb. 16, 1995; T.D. 8758, 63 FR 2894, Jan. 20, 1998]

§1.468A-4 Treatment of nuclear decommissioning fund.

(a) *In general.* A nuclear decommissioning fund is subject to tax on all of its modified gross income (as defined in paragraph (b) of this section). The rate of tax is 22 percent for taxable years beginning in calendar year 1994 or 1995, 20 percent for taxable years beginning after December 31, 1995, and the highest rate of tax specified by section 11(b) for other years. This tax is in lieu of any other tax that may be imposed under