

§ 1.468A-1T

- (1) In general.
- (2) Additional rules.
- (3) Substantial completion of decommissioning defined.

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

- (a) In general.
- (b) Requirements.
- (c) Tax consequences.
 - (1) The transferor and its Fund.
 - (2) The transferee and its Fund.
- (d) Basis.
- (e) Determination of proportionate amount.
- (f) Calculation of schedule of ruling amounts and schedule of deduction amounts for dispositions described in this section.
 - (1) Transferor.
 - (i) Taxable year of disposition.
 - (ii) Taxable years after the disposition.
 - (2) Transferee.
 - (i) Taxable year of disposition.
 - (ii) Taxable years after the disposition.
- (g) Example.
- (h) Anti-abuse provision.

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

- (a) In general.
- (b) Required information.

§ 1.468A-8T Special transfers to qualified funds pursuant to section 468A(f) (temporary).

- (a) General rule.
 - (1) In general.
 - (2) Previously excluded amount.
 - (3) Transfers in multiple years.
 - (4) Contributions of property.
- (b) Deduction for amounts transferred.
 - (1) In general.
 - (2) Denial of deduction for previously deducted amounts.
 - (3) Transfers of qualified nuclear decommissioning funds.
 - (4) Special rules.
 - (i) Gain or loss not recognized on transfers to fund.
 - (ii) Transfers of appreciated property to fund.
- (c) New ruling amount required.
 - (1) In general.
 - (2) Transfers in multiple taxable years.
- (d) Manner of requesting schedule of deduction amounts.
 - (1) In general.
 - (2) Information required.
 - (3) Statement required.
 - (4) Administrative procedures.

§ 1.468A-9T Effective/applicability date and transitional rules (temporary).

- (a) Effective date.
- (b) Transitional rules.
 - (1) Schedules of ruling amounts based on prior regulations.

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

- (2) Nuclear decommissioning fund qualification requirements.
- (3) Use of formula method.

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§ 1.468A-1T Nuclear decommissioning costs; general rules (temporary).

(a) *Introduction.* Section 468A provides an elective method for taking into account nuclear decommissioning costs for Federal income tax purposes. In general, an eligible taxpayer that elects the application of section 468A pursuant to the rules contained in § 1.468A-7T is allowed a deduction (as determined under § 1.468A-2T) for the taxable year in which the taxpayer makes a cash payment to a nuclear decommissioning fund. Taxpayers using an accrual method of accounting that do not elect the application of section 468A are not allowed a deduction for nuclear decommissioning costs prior to the taxable year in which economic performance occurs with respect to such costs (see section 461(h)).

(b) *Definitions.* The following terms are defined for purposes of section 468A and the regulations:

(1) The term *eligible taxpayer* means any taxpayer that possesses a qualifying interest in a nuclear power plant (including a nuclear power plant that is under construction).

(2) The term *qualifying interest* means—

- (i) A direct ownership interest; and
- (ii) A leasehold interest in any portion of a nuclear power plant if—

(A) The holder of the leasehold interest is primarily liable under Federal or State law for decommissioning such portion of the nuclear power plant; and

(B) No other person establishes a nuclear decommissioning fund with respect to such portion of the nuclear power plant.

(3) A *direct ownership interest* includes an interest held as a tenant in common or joint tenant, but does not include stock in a corporation that owns a nuclear power plant or an interest in a partnership that owns a nuclear power plant. Thus, in the case of a partnership that owns a nuclear power plant, the election under section 468A must be made by the partnership and not by the partners. In the case of an unincorporated organization described in

§1.761-2(a)(3) that elects under section 761(a) to be excluded from the application of subchapter K, each taxpayer that is a co-owner of the nuclear power plant is eligible to make a separate election under section 468A.

(4) The terms *nuclear decommissioning fund* and *qualified nuclear decommissioning fund* mean a fund that satisfies the requirements of §1.468A-5T. The term *nonqualified fund* means a fund that does not satisfy those requirements.

(5) The term *nuclear power plant* means any nuclear power reactor that is used predominantly in the trade or business of the furnishing or sale of electric energy. Each unit (that is, nuclear reactor) located on a multi-unit site is a separate nuclear power plant. The term *nuclear power plant* also includes the portion of the common facilities of a multi-unit site allocable to a unit on that site.

(6) The term *nuclear decommissioning costs* or *decommissioning costs* means all otherwise deductible expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a nuclear power plant that has permanently ceased the production of electric energy. Such term includes all otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all otherwise deductible expenses to be incurred with respect to the plant after the actual decommissioning occurs, such as physical security and radiation monitoring expenses. Such term does not include otherwise deductible expenses to be incurred in connection with the disposal of spent nuclear fuel under the Nuclear Waste Policy Act of 1982 (Pub. L. 97-425). An expense is otherwise deductible for purposes of this paragraph (b)(6) if it would be deductible under chapter 1 of the Internal Revenue Code without regard to section 280B.

(7) The term *public utility commission* means any State or political subdivision thereof, any agency, instrumentality or judicial body of the United States, or any judicial body, commission or other similar body of the Dis-

trict of Columbia or of any State or any political subdivision thereof that establishes or approves rates for the furnishing or sale of electric energy.

(8) The term *ratemaking proceeding* means any proceeding before a public utility commission in which rates for the furnishing or sale of electric energy are established or approved. Such term includes a generic proceeding that applies to two or more taxpayers that are subject to the jurisdiction of a single public utility commission.

(9) The term *special transfer* means any transfer of funds to a qualified nuclear decommissioning fund pursuant to §1.468A-8T.

(c) *Special rules applicable to certain experimental nuclear facilities.* (1) The owner of a qualifying interest in an experimental nuclear facility possesses a qualifying interest in a nuclear power plant for purposes of paragraph (b) of this section if such person is engaged in the trade or business of the furnishing or sale of electric energy.

(2) An owner of stock in a corporation that owns an experimental nuclear facility possesses a qualifying interest in a nuclear power plant for purposes of paragraph (b)(1) of this section if—

(i) Such stockholder satisfies the conditions of paragraph (c)(1) of this section; and

(ii) The corporation that directly owns the facility is not engaged in the trade or business of the furnishing or sale of electric energy.

(3) For purposes of this paragraph (c), an experimental nuclear facility is a nuclear power reactor that is used predominantly for the purpose of conducting experimentation and research.

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§ 1.468A-2T Treatment of electing taxpayer (temporary).

(a) *In general.* An eligible taxpayer that elects the application of section 468A pursuant to the rules contained in §1.468A-7T (an electing 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 as provided in paragraph (c) of this section) to a nuclear decommissioning fund and for any taxable year in which a deduction is allowed for a special transfer described in §1.468A-