

[Federal Register: December 27, 1994]

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DEPARTMENT OF THE TREASURY  
26 CFR Parts 1 and 602

[**TD 8580**]  
RIN 1545-AN06

Disposition of an Interest in a Nuclear Power Plant

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

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SUMMARY: This document contains final regulations relating to certain Federal income tax consequences of a disposition of an interest in a nuclear power plant by a taxpayer that has maintained a nuclear decommissioning fund with respect to that plant. These regulations affect taxpayers that transfer or acquire interests in nuclear power plants by providing guidance on the tax consequences of these transfers. In addition, the final regulations extend the benefits of section 468A to electing taxpayers with an interest in a nuclear power plant under the jurisdiction of the Rural Electrification Administration. The regulations also make a number of other changes and clarifications to the existing regulations to aid in the administration of section 468A.

EFFECTIVE DATE: These regulations are effective December 27, 1994.

FOR FURTHER INFORMATION CONTACT: Peter C. Friedman, (202) 622-3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1378. With respect to Sec. 1.468A-3(h)(2) (xii) and (xiii), the estimated annual burden per respondent varies from 1 to 2 hours, depending on individual circumstances, with an estimated average of 1.5 hours.

With respect to Sec. 1.468A-3(i)(1)(ii)(B), the estimated annual burden per respondent varies from 20 to 30 hours, depending on individual circumstances, with an estimated average of 25 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

## Background

This document contains amendments to the Income Tax Regulations (26 CFR parts 1 and 602) under section 468A. Section 468A, relating to nuclear decommissioning costs, was added to the Internal Revenue Code by section 91(c) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 604). On November 20, 1992, the IRS published in the Federal Register a notice of proposed rulemaking (57 FR 54734) setting forth proposed amendments to the regulations under section 468A.

Section 468A(c)(1)(B) authorizes the Secretary to issue regulations that prescribe the extent to which a taxpayer must include amounts from a nuclear decommissioning fund (a Fund) in gross income upon the disposition of an interest in a nuclear power plant to which the Fund relates. Section 1.468A-6T (**TD** 8094, 51 FR 25033) published in the Federal Register on July 10, 1986, treated such a disposition as a taxable distribution of assets in the Fund to the taxpayer transferring the interest. In response to generally adverse comments on this rule, final regulations (**TD** 8184, 53 FR 6800) published in the Federal Register on March 3, 1988, stated that guidance on the tax treatment of these dispositions would be provided at a later date. These regulations are issued to provide this guidance.

## Explanation of Provisions

### In General

The regulations prescribe certain federal income tax consequences

of the disposition of all or a portion of a qualifying interest in a nuclear power plant to which a Fund relates. The regulations treat a transfer of Fund assets in connection with such a disposition as a nonrecognition event, provided certain requirements are satisfied. The transferee of the interest is viewed as stepping into the shoes of the transferor with respect to the amount of the assets in the transferor's Fund that is proportionate to the interest transferred and with respect to the transferor's ruling amount for the portion of the taxable year that follows the disposition. These regulations also provide rules for the calculation of schedules of ruling amounts for the transferee and for a transferor that retains a portion of its original qualifying interest.

The regulations also contain a general provision allowing the IRS to treat a disposition occurring on or after December 27, 1994 as satisfying the requirements of the regulations if the IRS decides that this treatment is necessary or appropriate to carry out the purposes of section 468A and the regulations thereunder. Another provision allows the IRS, upon the request of an electing taxpayer, to apply these regulations to a disposition of an interest in a nuclear power plant occurring after July 17, 1984, and before December 27, 1994.

The regulations also allow rural electric cooperatives to qualify as electing taxpayers; modify the information requirements that are part of a request for a schedule of ruling amounts; create a new mandatory review period for schedules of ruling amounts determined with respect to a disposition of an interest in a nuclear power plant; require that the trust agreement for each Fund contain a provision that assets of the Fund may be used only in a manner that is authorized by section 468A and the regulations thereunder; and provide that the period within which a taxpayer must substantially comply with the provisions requiring information to be submitted as part of a request for a schedule of ruling amounts is the general period applicable to requests for private letter rulings.

## Comments Received

Comments received in response to the notice of proposed rulemaking (57 FR 54734) can be divided into five general categories--rural electric cooperatives, reduction in time to provide additional information, trust provisions, disposition provisions, and self-dealing rules.

## Rural Electric Cooperatives

The proposed regulations extend the benefits of section 468A to

electing rural electric cooperatives. One commentator requested that the IRS (1) not consider earnings on assets in Funds when determining whether tax-exempt rural electric cooperatives satisfy the 85 percent test of section 501(c)(12) (which requires at least 85 percent of the cooperative's income to be from members); (2) specify the regulatory authority (Rural Electrification Administration, Federal Energy Regulatory Commission, or State Commission) that is charged with approving cost of service amounts; and (3) allow rural electric cooperatives to elect to apply section 468A retroactively for all open taxable years.

The determination of whether earnings on nuclear decommissioning funds (whether or not established under section 468A) count toward satisfaction of the 85 percent test is an issue under section 501 and, therefore, is outside the scope of this project. Further, it is the responsibility of the regulatory authorities to decide which of the authorities is responsible for approving cost of service amounts. These issues, therefore, are not addressed in the final regulations. Additionally, because sections 468A (a) and (g) require that payments to a Fund for a taxable year be made no later than two and one-half months after the close of that year, the IRS believes that retroactive application of section 468A to rural electric cooperatives is not permitted by the statute.

#### Time Period for Additional Information

The proposed regulations also reduce the time for submitting additional information requested by the IRS concerning a request for a schedule of ruling amounts from 60 to 30 days. Many commentators stated that the abbreviated response time would be inadequate for a taxpayer to gather, prepare, and submit requested information. Retaining the requirements of the proposed regulations, the final regulations merely conform the section 468A rules to the normal rules governing requests for letter rulings to help expedite the rulings process. The final regulations clarify, however, that the IRS may waive this deadline if the taxpayer is making a good faith effort to comply with the deadline.

#### Trust Provisions

The proposed regulations also provide that each qualified nuclear decommissioning trust agreement must require that assets of the Fund be used as authorized by section 468A and the regulations thereunder and that the agreement cannot be amended to violate section 468A or the regulations thereunder. Commentators argued that this provision exceeds the IRS's authority. It is apparent from section 468A(e)(4) (which

requires that amounts in a Fund be used exclusively for decommissioning, associated expenses, or, when not currently needed for those purposes, to make investments) and from the special section 468A tax rules (including the preferential tax rates on Fund earnings for taxable years beginning after December 31, 1993), that Congress intended for amounts set aside in these Funds to be available for decommissioning of nuclear power plants. The IRS believes it is consistent with this Congressional intent, and with the IRS's responsibilities for successfully administering the program, to require that the trust agreements limit use of Fund assets to section 468A purposes. Accordingly, the final regulations retain this requirement. To ensure that taxpayers have sufficient time to modify their trust agreements, the final regulations also retain the grace period of the proposed regulations that allows until December 31, 1996, for the inclusion of the required trust provisions.

### Dispositions of an Interest in a Nuclear Power Plant

The proposed regulations generally treat transfers of assets in Funds resulting from transfers of interests in nuclear power plants to which the Funds relate as nonrecognition, transferred basis transactions. Most of the comments favored the proposed rules. However, commentators requested (1) additional guidance on how to determine which Fund assets relate to a transferred interest in a nuclear power plant and clarification that the regulations were not adopting a tracing approach; (2) an option to treat these dispositions as triggering a taxable transfer of related assets; (3) an option to transfer an entire Fund rather than the assets in the Fund; and (4) assurance that the proposed rules apply in the context of corporate reorganizations.

First, to make clear that the regulations do not adopt a tracing approach, the final regulations refer to assets in a Fund that are proportionate to the interest in the plant that is transferred, rather than to assets that ``relate'' to the interest transferred. The final regulations also clarify that a proportionate amount of the assets in a Fund is considered transferred if, on the date the qualifying interest is transferred, the percentage of the aggregate fair market value of the assets transferred equals the percentage of the qualifying interest transferred.

Second, the final regulations do not adopt the suggestion to provide taxpayers with an option to treat the disposition as triggering a taxable transfer of a proportionate amount of the assets. The nonrecognition, transferred basis approach simplifies the tax rules for dispositions and corresponds to the substance of these transactions.

Permitting taxpayers to elect taxable treatment would unnecessarily complicate the tax rules.

Third, to minimize the role of form in these disposition transactions, the final regulations clarify that when an interest in a nuclear power plant is transferred, the associated assets must be transferred to a Fund of the transferee or, if the transferee acquires the transferor's entire interest in the plant, the transferor's Fund may be transferred to the transferee. Such a transfer of the transferor's Fund must not be prohibited by the transferor's trust agreement or applicable local law. Regardless of whether the assets of the transferor's Fund or the Fund itself is transferred, after the transfer, the transferee must not violate Sec. 1.468A-5(a)(1)(ii), which requires that an electing taxpayer maintain only one Fund for each nuclear power plant. Similarly, after the transfer, the transferee and the transferor that retains an interest must not violate Sec. 1.468A-5(a)(1)(ii), which requires that each electing taxpayer have a separate Fund for its interest in the same plant.

In addition, the final regulations provide that if a transferee acquires an interest in a nuclear power plant in a transaction to which Sec. 1.468A-6 (dispositions of an interest in a nuclear power plant) applies, the transferee's qualifying percentage for the interest acquired generally is the transferor's qualifying percentage with respect to that interest immediately before the disposition.

Fourth, although the final regulations make no specific mention of corporate reorganizations, they apply to all dispositions described in the regulations, including those that occur in the context of corporate reorganizations.

## Self-Dealing

The proposed regulations also make a change to the rules prohibiting a trustee or other disqualified person from engaging in an act of self-dealing with a Fund. The change excepts deposits in trustee institutions from the self-dealing rules if the deposits are made to facilitate temporary investments or the payment of reasonable administrative expenses. The change was intended to reduce administrative costs associated with establishing an account with a different institution for these purposes.

Commentators criticized the rule on the ground that it called into question the permissibility of using Fund assets to pay investment advisory and trustee fees. In response to these comments, the final regulations provide that the proposed exception to the self-dealing rules is an addition to, rather than a substitution for, the existing exception for payment of fees.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

## Drafting Information

The principal author of these regulations is Peter C. Friedman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

## List of Subjects

### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### 26 CFR Part 602

Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

### PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.468A-0 is amended by:

1. Adding an entry for Sec. 1.468A-1, paragraph (d).

2. Adding an entry for Sec. 1.468A-5, paragraph (a)(4).

3. Revising the heading for Sec. 1.468A-6 and adding entries for paragraphs (a) through (h).

4. The revision and additions read as follows:

Sec. 1.468A-0 Nuclear decommissioning costs; table of contents.

\* \* \* \* \*

Sec. 1.468A-1 Nuclear decommissioning costs; general rules.

\* \* \* \* \*

(d) Special rules for electing taxpayers whose rates are under the jurisdiction of the Rural Electrification Administration.

\* \* \* \* \*

Sec. 1.468A-5 Nuclear decommissioning fund--miscellaneous provisions.

(a) \* \* \*

(4) Trust provisions.

\* \* \* \* \*

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

(a) In general.

(b) Requirements.

(c) Tax consequences.

(1) The transferor and its Fund.

(2) The transferee and its Fund.

(3) Basis.

(d) Determination of proportionate amount.

(e) Calculation of schedule of ruling amounts for dispositions described in this section.

(1) Transferor.

(2) Transferee.

(3) Example.

(f) Calculation of the qualifying percentage after dispositions described in this section.

(1) In general.

(2) Special rule.

(g) Other.

(1) Anti-abuse provision.



(2) Relief provision.

(h) Effective date.

\* \* \* \* \*

Par. 3. Section 1.468A-1 is amended as follows:

1. The introductory text of paragraph (b) is revised.
2. Paragraph (b)(4) is revised.
3. Paragraph (d) is added.
4. The added and revised provisions read as follows.

Sec. 1.468A-1 Nuclear decommissioning costs; general rules.

\* \* \* \* \*

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

\* \* \* \* \*

(4) 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, if the rates for the furnishing or sale, as the case may be, either have been established or approved by a public utility commission or are under the jurisdiction of the Rural Electrification Administration. Each unit (i.e., 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.

\* \* \* \* \*

(d) Special rules for electing taxpayers whose rates are under the jurisdiction of the Rural Electrification Administration. Notwithstanding any other provision of the regulations under section 468A, a schedule of ruling amounts may be provided to a taxpayer with respect to a nuclear power plant if the rates for the furnishing or sale of the plant's electricity are under the jurisdiction of the Rural Electrification Administration. This schedule will be determined on the basis of all facts and circumstances in a manner consistent with section 468A. No taxpayer will be provided a schedule of ruling amounts under section 468A for any taxable year unless the portion of the rates attributable to the decommissioning costs of that taxpayer with respect to such taxable year are treated by the taxpayer as though they were subject to section 88.

Par. 4. Section 1.468A-3 is amended as follows:

1. Paragraph (h)(1)(v) is removed.
2. Paragraphs (h)(1)(vi) through (h)(1)(viii) are redesignated as paragraphs (h)(1)(v) through (h)(1)(vii), respectively.
3. Newly designated paragraph (h)(1)(vii) is revised.

4. Paragraphs (h)(2) (xii) and (xiii) are added.
5. Paragraph (i)(1)(ii) is revised.
6. The revisions and additions read as follows:

Sec. 1.468A-3 Ruling amount.

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

(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) \* \* \*

(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.

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(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 (which applies when a public utility commission estimates decommissioning costs in current dollars) must

file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for its fifth taxable year that begins after its taxable year in which the most recent formula or method was received.

(B) Any taxpayer that has determined its ruling amount for any taxable year under a formula prescribed by Sec. 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.

\* \* \* \* \*

Par. 5. Section 1.468A-5 is amended as follows:

1. Paragraph (a)(4) is added.

2. Paragraph (b)(2)(v) is amended by removing ``or'' at the end thereof.

3. Paragraph (b)(2)(vi) is redesignated as paragraph (vii).

4. New paragraph (b)(2)(vi) is added.

The additions read as follows:

Sec. 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) \* \* \*

(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) \* \* \*

(2) \* \* \*

(vi) Any act described in Sec. 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

\* \* \* \* \*

Par. 6. Section 1.468A-6 is amended by adding text to read as follows:

Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. Section 602.101(c) is amended by revising the entry for 1.468A-3 to read as follows:

Sec. 602.101 OMB Control Numbers.

\* \* \* \* \*

(c) \* \* \*

CFR part or section where identified or described	Current OMB control No.
1.468A-3.....	1545-1269 1545-1378

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Margaret Milner Richardson,  
Commissioner of Internal Revenue.

Approved: December 8, 1994.

Cynthia G. Beerbower,  
Deputy Assistant Secretary of the Treasury.

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