

EXHIBIT B-1

Section 468B of the
Internal Revenue Code of 1986

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(i) Gain or loss not recognized on transfers to Fund. No gain or loss shall be recognized on any transfer described in paragraph (1).

(ii) Transfers of appreciated property to Fund. If appreciated property is transferred in a transfer described in paragraph (1), the amount of the deduction shall not exceed the adjusted basis of such property.

(3) New ruling amount required. Paragraph (1) shall not apply to any transfer unless the taxpayer requests from the Secretary a new schedule of ruling amounts in connection with such transfer.

(4) No basis in qualified funds. Notwithstanding any other provision of law, the taxpayer's basis in any Fund to which this section applies shall not be increased by reason of any transfer permitted by this subsection.

(g) Nuclear powerplant.

For purposes of this section, the term "nuclear powerplant" includes any unit thereof.

(h) Time when payments deemed made.

For purposes of this section, a taxpayer shall be deemed to have made a payment to the Fund on the last day of a taxable year if such payment is made on account of such taxable year and is made within 2½ months after the close of such taxable year.

In 2005, P.L. 109-58, Sec. 1310(a), amended subsec. (b) . . . Sec. 1310(b)(1), redesignated subsecs. (f) and (g) as subsecs. (g) and (h), and added subsec. (i) . . . Sec. 1310(b)(2), amended subpara. (d)(2)(A) . . . Sec. 1310(c), added "For purposes of the preceding sentence, the taxpayer shall request a schedule of ruling amounts upon each renewal of the operating license of the nuclear powerplant." at the end of para. (d)(1) . . . Sec. 1310(d), substituted "Except as provided in subsection (f), the Fund" for "The Fund" in para. (e)(3) . . . Sec. 1310(e)(1), substituted "rate of 20 percent" for "rate set forth in subparagraph (B)" in subpara. (e)(2)(A) . . . Sec. 1310(e)(2), deleted subpara. (e)(2)(B) . . . Sec. 1310(e)(3), redesignated subparas. (e)(2)(C) and (D) as subparas. (e)(2)(B) and (C), effective for tax yrs. begin. after 12/31/2005.

Prior to amendment, subsec. (b) read as follows:

(b) Limitation on amounts paid into Fund. The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the lesser of

(1) the amount of nuclear decommissioning costs allocable to the Fund which is included in the taxpayer's cost of service for ratemaking purposes for such taxable year, or

(2) the ruling amount applicable to such taxable year.

Prior to amendment, subpara. (d)(2)(A) read as follows:

(A) fund that portion of the nuclear decommissioning costs of the taxpayer with respect to the nuclear powerplant which bears the same ratio to the total nuclear decommissioning costs with respect to such nuclear powerplant as the period for which the Fund is in effect bears to the estimated useful life of such nuclear powerplant, and

Prior to deletion, subpara. (e)(2)(B) read as follows:

(B) Rate of tax. For purposes of subparagraph (A), the rate set forth in this subparagraph is—

(i) 22 percent in the case of taxable years beginning in calendar year 1994 or 1995, and

(ii) 20 percent in the case of taxable year beginning after December 31, 1995.

In 1996, P.L. 104-188, Sec. 1704(j)(6), amended Sec. 1917(b)(1) of P.L. 102-486 by substituting "at a rate" for "at the rate" in the material proposed to be stricken, see below.

In 1992, P.L. 102-486, Sec. 1917(a), deleted "described in section 501(c)(21)(B)(ii)" after "investments" in subpara. (e)(4)(C), effective for tax yrs. begin. after 12/31/92.

P.L. 102-486, Sec. 1917(b)(1), amended by Sec. 1704(j)(6) of P.L. 104-188, see above) substituted "at the rate set forth in subparagraph (B)" for "at a rate equal to the highest rate of tax specified in section 11(b)", in subpara. (e)(2)(A) . . . Sec. 1917(b)(2), redesignated subparas. (e)(2)(B) and (C) as subparas. (e)(2)(C) and (D) and added new subpara. (e)(2)(B), effective as provided in Sec. 1917(c)(2) of this Act, which reads as follows:

(2) Subsection (b). The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 1993. Section 15 of the Internal Revenue Code of 1986 shall not apply to any change in rate resulting from the amendment made by subsection (b).

In 1986, P.L. 99-514, Sec. 1807(a)(4)(A)(i), added subsec. (g) effective 7/18/84 in tax yrs. end. after 7/18/84. Sec. 1807(a)(4)(A)(ii) of this Act provides the following transitional rule:

(ii) Transitional rule.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, subsection (g) of section 468A of the Internal Revenue Code of 1954 (as added by clause (i)) shall be applied with respect to any payment on account of a taxable year beginning before January 1, 1987, as if it did not contain the requirements that the payment be made within 2½ months after the close of the taxable year. Such regulations may provide that, to the extent such payment to the Fund is made more than 2½ months after the close of the taxable year, any adjustment to the tax attributable to such payment shall not affect the amount of interest payable with respect to periods before the payment is made. Such regulations may provide appropriate adjustments to the deduction allowed under such section 468A for any such taxable year to take into account the fact that the payment to the Fund is made more than 2½ months after the close of the taxable year.

—P.L. 99-514, Sec. 1807(a)(4)(B), substituted subsection (e)(4)(B), for "subsection (e)(2)(B)," in subpara. (c)(1)(A) . . . Sec. 1807(a)(4)(C), amended para. (e)(2) . . . Sec. 1807(a)(4)(D), deleted "and" from the end of subpara. (e)(4)(A), substituted "and" for the period at the end of subpara. (e)(4)(B), and added subpara. (e)(4)(C) . . . Sec. 1807(a)(4)(E)(i), substituted "this section" for "this subsection" in subsec. (a) . . . Sec. 1807(a)(4)(E)(ii), substituted "this section" for "this subsection" in subsec. (d) . . . Sec. 1807(a)(4)(E)(iii), substituted "reserve fund" for "trust fund" in the heading of subsec. (e) . . . Sec. 1807(a)(4)(E)(iv)(D), substituted "this section" for "this subsection" in para. (e)(1) . . . Sec. 1807(a)(4)(E)(iv)(II), substituted "Reserve Fund" for "Trust Fund" in para. (e)(1) . . . Sec. 1807(a)(4)(E)(v)(B), substituted "this section" for "this subsection" each place it appeared in para. (e)(6) . . . Sec. 1807(a)(4)(E)(v)(II), substituted "this paragraph" for "this subparagraph" in para. (e)(6) . . . Sec. 1807(a)(4)(E)(vi), substituted "For purposes of this section, the term" for "The term" in subsec. (f), effective 7/18/84 for tax yrs. end. after 7/18/84. For exceptions and transitional rules, see Sec. 91(h) and (i) of P.L. 98-369 reproduced in note following Code Sec. 461.

Prior to amendment, para. (e)(2) read as follows:

(2) Taxation of fund. There is imposed on the gross income of the Fund for any taxable year a tax at a rate equal to the maximum rate in effect under section 11(b), except that

(A) there shall not be included in the gross income of the Fund any payment to the Fund with respect to which a deduction is allowable under subsection (a), and

(B) there shall be allowed as a deduction any amount paid by the Fund described in paragraph (4)(B) (other than to the taxpayer).

—P.L. 99-514, Sec. 1807(a)(4), added Sec. 91(g)(5) to P.L. 98-369, the effective date for changes made by Sec. 91(c)(1), see below.

In 1984, P.L. 98-369, Sec. 91(c)(1), added Code Sec. 468A, effective 7/18/84 for tax yrs. end. after 7/18/84 [as amended by Sec. 1807(a)(4) of P.L. 99-514, see above]. For exceptions and transitional rules, see Secs. 91(h) and (i) of P.L. 98-369 reproduced in note following Code Sec. 461.

Sec. 468B. Special rules for designated settlement funds.

(a) In general.

For purposes of section 461(h), economic performance shall be deemed to occur as qualified payments are made by the taxpayer to a designated settlement fund.

(b) Taxation of designated settlement fund:

(1) In general. There is imposed on the gross income of any designated settlement fund for any taxable year a tax at a rate equal to the maximum rate in effect for such taxable year under section 1(e).

(2) Certain expenses allowed. For purposes of paragraph (1), gross income for any taxable year shall be reduced by the amount of any administrative costs (including State and local taxes) and other incidental expenses of the designated settlement fund (including legal, accounting, and actuarial expenses)

(A) which are incurred in connection with the operation of the fund, and

(B) which would be deductible under this chapter for purposes of determining the taxable income of a corporation.

No other deduction shall be allowed to the fund.

(3) Transfers to the fund. In the case of any qualified payment made to the fund—

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for taxable years
transferred shall
taxable year which

(A) the amount of such payment shall not be treated as income of the designated settlement fund;

(B) the basis of the fund in any property which constitutes a qualified payment shall be equal to the fair market value of such property at the time of payment, and

(C) the fund shall be treated as the owner of the property in the fund (and any earnings thereon).

(4) **Tax in lieu of other taxation.** The tax imposed by paragraph (1) shall be in lieu of any other taxation under this subtitle of income from assets in the designated settlement fund.

(5) **Coordination with subtitle F.** For purposes of subtitle F—

(A) a designated settlement fund shall be treated as a corporation, and

(B) any tax imposed by this subsection shall be treated as a tax imposed by section 11.

(c) **Deductions not allowed for transfer of insurance amounts.**

No deduction shall be allowable for any qualified payment by the taxpayer of any amounts received from the settlement of any insurance claim to the extent such amounts are excluded from the gross income of the taxpayer.

(d) **Definitions.**

For purposes of this section—

(1) **Qualified payment.** The term “qualified payment” means any money or property which is transferred to any designated settlement fund pursuant to a court order, other than—

(A) any amount which may be transferred from the fund to the taxpayer (or any related person), or

(B) the transfer of any stock or indebtedness of the taxpayer (or any related person).

(2) **Designated settlement fund.** The term “designated settlement fund” means any fund—

(A) which is established pursuant to a court order and which extinguishes completely the taxpayer’s tort liability with respect to claims described in subparagraph (D),

(B) with respect to which no amounts may be transferred other than in the form of qualified payments,

(C) which is administered by persons a majority of whom are independent of the taxpayer,

(D) which is established for the principal purpose of resolving and satisfying present and future claims against the taxpayer (or any related person or formerly related person) arising out of personal injury, death, or property damage,

(E) under the terms of which the taxpayer (or any related person) may not hold any beneficial interest in the income or corpus of the fund, and

(F) with respect to which an election is made under this section by the taxpayer.

An election under this section shall be made at such time and in such manner as the Secretary shall by regulation prescribe. Such an election, once made, may be revoked only with the consent of the Secretary.

(3) **Related person.** The term “related person” means a person related to the taxpayer within the meaning of section 267(b).

(e) **Nonapplicability of section.**

This section (other than subsection (g)) shall not apply with respect to any liability of the taxpayer arising under any workers’ compensation Act or any contested liability of the taxpayer within the meaning of section 461(f).

(f) **Other funds.**

Except as provided in regulations, any payment in respect of a liability described in subsection (d)(2)(D) (and not described in subsection (e)) to a trust fund or escrow fund which is not a designated settlement fund shall not be treated as constituting economic performance.

(g) **Clarification of taxation of certain funds.**

Nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise.

In 1990, P.L. 101-508, Sec. 11702(e)(1), substituted, “This section (other than subsection (g))” for “This section” in subsec. (e), effective as provided in Sec. 91(g), (h), and (i) of P.L. 98-369 reproduced in note following Code Sec. 461. For special rules see Secs. 1807(a)(7)(C) and (D) of P.L. 99-514 reproduced below.

In 1988, P.L. 100-647, Sec. 1018(f)(1), substituted, “the taxpayer (or any related person)” for “the taxpayer” in subparas. (d)(1)(A) and (d)(2)(E) . . . Sec. 1018(f)(2), amended subpara. (d)(2)(A) . . . Sec. 1018(f)(4)(A), substituted, “a corporation,” for “the corporation,” in subpara. (b)(2)(B) . . . Sec. 1018(f)(4)(B), substituted, “No other,” for “no other” in para. (b)(2) . . . Sec. 1018(f)(5)(A), added subsec. (g), effective as provided in Secs. 91(g), (h), and (i) of P.L. 98-369, reproduced in the note following Code Sec. 461 and Sec. 1807(a)(7)(C) of P.L. 99-514, reproduced below.

Prior to amendment, subpara. (d)(2)(A) read as follows:

“(A) which is established pursuant to a court order.”

—P.L. 100-647, Sec. 1018(f)(3), amended Sec. 1807(a)(7)(C)(i) of P.L. 99-514 [reproduced below] part of the effective date for changes made by Sec. 1807(a)(7)(A) of P.L. 99-514 . . . Sec. 1018(f)(5)(B), repealed Sec. 1807(a)(7)(D) of P.L. 99-514, clarification of amendments made by Sec. 1807(a)(7)(A) of P.L. 99-514, see below.

Prior to amendment, Sec. 1807(a)(7)(C)(i) of P.L. 99-514 read as follows:

“(i) any portion of such fund which meets the requirements of subparagraphs (A), (C), (D), and (F) of section 468B(d)(2) of the Internal Revenue Code of 1954 (as added by this paragraph) shall be treated as a designated settlement fund for purposes of section 468B of such Code.”

Prior to repeal, Sec. 1807(a)(7)(D) of P.L. 99-514 read as follows:

“(D) Clarification of law with respect to certain funds.—

“(i) In general.—Nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. If contributions to such an account or fund are not deductible, then the account or fund shall be taxed as a grantor trust.

“(ii) Effective date.—The provisions of clause (i) shall apply to accounts or funds established after August 16, 1986.”

In 1986, P.L. 99-514, Sec. 1807(a)(7)(A), added Code Sec. 468B, effective as provided in Secs. 91(g), (h), and (i) of P.L. 98-369, reproduced in note following Code Sec. 461. Sec. 1807(a)(7)(C) [as amended by Sec. 1018(f)(3) of P.L. 100-647, see above] of this Act and Sec. 1807(a)(7)(D) of this Act [repealed by Sec. 1018(f)(5)(B) of P.L. 100-647, see above] provides:

“(C) Special rule for taxpayer in bankruptcy reorganization. In the case of any settlement fund which is established for claimants against a corporation which filed a petition for reorganization under chapter 11 of title 11, United States Code, on August 26, 1982, and which filed with a United States district court a first amended and restated plan of reorganization before March 1, 1986

“(i) any portion of such fund which is established pursuant to a court order and with qualified payments, which meets the requirements of subparagraphs (C) and (D) of section 468B(d)(2) of the Internal Revenue Code of 1954 (as added by this paragraph), and with respect to which an election is made under subparagraph (F) thereof, shall be treated as a designated settlement fund for purposes of section 468B of such Code,

“(ii) such corporation (or any successor thereof) shall be liable for the tax imposed by section 468B of such Code on such portion of the fund (and the fund shall not be liable for such tax), such tax shall be deductible by the corporation, and the rate of tax under section 468B of such Code for any taxable year shall be equal to 15 percent, and

“(iii) any transaction by any portion of the fund not described in clause (i) shall be treated as a transaction made by the corporation.”

Sec. 469. Passive activity losses and credits limited.

(a) **Disallowance.**

(1) **In general.** If for any taxable year the taxpayer is described in paragraph (2), neither—