Attachment C – IRS PLR 14324114

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Date:
July 06, 2015

LEGEND:

Taxpayer	=
Parent	=
State A	=
State B	=
Commission A	=
Commission B	=
Commission C	=
Operator	=
Year A	=
Case A	=
Case B	=
Case C	=
Date X	=
Director	=

Dear :

This letter responds to Parent's request, made on behalf of Taxpayer, dated January 9, 2015, for a ruling on the application of the normalization rules to certain regulatory procedures applied in State as described below.

The representations set out in your letter follow.

Taxpayer, a wholly-owned subsidiary of Parent, is primarily engaged in the business of generating, transmitting, distributing, and selling electric power to customers in State A and State B. It is subject to regulation by Commission A, Commission B, and Commission C with respect to terms and conditions of services, including the rates it may charge for its services. All three Commissions establish Taxpayer's rates based on Taxpayer's costs, including a provision for a return on the capital employed by Taxpayer in its regulated business.

The law of State A provides a process under which a utility may recover its costs relating to projects such as new electric generation facilities as a stand-alone rate adjustment added to customers' base rates. As relevant to this ruling request, the process for setting the rates involves two components. First, a taxpayer files estimated projections of all factors, including Accumulated Deferred Federal Income Taxes (ADFIT), relevant to the costs associated with the facility that is the subject of the rate adjustment. Rate base for this purpose is calculated using an average of the thirteen projected end of month balances of the components of rate base. The rate adjustment computed using these projections goes into effect at the beginning of the test period. The test period is a twelve month period. The anticipated collections from rate payers, the actual cost incurred with respect to the generating facility and any differences between anticipated amounts and actual amounts are reconciled by a "true-up" mechanism at the end of the test year. Under this mechanism, the reconciliation amount is either charged to ratepayers (if actual revenues are below estimates) or credited to ratepayers (if actual revenues exceed estimates) as part of the rates established for the forthcoming rate year. For both under and over collections, a carrying charge is imposed.

Taxpayer owns and operates electric transmission lines in several states, including State A and State B. These lines are integrated into Operator, a regional transmission operator. The rates that Taxpayer may charge its customers for these transmission services are set using a formula approved by Commission C. The formula rates are calculated using a methodology similar to that used to calculate the rate adjustments, inasmuch as the formula rates are calculated using projected costs to establish rates during the period for which rates are being set and a true-up based on over or under recoveries that are reflected in a subsequent rate year. The rates are determined by application of the formula approved by Commission C and go into effect with no additional action by Commission C.

Taxpayer claims accelerated depreciation on its tax returns to the extent permitted by the Internal Revenue Code. Taxpayer normalizes the federal income taxes deferred as a result of its use of accelerated depreciation and thus maintains an ADFIT balance on its regulatory books. In ratemaking proceedings before Commission A to authorize rate adjustments as well as in calculation of the formula rates, rate base is reduced by the calculated ADFIT balance. In calculating its ADFIT balance for purposes of both the projection and true-up elements of the rate adjustment

calculations, Taxpayer followed the same averaging conventions it used for the other components of rate base. However, for prior formula rate filings, Taxpayer had calculated its ADFIT balance by an average of the beginning and ending balances notwithstanding that it used a 13-month average for computation of the plant portion of rate base. In those prior cases, the averages are calculated in accordance with the provisions of the Commission-approved template and the differences in averaging conventions are required by the regulations adopted by Commission C.

Section 1.167(l)-1(h)(6) of the Income Tax Regulations requires that a proration methodology be used by Taxpayer to calculate its applicable ADFIT balance for future test periods. Prior to Year A, Taxpayer had not used the proration methodology either in estimating its projected ADFIT balance or for the calculation of ADFIT for purposes of the true-up. Members of Taxpayer's tax department became concerned about the normalization implications of not using the proration formula during Year A. In filing Case A, Case B, and Case C, Taxpayer incorporated the proration methodology into the calculation of its projected ADFIT balance. In addition, Taxpayer incorporated the proration methodology into the calculation of the true-up in Case B. The staff of Commission A did not agree that the test period used for the rate adjustment ratemaking was a future test period and therefore asserted that the proration methodology was not required. In each of these cases, Commission A approved the use of the proration methodology in the projected ADFIT balance but denied its use in the true-up. When Commission A approved the use of the proration methodology for the projected ADFIT balance, it revised a portion of the Taxpayer's cash working capital allowance to reflect the adoption of the proration methodology. The adjusted portion was intended to compensate Taxpayer for the lag in time between when expenditures are made for services by Taxpayer and when collections for those services are received by Taxpayer. Commission A concluded that the item in the cash working capital allowance was duplicative of the effect of the proration methodology and was thus unnecessary. Due to the uncertainty surrounding the application of the proration methodology and the adjustment to cash working capital, Commission A directed Taxpayer to seek this ruling from the Internal Revenue Service.

Both Commission A and Commission C at all times have required that all public utilities under their respective jurisdictions use normalized methods of accounting.

Taxpayer requests that we rule as follows:

1. The proration methodology requirement does not apply to stand-alone rate adjustment ratemaking and to the Commission C formula rates even if they involve future test periods.
2. The estimated projection component of both the stand-alone rate adjustment ratemaking and the formula rate does not employ a future test period within the meaning of § 1.167(l)-1(h)(6)(ii) and therefore Taxpayer is not required to use the proration methodology in order to comply with the normalization rules.

3. The true-up component of both the stand-alone rate adjustment ratemaking and the formula rate does not employ a future test period within the meaning of § 1.167(l)-1(h)(6)(ii) and therefore Taxpayer is not required to use the proration methodology in order to comply with the normalization rules.
4. In Taxpayer's stand-alone rate adjustment proceedings, an adjustment to eliminate from the Taxpayer's cash working capital allowance any provision for accelerated depreciation-related ADFIT if the proration methodology is employed does not conflict with the normalization rules.
5. In order to comply with the consistency requirement of the normalization rules, it is not necessary that the Taxpayer use the same averaging convention it uses in computing the other elements of rate base in computing its ADFIT balance for purposes of the formula rates.
6. If the Service rules adversely with respect to Rulings 1, 2, or 3, above, any failure by Taxpayer to employ the proration methodology prior to the proceedings in Cases A, B, or C or the effective date approved by Commission C for the requested modification of the formula rates was not a violation of the normalization rules requiring sanctions for such violation.
7. In the event that the Service rules adversely with respect to Ruling 5, above, Taxpayer's failure to comply with the consistency requirement in connection with its formula rates prior to the effective date approved by Commission C for the requested modification of the formula rates was not a violation of the normalization rules.

Law and Analysis

Issues 1 and 2

Former section 167(l) of the Code generally provided that public utilities were entitled to use accelerated methods for depreciation if they used a "normalization method of accounting." A normalization method of accounting was defined in former section 167(l)(3)(G) in a manner consistent with that found in section 168(i)(9)(A). Section 1.167(1)-1(a)(1) of the Income Tax Regulations provides that the normalization requirements for public utility property pertain only to the deferral of federal income tax liability resulting from the use of an accelerated method of depreciation for computing the allowance for depreciation under section 167 and the use of straight-line depreciation for computing tax expense and depreciation expense for purposes of establishing cost of services and for reflecting operating results in regulated books of account. These regulations do not pertain to other book-tax timing differences with respect to state income taxes, F.I.C.A. taxes, construction costs, or any other taxes and items.

Section 168(f)(2) of the Code provides that the depreciation deduction determined under section 168 shall not apply to any public utility property (within the

meaning of section 168(i)(10)) if the taxpayer does not use a normalization method of accounting.

In order to use a normalization method of accounting, section 168(i)(9)(A) requires that a taxpayer, in computing its tax expense for establishing its cost of service for ratemaking purposes of establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, to use a method of depreciation with respect to public utility property that is the same as, and a depreciation period for such property that is not shorter than, the method and period used to compute its depreciation expense for such purposes. Under section 168(i)(9)(A)(ii), if the amount allowable as a deduction under section 168 differs from the amount that-would be allowable as a deduction under section 167 using the method, period, first and last year convention, and salvage value used to compute regulated tax expense under section 168(i)(9)(A)(i), the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from such difference.

Section 1.167(l)-1(h)(6) sets forth additional normalization requirements with respect to public utility property. Under § 1.167(l)-1(h)(6)(i), a taxpayer does not use a normalization method of accounting if, for ratemaking purposes, the amount of the reserve for deferred taxes excluded from the rate base, or treated as cost-free capital, exceeds the amount of the reserve for the period used in determining the taxpayer's ratemaking tax expense. Section 1.167(l)-1(h)(6)(ii) also provides the procedure for determining the amount of the reserve for deferred taxes to be excluded from rate base or to be included as no-cost capital. If, in determining depreciation for ratemaking tax expense, a period (the "test period") is used which is part historical and part future, then the amount of the reserve account for this period is the amount of the reserve at the end of the historical portion of the period and a pro rata amount of any projected increase to be credited to the account during the future portion of the period. The pro rata amount of any increase during the future portion of the period is determined by multiplying the increase by a fraction, the numerator of which is the number of days remaining in the period at the time the increase is to accrue, and the denominator of which is the total number of days in the future portion of the period.

Section 1.167(l)-1(h)(6)(i) makes it clear that the reserve excluded from rate base must be determined by reference to the same period as is used in determining ratemaking tax expense. A taxpayer may use either historical data or projected data in calculating these two amounts, but it must be consistent. As explained in section 1.167(l)-1(a)(1), the rules provided in section 1.167(l)-1(h)(6)(i) are to insure that the same time period is used to determine the deferred tax reserve amount resulting from the use of an accelerated method of depreciation for cost of service purposes and the reserve amount that may be excluded from the rate base or included in no-cost capital in determining such cost of services.

If a taxpayer chooses to compute its ratemaking tax expense and rate base

exclusion amount using projected data then it must use the formula provided in section 1.167(l)-1(h)(6)(ii) to calculate the amount of deferred taxes subject to exclusion from the rate base. This formula prorates the projected accruals to the reserve so as to account for the actual time these amounts are expected to be in the reserve. As explained in § 1.167(l)-1(a)(1), the formula in section 1.167(l)-1(h)(6)(ii) provides a method to determine the period of time during which the taxpayer will be treated as having received amounts credited or charged to the reserve account so that the disallowance of earnings with respect to such amounts through rate base exclusion or treatment as no-cost capital will take into account the factor of time for which such amounts are held by the taxpayer.

The purpose of the proration formula is to prevent the immediate flow-through of the benefits of accelerated depreciation to ratepayers. The proration formula stops flow-through by limiting the deferred tax reserve accruals that may be excluded from rate base, and thus the earnings on rate base that may be disallowed, according to the length of time these accruals are actually in the reserve account.

The effectiveness of § 1.167(l)-1(h)(6)(ii) in resolving the timing issue has been questioned by its failure to define some key terms. Nowhere does this provision state what is meant by the terms "historical" and "future" in relation to the period for determining depreciation for ratemaking tax expense (the "test period"). One interpretation focuses on the type or quality of the data used in the ratemaking process. According to this interpretation, the historical period is that portion of the test period for which actual data is used, while the portion of the period for which data is estimated is the future period. The second interpretation focuses on when the utility rates become effective. Under this interpretation, the historical period is that portion of the test period before rates go into effect, while the portion of the test period after the effective date of the rate order is the future period.

The first interpretation, which focuses on the quality of the ratemaking data, is an attractive one. It proposes a simple rule, easy to follow and to enforce: any portion of the reserve for deferred taxes based on estimated data must be prorated in determining the amount to be deducted from rate base. The actual passage of time between the date ratemaking data is submitted and the date rates become effective is of no importance. But this interpretation of the regulations achieves simplicity at the expense of precision; in other words, it is overbroad. The proration of all estimated deferred tax data does serve to magnify the benefits of accelerated depreciation to the utility, but this is not the purpose of normalization. Congress was explicit: normalization "in no way diminishes whatever power the [utility regulatory] agency may have to require that the deferred taxes reserve be excluded from the base upon which the utility's permitted rate of return is calculated." H.R. Rep. No. 413, 91st Cong., 1st Sess. 133 (1969).

In contrast, the second interpretation of section 1.167(l)-1(h)(6)(ii) of the regulations is consistent with the purpose of normalization, which is to preserve for

regulated utilities the benefits of accelerated depreciation as a source of cost-free capital. The availability of this capital is ensured by prohibiting flow-through. But whether or not flow-through can even be accomplished by means of rate base exclusions depends primarily on whether, at the time rates become effective, the amounts originally projected to accrue to the deferred tax reserve have actually accrued.

If rates go into effect before the end of the test period, and the rate base reduction is not prorated, the utility commission is denying a current return for accelerated depreciation benefits the utility is only projected to have. This procedure is a form of flow-through, for current rates are reduced to reflect the capital cost savings of accelerated depreciation deductions not yet claimed or accrued by the utility. Yet projected data is often necessary in determining rates, since historical data by itself is rarely an accurate indication of future utility operating results. Thus, the regulations provide that as long as the portion of the deferred tax reserve based on projected (future estimated) data is prorated according to the formula in section 1.167(l)-1(h)(6)(ii), a regulator may deduct this reserve from rate base in determining a utility's allowable return. In other words, a utility regulator using projected data in computing ratemaking tax expense and rate base exclusion must account for the passage of time if it is to avoid flow-through.

But if rates go into effect after the end of the test period, the opportunity to flow through the benefits of future accelerated depreciation to current ratepayers is gone, and so too is the need to apply the proration formula. In this situation, the only question that is important for the purpose of rate base exclusion is the amount in the deferred tax reserve, whether actual or estimated. Once the future period, the period over which accruals to the reserve were projected, is no longer future, the question of when the amounts in the reserve accrued is no longer relevant (at the time the new rate order takes effect, the projected increases have accrued, and the amounts to be excluded from rate base are no longer projected but historical, even though based on estimates).

There are two kinds of ratemaking at issue here, with identical components. For both the stand-alone rate adjustment and the formula rates, Taxpayer estimates the various components of rate base. Rates go into effect as of the beginning of the service year.[1] As such, the rates are in effect during the test year and the proration formula must be used. The addition of the true up increases the ultimate accuracy of the rates but does not convert a future test period into a historical test period as those terms are used in the normalization regulations. Therefore, Taxpayer is required to apply the proration formula in calculating accumulated deferred income taxes for purposes of calculating rate base.

Issue 3

[1] We note that, because Taxpayer is using estimated data for the test period, the test period at issue here constitutes a “future test period” under the first interpretation discussed above as well.

As discussed above, where a taxpayer computes its ratemaking tax expense and rate base exclusion amount using projected data then must use the proration formula provided in section 1.167(l)-1(h)(6)(ii) to calculate the amount of deferred taxes subject to exclusion from the rate base. This formula prorates the projected accruals to the reserve so as to account for the actual time these amounts are expected to be in the reserve. As explained in § 1.167(l)-1(a)(1), the formula in section 1.167(l)-1(h)(6)(ii) provides a method to determine the period of time during which the taxpayer will be treated as having received amounts credited or charged to the reserve account so that the disallowance of earnings with respect to such amounts through rate base exclusion or treatment as no-cost capital will take into account the factor of time for which such amounts are held by the taxpayer.

The purpose of the proration formula is to prevent the immediate flow-through of the benefits of accelerated depreciation to ratepayers. The proration formula stops flow-through by limiting the deferred tax reserve accruals that may be excluded from rate base, and thus the earnings on rate base that may be disallowed, according to the length of time these accruals are actually in the reserve account.

In contrast to the projections discussed above, the true-up component is determined by reference to a purely historical period and there is no need to use the proration formula to calculate the differences between Taxpayer's projected ADFIT balance and the actual ADFIT balance during the period. In calculating the true-up, proration applies to the original projection amount but the actual amount added to the ADFIT over the test year is not modified by application of the proration formula.

Issue 4

In Taxpayer's stand-alone rate adjustment proceedings, Commission A adjusted the already-approved cash working capital allowance specifically to mitigate the effect of the use of the proration methodology, finding the effects duplicative. In general, taxpayers may not adopt any accounting treatment that directly or indirectly circumvents the normalization rules. See generally, § 1.46-6(b)(2)(ii) (In determining whether, or to what extent, the investment tax credit has been used to reduce cost of service, reference shall be made to any accounting treatment that affects cost of service); Rev. Proc 88-12, 1988-1 C.B. 637, 638 (It is a violation of the normalization rules for taxpayers to adopt any accounting treatment that, directly or indirectly flows excess tax reserves to ratepayers prior to the time that the amounts in the vintage accounts reverse). Here, Commission A adjusted the cash working capital allowance specifically to mitigate the effect of the application of the proration methodology. This is inconsistent with the normalization rules. We do not hold that the normalization rules require a similar type of cash working capital adjustment in all cases; we hold only that, where, as here, it is adjusted or removed in an attempt to mitigate the effects of the

application of the proration methodology or similar normalization rule, that adjustment or removal is not permitted under the normalization rules.

Issue 5

Former section 167(l) of the Code generally provided that public utilities were entitled to use accelerated methods for depreciation if they used a "normalization method of accounting." A normalization method of accounting was defined in former section 167(l)(3)(G) in a manner consistent with that found in section 168(i)(9)(A). Section 1.167(1)-1(a)(1) of the Income Tax Regulations provides that the normalization requirements for public utility property pertain only to the deferral of federal income tax liability resulting from the use of an accelerated method of depreciation for computing the allowance for depreciation under section 167 and the use of straight-line depreciation for computing tax expense and depreciation expense for purposes of establishing cost of services and for reflecting operating results in regulated books of account. These regulations do not pertain to other book-tax timing differences with respect to state income taxes, F.I.C.A. taxes, construction costs, or any other taxes and items.

Section 168(f)(2) of the Code provides that the depreciation deduction determined under section 168 shall not apply to any public utility property (within the meaning of section 168(i)(10)) if the taxpayer does not use a normalization method of accounting.

In order to use a normalization method of accounting, section 168(i)(9)(A) requires that a taxpayer, in computing its tax expense for establishing its cost of service for ratemaking purposes of establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, to use a method of depreciation with respect to public utility property that is the same as, and a depreciation period for such property that is not shorter than, the method and period used to compute its depreciation expense for such purposes. Under section 168(i)(9)(A)(ii), if the amount allowable as a deduction under section 168 differs from the amount that-would be allowable as a deduction under section 167 using the method, period, first and last year convention, and salvage value used to compute regulated tax expense under section 168(i)(9)(A)(i), the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from such difference.

Section 168(i)(9)(B)(i) of the Code provides that one way the requirements of section 168(i)(9)(A) will not be satisfied is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with such requirements. Under section 168(i)(9)(B)(ii), such inconsistent procedures and adjustments include the use of an estimate or projection of the taxpayer's tax expense, depreciation expense, or reserve for deferred taxes under section 168(i)(9)(A)(ii), unless such estimate or projection is

also used, for ratemaking purposes, with respect to all three of these items and with respect to the rate base.

In order to satisfy the requirements of §168(i)(9)(B), there must be consistency in the treatment of costs for rate base, regulated depreciation expense, tax expense, and deferred tax revenue purposes. Here, rate base, depreciation expense, and accumulated deferred income taxes are all calculated in consistent fashion – all are averaged over the same period. While there are minor differences in the convention used to average all elements of rate base including depreciation expense on the one hand, and ADFIT on the other, for purposes of §168(i)(9)(B), it is sufficient that both are determined by averaging and both are determined over the same period of time. Thus, the calculation of average rate base and accumulated deferred income taxes as described above complies with the consistency requirement of §168(i)(9)(B).

Because of the conclusion reached above, Taxpayer's seventh issue is moot and will not be considered further.

Issue 6

Because the Service has ruled in Issue 1 and 2 that Taxpayer was required to use the proration formula applicable to future test periods for the projected revenue requirement, prospectively adhering to the Service's interpretation of § 1.167(l)-1(h)(6)(ii) require adjustments to conform to this ruling. Any rates that have been calculated using procedures inconsistent with this ruling ("nonconforming rates") which are or which have been in effect and which, under applicable state or federal regulatory law, can be adjusted or corrected to conform to the requirements of this ruling, must be so adjusted or corrected. Where nonconforming rates cannot be adjusted or corrected to conform to the requirements of this ruling due to the operation of state or federal regulatory law, then such correction must be made in the next regulatory filing or proceeding in which Taxpayer's rates are considered. Specifically, the current timing of Taxpayer's stand-alone rate adjustment filings with Commission A will accommodate all adjustments or corrections to any prior estimated projections or true-ups necessary to conform to the requirements of this ruling in rates having an effective date no later Date X, including Case A, Case B, and Case C. In addition, Taxpayer has already sought an order from Commission C to make the necessary changes to the rate templates, not simply unilaterally adjusting the calculations (or the manner in which the templates are completed) in the next annual projections or true-up adjustments. If Taxpayer must request these changes through a filing with Commission C, Taxpayer has represented that it will make a filing with Commission C to amend its formula rate template within six months of receipt of this ruling letter, requesting that Commission C apply a methodology in accordance with this letter using an effective date of the first month following the date of the filing made with Commission C. Following Commission C's order in that filing, Taxpayer will prospectively apply the methodology consistent with

this letter approved by Commission C. Until Commission C acts on the filing, Taxpayer will continue to use the methodology described above.

Section 168(f)(2) of the Code provides that the depreciation deduction determined under section 168 shall not apply to any public utility property (within the meaning of section 168(i)(10)) if the taxpayer does not use a normalization method of accounting. However, in the legislative history to the enactment of the normalization requirements of the Investment Tax Credit, Congress has stated that it hopes that sanctions will not have to be imposed and that disallowance of the tax benefit (there, the ITC) should be imposed only after a regulatory body has required or insisted upon such treatment by a utility. See Senate Report No. 92-437, 92nd Cong., 1st Sess. 40-41 (1971), 1972-2 C.B. 559, 581.

Here, Taxpayer has received stand-alone rate adjustments from Commission A without application of the proration methodology as required. In addition, Taxpayer used a template approved by Commission C to calculate formula-based rates. Both Commission A and Commission C have, at all times, required that utilities under their respective jurisdictions use normalization methods of accounting. Taxpayer also intended at all times to comply with the normalization rules. As concluded above, Taxpayer was required to use the proration methodology in these ratemaking proceedings. However because Commissions A and C as well as Taxpayer at all times sought to comply, and because Taxpayer will take the corrective actions described above, it is not currently appropriate to apply the sanction of denial of accelerated depreciation to Taxpayer.

Conclusions

1. The proration methodology requirement applies to all future test periods.
2. The estimated projection component of both the stand-alone rate adjustment ratemaking and the formula rate does employ a future test period within the meaning of § 1.167(l)-1(h)(6)(ii) and therefore Taxpayer is required to use the proration methodology in order to comply with the normalization rules.
3. The true-up component of both the stand-alone rate adjustment ratemaking and the formula rate does not employ a future test period within the meaning of § 1.167(l)-1(h)(6)(ii) and therefore Taxpayer is not required to use the proration methodology in order to comply with the normalization rules.
4. In Taxpayer's stand-alone rate adjustment proceedings, an adjustment to eliminate from the Taxpayer's cash working capital allowance any provision for accelerated depreciation-related ADFIT if the proration methodology is employed does conflict with the normalization rules.
5. In order to comply with the consistency requirement of the normalization rules, it is not necessary that the Taxpayer use the same averaging convention it uses in computing the other elements of rate base in computing its ADFIT balance for purposes of the formula rates.

6. The Service rules adversely with respect to Rulings 1 and 2, above. Any failure by Taxpayer to employ the proration methodology prior to the proceedings in Cases A, B, or C or the effective date approved by Commission C for the requested modification of the formula rates was not a violation of the normalization rules requiring sanctions for such violation.
7. Because the Service rules favorably with respect to Ruling 5, above, Taxpayer's requested Ruling 7 is moot.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the matters described above.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent. In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative. We are also sending a copy of this letter ruling to the Director.

Sincerely,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)