

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply to

CC:DOM:IT&A:5, PLR 114876-98

Date: Jan. 11, 1999

DO:

Legend:

A =
B =
C =
D =
E =
L =

La =

Lb =
Lc =
Ld =
Le =
M =
P =
Facility =
T =
q =
t =
u =

Dear

This responds to your letter dated July 7, 1998, requesting a private letter ruling on behalf of A, addressing issues arising under section 1033 of the Internal Revenue Code of 1986, as amended (the "Code"). You have represented the following facts:

PLR 114876-98

A, B, C, D, and E (collectively hereinafter, the Taxpayers, with A being referred to as the Taxpayer) are related entities located in city M. L consists of La, Lb, Lc, Ld, and Le, each being a separately owned parcel of real property adjoining the Facility. La is owned by A; Lb is owned by B; Lc is owned by C; Ld is owned by D; and Le is owned by E. L is located immediately adjacent to the facility.

The Taxpayer represents that L is held for productive use in its trade or business, which consists entirely of the rental of the L parcels. The Taxpayers began acquiring L in year q, which is several decades earlier than the year of disposition. The Taxpayer represents further that at no time prior to learning of P's plans to expand the Facility and the need to acquire the L parcels did it list L for sale or solicit prospective purchasers.

P, a city M nongovernmental body that can and previously has obtained condemnation of real property through eminent domain proceedings for the purpose of expanding the Facility has determined that a substantial expansion of the Facility is necessary, and that such expansion will require the acquisition of L. P obtained appraisals of the fair market value of L and offered to purchase the parcels from the Taxpayers, expressing their desire to acquire the possible as soon as possible.

Upon learning of the Facility expansion plans through a highly visible publicity campaign launched by P and after having had these plans confirmed by P representatives, L entered negotiations with P for the voluntary sale of L. P retained qualified appraisers to value L and made an offer to purchase L for an amount equal to t percent over the lowest appraised value of L. P expressed its desire to acquire L as soon as possible in order to accommodate the Facility expansion plans. In an effort to obtain a higher purchase price, Taxpayer entered into a purchase and sale agreement with T, a third party. The Taxpayer advised T that P had been targeted for acquisition by P. The sale was completed on date u.

RULING REQUESTED

The Taxpayer's sale of L to T was made under a threat of condemnation by P for purposes of section 1033 of the Code.

LAW AND ANALYSIS

Section 1033(a) of the Code provides, in part, that if property, as a result of requisition or condemnation or the threat of imminence thereof, is involuntarily converted into money and if the taxpayer during the time specified purchases property similar or related in service or use to the property so converted, that taxpayer may elect to recognize gain only to the extent the amount realized on such conversion exceeds the cost of such other property.

PLR 114876-98

Rev. Rul. 63-221, 1963-2 C.B. 332, holds that for purposes of section 1033 of the Code, the threat or imminence of condemnation is generally considered to exist when a property owner is informed, either orally or in writing, by a representative of a governmental body or public official authorized to acquire property for public use, that such body or official has decided to acquire his property and the property owner has reasonable grounds to believe, from the information conveyed by the representative, that the necessary steps to condemn the property will be instituted if a voluntary sale is not arranged.

Rev. Rul. 81-180, 1981-2 C.B. 161, holds that the sale of property to one other than the threatening authority by a taxpayer having reasonable grounds to believe that necessary steps to condemn the property eventually would be taken, qualifies as an involuntary conversion under section 1033 of the Code.

Taken together, the facts and circumstances as represented by the Taxpayer constitute a reasonable basis for the Taxpayer to believe that P would condemn L unless it could obtain the property through a voluntary sale. Furthermore, in accordance with Rev. Rul. 81-180, the fact that the Taxpayer sold the property to T, a third party, does not affect the status of the transaction as an involuntary conversion.

HOLDING

The sale by the Taxpayer of La to T was made under a threat of condemnation for purposes of section 1033 of the Code, such that Taxpayer is entitled to defer the recognition of any resulting gain if the statutory requirements of section 1033 are otherwise satisfied.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on

PLR 114876-98

examination.

Sincerely,

ASSISTANT CHIEF COUNSEL
(INCOME TAX & ACCOUNTING)

by _____
David L. Crawford, Chief Branch 5

cc: District Director,
Chief, Examination Division