

Internal Revenue Service

Department of the Treasury

Index Nos.: 1033.00-00
7701.00-00

Washington, DC 20224

Number: **199945038**
Release Date: 11/12/1999

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:IT&A:Br.6-PLR-107246-99

Date:

August 18, 1999

Legend:

Taxpayer = SSN:

A =

B =

X =

This is in response to your request for a private letter ruling, submitted on behalf of the above-named Taxpayer, relating to a transaction intended to qualify, at the election of the Taxpayer, for nonrecognition of gain under section 1033 of the Internal Revenue Code (The Code). Specifically, you asked us to conclude that the purchase of certain properties by entities A and B, described below, for the purpose of replacing certain condemned property of the Taxpayer, will be treated as purchases by the Taxpayer within the contemplation of section 1033(a)(2)(A) and will, assuming the other requirements of the section are met, qualify under section 1033, at the election of the Taxpayer, for nonrecognition of gain on the disposition of the condemned property. We are pleased to address your request.

The information submitted indicates that the Taxpayer is the sole owner of all of the stock of entities A and B, two limited liability companies organized under the laws of State X. A, B, and the Taxpayer employ an overall cash method of accounting, and operate on a calendar year accounting period for both tax and financial reporting purposes. A and B were newly formed for the purpose of acquiring, owning and leasing a parcel of real estate. It is represented that A and B are not corporations under section 301.7701-2(b) of the Procedure and Administration Regulations, and that they are treated as sole proprietorships for federal income tax purposes.

The Taxpayer owns, invests in, leases and manages real estate, and is also the owner of a certain parcel of land with buildings thereon which Taxpayer holds for rental purposes (the condemned property). A municipal transportation authority has resolved to acquire this property by purchase or, if necessary, by eminent domain proceedings. The Taxpayer intends to enter into a transaction with the authority whereby it will acquire the subject (condemned) property. Thereafter, within the period described in section 1033(a)(2)(B), the Taxpayer intends to purchase two parcels of real estate for the purpose of replacing the described (condemned) property, as follows: entities A and B will each purchase a parcel of real estate to be held for rental purposes and activities.

The particular issue upon which a ruling is requested is whether the purchase of the replacement property by entities A and B will be treated as purchases by the Taxpayer as required by section 1033(a)(2)(A). For purposes of this letter ruling request, the Taxpayer has asked us to assume that the described transaction will otherwise satisfy the requirements of section 1033. Specifically, the Taxpayer has asked us to assume: (a) that the subject (condemned) property is under threat of condemnation within the contemplation of section 1033(a); (b) that the purchases of the replacement properties by A and B will occur within the replacement period referred to in section 1033(a)(2)(B); (c) that the replacement properties to be purchased by entities A and B are "like kind" property within the contemplation of section 1033(g); and (d) that the unadjusted basis of the replacement property to be purchased by A and B, but for the provisions of section 1033(b), would be its cost within the meaning of section 1012. Accordingly, it is so assumed, and no opinion is expressed herein respecting those issues.

Section 1033 of the Code provides, generally, for the elective nonrecognition of gain, in certain circumstances, upon the involuntary conversion of property as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof. In the case of a conversion into money, section 1033(a)(2)(A) provides, generally, that the nonrecognition provisions will apply if the taxpayer, during a specified period and for the purpose of replacing the converted property, purchases other property similar or related in service or use to the property

converted. Section 1033(g) provides additional rules applicable to the condemnation of real property held for productive use in a trade or business, or for investment.

Section 1033(a)(2)(A) requires, generally, that the replacement property referred to therein be purchased by the taxpayer. In the instant case, purchase of the described replacement properties by entities A and B, single member limited liability companies owned solely by the Taxpayer, will satisfy this requirement of the statute. Under sections 301.7701-2(a), -2(c)(2) and -3(b) of the regulations, a single owner business entity not classified as a corporation under section 301.7701-2(b) is generally disregarded as an entity separate from its owner.

Accordingly, purchase of the replacement properties by entities A and B in the transaction described herein will not preclude the elective nonrecognition of gain under section 1033 of the Code; assuming the other requirements of the statute are satisfied, the described transaction may, at the election of the Taxpayer, qualify for nonrecognition of gain on the disposition of the condemned property.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer, 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 requested ruling, it is subject to verification upon examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item not specifically discussed or referenced herein. Specifically, no opinion is expressed as to whether the transaction considered herein otherwise satisfies any or all of the requirements of section 1033 and the regulations thereunder.

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

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling may be issued in the future. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 12.04 of Rev. Proc. 99-1, 1999-1 I.R.B. 3, 44. However, when the criteria in section 12.05 of Rev. Proc. 99-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

Because it could help resolve future federal income tax issues, a copy of this letter should be maintained with the Taxpayer's permanent records; additionally, a copy should be attached to any federal income tax return filed in connection with the subject transaction.

A copy of this letter is being sent to the Taxpayer's district director. In accordance with a Power of Attorney on file with this office, the original of this letter is being sent to the Taxpayer's authorized representative, and a copy is being furnished to the Taxpayer.

Sincerely yours,

Assistant Chief Counsel
(Income Tax & Accounting)

/s/ Robert M. Casey

By _____
Robert M. Casey
Senior Technician Reviewer,
Branch 6

Enclosures:

Copy of this letter
Copy for § 6110 purposes