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Internal Revenue Service

Department of the Treasury

Third Party Contact: Petitions February 1, 1999 & February 5, 1999

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Réply to:

CC:DOM:IT&A:05 PLR-C-103069-99

Date: FEB 19 1999

Taxpayer:

Taxpayer's EIN:

Taxpayer's Address:

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Subsidiary 4 =

Subsidiary 5 =

Subsidiary 6 =

Properties 1 =

Properties 2 =

Properties 3 =

Properties 4 =

Date 1 =

Date 2 =

Date 3 =

Dear [redacted]

This letter responds to your request for a closing agreement, dated submitted on behalf of Taxpayer. Taxpayer requests a ruling that, for federal income tax purposes, under the facts described below, Taxpayer may defer recognizing gain under § 1033 of the Internal Revenue Code on the transfer of In addition, taxpayer seeks a ruling that § 1254 does not apply to its transaction.

ISSUES

Taxpayer has requested the following rulings:

1) Subsidiary 4's transfer of in exchange for will be treated as a tax-free involuntary conversion within the meaning of § 1033. Subsidiary 4 will recognize no taxable income as a consequence of this exchange.

2) Subsidiary 5's transfer of in exchange for will be treated as a tax-free involuntary conversion within the meaning of § 1033. Subsidiary 5 will recognize no taxable income as a consequence of this transfer to the extent that qualified replacement property is purchased during the relevant replacement period. Qualified replacement property for this purpose shall include (a) and (b)

3) Subsidiary 4's transfer of Properties 3 and Properties 4 to in exchange for will be treated as a tax-free involuntary conversion within the meaning of § 1033. Subsidiary 4 will recognize no taxable income as a consequence of these transfers to the extent that qualified replacement property is purchased during the relevant replacement period. Qualified replacement property for this purpose shall include (a) (b)

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4) Section 1254 will not be applicable to the transfers of Properties 1, Properties 2, Properties 3 and Properties 4 described in issues 1, 2 and 3 above.

CONCLUSIONS

1) Subsidiary 4's transfer of Properties 1 to in exchange for is an involuntary conversion within the meaning of § 1033(a)(1). Subsidiary 4 will recognize no taxable income as a consequence of this exchange.

2) Subsidiary 5's transfer of Properties 2 to in exchange for . is an involuntary conversion within the meaning of § 1033. Subsidiary 5 will recognize no taxable income as a consequence of this transfer to the extent that qualified replacement property is purchased during the relevant replacement period in accordance with the standards and requirements of § 1033 and applicable Treasury regulations thereunder. Qualified replacement property for this purpose includes (a)

and (b)

3) Subsidiary 4's transfer of Properties 3 and Properties 4 to . and of Properties 1 to . in exchange for is an involuntary conversion within the meaning of § 1033. Subsidiary 4 will recognize no taxable income as a consequence of these transfers to the extent that qualified replacement property is purchased during the relevant replacement period in accordance with the standards and requirements of § 1033 and applicable Treasury regulations thereunder. Qualified replacement property for this purpose includes (a)

and (b)

4) Section 1254 will not be applicable to the transfers of Properties 1, Properties 2, Properties 3 and Properties 4 described in issues 1, 2 and 3 above.

FACTS

I. The Taxpayer

Taxpayer is the common parent of an affiliated group that includes, among other corporations, Subsidiary 1, Subsidiary 2, Subsidiary 3, Subsidiary 4, and Subsidiary 5.

II. Taxpayer's Business

Taxpayer and its subsidiaries are engaged in This business

A. Properties 1

Properties 1 are owned by Subsidiary 4 and

B. Properties 2

Properties 2 are owned by Subsidiary 5 and

C. Properties 3

Subsidiary 4 owns Properties 3

D. Properties 4

1

Properties 4 are owned by Subsidiary 4 and

III.

The transaction giving rise to this ruling request resulted from a series of events that prevented Taxpayer and its subsidiaries from using Properties 1, Properties 2, Properties 3 and Properties 4 in business.

IV.

[2]

V. **Replacement**

It is anticipated that Subsidiary 4 will purchase to replace the properties transferred to in exchange The replacement property will be used in Subsidiary 4's business or held for investment.

It is anticipated that Subsidiary 5 will purchase to replace Properties 2. The replacement property will be used in Subsidiary 5's business or held for investment.

Although the proposed transaction contemplates the sale, exchange, conversion, or other disposition there is no proposed sale, exchange, conversion, or other disposition of property within the meaning of § 614.

LAW & ANALYSIS

Section 1033(a)(1) provides, in part, that if property (as a result of requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the converted property no gain shall be recognized.

Section 1033(a)(2) provides, in part, that if property (as a result of requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted into money or into property not similar or related in service or use to the converted

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[2]

property the gain (if any) shall not be recognized to the extent the taxpayer, within the period specified in § 1033(a)(2)(B), for the purpose of replacing property converted into cash, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property.

Section 1033(a)(2)(B) provides, in part, that the period referred to in § 1033(a)(2)(A) is the period beginning on the date of the disposition of the converted property, or the earliest date of the threat or imminence of requisition or condemnation of the converted property, whichever is the earlier, and ending 2 years after the close of the first taxable year in which any part of the gain upon the conversion is realized, or subject to such terms and conditions as may be specified by the Secretary, at the close of such later date as the Secretary may designate on application of the taxpayer.

Section 1033(g)(4) provides that in the case of a compulsory or involuntary conversion of real property (described in (g)(1)) held for productive use in a trade or business or for investment, § 1033(a)(2)(B) shall be applied by substituting "3 years" for "2 years."

Section 1033(g)(1) provides, in part, that for purposes of § 1033(a), if real property (not including stock in trade or other property held primarily for sale) held for productive use in trade or business or for investment is (as a result of its seizure, requisition, or condemnation, or threat or imminence thereof) compulsorily or involuntarily converted, property of a like kind to be held either for productive use in trade or business or for investment shall be treated as property similar or related in service or use to the property so converted.

Section 1033(i) provides a general rule that § 1033(a) will not apply if the replacement property is acquired from a related person. However, the general rule of § 1033(i) does not apply if the related person acquired the replacement property from an unrelated person within the period described in § 1033(a)(2)(B). For purposes of § 1033(i) a person is related to another person if the person bears a relationship described in § 267(b) or § 707(b)(1).

Section 1.1033(g)-1(a) provides special rules for application of § 1033 with respect to certain dispositions of real property held either for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale). For purposes of the regulation, disposition means the seizure, requisition, or condemnation (but not destruction) of the converted property, or the sale or exchange of such property under threat or imminence of seizure, requisition, or condemnation. In such case, for purposes of applying § 1033, the replacement of such property with property of like kind to be held either for productive use in the trade or business or for investment shall be treated as property similar or related in service or use to the property so converted.

Section 1.1033(g)-1(a) provides that the principles set forth in § 1.1031(a)-1(b) shall be used in determining whether replacement property is property of like kind. Section 1.1031(a)-1(b) provides that the words "like kind" have reference to the nature or character of the property and not to its grade or quality. Section 1.1031(a)-1(c) illustrates this point by providing that the exchange of a leasehold of a fee with 30 years or more to run for real estate will be treated as a like kind exchange.

Involuntary Conversion

Taxpayer asks whether Subsidiary 4's and Subsidiary 5's transfer of Properties 1, Properties 2, Properties 3 and Properties 4 to . in return for . constitutes an involuntary conversion of property within the meaning of § 1033. For the reasons described below, these transfers constitute an involuntary conversion under § 1033.

Section 1033 concerns the federal income tax treatment of involuntary conversions. The general rule requires nonrecognition of any gain realized if property is compulsorily or involuntarily converted into property similar or related in service or use to the converted property. Section 1033(a)(1); section 1.1033(a)-2(b). Alternatively, if property is converted into money or dissimilar property, then the taxpayer may elect to recognize gain only to the extent the amount realized upon the conversion exceeds the cost of qualified property that is purchased as a replacement. Section 1033(a)(2); section 1.1033(a)-2(c). These rules apply, however, only if the involuntary conversion of the property is a result of its complete or partial destruction, theft, seizure, or requisition or condemnation or the threat thereof. Section 1033(a); section 1.1031(a)-2(c)(1).

Involuntary conversion, within the meaning of § 1033, means that the taxpayer's property has been physically converted into other property or cash without the taxpayer's consent.

Deferral of Gain

Taxpayer also requests rulings that Subsidiary 4 and Subsidiary 5 will recognize no taxable income as a consequence of the transfers of Properties 1, Properties 2, Properties 3 and Properties 4 to
to the extent that qualified replacement property is purchased during the relevant replacement period. Taxpayer also requests a ruling that qualified replacement property for this purpose shall include

In appropriate circumstances §1033 will apply to defer gain resulting from the involuntary conversion of property.

In this case, the transfer of Properties 1, Properties 2, Properties 3 and Properties

Taxpayer asserts that the replacement of Properties 2, Properties 3 and Properties 4

will satisfy the requirement of § 1033 that the replacement property be similar or related in service or use to the converted property or consist of stock in the acquisition of control of a corporation owning such replacement property. Section 1033(g)(1) provides that property of a like kind to be held either for productive use in trade or business or for investment shall be treated as property similar or related in service or use to the property so converted. The rules of § 1031 apply in determining whether the replacement property satisfies the like kind standard. See §1.1033(g)-1(a). Provided the replacement property satisfies the like kind standard of § 1031, Subsidiary 4 and Subsidiary 5 will defer recognizing any gain in accordance with the rules of § 1033.

[3]

Taxpayer requests a ruling that qualified replacement property

Section 1033(a)(2)(A) provides that gain may be deferred under § 1033 if a taxpayer purchases stock in the acquisition of control of a corporation owning qualified replacement property. In this context, control means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

Provided the corporation's assets consist of a sufficient amount of qualified replacement property, acquisition of stock in the acquisition of control of such a corporation will permit Subsidiary 4 and Subsidiary 5 to defer gain in accordance with the rules of § 1033.[4]

Any acquisition of replacement property from a related party will trigger the restrictions of § 1033(i).

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[3]

[4]

1033(a)(2)(B).

Section 1254

Section 1254(a)(1) provides for the recognition of gain which is ordinary income in the case of certain dispositions of "section 1254 property".

Section 1254(a)(3) provides, in part, that the term "section 1254 property" means certain property within the meaning of § 614.

The proposed transaction will not provide for the sale, exchange, conversion, or other disposition of property within the meaning of § 614. Accordingly, there will be no disposition of "section 1254 property" and, therefore, no gain will be recognized under § 1254 as a result of the proposed transaction.

Except as specifically ruled above, no opinion is expressed as to the federal tax treatment of the above transactions under other provisions of the Code and regulations that may be applicable. No opinion is expressed as to the tax treatment of any conditions existing at the time of or effects resulting from the transaction that are not specifically covered by the above ruling. A copy of this letter ruling should be attached to the appropriate federal income tax returns for the taxable years in which the transactions described herein are consummated.

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

Judith C. Dunn

JUDITH C. DUNN
Associate Chief Counsel (Domestic)