



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

February 10, 2006

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CC:ITA:B04
PLR-159601-05

Dear _____ :

This letter responds to your request for a private letter ruling. Specifically, you requested a number of rulings regarding the application of § 1033 of the Internal Revenue Code to certain real estate transactions.

The Internal Revenue Service has established certain rules and procedures regarding the submission, processing, and issuance of letter rulings to individuals and organizations. These procedures are published annually, most recently in Rev. Proc. 2006-1, 2006-1 I.R.B. 1. The procedures, particularly those described in section 7, must be followed before we can consider a letter ruling request. The proper format and a checklist are contained in appendices B and C. Because your request does not contain many of the items required by Rev. Proc 2006-1, we are returning your letter along with a copy of Rev. Proc. 2006-1. We will also return the user fee you submitted in a separate correspondence.

Although we cannot process your letter ruling request at this time, we can, under section 2.04 of Rev. Proc. 2006-1, provide you with the following general information on the issues raised in your ruling request. Your letter asks a number of question involving the acquisition of valid replacement property under § 1033. With regard to this issue of replacement property, we call your attention to Rev. Rul. 67-255, 1967-2 C.B. 270. In Rev. Rul. 67-255, a taxpayer's used condemnation proceeds to construct an office building on land that the taxpayer already owned. The revenue ruling provides that the construction of a building on land already owned by the taxpayer does not qualify as a "like kind" replacement of the converted property within the meaning of § 1033(g). A copy of Rev. Rul. 67-255 is enclosed.

You also asked about the replacement period for replacing property that has been involuntarily converted. Section 1033(g)(4) provides that 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 the result of its seizure, requisition, or condemnation, or threat or imminence thereof) compulsorily or involuntarily converted, the replacement

period ends three years after the close of the first taxable year in which any part of the gain from the conversion is realized. Under § 1.1033(a)-2(c)(3) of the Income Tax Regulations, the replacement period may be extended if the taxpayer applies for an extension of time before the end of the replacement period. No extension of time is generally granted unless the taxpayer can show reasonable cause for not being able to replace the converted property within the required period of time. Please review § 1.1033(a)-2(c)(3) for more information on filing for an extension.

Finally, you also asked whether property that is being constructed may qualify as valid replacement property. Rev. Rul. 56-543, 1956-2 C.B. 521, holds that property being constructed as replacement property but not yet completed by the end of the replacement period is not valid replacement property for purposes of § 1033. A copy of Rev. Rul. 56-543 is enclosed. Thus, if a taxpayer believes that construction will not be completed prior to the close of the § 1033 replacement period, an extension of the replacement period, as described above and in § 1.1033(a)-2(c)(3), needs to be requested.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2006-1, section 2.04. If you have any additional questions, please contact

our office at _____ of
_____ . As noted above, your user fee will be refunded to you and
will be mailed separately.

Sincerely,

Michael J. Montemurro
Branch Chief, Branch 4
(Income Tax & Accounting)

Enclosures (3):

Rev. Proc. 2006-1
Rev. Rul. 67-255
Rev. Rul. 56-543