Internal Revenue Service

Index Number 1033.00-00

199949043

Department of the Treasury

Washington, DC 20224

Person to contact:

Telephone Number:

Refer Reply To:
CC:DOM:IT&A:5 PLR-108016-99

Date: SEP 14 1999

Legend:

Taxpayer =
Company =
City =
Business =
State Statute =
A =

B =

d =
e =
f =
Year 1 =

Dear

This is in reply to a letter of April 5, 1999, from your authorized representative, seeking rulings on the reinvestment of proceeds under § 1033 of the Internal Revenue Code ("Code"). The original letter was supplemented by additional information provided by a letter dated June 16, 1999.

You have represented that you have for some time held as an investment a substantial (f%), but less than controlling, interest in the stock of Company, a privately owned state regulated utility. All of the assets of Company are dedicated to Business operations. By letter dated e, the City Attorney of City, in which Company does business, notified Taxpayer that City resolved to acquire Company, by purchase, if agreed to, or by eminent domain if necessary. After negotiations and in lieu of proceedings for requisition of an involuntary nature pursuant to State Statute, the shareholders of Company sold all of their Company stock for cash in d of Year 1 to City.

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You propose to reinvest the entire proceeds from the involuntary conversion in public utility mutual funds such as A or utility stocks such as B. You state that the companies represented by these investments own or operate property dedicated to public utility uses similar to the property held by Company. You believe that the public utility mutual funds or utility stocks should constitute "property similar or related in service or use" to the Company stock converted by the City purchase within the meaning of § 1033(a)(1) of the Code.

You have requested that we rule that the replacement property will constitute "property similar or related in service or use" to the Company stock involuntarily converted, and that the reinvestment of the proceeds from the involuntary conversion in the replacement property is eligible for nonrecognition of gain under § 1033(a)(2)(A) of the Code.

Section 1033(a) provides that, at the election of the taxpayer, gain realized upon the involuntary conversion of property as a result of requisition or condemnation or threat or imminence thereof will be recognized only to the extent that the amount realized upon the conversion is not reinvested in property similar or related in service or use to the converted property.

Generally, replacement property does not qualify as "similar or related in service or use" unless its physical characteristics and end uses are similar to those of the converted property. When an investor owns property that is involuntarily converted, however, the inquiry shifts primarily to the similarity in the relationship of the services or uses which the converted and replacement properties have to the owner-investor. See Rev. Rul. 64-237, 1964-2 C.B. 319. Rev. Rul. 64-237 enumerates several factors to consider in determining whether the replacement property is indeed similar to the converted property of the owner-investor, including the nature of the business risks connected with the properties, and the extent and type of management activities the property requires of the owner. Thus, when an investor's property is involuntarily converted, the investor is entitled to consider the manner in which the converted property was held in determining whether the proposed replacement property will be similar or related in service or use.

The Service generally does not distinguish among various types of equity securities for purposes of § 1033. Rev. Rul. 66-355, 1966-2 C.B. 302, held that a taxpayer could replace common stock that was involuntarily converted with common stock, preferred stock, or mutual fund shares and treat the replacement property as similar or related in service or use within the meaning of § 1033.

The companies represented by investments in public utility mutual funds such as A or utility stocks such as B own or operate property dedicated to public utilities uses similar to the property held by Company. Accordingly, where a noncontrolling interest in Company stock is involuntarily converted into money within the meaning of §

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1033(a)(2), we rule that reinvestment of the proceeds in public utility mutual funds such as A or utility stocks such as B constitutes property similar or related in service or use within the meaning of § 1033(a)(2)(A).

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. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative. A copy of this letter must be attached to any income tax return to which it is relevant.

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 examination.

Sincerely,

Assistant Chief Counsel
Income Tax and Accounting

By: Kelly E. Alton

Kelly E. Alton
Senior Technician Reviewer
Branch 5

cc: