Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

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Date:
July 05, 2012

TY:

LEGEND:

Taxpayer	=
Date 1	=
Date 2	=
Date 3	=
Old	=
New	=
$v	=
$w	=
$x	=
$y	=
$z	=
Year 1	=
Year 2	=
Year 3	=

Dear

This responds to your request for a private letter ruling, dated December 21, 2011, concerning whether the late designation of replacement property disqualifies Taxpayer from making an election under § 1033 of the Internal Revenue Code (Code).

FACTS:

On or about Date 1, Taxpayer's old principal residence (Old) was involuntarily converted as it was destroyed in a presidentially declared disaster. On Date 2, Taxpayer acquired new principal residence (New) and has used New as his principal residence since that date. Taxpayer represents that he purchased New with the intent that New would be

his replacement principal residence under § 1033 of the Code, and in fact, taxpayer used New as his principal residence. However, Taxpayer never notified the Service that New was his replacement property in the manner provided in § 1.1033(a)-2(c)(2) of the Income Tax Regulations (Regulations).

At the time of the disaster, Taxpayer's basis in Old exceeded $v. Taxpayer purchased New for $w. By the date Taxpayer submitted this ruling request, he had already made substantial capital improvements to New in order to make it more comparable to Old. Such capital improvements are ongoing and are expected to approximate $x by Date 3 (the expiration date of the replacement period under §1033(h)(1)(B) of the Code).

During Year 1, Year 2, and Year 3, Taxpayer received $y of insurance proceeds for the destruction of Old (Old Proceeds). Taxpayer used $z of Old Proceeds for restoration of Old. In Year 2, Taxpayer realized gain from the involuntary conversion because in that year the insurance proceeds for the conversion of Old for the first time exceeded his tax basis in Old. Taxpayer has not yet reported gain recognition from any of the insurance proceeds received for this conversion.

APPLICABLE LAW AND ANALYSIS:

Section 1033(a)(2)(A) of the Code provides, in part, that if property (as a result of its destruction in whole or in part) is compulsorily or involuntarily converted into money, the gain if any shall be recognized except to the extent the electing taxpayer, during the replacement period specified, for the purpose of replacing, purchases other property similar or related in service or use to the property so converted. In the event that an election is made, the gain shall be recognized only to the extent that the amount realized upon the conversion (regardless of whether the amount is received in one or more taxable years) exceeds the cost of the replacement property. See also § 1.1033(a)-2(c)(1) of the Regulations.

In Year 1 (the year of the conversion), § 1033(h)(1)(A) of the Code provided, in part, that if the taxpayer's principal residence or any of its contents is compulsorily or involuntarily converted as a result of a presidentially declared disaster, in the case of any insurance proceeds for such residence or contents, such proceeds shall be treated as received for the conversion of a single item of property, and any property which is similar or related in service or use to the principal residence so converted (or contents thereof) shall be treated for purposes of subsection (a)(2) as property similar or related in service or use to such single item of property.

Section 1033(a)(2)(B)(i) of the Code generally provides that the replacement period referred to in subparagraph (A) of § 1033(a)(2) shall be the period beginning with the date of the disposition of the converted property and ending 2 years after the close of the first taxable year in which any part of the gain upon the conversion is realized.

Section 1033 (h)(1)(B) of the Code provides that subsection (a)(2)(B) shall be applied with respect to any converted §1033(h)(1) principal residence and contents by substituting “4 years” for “2 years”.

Section 1.1033(a)-1(c)(1) of the Regulations provides, in part, that gain on an involuntary conversion is normally recognized only to the extent that the amount realized upon such conversion exceeds the cost of other property purchased by the taxpayer which is similar or related in service or use to the property so converted.

Section 1.1033(a)-2(c)(2) of the Regulations provides, in part, that all of the details in connection with an involuntary conversion of property at a gain (including those relating to the replacement of the converted property, or a decision not to replace, or the expiration of the period for replacement) shall be reported in the return for the taxable year or years in which any of such gain is realized. An election to have such gain recognized only to the extent provided in subparagraph (1) of this paragraph shall be made by including such gain in gross income for such year or years only to such extent. If, at the time of filing such a return, the period within which the converted property must be replaced has expired, or if such an election is not desired, the gain should be included in gross income for such year or years in the regular manner. A failure to so include such gain in gross income in the regular manner shall be deemed to be an election by the taxpayer to have such gain recognized only to the extent provided in subparagraph (1) of this paragraph even though the details in connection with the conversion are not reported in such return.

In the present case, Taxpayer’s principal residence was converted in a presidentially declared disaster. Taxpayer acquired a new principal residence in the subsequent year, began using it as his principal residence immediately after acquisition and has used such property as his principal residence since that date. No other property was acquired for such purpose. Thus, Taxpayer has demonstrated that he acquired New to replace Old and intended to use New as his principal residence upon acquisition.

Further, Taxpayer did not recognize gain from the conversion of Old and did not disclose facts pertaining to the conversion, or the replacement of the converted property. Under § 1.1033(a)-2(c)(2) of the Regulations, Taxpayer is deemed to have made an election to defer gain from the conversion under § 1033 when he did not recognize gain on his return for the year he received insurance proceeds.

RULING:

Taxpayer may file original and amended federal income tax returns for Year 2 and any subsequent year within the replacement period in which he acquired property similar or related in service or use to the converted principal residence or contents for the purpose of replacing the converted property in order to notify Service of the acquisition of the

replacement property in the manner specified in § 1.1033(a)-2(c) of the Income Tax Regulations.

CAVEATS:

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. Specifically, the tax treatment of the other proceeds from the involuntary conversion of Old, including the $z expended for restoration of Old and for other purposes besides the acquisition and improvement of New, is not addressed in this ruling letter.

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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by Taxpayer. 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,

Christina M. Glendening
Assistant to the Branch Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: