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Internal Revenue Code Section 1033(h)(2)

Involuntary conversions

(a) General rule.

If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted-

(1) Conversion into similar property.

Into property similar or related in service or use to the property so converted, no gain shall be recognized.

(2) Conversion into money.

Into money or into property not similar or related in service or use to the converted property, the gain (if any) shall be recognized except to the extent hereinafter provided in this paragraph:

(A) Nonrecognition of gain. If the taxpayer during the period specified in subparagraph (B) , for the purpose of replacing the property so converted, 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, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more taxable years) exceeds the cost of such other property or such stock. Such election shall be made at such time and in such manner as the Secretary may by regulations prescribe.

For purposes of this paragraph -

(i) no property or stock acquired before the disposition of the converted property shall be considered to have been acquired for the purpose of replacing such converted property unless held by the taxpayer on the date of such disposition; and

(ii) the taxpayer shall be considered to have purchased property or stock only if, but for the provisions of subsection (b) of this section , the unadjusted basis of such property or stock would be its cost within the meaning of section 1012 .

(B) Period within which property must be replaced. The period referred to in subparagraph (A) shall be the period beginning with 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-

(i) 2 years after the close of the first taxable year in which any part of the gain upon the conversion is realized, or

(ii) 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 by the taxpayer. Such application shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(C) Time for assessment of deficiency attributable to gain upon conversion. If a taxpayer has made the election provided in subparagraph (A) , then-

(i) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on such conversion is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the replacement of the converted property or of an intention not to replace, and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

(D) Time for assessment of other deficiencies attributable to election. If the election provided in subparagraph (A) is made by the taxpayer and such other property or such stock was purchased before the beginning of the last taxable year in which any part of the gain upon such conversion is realized, any deficiency, to the extent resulting from such election, for any taxable year ending before such last taxable year may be assessed (notwithstanding the provisions of section 6212(c) or 6501 or the provisions of any other law or rule of law which would otherwise prevent such assessment) at any time before the expiration of the period within which a deficiency for such last taxable year may be assessed.

(E) Definitions. For purposes of this paragraph -

(i) Control. The term "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.

(ii) Disposition of the converted property. The term "disposition of the converted property" means the destruction, theft, seizure, requisition, or condemnation of the converted property, or the sale or exchange of such property under threat or imminence of requisition or condemnation.

(b) Basis of property acquired through involuntary conversion.

(1) Conversions described in subsection (a)(1) .

If the property was acquired as the result of a compulsory or involuntary conversion described in subsection (a)(1) , the basis shall be the same as in the case of the property so converted-

(A) decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and

(B) increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made.

(2) Conversions described in subsection (a)(2) .

In the case of property purchased by the taxpayer in a transaction described in subsection (a)(2) which resulted in the nonrecognition of any part of the gain realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than 1 piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

(3) Property held by corporation the stock of which is replacement property.

(A) In general. If the basis of stock in a corporation is decreased under paragraph (2) , an amount equal to such decrease shall also be applied to reduce the basis of property held by the corporation at the time the taxpayer acquired control (as defined in subsection (a)(2)(E)) of such corporation.

(B) Limitation. Subparagraph (A) shall not apply to the extent that it would (but for this subparagraph) require a reduction in the aggregate adjusted bases of the property of the corporation below the taxpayer's adjusted basis of the stock in the corporation (determined immediately after such basis is decreased under paragraph (2)).

(C) Allocation of basis reduction. The decrease required under subparagraph (A) shall be allocated-

(i) first to property which is similar or related in service or use to the converted property,

(ii) second to depreciable property (as defined in section 1017(b)(3)(B)) not described in clause (i) , and

(iii) then to other property.

(D) Special rules.

(i) Reduction not to exceed adjusted basis of property. No reduction in the basis of any property under this paragraph shall exceed the adjusted basis of such property (determined without regard to such reduction).

(ii) Allocation of reduction among properties. If more than 1 property is described in a clause of subparagraph (C) , the reduction under this paragraph shall be allocated among such property in proportion to the adjusted bases of such property (as so determined).

(c) Property sold pursuant to reclamation laws.

For purposes of this subtitle, if property lying within an irrigation project is sold or otherwise disposed of in order to conform to the acreage limitation provisions of Federal reclamation laws,

such sale or disposition shall be treated as an involuntary conversion to which this section applies.

(d) Livestock destroyed by disease.

For purposes of this subtitle, if livestock are destroyed by or on account of disease, or are sold or exchanged because of disease, such destruction or such sale or exchange shall be treated as an involuntary conversion to which this section applies.

(e) Livestock sold on account of drought, flood, or other weather-related conditions.

(1) In general.

For purposes of this subtitle, the sale or exchange of livestock (other than poultry) held by a taxpayer for draft, breeding, or dairy purposes in excess of the number the taxpayer would sell if he followed his usual business practices shall be treated as an involuntary conversion to which this section applies if such livestock are sold or exchanged by the taxpayer solely on account of drought, flood, or other weather-related conditions.

(2) Extension of replacement period.

(A) In general. In the case of drought, flood, or other weather-related conditions described in paragraph (1) which result in the area being designated as eligible for assistance by the Federal Government, subsection (a)(2)(B) shall be applied with respect to any converted property by substituting "4 years" for "2 years".

(B) Further extension by Secretary. The Secretary may extend on a regional basis the period for replacement under this section (after the application of subparagraph (A)) for such additional time as the Secretary determines appropriate if the weather-related conditions which resulted in such application continue for more than 3 years.

(f) Replacement of livestock with other farm property in certain cases.

For purposes of subsection (a), if, because of drought, flood, or other weather-related conditions, or soil contamination or other environmental contamination, it is not feasible for the taxpayer to reinvest the proceeds from compulsorily or involuntarily converted livestock in property similar or related in use to the livestock so converted, other property (including real property in the case of soil contamination or other environmental contamination) used for farming purposes shall be treated as property similar or related in service or use to the livestock so converted.

(g) Condemnation of real property held for productive use in trade or business or for investment.

(1) Special rule.

For purposes of subsection (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 the 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.

(2) Limitation.

Paragraph (1) shall not apply to the purchase of stock in the acquisition of control of a corporation described in subsection (a)(2)(A).

(3) Election to treat outdoor advertising displays as real property.

(A) In general. A taxpayer may elect, at such time and in such manner as the Secretary may prescribe, to treat property which constitutes an outdoor advertising display as real property for purposes of this chapter. The election provided by this subparagraph may not be made with respect to any property with respect to which an election under section 179(a) (relating to election to expense certain depreciable business assets) is in effect.

(B) Election. An election made under subparagraph (A) may not be revoked without the consent of the Secretary.

(C) Outdoor advertising display. For purposes of this paragraph, the term "outdoor advertising display" means a rigidly assembled sign, display, or device permanently affixed to the ground or permanently attached to a building or other inherently permanent structure constituting, or used for the display of, a commercial or other advertisement to the public.

(D) Character of replacement property. For purposes of this subsection, an interest in real property purchased as replacement property for a compulsorily or involuntarily converted outdoor advertising display defined in subparagraph (C) (and treated by the taxpayer as real property) shall be considered property of a like kind as the property converted without regard to whether the taxpayer's interest in the replacement property is the same kind of interest the taxpayer held in the converted property.

(4) Special rule.

In the case of a compulsory or involuntary conversion described in paragraph (1), subsection (a)(2)(B)(i) shall be applied by substituting "3 years" for "2 years".

(h) Special rules for property damaged by federally declared disasters.

(1) Principal residences.

If the taxpayer's principal residence or any of its contents is located in a disaster area and is compulsorily or involuntarily converted as a result of a federally declared disaster-

(A) Treatment of insurance proceeds.

(i) Exclusion for unscheduled personal property. No gain shall be recognized by reason of the receipt of any insurance proceeds for personal property which was part of such contents and which was not scheduled property for purposes of such insurance.

(ii) Other proceeds treated as common fund. In the case of any insurance proceeds (not described in clause (i)) for such residence or contents-

(I) such proceeds shall be treated as received for the conversion of a single item of property, and

(II) any property which is similar or related in service or use to the 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.

(B) Extension of replacement period. Subsection (a)(2)(B) shall be applied with respect to any property so converted by substituting "4 years" for "2 years".



(2) Trade or business and investment property.

If a taxpayer's property held for productive use in a trade or business or for investment is located in a disaster area and is compulsorily or involuntarily converted as a result of a federally declared disaster, tangible property of a type held for productive use in a trade or business shall be treated for purposes of subsection (a) as property similar or related in service or use to the property so converted.

(3) Federally declared disaster; disaster area.

The terms "federally declared disaster" and "disaster area" shall have the respective meaning given such terms by section 165(i)(5) .

(4) Principal residence.

For purposes of this subsection , the term "principal residence" has the same meaning as when used in section 121 , except that such term shall include a residence not treated as a principal residence solely because the taxpayer does not own the residence.

(i) Replacement property must be acquired from unrelated person in certain cases.

(1) In general.

If the property which is involuntarily converted is held by a taxpayer to which this subsection applies, subsection (a) shall not apply if the replacement property or stock is acquired from a related person. The preceding sentence shall not apply to the extent that the related person acquired the replacement property or stock from an unrelated person during the period applicable under subsection (a)(2)(B) .

(2) Taxpayers to which subsection applies.

This subsection shall apply to-

(A) a C corporation,

(B) a partnership in which 1 or more C corporations own, directly or indirectly (determined in accordance with section 707(b)(3)), more than 50 percent of the capital interest, or profits interest, in such partnership at the time of the involuntary conversion, and

(C) any other taxpayer if, with respect to property which is involuntarily converted during the taxable year, the aggregate of the amount of realized gain on such property on which there is realized gain exceeds \$100,000.

In the case of a partnership, subparagraph (C) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(3) Related person.

For purposes of this subsection, a person is related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1) .

(j) Sales or exchanges under certain hazard mitigation programs.

For purposes of this subtitle, if property is sold or otherwise transferred to the Federal Government, a State or local government, or an Indian tribal government to implement hazard mitigation under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date), such sale or transfer shall be treated as an involuntary conversion to which this section applies.

(k) Cross references.

- (1) For determination of the period for which the taxpayer has held property involuntarily converted, see section 1223 .
- (2) For treatment of gains from involuntary conversions as capital gains in certain cases, see section 1231(a) .
- (3) For exclusion from gross income of gain from involuntary conversion of principal residence, see section 121 .