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PLR-124954-06

Date:  
July 28, 2006

**LEGEND**

Taxpayer =  
Company-A =  
Station-A =  
Corporation Z =

Dear

This responds to your letter dated May 1, 2006, requesting a ruling that a property exchange mandated by the Federal Communications Commission (FCC) is an involuntary conversion to which § 1033 of the Internal Revenue Code applies.

**APPLICABLE FACTS:**

Taxpayer is the parent of a conglomerate of companies operating in the communications industry. One of its subsidiaries, Company-A, owns and operates a broadcast television station, Station-A, pursuant to a license issued by the FCC.<sup>1</sup>

The FCC regulates the use of our nation's electromagnetic spectrum. Recently, the FCC has implemented a program designed to eliminate a serious interference problem that exists for public safety wireless communications services, such as police, fire, EMT,

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<sup>1</sup> For convenience, Taxpayer and Company-A shall be hereafter referred to interchangeably by the term "Taxpayer."

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Homeland Security, and other life-saving "First Responders." The FCC determined that this interference could be eliminated by shifting some current 800 MHz licensed services either to other portions of the 800 MHz band or to the 2 GHz band. This action would make it possible to allocate to public safety communications a dedicated block of spectrum in the 800 MHz band.

Corporation-Z presently operates on portions of the 800 MHz band that will be allocated to public safety wireless communications services. The FCC has ordered that Corporation-Z relocate some of its operations to a portion of the 2 GHz band (1990-2110 MHz) currently licensed to television broadcast stations for Broadcast Auxiliary Services ("BAS"), including Station-A. The primary use of BAS is mobile electronic news-gathering ("ENG"), principally providing on-the-spot television coverage of breaking news stories or other events of interest to the public.<sup>2</sup>

In order to accommodate new licensees in the 2 GHz band, the FCC requires each BAS broadcaster, including Taxpayer, to cease using the 1990-2025 MHz portion of the spectrum by a specified date, and to limit future operations to a band of the spectrum narrower than that on which they currently operate. The equipment presently owned by these broadcasters will not operate (or will not operate without causing interference) on the new bands assigned. The FCC requires that these licensees be provided different equipment, including equipment components to conduct their operations immediately, upon the move to the newly authorized band location.

The FCC requires Corporation-Z to furnish this equipment and to pay related costs necessary to provide the incumbent BAS broadcasters with "comparable facilities" (replacement equipment). The elements of "comparability" required of the BAS replacement equipment are: (1) equivalent channel capacity (both in the number of channels and in operational ability on the narrower bands); (2) equivalent signaling capability, baud rate and access time; (3) coextensive geographic coverage; and (4) equivalent operating costs. The replacement equipment is engineered to make possible substantially the same functionality on the new spectrum licensed to the BAS broadcasters as available in the broadcaster's current operations.

Corporation-Z is obligated to pay the FCC/US Treasury \$4.86 billion for the newly-licensed 2 GHz spectrum that it will use. Corporation-Z will receive a credit towards

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<sup>2</sup> BAS equipment makes possible "live shots" that are transmitted to the local television studio, typically for integration into local news, sports, and entertainment programming and then broadcast to viewers. Station-A employs a number of BAS "mobile units" installed in news trucks that are equipped with antennas, transmitters, and other equipment operating in the licensed 2 GHz spectrum band. Station-A also maintains a number of "central receive sites" to which mobile units may transmit when, for instance, they are far from the studio. Central receive sites employ, among other things, receivers, antennas, and controllers, and serve to relay the ENG feed on to the studio for integration into the broadcast. Station-A also owns a number of portable transmitters that are employed on an as-needed basis. Finally, Station-A owns BAS transmitters, receivers and antennas that are installed in a helicopter for news gathering purposes.

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this obligation for \$2.06 billion, the FCC-determined value of its net disposition of access to spectrum in the 800 MHz band. It will also receive an aggregate credit (currently estimated at \$2.184 billion) for its payment of the actual costs of providing comparable facilities to relocated incumbents in both the 800 MHz band (including public safety licensees) and the 2 GHz band (including BAS broadcasters such as Taxpayer). The resulting estimated balance that will be owed to the FCC/US Treasury will be \$616 million.

The FCC requires that Corporation-Z provide all equipment and related costs, or reimburse broadcasters for relocation costs incurred, including those for replacement equipment, integration, testing, and training costs to ensure that the replacement equipment provides comparable functionality to Taxpayer. The replacement equipment will be ordered by Taxpayer.<sup>3</sup> The equipment currently used by Taxpayer will be transferred to Corporation-Z. It is anticipated that Corporation-Z will dispose of the equipment as scrap because it will be unsuitable for any use permitted by the FCC.

Taxpayer will receive only equipment that Corporation-Z provides under the FCC's "comparable facilities" standard. Taxpayer will be reimbursed for only those approved expenditures for related necessary items such as the removal of old equipment, and installation and testing of the replacement equipment. Taxpayer will have no opportunity (as it might with conventional insurance proceeds for loss or damage) to forego reinvestment in similar replacement property, or to keep the conversion proceeds for other purposes.

#### REQUESTED RULING

Taxpayer requests a ruling that the exchange of its current BAS equipment for newly installed and tested equipment supplied by Corporation-Z pursuant to the FCC Order is an involuntary conversion of property into property similar or related in service or use to the property so converted under § 1033(a)(1), and that Taxpayer will not recognize income or gain on the exchange.

#### APPLICABLE LAW AND ANALYSIS

Section 1033(a)(1) provides that 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 into property similar or related in service or use to the property so converted, no gain shall be recognized.

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<sup>3</sup> The cost of the replacement equipment itself represents the core relocation cost. However, the FCC also requires that Corporation-Z cover all costs of removing existing equipment, which Taxpayer has on towers and buildings, and in helicopters, trucks, and studios; and of installing the replacement equipment. This equipment is part of an engineering system. Therefore, costs for design, integration, testing, and training will be incurred to ensure that the replacement equipment provides comparable functionality to Taxpayer. These costs must also be covered by Corporation-Z.

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Section 1.1033(a)-2(b) of the Income Tax Regulations expressly provides that nonrecognition of gain is mandatory when property, as a result of condemnation, is involuntarily converted solely into property similar or related in service or use to the property so converted.

The basic purpose of § 1033(a) is to allow a taxpayer to replace property or to continue an investment without realizing gain. *S. E. Ponticos, Inc., v. Commissioner*, 40 T.C. 60, 64 (1963).

Section 1033(a)(1) will apply to the facts of the present case if two requirements are met: (1) the BAS equipment of Taxpayer is compulsorily or involuntarily converted as a result of requisition or condemnation (or threat or imminence thereof); and (2) the replacement equipment is similar or related in service or use to the equipment so converted. These requirements are discussed below.

#### A. Conversion by Condemnation or Requisition of Private Property.

For purposes of § 1033, a "conversion" by condemnation or requisition means the process by which private property is taken for public use without the consent of the property owner but upon the award and payment of just compensation. Rev. Rul. 57-314, 1957-2 C.B. 523. The Takings Clause of the Fifth Amendment of the United States Constitution states, "nor shall private property be taken for public use, without just compensation." The concept of a governmental taking for purposes of § 1033(a) has two components: (1) there must be a "taking" of the taxpayer's rights in private property; and (2) the taking must be for "public use."

##### 1. Section 1033 "Taking"

For purposes of § 1033, a taking by governmental authority includes (1) the physical occupation of a taxpayer's private property, (2) the forced sale of such property or (3) in some circumstances, the regulation against its otherwise lawful use in order to effect a public purpose. With regard to a taking by regulatory action, cases addressing the scope of a Fifth Amendment taking are also instructive as to the scope of involuntary conversions by condemnation or requisition for § 1033 purposes. For example, the Supreme Court has recognized that government regulation of private property may, in some instances, be so onerous that its effect is tantamount to a direct appropriation compensable under the Fifth Amendment. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), involved a state act prohibiting certain mining of coal in such a way as to diminish the support for surface structures. In analyzing the effect of the state law prohibiting certain exploitation of coal mining rights, the Court noted that "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *Mahon* at 415. Further, the Court reasoned that "to make it commercially impracticable to mine certain coal has very nearly the same effect for constitutional purposes as appropriating or destroying it." *Id.* at 414.

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Building on this concept from *Mahon*, the Court later stated that a regulatory action will constitute a taking if the regulation or action deprives an owner of "all economically beneficial use" of his property. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), held that a state regulation barring development of two beachfront lots in a developed subdivision was a taking. In *Lucas*, the Court noted that while it has "generally eschewed any 'set formula'" for determining when a given regulation has gone "too far" under *Mahon*, the Court recognized two categories of regulatory action that are compensable. In the first, the action effects a permanent physical "invasion" of the property, and in the second, the action denies all economically beneficial or productive use of the property. *Id.* at 1015. The Court stated that, "when the owner of real property has been called upon to sacrifice *all* economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking." *Id.* at 1019.

Situations in which a governmental action has been found not to constitute a § 1033 requisition or condemnation have generally involved governmental action compelling a taxpayer's transfer of property in the exercise of the police powers of the state in enforcing existing law, including laws intended to protect its citizens' health, well-being, and safety. Generally, a taking as a result of the exercise of governmental police powers will not qualify as an involuntary conversion. For example, a taxpayer's court-ordered disposition of stock, the ownership of which was in violation of the Sherman Anti-Trust Act, does not constitute a taking for public use for purposes of § 1033. Rev. Rul. 58-11, 1958-1 C.B. 273. See also, Rev. Rul. 57-314, 1957-2 C.B. 523 (the sale of rental properties in order to avoid compliance with building, fire, and health code requirements, even though failure to comply would result in the owner's loss of the legal right to rent such properties, does not fall within § 1033); and Rev. Rul. 77-370, 1977-2 C.B. 306 (the forced sale of real property to satisfy delinquent taxes was not a conversion as contemplated in § 1033, because the property was taken merely to satisfy a lien for delinquent taxes, rather than for public use).

In the syllabus to the *Lucas* opinion, there is a concise distinction drawn between a compensable Fifth Amendment taking and a mere exercise of police power:

Because it is not consistent with the historical compact embodied in the Takings Clause that title to real estate is held subject to the State's subsequent decision to eliminate all economically beneficial use, a regulation having that effect cannot be newly decreed, and sustained, without [compensation] being paid the owner. However, no compensation is owed . . . if the State's affirmative decree simply makes explicit what already inheres in the title itself, in the restrictions that background principles of the State's law of property and nuisance already place upon land ownership.

*Lucas* at 1004, citing *Scranton v. Wheeler*, 179 U.S. 141 (1900).

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## 2. Public Use Requirement

Cases involving challenges to government action as a Fifth Amendment taking are also instructive on the meaning of "public use" as that term is used in the context of involuntary conversion by condemnation or requisition. A "public use" includes the advancement of a "public purpose" by a transfer of ownership of privately-held property to (i) a governmental entity, or (ii) a private enterprise, provided that in each case there is an advancement of "the broader and more natural interpretation of public use as public purpose." *Kelo v. City of New London*, 125 S. Ct. 2655 (2005). In *Kelo*, the city of New London, Connecticut, approved a development plan to increase tax revenues, create jobs, and revitalize an economically depressed area. The Court noted that a broad understanding of "public use" had been the view of the Court for over a century. (See, e.g., *Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.*, 240 U.S. 30 (1916)). In finding that the development plan was a permitted "taking" under the Fifth Amendment, the Court stated:

The public end may be as well or better served through an agency of private enterprise than through a department of government - or so Congress might conclude. We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects.

*Id.* at 2666, quoting *Berman v. Parker*, 348 U.S. 26, 34 (1954). Accordingly, for purposes of § 1033, it makes no difference in the present case that the existing equipment is being transferred to a third party for disposal as opposed to a governmental entity. Similarly, for a "public use" under § 1033, the scope of 'condemnation' is not restricted to takings for active uses. The question, rather, is whether the taking is for a "public use," including the advancement of a public purpose.

### B. Conversion into Property Similar or Related in Service or Use.

With respect to owner-users of converted property, replacement property will be considered to be similar or related in service or use to the converted property if the "physical characteristics and end uses of the converted and replacement properties are closely similar." Rev. Rul. 64-237, 1964 C.B. 319.<sup>4</sup> The Tax court has described the similar or related in service or use requirement as follows:

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<sup>4</sup> Rev. Rul. 64-237 delineates between the functional use of property held by the taxpayer as an owner-user and property held for investment but not used directly by the taxpayer (i.e., property owned by a taxpayer but leased to another party). For property to qualify as replacement property for § 1033 purposes, the physical characteristics of, and the taxpayer's relationship to, the replacement property must be similar to the physical characteristics of, and the taxpayer's relationship to, the converted property. If a taxpayer is an owner/user of the converted property (as opposed to an owner/lessor), the required relationship of the taxpayer to the replacement property is to continue as an owner/user of the replacement property.

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. . . [T]he reinvestment must be made in substantially similar business property. *Ellis D. Wheeler*, 58 T.C. 459, 463 (1965). Stated differently, the statute requires a "reasonably similar continuation of the petitioner's prior commitment of capital and not a departure from it." *Harvey J. Johnson v. Commissioner*, 43 T.C. 736, 741 (1965). While it is not necessary to acquire property which duplicates exactly that which was converted (*Loco Realty Co. v. Com'r*, 306 F.2d 207 (8th Cir. 1962), *rev'g* 35 T.C. 1059 (1961)), the fortuitous circumstance of involuntary conversion does not permit a taxpayer to change the character of his investment without tax consequences." (See *Liant Record, Inc. v. Com'r*, 303 F.2d 326 (2d Cir. 1962), *rev'g* 36 T.C. 224 (1961)).

*Maloolf v. Commissioner*, 65 T.C. 263, 269 (1975).

C. Section 1033 is a Relief Provision.

In determining whether a given taxpayer's receipt of replacement property qualifies under § 1033, courts have long recognized that § 1033 is a relief provision that should be liberally construed to effect its purpose. *E.g.*, *Massillon-Cleveland-Akron Sign Co. v. Commissioner*, 15 T.C. 79, 83 (1950) (interpreting former § 112(f), the precursor to § 1033). Section 1033 provides a means by which a taxpayer whose enjoyment of his property is interrupted without his consent may arrange to have that interruption ignored for tax purposes, by returning as closely as possible to his original position. *Maloolf* at 270, *citing Gaynor News Co. v. Commissioner*, 22 T.C. 1172 (1954). What is required is a reasonable degree of continuity in the nature of the assets as well as in the general character of the business. *Id.* Thus, if the replacement property continues the nature and character of the taxpayer's investment in, or use of, the converted property, it qualifies as replacement property for purposes of § 1033 and gain is deferred.

#### APPLICATION OF LAW TO FACTS

A. Was there a condemnation or requisition for § 1033 purposes?

To implement the FCC's reallocation plan, Taxpayer is required to cease using certain portions of its equipment to avoid interfering with the new licensees of the reallocated spectrum. The FCC-mandated "clearing" of the BAS broadcasters' equipment under the plan is a condemnation within the meaning of § 1033. The "just compensation" to be provided Taxpayer for such taking consists of the replacement equipment itself and related installation and other capital costs that the FCC has ordered Corporation-Z to pay (the required "comparable facilities"). As described above, such costs paid by Corporation-Z offset dollar-for-dollar the amount otherwise payable by Corporation-Z to the FCC/US Treasury. Thus, the net effect of this offset is that the cost of replacement is borne by the FCC/US Treasury.

As part of its regulation of spectrum to promote the general public interest, the FCC reallocates spectrum to other purposes and relicenses the use of allocated spectrum

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among both public and private users. A given licensee has no personal property rights *vis-a-vis* the FCC in its FCC license beyond the limited, specific terms of the license itself. The Communications Act of 1934 ("the Act") provides at 47 U.S.C. § 301 (2005), that the Act's purpose is, "among other things, to maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under license granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license." Section 316(a)(1) of the Act provides that any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or cause a party to be more fully in compliance with the provisions of this Act or of any treaty ratified by the United States. Therefore, the FCC's reallocation of spectrum for other uses and the relicensing of such spectrum to new licensees is in itself a regulatory act that does not result in a conversion of any private property rights of the licensee in the license or the spectrum. However, the reallocation of spectrum here has resulted in the condemnation of Taxpayer's related equipment.

Generally, telecommunications equipment, including BAS equipment, may be used only pursuant to and in accordance with FCC authorization and only upon the equipment's compliance with the FCC's technical rules for the radio services in which it is employed. Section 302(a) of the Act provides, in part, that the Commission may, consistent with the public interest, convenience, and necessity, make reasonable regulations governing the interference potential of devices which, in their operation, are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications. It further provides that such regulations shall be applicable to the use of such devices.

Section 303 of the Act provides, in part, that the Commission shall, as public convenience, interest, or necessity requires — ". . . (e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein. . . [and] (f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act. . . ."

When the FCC (1) reallocated certain portions of spectrum previously used by Taxpayer, (2) changed the frequency definitions for the new, narrower channels allocated for BAS use, and (3) ordered that different equipment be provided to assure continuity of essential broadcast services without interruption, it rendered Taxpayer's present equipment completely unusable as of the band clearing date. This action constituted a regulatory Fifth Amendment taking under *Mahon* and *Lucas, supra*. As previously noted, an involuntary conversion may occur even without a physical taking of the old equipment. If the reallocated spectrum and the equipment are conceived as one economic unit, then it is more evident that the reallocation of spectrum under these facts is tantamount to the taking of the equipment.

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This "economic unit" approach was applied in *Masser v. Commissioner*, 30 T.C. 741 (1958), when the taxpayer sold property physically adjacent to and used in connection with certain converted property. Under those facts, the Tax Court determined that the subsequent sale was encompassed within the involuntary conversion. Under the economic unit analysis, the Court recognized that certain business assets are so necessarily intertwined that the condemnation of a portion of such assets is in effect a conversion of all of the assets of the economic unit. The Service has formally recognized this same "economic unit" approach for determining the scope of involuntary conversions under § 1033. Rev. Rul. 59-361, 1959-2 C.B. 183.

Taxpayer's case is analogous to the economic unit rule. The current BAS spectrum and the equipment permitted by the FCC for use on such band form an economic unit. The reallocation and relicensing of the spectrum (while not in itself a taking of any property right of Taxpayer in the license or spectrum) necessitates the removal and replacement of the existing BAS equipment. This circumstance constitutes an involuntary conversion of Taxpayer's equipment. When, as here, the FCC requires a broadcaster to discontinue use of its own equipment, rendering such equipment useless for any purpose, and provides for functionally comparable non-interfering replacement equipment for the broadcaster, the previously-used equipment has been converted into similar property.

B. Was the condemnation or requisition for a public purpose?

The FCC's "clearing" of the BAS equipment and provision of comparable equipment for efficient, uninterrupted BAS service, as part of a larger project intended to promote the general public good, is a taking for a "public use" under § 1033. In fact, since the FCC is charged by Congress with acting to promote the fair use of spectrum in the public interest, all its actions are presumptively undertaken in furtherance of that public purpose. In addition, and more specifically, the particular public use driving the reallocation of spectrum is the enhancement of the communications abilities of the nation's public safety first responders. Further, the FCC sought to ensure the continuity of BAS with minimal disruption to television broadcast services to the public because BAS is a part of the broadcast system by which emergency information is provided to the American public. Such a condemnation for the advancement of public purposes is analogous to the type of "public use" described by the Supreme Court in *Kelo* as required in a Fifth Amendment taking.

As part of the spectrum reallocation plan, Taxpayer's existing BAS equipment is required to be taken out of service to prevent interference with new users of part of the spectrum formerly licensed to Taxpayer (1990 MHz-2025 MHz). This equipment will most likely be scrapped upon its transfer to Corporation-Z to guard against future interference. The *Kelo* case makes clear that the concept of public purpose is to be defined broadly with proper deference to the legislative or agency judgment implementing such public purpose. The Court explained that "[f]or more than a century, our public use jurisprudence has widely eschewed rigid formulas and intrusive scrutiny

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in favor of affording legislatures broad latitude in determining what public needs justify the use of the takings power." *Kelo* at 2664.

Through the Act, Congress delegated plenary powers to the FCC to regulate use of the public spectrum. The Court in *Kelo* stated that "once the question of the public purpose has been decided, the amount and character of the land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch." *Id.* at 2668, *citing Berman* at 35-36. Here, since the FCC's purpose in regulating the spectrum, eliminating interference for public safety users, and ensuring the continuation of BAS is clearly for the public benefit, the particular details of implementation of this mandate is within the FCC's purview and discretion. The plan for reallocation of spectrum is for the advancement of a public purpose, both for Fifth Amendment and § 1033 purposes.

C. Was the replacement property similar or related in service or use to the converted property?

Taxpayer will receive replacement equipment which will enable it to continue operations without interruption and with "comparable functionality" on the remaining licensed bandwidth. Pursuant to the FCC Order, Corporation-Z must provide the broadcasters with "comparable facilities." Comparable facilities are those that will provide the same level of service as the incumbent's existing facilities, with transition to the new facilities as transparent as possible to the public end users of the broadcast services. Specifically, the BAS replacement equipment must provide all the following elements of comparability: (1) equivalent channel capacity (both in the number of channels and in operational ability on the narrower bands); (2) equivalent signaling capability, baud rate, and access time; (3) coextensive geographic coverage; and (4) equivalent operating costs.

"[It] is not necessary to acquire property which duplicates exactly that which was converted." *Maloolf* at 269, *citing Loco Realty Co. v. Commissioner, supra*. Thus, the fact that the new equipment may be more valuable, or may employ more efficient circuitry than the converted equipment (in that it uses digital rather than analog circuitry) does not matter for purposes of § 1033(a)(1). Since all that § 1033 requires is "a reasonable degree of continuity in the nature of the assets as well as in the general character of the business," the replacement equipment received by Taxpayer will be similar or related in service or use to that rendered worthless by the FCC action. *Id.* at 271. The FCC's reallocation plan requires the new equipment provided to Taxpayer to be equivalent in functionality. This requires comparable ENG operations on seven BAS operating channels, each of which is approximately 5 MHz narrower than the channels on which Taxpayer currently operates. The independent transition administrator appointed by the FCC and Corporation-Z's own financial self-interest assure that the equipment provided will be neither more nor less than necessary to provide Taxpayer with "comparable facilities." In addition, Taxpayer, an owner-user of the converted equipment, will continue to be an owner-user rather than an owner-lessor, of the replacement equipment. Therefore, the replacement equipment is similar or related in service or use to the converted equipment.

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In summary, the FCC has implemented a spectrum reallocation plan to improve the communications capabilities of the nation's public safety first responders. Under this plan, incumbent BAS broadcasters, including Taxpayer, must relocate to different and narrower frequency assignments. Such relocation necessitates, and the FCC Order requires, Taxpayer to cease using certain of its existing equipment, the use of which would otherwise cause interference with the new users of the reallocated and relicensed spectrum, and renders that equipment useless. Pursuant to the FCC Order, Taxpayer will be provided with "comparable facilities," that is, replacement equipment that will allow Taxpayer to continue its operations, primarily ENG, on the new and narrower spectrum licensed to it. Under the plan, the cost will be borne initially by Corporation-Z and ultimately by the FCC/US Treasury. This mandated replacement to facilitate the plan is an involuntary conversion within the provisions of § 1033(a)(1) and non-recognition of gain is mandatory under § 1.1033(a)-2(b).

## RULINGS

1. Taxpayer's exchange of its current BAS equipment for newly installed and tested equipment supplied by Corporation-Z pursuant to the FCC Order is an involuntary conversion of property into property similar or related in service or use to the property so converted under § 1033(a)(1).
2. Taxpayer will not recognize gain on the exchange.

## DISCLAIMERS AND LIMITATIONS

Except as 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 requesting it. Section 6110(k)(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.

The rulings contained in this letter are based upon information and representations submitted by 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. A copy of this letter must be attached to any income tax return to which it is relevant.

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Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

Sincerely,

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

cc: