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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-133349-17
Date:
February 20, 2018

Legend

- Taxpayer =
- State A =
- Company =
- Segment 1 =
- Segment 2 =
- DE =
- FYE =
- Year A =
- Station A =
- Station B =
- Station C =
- \$x =
- \$y =
- \$z =
- Total Auction Proceeds =
- Date =

Dear _____ :

This is in response to your Request for a Ruling dated October 30, 2017. Specifically, you have requested a ruling that the implementation of the applicable provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”),¹ by the Federal Communications Commission (FCC) constitutes a “threat” of repacking to Taxpayer for

¹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 §6403.

which deferral of gain under § 1033 of the Internal Revenue Code (Code) on the relinquishment of Taxpayer's spectrum rights ("Spectrum Rights") pursuant to the FCC's broadcast television spectrum incentive auction ("Incentive Auction") is proper.

FACTS

Company is a diversified global media and entertainment company with operations in television broadcasting as well as operations in Segment 1 and Segment 2. Company is the common parent and Taxpayer, Company's wholly owned subsidiary, is a member of an affiliated group of corporations filing a consolidated return.

Taxpayer is a State A corporation. Taxpayer conducts most of Company's United States media and entertainment business operations. Taxpayer's United States television stations are operated pursuant to licenses and permits issued by the FCC, which authorize each station to deliver video, audio, data, and other content over its channels. Taxpayer, through a number of disregarded entities, owns DE, an entity that is disregarded for Federal income tax purposes, which in turn owns the FCC licenses with the related Spectrum Rights. Company has a FYE fiscal year end.

Pursuant to the Spectrum Act, the FCC conducted the Incentive Auction in connection with which television broadcast licensees relinquished all or a portion of their broadcast spectrum usage rights to the FCC in exchange for incentive payments (the "Auction Proceeds"). On May 15, 2014, the FCC adopted a Report and Order (released on June 2, 2014), adopting rules to implement the broadcast TV spectrum Incentive Auction.

In Year A, DE filed applications to participate in the Incentive Auction, and the FCC agreed to purchase the spectrum licensed to Taxpayer with respect to Station A, Station B, and Station C. The Auction Proceeds were received on Date.

Based on the design of the Spectrum Auction and the FCC's implementing rules, unless Taxpayer relinquished its Spectrum Rights in the Incentive Auction, Taxpayer would likely have been "repacked" to different frequencies which would have forced it to operate with different facilities, on different and less valuable frequencies, and with possibly reduced protected service areas, all of which would harm Stations A, B, and C's future revenue potential and economic value.

Thus, if Taxpayer did not agree to relinquish its Spectrum Rights for other uses, very likely it would have been repacked to lower less valuable frequencies. As a result of its agreement to relinquish Spectrum Rights, the FCC awarded Taxpayer the following Auction Proceeds: For Station A, it received \$x; for Station B, it received \$y; and for Station C, it received \$z. The FCC thus paid Taxpayer the Total Auction Proceeds for its relinquishment of the Spectrum Rights in the three television stations in the Incentive Auction.

Post-auction, Taxpayer only retains the FCC broadcasting licenses for the above television stations – that is, no Spectrum Rights are retained.

Taxpayer further represents that it intends to treat the date on which the Auction Proceeds are received for the relinquishment of its Spectrum Rights as the date of disposition for purposes of § 1033. Taxpayer will treat the entire depreciable tax basis as allocable to the retained portion of the FCC licenses, i.e., none of the depreciable tax basis is allocable to the Spectrum Rights sold to the FCC in the Incentive Auction.

LAW AND ANALYSIS

Section 1033 (a)(2)(A) of the Code generally 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 money and the taxpayer, within the period provided in § 1033(a)(2)(B) and for the purpose of replacing such property, 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. For purposes of § 1033(a)(2)(A), --

(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 § 1033(b), the unadjusted basis of such property or stock would be its cost within the meaning of § 1012.

One of the circumstances in which a § 1033 requisition or condemnation occurs is where a taxpayer's property is subjected to a compensable governmental taking for public use under the Fifth Amendment of the U.S. Constitution. *American Natural Gas Co. v. United States*, 279 F.2d 220 (Ct. Cl. 1960); *Behr-Manning Corp. v. United States*, 196 F. Supp. 129 (D.C. Mass. 1961); Rev. Rul. 69-254, 1969-2 C.B. 162; Rev. Rul. 58-11, 1958-1 C.B. 273. The Fifth Amendment provides, in part, that no "private property be taken for public use without just compensation." The meaning of condemnation or requisition for purposes of § 1033 is not strictly limited to takings within the meaning of the Fifth Amendment, however.

In Rev. Rul. 82-147, 1982-1 C.B. 190, a federal law prohibited the use of motor boats with motors of greater than 25 horsepower on designated lakes in wilderness areas. It also provided that, if the horsepower restriction made the operation of a resort uneconomical, the owner of the resort could require the government to purchase its resort at its fair market value (determined without regard to the horsepower restrictions). The horsepower restriction made the operation of the taxpayer's resort uneconomical

and the taxpayer sold its fishing lodge to the federal government. In holding that the government's purchase of the resort constituted a condemnation within the meaning of § 1033, the Service did not refer to a Fifth Amendment taking, but instead emphasized that the horsepower restriction "in addition to the provision authorizing purchase of a resort at its fair market value without regard to the restriction, effectively constitutes a taking of property upon payment of fair compensation."

In the present case, the FCC's repacking process is functionally equivalent to a direct physical taking of private property for a public use without the consent of the property owner because it effectively deprives Taxpayer of its assets. Taxpayer's choice to participate in the Incentive Auction was not a meaningful choice. Choosing to forego the Incentive Auction would have subjected Taxpayer to the repacking process. Due to Taxpayer's unique circumstances, if Taxpayer did not participate in the Incentive Auction with respect to Stations A,B, and C, it was likely that Taxpayer would have been repacked into a different channel.

Rev. Rul. 63-221, 1963-2 C.B. 332, provides that for purposes of § 1033, threat or imminence of condemnation is generally considered to exist if a property owner is informed, either orally or in writing, by a representative of a governmental body that the government entity has decided to acquire his property and the property owner has reasonable grounds to believe, from the information conveyed to him by such representative, that the necessary steps to condemn the property will be instituted if a voluntary sale is not arranged.

In Rev. Rul. 81-180, 1981-2 C.B. 161, a taxpayer learned through newspaper reports that a city intended to acquire its property by condemnation for public use if a sale could not be negotiated. City officials confirmed the accuracy of the reports. The taxpayer sold its property to a third party thereafter, but before the city actually condemned the property. The Service concluded that the sale was made under the "threat or imminence of condemnation" because the property was sold after the taxpayer was given reasonable grounds to believe that its property would be taken.

These authorities indicate that a voluntary sale qualifies as an involuntary conversion under § 1033 if the threat or imminence of condemnation is present at the time of sale. The threat need not be a certainty. A threat exists if the taxpayer may reasonably believe from representations of the government and surrounding circumstances that a forced sale is likely to take place.

The FCC has provided Taxpayer with notice, through the Spectrum Act and the *Report and Order*, of its intent to acquire the type of Spectrum Rights that Taxpayer possesses in Stations A, B, and C. Under its unique circumstances, it is reasonable for Taxpayer to believe that if it did not participate in the Incentive Auction, it was likely that the FCC would take Taxpayer's Spectrum Rights in each of its three Stations, and then force Taxpayer to relocate its Stations to a different frequency.

Accordingly, Taxpayer's sales of Spectrum Rights with respect to Stations A, B, and C to the FCC pursuant to the Incentive Auction constitutes a disposition under the threat or imminence of condemnation for purpose of § 1033 of the Code.

CONCLUSION

We therefore conclude that the sales of the Spectrum Rights with respect to Stations A, B, and C by Taxpayer to the FCC in the Incentive Auction constitute sales under a threat of involuntary conversion for purposes of § 1033.

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. In particular, no opinion is expressed or implied concerning whether any particular property acquired by Taxpayer, or any party related to Taxpayer, constitutes property that is similar or related in service or use within the meaning of § 1033(a)(2) to the Spectrum Rights relinquished in this private letter ruling.

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.

A copy of this letter must be attached to any income tax return to which it is relevant. 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 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,

Christina M. Glendening
Senior Counsel, Branch 5
Office of Chief Counsel
(Income Tax & Accounting)

Enclosure (1)

cc: