

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B04  
PLR-121976-20; PLR-121977-20

Date:  
March 29, 2021

**LEGEND**

Taxpayer 1 =  
Taxpayer 2 =  
Foreign Entity =  
State =  
\$x =  
\$y =

Dear :

This letter responds to your request for a private letter ruling dated September 29, 2020, and supplemental information, dated December 4, 2020, regarding the application of § 1033 of the Internal Revenue Code (“Code”) to your transactions. You have requested 4 rulings relating to the repurposing of certain portions of the electromagnetic spectrum and whether such sales constitute sales under a threat of an involuntary conversion for purposes of § 1033. This letter ruling is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to the taxpayers.

**FACTS**

Taxpayer 1 is a Foreign Entity classified as corporation for U.S. federal income tax purposes which , Taxpayer 2, which is a State limited partnership. Taxpayers are in the business of providing communication

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services in \_\_\_\_\_ over the \_\_\_\_\_ (the “C-band”) through commercial communication satellites and other infrastructure (the “Satellite Business”). Taxpayers both use the accrual method of accounting and file on a December 31 taxable year-end.

Taxpayer 2, through entities that are disregarded as separate from Taxpayer 2, holds almost all of Taxpayers’ tangible and intangible assets related to the Satellite Business (“Relevant Assets”), including licenses issued by the Federal Communications Commission (“FCC”) giving Taxpayer 2 the right to transmit over the C-band (“Spectrum Usage Rights”), satellites, ground-based facilities, and other related equipment. Taxpayers represent that Taxpayer 1 holds the monetization rights to a subset of the Spectrum Usage Rights held by Taxpayer 2.

Pursuant to its authority under 47 U.S.C. § 309(j) and as required by the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act (MOBILE NOW Act),<sup>1</sup> the FCC is repurposing spectrum in the C-band—currently used domestically by satellite operators to transmit signals to earth-based stations throughout the United States—for other uses including the fifth generation of wireless technology (“5G”). On March 3, 2020, the FCC issued a Report and Order<sup>2</sup> (“FCC Order”) adopting rules to clear the lower 300 MHz of the C-band, repack existing satellite operators into the upper 200 MHz of the C-band, designate 20 MHz to serve as a guard band, and auction licenses to use the lower 280 MHz for flexible terrestrial use including 5G wireless services. The FCC will issue new overlay licenses to wireless broadband service providers that place winning bids (“Overlay Licensees”). These overlay licenses will authorize Overlay Licensees to transmit over the lower 280 MHz within geographic areas in which the current holders of C-band licenses (“Incumbent Licensees”) operate.

The FCC Order requires Incumbent Licensees to cease operating on the lower 300 MHz of the C-band by December 5, 2025 (the “Deadline”). After the Deadline, the FCC will consider Incumbent Licensees that continue to transmit on the lower 300 MHz to be operating on an unauthorized basis and such operators may be subject to fines with a base amount of \$10,000 for each prohibited transmission. While Incumbent Licensees will need to clear the lower 300 MHz, the FCC Order also requires that those licensees continue to serve their current customers entirely within the upper 200 MHz without any service interruptions.

The FCC Order offers affected Incumbent Licensees two potential forms of compensation. First, to facilitate the relocation of services into the upper 200 MHz, Incumbent Licensees that relocate by the Deadline are eligible to receive payments as reimbursement (“Reimbursement Payments”) for certain reasonable costs incurred that

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<sup>1</sup> MOBILE NOW Act, Pub. L. No. 115-141, Division P, Title VI, § 601 *et. seq.* (2018).

<sup>2</sup> FCC 20-22, Report and Order and Order of Proposed Modification, Released Mar. 3, 2020, GN Docket No. 18-122.

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are reasonably necessary to move operations from the lower 300 MHz to the upper 200 Mhz. Second, to incentivize Incumbent Licensees to clear the lower 300 MHz more quickly, the FCC Order also authorizes payments (“Acceleration Payments”) to Incumbent Licensees who meet certain accelerated deadlines. As Incumbent Licensees, Taxpayers are entitled to a \$x payment if they clear \_\_\_\_\_ by December 5 \_\_\_\_\_, and a \$y payment if they clear \_\_\_\_\_ by December 5, \_\_\_\_\_. Both the Reimbursement and Acceleration Payments will be funded by the Overlay Licensees as a condition of receiving a new overlay license.

To manage the collection and disbursement of funds, including the Reimbursement and Acceleration Payments, the FCC Order calls for the selection of a neutral, third party to serve as a clearinghouse subject to the FCC’s oversight. The clearinghouse’s duties include collecting funds from the Overlay Licensees, reviewing Incumbent Licensees’ claims for reimbursement, apportioning costs, and disbursing the Reimbursement and Acceleration Payments to the Incumbent Licensees.

In light of the FCC Order and their particular situation, Taxpayers concluded that they had no rational economic choice other than to pursue the Reimbursement Payments and Acceleration Payments. Accordingly, Taxpayers have submitted to the FCC a proposed plan for transitioning its services out of \_\_\_\_\_ of the C-band. This plan includes the acquisition of new equipment and the upgrade of existing equipment and facilities, the costs for which will be covered through Reimbursement Payments. In particular, Taxpayer 2 is in the process of designing, building, and launching new satellites, which are capable of transmitting on the C-band as well as frequencies outside of the C-band (“New Multi-Band Satellites”) and which will replace existing multi-band satellites currently in use. Taxpayers represent that these New Multi-Band Satellites are necessary for and will be used in Taxpayers’ Satellite Business.

#### REQUESTED RULINGS

1. Whether any Reimbursement Payments and the Acceleration Payments received by Taxpayers constitute money received in connection with a compulsory or involuntary conversion of the Relevant Assets for purposes of § 1033 of the Code.
2. Whether the release of the FCC Order on March 3, 2020, constitutes the date of the beginning of the threat or imminence of requisition or condemnation of the Relevant Assets for purposes of § 1033(a)(2)(B) and Treas Reg. § 1.1033(a)-2(c)(3).
3. Whether any Reimbursement Payments or Acceleration Payments received by Taxpayers shall be eligible for nonrecognition of gain pursuant to § 1033(a)(2)(A) to the extent such amounts do not exceed the cost of property purchased by \_\_\_\_\_ that is similar or related in service or use to the Relevant Assets, or

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otherwise used to provide broadcast services using the C-band over North America, during the period described in § 1033(a)(2)(B) (as such period may be extended pursuant to Treas. Reg. § 1.1033(a)-2(c)(3)).

4. Whether the New Multi-Band Satellites constitute eligible replacement property for purposes of § 1033(a)(2)(A).

#### 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.

#### Ruling Number 1: Sale Under Threat of a Compulsory or Involuntary Conversion

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 United States 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, however, strictly limited to takings within the meaning of the Fifth Amendment.

In Rev. Rul. 82-147, 1982-1 C.B. 190, a federal law prohibited the use of motorboats 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."

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In the present case, the FCC's repurposing of the lower 300 MHz of the C-band 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 Taxpayers of the Relevant Assets. Taxpayers' choice to clear \_\_\_\_\_ prior to the applicable deadlines in order to be eligible for Reimbursement Payments and Acceleration Payments is not a meaningful choice because choosing not to do so would result in Taxpayers nevertheless losing the right to transmit in \_\_\_\_\_ range and use of related equipment and facilities, while also forfeiting the right to any Reimbursement or Acceleration Payments.

### Ruling Number 2: Date Threat of Condemnation Began

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 issued the FCC Order on March 3, 2020, determining that it would proceed with plans to clear the lower 300 MHz of the C-band. The FCC Order constituted written notice to the Taxpayers of the FCC's intent to reassign a portion of Taxpayers Spectrum Usage Rights, which would result in the involuntary conversion or taking of the Relevant Assets.

### Ruling Number 3: Taxpayers' Spectrum Rights and Associated Equipment Were Involuntarily Converted into Money in the Form of the Reimbursement and Acceleration Payments

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Based on the information and representations provided, the Reimbursement and Acceleration Payments are the only way for Taxpayers to receive compensation for relinquishing their right to broadcast in \_\_\_\_\_ of the C-band and for the costs related to relocating services into \_\_\_\_\_ of the C-band. Accordingly, the Reimbursement and Acceleration Payments constitute money received in exchange for the relinquished Spectrum Usage Rights and the other Relevant Assets.

Ruling Number 4: The New Multiband Satellites Constitute Eligible Replacement Property for Purposes of § 1033(a)(2)(A)

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. The Tax Court has explained the similar or related in service or use requirement as follows:

[T]he reinvestment must be made in substantially similar business property. Stated differently, the statute requires a “reasonably similar continuation of the petitioner's prior commitment of capital and not a departure from it.” While it is not necessary to acquire property which duplicates exactly that which was converted, the fortuitous circumstance of involuntary conversion does not permit a taxpayer to change the character of his investment without tax consequences.

*Maloo v. Commissioner*, 65 T.C. 263, 269 (1975) (citations omitted).

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. See, 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. *Maloo* 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.

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Taxpayers must replace or modify existing equipment in order to comply with the FCC's Order and transition service seamlessly to \_\_\_\_\_ of the C-band before the relevant deadlines. As part of their proposed plan, Taxpayer 2 is acquiring the New Multi-Band Satellites to replace its existing multi-band satellites. Based on Taxpayers' representations, the New Multi-Band Satellites will serve the same basic function in Taxpayers' Satellite Business as the existing multi-band satellites that are being replaced: to provide broadcasting services over the C-band in \_\_\_\_\_. Thus, the New Multi-Band Satellites that provide services over \_\_\_\_\_ of the C-band as part of the Satellite Business, regardless of whether they also are used to provide service outside of the C-band, constitute replacement property for purposes of § 1033(a)(2)(A).

### RULINGS

1. The Reimbursement Payments and the Acceleration Payments received by Taxpayers constitute money received in connection with a compulsory or involuntary conversion of the Relevant Assets for purposes of § 1033 of the Code.
2. The release of the FCC Order on March 3, 2020, constitutes the date of the beginning of the threat or imminence of requisition or condemnation of the Relevant Assets for purposes of § 1033(a)(2)(B) and Treas Reg. § 1.1033(a)-2(c)(3).
3. Reimbursement Payments or Acceleration Payments received by Taxpayers shall be eligible for nonrecognition of gain pursuant to § 1033(a)(2)(A) to the extent such amounts do not exceed the cost of property purchased by Taxpayers that is similar or related in service or use to the Relevant Assets, or otherwise used to provide broadcast services using the C-band over North America, during the period described in § 1033(a)(2)(B) (as such period may be extended pursuant to Treas. Reg. § 1.1033(a)-2(c)(3)).
4. The New Multi-Band Satellites constitute eligible replacement property for purposes of § 1033(a)(2)(A).

### 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.

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.

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In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

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 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,

Angella L. Warren  
Branch Chief, Branch 4  
(Income Tax & Accounting)

cc: