

Written Determination

Number: **8127089**

Internal Revenue Service

April 10, 1981

Symbol: T:C:C:3:2

This is in response to your letter dated *****. In that correspondence you requested a determination letter stating that no gain will be recognized under section 1033 of the Internal Revenue Code if insurance proceeds from the loss of works of art are reinvested in other works of art.

In the judgment of the District Director, your request warranted the attention and special technical expertise of the National Office. Administrative procedure requires the National Office to treat your request for a determination letter as a ruling request under Rev. Proc. 80-20, 1980-1 C.B. 633.

The following facts and representations were submitted:

On *****, a fire occurred in the residence then occupied by the taxpayers. There was damage to an art collection consisting of approximately 3,000 lithographs, representing the works of approximately 200 different artists and having an approximate value of *****. The art collection damage also included some oil paintings, pencil drawings, sculptures, masks, wood carvings and block prints. There was smoke and water damage to this collection slightly in excess of *****. Insurance proceeds were paid to the taxpayers in the amount of the damage in *****. The bulk of the insurance proceeds were paid for the damage to and loss in value of the print collection; 1 percent or less was attributable to the loss in value of art objects other than the lithographs. Some portion of the insurance proceeds represents gain.

The taxpayers are currently experiencing difficulty in having the lithographs restored within a reasonable period of time. They are offering to buy other works of art. The proceeds would be used to purchase replacement property which would consist of approximately 63 percent lithographs and 37 percent art works in other artistic media, such as oil paintings, watercolors, sculptures or other graphic forms of art.

Section 1033(a)(2)(A) of the Code provides, generally, that if property is involuntarily converted into money and the taxpayer, within the period provided in section 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 converted, then upon election by the taxpayer, gain shall be recognized only to the extent that the amount realized upon the conversion exceeds the cost of such other property.

Section 1033(a)(2)(B) of the Code provides, in part, that the replacement period shall begin on 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 end two years after the close of the first taxable year in which any part of the gain upon the conversion is realized.

Under the provisions of section 1033(a) of the Code, when property is involuntarily converted into money, the taxpayer must purchase property similar or related in service or use to the property converted in order to avoid recognizing gain. The facts presented have established that you are proposing to replace approximately 99 percent of the lithographs and approximately 1 percent of art works in other artistic media that were partially destroyed with approximately 63 percent lithographs and 37 percent art works in other artistic media. The Internal Revenue Service will not consider as property similar or related in service or use, art work in one medium, destroyed in whole or in part, replaced with art work in another medium. Therefore, in order to qualify for complete nonrecognition of gain under section 1033(a), you must purchase the same percentage of lithographs as were destroyed in whole or in part and the same percentage of art works in other artistic media as were destroyed in whole or in part.

Accordingly, gain will be recognized under section 1033(a) of the Code if proceeds of insurance derived from the partial destruction of approximately 99 percent lithographs and approximately 1 percent art works in other art media are reinvested in approximately 63 percent lithographs and approximately 37 percent art works in other art media. Gain would be recognized to the extent that 36 percent of the proceeds were reinvested in art works in other artistic media.

Pursuant to a power of attorney on file with this office a copy of this letter is being sent to your authorized representative.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.