



December 11, 2023

Ms. Amalia C. Colbert
Commissioner, Small Business/Self-Employed Division
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224

Re: Section 1033(a)(2)(B)(ii) Extension Requests Filed by Disaster Victims for Business Property

Dear Ms. Colbert:

The American Institute of CPAs (AICPA) is providing feedback and recommendations on the Internal Revenue Service (IRS) procedure for processing section¹ 1033 replacement period extension requests.

We recommend that the IRS establish a more streamlined and rapid procedure for processing requests to extend the section 1033 replacement period. We also recommend that the IRS increase transparency relating to section 1033 extension requests. Specific details relating to these recommendations are discussed further in this letter.

BACKGROUND

Section 1033 provides relief for taxpayers who are the victims of natural disasters by allowing additional time to replace damaged and destroyed property.

Section 1033(h)(1) provides for a four-year replacement period for personal residences damaged or destroyed as a consequence of a federally declared disaster and provides that no gain is recognized for insurance proceeds received for personal property.

Section 1033(h)(2) provides for a two-year replacement period for trade or business and investment property damaged or destroyed as a consequence of a federally declared disaster.

Section 1033(a)(2)(B)(ii) and Treas. Reg. § 1.1033(a)-2(c)(3) allow for the Secretary to extend the two-year replacement period (or 4 year replacement period in the case of a taxpayer's principal residence damaged by a federally declared disaster) upon request by a taxpayer when the taxpayer has reasonable cause and is unable to locate or acquire replacement property within the proscribed period.

¹ All references to "section" or "§" are to the Internal Revenue Code of 1986, as amended, and all references to "Treas. Reg. §" and "regulations" are to U.S. Treasury regulations promulgated thereunder.

Treasury Reg. § 1.1033(a)-2(c)(3) discusses what the taxpayer must do to request the extension. The taxpayer may apply to the IRS for an extension based on reasonable cause. The extension must be requested within the replacement period unless reasonable cause is shown for a later request. The application must contain all the details in connection with the involuntary conversion. The application is to be submitted to the district director for the district in which the return is filed.

Specifically, Treas. Reg. § 1.1033(a)-2(c)(3) provides:

(3) The period referred to in subparagraphs (1) and (2) of this paragraph is the period of time commencing with the date of the disposition of the converted property, or the date of the beginning of the threat or imminence of requisition or condemnation of the converted property, whichever is earlier, and ending 2 years (or, in the case of a disposition occurring before December 31, 1969, 1 year) after the close of the first taxable year in which any part of the gain upon the conversion is realized, or at the close of such later date as may be designated pursuant to an application of the taxpayer. Such application shall be made prior to the expiration of 2 years (or, in the case of a disposition occurring before December 31, 1969, 1 year) after the close of the first taxable year in which any part of the gain from the conversion is realized, unless the taxpayer can show to the satisfaction of the district director—

(i) Reasonable cause for not having filed the application within the required period of time, and

(ii) The filing of such application was made within a reasonable time after the expiration of the required period of time. The application shall contain all of the details in connection with the involuntary conversion. Such application shall be made to the district director for the internal revenue district in which the return is filed for the first taxable year in which any of the gain from the involuntary conversion is realized. No extension of time shall be granted pursuant to such application unless the taxpayer can show reasonable cause for not being able to replace the converted property within the required period of time.

In addition, [IRS Publication 547, *Casualties, Disasters, and Thefts*](#), states that an extension of the replacement period will be granted if the taxpayer can show reasonable cause and that such requests for extension are normally granted near the end of the replacement period. The IRS Technical Services group is responsible for granting and denying the extensions. Specifically, [Internal Revenue Manual \(IRM\) 4.8.8, *Miscellaneous Responsibilities*](#), provides:

[4.8.8.6.1](#) (12-01-2017)

Technical Services' Responsibility

- Technical Services is responsible for granting or denying extensions and for following up on taxpayers who fail to notify the Service if they have replaced the property or amended their returns.
- The request for extension of the replacement period should be reviewed to ensure the taxpayer has provided all the necessary information as follows:
 - Name, address, and taxpayer identification number of the taxpayer
 - Legal descriptions of property converted
 - Date property was converted
 - Adjusted basis of converted property

- Date(s) and amount(s) of payment(s) received
- Copy of return that related to the deferral of the gain
- Statement of action taken to replace the property
- The taxpayer has 2 years to replace personal property. The taxpayer has 3 years to replace 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.
- The taxpayer must demonstrate reasonable cause for not replacing the converted property within the original required time period. Refer to Rev. Rul. 60-69, 1960-1 C.B. 294. Also, see Treas. Reg. § 1.1033(a)-2(c)(3)(i) and (ii). Refer to SB/SE 1-23-33, Authority to Grant Extensions of Time to Replace Involuntarily Converted Property Under Section 1033 of the Internal Revenue, for authority to issue letters.
- If the extension request is granted, Letter 1039, Extension Granted to Replace Involuntarily Converted Property, is sent to the taxpayer to advise him or her an extension has been granted. Generally, extensions are not granted for more than 1 year. The taxpayer must notify the Service when the property is replaced.
- If the taxpayer has not provided enough information, the reviewer should request additional information from the taxpayer.
- If the extension request is not granted, the taxpayer should be notified and provided the reason(s) why. Extensions can be denied if the request is premature.

Example:

If the taxpayer requests an extension to replace real business property under section 1033(g) at the end of two years, the request can be denied since business property has a 3-year replacement period.

RECOMMENDATIONS

1. Establish a More Streamlined and Rapid Procedure

The IRS should establish a more streamlined and rapid procedure for processing requests to extend the section 1033 replacement period. In furtherance of this objective, the IRS should take the following specific steps:

- Acknowledge receipt of replacement period extension requests within 30 days.
- Render decisions on replacement period extension requests within 90 days of receipt by the IRS.
- Provide blanket automatic extensions for certain disasters that cause tremendous damage to most taxpayers in a particular area, such as caused by wildfires, category 3-5 hurricanes, and tornadoes.
- Eliminate the requirement for taxpayers to provide a reason or justification for section 1033 extension requests, saving time and costs to taxpayers and the IRS in the IRS review and approval of the extensions.

If the IRS decides to continue requiring a reason or justification for section 1033 extension requests, the IRS should increase staffing of the Section 1033 Coordinator office and clarify what is required in the requests, such as:

- Name, address, and taxpayer's identification number (TIN);
- Legal description of property converted;
- Date property was converted;
- Adjusted basis of property converted;
- Dates and amounts of payments received;
- Copy of tax return that is related to the deferral of the gain (for the tax year in which the gain was realized); and
- Statement of action taken to replace the property.

2. Increase Transparency

The IRS should increase transparency relating to section 1033 extension requests. In furtherance of this objective, the IRS should take the following specific steps:

- Provide tax practitioners and taxpayers with an online tool to submit and monitor the status of section 1033 extension requests, contact IRS personnel to determine the status of such requests, and receive email notifications when decisions have been made.²
- Publicize the number of section 1033 extension requests received and approved each year.
- Increase education and website information regarding the availability and process for section 1033 extensions.

ANALYSIS

Severe disaster situations with widespread damage result in significant delays in meeting the section 1033 replacement periods.³

The 1033 replacement period extension request process is date critical, and taxpayers deserve prompt disposition of their extension request so they may timely and accurately conform to the requirements in the Code and Regulations. If the section 1033 extension is not granted, the taxpayer needs to include that amount in income for the appropriate tax period. Also, the taxpayer needs to stop looking for replacement property.

The increasing number of natural disasters each year leads to an increase in taxpayer requests for an extension of time to meet the requirements of section 1033(a)(2)(B)(i) and Treas. Reg. § 1.1033(a)-2(c)(3) for business property. This increase has led to delays in obtaining the section 1033 extension approvals, likely due to IRS staffing challenges in dealing with increased demand for the section 1033 extensions.

² This tool could be similar to the [Where's My Refund?](#) and [Energy Credits Online](#) tools currently available on the IRS's website. Implementing such a tool would be in keeping with Objective 1 of the [IRS Inflation Reduction Act Strategic Operating Plan](#), *Dramatically improve services to help taxpayers meet their obligations and receive the tax incentives for which they are eligible.*

³ While section 1033(h)(1) provides a four-year replacement period for a principal residence and its contents, property in disaster areas also includes business and rental properties.

Ms. Amalia C. Colbert

December 11, 2023

Page 5 of 6

Taxpayers and tax practitioners have reported that in the past, the IRS promptly acknowledged section 1033 requests, but we have heard that in the past few years, the time the Section 1033 Coordinator office is taking to reply has been unreasonable (more than 6 months and beyond the period for filing the impacted tax return). While some taxpayers have received timely fax responses, others have informed us that they submitted replacement period extension requests in late 2021 and have still not received an acknowledgment or decision, with numerous unsuccessful attempts to reach the Section 1033 Coordinator office.

Recently, tax professionals assisting taxpayers affected by Hurricane Michael and the California wildfires who submitted requests with the required information for extensions of the section 1033 replacement period have said that replies, acknowledgements, and approvals from the Section 1033 Coordinator office have been very slow. In many cases, there has been no acknowledgement from the IRS.

In addition, these taxpayers often are affected by the emotional trauma and other associated matters with these natural disasters they have experienced. It is not unusual for difficulties, such as shortage of building materials, skilled labor, utilities, and the other services for rebuilding to be unavailable on a timely basis to conform with the period prescribed in the Code.

Further, the Covid pandemic and the closing of the court systems has delayed insurance cases, and many are just now settling with the insurance companies. These businesses have had to make multiple year extension requests of the section 1033 replacement period because of the long process of settling with insurance companies and are just now able to begin rebuilding. They have been left wondering whether the section 1033 request was approved as there has been no acknowledgement from the IRS. Our recommendations would assist these taxpayers and bring transparency to the IRS process and acknowledgement of these section 1033 extension requests. In addition, we believe our recommendations are in keeping with the IRS mission of effective tax administration and providing the highest quality service to taxpayers and the American public.

We encourage the IRS to adopt our recommendations to establish a more streamlined and rapid procedure for processing requests to extend the section 1033 replacement period, and to increase transparency relating to section 1033 extension requests.

* * * * *

The AICPA is the world's largest member association representing the accounting profession, with more than 421,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state, and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

Ms. Amalia C. Colbert

December 11, 2023

Page 6 of 6

We welcome the opportunity to discuss these comments or to answer any questions that you may have. If you have any questions, please contact; Peter Mills, AICPA Senior Manager, Tax Policy & Advocacy at (202) 434-9272, or Peter.Mills@aicpa-cima.com; Gerald Schreiber, chair of the AICPA Disaster Tax Relief Task Force at (504) 832-1819 or ghschreiber@schreibercpa.com; or me at (830) 372-9692 or Bvickers@alamo-group.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Blake Vickers". The signature is fluid and cursive, written in a professional style.

Blake Vickers, CPA, CGMA
Chair, AICPA Tax Executive Committee

cc: Ms. Erin Collins, National Taxpayer Advocate, Internal Revenue Service