

Current law (section 1033 of the Internal Revenue Code) recognizes the need in some circumstances to allow deferral of payment of capital gains taxation on the proceeds of an involuntary conversion. Under that section, the owner of land taken for public use can postpone recognition of gain on compensation he receives only by reinvesting in property of "like kind" within a specified period. Generally, this permits the landowner to reinvest in any comparable real property.

The amendment we offer would permit the taxpayer to defer capital gains taxation of condemnation awards when he reinvests in securities or a business if he establishes that to require him to reinvest only in comparable real property would work "undue hardship" on him.

The term "undue hardship" is one of equity; still this is a situation which calls for equity. Since the burden of proof will be placed on the taxpayer, this amendment would be restricted to relief situations rather than open up an area of abuse.

As an example of circumstances which would constitute an "undue hardship", let us take the situation that arises in large reservoir takings. Comparable replacement property often is not available in the general vicinity, and landowners would be required to move considerable distances in order to reinvest in similar farm property. Another hardship situation would arise when a landowner is forced to sell a going farm operation but has reached an age when he does not believe it physically possible to start a new farming or ranching life. He is being pushed into an early retirement. These people have no choice, no real alternative to selling their land; in order to avoid undue hardship, tax concepts should be made to conform with current needs and the increasing scarcity of land.

Our amendment does not provide specific criteria for the application of "undue hardship." To do so would only confine the attempt to achieve equity to arbitrary limits. However, we can think of several factors that might merit consideration in determining "undue hardship": the age of the landowner, the number of years he has owned the land, and evidence of his efforts to find reasonable replacement realty.

Mr. Chairman, we believe that our amendment would provide considerable economic assistance to persons across the country whose property is taken for public works programs such as reservoirs and highways. More equitable tax treatment seems in order for those who are forced to give up land that may have been built up over many years, even generations, and then who are taxed because they are unable to find replacement property.

Your Committee's favorable consideration of this proposal will be appreciated. Amendment intended to be proposed by Mr. Symington (for himself and Mr. Long of Missouri) to the bill (S. 698) viz: On page 49, after line 10, insert the following:

PART C—AMENDMENT TO INTERNAL REVENUE CODE

PROPERTY REQUIRED TO REPLACE REAL PROPERTY TAKEN BY CONDEMNATION

SEC. 811. (a) Section 1033 of the Internal Revenue Code of 1954 (relating to involuntary conversions) is amended by redesignating subsection (h) as (i), and by inserting after subsection (g) the following new subsection:

"(h) CONDEMNATION OF REAL PROPERTY AFTER 1966.—

"(1) *Special rule.*—For purposes of subsection (a), if real property (not including stock in trade or other property held primarily for sale) is (as the result of its seizure, requisition, or condemnation, or threat or imminence thereof) compulsorily or involuntarily converted, and if the disposition of the converted property (within the meaning of subsection (a) (2)) occurs after December 31, 1966, replacement property shall be treated as property similar or related in service or use to the property so converted.

"(2) *Replacement property defined.*—For purposes of paragraph (1), the term 'replacement property' means—

"(A) real property and any interest in real property,

"(B) property to be used in trade or business of the taxpayer (as defined in section 1231(b) (1), but determined without regard to any holding period), and

"(C) subject to the provisions of paragraph (3), any property to be held for investment by the taxpayer.

"(3) *Application of paragraph (2) (C).*—Subparagraph (C) of paragraph