

(2) shall apply with respect to any property only if the taxpayer establishes that it would have worked an undue hardship for him to replace the property converted by the purchase of—

“(A) property similar or related in service or use to the property converted, or

“(B) property described in subparagraphs (A) and (B) of paragraph (2).”

(b) Section 1033 (g) of such Code is amended—

(1) by inserting after “December 21, 1957” in paragraph (2) (B), and before January 1, 1967”; and

(2) by striking out the heading of such paragraph and inserting in lieu thereof “Period of applicability.”

(c) The amendments made by this Section shall apply to taxable years ending after December 31, 1966.

SUPPLEMENTAL STATEMENT BY SENATOR STUART SYMINGTON

Mr. Chairman: Just this morning, Mr. Charles Smith, staff director of your subcommittee, made available to my office a copy of a letter dated May 15, 1968, addressed to you from Assistant Secretary of the Treasury Stanley Surrey. This letter further states the objections of the Treasury Department to the amendment proposed by Senator Long and me.

I have had prepared a rebuttal to the Treasury Department's further argument, and ask that it be included in the record along with the letter which you have received.

REBUTTAL OF TREASURY DEPARTMENT'S LETTER OF MAY 15, 1968

1. Fear of abandonment of the principle that a capital gains tax becomes due upon change in investment position is unwarranted. The situation we are concerned about involves an involuntary conversion, which allows deferral of capital gains because the change in investment position is *not voluntary*. Section 1033 of the Internal Revenue Code is a modification of the capital gains principle that has been long recognized. Our amendment would merely make the intent of section 1033 applicable in situations where replacement realty was not available. No new area for special treatment is being suggested. These landowners have no choice, no real alternative to selling their land; in order to avoid undue hardship, historical tax concepts should be made to conform with current needs and the increasing scarcity of land.

2. The fear that there would be extensive litigation seems to be exaggerated. Admittedly the term “undue hardship” is one of equity; but 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. The possibility of litigation arising should certainly be no excuse for denial of the right to relief.

TREASURY DEPARTMENT,
Washington, D.C. May 15, 1968.

Hon. EDMUND S. MUSKIE,
Chairman, Subcommittee on Intergovernmental Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is intended to supplement my letter to you of May 17, 1967, setting forth the Treasury Department's views on an amendment to S. 698 proposed by Senators Stuart Symington and Edward V. Long of Missouri. The original amendment would have permitted the proceeds of a land condemnation award to be reinvested, without payment of a capital gains tax, in any type of real property, in any trade or business property, or (in those instances in which it would be “impractical” or would cause “undue hardship” to invest in suitable replacement property) in any type of investment property, including stocks and bonds. Since that time, Senator Symington and Senator Long have amended their proposal by removing the standard of impracticality, and I felt that views should reflect this change.

The Treasury Department continues to be opposed to this amendment to S. 698. The change in the amendment which has been suggested does not correct the basic and serious policy problems of deferring the capital gains tax to which I referred in my previous letter: The result of enacting the amendment would