

Tax Consequences of Condemnation of Private Agricultural Lands



Read the [full article](#) (PDF) by tax attorney Bob Fishman.

With several large regional or statewide infrastructure projects in the planning, acquisition, pre-construction, and initial construction stages, government eminent domain issues have surfaced as a major concern for rural landowners in many parts of California. In addition to on-going road construction and public utility projects throughout the state, major public works under consideration range from water and flood-control projects to utility upgrades to major transportation projects such as California High Speed Rail, a statewide train system for which construction is slated to start in the Central Valley.

Many agricultural landowners are familiar with §1031 of the Internal Revenue Code (IRC), which allows them to avoid or reduce costly federal and state taxes by reinvesting proceeds from a sale of farmland in like kind property. A related but less known tax provision is §1033, which deals with eminent domain and government takings of private property (“condemnation,” or more technically, an “involuntary conversion”). Similar to §1031, §1033 permits deferral of taxable gain by reinvesting in replacement property. But unlike §1031, §1033 allows the taxpayer to keep control of the money received from the condemnation sale of his property for several years before purchasing replacement property.

Generally, when property is taken by condemnation or sold under threat of condemnation, taxable gain results. Taxable gain is the amount by which the sale price exceeds the “Tax Basis” of the property. Tax Basis is generally the original purchase price of the property, plus the cost of improvements, less depreciation. This gain can be substantial if the condemned property was purchased or developed decades if not generations ago.

Without careful planning, including timely reinvestment, the taxable gain from the significant difference between the condemnation proceeds and tax basis can result in substantial taxes in addition to the loss of property due to the condemnation itself. Fortunately, planning on the sound advice of a competent tax attorney or advisor both before and after a condemnation or sale under a threat of eminent domain can reduce or eliminate the tax cost of involuntary conversions.

CFBF is providing the following summary by Robert Fishman of Fishman, Larsen, Goldring & Zeitler in Fresno California (www.flgz.net) to inform Farm Bureau members regarding some of the important tax-implications of selling their property to a government entity in a condemnation under the government’s powers of eminent domain.

The information provided is not legal advice, but rather is only intended as a general overview of some of the key points relating to tax deferrals in property condemnation situations under IRC §1033 and other applicable laws. Individuals seeking legal advice on these matters should consult a private attorney or tax advisor for guidance on their particular facts and circumstances.

While the information provided is believed to be generally correct, neither the California Farm Bureau Federation nor the author makes any representation as to its legal or factual accuracy. In making this information available, the California Farm Bureau Federation disclaims any and all liability for any party's reliance on the information provided.

Read the [full article](#) (PDF) by tax attorney Bob Fishman.