

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B01

PLR-125631-06

Date: 06/07/2006

Legend:

Asset #1 =

Asset #2 =

Buyers =

Date 1 =

Date 2 =

Taxpayer =

Year 1 =

\$x =

\$y =

Dear :

This is in reply to your request pursuant to section 453(d)(3) of the Internal Revenue Code and section 15a.453-1(d)(4) of the Temporary Income Tax Regulations for consent to revoke an election out of the installment method.

FACTS:

During Year 1, Taxpayer sold Asset #1 and Asset #2 to Buyers. The terms of sale provided for full payment for Asset #1 at the time of closing. The Buyers made a down payment on Asset #2 and gave the Taxpayer their interest bearing note for the balance of the sales price.

It has been represented that the Taxpayer's original federal income tax return for Year 1 was filed on extension on Date 2. The Taxpayer has indicated that he intended to recognize the gain on the sale of Asset #2 as the Buyers made payments on their note. However, the return preparer did not prepare the tax return in a manner consistent with the Taxpayer's instruction; the entire gain was reported on the federal income tax return for Year 1.

When the Taxpayer changed tax return preparers, the new return preparer discovered that the entire gain from the Year 1 sale had been reported on the return for Year 1. As a result of the discovery of the return treatment, the Taxpayer requested approval to revoke the election out of the installment method.

LAW AND ANALYSIS:

Section 453(a) of the Code provides that, generally, a taxpayer shall report income from an installment sale under the installment method. Section 453(b) defines an installment sale as a disposition of property for which at least one payment is to be received after the close of the taxable year of the disposition.

Section 15a.453-1(b)(3)(i) of the Temporary Regulations defines "payment" to include amounts actually or constructively received in the taxable year under an installment obligation.

Section 453(d)(1) of the Code and section 15a.453-1(d)(1) of the Temporary Regulations provides that a taxpayer may elect out of the installment method in the manner prescribed by the regulations. Section 15a.453-1(d)(3) of the Temporary Regulations provides that a taxpayer who reports an amount realized equal to the selling price including the full face amount of an installment obligation on a timely filed tax return for the taxable year in which the installment sale occurs is considered to have elected out of the installment method.

Except as otherwise provided in the Regulations, section 453(d)(2) of the Code requires a taxpayer who desires to elect out of the installment method to do so on or before the

due date (including extensions) of the taxpayer's federal income tax return for the taxable year of the sale. Section 15a.453-1(d)(4) of the Temporary Regulations provides that an election under section 453(d)(1) of the Code is generally irrevocable. An election may be revoked only with the consent of the Internal Revenue Service. Section 15a.453-1(d)(4) provides that revocation of an election out of the installment method is retroactive and will not be permitted when one of its purposes is the avoidance of federal income taxes.

The Taxpayer has represented that he advised the tax return preparer that he intended to pay tax on the gain as he received payments on the Buyer's note. However, the return preparer included the entire gain from the sale on the taxpayer's Year 1 return. When the Taxpayer changed return preparer's and the new return preparer discovered the return treatment of the Year 1 sale, the Taxpayer was advised to request Internal Revenue Service approval to revoke the election out of the installment method.

The information provided and the representations made indicate that: (1) the Buyers have made timely payment of all required principal interest payments on their note and the note is not in default; (2) the Taxpayer did not incur any significant capital or ordinary losses in any year subsequent to Year 1 and has no unrealized loss that he intends to realize to offset installment gain if revocation of the election out of the installment method is approved; (3) the Taxpayer made no installment sales prior to or subsequent to Year 1 that were reported on the installment method; (4) the Taxpayer has made no installment sales, other than the subject sale, prior or subsequent to Year 1 that were not reported on the installment method.

The fact that the applicable tax rates were reduced after Year 1, the year in which the sale took place, would generally result in denial of consent for revocation of an election out of the installment method on the basis that the request to revoke the election would be based on hindsight and the intent to avoid federal income taxes. Although the tax rates were reduced after Year 1, the reduction occurred before the Taxpayer's return for Year 1 was filed on extension. At the time the return was filed, the reduction in tax rates had already been enacted. Based upon the timing of the enactment of the change in tax rates and the information described above, it was evident at the time the Taxpayer's Year 1 return was filed that the use of the installment method would have been beneficial for the Taxpayer.

CONCLUSION:

Based on careful consideration of all of the information submitted and the representations made, we conclude that the Taxpayer will be allowed to revoke the election out of the installment method with respect to the Year 1 sale of Asset #2.

Permission to revoke the election out of the installment method of reporting for the Year 1 sale of Asset #2 is granted for the period that ends 75 days after the date of this letter.

In order to revoke the election out of the installment method for the sale at issue, the Taxpayer must file an amended federal income tax return for Year 1 and any other previously filed returns on which a portion of the gain from the sale is reportable under the installment method. A copy of this letter ruling must be attached to each of the amended return(s).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, including the computation of gain to be reported under the installment method.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This ruling is conditioned upon the accuracy of that information and those representations. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Thomas A. Luxner
Chief, Branch 1
(Income Tax & Accounting)