Internal Revenue Service

Number: **200630012**
Release Date: 7/28/2006
Index Number: 453.00-00, 453.08-00

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:B05
PLR-158731-05
Date:
April 28, 2006

Legend:

Taxpayer =

Asset #1 =

Asset #2 =

Asset #3 =

Date 1 =

Date 2 =

Year 1 =

Amount #1 =

Amount #2 =

Amount #3 =

Amount #4 =

Amount #5 =

Dear :

This is in reply to your request pursuant to section 453(d)(3) of the Internal Revenue Code (the 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:

On Date 1, Taxpayer sold Asset # 1 for Amount # 1, Asset # 2, for Amount # 2 and Asset # 3 for Amount # 3. Taxpayer's aggregate adjusted basis in the property was Amount # 4, resulting in an aggregate long-term capital gain of Amount #5.

It has been represented that the capital gain from the sales of these properties was eligible for installment sale treatment under § 453 of the Code.

Taxpayer's original federal income tax return for Year 1 was filed on extension on Date 2. Taxpayer indicates that it intended to recognize the gain on the sale of Asset #1, Asset #2, and Asset #3, using the installment method under § 453 of the Code as it had done for similar transactions in the past. However, the return preparer did not prepare the tax return in a manner consistent with Taxpayer's instruction; the entire capital gain was reported on the federal income tax return for Year 1.

After filing its federal income tax return for Year 1, Taxpayer realized that the full amount of the capital gain had been included in Year 1. Once it discovered its error, Taxpayer requested approval to revoke the election out of the installment method.

The applicable tax rates for capital gains were reduced effective for taxable years subsequent to Year 1.

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.

In the instant case, Taxpayer supplied its return preparer with documents anticipating installment sale reporting treatment for gain from the sales of the assets described above. The return preparer inadvertently prepared the Year 1 return reporting all the gain from the sales in that year. As soon as Taxpayer became aware of this oversight, Taxpayer filed a request for consent to revoke the election out of the installment method. The information submitted indicates that Taxpayer's desire to revoke the election is due to inadvertence rather than hindsight by Taxpayer or a purpose of avoiding federal income taxes.

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 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 Taxpayer will be allowed to revoke its election out of the installment sale method treatment with respect to the Year 1 sales of Asset #1, Asset #2, and Asset #3.

Permission to revoke the election out of the installment method of reporting for the Year 1 sales of Asset #1, Asset #2, and Asset #3, is granted for the period that ends 75 days after the date of this letter. In order to revoke its election out of the installment sale method, 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,

William A. Jackson
Branch Chief
Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)