

## 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:B05  
PLR-146314-09

Date:  
April 02, 2010

Date 1 =

State A =

State B =

Taxpayers =

Year 1 =

Year 2 =

\$x =

\$y =

Dear :

This letter is in response to a request, submitted by your authorized representative, that you be allowed to make a late election out of the installment method with respect to an installment sale of a business in Year 1.

On Date 1, you moved from State A to State B. You filed your federal and State A income tax returns for Year 1 subsequent to the move from State A to State B. The returns reported capital gains from the installment sale of \$x and \$y for Year 1 and Year 2, respectively.

As the result of an audit of your State B income tax return for Year 2, you discovered that State B requires that the Year 2 installment payment be reported on the State B tax return for Year 2 and that if the installment sale of your business was reported under the

installment method on your federal income tax return you would be required to use the installment method on your State B return. State B's income tax rates were considerably higher than those of State A. You represent that electing out of the installment method and reporting the entire gain realized on the sale of your business on your federal and State A returns for Year 1 would yield a savings on state income taxes that would more than offset the adverse impact of accelerated reporting of the entire gain on your federal and State A income tax returns for Year 1.

At the time that your federal and State A income tax returns for Year 1 were prepared and filed, you had moved from State A and were living in State B. If your return preparer had considered whether State B would tax the Year 2 installment payment and compared the income tax rates of State A and State B, he would have discovered that State B's income tax rates were significantly higher than those of State A and that reporting the installment payments received after Year 1, while you were residents of State B, on your State B income tax return(s) would subject the gain included in those payments to the higher tax rates of State B. The additional State B tax would more than offset the adverse impact associated with electing out of the installment method and reporting the entire amount realized on the sale of the business on your federal and State A income tax returns for Year 1, the year in which the sale took place.

#### LAW and ANALYSIS:

Section 453(a) of the Internal Revenue Code provides that income from an installment sale shall be taken into account under the installment method except as otherwise provided in section 453.

Section 453(d)(1) provides that the installment method shall not apply to any disposition if the taxpayer elects to have section 453(a) not apply to such disposition.

Section 453(d)(2) provides that except as otherwise provided by regulations, an election under section 453(d)(1) with respect to a disposition may be made only on or before the due date prescribed by law (including extension) for filing the taxpayer's return of the tax imposed by this chapter for the taxable year in which the disposition occurs. Such an election shall be made in the manner prescribed by regulations.

Section 15A.453-1(d)(3)(i) of the Temporary Income Tax Regulations provides, in general, that an election out of the installment method must be made on or before the due date prescribed by law (including extensions) for filing the taxpayer's return for the taxable year in which the installment sale occurs.

Section 15A.453-1(d)(3)(ii) provides that elections after the time specified in section 15A.453-1(d)(3)(i) will be permitted only in those rare circumstances when the Internal Revenue Service concludes that the taxpayer had good cause for failing to make a timely election.

Rev. Rul. 90-46, 1990-1 C.B. 107 considers three different scenarios in which taxpayers who initially reported a sale on the installment method subsequently sought permission to elect out of the installment method for their respective transactions. The ruling concludes that the first taxpayer was not allowed to elect out because the request was based on a subsequent change in law. The second taxpayer was not granted permission to elect out as a change of mind based on a desire to simplify tax reporting was not considered good cause. The third taxpayer was allowed to elect out since his accountant had failed to implement the taxpayer's direction to elect out and the taxpayer took timely action to correct the mistake.

Your circumstances are more analogous to those of the third taxpayer in Rev. Rul. 90-46, than those of the two taxpayers who were denied approval to make a late election out of the installment method. Your return preparer failed to consider that State B would tax the Year 2 installment payment and the difference in the income tax rates of States A and B in advising you to report the sale of your business under the installment method. Had you been advised of the significance of the difference in the state income tax rates, you would have discovered that election out of the installment method would have been in your best interest. Your request for approval to make a late election out of the installment method is prompted by your desire to correct your return preparer's mistake.

Based on the information provided and the representations made, approval is granted for you to make a late election out of the installment method for the Year 1 installment sale of your business.

To make the late election out, you must file amended federal and State A income tax returns for Year 1 on which you will report an amount realized on the sale of the business equal to the sales price including the full face amount of any installment obligation. You will also file amended federal and State A income tax returns for Year 2 and any subsequent years in which you reported gain attributable to receipt of payments on the Year 1 sale of your business. To make the late election out, you must file the previously described amended returns within the earlier of 75 days of the date of this letter or by the date upon which the statutory period for filing such amended return would end. A copy of this letter must be attached to each of the amended returns. If you file the amended returns electronically, you may satisfy this requirement by attaching a statement to each of the amended returns that provides the date and control number of this letter ruling.

The above ruling is subject to the following caveats:

No event(s) have occurred subsequent to the end of Year 1 that would result in taxation on either an amended federal or State A return for Year 1 of any portion of the amount realized on the sale of your business in Year 1 at a federal or State A tax rate lower

than the rate applicable to any portion of the gain from the sale of your business reported on your original federal or State A tax returns for Year 1.

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.

No opinion is expressed concerning the interpretation or application of any provisions of the income tax statutes of States A or B.

This ruling is directed only to the taxpayer requesting 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.

Sincerely,

Amy Pfalzgraf  
Senior Counsel, Branch 5  
(Income Tax & Accounting)