

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-131427-15
Date:
January 15, 2016

Taxpayers:
Company:
Year 1:

Dear _____ :

This ruling is in reference to Taxpayers' request to make a late election under § 453(d)(1) of the Internal Revenue Code to apply to a disposition of shares in Company made in Year 1, under the authority in § 15A.453-1(d)(3)(ii) of the Income Tax Regulations.

FACTS

Taxpayers were shareholders in Company until December of Year 1, when they sold all shares in an installment sale. Under the sale agreement for the shares, Taxpayers were to receive a portion of the payment after the end of Year 1. Therefore, the sale was an installment sale under § 453.

Taxpayers directed their tax preparer to make two draft returns for Year 1, one draft using the installment method and the other electing out as per § 453(d)(1). After consideration of both drafts, Taxpayers decided to file a return electing out of the installment method. As a result of a clerical error on the part of the tax preparer and through no fault of Taxpayers, the draft return using the installment method was transmitted to the Internal Revenue Service. Taxpayers, therefore, failed to make a § 453(d) election on their Year 1 return as originally filed.

Affidavits provided by Taxpayers indicated that they intended to file a return electing out of the installment method, and had included payment for additional taxes owed in that year as a result. Taxpayers also attested that they had been unaware of the error until they received a refund for overpayment. An affidavit provided by the tax preparer for

Taxpayers states that he mistakenly filed the wrong version of the return, and that he was likewise not aware of the error until Taxpayers received a refund.

LAW AND ANALYSIS

Section 453 states that income from installments sales is to be reported under the installment method, with income recognized simultaneously and in proportion to payments received on the sale. 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 453(d) allows taxpayers to elect out of the installment method, and instead immediately recognize all gains from the sale as income. Per § 453(d)(2), this election is to be made on or before the due date for the taxpayer's return for the tax year in which the disposition is made. Under § 15A.453-1(d)(3)(i) of the Income Tax Regulations, such elections are made by reporting an amount realized equal to the sale price on the tax return for the taxable year in which the sale occurs.

Section 15A.453-1(d)(3)(ii) provides the standard under which such requests for late § 453(d) elections are to be made. Requests for relief under that section are granted when the Internal Revenue Service concludes that the taxpayer had good cause for failing to make a timely election.

In the instant case, the information submitted indicates that Taxpayers intended to timely file a return properly electing out of the installment method, and their failure to do so was the result of clerical errors on the part of their tax preparer.

CONCLUSION

Based on the facts and information submitted and the representations made, we conclude that Taxpayers had good cause for failing to make a timely election under § 453(d). Accordingly, Taxpayers have satisfied the requirements of the regulations for granting of relief.

Permission to make a late election out of the installment method for the Year 1 sale of Taxpayers is granted for the period that ends 75 days after the date of this letter. In order to elect out of the installment method, Taxpayers must file an amended federal income tax return for Year 1 at the Internal Revenue Service Center where Taxpayers file annual Federal income tax returns, and report the full amount realized on the sale in Year 1. A copy of this letter ruling must be attached to the amended return. If you file the amended return 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 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. 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.

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.

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. Enclosed is a copy of the letter ruling showing the deletions proposed to be made when it is disclosed under § 6110.

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,

William A. Jackson
Branch Chief, Branch 5
(Income Tax & Accounting)

Enclosures:
Copy of letter for section 6110 purposes

cc: