

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:B04

PLR-133834-17

Date:

March 26, 2018

LEGEND

| | |
|----------------|---|
| Taxpayer | = |
| Taxpayer2 | = |
| B | = |
| Items | = |
| LLC | = |
| Date 1 | = |
| Date 2 | = |
| Date 3 | = |
| Date 4 | = |
| Date 5 | = |
| Place 1 | = |
| Place 2 | = |
| Year 1 | = |
| Year 2 | = |
| Year 3 | = |
| Year 4 | = |
| Year 5 | = |
| \$U | = |
| \$V | = |
| \$W | = |
| \$X | = |
| \$Y | = |
| \$Z | = |
| Accountant | = |
| Representative | = |

Dear :

This is in reply to a letter submitted by your authorized representative requesting a ruling on your behalf under § 453(d)(3) of the Internal Revenue Code and § 15a.453-1(d)(4) of the Temporary Income Tax Regulations under the Installment Sales Revision Act. You are requesting permission to revoke an election out of the installment method for the deferred exchange of certain real property through a qualified intermediary.

FACTS

Taxpayer on behalf of himself and as B of Taxpayer2, his wife, has requested this ruling. Taxpayer is a majority shareholder and CFO of a corporation that sells Items, and individually and as a partner, is the owner of numerous residential and commercial rental properties.

On Date 1, Taxpayer entered into an exchange agreement with LLC, a qualified intermediary (Intermediary), to effect a tax-deferred exchange of commercial real property owned by Taxpayer located at Place 1 (Relinquished Property). Pursuant to the exchange agreement, the Relinquished Property was sold by the Intermediary on Date 2, late in Year 1 for \$W. The Intermediary continued to hold the exchange funds during the 180-day replacement period.

On Date 3, early in Year 2, Taxpayer and Intermediary executed a Replacement Property Assignment and related documents assigning an agreement to purchase property located at Place 2 (Replacement Property) and authorizing Intermediary to disburse exchange funds to purchase the Replacement Property for \$X.

On Date 4, in Year 2, Intermediary distributed to Taxpayer approximately \$Y in excess exchange funds, which was net of improvements¹, transfer taxes, exchange expenses and other fees. On Date 5, in Year 2, Taxpayer signed and timely filed the Year 1 federal individual income tax return that included Form 8824, *Like-Kind Exchanges*, reporting recognized gain of \$U that represents the amount of boot received on the exchange. Taxpayer by recognizing gain in Year 1 that resulted in federal income tax of \$Z in effect elected out of the § 453 installment method.

In Year 5, as a result of a state income tax examination, Taxpayer, Accountant, and Representative became aware that the gain recognized in Year 1 could have been deferred until Year 2 under the installment method. By his own admission, Accountant incorrectly advised Taxpayer that the Year 1 Form 1099-S reporting the first leg of the exchange required the gain to be reported in Year 1. This is contrary to a correct

¹ During the 180-day replacement period, in addition to the acquisition of the Replacement Property, Intermediary utilized exchange funds to pay for improvements to the Replacement Property. We understand that the improvements to the Replacement Property may not have been properly identified within the 45-day identification period and without such support there could be additional gain that may be recognized on the exchange of approximately \$V.

understanding that the § 453 installment method may apply and that gain may be deferred until after the second leg of the exchange in Year 2.

Shortly after becoming aware of the error, Representative promptly filed this private letter ruling request on behalf of Taxpayer and Taxpayer concurrently and timely filed an amended return for Year 1. The amended return was filed as a protective claim for refund pending the determination of this ruling request.

LAW AND ANALYSIS

Section 453(a) of the Code provides that a taxpayer shall report income from an installment sale under the installment method. Section 453(b)(1) 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)(1) provides, however, that the installment method will not apply to a disposition if the taxpayer elects to not have the installment method apply to such disposition. Under § 453(d)(2), except as otherwise provided by regulations, an election out of the installment method with respect to a disposition may be made only on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of tax for the taxable year in which the disposition occurs.

Section 15a.453-1(d)(3)(i) of the regulations provides that an election out of the installment method must be made in the manner prescribed by the appropriate forms for the taxpayer's return for the taxable year of the sale. A taxpayer who reports an amount realized equal to the selling price including the full face amount of any installment obligation on the tax return filed for the taxable year in which an installment sale occurs will be considered to have made an effective election.

Section 453(d)(3) provides that a taxpayer who has elected out of the installment method may revoke that election only with the consent of the Secretary.

Section 15a.453-1(d)(4) provides that generally an election out is irrevocable. An election out may be revoked only with the consent of the Internal Revenue Service. A revocation, which is retroactive, will not be permitted when one of its purposes is the avoidance of federal income taxes, or when the taxable year in which any payment was received has closed.

In this case, Accountant did not correctly advise Taxpayer regarding the installment method for Taxpayer's Year 1 federal income tax return. Accountant erroneously prepared the Year 1 return reporting all the gain from the exchange. Had Taxpayer been properly informed, gain would have been deferred until Year 2 under the installment method. As soon as Taxpayer became aware of this oversight, Representative filed a request for consent to revoke the election out of the installment

method. The request to revoke the election does not involve hindsight or a purpose of avoiding federal income taxes.

CONCLUSION

Accordingly, based on the information submitted and the representations made, Taxpayer is granted permission to revoke the election out of the installment method for Year 1. Taxpayer must file an amended federal income tax return for Year 2 to report the taxable gain recognized on the exchange. Taxpayer must also file amended tax returns for Year 3 and Year 4 to reduce any tax carry-forwards affected by the amended tax returns filed in Year 1 and Year 2.

CAVEATS

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. Thus, we do not express any opinions under §§ 453 or 1031, except that Taxpayer may revoke the election out of the installment method for Year 1 and report taxable gain under the installment method under § 453 to the extent allowed by that section. We do not express any opinion on the amount of gain reportable under § 453.

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.

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. 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.

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

Sincerely,

Michael J. Montemurro
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: