

Dear _____ :

This letter refers to your request under section 453(d)(3) of the Internal Revenue Code and section 15A.453-1(d)(4) of the Temporary Income Tax Regulations under the Installment Sales Revision Act.¹

FACTS

The facts as represented by Taxpayers are as follows:

Taxpayers are married individuals who file their federal income tax returns jointly. Taxpayers use the cash method of accounting and use the calendar year as their taxable year.

Taxpayers, through P, operated Business. Wholly owned by Taxpayers, P owned all business assets used by Business, except Asset A, which Taxpayers directly owned. On Date 1, Taxpayers, directly, and indirectly through P, sold to Buyers for \$X substantially all of Business assets and Asset A. The parties allocated \$Y to Asset A, which amount Buyers paid in a combination of cash and an installment note obligation with a face value of \$Z (Note). Note was to be fully repaid in N years, with the first payment due on Date 2.

Taxpayers retained Preparer 1 and Preparer 2 to prepare their federal income tax return for Year 1 (Year 1 Return). Taxpayers timely provided them with all information necessary to report the sale of Business assets and Asset A on the federal income tax return. Neither Preparer 1 nor Preparer 2, however, discussed with Taxpayers the tax treatment of the sale, including whether they should use the installment sale method to account for the income attributable to Note. Although Taxpayers reviewed Year 1 Return before filing it, they did not realize that they were electing out of the installment method for the income attributable to Note.

In Year 3, Taxpayers retained New Preparer to prepare their Year 2 federal income tax return. Reviewing Taxpayers' filed Year 1 Return, New Preparer questioned their election out of the installment method for Year 1. Subsequently, Preparer 1 confirmed that Taxpayers should have used the installment method to account for the income attributable to Note.

No facts have changed since the original due date of Year 1 Return that would make revocation of Taxpayers' election out of the installment method advantageous.

¹ Unless noted otherwise, all section references are to the Internal Revenue Code or the Temporary Income Tax Regulations under the Installment Sales Revision Act (26 C.F.R. part 15A), as they were in effect for the taxable years at issue.

Taxpayers do not anticipate the granting of this ruling request to result in lower tax liability for Taxpayers in the aggregate for all taxable years affected compared to the tax liability that Taxpayers would have had if Taxpayers had never elected out of the installment method for the income attributable to Note.

Year 1 Return is not closed, and neither are Taxpayers' federal income tax returns on which the income attributable to Note is reportable under the installment method. As of the filing of this ruling request, Taxpayers have not been before examination, before appeals, or before a federal court with respect to Year 1 Return or Taxpayers' federal income tax returns on which the income attributable to Note is reportable under the installment method.

LAW AND ANALYSIS

Section 453(a) provides that, generally, a taxpayer must report income from an installment sale under the installment method. Section 453(b) defines 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 that section 453(a) does not apply to a disposition if the taxpayer so elects. Section 453(d)(3) provides that the election "may be revoked only with the consent of the Secretary." See *also* § 15a.453-1(d)(4). A revocation will not be permitted when one of its purposes is the avoidance of federal taxes, or when the taxable year in which any payment was received is closed. *Id.*

Here, Preparers failed to explain to Taxpayers how the income attributable to Note should be accounted for on Taxpayers' return and whether using the installment method would be appropriate. As a result, Taxpayers inadvertently elected out of the installment method. Moreover, Taxpayers did not use hindsight in requesting relief, and this request was not motivated by an intent to avoid federal taxes. Further, Taxpayers' taxable year in which the installment sale took place and taxable years in which income from that sale is reportable under the installment method are not closed.

CONCLUSION

Based on the information submitted and the representations made, Taxpayers are granted permission to revoke their election out of the installment method for the income attributable to Note. Permission is granted for the period that ends 75 calendar days after the date of this letter. To revoke their election out of the installment method, Taxpayers must file an amended federal income tax return for Year 1 and any other taxable year for which Taxpayers previously filed a federal income tax return on which a portion of the income attributable to Note is reportable under the installment method. A copy of this letter ruling must be attached to any amended return.

Except as expressly provided here, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referred to in this letter, including whether Taxpayers are eligible to use the installment method or how much income should be reported under the installment method.

This ruling is directed only to Taxpayers. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations you submitted with properly executed penalty of perjury statements. While this office has not verified any of the material submitted in support of the ruling request, 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 your authorized representative.

Sincerely,

Sue-Jean Kim
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure:

Copy for § 6110 purposes

cc: