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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

UIL: 0453.08-01

Person to Contact:

Telephone Number:

Refer Reply to:
CC:DOM:IT&A:5 PLR-120894-98

Date: JUN 9 1999

Date a =

Date b =

Date c =

$d =

$e =

$f =

Partnership =

CPA =

Entity C =

S Corp =

Partnership 2 =

Year x =

Dear

This is in reply to a letter dated November 13, 1998, submitted by your authorized representative requesting a ruling under section

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453(d)(1) of the Internal Revenue Code and section 15a.453-1(d)(3)(ii) of the Temporary Income Tax Regulations on behalf of Partnership. Partnership is requesting permission to elect out of the installment method with respect to the sale of its assets reported on its Year x federal income tax return.

Partnership was formed in 1991 and engaged in the business of advising public, corporate, union and governmental pension plans and endowments on investing in real estate. From its inception through its section 708 termination in Year x, Partnership's 99% partner was Entity C. The 99% partner of Entity C was S Corp. On Date a, Partnership sold its assets in exchange for $d cash, property valued at $e, and installment obligations with a face amount of $f. On Date b, S Corp made a liquidating distribution of its assets to its shareholders. The installment obligations received in the sale continued to be held by Partnership. Partnership represents that the liquidating distribution caused Entity C and Partnership to have a greater than 50% change in ownership, thereby resulting in a termination pursuant to section 708(b)(1)(B).

During Year x, Partnership, based on the advice of its CPA, determined that it would elect out of the installment method. This is further evidenced by the fact that S Corp made its corporate estimated state income tax payments by taking into account the additional gain recognized by Partnership due to the election out.

The taxable income of Partnership was reported by the shareholders of S Corp (i.e. individual taxpayers). Partnership, an accrual basis taxpayer, used a fiscal year end until its technical termination on Date b. At that time, Partnership changed its name to Partnership 2, and its tax-year end to December 31. As a result of the technical termination, Partnership's tax return for Year x was due on Date c. CPA failed to file an extension on or before Date c. CPA discovered the error later when it was preparing to file Partnership's return as if an extension had been filed.

CPA prepared and timely filed S Corp's extension, however, it inadvertently failed to file Partnership's extension. Partnership relied on CPA to prepare and timely file all income tax extensions, returns, and elections. When it was time to attach the extension to Partnership's return, CPA realized that an extension had not been filed and it was then too late to file a valid extension. Since Partnership's income tax return was delinquent, it was not possible for Partnership to make a timely election out of the installment method under section 453(d).

CPA acknowledges making the error in not filing the extension and thereby not being able to file a timely return electing out of the

installment method. Partnership represents that it always intended that the sale not be reported on the installment method.

Partnership represents that electing out of the instalment method does not result in any income tax deferral since the installment obligations were included in the shareholders' Year x taxable income due to the liquidation of Partnership's 99% indirect owner, S Corp (i.e., the installment notes were held by Partnership on the liquidation date and the value of Partnership's assets was included by the shareholders as sales proceeds from the sale or exchange of S Corp's stock).

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

Section 453(d)(1) of the Code provides, in general, that subsection (a) shall not apply to any disposition if the taxpayer elects to have subsection (a) not apply to such disposition. Paragraph (2) provides that, except as otherwise provided by regulations, an election under paragraph (1) 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 the tax imposed by this chapter for the taxable year in which the disposition occurs.

Section 15a.453-1(d)(1) of the temporary regulations provides that an installment sale is to be reported on the installment method unless the taxpayer elects otherwise in accordance with the rules set forth in paragraph (d)(3) of this section.

Section 15a.453-1(d)(3)(i) of the temporary regulations provides that an election under paragraph(d)(1) of this section 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) of the temporary regulations provides, in part, that an election made after the time specified in paragraph (d)(3)(i) of this section 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.

The facts presented in this ruling request indicate that it was not the intent of Partnership to report the sale of its assets on the installment method. Partnership was unable to elect out of the installment method because CPA failed to file an extension for the Year x return. Upon discovering the mistake, CPA filed this ruling request to correct its error. Partnership has therefore established good cause for failing to timely elect out of the installment method. See

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Situation 3 of Rev. Rul. 90-46, 1990-1 C.B. 107.

Accordingly, based on the facts presented and the representations made, it is concluded that:

Partnership is granted permission to elect out of the installment method with respect to the sale of its assets reported on its Year x federal income tax return.

No opinion is expressed as to the value of the installment obligations. No opinion is expressed as to the tax treatment of the transaction under the provisions of any other sections of the Code and regulations which may be applicable thereto, or the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions which are not specifically covered by the above ruling.

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.

Pursuant to the power of attorney on file with this office a copy of this ruling has been sent to the first and second representatives designated on the power of attorney.

Sincerely yours,

Assistant Chief Counsel
(Income Tax & Accounting)

By David L. Crawford
David L. Crawford
Chief, Branch 5