Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

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Legend:

DO:

Taxpayers =

Property X =

r =

s =

t =

Date 1 =

Year 1 =

Year 2 =

Accounting Firm =

Accountant 1 =

Dear :

This letter is in response to a request on behalf of Taxpayers for a private letter ruling granting permission to revoke an election out of the installment method pursuant to § 453(d) of the Internal Revenue Code.

FACTS

Husband Taxpayer (Taxpayer) is an individual using the cash method of accounting. Taxpayer owned Property X. Taxpayer secured a purchaser for Property X in Year 1. On Date 1, Taxpayer sold Property X for a selling price of $r. Taxpayer received $s on the date of sale. Taxpayer was entitled to a payment of $t in Year 2 and additional amounts in subsequent years.

Taxpayer retained Accounting Firm to prepare the Year 1 federal income tax return. Taxpayer provided Accounting Firm with a copy of the documents pertaining to the sale of Property X. Accountant 1, who worked with Taxpayer in preparing the return, erroneously concluded that the installment sale provisions did not apply. The return was prepared reporting all of the gain on the Year 1 return. Accounting Firm represents that the applicability of the installment method was not considered by any of the other accountants who reviewed or signed the Year 1 return. Taxpayers signed the return, inadvertently making the election out of the installment method on the timely filed Year 1 return.

Subsequently, another member of Accounting Firm reviewed Taxpayers' Year 1 return and realized that the installment method should have been used for the sale. Within a reasonable time of the discovery of the mistake, Accounting Firm prepared the request for permission to revoke the election out of the installment method for the sale. Taxpayers represent that there was no intention on their part to elect out of the installment method. Taxpayers also represent that the request for a change is not due to hindsight on their part. Taxpayers' request was within a reasonable time and in accordance with the applicable administrative procedures for requesting a private letter ruling.

LAW AND ANALYSIS

Section 453(a) of the Code provides that, generally, a taxpayer shall report income from an installment sale under the installment method. 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 15A.453-1(b)(3) (i) of the temporary Income Tax Regulations defines payment to include amounts actually or constructively received in the taxable year under an installment obligation.

Pursuant to § 453(d)(1) of the Code and § 15A.453-1 (d)(1) of the temporary Income Tax Regulations, a taxpayer may elect out of the installment method in accordance with the manner prescribed by regulations. Under § 1.453-1(d)(3) of the Income Tax Regulations, a taxpayer who reports an amount realized equal to the selling price including the full face amount of any installment obligation on a timely tax

return filed for the taxable year in which the installment sale occurs is considered to have elected out of using the installment method.

Except as otherwise provided in regulations, § 453(d)(2) requires a taxpayer who desires to elect out of the installment method for a qualifying sale to do so on or before the due date (including extensions) for the taxpayer's federal income tax return for the taxable year of the sale. Pursuant to § 15A.453-1(d)(4) of the temporary regulations, generally, an election under § 453 (d)(1) is irrevocable and such an election is revocable only with the consent of the Internal Revenue Service. A revocation of an election out of the installment method is retroactive and will not be permitted when one of its purposes is the avoidance of federal income taxes. Temp. Treas. Reg. § 15A.453-1(d)(4).

In the instant case Taxpayer supplied Accounting Firm with documents containing information sufficient to indicate the possible application of installment sale reporting for gain from the sale at issue. Accounting Firm did not use the installment method to report the gain because of Accountant 1's failure to recognize that at least one payment would be received by Taxpayer after the year of disposition. Accountant 1 did not recognize the installment method was available and did not advise Taxpayer to report the gains using the installment method. At no time prior to the filing of the Year 1 return did Accountant 1 or any other employee of Accounting Firm discuss use of the installment method with Taxpayer. The information submitted indicates that Taxpayers' desire to revoke the election is due to Accountant 1's error and not hindsight by Taxpayers. Taxpayers' inadvertent election out was made in reliance upon the accountant's advice and with the expectation that their liability was being minimized to the extent allowable by law. As soon as Accounting Firm became aware of the oversight, Taxpayers were advised to file a request to revoke the election out. Accordingly, based on a careful consideration of all the information submitted and representations made, Taxpayers may revoke the election out of the installment method of reporting under § 453(d)(3).

Permission to revoke the election out of installment method reporting for the sale is granted for the period that ends 75 days after the date of this letter. To revoke the election out of the installment method for the sale at issue, Taxpayers must file an amended federal income tax return for the taxable year of the sale and any previously filed return on which a portion of the gain from the sale is reportable under the installment method. A copy of this letter must be attached to the amended returns.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. No opinion is expressed regarding the amount of gain realized on the sale of Property X, including whether the gain qualifies for the installment method under § 453 of the Code. No opinion is expressed as to the tax treatment of the transaction under any other provisions of the Code and regulations

that may be applicable thereto, or the tax treatment of any conditions existing at the time of, or effects resulting from the transaction which are not specifically covered by the above ruling.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. In accordance with the provisions of a power of attorney currently on file with this office, we are sending a copy of this letter ruling to the taxpayers' authorized representative.

Sincerely,

/s/ J. Charles Strickland

J. Charles Strickland
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)