Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

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TIN:

Dear

This is in response to your April 9, 2002, letter requesting permission under I.R.C. § 453(d)(3) and Treas. Reg. § 15A.453-1(d)(4) to revoke the election out of the installment method for a certain sale during the tax year.

During , you (taxpayer) sold your professional practice to an unrelated corporation for cash and stock in that corporation. The cash portion was received upon execution of the agreement. The stock portion was to be received in a subsequent year, 2003, or in an earlier year if certain conditions occurred (i.e, a public offering of the stock of the corporation). Those conditions were not met and the stock portion "payment" was, as yet, still outstanding at the time of this ruling request.

Taxpayer consulted with a certified public accountant during the sale negotiations and the sale was purportedly purposefully structured as an installment sale. The sale agreement is labeled "Installment Sale Agreement." As stated in the ruling request, the taxpayer "desired, understood and expected" that the transaction would be treated as an installment sale and relied upon the accountant to report it as such. The accountant, however, prepared the return reporting the entire sale proceeds–including the future stock payment–on the tax return. The taxpayer, relying upon the accountant, signed and filed the return without realizing this fact. When the taxpayer subsequently switched accountants, the new accountants reviewed prior returns and found the error. The taxpayer subsequently submitted this ruling request.

Section 453(a) requires that income from an installment sale, except as otherwise provided, shall be taken into account under the installment method. Section 453(b)(1) provides that an installment sale is a disposition of property where at least one payment thereon is received after the close of the taxable year in which the disposition occurred.

Section 453(d)(1) provides that if the taxpayer elects not to have the installment method apply, the installment method shall not apply.

Pursuant to section 453(d)(1) of the Code and section 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 section 15A.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, section 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 section 15A.453-1(d)(4) of the temporary regulations, generally, an election under paragraph (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. A revocation of an election out 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 the present case, the taxpayer's representations indicate it was always taxpayer's intent to use the installment method for reporting the gain from the sale. Further, the facts indicate the election out of the installment method here was inadvertent and unintended and the result of the original accountant's erroneous preparation of the taxpayer's income tax return.

Accordingly, based upon the facts presented and the representations made, the taxpayer is permitted to revoke the election out of the installment method for the sale of taxpayer's professional practice for the year in issue.

Permission to revoke the election out of installment method reporting for the sale at issue 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 taxpayer 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.

No opinion is expressed as to the tax treatment of the transaction under the provisions of any other sections of the Internal Revenue Code or regulations which 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 the above ruling.

In accordance with the provisions of a power of attorney currently on file, we are also sending a copy of this letter ruling to the taxpayer's authorized representative.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Sincerely,

_____

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

cc: