Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
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In Re:

Date:
December 21, 2007

Taxpayer =
EIN:

Area =

X =

City =

State =

Property =

Year 1 =

Year 2 =

Year 3 =

Y =

Dear :

This is in reply to Taxpayer's letter of September 4, 2007, requesting permission retroactively to revoke an inadvertent election out of the installment method. The ruling was requested under § 453(d)(3) of the Internal Revenue Code (Code) and § 15a.453-1(d)(4) of the Income Tax Regulations (Regulations). Taxpayer submitted additional information and amended its ruling request on November 26, 2007.

FACTS:

The facts as represented by Taxpayer are as follows.

Taxpayer is a limited liability company that is treated as a partnership for federal income tax purposes. Taxpayer uses the calendar year as its taxable year and reports its income under the accrual method of accounting.

Taxpayer is engaged in the business of developing Area near X in City, State. In the ordinary course of its business, Taxpayer sells Property in Area to its customers. Taxpayer began selling Property in Year 1, but the sale escrows did not close until Year 2.

Nearly all (Y percent) of Taxpayer's customers purchase Property using installment payment contracts. Taxpayer timely filed its Year 2 return in Year 3. Taxpayer represents that at all times it intended to use the installment sale method of reporting gain on its sales of Property. However, Taxpayer in fact reported the entire selling price of its various installment sales of Property on its Year 2 return. By doing so, Taxpayer elected out of the installment method for Year 2.

Taxpayer represents that its election out for Year 2 was inadvertent. Taxpayer has submitted affidavits indicating that although Taxpayer instructed its accountant to report the gain from the sales on the installment method, Taxpayer's return for Year 2 was mistakenly prepared and filed reporting the entire gain from the sales. Upon discovering the error, Taxpayer acted promptly in requesting permission retroactively to revoke its election out of the installment method.

LAW AND ANALYSIS:

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

Based on the facts as represented, we have determined that Taxpayer intended from the outset to use the installment method and that its election on its original Year 2 return was inadvertent. We also have determined that Taxpayer's request to revoke its election out does not involve hindsight or tax avoidance. Taxpayer has established good cause for being permitted retroactively to revoke its election out of the installment method, and Year 2 has not closed.

CONCLUSION:

Accordingly, based solely on the facts presented, the representations made, and the applicable law, Taxpayer is granted permission retroactively to revoke its election out the installment method for Taxpayer's Year 2 return. This permission is conditioned on the IRS receiving from Taxpayer an amended federal income tax return for Year 2 reporting gain from Taxpayer's sales of Property during Year 2 on the installment method.

CAVEATS:

The rulings contained in this letter are based upon information and representations made by Taxpayer and several individuals under penalties of perjury.

Although this office has not verified any of the material submitted or facts assumed in support of the request for ruling, it is subject to verification on examination.

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.

This ruling is directly only to the taxpayer requesting it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
(Income Tax & Accounting)

By: _____
Donna Welsh
Senior Technician Reviewer, Branch 4

Enclosure:
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