Internal Revenue Service

Number: **200937013**
Release Date: 9/11/2009

Index Number: 453.00-00, 453.08-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-151713-08
Date:
June 08, 2009

LEGEND

Taxpayer	=
Date 1	=
Date 2	=
Year 1	=
Purchaser	=
Subsidiary	=
Date 3	=
Representative	=

Dear :

This is in reply to your letter requesting permission retroactively to revoke an election out of the installment method pursuant to § 453(d)(3) of the Internal Revenue Code and §15A.453-1(d)(4) of the Temporary Income Tax Regulations.

FACTS

Taxpayer is an S corporation and reports its income under the accrual method of accounting and uses the calendar year as its taxable year. However, as a result of a sale transaction, the Taxpayer had a short taxable year that began on Date 1 and ended on Date 2. This ruling is requested for the short taxable year, Year 1.

The shareholders of Taxpayer agreed to sell all of their stock in Taxpayer to Purchaser. Purchaser created Subsidiary solely for purposes of this transaction. Subsidiary merged into Taxpayer, with Taxpayer as the surviving corporation. The Purchaser and Taxpayer's shareholders made an election under § 338(h)(10) to treat the transaction as a deemed sale of assets.

The sale was completed on Date 2, and the shareholders received a promissory note, a right to a contingent payment, and a right to a future payment tied to certain specified performance objectives. All principal and interest accrued but unpaid was due and payable on Date 3.

Taxpayer engaged Representative to prepare the final return of the Taxpayer for Year 1. The S corporation return of Taxpayer reported the entire amount of gain from the deemed sale of the assets, effectively electing out of the installment method. The gain was computed by including the entire amount of the promissory note in the amount realized.

Representative prepared the original return without the use of the installment method because Representative was unaware of the full details of the terms of the acquisition or the consideration provided by the Purchaser. The parties had intended to use the installment sale method because certain consideration was contingent and other consideration was deferred. However, Representative filed the original return based on an incomplete and inaccurate understanding of the relevant facts as a result of a miscommunication between the parties.

Shortly, after becoming aware of the error, Representative filed a superseding return for Year 1, the short taxable year, and used the installment method to report any corporate-level gain from the deemed sale of assets. To guard against the possibility that the Internal Revenue Service would not accept the superseding return as the original return, Representative requested this ruling.

Taxpayer has represented that (i) the revocation of the election out of the installment method does not have as one of its purposes the avoidance of federal income taxes and (ii) no taxable year of the Taxpayer or any shareholder of the Taxpayer in which any payment was received is closed to assessment or collection pursuant to § 6501(a).

LAW AND ANALYSIS

Section 453(a) of the Code provides that a taxpayer shall report income from an installment sale under the installment method. Section 453(b)(1) 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 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.

In this case, Taxpayer's Representative did not prepare Taxpayer's Year 1 federal income tax return in accordance with Taxpayer's intention to report the deemed sale of assets under the installment method. The Representative inadvertently prepared the Year 1 return reporting all the gain from the deemed asset sale in that year. As soon as Taxpayer became aware of this oversight, Taxpayer filed a request for consent to revoke the election out of the installment method. The request to revoke the election does not involve hindsight or a purpose of avoiding federal income taxes.

CONCLUSION

Accordingly, based on the information submitted and the representations made, Taxpayer is granted permission to revoke its election out of the installment method for the Year 1 deemed sale of assets.

Permission to revoke the election out of the installment method for the Year 1 deemed sale of assets is granted. If the Internal Revenue Service does not accept Taxpayer's superseding return, Taxpayer must file an amended federal income tax return for Year 1 and any other previously filed returns on which a portion of the gain from the sale is reportable under the installment method. A copy of this letter ruling must be attached to each of the amended returns.

CAVEATS

Except as expressly provided in the preceding paragraph, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning Taxpayer's eligibility to use the installment method under § 453 and the

regulations thereunder and the amount of gain on the deemed sale of assets reported on the installment method.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

You must attach a copy of this letter to any income tax return to which it is relevant. If you file your returns electronically, you may satisfy this requirement by attaching a statement to the returns that provide the date and the control number of this letter ruling.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Donna Welsh
Senior Technician Reviewer, Branch 4
(Income Tax & Accounting)

cc: