Internal Revenue Service

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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-134321-14

Date:
March 11, 2015

In re:

LEGEND

S Corp =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =
CPA =
V =
x =
y =
z =

Dear :

This is in reply to a letter submitted by your authorized representative requesting a ruling on your behalf under § 453(d)(1) of the Internal Revenue Code and § 15a.453-1(d)(3)(ii) of the Temporary Regulations under the Installment Sales Revision Act of 1981. You are requesting permission to make a late election out of the installment method for the sale of S Corp stock.

FACTS

In Year 1, you incorporated your business as an S corporation and owned x percent of the company stock. S Corp was engaged in business as a V. You use the cash method of accounting and your annual accounting period is the calendar year. In Year 2, you sold your S Corp stock for a share of a $y Down Payment and contingent payment obligations (earn-out payments) to be received in Years 4, 5, 6 and 7.

On several occasions in Year 2 and Year 3, prior to filing your Year 2 Form 1040, you had tax planning and tax return preparation conversations with CPA. Many of these conversations dealt with the tax reporting of the sale of the stock. During these conversations, CPA explained to you the pros and cons of using the installment method to report the gain on the sale of your stock. Because of concerns about increased tax rates on the dates of the earn-out payments, you informed CPA that you did not want to use the installment method to report gain on the sale of the S Corp stock.

You understood that you were required to report the total amount of recognized gain from the sale of the stock on the Year 2 Form 1040 to effectively elect out of the installment method. CPA misinformed you on the correct way to elect out of the installment method. He advised you to report the recognized gain from the Down Payment in Year 2, and after receipt of the first earn-out payment in Year 4, to amend the Year 2 Form 1040 to report the total amount of recognized gain on the sale of the stock, including all future earn-out payments.[1] You followed CPA's advice that you would effectively elect out of the installment method by initially reporting the Down Payment on Schedule D instead of Form 6252, *Installment Sale Income*, on your original Year 2 Form 1040.

After you received the first earn-out payment in Year 4, and while CPA was preparing an amended return for Year 2, CPA realized that he misinformed you on the correct way to effectively elect out of the installment method and that you would need a favorable private letter ruling to effectively elect out of the installment method. Shortly thereafter, you hired an appraiser to determine the fair market value of the contingent payment obligations on the date of sale. After the appraisal was completed, preparation of this ruling request commenced. Before filing this request for a private letter ruling, pursuant to your CPA's advice to stop the running of statutory interest, you filed your Year 2 Form 1040X in Year 5 to report the total amount of recognized gain on the sale of the stock. You and CPA have submitted affidavits consistent with the above facts.

LAW AND ANALYSIS

Section 453(a) 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

[1] The correct way to elect out of an installment method that includes contingent payment obligations is to report in the year of sale the amount realized as provided in § 1.1001-1(g) of the Income Tax Regulations. *See* § 1.1001-1(g)(3).

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 only 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) provides that the 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. A cash method taxpayer receiving an obligation with a fair market value that is less than the face value must make the election as provided in the appropriate instructions for the return filed for the taxable year of the sale.

Under § 15a.453-1(d)(3)(ii), elections after the due date prescribed by law (including extensions) for filing the taxpayer's return 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.

Based on your representations and the affidavits, you have shown that you always intended to elect out of the installment method for the sale of the S Corp stock. Further, you promptly filed this ruling request after you realized that an effective election out had mistakenly not been made. We have determined that your request for an extension of time to make the election out of the installment method does not involve hindsight and that you have established good cause for an extension to file an election. *See Situation 3* of Rev. Rul. 90-46, 1990-1 C.B. 107.

CONCLUSION

Accordingly, based on the facts presented, the representations made, and provided that your basis in the S Corp stock was $z, we grant you an extension to elect out of the installment method for the sale of your S Corp stock, and conclude that you effected that election when you filed your amended Year 2 Form 1040 in Year 5.

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. For example, we do not express any opinion concerning whether you properly computed the amount realized or the gain required to be recognized on the sale of the S Corp stock.

You must attach a copy of this letter to any federal tax return to which it is relevant. If you file the amended returns electronically, you may satisfy this requirement by

attaching a statement to each of the amended returns that provides the date and 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.

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 request for rulings, it is subject to verification on examination.

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

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: