Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

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Date:
April 22, 2015

LEGEND

Taxpayer =
Year 1 =
Year 3 =
Year 2 =

Dear :

This letter responds to your request for a private letter ruling dated , requesting that the Taxpayer be permitted, pursuant to § 453(d)(1) of the Internal Revenue Code and § 15A.453-1(d)(3)(ii) of the Temporary Income Tax Regulations, to make a late election out of the installment method.

FACTS

Prior to the sale in December of Year 1, Taxpayer was an S corporation owned by a number of individual shareholders. Taxpayer used an accrual method of accounting. Taxpayer was acquired in a stock sale transaction, treated as an asset sale under § 338(h)(10), and is now a subsidiary of the acquiring corporation.

Under the sales agreement, the acquiring corporation paid no funds in Year 1, but agreed to pay a significant amount of the funds two years later, in Year 3, with the final amount to be held in escrow until later years. Thus, the stock sale was an "installment sale" under § 453 because, under the terms of the sales agreement, at least one payment was to be received after the end of Year 1.

In Year 2, Taxpayer's accountant completed and timely filed Taxpayer's Year 1 federal return, Form 1120S, and the related Forms 1040 for the shareholders. After the sale of Taxpayer, but prior to the due date of Taxpayer's and the shareholders' Year 1 tax returns, there was a change in the tax law that increased the tax rate for capital gains reported in taxable years after Year 1. The accountant, however, did not advise Taxpayer or its shareholders prior to the due date for filing the returns that Taxpayer could elect not to report the stock sale on the installment method, nor did the accountant advise that the tax law had changed.

An affidavit was provided by the president and chief executive officer of Taxpayer, who was also one of the owners of Taxpayer prior to its sale. In the affidavit, he indicated that Taxpayer would have elected out of the installment method under § 453 if it had known that it could, given the tax impact reporting under the installment method has on Taxpayer, and on him and the other shareholders. An affidavit was also provided by the accountant who completed and filed the Year 1 Form 1120S and the related Forms 1040 for the shareholders, putting them on the installment method. The accountant states that she did not inform Taxpayer that it could elect out of the installment method so that the increased tax rate on capital gains resulting from the change in the tax law would not apply to Taxpayer's stock sale. The accountant also states that she did not discuss with any shareholder the option to elect out of reporting the sale transaction as an installment sale.

LAW AND ANALYSIS

Section 453(a) 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 453(d)(1) provides that the installment method shall not apply to any sale if the taxpayer elects not to have the installment method apply to the sale. Section 453(d)(2) provides that, except as otherwise provided by regulations, an election out of the installment method may be made only on or before the due date prescribed by law (including extensions) for filing the taxpayer's return for the taxable year of the sale.

Section 15A.453-1(d)(1) of the temporary regulations provides that an installment sale is to be reported on the installment method unless a taxpayer elects otherwise in accordance to the rules in § 15A.453-1(d)(3). Section 15A.453-1(d)(3)(i) provides that a taxpayer who reports an amount realized equal to the selling price, including the full face amount of an installment obligation, on a timely filed tax return for the taxable year in which the installment sale occurs is considered to have elected out of the installment method.

Section 15A.453-1(d)(3)(ii) provides that an election made after the time specified in paragraph (d)(3)(i) will be permitted only in those rare circumstances when the Service concludes that the taxpayer had good cause for falling to make a timely election.

In the instant case, the information submitted indicates that Taxpayer would have elected out of the installment method if it had known that the option was available and that the change in tax law prior to the due date of Taxpayer's Year 1 return would have made this option advantageous to Taxpayer. Taxpayer was thwarted by a mistake, the failure of its accountant to inform and discuss the option to elect out of the installment method.

CONCLUSION

Based on careful consideration of all of the information submitted and the representations made, approval is granted for Taxpayer to make a late election out of the installment method for the Year 1 installment sale of the business

Permission to make a late election out of the installment method for the Year 1 sale of Taxpayer is granted for the period that ends 75 days after the date of this letter. In order to elect out of the installment method, Taxpayer must file an amended federal income tax return for Year 1 and report the full amount realized on the sale in Year 1 (Taxpayer must also amend any other previously filed returns that report the amount realized on the installment method). Similarly, the shareholders of Taxpayer must amend their Year 1 federal returns and each must report the proper share of the amount realized on the sale on each individual's Year 1 federal return (and amend any other year's previously filed return that is now inconsistent with the election out of the installment method). A copy of this letter ruling must be attached to each of the amended returns. 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.

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, including the computation of gain to be reported under the installment method.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 representative.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayers and their accountant and accompanied by a penalty of perjury statement executed by appropriate parties. 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.

Sincerely,

William A. Jackson
Branch Chief, Branch 5
(Income Tax & Accounting)

cc: