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-100909-15

Date:
June 25, 2015

In re:

LEGEND

Corp	=
Buyer	=
Year 1	=
Year 2	=
$w	=
$y	=
$z	=
Accounting Firm	=
CPA	=

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 Corp stock.

FACTS

You report income under the cash basis method of accounting and use the calendar year as your taxable year. You owned 100 percent of the stock of Corp, a non-

publically traded company. In Year 1, you sold all of the stock of Corp to Buyer, an unrelated party. The agreement called for you to receive a down payment of $w and a secured promissory note of $y. The promissory note called for ten monthly payments of $z. All of the installment payments were due in Year 2.

For several years prior to the Year 1 sale, you had been using Accounting Firm to prepare both personal and corporate income tax returns. You relied on Accounting Firm to provide you with proper guidance regarding U.S. tax laws for which you did not have an expertise.

In Year 1, after the sale closed, you promptly notified Accounting Firm of the terms of the stock sale, which included submitting the Stock Purchase and Sale Agreement to Accounting Firm. Based on the information that you submitted, Accounting Firm knew or should have known that all of the installment payments were due in Year 2. You and members of Accounting Firm had various discussions relating to the stock sale and you were not informed of the option to elect out of the installment method and report the entire gain on the sale in Year 1. Because of concerns about increased tax rates, if you had known of the option to elect out of the installment method, you would have made the election.

In Year 1, CPA, a member of Accounting Firm, who was aware of increased tax rates in Year 2, prepared your joint Form 1040 *Individual Income Tax Return* reporting income from the stock sale on Form 6252, *Installment Sale of Income*, which resulted in only reporting income on the cash down payment received in Year 1. In Year 2, you decided to change accounting firms and were informed by the new firm that an election out of the installment method was available. Shortly thereafter, your authorized representative filed this ruling request. 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 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.

Under Rev. Rul. 90-46, 1990-1 C.B. 107*, Situation 1*, the Internal Revenue Service does not consider a subsequent change in circumstances or law to be a good cause for failing to make a timely election out of the installment method. However, in this case, the increase in tax rates became effective prior to the date your return was prepared and filed for Year 1. The CPA, who knew of the tax rate increase, failed to inform you of the option to elect out of the installment method.

Based on your representations and the affidavits, you have shown that had CPA informed you of the election out of installment method reporting, you would have elected out of the installment method for the Corp stock sale. Further, you promptly filed this ruling request after you realized that an election out had inadvertently 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.

CONCLUSION

Accordingly, based on the facts presented and the representations made, we grant you an extension to elect out of the installment method for the sale of your Corp stock. To make the election out you must file (i) an amended return for Year 1 for the full amount realized on the sale of your stock in Corp as provided in § 1.1001-1(g) of the Income Tax Regulations and (ii) and amended return for Year 2, if necessary, reporting $0 as the amount realized in that year. You must file these amended returns within the earlier of 75 days of the date of this letter or the date upon which the statutory period for filing such amended return would end.

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 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 representative.

Sincerely,

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