Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:IT4 - PLR-130734
Date:
November 18, 2002

Legend:

A =

B =

Z =

Year 1 =

$x =

$z =

d =

e =

Dear :

This responds to your request for a private letter ruling, dated May 14, 2002, and supplemental correspondence dated September 12, 2002, requesting permission to revoke an election out of the installment method for the sale of certain property under § 453(d)(3) of the Internal Revenue Code and § 15a.453-1(d)(4) of the Income Tax Regulations.

FACTS:

A is engaged in several real property rental activities. In Year 1, A sold Z, consisting of

real property, to B, an unrelated third party, for $x. The consideration included a seller-financed installment note for $x. The note provided for monthly installments comprised of $z principal at the rate of d percent interest per annum to be paid over e years, with all remaining principal and accrued interest payable in full at the end of that period.

A represents the following: A intended that the gain from the sale of Z be reported on the installment method and instructed his tax accountant that A wanted to pay the lowest amount of tax possible. Contrary to A's intent, his accountant reported the entire gain from the sale of Z on A's timely-filed federal income tax return for Year 1. The installment note was included in the documents A furnished to his accountant, but the accountant overlooked it. A has always reported the gain from the sales of rental properties on the installment method, and gain from two other sales made in years prior to Year 1 were reflected in the return for Year 1. Upon preparing A's federal income tax for the year following Year 1, A's accountant became aware that A had received principal and interest payments relating to Z during Year 1. After re-examining the Year 1 settlement statement for Z, the accountant realized its error in not reporting the sale on the installment method. The request to revoke the election was filed shortly after the error was discovered.

LAW AND ANALYSIS:

Under § 453(a), except as otherwise provided in § 453, income from an installment sale shall be taken into account under the installment method. Section 453(d)(1) provides, in general, that subsection (a) shall not apply to any disposition if the taxpayer elects to have subsection (a) not apply to such disposition. Section 453(d)(2) provides that, except as otherwise provided by regulations, an election under § 453(d)(1) 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 the tax imposed by this chapter for the taxable year in which the disposition occurs. Section 453(d)(3) provides that an election under § 453(d)(1) with respect to any disposition may be revoked only with the consent of the Secretary.

Section 15a.453-1(d)(1) provides that an installment sale is to be reported on the installment method unless the taxpayer elects otherwise in accordance with the rules set forth in § 15a.453-1(d)(3). Section 15a.453-1(d)(3)(i) provides that an election under § 15a.453-1(d)(1) must be made on or before the due date prescribed by law (including extensions) for filing the taxpayer's return for the taxable year in which the installment sale occurs.

Section 15a.453-1(d)(4)provides, in part, that an election made under §15a.453-1(d)(1) is generally irrevocable. An election may be revoked only with the permission of the Internal Revenue Service. A revocation is retroactive. A revocation will not be permitted if one of its purposes is the avoidance of federal income taxes, or when the taxable year in which any payment was received has closed.

CONCLUSION:

A's representations indicate that it was always the intent of the A to report the gain from the sale of Z on the installment method and that the election out was the result of the accountant's erroneous preparation of A's income tax return. Accordingly, based on the facts presented , including the representations made, we conclude that A will be permitted, under § 15a.453-1(d)(4) to revoke his election out of the installment method for the sale of Z.

CAVEATS:

A copy of this letter must be attached to any income tax return to which it is relevant. We have enclosed a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter. This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Robert A. Berkovsky
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)