Internal Revenue Service

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Department of the Treasury

Person to Contact:

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Refer Reply To:
CC:ITA:4 – PLR-134399-02

Date:
January 14, 2003

Legend

H	=
W	=
CorpA	=
Q	=
$r	=
Date 1	=
Year 1	=
Accounting Firm	=

Dear :

This letter is in response to a request on behalf of H and W for a private letter ruling granting permission to revoke an election out of the installment method pursuant to § 453(d) of the Internal Revenue Code.

FACTS

H and W are married individual taxpayers on the cash method of accounting who filed their federal income tax return jointly in Year 1. (Hereinafter the term “Taxpayers” will be used when reference is made to H and W jointly). Prior to Date 1 of Year 1, H owned Q shares of CorpA stock (hereinafter “Stock”). Stock was not publicly traded and was subject to substantial restrictions on sale.

On Date 1 of Year 1, H sold Stock for $r. Taxpayers represent that they received no cash on the date of the sale and that payments for Stock were to be received in years subsequent to Year 1.

Taxpayers retained Accounting Firm to prepare the Year 1 return and provided it with a copy of the documents pertaining to the sale of Stock. The return reported all of the gain from the sale in Year 1. Accounting Firm represents that the applicability of the installment method was not considered by any of the accountants who reviewed or signed the Year 1 return. Taxpayers signed the return, inadvertently electing out of the installment method on the timely filed Year 1 return.

Subsequently, an Accounting Firm accountant reviewed Taxpayers' Year 1 return and determined that Taxpayers could have reported gain from the sale of Stock using the installment method. Within a reasonable time after discovering the mistake, Accounting Firm prepared the request for permission to revoke the election out of the installment method for the sale. Taxpayers represent that there was no intention on their part to elect out of the installment method. Taxpayers also represent that the request for a change is not due to hindsight on their part. Taxpayers' request was within a reasonable time and in accordance with the applicable administrative procedures for requesting a private letter ruling.

LAW AND ANALYSIS

Section 453(a) of the Code 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.

Pursuant to § 453(d)(1) of the Code and § 15a.453-1 (d)(1) of the Temporary Income Tax Regulations, a taxpayer may elect out of the installment method in accordance with the manner prescribed by regulations. Under § 15a.453-1(d)(3), a taxpayer who reports an amount realized equal to the selling price, including the full face amount of any installment obligation, on a timely tax return filed for the taxable year in which the installment sale occurs will be considered to have elected out of using the installment method.

Except as otherwise provided in regulations, § 453(d)(2) requires a taxpayer who desires to elect out of the installment method for a qualifying sale to do so on or before the due date (including extensions) for the taxpayer's return for the taxable year of the sale. Pursuant to § 15a.453-1(d)(4), generally, an election under § 453 (d)(1) is irrevocable and such an election is revocable only with the consent of the Internal Revenue Service. Also, a revocation of an election out of the installment method is retroactive and will not be permitted when one of its purposes is the avoidance of federal income taxes. *See* § 15a.453-1(d)(4).

In connection with the preparation of the Year 1 return, Taxpayers supplied Accounting Firm with documents containing information sufficient to indicate the possible application of installment method reporting for gain from the sale at issue. At no time prior to the filing of the Year 1 return did Accounting Firm discuss use of the installment method with Taxpayer. The information submitted indicates that Taxpayers' desire to revoke the election is due to Accounting Firm's error and not hindsight by Taxpayers or for tax avoidance purposes. Taxpayers' inadvertent election out was made in reliance upon Accounting Firm's advice and with the expectation that their liability was being minimized to the extent allowable by law. As soon as Accounting Firm became aware of the oversight, Taxpayers were advised to file a request to revoke the election out. Accordingly, based on a careful consideration of all the information submitted and representations made, Taxpayers may revoke the election out of the installment method of reporting under § 453(d)(3).

Permission to revoke the election out of installment method reporting for the sale is granted for the period that ends 75 days after the date of this letter. To revoke the election out of the installment method for the sale at issue, Taxpayers must file an amended return for the taxable year of the sale and any previously filed return on which a portion of the gain from the sale is reportable under the installment method. A copy of this letter must be attached to the amended returns.

The ruling contained in this letter is based upon information and representations submitted by Taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. No opinion is expressed regarding the amount of gain realized on the sale of Stock. Further, we have made no determination regarding whether, as represented by the Taxpayers, the sale of Stock is a sale that may be accounted for in accordance with the installment method under § 453. In particular, we express no opinion as to whether the sale proceeds were actually or constructively received by Taxpayers in Year 1 or whether Taxpayers' receipt of evidences of indebtedness in Year 1 is considered a payment within the meaning of § 453(f)(3) and § 15a.453-1(b)(3)(i).

In addition, no opinion is expressed as to the tax treatment of the transaction under any provisions of the Code and regulations that may be applicable thereto, or the tax treatment of any conditions existing at the time of, or effects resulting from the transaction, not specifically covered by the above ruling.

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

In accordance with the provisions of a power of attorney currently on file with this office, we are sending a copy of this letter ruling to Taxpayers' authorized representative.

Sincerely,

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