Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:05 – PLR-137109-03
Date: October 15, 2003

Partnership =
Year 1 =
Year 2 =
X =
Z =
Date 1 =
Date 2 =
Accounting Firm =

Dear :

This is in response to a letter dated Date 1, submitted on behalf of Partnership ("Taxpayer") requesting permission under § 453(d)(3) of the Internal Revenue Code and § 15A.453-1(d)(4) of the temporary Income Tax Regulations to revoke the election out of the installment method for a certain sale of real property during the Year 1 taxable year.

FACTS

Taxpayer is a cash basis partnership. In Year 1, Taxpayer sold real property in exchange for X in cash and a note for Z. Taxpayer, under the terms of the note, was entitled to monthly payments of interest and principle and a final payment of all unpaid principal and interest on Date 2.

Accounting Firm was retained to prepare Taxpayer's Year 1 federal income tax return. Taxpayer provided Accounting Firm with a copy of all the documents pertaining to the sale of the real property. According to the information submitted, Accounting Firm

prepared the return inadvertently reporting all of the gain from the sale of real property on Taxpayer's Year 1 return.

Subsequently, Taxpayer's partners reviewed the Year 1 return and after discovering the mistake and consulting with Accounting Firm, Taxpayer in Year 2 prepared this request for permission to revoke the election out of the installment method for the sale. Taxpayer represents that there was no intention on its part to elect out of the installment method. Taxpayer also represents that the request for a change is not due to hindsight.

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.

Section 15A.453-1(b)(3)(i) of the temporary Income Tax Regulations defines payment to include amounts actually or constructively received in the taxable year under an installment obligation.

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 § 1.453-1(d)(3) of the temporary Income Tax Regulations, a taxpayer who reports an amount realized equal to the selling price including the full face amount of any 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 using the installment method.

Except as otherwise provided in the Income Tax Regulations, § 453(d)(2) of the Code requires a taxpayer who desires to elect out of the installment method to do so on or before the due date (including extensions) of the taxpayer's federal income tax return for the taxable year of the sale. Pursuant to § 15A.453- 1(d)(4) of the temporary Income Tax Regulations, generally, an election under § 453(d)(1) of the Code is irrevocable. An election may be revoked only with the consent of the Internal Revenue Service. 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 Temp. Treas. Reg. § 15A.453-1(d)(4).

In the instant case, Taxpayer supplied Accounting Firm with documents indicating application of installment sale reporting for gain from the sale at issue. The Accounting Firm inadvertently prepared the year 1 return reporting all gain from the sale in that year. As soon as Accounting Firm became aware of the oversight, Taxpayer was advised to file a request to revoke the election out of the installment method. The information submitted indicates that Taxpayer's desire to revoke the election is due to

inadvertence rather than hindsight by Taxpayer or a purpose of avoiding federal income taxes.

CONCLUSION

Based on a careful consideration of all the information submitted and representations made, we conclude Taxpayer may revoke the election out of the installment method of reporting under § 453(d)(3) of the Code.

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, Taxpayer must file an amended federal income tax return for the taxable year of the sale and any previously filed returns on which a portion of the gain from the sale is reportable under the installment method. A copy of this letter ruling must be attached to the amended return(s).

The ruling contained in this letter is based upon information and representations submitted by Taxpayer. No opinion is expressed regarding the amount of gain realized on the sale of the real estate or whether the gain qualifies for the installment method under § 453 of the Code. No opinion is expressed as to the tax treatment of the transaction under any other 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 which are not specifically covered by the above 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.

In accordance with the provisions of a power of attorney currently on file with this office, the original of this letter ruling is being sent to Taxpayer's authorized representative and a copy is being sent to Taxpayer.

Sincerely,

J. Charles Strickland
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosures (2):
Copy of this letter
Copy for section 6110 purposes