

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-101724-19

Date:

July 31, 2019

LEGEND

Taxpayer	=
Individual	=
Purchaser	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Year 1	=
Year 4	=
\$u	=
\$v	=
\$w	=
\$x	=
Certified Public Accountant	=
Accounting Firm	=
Return Preparer	=
Representative	=

Dear :

This is in reply to a letter dated January 28, 2019, submitted by your authorized representative requesting a ruling on Taxpayer's behalf under § 453 of the Internal Revenue Code that it did not elect out of the installment method pursuant to § 15a.453-1(d)(3) of the Temporary Income Tax Regulations.

FACTS

Taxpayer is an S corporation, wholly owned by Individual, that uses an accrual method of accounting and whose taxable year is a calendar year. On Date 1, Taxpayer entered

into an Asset Purchase Agreement (Agreement) to sell all of its assets to Purchaser, an unrelated third party. The selling price for the assets was \$u payable to Taxpayer as follows: \$v due at closing and the balance in 12 equal quarterly payments of \$w commencing on Date 2 in Year 1 and concluding in Year 4. Taxpayer received the sum of \$v at closing. However, the Purchaser defaulted on the Agreement and has not made any of the quarterly payments to date. On Date 3, Taxpayer and Individual commenced a legal action against Purchaser for the unpaid amounts. As of the date of this letter, this legal action is still pending.

Taxpayer engaged Certified Public Accountant, who retained Return Preparer to prepare Form 1120S for the tax year prior to the year of sale. Certified Public Accountant died prior to filing Taxpayer's final return Form 1120S for Year 1, the year of sale. Taxpayer retained Return Preparer to prepare its final return Form 1120S for Year 1, which was filed on Date 4. When it came time to prepare Individual's Year 1 Form 1040, Return Preparer could not be located and Individual retained Accounting Firm to prepare the return.

Accounting Firm noticed that there were errors on Taxpayer's final return Form 1120S for Year 1 and on the related Form K-1. Taxpayer's Form 1120S did not properly report the installment sale on Form 6252, however, Return Preparer did not report the full amount realized of \$u, nor the full face amount of the installment obligation, reporting only \$x on the tax return for Year 1. Additionally, there were posting errors incidental to the reporting of the installment sale.

Taxpayer and Individual are concerned that the errors on the Form 1120S could be misconstrued as an election out of the installment method. On Form 1040 for Year 1, Individual attached Form 8275 *Disclosure Statement* informing the Internal Revenue Service of the reporting and computational errors on Form 1120S and Individual's use of the installment method on Form 1040.

Individual represents that she intended to report the gain realized from the sale using the installment method under § 453. Return Preparer has represented that there was no intention to elect out of the installment method under § 453 and that he was under the impression that he reported only the proceeds received in Year 1 on the Form 1120S. Shortly after Individual was informed of the reporting errors, Individual hired Representative to submit this request that Taxpayer had not elected out of the installment method for its sale in Year 1.

LAW AND ANALYSIS

Section 453(a) of the Code provides that a taxpayer shall report income from an installment sale under the installment method. Section 453(b)(1) 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(c) provides that, for the purposes of § 453, the term “installment method” means a method under which the income recognized for any taxable year from a disposition is that proportion of the payments received in that year which the gross profit (realized or to be realized when payment is completed) bears to the total contract price.

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)(i) of the regulations provides that an 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 out of the installment method of accounting.

In this case, Individual and Return Preparer represent that they did not intend to elect out of the installment method, and Taxpayer did not report an amount realized equal to the selling price including the full face amount of the installment obligation on the tax return filed for Year 1. Soon after Individual was informed of Return Preparer's error, Individual submitted this request for a ruling that Taxpayer did not elect out of the installment method. In addition, as of the date of this letter, the periods of limitation applicable to Taxpayer's and Individual's Year 1 returns has not closed.

CONCLUSION

Based on the information submitted and the representations made, Taxpayer did not elect out of the installment method with respect to its sale of assets in Year 1.

Accordingly, based on the information submitted and the representations made, Taxpayer and possibly Individual must file amended Federal income tax returns for Year 1 to properly report the gain from the installment method.

If the ruling granted in this letter would have any effect on any amounts reported on Taxpayer's previously filed Federal income tax return or Individual's previously filed Federal income tax return, Taxpayer and Individual must file amended returns for such years to reflect the effect of this ruling within 75 days after the date of this letter. If any amended returns are required, a copy of this letter ruling must be attached to each of the amended returns.

CAVEATS

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 allocation of the selling price among the assets sold and the computation of gain to be reported under the installment method. Thus, we do not express any opinions except that Taxpayer has not elected out of the installment method for Year 1. We further express no opinion regarding whether and to what extent the gain resulting from the sale is eligible for the installment method under § 453. We do not express any opinion on the amount of gain reportable under § 453.

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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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, a copy of this letter is being sent to Representative.

Sincerely,

Angella L. Warren
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: