

## Internal Revenue Service

## Department of the Treasury

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Person to Contact:

Telephone Number:

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September 11, 2000

TY:

### Legend

Taxpayer	=
Property	=
<u>a</u>	=
<u>b</u>	=
<u>c</u>	=
<u>d</u>	=
<u>e</u>	=

Dear :

This letter is in response to a request for a private letter ruling filed on behalf of Taxpayer, concerning the application of section 453(d) of the Internal Revenue Code to the following set of facts.

Taxpayer is a cash basis partnership whose sole asset was Property. In February , Taxpayer sold Property for a total price of a. Buyer paid a deposit of b, and an equal payment at closing, while the remainder of the sales price was financed with a purchase money mortgage, provided by Taxpayer, in the amount of c. The mortgage was to be paid over a course of d years, with interest at e percent.

Taxpayer informed its accountant of the sale of the property, and directed the accountant to compute the gain on the installment method. The accountant, however, through an inadvertent error, reported the entire gain on Taxpayer's short year return, filed on or before June . Taxpayer realized the accountant's error in September , when Taxpayer was calculating its estimated tax payments for that quarter.

Taxpayer represents that there was no intention on the part of Taxpayer to elect out of the installment method. Taxpayer represents that it is not changing its mind, due to hindsight on the part of Taxpayer. Taxpayer has no capital losses for the year in

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question to offset the capital gain. Taxpayer's partners are not attempting to achieve basis step-up for estate or gift tax planning.

#### LAW AND ANALYSIS

Section 453(a) provides that income from an installment sale shall be taken into account under the installment method.

Section 453(d)(1) provides that section 453(a) will not apply to any disposition if the taxpayer elects to not have section 453(a) apply to such disposition.

Section 453(d)(3) provides that an election made with respect to any disposition may be revoked only with the consent of the Secretary.

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

As noted in the regulations, once a taxpayer elects out of the installment method under § 453(d), such an election is irrevocable. A taxpayer will not be permitted to revoke their election out of the installment method merely because they have the benefit of hindsight, which allows them to see that a revocation of an election would be beneficial. Hindsight includes those situations where the taxpayer's change of mind is prompted by changed circumstances, subsequent events, or occurrences beyond the taxpayer's control.

However, there are situations in which the Service will allow a taxpayer to revoke its election out of the installment method. In those situations, the facts reflect that (1) the taxpayer originally intended to report the disposition on the installment method; (2) the taxpayer's request to use the installment method was frustrated by inadvertent errors of third persons; (3) the taxpayer acted diligently in requesting a revocation; and (4) the requested revocation did not prejudice the interest of the government.

In the present case, the facts indicate that Taxpayer's intent was to use the installment method to pay tax on their sale of Property. It was through an inadvertent error by the accountant that Taxpayer recorded the full gain on its short return for 1999. Taxpayer then acted diligently in requesting the revocation by filing its request shortly after the error was discovered. Finally, the requested revocation will not prejudice the interest of the government, since the revocation is not motivated by tax avoidance purposes. Therefore, we conclude that Taxpayer may revoke their election out of the installment method.

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This ruling is directed only to the taxpayer(s) 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.

Sincerely,  
Associate Chief Counsel  
Income Tax & Accounting  
Douglas A. Fahey  
Acting Chief, CC:IT&A:5

cc: