**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:B05
PLR-149130-05
Date:
April 04, 2006

TY:

Legend:

Buyer

Date 1

Date 2

Shareholder(s)

Taxpaye- r

Year 1

U

$v

$w

$x

$y

$z

Dear

This is in reply to your request, submitted on behalf of the Taxpayer, for consent for the revocation of the Taxpayer's election out of the installment method.

On Date 1, the Shareholders of the Taxpayer entered into an agreement to sell their stock in the Taxpayer to Buyer for $x. The Buyer made a cash payment of $y on Date 1 and gave the Shareholders promissory notes in the aggregate amount of $z. The notes have a term of u years and provide for equal semi-annual payments of principal and accrued interest.

It has been represented that a timely section 338(h)(10) election was made to treat the stock sale as a deemed asset sale.

The entire gain from the sale of stock, i.e., the deemed asset sale, was reported on the Taxpayer's return for Year 1. When the Shareholders' returns were being prepared, the effect of the treatment indicated on the Taxpayer's return became evident. Shortly thereafter, an amended return for Year 1 reporting the Date 1 sale as an installment sale was filed for the Taxpayer.

The federal income tax return for Year 1 of each Shareholder was filed by Date 2. Each of those returns reflected the Date 1 sale as if it had been properly reported as an installment sale on the Taxpayer's return. Each of the Shareholders reported taxable income between $v and $w for Year 1.

It has been represented that: (i) none of the Shareholders incurred any losses (business, investment, casualty, etc.,) during Year 2; (ii) none of the Shareholders had unrealized losses in Year 2 that did not exist in Year 1 and would exceed $3,000 as of the end of Year 2, (iii) none of the Shareholders held any other installment notes; and, (iv) the Buyer has made timely payment of all required principal and interest payments on the installment note.

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.

Section 453(d)(1) of the Code and section 15a.453-1(d)(1) of the Temporary Regulations provides that a taxpayer may elect out of the installment method in the manner prescribed by the regulations. Section 15a.453-1(d)(3) of the Temporary Regulations provides that a taxpayer who reports an amount realized equal to the selling price including the full face amount of an 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 the installment method. The filing of the original corporate return in the subject circumstances constituted an election out of the installment method. If the amended corporate return in this case was filed after the due date (extended due date) for the corporate return, the revocation of the election out of the installment method without prior consent from the Internal Revenue Service was improper.

Except as otherwise provided in the Regulations, section 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. Section 15a.453-1(d)(4) of the Temporary Regulations provides that an election under section 453(d)(1) of the Code is generally irrevocable. An election may be revoked only with the consent of the Internal Revenue Service. Section 15a.453-1(d)(4) provides that revocation 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.

It has been represented that the parties always intended to report the Date 1 sale on the installment method. As soon as the Shareholders realized that the entire amount of the gain on the Date 1 sale had been reported on the Taxpayer's original return, they took prompt, though improper, action of filing of an amended return for the Taxpayer on the basis as if there had been no election out of the installment method. The Shareholders filed their individual returns for Year 1 on a basis consistent with the amended return of the Taxpayer. A short time after filing their individual returns, the Shareholders submitted this request for a ruling seeking the consent of the Service for the revocation of the Taxpayer's election out of the installment method.

CONCLUSION:

Based on careful consideration of all of the information submitted and the representations made, the Taxpayer is granted consent for the revocation of its election out of the installment method with respect to the Date 1 sale.

Permission to revoke the Taxpayer's election out of the installment method of reporting for the Date 1 sale is granted for the period that ends 75 days after the date of this letter. If the ruling granted in this letter would have any effect on any amounts reported on the Taxpayer's previously filed amended return for Year 1, the Taxpayer must file an amended return for Year 1 to reflect the effect of this ruling. If this ruling would have any effect on any returns previously filed by the Shareholders, the Shareholders must file amended returns for such years to reflect the effect of this ruling. If any amended returns are required, a copy of this letter ruling must be attached to each of the amended return(s).

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 computation of the gain to be reported under the installment method and the extent to which the transaction qualifies for reporting under the installment method.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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 ruling contained in this letter is based upon information and representations, accompanied by a penalty of perjury statement executed by an appropriate party, submitted by the Taxpayer and the Shareholders. This ruling is conditioned upon the accuracy of that information and those representations. The ruling is also conditioned on the Taxpayer and Shareholders having disclosed to the Internal Revenue Service any circumstances known to exist at any time prior to issuance of the ruling that would result in the revocation of the Taxpayer's election out of the installment method facilitating any tax benefits in addition to the tax deferral provided by the installment method. A non-exclusive list of examples of circumstances requiring disclosure include: contemplated use of gain on the installment sale to offset capital losses incurred by the Taxpayer or Shareholders after Year 1 and before the issuance of this ruling; use of gain on the installment sale to offset losses which were known to the Taxpayer or Shareholders but unrealized at the time this ruling was issued; use of the gain on the installment sale to offset losses which were anticipated prior to the issuance of this ruling but realized subsequent to the issuance of the ruling; use of the gain on the

installment sale to facilitate deduction of investment interest expense by Shareholders in a year subsequent to Year 1; etc. 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,

William A. Jackson
Chief, CC:ITA:5
Income Tax and Accounting

Enclosure: Redacted copy of letter

cc