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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to contact:

Telephone Number:

Refer Reply to:
CC:DOM:IT&A:05/PLR-121923-97
Date: NOV 10 1998

Taxpayer:

Individual B:

Property P:

Date u:

Date v:

Date w:

Date x:

Date y:

Date z:

243

c:

d:

e:

Dear

This responds to your representative's letter dated September 16, 1997, and supplemental correspondence dated June 18, 1998, requesting a private letter ruling on behalf of the Taxpayer under § 453(d)(3) of the Internal Revenue Code and § 15a.453-1(d)(4) of the Temporary Income Tax Regulations.

It is represented that the Taxpayer and Individual B each owned a one-half interest in Property P, residential rental real estate. On Date u, the Taxpayer and Individual B sold Property P for $c. The consideration included an installment note of $d, which constituted approximately 15% of the sale proceeds. The note provided for principal and interest payments to be made by the buyer over e years, with all remaining principal and accrued interest payable in full at the end of that period.

The Taxpayer represents that, contrary to her wishes, her original tax accountant reported the entire proceeds from the sale of her interest in Property P on Schedule D and thus, reported the entire gain from the sale of Property P on her federal income tax return (Form 1040) for that year, which was filed on Date v. Moreover, the Taxpayer represents that her original tax accountant did not inform her that he was reporting the entire gain from the sale of Property P prior to or after presenting the tax return for signature. The Taxpayer, who is not in a tax-related profession, relied upon the accountant to prepare her return in accordance with her wishes and did not notice that the installment note had been included in the sale proceeds reported on Schedule D of the return.

In the following year, the original accountant died in an accident on Date w and, consequently, the Taxpayer hired a new accountant on Date x. The new accountant was hired to review prior years' returns and to prepare the Taxpayer's federal income tax return for that year. That return and the return for the subsequent year were both filed on Date y. The Taxpayer represents that information necessary to file those returns could not be reviewed by her new tax representative until Date Z, when they became available from the original accountant's estate.

Under § 15a.453-1(d)(4) of the temporary regulations, the Taxpayer has requested permission to revoke her election out of the installment method for the sale of Property P.

Section 453(a) of the Code provides that, except as otherwise provided in this section, income from an installment sale shall be taken into account for purposes of this title under the installment method.

Section 453(d)(1) of the Code provides, in general, that subsection (a) shall not apply to any disposition if the taxpayer elects to have subsection (a) not apply to such disposition. Paragraph (2) provides that, except as otherwise provided by regulations, an election under paragraph (1) 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 the tax imposed by this chapter for the taxable year in which the disposition occurs. Paragraph (3) provides that an election under paragraph (1) with respect to any disposition may be revoked only with the consent of the Secretary.

Section 15a.453-1(d)(1) of the temporary regulations provides that an installment sale is to be reported on the installment method unless the taxpayer elects otherwise in accordance with the rules set forth in paragraph (d)(3) of this section.

Section 15a.453-1(d)(3)(i) of the temporary regulations provides that an election under paragraph (d)(1) of this section must be made on or before the due date prescribed by law (including extensions) for filing the taxpayer's return for the taxable year in which the installment sale occurs.

Section 15a.453-1(d)(4) of the temporary regulations provides, in part, that an election made under paragraph (d)(1) is generally irrevocable. An election may be revoked only with the permission 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.

In the present case, the Taxpayer's representations indicate that it was always the intent of the Taxpayer to report the sale of Property P on the installment method and that the election out was the result of the original accountant's erroneous preparation of the Taxpayer's income tax return.

Accordingly, based on the facts presented and representations made, we rule that Taxpayer will be permitted, under § 15a.453-1(d)(4) of the temporary regulations, to revoke her election out of the installment method for the sale of Property P.

No opinion is expressed as to the tax treatment of the transaction under the provision of any other sections of the Code or regulations which may be applicable thereto, or the tax treatment of any conditions existing at the time of, or effects resulting from the transactions which are not specifically covered by the above ruling.

A copy of this letter should be attached to the federal income tax return for the year in which the transactions in question occur. This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter has been sent to the designated representative.

Assistant Chief Counsel
(Income Tax & Accounting)

By Douglas A. Fahey
Douglas Fahey
Assistant to the Chief, Branch 5