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Internal Revenue Service

Department of the Treasury

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Ben Franklin Station
Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:IT&A:5 PLR-119697-98

Date: MAR 22 1999

Partnership P =

Individual C =

Individual D =

Individual E =

Individual F =

Date v =

Date w =

Date x =

Date y =

Date z =

Dear

This is in reply to your letter of October 13, 1998, and subsequent correspondence, requesting a ruling under section 453(d)(1) of the Internal Revenue

Code and section 15a.453-1(d)(4) of the Temporary Income Tax Regulations on behalf of Partnership P.

It is represented that Partnership P sold real property on Date v, on installment terms. On that date it distributed to its two partners, Individuals C and D, the installment obligations taken in payment. During the months including Dates x and y, when the partnership return was being prepared, Individual C suffered two strokes and was hospitalized twice. He spent nearly three months recuperating at his son's home, many miles from the Partnership P books. On Date w, all business of the partnership was finished. By Date x, all the partnership accounting was completed and the bookkeeper delivered the accounts to Individual E, a CPA located over 200 miles from where Individual C was recuperating. Individual E tried to get additional information from Individual C, but was told he was out of town for an indefinite period. The bookkeeper eventually supplied a closing statement and other documents from the realtor who sold the property. Individual E completed Form 1065, the final partnership return, on Date y. It reported the sale in full, inadvertently electing out of the installment method. When Individual E completed the return he sent it to Individual C, who then signed and mailed the completed return without asking Individual E any questions. Individual C has little recollection of what took place during that period of time. The discovery of the error was made by Individual F, accountant for Individual D, when preparing Individual D's Form 1040 on or before Date z. Individual F prepared the Form 1040 consistent with the installment method but not with the earlier Form 1065 for Partnership P, and delivered both to Individual D, who then called his former partner, Individual C. Shortly thereafter, Individual C called Individual E to find out what could be done to fix the error at the partnership level. It was determined to use Form 8275 inconsistent with the previously filed Form 1065 and immediately apply for relief with a letter ruling request. There was not time to redo Individual C's return, but Individual F did have time to fix Individual D's return. The request for relief under section 15a.453-1(d) followed.

Partnership P has requested that the Service rule that:

Partnership P will be permitted to revoke its election out of the installment method for the date v sale in its federal income tax return for 1997 under section 15a.453-1(d)(4) of the temporary regulations.

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 generally, an election made under paragraph (d)(1) is 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.

Here the facts indicate that it was always the intent of Partnership P to report the sale of real property on Date v on the installment method and that the election out was not intentional, but made in error in the 1997 return. The error of Individual E in preparing the return was mainly due to Individual C's strokes and subsequent unavailability. Individual F discovered the mistake, at his first opportunity, and Individual E tried to correct the problem soon after discovery. Partnership P has therefore established good cause for the revoking the election out of the installment method.

Accordingly, based on the facts presented and the representations made, we rule that:

Partnership P will be permitted to revoke its election out of the installment method for the Date v sale on its federal income tax return for 1997 under section 15a.453-1(d)(4) of the temporary regulations.

No opinion is expressed as to the tax treatment of the transaction under the provisions of any other sections of the Code and 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.

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

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

Sincerely yours,

Assistant Chief Counsel
(Income Tax & Accounting)

By David L. Crawford
David L. Crawford
Chief, Branch 5