Internal Revenue Service

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Legend:

Taxpayers =

$ Amount 1 =

$ Amount 2 =

$ Amount 3 =

Year 1 =

Year 2 =

Year 3 =

Dear :

This is in reply to your request pursuant to § 453(d)(3) of the Internal Revenue Code and § 15A.453-1(d)(4) of the Temporary Income Tax Regulations for consent to revoke an election out of the installment sale method.

FACTS:

During Year 1, Taxpayers sold their principal residence for $ Amount 1. In accordance with the purchase and sale agreement, Taxpayers received $ Amount 2 in Year 1 and were to receive $ Amount 3 in Year 2.

Taxpayers engaged a tax return preparer to prepare their Year 1 tax return. Taxpayers represent that the tax return preparer advised them that installment sale

treatment could not be combined with the § 121 exclusion from income for the sale of a principal residence. Therefore, Taxpayers reported all the gain (less the § 121 exclusion) from the sale of their principal residence on their Year 1 federal income tax return. Taxpayers would have reported the sale of their principal residence on the installment method had the return preparer advised Taxpayers that installment sale treatment could be combined with the exclusion from income for the sale of a principal residence.

When Taxpayers changed tax return preparers in Year 3, the new return preparer advised Taxpayers that it was possible to exclude gain on the sale of a principal residence and report the remaining gain on the installment method. As a result, Taxpayers requested approval to revoke the election out of the installment method for the Year 1 sale of their principal residence.

LAW AND ANALYSIS:

Section 121(a) excludes up to $250,000 ($500,000 for certain joint returns) of gain from the sale of a principal residence, if certain requirements are met.

Section 453(a) generally 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(d)(1) 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 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.

Section 15A.453-1(d)(4) of the regulations provides that an election under section 453(d)(1) generally is irrevocable. Section 453(d)(3) provides that an election made pursuant to § 453(d)(1) may be revoked only with the consent of the Secretary. Section 15A.453-1(d)(4) of the regulations provides that revocation of 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, or when the taxable year in which any payment was received has closed.

In the instant case, Taxpayers represent that their first return preparer advised them that they could not exclude gain from the sale of a principal residence if the gain was reported under the installment method. Accordingly, Taxpayers reported all the gain (less the § 121 exclusion) from the principal residence sale on their Year 1 tax return, thereby electing out of the installment method. As soon as Taxpayers were told

by their new return preparer that Taxpayers could have excluded gain on the sale and reported the remaining gain on the installment method, Taxpayers filed a request for consent to revoke the election out of the installment method. The information submitted indicates that Taxpayers' desire to revoke the election is due to their return preparer's misinformation rather than to avoid federal income taxes.

CONCLUSION:

Taxpayers are allowed to revoke their election out of the installment sale method with respect to the Year 1 sale of their principal residence.

The rulings contained in this letter are based upon information and representations submitted by Taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. This ruling is conditioned upon the accuracy of that information and those representations. 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.

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 exclusion from gross income under § 121 or the computation of gain to be reported under the installment method under § 453.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives. A copy of this letter must be attached to any income tax return to which it is relevant.

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

Sincerely,

Amy J. Pfalzgraf
Senior Counsel
Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)