Internal Revenue Service

Number: **201049006**
Release Date: 12/10/2010

Index Number: 453.05-00, 453.13-01

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:B04
PLR-110275-10

Date:
August 23, 2010

LEGEND

Taxpayer =
Corp A =
State A =
Year 1 =
x =
State B =
State C =
Date 1 =
LLC1 =
Date 2 =
$r =
$s =
Date 3 =
LLC2 =
$t =
Bank =
LLC3 =

Dear :

This is in reply to your letter requesting a private letter ruling under § 453B of the Internal Revenue Code (Code). Specifically, Taxpayer requests a ruling that the transfer of an installment note during an intra-group reorganization will not result in a taxable disposition of the installment note under § 453B(a).

FACTS

Taxpayer is a subchapter C corporation and is a company that provides solutions to various industries. Taxpayer's other business operations serve the market, market, market, and market.

Corp A is a State A subchapter C corporation and is a wholly-owned subsidiary of Taxpayer. Corp A is engaged primarily in the business of manufacturing that other Taxpayer entities or unrelated customers convert into used in the industry. In addition, Corp A is engaged in the business of .

The Installment Sale

In Year 1, Corp A sold approximately x acres of located in State B and State C, and other real and personal property, to an unrelated third party purchaser. Pursuant to a Purchase and Sale Agreement (Agreement) dated Date 1, between Corp A and the unrelated third party purchaser, Corp A formed LLC1, a wholly-owned State A limited liability company that was disregarded as an entity separate from Corp A for federal income tax purposes. Corp A then contributed the assets held for sale to LLC1.

Pursuant to the Agreement, Corp A conveyed all of its interest in LLC1 to the unrelated third party purchaser effective Date 2 in exchange for an installment note (Note) in the face amount of $r, which equaled the value of the installment sale assets (Installment Sale Assets), and $s in cash, which equaled the value of the cash sale assets (Cash Sale Assets). Under the Agreement, Corp A exchanged the Installment Sales Assets for the Note and the Cash Sale Assets for the cash amount.

The Note bears interest for the initial 20-year period at a rate equal to three-month LIBOR plus a margin of .05 percent. Interest payments are due under the Note on the last day of each three-month interest period; no principal payments are due until maturity. The Note may not be redeemed or prepaid in whole or in part prior to maturity.

On Date 3, Corp A conveyed its interest in the Note to a wholly-owned limited liability company, LLC2, which is disregarded as an entity separate from Corp A for federal income tax purposes. LLC2 continues to retain title to, and possession of, the Note. Also on Date 3, LLC2 entered into a Credit Agreement and related Pledge Agreement under which LLC2 borrowed approximately $t from Bank and pledged all of the assets

of LLC2, including the Note, as collateral. LLC2 distributed the proceeds of the Bank loan to Corp A as partial consideration for the purchase of the Note.[1]

A paying agent of the unrelated third party purchaser of the Installment Sales Assets makes payments on the Note to an account of LLC2 with Bank. In addition, LLC2 makes payments of interest and principal under the Bank loan from that account directly to Bank.

Corp A will report gain from the sale of the Installment Sale Assets using the installment method of accounting under § 453. Taxpayer has represented that Corp A qualifies to use the installment method of accounting under § 453 for the payments received under the Note.

The Proposed Corporate Restructuring

In the proposed corporate restructuring, Taxpayer will first form a new LLC (New LLC), which will be disregarded as an entity separate from Taxpayer for federal income tax purposes. Then, Corp A will merge under state law into New LLC (Upstream Merger). Following the Upstream Merger, Taxpayer anticipates that New LCC will contribute approximately 5 to 15 percent of the assets of Corp A to one or more subsidiaries of Taxpayer to then be marketed for sale to third parties. The proposed corporate restructuring would enable Taxpayer to reduce and consolidate the landholdings of various Taxpayer affiliates under a single entity, LLC3, a wholly-owned limited liability company that is disregarded as an entity separate from Taxpayer for federal tax purposes.

Taxpayer has represented that the Upstream Merger will qualify as either a liquidation described in § 332 or a reorganization described in § 368(a)(1)(A) or both.

ISSUE

Will Corp A recognize gain or loss under § 453B(a) on the transfer of the Note to Taxpayer during the proposed restructuring.

LAW AND ANALYSIS

Section 453B(a) provides, in general, that the distribution, transmission, sale or other disposition of an installment obligation results in the recognition of gain or loss. Section 453B(a)(2) provides that if an installment obligation is distributed, transmitted, or disposed of in any way other than by sale or exchange, the gain or loss recognized is the difference between the basis in the obligation and the fair market value of the obligation at the time of the distribution, transmission, or disposition.

[1] The balance of the consideration was a capital contribution from Corp A to LLC2.

Section 453B and § 332 Liquidation

Section 453B(d) provides an exception to the application of § 453B(a) for any distribution to which § 337(a) applies. Section 337(a) provides that no gain or loss shall be recognized to the liquidating corporation on the distribution to the 80-percent distributee of any property in a complete liquidation to which § 332 applies.

Section 453B and § 368(a)(1)(A) Statutory Merger

The wording of current § 453B(a) is identical to the wording of § 453(d)(1) prior to the amendments to § 453 by § 2(a) of the Installment Sales Revisions Act of 1980, Pub.L. 96-471, 94 Stat. 2253. The legislative history to the 1980 Act does not indicate that Congress intended any substantive change to the rule in § 453(d). See S.Rep. No. 1000, 96th Cong., 2d Sess. (1980). The regulations under § 453 have not been updated to reflect the amendments by the 1980 Act; however, the regulations under prior § 453(d) provide guidance in interpreting and applying § 453B.

Section 1.453-9(c)(2) of the Income Tax Regulations (regulations) provides that where the Code provides for exceptions to the recognition of gain or in the case of certain dispositions (including transfers to corporations under §§ 351 and 361), no gain or loss shall result under § 453(d) in the case of a disposition of an installment sales note.

Section 361 provides generally that no gain or loss is recognized to a corporation if the corporation is a party to a reorganization and exchanges property, pursuant to the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization. For purposes of § 361, the term “reorganization” is defined in § 368(a), and includes a § 368(a)(1)(A) statutory merger.

Section 453B and § 381 Carryover

Section 381(c)(8) provides that if the acquiring corporation acquires installment obligations (the income from which the distributor or transferor corporation reports on the installment basis under § 453) the acquiring corporation shall, for purposes of § 453, be treated as if it were the distributor or transferor corporation.

Section 1.381(c)(8)-1(a) of the regulations provides, in part, that if, in a transaction to which § 381(a) applies, an acquiring corporation acquires installment obligations, the income from which the distributor or transferor corporation has elected under § 453 and the regulations to report on the installment method, then the acquiring corporation shall be treated as the distributor or transferor corporation would have been treated under § 453 had it not transferred the installment obligations.

Based on the representations that Taxpayer qualifies to use the installment method of accounting under § 453 for the payments received under the Note and that the Upstream Merger of Corp A will qualify as a § 332 liquidation, then under § 453B(d), Corp A will not recognize gain or loss under § 453B(a) on the transfer of the Note to Taxpayer pursuant to the liquidation. In addition, based on Taxpayer's representation that the Upstream Merger of Corp A will qualify as a § 368(a)(1)(A) statutory merger, then no gain or loss will be recognize under § 1.453-9(c)(2) of the regulations on the transfer of the Note to Taxpayer.

CONCLUSION

Whether the proposed Upstream Merger is characterized, for federal income tax purposes, as a § 332 liquidation of Corp A or a § 368(a)(1)(A) statutory merger or both, the proposed restructuring will not result in a disposition of the Note under § 453B(a). Accordingly, Corp A will not recognize gain or loss under § 453B(a) on the transfer of the Note to Taxpayer during the proposed restructuring.

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.

This ruling is directed only to the taxpayer requesting 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 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,

Donna Welsh
Senior Technician Reviewer, Branch 4
(Income Tax & Accounting)