

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-114870-24

Date:

January 27, 2025

LEGEND

Taxpayer	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Date 9	=
Date 10	=
Month 1	=
Month 2	=
Year 1	=
Year 2	=
Buyer	=
\$A	=
\$B	=
\$C	=
\$D	=
\$E	=

Dear :

This letter refers to Taxpayer's request for a private letter ruling, dated Date 9, requesting permission to revoke its election out of the installment method for the sale of certain property under section 453 of the Internal Revenue Code and section 15A.453-1(d)(4) of the Temporary Regulations under the Installment Sales Revision Act of 1981 (Regulations).

This letter ruling is being issued electronically in accordance with Rev. Proc. 2024-1, 2024-1 I.R.B. 1. A paper copy will not be mailed to Taxpayer.

FACTS

Taxpayer has represented that the facts are as follows:

Taxpayer is an S corporation for Federal income tax purposes and is owned by four shareholders. On Date 1, the shareholders collectively sold 100% of the stock of Taxpayer to Buyer, an unrelated corporation, for \$E. This total purchase price included an initial down payment to be paid at closing, a payment based on the final Year 1 earnings before interest, taxes, depreciation, and amortization (EBITDA) to be paid in Year 2, a payment based on post-closing adjustments to be paid in Year 2, and a \$C holdback amount to be paid within 20 days after Date 10.

This sale was originally structured as a stock sale. In accordance with this sale structure, each of the individual shareholders of Taxpayer would recognize a capital gain calculated as their percentage of the total sales price less their ending cost basis in their S-Corporation stock. However, under the stock purchase agreement, the Buyer had the ability to request a section 338(h)(10) election to treat the stock sale by the shareholders as an asset sale by Taxpayer for tax purposes.

On Date 1, the shareholders received an initial down payment of \$D. On Date 2, the shareholders received a payment of \$B to satisfy the Year 1 final EBITDA calculation payment. On Date 3, the shareholders received a payment of \$A to satisfy the post-closing adjustments. The \$C holdback amount is still scheduled to be paid within 20 days after Date 10.

The shareholders engaged a large accounting firm to prepare Taxpayer's Year 1 Form 1120-S, *U.S. Income Tax Return for an S Corporation*, believing the firm to possess the proper knowledge and expertise to do so. Taxpayer timely requested an extension to file its Year 1 Form 1120-S.

The first draft of the Form 1120-S was received by Taxpayer on Date 4. A request for a section 338(h)(10) election was not received by the Taxpayer until after the receipt of the first draft, on Date 6. Therefore, the first draft of the Form 1099-S for Taxpayer did not include any of the stock sale reporting.

Taxpayer received a second draft of the Year 1 Form 1120-S on Date 5. This draft included updates discussed after reviewing the initial draft. After both parties reviewed the second draft, the Buyer requested that Taxpayer make a section 338(h)(10) election on Date 6. The Taxpayer forwarded this request to their accounting firm on the same day, noting that they would like to use the installment method for the qualifying assets included in the sale.

On Date 7, the Buyer provided comments regarding the Taxpayer's Year 1 Form 1120-S and requested certain updates be made to the draft. Upon receipt of this request, Taxpayer forwarded the request to Taxpayer's accounting firm.

Taxpayer asked their accounting firm for multiple updates regarding the updated draft of the Form 1120-S reflecting the section 338(h)(10) election between Date 6 and Date 8, the extended due date of Taxpayer's Form 1120-S. The updated draft was eventually sent to Taxpayer at 2:59 P.M. local time on Date 8.

The return included the Federal income tax return and 12 state income tax returns. Due to the short window of time between receipt of the draft and the due date of the return, Taxpayer and its consultants were unable to complete a thorough review of the tax return by the end of that day. Taxpayer signed the e-file authorization and immediately sent the return to their consultants for a complete review of the Federal and state returns, with the understanding that they would be able to complete an amended return, if required.

The week following the due date and filing of the Form 1120-S, Taxpayer and its consultants had the ability to complete a thorough review of the Form 1120-S that was filed. Taxpayer then questioned why the transaction was not reported on the installment method. The representatives of the accounting firm in charge of review and signature of the Form 1120-S stated to Taxpayer that the sale was not eligible to be reported on the installment basis. Taxpayer did not participate in the decision to elect out of the installment method. Later discussions with additional representatives of the accounting firm in Month 1 led to the acknowledgement that the qualifying assets in the sale could be reported on the installment basis.

Taxpayer has continued to work with the same accounting firm over the past year to correct the items needed on their Year 1 Form 1120-S. In another conversation in Month 2, the accounting firm again acknowledged that the qualifying assets could be reported on the installment basis. The accounting firm informed Taxpayer that the way to change the reporting on this would be through a private letter ruling to revoke the election out of the installment method. Taxpayer then filed for this private letter ruling.

LAW AND ANALYSIS

Section 453(a) 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) defines "payment" to include amounts actually or constructively received in the taxable year under an installment obligation.

Section 453(d)(1) and section 15A.453-1(d)(1) provide that a taxpayer may elect out of the installment method in the manner prescribed by the regulations. Section 15A.453-1(d)(3) 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.

Except as otherwise provided in the regulations, section 453(d)(2) 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) provides that an election under section 453(d)(1) 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 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.

In the instant case, the information submitted indicates that Taxpayer inadvertently elected out of the installment method under section 453. Taxpayer was not aware of the accounting firm's election out of the installment method, did not participate in the decision to elect out of the installment method, and did not have adequate time to review the tax returns before submission. Additionally, Taxpayer did not use hindsight in requesting relief, and this request is not motivated by an intent to avoid Federal taxes. Further, Taxpayer's taxable year in which the sale took place is not closed.

CONCLUSION

Based on careful consideration of all the information submitted and the representations made, Taxpayer is granted permission to revoke its election out of the installment method for the sale of Taxpayer on Date 1 and provide corrected Forms K-1 to the shareholders. Permission is granted for the period that ends 75 days after the date of this letter. To revoke its election out of the installment method, Taxpayer must file an amended Federal income tax return for Year 1 and any other previously filed returns on which a portion of the gain from the sale is reportable under the installment method. A copy of this letter ruling must be attached to any amended return.

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 whether Taxpayer is eligible to use the installment method or the computation of gain to be reported under the installment method. We express no opinion, either express or implied, concerning whether Taxpayer was eligible to make a section 338(h)(10) election or whether that election was properly made. Likewise, no opinion is expressed or implied concerning the tax consequences of any aspect of any shareholders' income tax return for Year 1.

This ruling is directed only to Taxpayer who requested this ruling. Section 6110(k)(3) 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.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by executed penalty of perjury statements executed by appropriate parties. 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,

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

CC: