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Directive 86-34: Security Corporations: Installment Notes

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FACTS: Baker Corporation is a domestic corporation that had been engaged in manufacturing. During a previous taxable year, Baker ceased its manufacturing activities and sold its plant, equipment, and other assets in exchange for cash and an installment note. It took the note as a means of financing the sale of its assets.

Since that time, Baker Corporation has invested the cash in marketable securities on its own behalf and not as a broker. It has also retained the note and has been reporting the income from it on the installment method pursuant to section 453 of the Internal Revenue Code.

During its current taxable year, Baker Corporation applies for classification as a security corporation.

ISSUE: May Baker Corporation qualify for classification and tax treatment as a security corporation while it holds an installment note acquired in the liquidation of the assets of its former business?

DISCUSSION: In general, a corporation may qualify for classification and tax treatment as a security corporation, provided that it is engaged exclusively in buying, selling, dealing in, or holding securities on its own behalf and not as a broker. G.L. c. 63, § 38B. To satisfy this requirement, a corporation must be engaged exclusively in buying, selling, dealing in, or holding marketable securities for the purpose of investment. *State Tax Commission v. PoGM Co.*, 369 Mass. 611, 613 (1976); *Industrial Finance Corp. v. State Tax Commission*, 367 Mass. 360, 366 (1975). An installment note that is not acquired for investment, but as a means of financing a sale of assets, lacks the characteristics of a marketable security bought and held for investment purposes. *State Tax Commission v. PoGM Co.*, 369 Mass. 611, 613 (1976). The fact that a major portion of a corporation's activities may fit the statutory definition, moreover, does not satisfy the statutory requirement. *Id.*, at 612; *Chatham Corp. v. State Tax Commission*, 362 Mass. 216, 219 (1972). This result obtains whether or not income from the note is reported on the installment method pursuant to section 453 of the Internal Revenue Code.

DIRECTIVE: Baker Corporation may not qualify for security corporation classification while it retains an installment note acquired in the sale of its former business assets.

REFERENCE: G.L. c. 63, § 38B; *State Tax Commission v. PoGM Co.*, 369 Mass. 611 (1976); *Industrial Finance Corp. v. State Tax Commission*, 367 Mass. 360 (1975); *Chatham Corp. v. State Tax Commission*, 362 Mass. 216 (1972).

31 December 1986

[/s/Ira A. Jackson](#)

Ira A. Jackson

Commissioner of Revenue

This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 C.M.R. § 62C.01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as

those set forth in this Directive.

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