



Robert W. Wood

THE TAX LAWYER

TAXES 12/14/2015

Why 'Pay Me Next Year' May Not Convince IRS On Your Taxes

This time of year, many people ask for payment in January. “Pay me next year” requests are common with employers, suppliers, vendors, customers, and more. On a cash basis, you probably assume you can’t be taxed until you receive money. Yet if you have a legal right to payment but decide not to receive it, the IRS can tax you nonetheless. Is that fair? The IRS thinks so.

The tax law includes the concept of *constructive* receipt. It requires you to pay tax when you merely have a right to payment even though you do not actually receive it. The classic example is a bonus check your employer tries to hand you at year-end. You might insist you’d rather receive it in January, thinking you can postpone the taxes. Wrong. Because you had the right to receive it in December, it is taxable then, even though you might not actually pick it up until January.



As a practical matter, if your company agrees to delay the payment (and actually pays it to you and reports it on its own taxes as paid in January) you would probably be successful in putting off the income until the next year. Yet even in this circumstance, the IRS might contend you had the right to receive

it in the earlier year. The IRS does its best to ferret out constructive-receipt issues, and disputes about such items do occur.

The situation would be quite different if you negotiated for deferred payments *before* you provided the services. For example, suppose you are a consultant and contract to provide personal services in 2015 with the understanding that you will complete all of the services in 2015, but will not be paid until Feb. 1, 2016. Is there constructive receipt?

There shouldn't be. In general, you can do this kind of tax deferral planning as long as you negotiate for it up front and have not yet performed the work. Some of the biggest misconceptions about constructive receipt involve conditions. Suppose you are selling your watch collection. A buyer offers you \$100,000 and even holds out a check. Is this constructive receipt? No, unless you part with the watch collection.

If you simply refuse the offer—even if your refusal is purely tax-motivated because you don't want to sell the watch collection until January—that will be effective for tax purposes. Because you condition the transaction on a transfer of legal rights (your title to the watch collection and presumably your delivery of it), there is no constructive receipt.

If you are settling a lawsuit, you might refuse to sign the settlement agreement unless it states that the defendant will pay you in installments. Even though it may *sound* as if you could have gotten the money sooner, there is no constructive receipt because you conditioned your signature on receiving payment in the fashion you wanted. That is different from having already performed services, being offered a paycheck and delaying taking it.

Tax issues in litigation are huge, and you should consider the bottom line after taxes, [not before taxes](#). In fact, [when settling litigation, you should always address taxes](#), preferably *before* you sign. Otherwise you may end up with [a Form 1099 you would rather not have](#).

There is much artifice in the tax law. Some of it can be helpful, and some of it is decidedly hurtful. If you have ever received a Form K-1 reporting phantom income to you when you received no cash, that can seem pretty hurtful.

For alerts to future tax articles, email me at <mailto:Wood@WoodLLP.com>">Wood@WoodLLP.com. This article is not legal advice.