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How (Not) To Manipulate Your 2012 v. 2013 Pay

With tax rates rising, there's a lot of year-end jockeying. Most people want to grab income now, not next year when rates will be up. [Should you grab pay in 2012 or defer 'til 2013?](#) Some want the reverse, but you can't always choose. Constructive receipt requires you to pay tax when you have a legal right to payment even if you **chose** to be paid later.



(Photo credit: MoneyBlogNewz)

The classic example is a bonus your employer **tries** to hand you, but you insist you'd rather receive it in January. Because you had the **right** to receive it in December, it is taxable then. The IRS can say you had the **right** to it in the earlier year even if your company pays you in January and puts it on your next year's [Form W-2](#).

It's different if you negotiate for deferred payments **before** you provide services. If you contract to provide services in 2012 with the understanding that you will complete all services in 2012, but will not be paid until February 1, 2013, is there [constructive receipt](#)? No. In general, you can do this kind of tax planning as long as you negotiate for it up front and have not yet performed the work.

The IRS won't like it if you document a transaction one way and later argue you didn't mean it. That's what happened to consulting partners of [Ernst & Young](#) when they sold to Cap Gemini for stock. The stock was subject to restrictions, but the partners thought it was better to pay tax that year so increases in the Cap Gemini stock would be long term capital gain.

When the Cap Gemini stock plummeted instead, the partners filed amended returns claiming the stock was restricted so couldn't be taxed. In [Hartman v. U.S.](#), the Court of Appeals for the Federal Circuit held the returns were right the first time. The partner exercised control even though he couldn't sell for five years. These courts agreed in similar cases:

- The Fourth Circuit in [U.S. v. Bergbauer](#);
- The Seventh Circuit in [U.S. v. Fletcher](#); and
- The Eleventh Circuit in [U.S. v. Fort](#).

Apart from the obvious importance of the constructive receipt rule, these cases are also about being consistent and sticking with your choices. Sometimes things just can't be undone.

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