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# Taxes Are Going Up, But Payments On January 2nd Can Still Be Smart

**KEY POINTS**

- The IRS can tax you under the doctrine of constructive receipt.
- 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.
- The IRS does its best to ferret out constructive-receipt issues, and disputes about such items do occur.

Our tax system is annual, so Dec. 31 is the cutoff for payments you make, and payments you receive. There are exceptions, of course, such as pension contributions that can be made up until tax time on April 15. But mostly, you need to think of it as a hard deadline.

Given taxes and filing deadlines, would you prefer to pay in 2020 or the first week in January? "Pay me next year" requests are common this time of year with employers, suppliers, vendors, customers, and more.

If you are paid in December, taxes are due April 15, 2021. If you are paid in early January, taxes are due April 15, 2022. President-elect Joe Biden has proposed hiking tax rates from 37% to 39.6%.

But even if you decide what you want, can you ever put off income you are about to receive?

On a cash basis, you might assume that you can't be taxed until you actually receive money. But if you have a legal right to payment but decide not to receive it, the IRS can tax you under the doctrine 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.

A classic example is a bonus check your employer tries to hand you at year-end. You might insist you would 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.

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.

In general, you can do 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 car. A buyer offers you $20,000 and even holds out a check. Is this constructive receipt? No, unless you part with the car.

If you refuse the offer—even if your refusal is purely tax-motivated because you don’t want to sell the car until January—that will be effective for tax purposes. Because you condition the transaction on a transfer of legal rights (title to the care and delivery), 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 almost always present, so be careful.

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