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THE TAX LAWYER

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### When ‘Pay Me Later’ Means Taxes Now

If you have a legal right to payment, the IRS can tax you even if you choose not to receive it. That may seem odd, as most individuals are cash-basis taxpayers—meaning we only pay tax on what we receive. But the “constructive receipt” doctrine trumps cash accounting.

Constructive receipt requires you to pay tax when you have a legal right to payment even though you defer it.

The classic example is a bonus. Say your employer tries to hand it to you at year-end, but you insist you’d rather receive it in January to postpone taxes.

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. Sure, 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. Yet even here the IRS might say you had the **right** to it in the earlier year.

The situation would be different if you negotiated for deferred payments **before** you provided services. Suppose you are a consultant and 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.

**Conditional Payments.** Suppose you are selling your watch collection. A buyer offers you \$100,000 and holds out a check. Is this constructive receipt?

No. If you refuse the offer—even for tax reasons—it will be effective. You can also agree to sell for \$100,000 in January, and that will be respected. Because you condition the transaction on a transfer of legal rights (title to the watch collection and delivery), there is no constructive receipt. See [Want A Piece Of Nasdaq's \\$40M Facebook Settlement?](#)

You can apply the same logic to a sale of your house. Suppose you refuse to sell for cash and instead insist on payment in installments over ten years. Again, no constructive receipt. But you **would** have constructive receipt if you asked for installments **after** you signed all the papers entitling you cash.

**Legal Settlements.** 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. See [When 'I'm Too Sexy' Lawsuit Settles, Will IRS Win Too?](#) 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 accepting it.

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