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Terms: **8333035** (Edit Search)

*PRIVATE RULING 8333035; 1983 PRL LEXIS 3728, **

PRIVATE RULING 8333035 - Refers to Private Ruling 8325054

"This document may not be used or cited as precedent. Section 6110(J)(3) of the Internal Revenue Code."

SECTION 0451
General Rule For Taxable Year of Inclusion (Year Received V. NOT Year Received)
-- Constructive Receipt

0451.14-00

PRIVATE RULING 8333035; 1983 PRL LEXIS 3728

DATE: May 16, 1983

REFER REPLY TO: [*1]

CC:IND:I:3:3

Dear * * *

This is in reply to a letter of April 5, 1983, submitted on your behalf by your authorized representative, requesting a supplemental ruling that disclosure by defendant of the cost or present value of an annuity to be purchased to fund its monthly settlement obligation will not cause you to be in constructive receipt of the present value of the amount invested in the annuity.

On March 21, 1983, the Internal Revenue Service issued a ruling that you will have neither actual nor constructive receipt, nor the economic benefit of the present value of the amount invested in the annuity, and the periodic payments will be excludable from your gross income under section 104(a)(2) of the Internal Revenue Code. In that ruling we cited Rev. Rul. 79-313, 1979-2 C.B. 75; and Rev. Rul. 79-220, 1979-2 C.B. 74; for the proposition that a corporation will be considered the owner of an annuity if the annuity is subject to the general creditors of the corporation, the corporation can change the beneficiary of the policy, and the beneficiary does not have the right to accelerate any payment or increase or decrease the amount of the annual payments specified.

You have asked [*2] for a clarification of the above ruling because of your concern that your knowledge of the existence or cost of the annuity might cause you to be in constructive receipt of that annuity.

Section 1.451-2(a) of the Income Tax Regulations provides that income although not actually reduced to a taxpayer's possession is constructively received by him in the taxable year in which it is credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdraw had been given.

Based on the language in section 1.451-2(a) of the regulations, the Service has consistently taken the position that knowledge is not determinative in deciding a question of constructive receipt, but that unqualified availability is decisive. Rev. Rul. 68-126, 1968-1 C.B. 194; Rev. Rul. 73-99, 1973-1 C.B. 412; Rev. Rul. 74-37, 1974-1 C.B. 112; and Rev. Rul. 76-3, 1976-1 C.B. 114; all set forth conclusions consistent with this position.

Rev. Rul. 74-37 takes the position that interest accruing in a Uniformed Services savings account subsequent to the time principal and interest [*3] on deposit exceeds \$10,000 (at which time such interest may be withdrawn at request) is constructively received at that time since it is available within the meaning of section 1.451-2(a) of the regulations. There is no exception to this rule in the case of POW's or MIA's who would not be in a position to know of the triggering event.

Based on the information submitted in the original ruling request, we conclude that disclosure by defendant of the existence, cost, or present value of the annuity will not cause you to be in constructive receipt of the present value of the amount invested in the annuity.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this ruling should be attached to your tax return for the first taxable year in which those payments are received. We are enclosing a copy for this purpose.

In accordance with the power of attorney on file with us, a copy of this letter has been sent to your authorized representative.

Sincerely yours,

Anthony Manzanares Jr
Chief, Individual Income Tax Branch

Enclosures 2
Copy of this letter
Copy for [*4] section 6110 purposes

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