DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF CHIEF COUNSEL

January 30, 2006

Number: **INFO 2006-0005**
Release Date: 3/31/06
CONEX-101421-06/CC:ITA:B3
UIL: 451.00-00

Dear :

I am responding to your letter dated , to the Taxpayer Advocate Service in . You wrote on behalf of your constituent, , who is asking for assistance with reporting annuity checks he receives through the mail.

In general, we consider an annuity payment gross income in the taxable year in which it is received, unless the taxpayer's method of accounting requires that he or she account for the payment in a different period. [Section 451(a) of the Internal Revenue Code (the Code)]. Most individual taxpayers use the cash receipts and disbursements method of accounting. Under this method of accounting, taxpayers must generally include items of gross income in the year they actually or constructively received them. [Sections 1.451-1 and 1.451-2 of the Income Tax Regulations (the Regulations)].

A taxpayer "constructively receives" income when a payer makes it available so that the taxpayer can draw upon it at any time, or so that the taxpayer could have drawn upon it during the taxable year if he or she had given notice of intention to withdraw. [Section 1.451-2(a) of the Regulations]. However, income is not constructively received if the taxpayer's control of its receipt is subject to a substantial restriction or limitation. *Id.*

Generally, we consider checks income to a cash method taxpayer in the year he or she receives them unless constructively received in an earlier year. *See Lavery v. Commissioner*, 158 F.2d 859 (7th Cir. 1946). The fact that a check is issued in one year and received in another does not make the check taxable in the year issued. *See McEuen v. Commissioner*, 196 F.2d 127, 130 (5th Cir. 1952). Checks sent through the mail are typically taken into income in the year the taxpayer actually receives them, unless the amounts are made available to the taxpayer in the earlier year. *See Avery v. Commissioner*, 292 U.S. 210 (1934); Rev. Rul. 76-3, 1976-1 C.B. 114; Rev. Rul. 73-99, 1973-1 C.B. 412. In other words, unless the taxpayer had access to or control over the check in the first year, no constructive receipt of the check occurred in the first year and the taxpayer should recognize the income in the second year when he or she actually received the check. However, if a taxpayer has the option of receiving payments by direct deposit instead of by checks sent through the mail, there may be constructive receipt of a payment on the earlier date that the direct deposit would have been made.

A taxpayer should report income in the correct taxable year even if that conflicts with information on a Form 1099. If a payer incorrectly reports a taxpayer's annuity information on a Form 1099-R, the taxpayer may need to complete Form 4852, Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions from Pensions, Annuities, Retirement, or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. and attach it to the income tax return. I enclosed, for your convenience, a copy of Form 4852.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. *See* Rev. Proc. 2006-1, 2006-1 I.R.B. 1. I hope this information is helpful. If you need further assistance, please contact me or at .

Sincerely,

Christopher F. Kane
Branch Chief, Branch 3
(Income Tax & Accounting)

Enclosure (1)