The Authority

The exact statutory, regulatory, and case-law basis for deferring tax on a large sale, contingency fee, or settlement — including why the assignment-company structure does not trigger constructive receipt. Hand this to your CPA or tax attorney.

> SELLING PROPERTY OR A BUSINESS — IRC §453
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> *"The term 'installment sale' means a disposition of property where at least 1 payment is to be received after the close of the taxable year in which the disposition occurs." (§453(b)(1)) … "the term 'installment method' means a method under which the income recognized for any taxable year… is that proportion of the payments received in that year which the gross profit… bears to the total contract price." (§453(c))*
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> 26 U.S. Code §453 — Installment method. In the Internal Revenue Code since 1980.

Why the assignment-company structure does not trigger constructive receipt

A plain §453 installment sale is uncontroversial. The question a careful CPA asks about a *structured* installment sale is whether assigning the buyer's payment obligation to a third-party funding company gives the seller constructive receipt. It does not — for three documented reasons.

> 1 — CONSTRUCTIVE RECEIPT, THE GOVERNING RULE
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> *"Income although not actually reduced to a taxpayer's possession is constructively received by him… However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions."*
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> Treas. Reg. §1.451-2(a).

> 2 — NON-QUALIFIED ASSIGNMENT: THE SELLER'S RIGHTS ARE RESTRICTED
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> *Under a non-qualified assignment, the buyer's future-payment obligation is transferred to an assignment company that funds it (an annuity or U.S. Treasuries). The seller holds only an unsecured, non-accelerable, non-assignable right to fixed future payments — the seller cannot reach, pledge, accelerate, or sell that stream. These are exactly the "substantial limitations or restrictions" §1.451-2(a) requires.*
>
> Applies §1.451-2(a) to the structured fact pattern.

> 3 — ECONOMIC BENEFIT / CASH EQUIVALENCE
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> *A right to future payments is taxed currently only if it is the equivalent of cash — freely assignable, unconditional, and from a solvent obligor. A properly drafted structured installment obligation is none of these, so it is taxed only as payments are actually received.*
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> Cowden v. Commissioner, 289 F.2d 20 (5th Cir. 1961) (cash-equivalence doctrine).

Precision point: §130 "qualified assignments" apply only to §104 physical-injury settlements. A property or business sale uses a **non-qualified assignment** under §453 — the assignment company recognizes the funding and offsets it with the annuity. This is the standard structure offered by A-rated carriers (e.g., Independent Life, MetLife).

CONTINGENCY-FEE ATTORNEYS — CHILDS V. COMMISSIONER

An attorney who arranges to receive contingency fees in future installments — before the fees are payable — is not in constructive receipt, and is taxed only as each payment is actually received.

Childs v. Commissioner, 103 T.C. 634 (1994), aff'd 89 F.3d 856 (11th Cir. 1996).

PHYSICAL-INJURY SETTLEMENTS — IRC §104

"...gross income does not include... the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness."

26 U.S. Code §104(a)(2).

Common CPA objections — answered

"DOESN'T THE ASSIGNMENT TRIGGER CONSTRUCTIVE RECEIPT?"

No. Under Treas. Reg. §1.451-2(a) there is no constructive receipt where the taxpayer's control is subject to "substantial limitations or restrictions." Under a non-qualified assignment the seller holds only an unsecured, non-accelerable, non-assignable right to fixed future payments — and cannot reach, pledge, accelerate, or sell the stream. It is also not a cash equivalent (Cowden, 5th Cir. 1961).

"ISN'T THIS THE MONETIZED INSTALLMENT SALE THE IRS LISTED AS ABUSIVE?"

*No — this is the key distinction. The IRS's proposed regulations (Fed. Reg., Aug. 4, 2023) target **monetized** installment sales, where the seller takes a **loan against the installment note** to obtain cash now while claiming deferral. Under the §453A(d) pledge rule, borrowing against the obligation is treated as payment received. A structured installment sale involves **no loan and no monetization** — the seller genuinely receives scheduled payments over time and never pledges or borrows against the obligation. It is a different transaction, and the listed-transaction rules do not reach it.*

"WHAT ABOUT THE §453A INTEREST CHARGE?"

It applies only when the aggregate face amount of installment obligations exceeds $5 million. Above $5M, §453A imposes a modest interest charge on the deferred tax (the disclosed "fee" over $5M). At or under $5M, there is no §453A charge.

"ISN'T DEPRECIATION RECAPTURE DEFERRABLE TOO?"

No — and we disclose it up front. Under §453(i), §1245/§1250 recapture is recognized in the year of sale and is not spread. Only the capital-gain portion is deferred. Structure before signing.

"RELATED-PARTY, DEALER, OR INVENTORY PROPERTY?"

§453(b)(2) excludes dealer dispositions and inventory; §453(e) and (g) limit related-party sales. A straightforward third-party sale of investment or business property qualifies.

"DOES IT HAVE ECONOMIC SUBSTANCE (§7701(O))?"

Yes. There is genuine deferral of receipt, guaranteed payments from an A-rated carrier, and real non-tax purpose — income smoothing, a guaranteed stream, and transfer of the buyer's credit risk off the seller. It is not a paper-only arrangement.

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