

Internal Revenue Code Section 453(f)(1)

Installment method

(e) Second dispositions by related persons.

(1) In general. If—

(A) any person disposes of property to a related person (hereinafter in this subsection referred to as the "first disposition"), and

(B) before the person making the first disposition receives all payments with respect to such disposition, the related person disposes of the property (hereinafter in this subsection referred to as the "second disposition"), then, for purposes of this section, the amount realized with respect to such second disposition shall be treated as received at the time of the second disposition by the person making the first disposition.

(2) 2-year cutoff for property other than marketable securities.

(A) In general. Except in the case of marketable securities, paragraph (1) shall apply only if the date of the second disposition is not more than 2 years after the date of the first disposition.

(B) Substantial diminishing of risk of ownership. The running of the 2-year period set forth in subparagraph (A) shall be suspended with respect to any property for any period during which the related person's risk of loss with respect to the property is substantially diminished by—

(i) the holding of a put with respect to such property (or similar property),

(ii) the holding by another person of a right to acquire the property, or

(iii) a short sale or any other transaction.

(3) Limitation on amount treated as received. The amount treated for any taxable year as received by the person making the first disposition by reason of paragraph (1) shall not exceed the excess of—

(A) the lesser of—

- (i) the total amount realized with respect to any second disposition of the property occurring before the close of the taxable year, or
 - (ii) the total contract price for the first disposition, over
- (B) the sum of—
 - (i) the aggregate amount of payments received with respect to the first disposition before the close of such year, plus
 - (ii) the aggregate amount treated as received with respect to the first disposition for prior taxable years by reason of this subsection.
- (4) Fair market value where disposition is not sale or exchange. For purposes of this subsection, if the second disposition is not a sale or exchange, an amount equal to the fair market value of the property disposed of shall be substituted for the amount realized.
- (5) Later payments treated as receipt of tax paid amounts. If paragraph (1) applies for any taxable year, payments received in subsequent taxable years by the person making the first disposition shall not be treated as the receipt of payments with respect to the first disposition to the extent that the aggregate of such payments does not exceed the amount treated as received by reason of paragraph (1).
- (6) Exception for certain dispositions. For purposes of this subsection—
 - (A) Reacquisitions of stock by issuing corporation not treated as first dispositions. Any sale or exchange of stock to the issuing corporation shall not be treated as a first disposition.
 - (B) Involuntary conversions not treated as second dispositions. A compulsory or involuntary conversion (within the meaning of section 1033) and any transfer thereafter shall not be treated as a second disposition if the first disposition occurred before the threat or imminence of the conversion.
 - (C) Dispositions after death. Any transfer after the earlier of—
 - (i) the death of the person making the first disposition, or
 - (ii) the death of the person acquiring the property in the first disposition, and any transfer thereafter shall not be treated as a second disposition.
- (7) Exception where tax avoidance not a principal purpose. This subsection shall not apply to a second disposition (and any transfer thereafter) if it is established to the satisfaction of the Secretary that neither the first disposition nor the second disposition had as one of its principal purposes the avoidance of Federal income tax.

(8) Extension of statute of limitations. The period for assessing a deficiency with respect to a first disposition (to the extent such deficiency is attributable to the application of this subsection) shall not expire before the day which is 2 years after the date on which the person making the first disposition furnishes (in such manner as the Secretary may by regulations prescribe) a notice that there was a second disposition of the property to which this subsection may have applied. Such deficiency may be assessed notwithstanding the provisions of any law or rule of law which would otherwise prevent such assessment.

(f) Definitions and special rules. For purposes of this section—



(1) Related person. Except for purposes of subsections (g) and (h), the term "related person" means—

(A) a person whose stock would be attributed under section 318(a) (other than paragraph (4) thereof) to the person first disposing of the property, or

(B) a person who bears a relationship described in section 267(b) to the person first disposing of the property.

(2) Marketable securities. The term "marketable securities" means any security for which, as of the date of the disposition, there was a market on an established securities market or otherwise.

(3) Payment. Except as provided in paragraph (4), the term "payment" does not include the receipt of evidences of indebtedness of the person acquiring the property (whether or not payment of such indebtedness is guaranteed by another person).

(4) Purchaser evidences of indebtedness payable on demand or readily tradable. Receipt of a bond or other evidence of indebtedness which—

(A) is payable on demand, or

(B) is readily tradable, shall be treated as receipt of payment.

(5) Readily tradable defined. For purposes of paragraph (4), the term "readily tradable" means a bond or other evidence of indebtedness which is issued—

(A) with interest coupons attached or in registered form (other than one in registered form which the taxpayer establishes will not be readily tradable in an established securities market), or

(B) in any other form designed to render such bond or other evidence of indebtedness readily tradable in an established securities market.

(6) Like-kind exchanges. In the case of any exchange described in section 1031(b)—

- (A) the total contract price shall be reduced to take into account the amount of any property permitted to be received in such exchange without recognition of gain,
- (B) the gross profit from such exchange shall be reduced to take into account any amount not recognized by reason of section 1031(b), and
- (C) the term "payment", when used in any provision of this section other than subsection (b)(1), shall not include any property permitted to be received in such exchange without recognition of gain.

Similar rules shall apply in the case of an exchange which is described in section 356(a) and is not treated as a dividend.

- (7) Depreciable property. The term "depreciable property" means property of a character which (in the hands of the transferee) is subject to the allowance for depreciation provided in section 167.
- (8) Payments to be received defined. The term "payments to be received" includes—
 - (A) the aggregate amount of all payments which are not contingent as to amount, and
 - (B) the fair market value of any payments which are contingent as to amount.