



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

OFFICE OF THE CHIEF COUNSEL

December 1, 2014

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CONEX-144018-14

The Honorable Al Franken  
United States Senator  
515 West First Street, Suite 104  
Duluth, MN 55802

Attention: UIL Code: 451.20-00

Dear Senator Franken:

I am responding to your inquiry dated December 1, 2014, on behalf of your constituent, \_\_\_\_\_, who wrote under power of attorney granted by his mother, \_\_\_\_\_. He asked if it was possible to avoid taking into income funds deposited into his mother's bank account on \_\_\_\_\_, but returned to the payor the same day by cashier's checks accompanied by a letter saying that he had asked the payment to be made on \_\_\_\_\_.

Certain annuities held by \_\_\_\_\_ were due to mature, and \_\_\_\_\_ had elected a lump sum distribution. He believed the payout date was in \_\_\_\_\_ 2015; however, the insurance company forwarded the funds in \_\_\_\_\_ 2014. \_\_\_\_\_ does not dispute that the distribution is, at least in part, income to \_\_\_\_\_.

Generally, an individual who has income deposited into his or her bank account has received this income at the time of the deposit, even if he or she returns the amount to the payor the same day. Since the individual could draw upon the income in the account on the day of deposit, it is subject to that person's control and is income at the time of the deposit.

Section 1 of the Internal Revenue Code (the Code) imposes income tax on a taxpayer's gross income. Individuals on the cash method of accounting have income in the taxable year in which the individual actually or constructively receives the income. Income is constructively received by an individual when credited to his or her account or otherwise made available to him or her so that he or she may draw upon it at any time. Income is not constructively received if the individual's control over it is subject to substantial

limitations or restrictions (section 451(a) of the Code and section 1.451-2(a) of the Federal Income Tax Regulations).

This letter is intended for informational purposes only and explains certain general principles of the law. It does not constitute a ruling. If [redacted] would like a formal ruling on this issue, he can request a private letter ruling. There is a user fee for this.

Revenue Procedure 2014-1 describes the procedures for obtaining a letter ruling. It is available online at [www.irs.gov](http://www.irs.gov).

I hope this information is helpful. If you have any questions, please contact me or [redacted] at [redacted].

Sincerely,

Christopher F. Kane  
Chief, Branch 3,  
Associate Chief Counsel  
(Income Tax and Accounting)