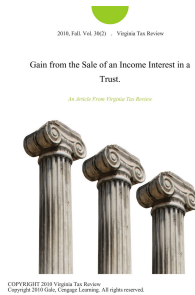


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## GAIN FROM THE SALE OF AN INCOME INTEREST IN A TRUST EBOOKS 2019



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A tax doctrine that is related to the anticipatory assignment of income doctrine, but yet different from that doctrine is variously referred to as the "substitute for ordinary income doctrine" or the "anticipation of income doctrine." This latter doctrine arises on the sale of an item. The test often utilized to determine whether that latter doctrine applies is whether the sale of an item substantively represents the receipt of a substitute for future income--i.e., are the proceeds of the sale given "in lieu of" ordinary income that the seller would have otherwise received at a later date. The "substitute for ordinary income" concept is not only used to characterize the doctrine itself but also is used to describe the test used to determine whether the doctrine applies. One of the points made in this article is that the "substitute for ordinary income" concept is useless as a test. Courts that have purported, to apply that concept recently have recognized that the concept is too broad, and so they have fashioned standards to be applied to distinguish when the doctrine is applicable from when it is not. The article points out that it is the standards themselves that are the tests, and the "substitute for ordinary income" concept plays no role and is a distraction. Several of the standards are discussed--especially the retention of a residual interest standard. There is established authority that the doctrine does not apply to the sale of a term interest in a trust when the seller does not retain any interest in the trust; and therefore the seller will receive capital gain treatment on such sales. Several courts have questioned that holding recently; one of which suggested that the holding was no longer valid. In this article, the author concludes that the holding is still valid and so the gain from such sales is a capital gain. The author also defends capital gain treatment for such sales of a term interest in a trust as proper under tax policy considerations.

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