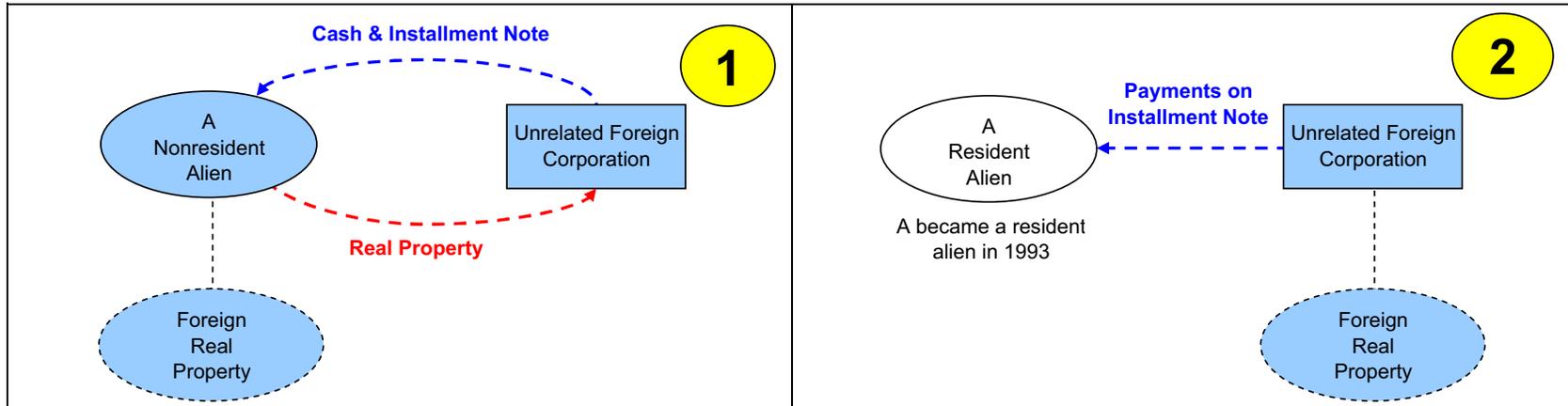


**NRA Automatically Elected
Out of Installment Method**

Installment Sale (1986)

Installment Payments (1987 - 1994)



A was a resident of Canada. In 1986, A and her mother, also a resident of Canada, sold jointly owned real property located in Canada to an unrelated foreign corporation. The contract of sale provided for a sales price of \$Cdn. B with the payment of \$Cdn. C in the year of sale and with quarterly payments of \$Cdn. D plus interest until 1994 at which time the entire principal balance is due. A acquired her interest in the property over a period of years through either gifts or inheritance. A reported the gain on the sale on the Canadian income tax returns that she filed for the years 1986-1990. It had been represented that the payments under the contract were not effectively connected with the conduct of a trade or business within the United States or received from sources within the United States. It had also been represented that prior to 1993, when A became a resident alien, A was not required to file a U.S. income tax return.

Section 1.1-1(b) of the Income Tax Regulations provides, in part, that all resident alien individuals are liable to income taxes imposed by the Code whether the income is received from sources within or without the United States. Section 453(a) provides that, except as otherwise provided in that section, income from an installment sale shall be taken into account under the installment method. Section 453(d) provides that section 453(a) shall not apply to any disposition if the taxpayer elects to have section 453(a) not apply to such disposition.

Prior to the Installment Sales Revision Act of 1980, (the "Act"), P.L. 96-471, 1980-2 C.B. 489, taxpayers were required to make an election in order to report gain from an installment sale on the installment method. As a result of the denial of use of the installment method in circumstances where taxpayers were not aware of the requirement to elect the installment method, the Act eliminated the requirement for election of the installment method for reporting gains from sales of realty and nondealer personal property. Instead, the Act provided that the installment method would automatically apply to a qualified sale unless the taxpayer elected out of the installment method. The legislative history for the Act, H.R. 6883, 96th Cong., 2nd Sess. 11 (1980), includes the following:

It is anticipated that the regulations will prescribe election rules relating to the treatment of gains from deferred payment sales of property by a nonresident alien. Under the installment method rules of present law, these gains do not become taxable as payment are received after the seller becomes a resident or citizen subject to U.S. income tax for a taxable year subsequent to the year in which the sale was made. It is intended that the election regulations will continue this treatment in appropriate cases.

The private letter ruling concluded that the tax consequences of the installment sale should be determined as if A had elected under section 453(d) not to report the sale on the installment method. See also TAM 8708002.