

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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date: November 16, 2017

to: Alfredo Valdespino
Director, Examination - Specialty Policy
(Small Business/Self-Employed)

from: Shareen S. Pflanz
Senior Technician Reviewer, Branch 5
Office of the Associate Chief Counsel
(Income Tax & Accounting)

subject: Request for PMTA--Structured Settlement Factoring Transactions

This memorandum responds to your request for non-taxpayer specific legal advice with respect to the tax imposed by § 5891(a) of the Internal Revenue Code concerning the scenarios set forth below. This advice may not be used or cited as precedent.

ISSUE

Whether the excise tax imposed under § 5891 applies under the facts described below, and if so, who would be liable for the excise tax under § 5891?

CONCLUSION

[REDACTED]

FACTS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

LAW AND ANALYSIS

Section 5891(a) imposes on any person who acquires directly or indirectly structured settlement payment rights in a structured settlement factoring transaction a tax equal to 40 percent of the factoring discount with respect to such factoring transaction.

Section 5891(b)(1) provides that the tax imposed under § 5891(a) shall not apply to a structured settlement factoring transaction if the transfer of structured settlement payment rights is approved in advance in a qualified order.

Section 5891(b)(2), provides that the term “qualified order” means a final order, judgment, or decree that (A) finds that the transfer of structured settlement payment rights does not contravene any Federal or state statute, or the order of any court or responsible administrative authority, and is in the best interest of the payee, taking into account the welfare and support of the payee's dependents; and (B) is issued (i) under the authority of an applicable State statute by an applicable State court, or (ii) by the responsible administrative authority (if any) which has exclusive jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

Section 5891(b)(3) provides that for purposes of § 5891, the term “applicable State statute” means a statute providing for the entry of an order, judgment, or decree described in § 5891(b)(2)(A) that is (A) enacted by the State in which the payee of the structured settlement is domiciled, or (B) if there is no such statute, a statute that is enacted by the State in which either the party to the structured settlement (including an assignee under a qualified assignment under § 130) or the person issuing the funding

asset for the structured settlement is domiciled or has its principal place of business; and provides for the entry of such an order, judgment, or decree.

Section 5891(b)(4)(A) provides that the term “applicable State court” means, with respect to any applicable state statute, a court of the State that enacted such statute. Under § 5891(b)(4)(B), if the payee of the structured settlement is not domiciled in the State that enacted the statute, the term also includes a court of the State in which the payee is domiciled.

Section 5891(b)(5) provides that a qualified order shall be treated as dispositive for purposes of the exception in § 5891(b).

Section 5891(c)(1) defines the term “structured settlement” to mean an arrangement— (A) which is established by (i) suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under § 104(a)(2), or (ii) agreement for the periodic payment of compensation under any workers' compensation law excludable from the gross income of the recipient under section 104(a)(1); and (B) under which the periodic payments are (i) of a character described in § 130(c)(2)(A) and (B); and (ii) payable by a person who is a party to the suit or agreement or to the workers' compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with § 130.

Section 5891(c)(2) defines the term “structured settlement payment rights” to mean rights to receive payments under a structured settlement.

Section 5891(c)(3)(A) defines the term “structured settlement factoring transaction” to mean a transfer of structured settlement payment rights (including portions of structured settlement payments) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration.

Under § 5891(c)(3)(B), a “structured settlement factoring transaction” does not include—(i) the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution in the absence of any action to redirect the structured settlement payments to such institution (or agent or successor thereof) or otherwise to enforce such blanket security interest as against the structured settlement payment rights; or (ii) a subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.

Section 5891(c)(4) defines the term “factoring discount” to mean an amount equal to the excess of—(A) the aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction; over (B) the total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

[REDACTED]

[REDACTED]

Please call M. Duke Osborne or me at (202) 317-7006 if you have any further questions.