

Revenue Procedure 93-34

Internal Revenue Service

1993-2 C.B. 470

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

(Also Part I, Sections 130, 468B; 1.468B, 1.468B-1.)

Rev. Proc. 93-34

SECTION 1. PURPOSE

This revenue procedure provides rules under which a designated settlement fund described in section 468B(d)(2) of the Internal Revenue Code or a qualified settlement fund described in section 1.468B-1 of the Income Tax Regulations will be considered "a party to the suit or agreement" for purposes of section 130. In general, section 130 provides that an assignee may exclude from gross income amounts it receives for assuming the liability of a party to a suit or agreement to make described periodic payments of damages to a claimant.

SEC. 2. BACKGROUND

.01 Section 130(a) of the Code provides that any amount received for agreeing to a qualified assignment is not included in gross income to the extent that the amount does not exceed the aggregate cost of any qualified funding assets.

.02 Section 130(c) of the Code defines a "qualified assignment" to mean any assignment of a liability to make periodic payments as damages (whether by suit or agreement) on account of personal injury or sickness (in a case involving physical injury or physical sickness) if:

(1) the assignee assumes the liability from a person who is a party to the suit or agreement;

(2) the periodic payments are fixed and determinable as to the amount and time of payment;

(3) the periodic payments cannot be accelerated, deferred, increased, or decreased by the recipient of the payments;

(4) the assignee's obligation on account of the personal injuries or sickness is not greater than the obligation of the person who assigned the liability; and

(5) the periodic payments are excludable from the gross income of the recipient under section 104(a)(2).

.03 Section 130(d) of the Code defines a "qualified funding asset" as any annuity contract issued by a company licensed to do business as an insurance company under the laws of any state, or any obligation of the United States if:

(1) the annuity contract or obligation is used by the assignee to fund periodic payments under any qualified assignment;

(2) the periods of the payments under the annuity contract or obligation are reasonably related to the periodic payments under the qualified assignment and the amount of any such payment under the contract or obligation does not exceed the periodic payment to which it relates;

(3) the annuity contract or obligation is designated by the assignee as being taken into account under section 130 with respect to the qualified assignment; and

(4) the annuity contract or obligation is purchased by the assignee not more than 60 days before the date of the qualified assignment and not later than 60 days after the date of such assignment.

.04 Section 468B(d)(2) of the Code defines a "designated settlement fund" as any fund:

(1) that is established pursuant to a court order and that extinguishes completely the transferor's tort liability with respect to claims arising out of personal injury, death, or property damage;

(2) with respect to which no amount may be transferred other than in the form of qualified payments;

(3) that is administered by persons a majority of whom are independent of the transferor;

(4) that is established for the principal purpose of resolving and satisfying present and future claims against the transferor (or any related person or formerly related person) arising out of personal injury, death, or property damage;

(5) under the terms of which the transferor (or any related person) may not hold any beneficial interest in the income or corpus of the fund; and

(6) with respect to which an election is made by the transferor.

.05 Section 1.468B-1(a) of the regulations provides that a qualified settlement fund is a fund, account, or trust that satisfies the requirements of section 1.468B-1(c). Section 1.468B-1(c) provides that a fund, account, or trust is a qualified settlement fund if:

(1) it is established pursuant to an order of, or is approved by, the United States, any state (including the District of Columbia), territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) of any of the foregoing and is subject to the continuing jurisdiction of that governmental authority;

(2) it is established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an event (or a related series of events) that has occurred and that has given rise to at least one claim asserting liability:

(a) under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.; or

(b) arising out of a tort, breach of contract, or violation of law; or

(c) designated by the Commissioner in a revenue ruling or revenue procedure; and

(3) the fund, account, or trust is a trust under applicable state law, or its assets are otherwise segregated from other assets of the transferor (and related persons).

.06 Section 1.468B of the regulations provides that a designated settlement fund is taxed in the manner described in section 1.468B-2, pertaining to qualified settlement funds. In addition, the rules for transferors to a qualified settlement fund described in section 1.468B-3 apply to transferors to a designated settlement fund and the rules for claimants of a qualified settlement fund described in section 1.468B-4 apply to claimants of a designated settlement fund.

.07 Section 1.468B-1(d)(1) of the regulations defines a "transferor" as a person that transfers (or on behalf of whom an insurer or other person transfers) money or property to a qualified settlement fund to resolve or satisfy claims described in section 1.468B-1(c)(2) against that person.

.08 Section 1.468B-3(f)(2)(i) of the regulations provides that, if a qualified settlement fund makes a distribution on behalf of a transferor to a person that is not a claimant, the distribution is deemed made by the fund to the transferor. The transferor, in turn, is deemed to have made a payment to the actual recipient.

SEC. 3. SCOPE

This revenue procedure provides specific guidance on the requirements that must be satisfied in order for a designated settlement fund or qualified settlement fund to be treated as "a party to the suit or agreement" under section 130(c)(1) of the Code. In addition to the requirements provided by this revenue procedure, an assignment by a designated or qualified settlement fund of a liability to make periodic payments must also satisfy all the other requirements of section 130 to be a qualified assignment. No inference should be drawn regarding the application of section 130 to any other type of taxpayer.

SEC. 4. APPLICATION

.01 A designated settlement fund or a qualified settlement fund will be treated as "a party to the suit or agreement" within the meaning of section 130(c)(1) of the Code if each of the following requirements is satisfied:

(1) the claimant agrees in writing to the assignee's assumption of the designated or qualified settlement fund's obligation to make periodic payments to the claimant;

(2) the assignment is made with respect to a claim on account of personal injury or sickness (in a case involving physical injury or physical sickness) that is either:

(a) a claim described in section 2.04(1) in the case of a designated settlement fund, or

(b) a claim described in section 2.05(2) in the case of a qualified settlement fund;

(3) each qualified funding asset purchased by the assignee in connection with the assignment by the designated or qualified settlement fund relates to a liability to a single claimant to make periodic payments for damages;

(4) the assignee is not related to the transferor (or transferors) to the designated or qualified settlement fund within the meaning of sections 267(b) or 707(b)(1); and

(5) the assignee is neither controlled by, nor controls, directly or indirectly, the designated or qualified settlement fund. For purposes of this section 4.01(5), examples of control include an assignee that is a corporation the stock of which is owned by the fund or an assignee that is a trust the trustee of which is the administrator of the fund.

.02 If an assignment by a designated or qualified settlement fund satisfies the requirements of section 4.01 of this revenue procedure and all the other applicable requirements of section 130 of the Code, the assignment is a qualified assignment within the meaning of section 130 and the transferor to the designated or qualified settlement fund will not be treated as receiving a deemed distribution described in section 2.08 of this revenue procedure when the qualified assignment is made.

SEC. 5. EFFECTIVE DATE

This revenue procedure is effective for qualified assignments made after August 10, 1993.