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June 19, 2003

Pamela F. Olson
Assistant Secretary (Tax Policy)
Department of Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

B. John Williams
Chief Counsel, Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: Section 130 Qualified Assignments

Dear Assistant Secretary Olson and Chief Counsel Williams:

We respectfully request that the Internal Revenue Service ("IRS") and Treasury Department ("Treasury") publish guidance under section 130 of the Internal Revenue Code (the "Code").¹ In general, section 130 provides that, in the case of a "qualified assignment" of a liability to make periodic payments of damages on account of personal injury, the assignee may exclude from gross income the amount it receives for assuming the liability to the extent assets are acquired to fund the periodic payments. We request guidance clarifying that the assignment of a liability to make periodic payments does not fail to be a "qualified assignment" for purposes of section 130 solely because the settlement proceeds are held temporarily in a qualified settlement fund (as defined in Treas. Reg. § 1.468B-1(c)) before the liability is assigned.

¹ Unless otherwise indicated, all section references are to the Code.

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The failure of a number of insurance companies and the financial weakness of others have led to concerns about the safety, security and long-term viability of traditional annuity-based structured settlements. These concerns have resulted in the use of qualified settlement funds in many structured settlements today to ensure that the assets needed to fund the future periodic payments to the claimant will be secure.

We understand the IRS currently is considering whether, in a situation where the settlement involves a single claimant and a qualified settlement fund to facilitate assignment of the liability to make periodic payments to the claimant, the judicial economic benefit doctrine may somehow apply to cause the assignment to fail to be a qualified assignment under section 130. We believe that application of the economic benefit doctrine to disqualify an otherwise qualified assignment would be contrary to section 130, Congress' intent in enacting the 1988 statutory amendment, and the policy underlying Rev. Proc. 93-34, 1993-2 C.B. 470, which provides procedures under which qualified settlement funds can be used to facilitate a qualified assignment under section 130. Application of the economic benefit doctrine to qualified settlement funds used to facilitate qualified assignments would as a practical matter render Rev. Proc. 93-34 a nullity. Because this issue impacts a substantial number of structured settlements involving an assignment of the liability to make periodic payments, we believe the issue should be addressed in published guidance.

Attached for your convenience is a memorandum that describes structured settlements involving the assignment of a liability to make periodic payments to a claimant and discusses the tax consequences of such settlements. Also attached is a proposed revenue procedure that we believe would provide the requested clarification. The proposed revenue procedure would modify and supercede Rev. Proc. 93-34 to make clear that a qualified settlement fund may make a qualified assignment under section 130 in a case involving a single claimant. For your convenience, we have also attached a blackline comparing the proposed revenue procedure to Rev. Proc. 93-34.

* * * * *

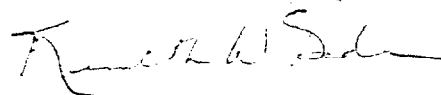
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We would appreciate the opportunity to discuss this issue with you and others from the IRS and Treasury. If you have any questions or would like additional information, please call Fred Goldberg at (202) 371-7110, Ken Gideon at (202) 371-7540, or Jody Brewster at (202) 371-7238.

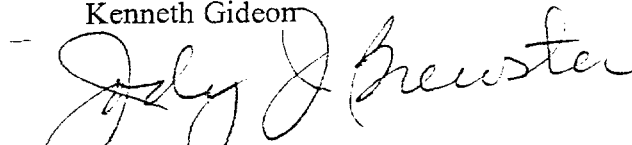
Sincerely,



Fred Goldberg



Kenneth Gideon



Jody Brewster

cc: Eric Solomon
Helen Hubbard
Gary Wilcox
Robert Brown
Tom Luxner
Mike Montemurro

Tax Consequences of a Single-Claimant Qualified Settlement Fund Used to Facilitate a Qualified Assignment under Section 130 of the Code

The failure of a number of insurance companies and the financial weakness of others have led to concerns among settling claimants about the safety, security and long-term viability of traditional annuity-based structured settlements. These concerns have resulted in the use of a qualified settlement fund as defined in Treas. Reg. § 1.468B-1(c) ("QSF")¹ to structure many settlements today to ensure that the annuities used to fund the periodic payments to a claimant will be safe, secure and viable.² Some defendants and their insurers have suggested that the economic benefit doctrine prevents a QSF from making a "qualified assignment" under section 130 of the Internal Revenue Code (the "Code"), particularly in settlements involving a single claimant, but also in multiple-claimant settlements where the amount paid to the QSF by the defendant or its insurer has been pre-allocated among the claimants.

This document (1) provides general background regarding the tax consequences of structured settlements; (2) describes variations of structured settlements that involve a single claimant, an assignment of the liability to make periodic payments to the claimant, and the use of a QSF; and (3) analyzes the impact, if any, of the economic benefit doctrine on an otherwise "qualified assignment" as defined in section 130(c) of the Code.

In summary, application of the economic benefit doctrine to prevent a qualified assignment by a QSF under section 130 would be contrary to the clear statutory override of that judicial doctrine in section 130, Congress intent underlying the 1988 amendment to section 130, and the policy underlying Rev. Proc. 93-34, 1993-2 C.B. 470. Given the uncertainty that exists in negotiations of structured settlements, Treasury and the IRS should publish guidance clarifying that the

1 A small number of structured settlements use a "designated settlement fund" as defined in section 468B(d)(2) of the Code ("DSF"), rather than a QSF. QSFs generally are preferred because the QSF regulations provide more complete guidance for taxpayers than does the statute providing for DSFs. For the sake of convenience, this document addresses only QSFs. However, the same issues and legal principles apply in the case of DSFs as well.

2 Additional considerations that result in the use of a QSF include (1) ensuring that the distribution of settlement proceeds, including periodic payments, is designed to meet the needs of the claimant; (2) ensuring that the claimant has the full benefit of a competitive free market for funding assets; and (3) ensuring that settlement proceeds are transferred at a time when the defendant or the defendant's insurer is solvent and funds are available.

economic benefit doctrine does not apply to prevent a QSF from making a qualified assignment under section 130. The attached draft revenue procedure, which would modify and supercede Rev. Proc. 93-34, contains the type of guidance that would provide the necessary clarification.

Background

Sections 104, 130, and 468B of the Code and the regulations thereunder interact to provide claimants, defendants and their insurers a great deal of flexibility in structuring the settlements of actions arising from personal physical injuries (*e.g.*, an automobile accident, a plane crash, medical malpractice, or a defective product). Under section 104(a)(2), gross income does not include "the amount of any damages (other than punitive damages) received . . . on account of personal physical injuries or physical sickness." The exclusion from gross income under section 104(a)(2) applies without regard to whether the damages are received pursuant to a lawsuit or a settlement agreement. Section 104(a)(2) (parenthetical language). Thus, if a defendant makes a single, lump-sum settlement payment of damages to the claimant, the lump-sum payment is excluded from the claimant's gross income pursuant to section 104(a)(2). Any future earnings on that lump-sum amount, however, will be taxable to the claimant.

The claimant may reject a lump-sum settlement payment because such a payment does not meet the future needs, for example, of a minor, incompetent, unsophisticated or severely-injured claimant. Instead, the claimant may insist upon periodic payments. The exclusion from gross income under section 104(a)(2) applies without regard to whether the amounts are received in a single lump sum or as periodic payments. Section 104(a)(2) (parenthetical language). Thus, if a defendant agrees to make periodic settlement payments to the claimant, each of the periodic payments received by the claimant is excludable from the claimant's gross income under section 104(a)(2), including the portion of the payments that can be traced to income earned on assets that may have been set aside to fund the periodic payments.

Where a claimant wants to receive periodic payments, but the defendant wants to make a lump-sum payment, a settlement can be structured requiring the defendant to make periodic payments, and the defendant can in turn make a "qualified assignment" pursuant to section 130 of that periodic-payment liability to a third-party (the "assignee") together with the lump-sum payment. Typically, the assignee is an affiliate of an insurance company, and its only business is to accept for a fee qualified assignments of liabilities to make periodic payments to

tort claimants. Section 130 sets forth rules that apply to a "qualified assignment" of a defendant's or its insurer's liability to make periodic payments to a claimant. Absent section 130, the lump-sum payment received by the assignee would be income to the assignee in the year received, and the assignee would get a deduction for the periodic payments – but only as the payments are made to the claimant. In contrast, if section 130 applies (*i.e.*, because the assignment is a "qualified assignment" as defined in section 130(c)³), the lump-sum payment is excluded from the assignee's gross income to the extent the payment received by the assignee does not exceed the assignee's cost of the "qualified funding assets" (Treasury obligations or annuities) acquired by the assignee to fund the periodic payments. In other words, the assignee includes in income only that portion of the lump-sum payment that is not used to purchase qualified funding assets.

Section 130 was added to the Code by the Periodic Payment Act of 1982, Pub. L. 97-473, 96 Stat. 2605, which also amended section 104(a)(2) to exclude from a claimant's gross income any damages received as periodic payments on account of personal injuries. The legislative history to the Periodic Payment Settlement Act of 1982 explains that section 104(a)(2) was amended and section 130 was added to the Code to provide statutory certainty that periodic payments of personal injury damages are excludable from the gross income of the recipient, and that likewise, amounts received by an assignee are excludable from the gross income

³

Section 130(c) defines a "qualified assignment" as:

any assignment of a liability to make periodic payments as damages (whether by suit or agreement), or as compensation under any workmen's compensation act, on account of personal injury or sickness (in a case involving physical injury or physical sickness) –

(1) if the assignee assumes such liability from a person who is a party to the suit or agreement, or the workmen's compensation claim, and

(2) if —

(A) such periodic payments are fixed and determinable as to amount and time of payment,

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

(C) the assignee's obligation on account of the personal injuries or sickness is no greater than the obligation of the person who assigned the liability, and

(D) such periodic payments are excludable from the gross income of the recipient under paragraph (1) or (2) of section 104(a).

The determination for purposes of this chapter of when the recipient is treated as having received any payment with respect to which there has been a qualified assignment shall be made without regard to any provision of such assignment which grants the recipient rights as a creditor greater than those of a general creditor.

of the assignee to the extent that those amounts are used to purchase annuities or Treasury obligations to fund the periodic payment liability. S. REP. NO. 97-646, 97th Cong., 2d Sess. 4 (1982). The public policy of encouraging structured settlements has been reaffirmed in subsequent legislation.⁴

The interests of a defendant's insurer may also impact settlement negotiations. The defendant's insurer may seek to settle a lawsuit by paying the claimant in periodic payments funded by an annuity from an affiliated life insurance company (or from another company selected by the defendant's insurer). The claimant may reject periodic payments funded by the insurer's affiliated or selected life insurance company because of concerns about its safety, security, and long-term viability.

A settlement between parties with such diverse objectives can be structured using a QSF. A QSF is any fund, account, or trust 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;

4 See Joint Committee on Taxation, Tax Treatment of Structured Settlement Arrangements, JCX-15-99 (Mar. 16, 1999), which describes the "public policy interest in tax subsidy for structured settlement arrangements" as follows:

The amount of damages in a case involving personal physical injuries or physical sickness may be based on the lifetime medical needs of the recipient. If a recipient chooses a lump sum settlement, there is a chance that the individual may, by design or poor luck, mismanage his or her funds so that future medical expenses are not met. If the recipient exhausts his or her funds, the individual may be in the position to receive medical care under Medicaid or in later years under Medicare. That is, the individual may be able to rely on Federally financed medical care in lieu of the medical care that was intended to have been provided by the personal injury award. Such a "moral hazard" potential may justify a subsidy to encourage the use of a structured settlement arrangement in lieu of a lump sum payment to the recipient, to reduce the probability that such individuals need to make future claims on these government programs.

JCX 15-99 accompanied H.R. 263, "The Structured Settlement Protection Act," 106th Cong., 1st Sess. Section 5891 of the Code was enacted by a subsequent version of that bill, H.R. 2884, on January 23, 2002. Generally, Section 5891 provides for an excise tax on the transfer of the right to receive structured settlement payments.

(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 related series of events) that has occurred and that has given rise to at least one claim asserting liability under CERCLA, arising out of a tort, breach of contract, or violation of law, or 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).

Treas. Reg. § 1.468B-1(c).

In a structured settlement involving a QSF, the defendant or its insurer transfers its settlement payment to the QSF and is released and dismissed from the suit.⁵ The QSF then uses the lump-sum payment from the defendant or its insurer to settle the claims of the claimant against the QSF. Pursuant to the settlement agreement between the QSF and the claimant, the QSF agrees to make periodic payments to the claimant and assigns that liability to an assignee in a qualified assignment acceptable to the claimant. The assignee purchases qualified funding assets to fund the periodic payments. A QSF can make a "qualified assignment" under section 130 of the QSF's liability to make periodic payments to a claimant. *See Rev. Proc. 93-34, 1993-2 C.B. 470.* That is, where a defendant transfers its settlement payment to a QSF, and the QSF agrees to make periodic payments to the claimant, the QSF may subsequently assign that liability in a qualified assignment. Under Rev. Proc. 93-34, the QSF is treated as "a party to the suit or agreement" for purposes of section 130(c)(1).

The Economic Benefit Issue

Under the doctrine of economic benefit, a taxpayer is considered in actual receipt of income when assets are unconditionally and irrevocably paid into a fund or trust to be used for the taxpayer's sole economic benefit. *See Sproull v. Comm'r*, 16 T.C. 244 (1951), *aff'd per curiam*, 194 F.2d 541 (6th Cir. 1952) (employee received current income in the form of amounts irrevocably paid out by

5 Treas. Reg. § 1.468B-3(c) provides that, for purposes of section 461(h), "economic performance" occurs when and to the extent that the defendant makes a transfer to a QSF to resolve or satisfy its tort liability. Absent this special rule, section 461(h)(2)(c) would defer the defendant's deduction until the QSF paid the amount to the claimant.

employer to a trust for the sole benefit of the employee). Where a QSF makes a qualified assignment under Rev. Proc. 93-34 in a settlement involving a single claimant, two arguments based on the economic benefit doctrine have been suggested by defendants and their insurers to prevent qualification as a "qualified assignment" under section 130(c).

First, it has been suggested that there can be no qualified assignment because the future periodic payments would not be excludable from the claimant's gross income under section 104(a)(1) or (2), as required by section 130(c)(2)(D). That is, if the claimant were considered, by application of the economic benefit doctrine, to have received the defendant's settlement payment at the time that payment was transferred to the QSF, then only that payment would be excludable from the claimant's gross income under section 104(a)(2). Future periodic payments would not be excludable under section 104(a)(1) or (2) as required by section 130(c)(2)(D). Thus, the assignment would fail to qualify as a "qualified assignment."

Second, it has been suggested that there can be no qualified assignment because the assignee has not assumed a liability from a person who is "a party to the suit or agreement" as required by section 130(c)(1). Rev. Proc. 93-34 provides that, if certain requirements are satisfied, a QSF will be treated as a party to the suit or agreement. In the case of a QSF, a "transferor" is a person that transfers money or property to the QSF to resolve or satisfy claims against that person. Treas. Reg. § 1.468B-1(d)(1). Arguably, if a claimant were considered by reason of the economic benefit doctrine to have received the settlement proceeds at the time the proceeds were transferred to a settlement fund, then it would follow that the transferor of the settlement proceeds to the settlement fund would be the claimant, rather than the defendant. If so, the settlement fund arguably would not be a QSF treated as "a party to the suit or agreement" under Rev. Proc. 93-34, and thus, the assignment would not be a "qualified assignment."

Discussion

The economic benefit doctrine does not apply to disqualify an otherwise qualified assignment under section 130. Any other conclusion would be contrary to the statutory language of section 130, the Congressional intent underlying the 1988 amendment to the statute, Rev. Proc. 93-34, and the policy underlying Rev. Proc. 93-34.

Section 130 and Congress' Intent Underlying the 1988 Amendment

Section 130 expressly provides that the "determination for purposes of this chapter of when the recipient is treated as having received any payment with respect to which there has been a qualified assignment shall be made without regard to any provision of such assignment which grants the recipient rights as a creditor greater than those of a general creditor." Section 130(c) (flush language). It is clear from the context in which this statutory language arose that Congress intended this language to preclude application of the economic benefit doctrine to cause an otherwise "qualified assignment" to fail to be a "qualified assignment" for purposes of section 130.

As initially enacted, section 130 restricted the rights that a claimant could have against the assignee and in the assets used to fund the future periodic payments. Specifically, section 130(c)(2)(C) (repealed in 1988) required that "the assignee does not provide to the recipient of such payment rights against the assignee which are greater than those of a general creditor." The legislative history explained that the periodic payments of personal injury damages are "excludable from income only if the recipient taxpayer is not in constructive receipt of or does not have the *current economic benefit* of the sum required to produce the periodic payments." S. REP. NO. 97-646; H.R. REP. NO. 97-832, 97th Cong., 2d Sess. 4 (1982) (emphasis added). Congress later abandoned this "general creditor" restriction.

In 1988, Congress repealed section 130(c)(2)(C), because, in Congress' view, "[r]ecipients of periodic payments under structured settlement arrangements should not have their rights as creditors limited by provisions of the tax law." H.R. REP. NO. 100-795, at 541 (1988). Congress also added the flush language to section 130(c) to provide that the determination of "when the recipient of periodic payments *is treated as having received any payment* with respect to which there has been a qualified assignment shall be made without regard to any provision of the assignment which grants the recipient rights as a creditor greater than those of a general creditor." Section 6079(b)(1)(A) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, 102 Stat. 3342 (emphasis added). The legislative history to the 1988 statutory amendment explains that "no amount *is currently includible in the recipient's income* solely because the recipient is provided creditor's rights that are greater than the rights of a general creditor." H.R. CONF. REP. NO. 1104, 100th Cong., 2d Sess. at II-171(1988) (emphasis added). The concepts addressed in the 1988 statutory amendment and its legislative history of "treating a payment as having been received" and "as currently includible in income"

are economic benefit concepts. Congress' intent was to make clear that these economic benefit concepts do not apply in determining whether there is a qualified assignment for purposes of section 130.

The IRS has interpreted the 1988 amendment to section 130(c) as intended to allow assignments of periodic payment liabilities without regard to whether a claimant has the current economic benefit of the settlement proceeds or the funding assets purchased with those settlement proceeds. In PLR 9703038 (Jan. 17, 1997),⁶ a defendant assigned to a trust the defendant's liability to make future periodic payments to the claimant. The trustee used the settlement proceeds it received from the defendant to purchase funding assets and gave the claimant a security interest in the funding assets. The IRS ruled that, assuming all other requirements of section 130(c) were met, the defendant's assignment to the trust of the defendant's liability to make future periodic payments to the claimant was a qualified assignment. In so ruling, the IRS concluded that, although the setting aside of funds in trust for a claimant generally confers an economic benefit to the claimant, "the 1988 amendment to section 130(c) of the Code was intended to allow assignments without regard to whether the recipient has the current economic benefit of the sum required to produce the periodic payments." Clearly, the fact that the claimant had a security interest in the funding assets did not prevent the assignment from being a qualified assignment. Nor did the fact that the assignee held the settlement proceeds in trust prior to the purchase of the funding assets prevent the assignment from being a qualified assignment.

In summary, the 1988 amendment to section 130(c) precludes any argument that an otherwise qualified assignment fails because the claimant receives the current economic benefit of settlement funds or funding assets that are held in trust.

Rev. Proc. 93-34 and Its Underlying Policy

Rev. Proc. 93-34 also supports the conclusion that the economic benefit doctrine does not apply to settlement proceeds that are held in trust in the context of a qualified assignment under section 130. Rev. Proc. 93-34 permits a QSF to make a "qualified assignment" under section 130 by treating the QSF as a "party to

⁶ Private letter rulings referred to herein are not cited as precedent under section 6110(k)(3), but rather to illustrate the thinking of the IRS on the issues addressed.

the suit or agreement" as required by section 130(c)(1). The premise underlying the revenue procedure is that the economic benefit doctrine does not apply where settlement proceeds are held in a QSF before the QSF makes a qualified assignment to the ultimate assignee.

Although the revenue procedure sets forth numerous requirements for a QSF to be treated as a "party to the suit or agreement,"⁷ the revenue procedure gives no indication that a QSF will be treated as a "party to the suit or agreement" for purposes of 130 *only if* the QSF holds funds for the benefit of more than one claimant. Indeed, the revenue procedure contains several references to "claimant" or "plaintiff" in the singular. For example, Section 4.10(3) of Rev. Proc. 93-34 requires that the funding asset purchased by the assignee in connection with an assignment by a QSF must relate to the liability to a "single claimant to make periodic payments for damages." Similarly, Section 4.10(1) of Rev. Proc. 93-34 requires that the claimant agree in writing to the assignee's assumption of the liability of the QSF to make periodic payments to the claimant. Each of these requirements presumes that identifiable assets may be set aside for the benefit of a single claimant, and the revenue procedure nonetheless concludes that the assignments are "qualified assignments" under section 130. Such a conclusion is clearly inconsistent with a conclusion that the economic benefit doctrine somehow applies to preclude a qualified assignment in the case of a single-claimant QSF.

Moreover, if the economic benefit doctrine were to apply in the case of a single-claimant QSF that makes a qualified assignment, then the doctrine would

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- 7 These requirements, as set forth in § 4.01 of Rev. Proc. 93-34, are:
- (1) the claimant agrees in writing to the assignee's assumption of the DSF or QSF'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 arising out of personal injury, death, or property damage in the case of a DSF, or
 - (b) a claim asserting liability under CERCLA, arising out of a tort, breach of contract, or violation of law, or designated by the Commissioner in a revenue ruling or revenue procedure, in the case of a QSF;
 - (3) each qualified funding asset purchased by the assignee in connection with the assignment by the DSF or QSF 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 DSF or QSF 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 DSF or QSF.

necessarily apply in the case of every QSF that makes a qualified assignment, including multiple-claimant QSFs, as well. As a general matter, application of the economic benefit doctrine is not restricted to a fund or trust with only a single beneficiary; the doctrine can apply to a fund or trust in which there are multiple beneficiaries – each with a specified share. See *Pulsifer v. Comm'r*, 64 T.C. 245 (1975) (holding that each of three children had to include in income in the year they won the Irish Sweepstakes the child's one-third share of the winnings that were irrevocably placed into an account with the court solely for the benefit of the children until they reached age of majority). In every case in which a QSF is established to satisfy the claims of multiple claimants, the rules of professional conduct require that a lawyer obtain advance approval from each client of that client's share of the aggregate settlement that funds the QSF.⁸ After advance approval is obtained, each claimant has an allocated share of the amount paid to the QSF.⁹ If the economic benefit doctrine were applied to trigger immediate receipt by the claimants of those shares, before settlements and qualified assignments were made, then no QSF could ever make a qualified assignment, and thus, Rev. Proc. 93-34 would be rendered meaningless. Clearly, Treasury and the IRS did not intend such a result.

Given the impact of the uncertainty regarding the application of the economic benefit doctrine to negotiations of structured settlements, we request that Treasury and the IRS publish guidance clarifying that the economic benefit doctrine does not apply to prevent a single-claimant QSF from making a qualified assignment under section 130. The attached draft revenue procedure, which would modify and

⁸ This ethical requirement is set forth in Rule 1.8(g) of the American Bar Association Model Rules of Professional Conduct, adopted in all 50 states, which provides, in pertinent part, as follows:

A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of . . . the clients . . . unless each client consents after consultation, including disclosure of the existence and nature of all the claims . . . and of the participation of each person in the settlement.

The penalty for failure to obtain advance approval is forfeiture by the attorney of his or her legal fees. See *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999) (adopting fee forfeiture as a remedy and remanding for trial the issue of whether the rule was violated).

⁹ Even if allocation of the settlement proceeds among multiple claimants were not to occur before the QSF is funded, such an allocation would have to occur before the QSF could make a final distribution to the claimants of the funds held by the QSF.

supercede Rev. Proc. 93-34, contains the type of guidance that would provide the requested clarification.

The requested clarification does not require ultimate resolution of whether the economic benefit doctrine ever applies to a QSF.¹⁰ Rather, what is sought is merely a clarification that a QSF may make a qualified assignment in a case involving a single claimant.

Conclusion

Application of the economic benefit doctrine to prevent a qualified assignment would be contrary to the statutory language of section 130, Congress' intent underlying the 1988 amendment to the statute, and Rev. Proc. 93-34 and its underlying policy. As the IRS itself has recognized, the 1988 amendment to section 130 was intended to allow assignments of periodic payment liabilities without regard to whether a claimant has the current economic benefit of the settlement proceeds or other assets that will be used to fund the periodic payments.

¹⁰ It is open to doubt that the economic benefit doctrine should ever apply to trigger immediate receipt of settlement proceeds by the claimant or claimants of a QSF solely because the QSF has a single claimant or because an allocation of settlement proceeds among multiple claimants has been made. First, there is no indication in the definition of a QSF or otherwise in the regulations or legislative history under section 468B that qualification as a QSF depends upon the number of claimants or the absence of an allocation of an aggregate settlement among the claimants. Second, a QSF is a separate taxable entity that reports and pays tax on the income earned by the QSF (at the highest applicable rate and without use of the lower brackets). Application of the economic benefit doctrine to a QSF could result in both the QSF and the claimant(s) having to report and pay tax on that income. Clearly, such double taxation is not a result intended by Congress, Treasury, or the IRS.