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Late last month, the Treasury released its list of prioritized action items. Conspicuously absent, at least from the perspective of settlement planners and the structured settlement industry, was upcoming guidance regarding the tax treatment of single-claimant qualified settlement fund guidance for now.


Chief among the policy rationales for such guidance is the explicit approval of annuity-based settlement procedures that provide increased time and control over the structuring process to personal injury plaintiffs and claimants.

Wood, author of the recently released treatise Qualified Settlement Funds and Section 468B has consistently recommended that the use of single-claimant QSFs be avoided without Treasury clarification, though he believes that the regulations “seem to allow the possibility of the single-claimant QSF.”

Risk, frequent QSF administrator and author of multiple articles discussing QSFs, argues that § 468B, revenue procedure, and economic benefit case law firmly allow single-claimant QSFs to structure settlements without triggering economic benefit. Though he calls for Treasury guidance explicitly confirms his view, he argues that practitioners need not wait for such clarification before pursuing single-claimant QSFs.

How we got here, and what the new priority guidance plan changes

As early as 2001, the issue had been discussed at Treasury with no conclusion reached. In 2003, the Society of Settlement Planners called on the Treasury to act through its representation, Skadden Arps. The firm’s assigned legal team included attorney Dwayne Ballentine, including a former QSF Counsel to the U.S. House Committee on Ways and Means.

Likely as a result of the correspondence, the Treasury listed the single-claimant QSF issue on its “to-do list” (the Priority Guidance Plan) in 2004. It has remained on that list in subsequent publications until last month.

The elimination of the issue from Treasury’s plans is somewhat surprising. Last year, Risk reported that published guidance was, in fact, “near.” The delay had purportedly resulted both from the Treasury’s diverted attention to rulings on relief funds for natural disasters, and the loss of several important Treasury attorneys.

Risk also provided insight as to the likely opinion of the Treasury. In 2006, the contemporary Branch Chief of the IRS Income Tax & Accounting Division said that the single-claimant status of a QSF does not automatically trigger economic benefit. Thus, it appeared that the Treasury might soon issue guidance in accord with those favoring single-claimant QSFs.

It is unclear what the removal of the single-claimant QSF issue from the Priority Guidance Plan means. When contacted, Risk responded, “I believe this can be viewed as favorable to plaintiffs seeking to use the QSF, whether or not there is more than one claimant to the assets of the QSF.”

Risk believes that the Treasury must have concluded that sufficient guidance on the issue already exists, since § 7805 of the Tax Code provides that “the Secretary shall prescribe all needful rules and regulations for the enforcement of [the Code].” No doubt, the National Structured Settlements Trade Association will interpret the removal of the issue quite differently, so long as its position concerning single-claimant QSFs remains unchanged. Of course, the Treasury may have simply concluded that more issues require resolution than time permits, and found this particular issue to be of less importance.

Unfortunately, plaintiffs and defense attorneys, settlement planners and the structured settlement industry without representation. While it’s very likely the arguments weigh in favor of single-claimant QSFs, the lack of legal clarity does not reduce the extensive research andmany from making use of the QSF entity in single-claimant cases.

The Priority Guidance Plan is updated throughout the year and responds to suggestions from interested parties, such as tax practitioners and industry groups.

Editor’s note: Babener is a third-year student at New York University School of Law, and a notes editor on the NYU Journal of Law and Business. He has written two pieces on structured settlements, one published in the NYU Journal of Law and Business, the other to be published in the NYU Journal of Legislation and Public Policy. He spoke last month at the annual conference of the National Association of Settlement Purchasers on the structured settlement tax subsidy. Portions of this article were used with permission of the author, by Patrick Hinderer on his blog Beyond Structured Settlements, http://2b blog.typepad.com.