

IRS Yawns Over Single-Claimant Qualified Settlement Funds


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By

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To the Editor:

I am writing concerning David Higgins' helpful article, "Single-Plaintiff Qualified Settlement Funds Seem OK," *Tax Notes*, Feb. 1, 2016, p. 559

 I applaud his understated title! It contrasts nicely with the hyperbole that at times has been used on both sides of the single-claimant qualified settlement fund (QSF) debate.

Everyone in the structured settlement industry has encountered this issue, and continues to do so. I lamented the issue back in 2009, and reprised my worries in 2014 ("Single-Claimant Qualified (468B) Settlement Funds?" *Tax Notes*, Jan. 5, 2009, p. 71 ; "Reprising Single-Claimant Qualified Settlement Funds," *Tax Notes*, June 23, 2014, p. 1445 ). I come at the issue slightly differently, but in all important respects, I agree with Higgins.

However, I think it is worth stating explicitly what to me seems implicit in Higgins' article. Is the IRS likely to pursue a single-claimant QSF as offending in some way? I don't think so. Is the IRS likely to pursue the sole beneficiary of a single-claimant QSF, asserting that the claimant is responsible for taxes on the QSF's earnings? It seems awfully unlikely.

Is the IRS likely to pursue the sole beneficiary of a single-claimant QSF, asserting that the claimant should be treated as receiving money *earlier* than he *actually* receives it via a distribution from the QSF? Again, I think not. In short, for years now, this single-claimant controversy has seemed to be a mostly academic debate.

What is quite real is the perception of the problem. If the marketplace believes that goblins might appear -- or has *other* reasons to refuse to recognize single-claimant QSFs as valid -- claimants may suffer. A claimant who wants the QSF to buy a structure may be told that the single-claimant QSF is too risky and the life insurance companies will not issue the annuity.

I agree with Higgins that the IRS probably does not need to clarify its position, although it would be nice. I think the IRS does not want to get involved in this. The IRS may see the dispute as a turf battle, not as a technical problem. Perhaps someone with a single-claimant fact pattern will get a ruling that will put the issue to bed.

Until then, it may not matter whether the IRS is worried, or what if anything the IRS might do. The marketplace has taken this issue on even if the IRS has not. To my mind, a bigger danger is what I'll call the abusive QSF, where the QSF is used as a kind of pocketbook. That danger is present with single or multiple claimants, although it may be worse with only one.

Regards,

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