

## Structured Settlements & Factoring: Never the Twain Shall Meet?

By Robert W. Wood

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If a plaintiff receives a tax-favored structured settlement for personal physical injuries or sickness calling for annuity payments over many years, should we allow third-party financing of those structures? Put another way, should we allow factoring or discounting of structured settlements? If we permit factoring, should we encourage or discourage it? And, if it is permitted, should it affect the underlying tax consequences of *all* structures, even if the plaintiff/taxpayer chooses not to enter a factoring transaction for his settlement?

As interesting as I find those questions, I will not even try to answer all of them. I will touch on them in the process of explaining a provision that was added to the Internal Revenue Code in 2001. That provision was added to deal (at least in part) with the growth of the structured settlement factoring industry. My specific topic is the excise tax now in section 5891, particularly the dense thicket of definitions in that provision and the regulations issued under it.

Although the subject itself is not terribly complex, I find this a terribly complex code section. Moreover, I'm not sure what effect it is having on factoring transactions. A fairly typical industry response to this excise tax provision is for the factoring company or the issuer of the annuity to require a "qualified order" before consummating any transaction, as that effectively obviates the statute.

There is also a market response. The excise tax does not prohibit factoring, but simply adds a cost to the factoring transaction. Not surprisingly, when the excise tax *does* apply, the party bearing the burden of the tax is unlikely to be the factoring company. Although the tax is nominally imposed on the party acquiring the structure (the purchaser, if you will), the financial costs of the excise tax (presumably plus compliance costs) are likely to be passed through to the original holder of the structure, the injured person. Like many excise taxes, then, that excise tax operates much like a sales tax, for which the consumer normally bears the burden.

Because factoring transactions are now regulated under state statutes in most states, I also include here a cursory discussion of state factoring laws. As my focus is primarily the excise tax rules of the federal law, I don't provide a comprehensive analysis of the laws affecting factoring. My focus is only structured settlements (excludable under section 104, and generally involving section 130 qualified assignments). Thus, I do not address the effect of any law on factoring or discounting of lottery

winnings or any other streams of payments, even though lottery winnings and tax consequences have often been in the news.

### I. Excise Tax Basics

Section 5891 was added to the Internal Revenue Code by the Victims of Terrorism Tax Relief Act of 2001.<sup>1</sup> Subject to various exceptions (discussed below), section 5891(a) provides for a 40 percent excise tax (payable by the acquiring party) on some structured settlement factoring transactions.<sup>2</sup> There are lots of definitions here, even for a tax law, and we must slog through them.

A structured settlement factoring transaction is 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.<sup>3</sup> The 40 percent excise tax is applied to the “factoring discount,” which is the excess of the aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction,<sup>4</sup> over the total amount actually paid by the acquirer to the person from whom the structured settlement payments are acquired.<sup>5</sup>

A “structured settlement” has a much more limited definition than one might suspect. It is defined as an arrangement established by suit or agreement for the periodic payment of damages that are excludable from the gross income of the recipient under section 104(a)(2), or established by 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),<sup>6</sup> under which the periodic payments are:

1. of the character described in sections 130(c)(2)(A) (that is, the periodic payments are fixed and determinable with respect to the amount and time of payment) and 130(c)(2)(B) (that is, the periodic payments cannot be accelerated, deferred, increased, or decreased by the recipient of the payments); and
2. 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 these periodic payments under a qualified assignment in accordance with section 130.<sup>7</sup>

Stripped of its complexity and multiple-choice nature, that definition basically means the vast majority of structured settlements in the United States — the classic personal physical injury structured settlement — are subject to the excise tax. It also means that structures

outside of this context are not covered. There is a growing trend in the United States toward nonqualified structures,<sup>8</sup> so they are wholly outside the scope of the excise tax.

### A. Exception for Qualified Orders

Even for the structures that fall within the definition, there is an exception from the applicability of the excise tax that effectively can consume the rule. The 40 percent excise tax does not apply to a structured settlement factoring transaction in which the transfer of structured settlement payment rights is approved in advance by way of a “qualified order.”<sup>9</sup> The existence of a qualified order is dispositive for purposes of the exception.<sup>10</sup> If you get one from a court, you (mercifully) don’t need to read the rest of this article.

A qualified order is defined as a final order, judgment, or decree that:

- (i) finds that the transfer does not contravene any federal or state statute or the order of any court or responsible administrative authority;<sup>11</sup>
- (ii) is in the best interest of the payee, taking into account the welfare and support of the payee’s dependents;<sup>12</sup> and
- (iii) is issued under the authority of an applicable state statute<sup>13</sup> by an applicable state court<sup>14</sup> or by the responsible administrative authority (if any) that has exclusive jurisdiction over the underlying action or proceeding that was resolved by means of the structured settlement.<sup>15</sup>

An “applicable state statute” is a statute providing for the entry of an order, judgment, or decree described above that is enacted by the state in which the payee of the structured settlement is domiciled. If there is no statute in the payee’s state, an applicable state statute is a statute enacted in a state in which either party to the structured settlement (including an assignee under a section 130 qualified assignment, or the person issuing the funding asset for the structured settlement) is domiciled or has its principal place of business where that statute provides for the entry of the order, judgment, or decree. An applicable state court, with respect to any applicable state statute, is a court of the state that enacted that statute. If the payee of the structured settlement is not domiciled in the state that enacted the statute, an applicable state court also includes a court of the state in which the payee of the structured settlement is domiciled. I find this quite heavy going, this definition after definition after definition.

<sup>8</sup>See Wood, “Structured Settlements in Non-Physical-Injury Cases: Tax Risks?” *Tax Notes*, Aug. 2, 2004, p. 511.

<sup>9</sup>Section 5891(b)(1); Treas. reg. section 157.5891-1(b)(1).

<sup>10</sup>Section 5891(b)(5); Treas. reg. section 157.5891-1(b)(2).

<sup>11</sup>Section 5891(b)(2)(A)(i); Treas. reg. section 157.5891-1(c)(4)(i).

<sup>12</sup>Section 5891(b)(2)(A)(ii); Treas. reg. section 157.5891-1(c)(4)(i).

<sup>13</sup>Section 5891(b)(3); Treas. reg. section 157.5891-1(c)(1).

<sup>14</sup>Section 5891(b)(4); Treas. reg. section 157.5891-1(c)(2).

<sup>15</sup>Section 5891(b)(2)(B); Treas. reg. section 157.5891-1(c)(4)(ii).

<sup>1</sup>P.L. 107-134 (January 23, 2002).

<sup>2</sup>Sections 5891(a) and (c)(4). See also Treas. reg. section 157.5891-1(a).

<sup>3</sup>Section 5891(c)(3)(A); Treas. reg. section 157.5891-1(c)(8).

<sup>4</sup>Section 5891(c)(3)(A); Treas. reg. section 157.5891-1(c)(8).

<sup>5</sup>Section 5891(c)(4); Treas. reg. section 157.5891-1(c)(3).

<sup>6</sup>Section 5891(c)(1)(A); Treas. reg. section 157.5891-1(c)(7)(i).

<sup>7</sup>Section 5891(c)(1)(B); Treas. reg. section 157.5891-1(c)(7)(ii).

**B. Limited Ambit of Section 5891**

Section 5891 is a technical provision. Yet there are a few questions even this admittedly intricate section does not answer. For example, can we assume that factoring of a structure is permitted (and does not trigger an excise tax) if the structure in question falls *outside* the scope of section 5891? If section 5891 imposes an excise tax on a transaction, it permits the transaction and merely regulates it. Therefore, factoring transactions that fall outside that code section are presumably equally permissible.

After all, section 5891 does not prohibit *any* type of factoring transactions. When it is applicable, section 5891 merely imposes an excise tax on some factoring transactions that are not made under a qualified order. Section 5891 is designed to discourage certain types of structured settlement factoring transactions, but it does not prohibit anything.

As a general rule, section 5891 applies to most section 104 structures. A “structured settlement” for purposes of section 5891 is an arrangement that is established by suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 104(a)(2) under which the periodic payments are of the character described in section 130(c)(2)(A) (that is, the periodic payments are fixed and determinable with respect to the amount and time of payment) and section 130(c)(2)(B) (that is, the periodic payments cannot be accelerated, deferred, increased, or decreased by the recipient of the payments).

Of course, what can be given with one hand can be taken away with the other, and vice versa. As long as a qualified order is obtained before the close of a factoring transaction, it escapes the imposition of the 40 percent excise tax.<sup>16</sup> Many state laws now require payees to obtain a qualified order before engaging in one of those factoring transactions. Given that reality, the effect of section 5891 is not as great as one might guess. Most section 104 structures that are being discounted will not fall subject to the excise tax, simply because many qualified structures will obtain the needed qualified order.

<sup>16</sup>See section 5891(b).

Section 5891 does not apply to non-section-104 structures. There is a growing trend to structure settlements even though the recovery is not excludable. The primary benefit sought by a plaintiff is tax deferral, with a stream of payments (including the inherent interest element on the payments) being taxed much more favorably than a lump sum would be.

Another tax reason for nonqualified structures is the tax treatment of attorney fees. The plaintiff may want a structure as a way of mitigating the alternative minimum tax and other problems posed by the Supreme Court’s recent *Banks* decision.<sup>17</sup> Nonqualified structures seem particularly suited for employment litigation. Although those structures are generally not done with wages, many nonwage recoveries in the employment litigation field and many other types of taxable recoveries are now settled in this way.<sup>18</sup>

Section 5891 also does not apply to attorney fee structures, because attorney fees (even in section 104(a)(1) or (a)(2) recoveries) are not excludable from gross income by the attorneys who labored to earn them.

**II. State Laws on Factoring**

Many states have elaborate schemes to regulate factoring transactions. A majority of the states now appear to require prior court (or administrative body) approval for those transactions to pass muster under applicable state law. Admittedly, many of those state law statutes are relatively new. Yet, given state law safeguards now in place, section 5891 will not apply to many structured settlement factoring transactions, because under applicable state law the transfer of the structured settlement payment rights must be approved in advance by way of what amounts to a qualified order. The table beginning on the following page attempts to summarize those laws.

<sup>17</sup>See Wood, “Supreme Court Attorney Fees Decision Leaves Much Unresolved,” *Tax Notes*, Feb. 14, 2005, p. 792.

<sup>18</sup>See Wood, “Structured Settlements Plus Nonqualified Assignments — Expanding the Field of Structures,” 6(3) *Journal of Tax Practice & Procedure* (June-July 2004), p. 29.

	Is Factoring Regulated?	Prior Approval of Court or Administrative Agency Required?	Disclosure of Key Terms to Consumer (Payee)?	Showing of Hardship Required?	Miscellaneous
Alabama	No.				
Alaska	Yes. Alaska Code sections 09.60.200 to 09.60.230.	Yes. Requires prior court approval.	Yes. At least 10 days before the effective date, written disclosure of the following in no less than 14-point boldface type: Amounts and due dates of payments to be transferred; Aggregate amount of payments; Discounted present value of payments and discount rate used; Gross amount for payments; Itemized list of expenses; Net amount payable to payee; Quotient amount; Penalties, including liquidated damages.	Yes. Transfer must be in the best interests of the payee and dependents.	Payee must receive independent professional advice regarding legal, tax, and financial implications of the transfer. Transferee must give written notice to annuity issuer and obligor and file copy of notice with court.
Arizona	Yes. Arizona Code sections 12-2901 to 12-2904.	Yes. Requires either court or administrative authority approval.	Yes. Not less than three days before the effective date, written disclosure of the following in no less than 14-point boldface type: Amounts and due dates of payments to be transferred; Aggregate amount of payments; Discounted present value of payments and discount rate used; Gross amount for payments; Itemized list of expenses; Net amount payable to payee; Statement that payee may cancel agreement no later than third business day after signed; Penalties, including liquidated damages.	Yes. Transfer is in the best interests of the payee, taking into account welfare and support of payee's dependents.	Payee must be advised in writing to seek independent professional advice, and has either received the advice or knowingly waived the advice in writing.
Arkansas	No.				

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California	Yes. Cal. Ins. Code sections 10134 to 10141.	Yes. Requires prior court approval.	Yes. At least 10 days before the effective date, written disclosure of the following in no less than 12-point boldface type: Effective date of transfer; Amounts and due dates of payments to be transferred; Aggregate amount of payments; Gross amount of all expenses; Net amount payable to payee; Discounted present value; Effective interest rate; Quotient amount; Statement recommending the payee seek professional advice; Notice of right to call district attorney or attorney general's office; Notice of irrevocable right of rescission.	Yes. Transfer is fair and reasonable and in the best interest of the payee, taking into account the support and welfare of dependents.	Copy of the (1) transfer agreement, (2) disclosure notice to payee, and (3) notice to interested parties, must be filed with state Attorney General's Office.
Colorado	Yes. Colo. Statutes sections 13-23-102 to 13-23-108.	Yes. Requires either court or administrative authority approval.	Yes. Not less than three days before the effective date, written disclosure of the following in no less than 14-point boldface type: Amounts and due dates of payments to be transferred; Aggregate amount of payments; Discounted present value of payments and discount rate used; Gross amount for payments; Itemized list of expenses; Net advance amount; Penalties, including liquidated damages; Statement that payee may cancel agreement no later than third business day after signed.	Yes. Transfer is in the best interests of the payee, taking into account welfare and support of payee's dependents.	Payee must be advised in writing to seek independent professional advice, and has either received the advice or knowingly waived the advice in writing; Copy of the (1) transferee's application filed with district court, (2) transfer agreement, (3) disclosure statement, (4) list of payee's dependents, (5) notice to interested parties, and (6) notice of hearing must be filed with the court.
Connecticut	Yes. Con. Gen. Stat. section 52-225f.	Yes. Requires prior court approval.	Yes. At least 10 days before effective date, written disclosure of: Aggregate amount transferred; Gross amount of expenses; Net amount payable to payee; Discounted present value of amount transferred; Discount rate.	Yes. Transfer must be in the best interests of payee and is "fair and reasonable" to all interested parties.	

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Delaware	Yes. Del. Code Ann. title 10 sections 6601 and 6602.	Yes. Requires either court or administrative agency approval.	Yes. At least 10 days before effective date, written disclosure of: Amounts and due dates of payments to be transferred; Aggregate amount of such payments; Discounted present value of such payments and discount rate; Gross amount payable to payee; Itemized list of expenses; Net amount payable to payee; Quotient amount; Amount of any penalty and liquidated damages.	Yes. Apply federal hardship standard in effect.	Payee must receive independent financial advice. If transfer would contravene terms of original structured settlement, written approval of some or all parties may be required.
District of Columbia	No.				
Florida	Yes. Fla. Stat. Ann. section 626.99296.	Yes. Court must find that transfer complies with Florida law.	Yes. Disclosure of the following in no less than 14-point boldface type: The amounts and due dates to be transferred; The aggregate amount of the payments; The discounted present value and the discount rate; The gross amount payable to the payee; An itemized listing of all commissions, fees, costs, expenses, and charges; The net amount payable to the payee; The quotient, expressed as a percentage, obtained by dividing the net payment amount by the discounted present value of the payments; The effective annual interest rate; Any penalty amounts, including liquidated damages.	Yes. Must find that the transfer is in the best interests of payee and dependents.	
Georgia	Yes. Ga. Code Ann. sections 51-12-70 to 51-12-77.	Yes, requires either court or administrative agency approval.	Yes. At least 10 days before the effective date, written disclosure of: Amount and due dates of payments to be transferred; Aggregate amount of such payments; Discounted present value of payments; Discount rate; Gross amount payable to payee; Itemized list of expenses; Quotient; Net amount payable to payee; Amount of any penalties or liquidated damages.	Yes. Transfer must be in the best interest of the payee, taking into account the welfare and support of the payee's dependents.	Notice to interested parties; Payee has 21 days to cancel/rescind.

	Is Factoring Regulated?	Prior Approval of Court or Administrative Agency Required?	Disclosure of Key Terms to Consumer (Payee)?	Showing of Hardship Required?	Miscellaneous
Hawaii	No.				
Idaho	Yes. Idaho Code section 28-9-109.	Yes. Must be approved by court with a finding that it is in the best interest of the payee.	Yes. Not less than three days before signing a transfer agreement, payee shall receive the following disclosures: Amounts and due date of payments to be transferred; Aggregate amount; Discounted present value; Gross advance amount; Itemized list of transfer expenses; Net advance amount; Penalties, including liquidated damages; Statement that payee may cancel agreement no later than third business day after signed.	Yes. Transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents.	Factor must advise payee to seek professional advice.
Illinois	Yes. 215 Ill. Comp. Stat. section 153.	Yes. Requires court approval.	Yes. Not less than three days before signing a transfer agreement, payee shall receive the following disclosures: Amounts and due date of payments to be transferred; Aggregate amount; Discounted present value; Gross advance amount; Itemized list of transfer expenses; Net advance amount; Penalties, including liquidated damages; Statement that payee may cancel agreement no later than third business day after signed.	Yes. Transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents.	Factor must advise payee to seek professional advice. Prohibits insurance companies from making payment to anyone other than beneficiary without prior approval of a court.
Indiana	Yes. Ind. Code sections 34-50-2-1 to 34-50-2-11.	Yes. Requires prior court approval.	Yes. At least 10 days before the effective date, disclosure of the following in no less than 14-point type: Amount and due date of payments to be transferred; Aggregated amount; Discounted present value; Gross amount payable; Itemized list of transfer expenses; Net amount payable; Quotient; Amount of any penalties, including liquidated damages.	Yes. Transfer must be in the best interests of payee, considering support of dependents.	

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Iowa	Yes. Iowa Code sections 682.1 to 682.7.	Yes. Requires final order of court or administrative agency.	Yes. Not less than three days before signing a transfer agreement, payee shall receive the following disclosures: Amounts and due date of payments to be transferred; Aggregate amount; Discounted present value; Gross advance amount; Itemized list of transfer expenses; Net advance amount; Amount of any penalties; Statement that payee may cancel agreement no later than third business day after agreement is signed.	Yes. Transfer must be in the best interests of payee, considering support of dependents.	Must advise payee in writing to seek professional advice.
Kansas	No.				
Kentucky	Yes. Ky. Rev. Stat. & R. Serv. sections 454.430 to 454.435.	Yes. Requires prior court approval.	Yes. At least 10 days before the effective date, written disclosure of: Amount and due dates of payments to be transferred; Aggregate amount of payment; Discounted present value of payments and discount rate; Gross amount payable to payee; Itemized listing of all expenses; Amount of any penalties.	Yes. Transfer is necessary to avoid imminent financial hardship.	Payee has consented in writing to transfer.
Louisiana	Yes. La. Sess. Law Serv. section 9:2715.	Transfer must be authorized in advance by <i>ex parte</i> order of court that had jurisdiction over the original action that gave rise to the structured settlement.	Yes. At least 10 days before the effective date, disclosure of the following in no less than 14-point type: Amounts and due dates of payments to be transferred; Aggregate amount of payments; Discounted present value of payments to be transferred; Gross amount payable; Itemized list of expenses; Net amount payable; Quotient; Percentage of estimated current value; Effective interest rate; Notice of penalties.	None.	Court must find that payee received independent professional advice regarding legal, tax, and financial implications.

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Maine	Yes. Me. Rev. Stat. Ann. title 24A sections 2241 to 2246.	Yes. Requires either court or administrative agency approval.	Yes. Not less than three days before signing a transfer agreement, payee shall receive the following disclosures: Amounts and due dates of payments to be transferred; Aggregate amount of payments; Discounted present value of payments and discount rate; Gross amount payable to payee; Itemized list of expenses; Net amounts payable to payee; Quotient; Amount of penalties.	Yes. Apply federal hardship standard in effect. If there is no such standard, it must be shown that the transfer is necessary to avoid imminent financial hardship and will not subject the payee or dependents to undue financial hardship in the future.	Requires payee to receive independent professional advice; May require approval of some or all original interested parties if transfer would contravene terms of the original structured settlement.
Maryland	Yes. Md. Cts. & Jud. Proc. sections 5-1101 to 5-1105.	Yes. Requires court order based on a finding that the transfer is necessary, reasonable, or appropriate.	Discounted present value must be disclosed.	Must show that it will not subject payee or the payee's dependents to undue or unreasonable hardship.	Payee must receive independent professional advice regarding the legal, tax, and financial implications of the transfer.
Massachusetts	Yes. Mass. Ann. Laws chapter 231C, section 2.	Yes. Court or administrative authority must make express finding that the transaction is in the best interest of the payee and full disclosure has been made.	Yes. At least 10 days before the effective date, written disclosure of: Amounts of payments to be transferred; Aggregate payment amounts; Discounted value; Gross amount payable; Itemized list of expenses; Net amount payable; Percentage of estimated current value payee will receive; Effective interest rate; Penalty, including liquidated damages.	None. (Needs to show only that it is in the payee's best interest.)	Must disclose that received or waived professional advice.
Michigan	Yes. Mich. Comp. Laws sections 691.1191 to 691.1197.	Yes. Requires prior court approval.	Yes. 10 days before transfer payee must be provided with disclosure statement to include: Amount and due dates; Aggregate amount of amount transferred; Present value; Gross amount payable to payee; Itemized listing of fees and expenses; Net amount payable; Quotient; Penalty, including liquidated damages.	Transfer must be due to imminent financial hardship of payee or dependents.	Payee must receive independent professional advice. Notice of transaction must be given to obligor.

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Minnesota	Yes. Minn. Stat. sections 549.31 to 549.34.	Yes. Requires either court or administrative agency approval.	Yes. At least 10 days before the effective date, written disclosure of: Amount of payments to be transferred; Aggregate amount of payments; Discounted present value of payments; Gross amount payable to payee; Itemized listing of commissions, fees, etc.; Net amount payable to payee; Quotient; Penalties, etc.	Transfer must be in the best interests of the payee and dependents.	Payee must receive independent professional advice.
Mississippi	Yes. Miss. Code Ann. sections 11-57-1 to 11-57-15.	Yes. Prior court or responsible administrative authority approval is required.	Yes. Not less than three days before transfer, the following must be disclosed: Aggregate amount of payments; Discounted present value of such payments and discount rate; Gross amount; Itemized listing of all expenses; Net amount; Amount of penalties; Statement that payee has right to cancel not later than third business day.	Yes. Court must find that the transfer is in the best interest of payee and dependents.	Payee must be advised in writing to seek independent professional advice.
Missouri	Yes. Mo. Rev. Stat. sections 407.1060 to 407.1068.	Yes. Prior court approval is required.	Yes. At least 10 days before the effective date, written disclosure of: Amount and due dates of payments to be transferred; Aggregate amount of payments; Discounted present value of payments to be transferred; Gross amount payable to payee; Itemized listing of all expenses.	Yes. Transfer must be in the best interests of payee and payee's dependents.	Written notice to interested parties; Payee must consent in writing; Payee must be represented by disinterested counsel; Payee must receive "fair market value" for payments transferred.
Montana	No.				

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Nebraska	Yes. Neb. Rev. Stat. sections 25-3101 to 25-3107.	Must be authorized in advance by final order of a court.	Yes. Must provide a disclosure of: Amount and due date of the payments to be transferred; Aggregate amount of payments; Discounted present value of payments to be transferred; Gross amount payable to payee; Itemized listing of all expenses; Net amount payable; Quotient, or the percentage of estimated current value; Effective annual interest rate; Amount of any penalty.	Yes. Must find that the transfer does not contravene public policy of Nebraska. Transfer must be in the best interests of payee, taking into account welfare and support of payee's dependents.	Does not apply to structured settlements of claims for workers' compensation benefits; Payee must be notified of right to seek professional advice; Discount rate must not exceed maximum interest rate for Nebraska consumer loan.
Nevada	No.				
New Hampshire	No.				
New Jersey	Yes. N.J. Stat. Ann. sections 2A:16-63 to 2A:16-69.	Yes. Requires either court or administrative agency approval.	Yes. Not less than three days before the date the transfer agreement is signed, payee must be provided the following in no less than 14-point type: Amounts and due dates of payments to be transferred; Aggregate amount of payments; Discounted present value of payments to be transferred; Gross advance amount; Itemized list of expenses; Net advance amount; Notice of penalties; Statement describing right to cancel within three business days.	Yes. Must show the transfer is in the best interest of the payee and dependents.	Payee must be advised to seek independent professional advice; Transfer must not contravene any existing law.
New Mexico	No.				
New York	Yes. N.Y. Gen. Oblig. sections 5-1701 to 5-1709.	Yes. Requires court approval.	Yes. At least 10 days before the effective date, written disclosure of: Amounts and due date of payments to be transferred; Aggregate amount of such payments; Discounted present value of such payments and discount rate; Price quote from original annuity issuer; Gross amount payable to payee; Itemized list of expenses; Net amount payable to payee; Amount of any penalties and liquidated damages; Notice of three-day right to rescind transfer.	Yes. Must show the transfer is in the best interest of the payee and dependents.	Transfer must not contravene applicable law; Payee must be advised to seek independent advice; If transfer would contravene terms of original structured settlement, written approval of some or all interested parties may be required.

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North Carolina	Yes. N.C. Gen. Stat. sections 44B-1-543.10 to 44B-1-543.15.	Yes. Requires either court or administrative agency approval.	Yes. At least 10 days before the effective date, written disclosure of: Amounts and due dates of payments to be transferred; Aggregate amount of such payments; Discounted present value of such payments and discount rate; Gross amount payable to payee; Itemized list of expenses; Net amount payable to payee; Quotient; Amount of any penalties and liquidated damages; Discount rate used.	Yes. Transfer must be in the best interest of the payee.	Payee must receive independent professional advice; Purchaser of payments must give notice to annuity issuer and structured settlement obligor; Transfer must be fair and reasonable; Discount rate, fees, and commissions are limited.
North Dakota	No.				
Ohio	Yes. Ohio Rev. Code Ann. sections 2323.58.1 to 2323.58.7.	Yes. Court approval is required finding that the transfer is fair and reasonable.	Yes. At least 10 days before the effective date, written disclosure of: Amounts and due dates; Aggregate amount; Present value; Gross amount payable to payee; Itemized list of expenses; Net amount payable; Quotient; Penalties.	Yes. If a federal hardship standard exists, must meet it.	Payee must get independent professional advice; Notice of transfer must be given to all parties.
Oklahoma	Yes. Okla. Stat. title 12, sections 3228 to 3245.	Yes. Prior approval of a court or regulatory agency.	Yes. Not less than three days before transfer agreement is signed the following must be disclosed: Amounts and due dates of payments to be transferred; Aggregate amount of payments; Discounted present value of payments to be transferred; Gross amount payable to payee; Itemized list of expenses; Net amount payable to payee; Notice of penalties; Payee has right to cancel within three days.	No, but transfer must be in the best interest of payee and dependents.	Advise payee in writing to seek professional advice.
Oregon	No.				

	<b>Is Factoring Regulated?</b>	<b>Prior Approval of Court or Administrative Agency Required?</b>	<b>Disclosure of Key Terms to Consumer (Payee)?</b>	<b>Showing of Hardship Required?</b>	<b>Miscellaneous</b>
Pennsylvania	Yes. 40 P.S. sections 4001 to 4009.	Yes. Prior court approval required.	Yes. At least 10 days before the effective date, written disclosure of: Amounts and due dates of payments to be transferred; Aggregate amount of such payments; Discounted present value of such payments and the discount rate; Gross amount payable to payee; Itemized expenses; Quotient; Net amount payable to payee; Amount of any penalties and liquidated damages.	Yes. Transfer must be in the best interest of payee and dependents.	Must not contravene existing law; Payee urged to obtain independent legal advice, or sign written waiver if not seeking counsel; Notice provided to annuity insurer.
Rhode Island	Yes. R.I. Code R. sections 27-9.3-1 to 27-9.3-7.	Yes. Prior court approval required.	Yes. Not less than three days before signing a transfer agreement, the following must be provided in bold type in no smaller than 14-point type: Amounts and dates of payments to be transferred; Aggregate amount of payments; Discounted value and rate of payment; Gross advance amount; Itemized list of expenses; Net amount payable to payee; Damages; Notice of three-day right to cancel.	Yes. Transfer must be in the best interest of payee and dependents.	Must advise to seek independent professional advice.
South Carolina	Yes. S.C. Code Ann. sections 15-50-10 to 15-50-70.	Yes. Prior court approval required.	Yes. Not less than three days before signing a transfer agreement, the following must be provided in bold type in no smaller than 14-point type: Amounts and dates of payments to be transferred; Aggregate amount of payments; Discounted value and rate of payment; Gross advance amount; Itemized list of expenses; Net amount payable to payee; Any penalties for breach of the agreement; A statement that the payee has the right to cancel within three days.	Yes. Transfer must be in the best interest of payee and dependents.	Must be advised in writing to seek independent professional advice.

	<b>Is Factoring Regulated?</b>	<b>Prior Approval of Court or Administrative Agency Required?</b>	<b>Disclosure of Key Terms to Consumer (Payee)?</b>	<b>Showing of Hardship Required?</b>	<b>Miscellaneous</b>
South Dakota	Yes. S.D. Codified Laws sections 21-3B-1 to 21-3B-12.	Yes. Prior court approval required.	Yes. Not less than three days before signing a transfer agreement, the following must be provided: Amounts and dates of payments to be transferred; Aggregate amount of payments; Discounted value and rate of payment; Gross advance amount; Itemized list of expenses; Net amount payable to payee; Notice of penalties; Statement that payee has right to cancel within three days.	Yes. Transfer must be in the best interest of payee and dependents.	Payee must be advised to seek professional advice.
Tennessee	Yes. Tenn. Code Ann. sections 47-18-2601 to 47-18-2607.	Yes. Requires either court or administrative agency approval.	Yes. At least 10 days before the effective date, written disclosure of: Amount and due dates of payments to be transferred; Aggregate amount; Present discounted value; Gross amount payable; Net amount payable; Itemized list of expenses; Penalties.	Yes. In determining whether transfer is in the payee's best interest consider terms of transfer, whether there are other sources of income, and whether transfer would be likely to result in financial hardship for dependents.	Payee must be advised to obtain independent professional advice.
Texas	Yes. Tex. Civ. Prac. & Rem. sections 141.001 to 141.009.	Yes. Requires court approval.	Yes. Not less than three days before signing a transfer agreement, the following must be provided: Amounts and dates of payments to be transferred; Aggregate amount of payments; Discounted value and rate of payment; Itemized list of expenses; Net amount payable to payee; Amount of penalties; A statement that the payee has the right to cancel within three days.	Yes. Court must find the transfer is in the best interest of payee and dependents.	Payee must be advised in writing to seek independent professional advice.

	<b>Is Factoring Regulated?</b>	<b>Prior Approval of Court or Administrative Agency Required?</b>	<b>Disclosure of Key Terms to Consumer (Payee)?</b>	<b>Showing of Hardship Required?</b>	<b>Miscellaneous</b>
Utah	Yes. Utah Code Ann. sections 78-59-101 to 78-59-108.	Yes. Requires court approval.	Yes. Not less than three days before signing a transfer agreement, the following must be provided: Amounts and dates of payments to be transferred; Aggregate amount of payments; Discounted value and rate of payment; Gross advance amount; Itemized list of expenses; Net amount payable to payee; Notice of penalties; Statement that the payee has the right to cancel not later than third business day.	Yes. Court must find the transfer is in the best interest of payee and dependents.	Payee must be advised in writing to seek independent professional advice.
Vermont	No.				
Virginia	Yes. Va. Code Ann. sections 59.1:475 to 59.1:477.1.	Yes. Requires either court or administrative agency approval.	Yes. Not less than three days before signing a transfer agreement, the following must be provided: Amounts and dates of payments to be transferred; Aggregate amount of payments; Discounted value and rate of payment; Gross advance amount; Itemized list of expenses; Net amount payable to payee; Penalties; Statement that the payee has the right to cancel not later than third business day.	Yes. Must show transfer is in the best interests of payee and dependents.	Payee must be advised in writing to seek independent professional advice.
Washington	Yes. Wash. Rev. Code sections 19.205.010 to 19.205.900.	Yes. Requires either court or administrative agency approval.	Yes. Not less than three days before signing a transfer agreement, the following must be provided: Amounts and dates of payments to be transferred; Aggregate amount of payments; Discounted value and rate of payment; Gross advance amount; Itemized list of expenses; Net amount payable to payee; Penalties; Statement that the payee has the right to cancel not later than third business day.	Yes. Must show transfer is in the best interests of payee and dependents.	Payee must be advised in writing to seek independent professional advice.

	<b>Is Factoring Regulated?</b>	<b>Prior Approval of Court or Administrative Agency Required?</b>	<b>Disclosure of Key Terms to Consumer (Payee)?</b>	<b>Showing of Hardship Required?</b>	<b>Miscellaneous</b>
West Virginia	Yes. W. Va. Code St. R. sections 46A-6H-1 to 46A-6H-8.	Yes. Requires court approval in certain circumstances: Payments arise out of personal injury; Lump sum payment to payee exceeds \$40,000; Settlement payments belong to an infant or incompetent; or The original structure restricts the right of the payee to transfer payments, requires consent of payor.	Yes. At least 14 days before the effective date, written disclosure of: Amounts and dates of payments to be transferred; Aggregate amount of payments; Discounted value and rate of payment; Good faith estimate of all expenses; Net amount payable to payee; Notice of possible tax consequences.	Yes. Court must find transfer is fair and reasonable and in best interest of payee.	Notice to interested parties; Cannot transfer workers' compensation claims; Five-day rescission period.
Wisconsin	No.				
Wyoming	No.				