*PRIVATE RULING 9703038; 1996 PRL LEXIS 2002, **

PRIVATE RULING 9703038

"This document may not be used or cited as precedent. Section 6110(j)(3) of the Internal Revenue Code."

Section 130
Personal Injury Liability Assignments

0130.00-00, 0130.02-00

PRIVATE RULING 9703038; 1996 PRL LEXIS 2002

DATE: July 24, 1996

Refer Reply to: CC:DOM:IT&A:1/PLR-25775-96
In re: * * *

LEGEND:
X = * * *
T = * * *
State = * * *

[*3]

Dear * * *

1 This is in response to your ruling request, dated January 26, 1996, submitted on behalf of X, a state corporation, regarding the application of section 130 of the Internal Revenue Code. You represent that X acts as a structured settlement provider. X works with plaintiffs and defendants in personal injury cases to facilitate settlements involving periodic payments and arranges for qualified assignments. X has created T, a master trust, to serve as the assignee in the structured settlements.

2 Specifically, you request rulings that:

(1) an assignment of liability to T as assignee will be treated as a qualified assignment as defined in section **[*4]** 130(c) of the Code; and

(2) any amount received by T as a qualified assignment within the meaning of section 130(c) of the Code will not be included in T's gross income to the extent such amount does not exceed the aggregate cost of any qualified funding assets as defined in section 130(d).

FACTS

3 X facilitates structured settlements between plaintiffs and defendants in personal injury cases, and arranges for qualified assignments to a third party assignee. X receives a fee for its services. In this case, the third party assignee is T, a master trust created by X.

[*5]

4 In your submission, you represent the following: X is both settlor and beneficiary of T. A major bank serves as trustee of T. T assumes the defendant's liability to make periodic payments to the plaintiff in exchange for a lump sum. With that lump sum, T purchases and holds funding assets, and gives the plaintiff a security interest in the funding assets. T has all ownership and control rights in the funding assets.

5 Pursuant to the documents you provided, the plaintiff will receive only those amounts to which the plaintiff was entitled under the terms of the settlement with the defendant. T has no greater obligation to pay the plaintiff than the obligation of the defendant, from whom T assumed the liability. The periodic payments are fixed and determinable as to the amount and time of payment, and cannot be accelerated, deferred, **[*6]** increased or decreased by the plaintiff. You represent that the periodic payments are excludable from the plaintiff's gross income under section 104(a)(2).

6 You further represent that the funding assets are used by T to fund the periodic payments to the plaintiff pursuant to section 130 of the Code. In addition, you represent that the periods of the payments under the funding assets are reasonably related to the periodic payments, and the amount of the payments under the funding assets does not exceed the periodic payments to which they relate. The funding assets are purchased by T not more than 60 days before or not later than 60 days after the date of the assignment.

LAW AND ANALYSIS

7 **[*7]** Section 104(a)(2) of the Code generally excludes from income the amount of any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injury or sickness.

8 Under section 130(a) of the Code, any amount received for agreeing to a qualified assignment is not included in gross income to the extent that such amount does not exceed the aggregate cost of any qualified funding assets.

9 For purposes of section 130 of the Code, section 130(c) defines a qualified assignment as 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), provided certain conditions are met: **[*8]** (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 amount and time of payment; (3) the periodic payments cannot be accelerated, deferred, increased or decreased by the recipient of such payments; (4) the assignee's obligation on

account of the personal injuries or sickness can be no 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).

10 Flush language to section 130(c) of the Code provides 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 will be made without regard to any provision of the assignment which grants the recipient rights **[*9]** as a creditor greater than those of a general creditor.

11 For purposes of section 130 of the Code, section 130(d) defines the term qualified funding asset to mean 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 annuity 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 **[*10]** annuity contract or obligation is purchased by the assignee no more than 60 days before or 60 days after the date of the qualified assignment.

12 The Periodic Payment Settlement Act of 1982, Pub. L. 97-473, 96 Stat. 2605, added section 130 of the Code and amended section 104(a)(2) of the Code to exclude damages for personal injury received as periodic payments from the recipient's gross income. The new provision was intended to codify existing law. See H.R. Rep. No. 832, 97th Cong., 2d Sess. 4 (1982); S. Rep. No. 646, 97th Cong., 2d Sess. 4 (1982). Accordingly, Congress stated that,

> the periodic payments of personal injury damages are still 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 **[*11]** produce the periodic payments.

H.R. Rep. No. 832, 97th Cong., 2d Sess. 4 (1982); S. Rep. No. 646, 97th Cong., 2d Sess. 4 (1982).

13 As originally enacted, section 130 of the Code required in section 130(c)(2)(C) that the assignee not provide to the recipient of periodic payments rights against the assignee which are 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, amended section 130(c) by repealing section 130(c)(2)(C) and adding the flush language to section 130(c) to read as above. The House Report explained the reason for this change as follows:

> Recipients of periodic **[*12]** payments under structured settlement arrangements should not have their rights as creditors limited by provisions of tax law.

H.R. Rep. No. 795, 100th Cong., 2d Sess. 541 (1988). Therefore, after 1988 Congress intended that,

> a liability assignment is treated as a qualified assignment notwithstanding that the recipient is provided creditor's rights against the assignee greater than those of a general creditor. . . . 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. **[*13]** 1104, 100th Cong., 2d Sess. vol. II at 171 (1988) (emphasis added).

14 The issue in this case is whether a trust may act as an assignee for purposes of section 130 of the Code. Under the facts presented, the assignee of the defendant's obligation to make periodic payments is T, a trust. T receives a lump sum from the defendant, from which it will make the periodic payments to the plaintiff. T uses the lump sum to purchase funding assets. T holds the funding assets in its name, grants the plaintiff a security interest in the funding assets, and uses the payout from the funding assets to fund the periodic payments.

15 Generally, the setting aside of funds in trust for a recipient confers an economic benefit and results in income to the recipient **[*14]** in the year of setting aside the funds. See Sproull v. Commissioner, 16 T.C. 244 (1951), aff'd her curiam, 194 F.2d 541 (6th Cir. 1952). However, the 1988 amendment to section 130(c) of the Code was intended to allow assignments of periodic payment obligations without regard to whether the recipient has the current economic benefit of the sum required to produce the periodic payments. Therefore, assuming all other requirements of section 130(c) are met, an assignment of liability to T as assignee will be treated as a qualified assignment under section 130(c). Further, any amount received by T for agreeing to a qualified assignment will not be included in T's gross income to the extent such amount does not exceed the aggregate cost of any qualified funding assets as defined in section 130(d).

16 This ruling relates only to the ruling requests described **[*15]** above, involving the particular facts presented. This ruling does not apply to transactions of the taxpayer which may present different facts, and therefore may warrant a different conclusion. Further, no opinion is expressed concerning the above transaction under any other section of the Code. Specifically, no inference is to be made from this ruling as to its effect, if any, on the excludability of lump-sum or periodic payments under section 104(a)(2) of the Code, or on the qualification of funding assets under section 130(d). In addition, no inference is to be made from this ruling with respect to any provisions of subchapter J of the Code.

17 This ruling is directed only to X. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

18 Pursuant to the power of attorney on file in this **[*16]** office,

this letter is being sent to you as authorized representative for X.

Sincerely,

Assistant Chief Counsel
(Income Tax and Accounting)

By: Rochelle L. Hodes
Acting Assistant to Chief
Branch 1

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