

# Congress of the United States

Washington, DC 20515

May 12, 2016

The Honorable John Koskinen  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue NW  
Washington, DC 20224

Dear Commissioner Koskinen:

We write today to request information regarding excise taxes on sales of structured settlements, also known as “factoring” transactions, as administered by the Internal Revenue Service (IRS).

Victims who have suffered severe physical injuries are often compensated for their losses with structured settlements. As opposed to lump-sum payments, these settlements are dispersed over decades to ensure financial stability for individuals who are often disabled and unable to work. Over the past several decades, insurance companies have committed an estimated \$350 billion in the United States.<sup>1</sup>

However, victims who have received structured settlements oftentimes have been subject to exploitation from what are known as “factoring” companies—businesses that use aggressive, high-pressure marketing tactics to identify the vulnerable owners and encourage them to sell one or more portions of their settlements. Victims, who do not always fully understand the financial impact of these transactions, have reportedly sold structured settlements for as little as nine cents on the dollar, leaving them in some instances unable support themselves financially.<sup>2</sup>

Congress and the IRS have taken a number of steps to encourage structured settlements and protect victims from exploitation if they choose to sell future payment rights on secondary markets in exchange for an immediate payment. In 1992, Congress enacted into law a ruling by the IRS to generally exempt settlements awards from taxation.<sup>3</sup> Congress also sought to protect sellers by imposing a 40 percent excise tax on the sale of future payments rights that are not approved by a “qualified order” by a state court.<sup>4</sup>

As a result, most states have attempted to protect these sellers through state structured settlement protection acts. Many of these acts require sales to be consistent with existing laws, in the best interests of the seller, and approved by a court in the

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<sup>1</sup> Fiscal and Policy Note: Transfer of Structured Settlement Payment Rights, Maryland General Assembly Department of Legislative Services (2016 session).

<sup>2</sup> Terrence McCoy, *How Companies Make Million Off Lead-Poisoned, Poor Blacks*, Washington Post (Aug. 25, 2015); see also Terrence McCoy, *The Flawed System that Allows Companies to Make Millions Off the Injured*, Washington Post (Dec. 27, 2015).

<sup>3</sup> I.R.C. § 104(a) (2014); H.R. Rep. No. 97-832 (1982).

<sup>4</sup> Victims of Terrorism Tax Relief Act of 2001, § 115; I.R.C. § 5891 (2014).

seller's state of residence. Delaware is one of just eight states that require sellers to receive independent professional advice regarding the legal, tax, and financial implications of the sale.<sup>5</sup> This month, the Maryland General Assembly passed legislation to further protect sellers, and it awaits the Governor's signature.

Unfortunately, recent developments, including incidents of forum shopping in state courts, have shown that current measures may not be enough to protect sellers of structured settlements who are subject to exploitation. In one state, it was reported that—of the approximately 6,500 structured settlement sale cases filed since 2000—over 6,000 of these cases were filed in a single circuit court by a single attorney. In 2013 alone, this attorney filed nearly 600 cases with 95 percent receiving approval by a single judge. Sellers were rarely present in court where dozens of sales can be approved in a single hour.<sup>6</sup>

It is important that the sale of structured settlements receive adequate oversight to ensure against exploitation. To better understand the administration of excise taxes on structured settlement transactions, I ask that you please provide the following information by June 15, 2016:

1. Structured settlement transactions that fail to obtain court approval must be reported on Form 8876. Since the form was first submitted to the Office of Management and Budget for approval, the Internal Revenue Service has estimated 100 filings per year.<sup>7</sup> How many taxpayers filed a Form 8876 and paid the excise tax in each of the last ten years? How much revenue has been received from the excise tax in each of the last ten years?
2. In the absence of filing Form 8876, how does the Internal Revenue Service determine that a factoring transaction may be subject to the excise tax? Are statistics maintained for factoring transactions approved by qualified orders that are exempt from paying the excise tax?
3. In September 2015, the Internal Revenue Service revised its guidance for auditing structured settlement factoring transactions.<sup>8</sup> Why was this guidance revised?
4. How many of these transactions were audited in the past 10 years?
5. Has the Internal Revenue Service ever determined that a qualifying order failed to meet all the required conditions? If so, how many times has an excise tax been

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<sup>5</sup> 10 *Del. C.* § 6601 (2000). *See also* Federal and State Laws, National Association of Settlement Purchasers.

<sup>6</sup> Terrence McCoy, *The Flawed System that Allows Companies to Make Millions Off the Injured*, Washington Post (Dec. 27, 2015).

<sup>7</sup> OMB Control Number 1545-1826 History, *Reginfo.gov*. *See also* Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35 (2014).

<sup>8</sup> Structured Settlement Factoring Audit Technique Guide (ATG), Internal Revenue Service (Sep. 2015).

subsequently imposed? Are any additional penalties or fines assessed in these situations?

6. Do structured settlement payment streams remain tax free after being sold to factoring companies? If not, how are the payment streams taxed?

[REDACTED]

Thank you for your attention to this matter.

With best personal regards, we are

Sincerely yours,



Tom Carper  
Ranking Member  
Committee on Homeland Security and  
Governmental Affairs



Elijah E. Cummings  
Ranking Member  
Committee on Oversight and  
Government Reform

cc: The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and Governmental Affairs

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform