Internal Revenue Service

Number: **201435006**
Release Date: 8/29/2014

Index Number: 130.00-00, 130.01-00, 130.02-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-143928-13

Date:
April 14, 2014

Legend

Assignee =
Issuer 1 =
Issuer 2 =
Date 1 =
Claimant =
State B =
X =

y =

Dear :

This responds to Assignee's request for a private letter ruling regarding the applicability of § 130 of the Internal Revenue Code to variable periodic payments proposed to be made to Claimant pursuant to a structured settlement agreement through an indexed annuity that will be sold by Issuer 1 or Issuer 2 to Assignee. Assignee also requests a ruling that the possibility of a commutation pursuant to a Notice of Hardship Conversion that Assignee will provide to Claimant will not cause the assignment of the obligation to Assignee and the annuity purchased by Assignee to fail to satisfy the requirements of § 130(c) and (d).

FACTS:

On Date 1, Claimant was permanently physically injured in an accident in State B. You represent that Claimant is entitled to damages in the form of periodic payments directly as a result of this accident. Claimant is negotiating a possible structured settlement agreement that would provide for periodic payments during Claimant's lifetime, with annuity payments guaranteed for a specific period (to be determined) and providing for indexed periodic payments.

You represent that pursuant to a Qualified Assignment and Release Agreement, *X* will assign to Assignee, and Assignee will assume from *X* the sole responsibility for making periodic payments to Claimant. In addition, Claimant will accept the assignment and release *X* from its obligation to make periodic payments. X was a party to the lawsuit as required by § 130(c)(1). Upon receiving the assignment, Assignee will purchase a Structured Settlement Indexed Annuity from Issuer 1 or Issuer 2 that is intended to be a § 130(d) qualified funding asset that will fund Assignee's obligation to make periodic payments to Claimant. The indexed periodic payments will provide Claimant with the possibility of increasing periodic payments to reflect certain changes in the S&P 500 Index. The S&P 500 Index will be used to determine any adjustment that is applied to the annuity payments on an annual basis, subject to a *y*% cap. The adjustment will not result in a decrease of any periodic payment. The purpose of the Structured Settlement Indexed Annuity is to allow Claimant the possibility of increased periodic payments to account for any diminution in value due to inflation.

The adjustment will be applied to the annuity payment (and corresponding periodic payment) on each annual annuity payment anniversary pursuant to a three step formula. Step 1 determines the index return, which equals the ending S&P 500 Index Price minus the starting S&P 500 Index Price divided by the starting S&P 500 Index Price. Step 2 determines the adjustment, which is the lesser of the Index Return or the *y*% cap. If the Index Return is less than or equal to zero, the adjustment will be zero. Step 3 determines the annuity payment amount.

Separate from the Qualified Assignment and Release Agreement, Assignee will provide Claimant with a Notice of Hardship Conversion option. The Notice of Hardship Conversion provides that the Assignee will consider a request from Claimant to convert future guaranteed structured settlement payments to an immediate lump sum payment, in certain qualifying hardship circumstances, if the request is approved by a court or applicable administrative authority pursuant to a qualified order under § 5891(b)(2). The qualifying hardship circumstances are financial hardship due to medical expenses, expenses related to a terminal illness, home improvement expenses for handicap accessibility, job loss, loss of home, and the same type of expense for the payee's dependents. Assignee expressly represents that it reserves the right to decline any hardship conversion request and that it will consider each hardship conversion request on a case-by-case basis. In addition, Assignee represents that it will not allow any hardship conversion in the first year after a qualified assignment.

Assignee also makes the following representations:

1. The annuity contract will be issued by Issuer 1 or Issuer 2 to fund the periodic payments to Claimant pursuant to an assignment of a liability to make periodic

payments as damages on account of personal injury or sickness (in a case involving physical injury or physical sickness).

2. The amount of the periodic payments to the Claimant and the amount of the payments under the annuity funding the payments will be determined by the S&P 500 Index (as explained above).

3. Claimant will be unable to accelerate, defer, increase or decrease the periodic payments from the direct obligor or Assignee, without regard to the possibility of the Claimant entering a commutation agreement under the Notice of Hardship Conversion.

4. The obligation of Assignee under the Qualified Assignment and Release Agreement will be no greater than the obligation of *X*.

5. The periodic payments made under the structured settlement agreement will be payments for damages received on account of personal physical injuries or physical sickness that are excludable from Claimant's gross income under § 104(a)(2).

6. The periods of the payments under an annuity contract issued to Assignee will be reasonably related to the periodic payments under the assignment of liability to make periodic payments of damages to Claimant on account of personal physical injuries or physical sickness, and the amount of any payment under the annuity contract will not exceed the periodic payment to which it relates.

7. Assignee will purchase the annuity contract from Issuer 1 or Issuer 2 not more than 60 days before or after the date of the assignment of liability to make periodic payments.

REQUESTED RULINGS

Assignee requests the following rulings:

1. The periodic payments of damages that Claimant will receive are fixed and determinable as to amount and time of payment within the meaning of § 130(c)(2)(A) even though they are calculated pursuant to an objective formula based on the performance of the S&P 500 Index.

2. The Structured Settlement Indexed Annuity, which Assignee will acquire from Issuer 1 or Issuer 2, will not fail to qualify as a qualified funding asset under § 130(d) solely by reason of the annuity's variable payments.

3. The possibility of a commutation by Claimant pursuant to the Notice of Hardship Conversion will not affect whether the structured settlement assignment satisfies the requirements of a qualified assignment under § 130(c).

4. The annuity issued by Issuer 1 or Issuer 2 and purchased by Assignee will not fail to be a qualified funding asset under § 130(d) by reason of the fact that Assignee may offer Claimant the possibility of a future commutation pursuant to the Notice of Hardship Conversion.

LAW AND ANALYSIS

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

Under § 130(a), the amount an assignee receives 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.

Section 130(c) defines a qualified assignment as any assignment of 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 sickness) provided, among other conditions, the periodic payments are fixed and determinable as to amount and time of payment.

Section 130(d) provides the requirements an annuity must meet to qualify as a qualified funding asset, including the requirements that (i) the periods of the payments under the annuity contract are reasonably related to the periodic payments under the qualified assignment, and (ii) the amount of any such payment under the contract does not exceed the periodic payment to which it relates.

Under the facts of this case, the S&P 500 Index provides an objective formula for determining the amount of any increase to the periodic payments. In addition, the amount of payments Claimant will receive in any year will only increase in relation to an annual percentage. Further, payments to Claimant in any year will not decrease from the amount of a prior year's payments even if the S&P 500 Index decreases. Under these conditions, the payments are "fixed and determinable" under § 130(c)(2)(A).

Assignee has the right to decline any hardship conversion request and Assignee will not approve any hardship conversion within the first year of the qualified assignment. Also, the hardship conversion will be a separately negotiated transaction between Assignee and Claimant. Under these facts, the Notice of Hardship Conversion that Assignee will provide to Claimant will not affect the assignment from qualifying under § 130(c) or the annuity from qualifying as a qualified funding asset under § 130(d).

RULINGS

Accordingly, based strictly on the information submitted and the representations made, we conclude:

1. The periodic payments of damages that Claimant will receive are fixed and determinable as to amount and time of payment within the meaning of § 130(c)(2)(A) even though they are calculated pursuant to an objective formula based on the performance of the S&P 500 Index.

2. The Structured Settlement Indexed Annuity which Assignee will acquire from either Issuer 1 or Issuer 2 will not fail to qualify as a qualified funding asset under § 130(d) solely by reason of annuity's variable payments.

3. The possibility of a commutation by Claimant pursuant to the Notice of Hardship Conversion will not affect whether the structured settlement assignment satisfies the requirements of a qualified assignment under § 130(c).

4. The annuity purchased by Assignee will not fail to be a qualified funding asset under § 130(d) by reason of the Notice of Hardship Conversion.

CAVEATS:

Except as expressly provided in rulings 1, 2, 3, and 4 above, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by Assignee and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)