

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202436007**
Release Date: 9/6/2024

Third Party Communication: None
Date of Communication: Not Applicable

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

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-124126-23

Date:
June 07, 2024

Legend:

Parent =

Assignee =

Assignor =

Issuer =

State 1 =

State 2 =

State 3 =

x% =

y% =

z% =

L =

Claimant =

Court =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

\$x =

Amount R =

Amount A =
 Amount B =
 Method A =
 Method B =
 Variable A =
 Variable B =
 Variable C =
 Variable D =
 Variable E =
 Payment Group =
 Payments =
 Payment Revision Date =

Frequency =
 Annuity Contract =

Assignment and Release Agreement =
 Addendum =
 Index =

Dear _____ :

This is in response to your Date 1 ruling request, and supplemental submissions dated Date 2, Date 3, and Date 4, submitted on behalf of Parent, the common parent of Assignee and Issuer, regarding the application of § 130 of the Internal Revenue Code ("Code") to the transaction described below.

FACTS

Parent represents the facts as follows:

Parent, incorporated in State 1 and closely held, is treated as a corporation for federal income tax purposes. Parent elects to file a consolidated federal income tax return with Assignee, with Parent as the common parent. Parent owns x% of both Issuer and Assignee.

Assignee is a structured settlement company (non-life insurance) domiciled in State 2 and authorized to operate in all states. Assignee's business consists of assuming liabilities from third-party defendants and making periodic payments to third-party claimants pursuant to structured settlement agreements involving claims for personal injury.

Issuer is a life insurance company under § 816, domiciled in State 2. Issuer files a separate federal income tax return because Parent has not made an election under § 1504(c)(2). Issuer's sole business is the issuance of single premium annuity contracts in connection with qualified structured settlements intended to meet the requirements of § 130, non-qualified structured settlements, structured attorney fees and structured installment sales.

All of the above-named parties are accrual-basis, calendar-year taxpayers. Assignor provides automobile insurance.

Issuer sells annuities to Assignee and other assignment companies and, in both instances, the contracts are issued only in State 2. In a typical transaction, Assignee enters into an agreement with a defendant (or its insurer) who caused personal physical injury to another pursuant to which Assignee assumes the sole responsibility for making periodic payments under a structured settlement agreement. However, for administrative purposes, Issuer often pays the injured person directly on behalf of Assignee. Assignee will purchase an annuity from Issuer to fund its obligation to make periodic payments to an injured person.

Claimant was physically injured in a rear-end car accident on Date 5 in State 3. Claimant suffered and continues to suffer personal physical and mental injuries related to the accident, including disk herniations and regular migraines. Claimant filed a complaint against defendants and Assignor with Court on Date 6 and is now in the process of negotiating a structured settlement agreement which would provide for periodic payments over the course of Claimant's lifetime. Claimant is considering entering into a structured settlement agreement that will provide for indexed payments, as described below.

The Assignment and Release Agreement includes the following provisions in relation to the proposed structured settlement agreement:

- The parties entered into a settlement agreement under which Assignor is obligated to make the periodic payments listed on Addendum to payee-Claimant;
- The periodic payments constitute damages (other than punitive damages) on account of personal injury or sickness in a case involving physical injury or physical sickness within the meaning of §§ 130(c) and 104(a);
- Payee-Claimant is entitled to receive the periodic payments; and
- The parties desire to affect an assumption of Assignor's periodic payment liability by Assignee and a full and complete discharge of Assignor respecting payee-Claimant's claim for periodic payments.

The Assignment and Release Agreement will specify the periodic payments and the mechanism to increase them using the same language as exists in an Annuity Contract with indexed benefits, sold by Issuer to Assignee. Under the Annuity Contract, certain future guaranteed benefits may increase annually on the Payment Revision Date according to a formula linked to the performance of an external index. Because the Assignment and Release Agreement and Annuity Contract contain the same language and operative terms, the discussion that follows applies to both documents.

The structured settlement and related Annuity Contract are intended to provide Claimant with the possibility of positive adjustments to the amount of the periodic payments she will receive, reflecting increases in the value of a designated index. Under the terms of the Annuity Contract, the adjustments will never result in a reduction in the amount of the periodic payments. Once a payment amount has been increased based on the increases in the designated index, that amount becomes the new guaranteed amount and can never decrease. Only those payments identified in Addendum as "Indexed" and when the payment start date has not yet occurred will be adjusted.

The underlying components of the designated index will be a mix of assets which could include stocks, treasuries, cash, etc., which are set and adjusted over time using a fixed and published set of rules. As of the date of Parent's ruling request, the only available index was the Index. The designated index, here the Index, may only be changed if it is discontinued, the composition of the calculation of it is substantially changed, or if Issuer is unable to use it. If necessary, Issuer will substitute a suitable alternative index and will notify the Claimant of the change.

The Annuity Contract contains a stabilizer provision designed to smooth out the adjustments resulting from increases in the value of the Index. The ability to smooth out adjustments will depend upon the balance of the available Variable A, a term defined in the Annuity Contract. The stabilizer provision contains a series of formulas that are fixed in the Annuity Contract at the time of issuance and cannot be modified. The stabilizer applies to each "Payment Group" (any group of Payments that are linked for the purposes of applying index growth) and its component "Payments" (one or more payments). All payments in a Payment Group are at the same mode or frequency. Instead of making an independent adjustment to each single periodic payment upon an increase in the Index when compared to the prior year, the stabilizer provision operates to increase the next Payments in a selected Payment Group to a target level and the other Payments in that Payment Group to a lesser degree, as needed to maintain payments at the target. However, if the growth is high enough, the stabilizer will adjust all Payments in the Payment Group by a higher, uniform proportion.

The future guaranteed payment amounts, defined as Amount R in the Annuity Contract, will be increased to take into account comparative increases in the Index. The actual amount of the increase will depend upon whether one of two methodologies, defined as Method A or Method B, is used to make the calculation. If Method A is used to make

the adjustment, all future Payments in the Payment Group grow proportionally. If Method B is used to make the adjustment, the stabilizer attempts to grow the next Payments to its target and the remaining Payments in the Payment Group grow proportionally, but less than the growth of the next Payments. The appropriate method is determined based on a calculation outlined in the Annuity Contract.

The calculation of the respective method depends on certain items set forth in Addendum. The value of those items is determined at the time of the issuance of the Annuity Contract. For the Annuity Contract the Claimant is considering, the method used to calculate the adjustment will always be Method A due to the values assigned to those items. In this structured settlement, Variable B is $y\%$ and Variable C is $z\%$. Accordingly, the effect of the stabilizer is neutralized.

Variable D is defined to be never less than L under the terms of the Annuity Contract. Amount B is Variable D times the sum of future Amount Rs and Amount A times Variable E, producing an Amount B that is never negative. The values of Amount A and Variable E are set forth in the Annuity Contract.

Under the Assignment and Release Agreement, the starting payment amount is $\$x$, and the payment frequency is Frequency. The first payment date for the first Payments is Date 7. The payment amount will be adjusted annually on the Payment Revision Date.

Parent also makes the following representations:

1. The Annuity Contract will be issued by Issuer to fund periodic payments pursuant to an assignment of a liability to Assignee 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).
2. The rights of Claimant to receive the periodic payments will be recognized in a binding structured settlement agreement between the parties; such payments will not be subject to a contingency which is under the control of any party to the agreement; the time of such payments will be established in the agreement; and the amount of such payments will be computed under a formula set forth in the agreement.
3. Claimant will be unable to accelerate, defer, increase, or decrease the periodic payments from the direct obligor or Assignee.
4. The obligation of Assignee under the Assignment and Release Agreement will be no greater than the obligation of the person (the direct obligor) that assigned the liability.
5. The periodic payments made under the structured settlement agreement will be payments for damages received on account of personal physical injuries or

sickness which are excludable from the gross income of the Claimant under § 104(a)(2).

6. The periods of the payments under the Annuity Contract issued to Assignee will be reasonably related to the periodic payments under the assignment of the liability to make periodic payments of damages on account of personal physical injuries or sickness, and the amount of any payment under the Annuity Contract will not exceed the periodic payment to which it relates.
7. The Annuity Contract issued to Assignee will be designated, in such manner as the Internal Revenue Service prescribes in regulations, as being taken into account under § 130 with respect to an assignment of liability to pay damages on account of personal physical injuries or sickness.
8. Assignee will purchase the Annuity Contract from Issuer not more than 60 days before or after the date of the assignment of liability to make periodic payments as damages on account of personal physical injuries or sickness.
9. The Annuity Contract issued by Issuer will qualify as an annuity under the laws of the state in which it is issued.
10. The amount of the periodic payments to the Claimant and the correlative amount of the payments under the Annuity Contract funding the periodic payments will be determined by taking into account the formula prescribed by the structured settlement agreement.
11. In the case of the Index's value decreasing on any date between the index start date and a subsequent Payment Revision Date, each payment within the Payments will be no less than the Amount R for that Payment.
12. The amount of the Assignment Consideration (*i.e.*, the amount received for entering into the Assignment and Release Agreement) that is excluded from gross income by Parent or Assignee will not exceed the aggregate cost of the Annuity Contract.

REQUESTED RULINGS

Parent has requested the following rulings:

1. The periodic payments (including any indexed benefits) that Claimant will receive pursuant to the structured settlement agreement are fixed and determinable as to amount and time of payment under § 130(c)(2)(A) of the Code. In addition, the other requirements of § 130(c) have also been met. Accordingly, the assignment entered into pursuant to an Assignment Agreement is a qualified assignment under § 130(c); and

2. The single premium annuity contract which Assignee will acquire from Issuer will not fail to qualify as a qualified funding asset under § 130(d) solely by reason of the annuity contract's provisions for indexed benefits.

LAW AND ANALYSIS

Section 104(a)(2) of the Code 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.

Section 130(a) provides that any 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 that, among other conditions: such periodic payments are fixed and determinable as to the 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 (1) such 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 (3) the amount of any such payment under the contract or obligation does not exceed the periodic payment to which it relates.

Periodic payments can be fixed and determinable as to the amount and time of payment even if the payments are calculated pursuant to a formula based on the performance of a stock index and/or a mutual fund portfolio. Under the facts of this case, the amount and time of the periodic payments as determined in accordance with the methodology set forth in the Annuity Contract and reiterated in the Assignment and Release Agreement depend on the performance of the Index, which is an objective basis for computing the amount of the periodic payments.

Therefore, we conclude that for purposes § 130(c)(2)(A), the periodic payments that will be made pursuant to the Annuity Contract are fixed and determinable as to the amount and time of payment.

Accordingly, the Annuity Contract will not fail to be a qualified funding asset within the meaning of § 130(d) solely by reason of the provision authorizing indexed payments and the potential increase in the periodic payments.

RULINGS

Accordingly, based strictly on the information submitted and the representations made, our office concludes:

1. The periodic payments (including any indexed benefits) that Claimant will receive pursuant to the structured settlement agreement are fixed and determinable as to amount and time of payment within the meaning of § 130(c)(2)(A), and the other requirements of § 130(c) of the Code have been met. Accordingly, the assignment that will be entered into pursuant to the Assignment and Release Agreement is a qualified assignment under 130(c).
2. The Annuity Contract will not fail to be a qualified funding asset within the meaning of § 130(d) solely by reason of the provisions for indexed benefits and potential increase in the periodic payments.

CAVEATS

Except as expressly provided in rulings 1 and 2 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. Specifically, no ruling on the taxability of the periodic payments to Claimant has been requested, and therefore no ruling is being issued under § 104(a)(2) or any other provision of the Code to Claimant in this rulings letter. Additionally, we express no opinion on the tax treatment of payments adjusted using the Method B process. 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.

The rulings contained in this letter are based upon information and representations submitted by Parent 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, a copy of this letter is being sent to your authorized representative.

Sincerely.

Gerald Semasek
Assistant to the Branch Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)

CC: