

TAX ANALYSTS INTERNAL REVENUE CODE

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SUBTITLE A -- INCOME TAXES

Chapter 1 -- Normal taxes and surtaxes

Subchapter E -- Accounting periods and methods of accounting

Part II -- Methods of accounting

Subpart C -- Taxable year for which deductions taken

Sec. 468B. Special rules for designated settlement funds

IRCODE Sec. 468B

(a) In general

For purposes of section 461(h), economic performance shall be deemed to occur as qualified payments are made by the taxpayer to a designated settlement fund.

(b) Taxation of designated settlement fund

(1) In general

There is imposed on the gross income of any designated settlement fund for any taxable year a tax at a rate equal to the maximum rate in effect for such taxable year under section 1(e).

(2) Certain expenses allowed

For purposes of paragraph (1), gross income for any taxable year shall be reduced by the amount of any administrative costs (including State and local taxes) and other incidental expenses of the designated settlement fund (including legal, accounting, and actuarial expenses)--

(A) which are incurred in connection with the operation of the fund, and

(B) which would be deductible under this chapter for purposes of determining the taxable income of a corporation.

No other deduction shall be allowed to the fund.

(3) Transfers to the fund

In the case of any qualified payment made to the fund--

(A) the amount of such payment shall not be treated as income of the designated settlement fund,

(B) the basis of the fund in any property which constitutes a qualified payment shall be equal to the fair market value of such property at the time of payment, and

(C) the fund shall be treated as the owner of the property in the fund (and any earnings thereon).

(4) Tax in lieu of other taxation

The tax imposed by paragraph (1) shall be in lieu of any other taxation under this subtitle of income from assets in the designated settlement fund.

(5) Coordination with subtitle F

For purposes of subtitle F--

(A) a designated settlement fund shall be treated as a corporation, and

(B) any tax imposed by this subsection shall be treated as a tax imposed by section 11.

(c) Deductions not allowed for transfer of insurance amounts

No deduction shall be allowable for any qualified payment by the taxpayer of any amounts received from the settlement of any insurance claim to the extent such amounts are excluded from the gross income of the taxpayer.

(d) Definitions

For purposes of this section--

(1) Qualified payment

The term "qualified payment" means any money or property which is transferred to any designated settlement fund pursuant to a court order, other than--

(A) any amount which may be transferred from the fund to the taxpayer (or any related person), or

(B) the transfer of any stock or indebtedness of the taxpayer (or any related person).

(2) Designated settlement fund

The term "designated settlement fund" means any fund--

(A) which is established pursuant to a court order and which extinguishes completely the taxpayer's tort liability with respect to claims described in subparagraph (D),

(B) with respect to which no amounts may be transferred other than in the form of qualified payments,

(C) which is administered by persons a majority of whom are independent of the taxpayer,

(D) which is established for the principal purpose of resolving and satisfying present and future claims against the taxpayer (or any related person or formerly related person) arising out of personal injury, death, or property damage,

(E) under the terms of which the taxpayer (or any related person) may not hold any beneficial interest in the income or corpus of the fund, and

(F) with respect to which an election is made under this section by the taxpayer.

An election under this section shall be made at such time and in such manner as the Secretary shall by regulation prescribe. Such an election, once made, may be revoked only with the consent of the Secretary.

(3) Related person

The term “related person” means a person related to the taxpayer within the meaning of section 267(b).

(e) Nonapplicability of section

This section (other than subsection (g)) shall not apply with respect to any liability of the taxpayer arising under any workers’ compensation Act or any contested liability of the taxpayer within the meaning of section 461(f).

(f) Other funds

Except as provided in regulations, any payment in respect of a liability described in subsection (d)(2)(D) (and not described in subsection (e)) to a trust fund or escrow fund which is not a designated settlement fund shall not be treated as constituting economic performance.

(g) Clarification of taxation of certain funds

Nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise.

HISTORICAL NOTES:

Background Notes

Sec. 468B Background Notes

(Added Pub. L. 99-514, title XVIII, Sec. 1807(a)(7)(A), Oct. 22, 1986, 100 Stat. 2814, and amended Pub. L. 100-647, title I, Sec. 1018(f)(1), (2), (4), (5)(A), Nov. 10, 1988, 102 Stat. 3582; Pub. L. 101-508, title XI, Sec. 11702(e)(1), Nov. 5, 1990, 104 Stat. 1388-515.)

AMENDMENTS

1990 - Subsec. (e). Pub. L. 101-508 substituted ‘This section (other than subsection (g))’ for ‘This section’.

1988 - Subsec. (b)(2). Pub. L. 100-647, Sec. 1018(f)(4)(B), substituted ‘No other’ for ‘no other’ in concluding provisions.

Subsec. (b)(2)(B). Pub. L. 100-647, Sec. 1018(f)(4)(A), substituted ‘a corporation.’ for ‘the corporation.’

Subsec. (d)(1)(A). Pub. L. 100-647, Sec. 1018(f)(1), inserted ‘(or any related person)’ after ‘taxpayer’.

Subsec. (d)(2)(A). Pub. L. 100-647, Sec. 1018(f)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ‘which is established pursuant to a court order.’

Subsec. (d)(2)(E). Pub. L. 100-647, Sec. 1018(f)(1), inserted '(or any related person)' after 'taxpayer'.

Subsec. (g). Pub. L. 100-647, Sec. 1018(f)(5)(A), added subsec. (g).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 11702(j) of Pub. L. 101-508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as an Effective Date of 1986 Amendment note under section 48 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI (Sec. 1101-1147 and 1171-1177) or title XVIII (Sec. 1800-1899A) of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

SPECIAL RULE FOR TAXPAYER IN BANKRUPTCY REORGANIZATION

Section 1807(a)(7)(C) of Pub. L. 99-514, as amended by Pub. L. 100-647, title I, Sec. 1018(f)(3), Nov. 10, 1988, 102 Stat. 3582, provided that: 'In the case of any settlement fund which is established for claimants against a corporation which filed a petition for reorganization under chapter 11 of title 11, United States Code, on August 26, 1982, and which filed with a United States district court a first amended and restated plan of reorganization before March 1, 1986 -

'(i) any portion of such fund which is established pursuant to a court order and with qualified payments, which meets the requirements of subparagraphs (C) and (D) of section 468B(d)(2) of the Internal Revenue Code of 1954 (now 1986) (as added by this paragraph), and with respect to which an election is made under subparagraph (F) thereof, shall be treated as a designated settlement fund for purposes of section 468B of such Code,

'(ii) such corporation (or any successor thereof) shall be liable for the tax imposed by section 468B of such Code on such portion of the fund (and the fund shall not be liable for such tax), such tax shall be deductible by the corporation, and the rate of tax under section 468B of such Code for any taxable year shall be equal to 15 percent, and

'(iii) any transaction by any portion of the fund not described in clause (i) shall be treated as a transaction made by the corporation.'

CLARIFICATION OF LAW WITH RESPECT TO CERTAIN FUNDS

Section 1807(a)(7)(D) of Pub. L. 99-514, which provided that nothing in any provision of law be construed as providing that an escrow account, settlement fund, or similar fund established after Aug. 16, 1986, not be subject to current income tax and that if contributions to such account or fund are not deductible then the account or fund be taxed as a grantor trust, was repealed by Pub. L. 100-647, title I, Sec. 1018(f)(5)(B), Nov. 10, 1988, 102 Stat. 3582.

SUMMARY: Code Section Summary

Section 468B. Special Rules for Designated Settlement Funds.

Qualified payments, made under a court order, to a designated settlement fund established to satisfy claims against the taxpayer are excluded from the income of the fund. Gross income of the fund is taxed at the maximum rate under section 1(e), in lieu of other taxes. (Section 468B(b)(1);(4)) Deductions allowed for the settlement fund include administrative costs and legal fees. (Section 468B(b)(2))

Qualified Payments. Qualified payments are payments of money or property made to a designated settlement fund under a court order, excluding any stock or indebtedness of the taxpayer and amounts that may be transferred from the fund to the taxpayer. (Section 468B(d)(1))

Requirements for a Designated Settlement Fund.

- 1) The fund must be set up under a court order. (Section 468B(d)(2)(A))
- 2) The fund must be established for the principal purpose of satisfying present and future claims against the taxpayer arising out of personal injury, death, or property damage, and the fund must completely extinguish that liability. (Section 468B(d)(2)(A);(D))

Exception. Section 468B does not apply to contested liabilities under section 461(f), nor does it apply to claims under a workers' compensation act. (Section 468B(e))

- 3) There may be no transfers from the fund except in the form of qualified payments. (Section 468B(d)(2)(B))
- 4) The majority of those administering the fund must be independent of the taxpayer, and the taxpayer may not hold any beneficial interest in the fund. (Section 468B(d)(2)(C);(E))

Exclusion of Qualified Payments from Income of Fund. Qualified payments to the fund are excludable from the income of the fund. (Section 468B(b)(3))

Deductible Expenses. The only deductions allowed to the fund are administrative (including State and local taxes), legal, and accounting costs incurred in the operation of the fund and that would otherwise be a deduction for a corporation. (Section 468B(b)(2))

Economic Performance. Economic performance occurs with each designated payment by the taxpayer to the designated settlement fund. (Section 468B(a) and (f))