

Section 5891.—Structured Settlement Factoring Transactions

26 CFR 157.5891–1T: Imposition of excise tax on structured settlement factoring transactions.

T.D. 9042

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 157 and 602

Excise Tax Relating to Structured Settlement Factoring Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the manner and method of reporting and paying the nondeductible 40-percent excise tax imposed on any person who acquires structured settlement payment rights in a structured settlement factoring transaction. The Victims of Terrorism Tax Relief Act of 2001 added this excise tax to the Internal Revenue Code of 1986. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking (REG–139768–02) on this subject in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on February 19, 2003.

Applicability Date: For dates of applicability, see §157.5891–1T(e).

FOR FURTHER INFORMATION CONTACT: Shareen S. Pflanz at 202–622–8488 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1824. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking (REG-139768-02) on page 583 of this Bulletin.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document adds a new part 157, Excise Tax on Structured Settlement Factoring Transactions, to title 26 of the Code of Federal Regulations. The temporary regulations under part 157 provide guidance on the proper manner and method of reporting and paying the 40-percent excise tax imposed on any person who acquires, directly or indirectly, structured settlement payment rights in a structured settlement factoring transaction. The temporary regulations reflect the addition to the Internal Revenue Code (Code) of chapter 55 and section 5891 by section 115 of the Victims of Terrorism Tax Relief Act of 2001, Public Law 107-134 (115 Stat. 2427, 2436-2439).

Explanation of Provisions

Section 5891 of the Internal Revenue Code imposes an excise tax on any person who acquires, directly or indirectly, structured settlement payment rights in a structured settlement factoring transaction. The tax is equal to 40 percent of the factoring discount with respect to the factoring transaction.

The temporary regulations set forth the manner and method of paying the excise tax imposed under section 5891 of the Code. Generally, the term *structured settlement factoring transaction* is defined as a transfer of structured settlement payment rights made for consideration by means of sale, assignment, pledge, or other form of en-

cumbrance or alienation for consideration. If a taxpayer is liable for the tax imposed by section 5891, the excise tax must be reported on Form 8876, *Excise Tax on Structured Settlement Factoring Transactions*. Generally, the temporary regulations require that the excise tax return be filed and the tax paid on or before the later of the ninetieth day following the day the taxpayer receives any structured settlement payment rights (including portions of structured settlement payments) or May 20, 2003. The temporary regulations provide rules relating to the Service's authority to extend the time for payment of any amount shown or required to be shown on the return.

The temporary regulations do not address the method of determining the proper amount of the excise tax imposed by section 5891 of the Code. Issues related to the determination of the amount of the excise tax may be addressed by future regulations.

The temporary regulations will be effective generally for structured settlement factoring transactions entered into on or after February 22, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking (REG-139768-02) on page 583 of this issue of the Bulletin. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

The principal author of these regulations is Shareen Soltanzadeh Pflanz, Attorney, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

Amendments to the Regulations

Accordingly, title 26 of the Code of Federal Regulations is amended as follows:

SUBCHAPTER D — MISCELLANEOUS EXCISE TAXES

Paragraph 1. Part 157 is added to read as follows:

PART 157 — EXCISE TAX ON STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

Subpart A — Tax on Structured Settlement Factoring Transactions

Sec.

157.5891-1T Imposition of excise tax on structured settlement factoring transactions.

Subpart B — Procedure and Administration

Sec.

157.6001-1T Records, statements, and special returns.

157.6011-1T General requirement of return, statement, or list.

157.6061-1T Signing of returns and other documents.

157.6065-1T Verification of returns.

157.6071-1T Time for filing returns.

157.6081-1T Extension of time for filing the return.

157.6091-1T Place for filing returns.

157.6151-1T Time and place for paying of tax shown on returns.

157.6161-1T Extension of time for paying tax.

157.6165-1T Bonds where time to pay tax has been extended.

Authority: 26 U.S.C. 7805

Section 157.6001-1T also issued under 26 U.S.C. 6001.

Section 157.6011-1T also issued under 26 U.S.C. 6011.

Section 157.6061-1T also issued under 26 U.S.C. 6061

Section 157.6091-1T also issued under 26 U.S.C. 6091.

Section 157.6161-1T also issued under 26 U.S.C. 6161.

Subpart A — Tax on Structured Settlement Factoring Transactions

§157.5891—IT Imposition of excise tax on structured settlement factoring transactions.

(a) *In general.* Section 5891 imposes on any person who acquires, directly or indirectly, structured settlement payment rights in a structured settlement factoring transaction a tax equal to 40 percent of the factoring discount with respect to such factoring transactions.

(b) *Exceptions for certain approved transactions* — (1) *In general.* The excise tax shall not apply to a structured settlement factoring transaction if the transfer of structured settlement payment rights is approved in advance in a qualified order.

(2) *Qualified order dispositive.* A qualified order shall be treated as dispositive for purposes of this exception.

(c) *Definitions* — (1) *Applicable state statute* means —

(i) A statute that is enacted by the state in which the payee of the structured settlement is domiciled and that provides for the entry of an order, judgment, or decree described in paragraph (c)(4)(i) of this section; or

(ii) If there is no such statute, a statute that is enacted by the state in which either the party to the structured settlement (including an assignee under a qualified assignment under section 130) or the person issuing the funding asset for the structured settlement is domiciled or has its principal place of business and that provides for the entry of such an order, judgment, or decree.

(2) *Applicable state court* means, with respect to any applicable state statute, a court of the state that enacted such statute. If the payee of the structured settlement is not domiciled in the state that enacted the statute, the term also includes a court of the state in which the payee is domiciled.

(3) *Factoring discount* means an amount equal to the excess of —

(i) The aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction; over

(ii) The total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

(4) *Qualified order* means a final order, judgment, or decree that —

(i) Finds that the transfer of structured settlement payment rights does not contravene any federal or state statute, or the order of any court or responsible administrative authority, and is in the best interest of the payee, taking into account the welfare and support of the payee's dependents; and

(ii) Is issued under the authority of an applicable state statute by an applicable state court, or is issued by the responsible administrative authority (if any) which has exclusive jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

(5) *Responsible administrative authority* means the administrative authority that had jurisdiction over the underlying action or proceeding that was resolved by means of the structured settlement.

(6) *State* includes the Commonwealth of Puerto Rico and any possession of the United States.

(7) *Structured settlement* means an arrangement —

(i) That is established by —

(A) Suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 104(a)(2); or

(B) Agreement for the periodic payment of compensation under any workers' compensation law excludable from the gross income of the recipient under section 104(a)(1); and

(ii) Under which the periodic payments are —

(A) Of the character described in section 130(c)(2)(A) and (B); and

(B) Payable by a person who is a party to the suit or agreement or to the workers' compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

(8) *Structured settlement factoring transaction* means a transfer of structured settlement payment rights (including portions of structured settlement payments) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration other than —

(i) The creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured de-

pository institution in the absence of any action to redirect the structured settlement payments to such institution (or agent or successor thereof) or otherwise to enforce such blanket security interest as against the structured settlement payment rights; or

(ii) A subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.

(9) *Structured settlement payment rights* means rights to receive payments under a structured settlement.

(d) *Coordination with other provisions of the Internal Revenue Code* — (1) *In general.* If the applicable requirements of sections 72, 104(a)(1), 104(a)(2), 130, and 461(h) were satisfied at the time the structured settlement involving structured settlement payment rights was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

(2) *No withholding of tax.* The provisions of section 3405 regarding withholding of tax shall not apply to the person making the payments in the event of a structured settlement factoring transaction.

(e) *Effective dates* — (1) *In general.* Section 5891 applies to structured settlement factoring transactions entered into on or after February 22, 2002. Section 5891(d) also applies to structured settlement factoring transactions entered into before February 22, 2002.

(2) *Transition rule.* In the case of a structured settlement factoring transaction entered into during the period beginning on February 22, 2002, and ending on July 1, 2002, no tax shall be imposed under section 5891(a) if —

(i) The structured settlement payee is domiciled in a state (or possession of the United States) that has not enacted an applicable state statute (as defined in section 5891(b)(3)); and

(ii) The person acquiring the structured settlement payment rights discloses to the structured settlement payee in advance of the structured settlement factoring transaction —

(A) The amounts and due dates of the payments to be transferred;

(B) The aggregate amount to be transferred;

(C) The consideration to be received by the structured settlement payee for the transferred payments;

(D) The discounted present value of the transferred payments (including the present value as determined in the manner described in section 7520); and

(E) The expenses required under the terms of the structured settlement factoring transaction to be paid by the structured settlement payee or deducted from the proceeds of such transaction.

Subpart B — Procedure and Administration

§157.6001–IT Records, statements, and special returns.

(a) *In general.* Any person subject to tax under chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code (chapter 55) must keep such complete and detailed records as are sufficient to enable the Internal Revenue Service (IRS) to determine accurately the amount of liability under chapter 55.

(b) *Notice by the IRS requiring returns, statements, or the keeping of records.* The IRS may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the IRS to determine whether or not the person is liable for tax under chapter 55.

(c) *Retention of records.* The records required by this section must be kept at all times available for inspection by the IRS, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

§157.6011–IT General requirement of return, statement, or list.

Every person liable for tax under section 5891 must file a return with respect to the tax in accordance with the forms and instructions provided by the Internal Revenue Service.

§157.6061–IT Signing of returns and other documents.

Any return, statement, or other document required to be made with respect to a tax imposed by chapter 55 (Structured

Settlement Factoring Transactions) of the Internal Revenue Code or the regulations thereunder must be signed by the person required to file the return, statement, or other document, or by the persons required or duly authorized to sign in accordance with the regulations, forms, or instructions prescribed with respect to such return, statement, or document. An individual's signature on such return, statement, or other document shall be *prima facie* evidence that the individual is authorized to sign the return, statement, or other document.

§157.6065–IT Verification of returns.

If a return, statement, or other document made under the provisions of chapter 55 of the Internal Revenue Code (chapter 55) or of subtitle F of the Code (subtitle F), or the regulations thereunder with respect to any tax imposed by chapter 55, or the form and instructions issued with respect to such return, statement, or other document, requires that it shall contain or be verified by a written declaration that it is made under the penalties of perjury, it must be so verified by the person or persons required to sign such return, statement, or other document. In addition, any other statement or document submitted under any provision of chapter 55 or subtitle F, or the regulations thereunder, with respect to any tax imposed by chapter 55 may be required to contain or be verified by written declaration that is made under the penalties of perjury.

§157.6071–IT Time for filing returns.

(a) *In general.* Except as provided in paragraph (b) of this section, returns required by §157.6011–IT (relating to returns of tax with respect to structured settlement factoring transactions) must be filed on or before the ninetieth day following the receipt of structured settlement payment rights in a structured settlement factoring transaction.

(b) *Returns relating to structured settlement payment rights received before February 19, 2003.* Returns required by §157.6011–IT that relate to structured settlement payment rights received on or before February 19, 2003, must be filed on or before May 20, 2003.

§157.6081–IT Extension of time for filing the return.

(a) *Application for extension.* An application for an extension of time for filing the

return required by §157.6011–IT (relating to returns of tax with respect to structured settlement factoring transactions) must be completed in accordance with the forms and instructions provided by the Internal Revenue Service. It should be made before the expiration of the time within which the return otherwise must be filed, and failure to do so may indicate negligence and constitute sufficient cause for denial. It should, where possible, be made sufficiently early to permit consideration of the matter and reply before what otherwise would be the due date of the return. An extension of time for filing a return shall not extend the time for the payment of the tax or any part thereof unless specified to the contrary in the grant of the extension.

(b) *Filing of return.* If an extension of time for filing the return is granted, a return must be filed before the period of extension expires.

§157.6091–IT Place for filing returns.

The return required by §157.6011–IT (relating to returns of tax with respect to structured settlement factoring transactions) must be filed at the place specified in the forms and instructions provided by the Internal Revenue Service.

§157.6151–IT Time and place for paying of tax shown on returns.

The tax under chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code shown on any return must, without assessment or notice and demand, be paid at the time and place specified in the forms and instructions provided by the IRS. For provisions relating to the time and place for filing such return, see §157.6071–IT and §157.6091–IT. For provisions relating to the extension of time for paying the tax, see §157.6161–IT.

§157.6161–IT Extension of time for paying tax.

(a) *In general — (1) Tax shown or required to be shown on return.* The Internal Revenue Service may, at the request of the taxpayer, grant a reasonable extension of time for payment of the amount of any tax imposed by chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code (chapter 55) and shown or required to be shown on any return. The period of such extension shall not

exceed 6 months from the date fixed for payment of such tax, except that in the case of a taxpayer that is abroad, such extension may exceed 6 months.

(2) *Extension of time for filing distinguished.* The granting of an extension of time for filing a return does not extend the time for the payment of the tax or any part thereof unless so specified in the extension.

(b) *Certain rules relating to extension of time for paying income tax to apply.* The provisions of §1.6161-1(b), (c), and (d) of this chapter (relating to a requirement for undue hardship, to the application for extension, and to payment pursuant to an extension) shall apply to extensions of time

for payment of the tax imposed by chapter 55 of the Internal Revenue Code.

§157.6165-1T Bonds where time to pay tax has been extended.

If an extension of time for payment is granted under section 6161, the Internal Revenue Service may, if it deems necessary, require a bond for the payment, in accordance with the terms of the extension, of the amount with respect to which the extension is granted. However, the bond shall not exceed double the amount with respect to which the extension is granted. For provisions relating to the form of bonds, see the regulations under section 7101 con-

tained in part 301 (Regulations on Procedure and Administration) of this chapter.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 2. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 3. In §602.101, paragraph (b) is amended by adding entries in numerical order to the table as follows:

§602.101 OMB control numbers.

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(b) * * *

CFR part or section where identified and described

Current OMB control No.

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157.6001-1T	1545-1824
157.6011-1T	1545-1824
157.6081-1T	1545-1824
157.6161-1T	1545-1824

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David A. Mader,
Assistant Deputy Commissioner
of Internal Revenue.

Approved December 17, 2002.

Pamela F. Olson,
Assistant Secretary of the Treasury.