

BOOK REVIEW: Qualified Settlement Funds and Section 468B

Attorneys without an extensive background in taxation are typically wary of drafting trust instruments that tackle complicated issues of tax law. However, attorneys practicing elder law and special needs planning will, either by accident or design, run into Qualified Settlement Funds (QSFs). QSFs are common tools, originally developed to hold settlements from large class-action litigations, which are now being used to handle settlements involving a wide range of parties. Unfortunately for the non-tax attorney, QSFs are creatures of the tax code and operate according to strict rules promulgated by the IRS. Robert Wood, an attorney and respected author in the field of taxation, has set out to explain QSFs in a comprehensive treatise designed for attorneys with a wide range of backgrounds and experiences with QSFs. *Qualified Settlement Funds and Section 468B* not only provides the background that any attorney confronting a QSF may need in order to have a working knowledge of the topic, but also delves into the details that practitioners looking to draft and administer QSFs will require.

QSFs are fairly recent creations, only coming into existence through IRS regulations issued in 1993. The main reason QSFs have gained in popularity since then has to do with their tax benefits for both plaintiffs and defendants. QSFs allow defendants to transfer assets into the QSF and claim a business deduction at the time of the transfer instead of having to wait to take the deduction at the time the plaintiff actually receives his or her settlement. Plaintiffs, on the other hand, can time their receipt of settlement funds to provide them with the maximum income tax benefit.

In order to establish a QSF, a party must meet three main "establishment requirements" outlined in IRC Section 468B. First, the QSF must be approved by a governmental authority, typically a court, which accepts continuing jurisdiction over the funds. Second, the QSF must resolve at least one claim of liability under a range of different actions, including claims for attorneys fees. Finally, the QSF must be a trust under state law or have assets segregated from the defendant's other assets. Wood guides practitioners through the process of establishing a QSF, and devotes a chapter to drafting the trust agreement, something elder law and special needs attorneys may be called upon to do in their work with plaintiffs' attorneys. Wood's guidance is clear, and he provides detailed explanations of most of the intricate provisions in his sample QSF trust. Since QSFs have relatively straightforward requirements, the majority of Wood's book illuminates the devilish details of taxation and management of QSFs.

Under IRS regulations, QSFs must have an "administrator" who is responsible for obtaining a tax identification number for the QSF and for "making" the QSFs tax return, among other duties. At the same time, if a QSF is also a trust, there obviously has to be a trustee to hold and manage the trust assets. Wood walks attorneys through the pros and cons of having one person or entity serve as both administrator and trustee, and

provides chapters of guidance for management of the QSF. As to be expected, Wood spends a good deal of time on the tax treatment of QSFs, and explains the main aspects of preparing and filing a QSF return.

After reading Wood's book, most attorneys with experience drafting and managing other types of trusts should feel confident that they could create a QSF as well. Wood's treatment of the taxation of QSFs, and, especially, the tax issues surrounding the payment of attorneys fees from a QSF, is required reading for attorneys who practice in this area or who hope to get involved in creating QSFs. Administrators and trustees will also profit from Wood's detailed analysis of their duties and his advice about how to successfully navigate tax season. Regardless of an attorney's experience with QSFs, *Qualified Settlement Funds and Section 468B* should be on the bookshelf if he or she ever plans on confronting these useful instruments.

To order *Qualified Settlement Funds and Section 468B* directly from the publisher, click [here](#).