106TH CONGRESS 2D SESSION

H. R. 5421

To amend the Internal Revenue Code of 1986 to impose an excise tax on persons who acquire structured settlement payments in factoring transactions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 2000

Mr. Shaw (for himself and Mr. Stark) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to impose an excise tax on persons who acquire structured settlement payments in factoring transactions, and for other purposes.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. SHORT TITLE.
- 4 This Act may be cited as the "Structured Settlement
- 5 Protection Act".

1	SEC. 2. IMPOSITION OF EXCISE TAX ON PERSONS WHO AC-
2	QUIRE STRUCTURED SETTLEMENT PAY-
3	MENTS IN FACTORING TRANSACTIONS.
4	(a) In General.—Subtitle E of the Internal Rev-
5	enue Code of 1986 is amended by adding at the end the
6	following new chapter:
7	"CHAPTER 55—STRUCTURED
8	SETTLEMENT FACTORING TRANSACTIONS
	"Sec. 5891. Structured settlement factoring transactions.
9	"SEC. 5891. STRUCTURED SETTLEMENT FACTORING TRANS-
10	ACTIONS.
11	"(a) Imposition of Tax.—There is hereby imposed
12	on any person who acquires directly or indirectly struc-
13	tured settlement payment rights in a structured settle-
14	ment factoring transaction a tax equal to 40 percent of
15	the factoring discount as determined under subsection
16	(c)(4) with respect to such factoring transaction.
17	"(b) Exception for Certain Approved Trans-
18	ACTIONS.—
19	"(1) In general.—The tax under subsection
20	(a) shall not apply in the case of a structured settle-
21	ment factoring transaction in which the transfer of
22	structured settlement payment rights is approved in
23	advance in a qualified order.

1	"(2) Qualified order.—For purposes of this
2	section, the term 'qualified order' means a final
3	order, judgment, or decree which—
4	"(A) finds that the transfer described in
5	paragraph (1)—
6	"(i) does not contravene any Federal
7	or State statute or the order of any court
8	or responsible administrative authority,
9	and
10	"(ii) is in the best interest of the
11	payee, taking into account the welfare and
12	support of the payee's dependents, and
13	"(B) is issued—
14	"(i) under the authority of an applica-
15	ble State statute by an applicable State
16	court, or
17	"(ii) by the responsible administrative
18	authority (if any) which has exclusive ju-
19	risdiction over the underlying action or
20	proceeding which was resolved by means of
21	the structured settlement.
22	"(3) Applicable state statute.—For pur-
23	poses of this section, the term 'applicable State stat-
24	ute' means a statute providing for the entry of an

1	order, judgment, or decree described in paragraph
2	(2)(A) which is enacted by—
3	"(A) the State in which the payee of the
4	structured settlement is domiciled, or
5	"(B) if there is no statute described in
6	subparagraph (A), the State in which either the
7	party to the structured settlement (including an
8	assignee under a qualified assignment under
9	section 130) or the person issuing the funding
10	asset for the structured settlement is domiciled
11	or has its principal place of business.
12	"(4) Applicable state court.—For pur-
13	poses of this section—
14	"(A) In general.—The term 'applicable
15	State court' means, with respect to any applica-
16	ble State statute, a court of the State which en-
17	acted such statute.
18	"(B) Special rule.—In the case of an
19	applicable State statute described in paragraph
20	(3)(B), such term also includes a court of the
21	State in which the payee of the structured set-
22	tlement is domiciled.
23	"(5) Qualified order dispositive.—A quali-
24	fied order shall be treated as dispositive for purposes
25	of the exception under this subsection.

1	"(c) Definitions.—For purposes of this section—
2	"(1) STRUCTURED SETTLEMENT.—The term
3	'structured settlement' means an arrangement—
4	"(A) which is established by—
5	"(i) suit or agreement for the periodic
6	payment of damages excludable from the
7	gross income of the recipient under section
8	104(a)(2), or
9	"(ii) agreement for the periodic pay-
10	ment of compensation under any workers'
11	compensation act excludable from the
12	gross income of the recipient under section
13	104(a)(1), and
14	"(B) under which the periodic payments
15	are—
16	"(i) of the character described in sub-
17	paragraphs (A) and (B) of section
18	130(e)(2), and
19	"(ii) payable by a person who is a
20	party to the suit or agreement or to the
21	workers' compensation claim or by a per-
22	son who has assumed the liability for such
23	periodic payments under a qualified assign-
24	ment in accordance with section 130.

1	"(2) Structured settlement payment
2	RIGHTS.—The term 'structured settlement payment
3	rights' means rights to receive payments under a
4	structured settlement.
5	"(3) STRUCTURED SETTLEMENT FACTORING
6	TRANSACTION.—
7	"(A) IN GENERAL.—The term 'structured
8	settlement factoring transaction' means a trans-
9	fer of structured settlement payment rights (in-
10	cluding portions of structured settlement pay-
11	ments) made for consideration by means of
12	sale, assignment, pledge, or other form of en-
13	cumbrance or alienation for consideration.
14	"(B) Exception.—Such term shall not
15	include—
16	"(i) the creation or perfection of a se-
17	curity interest in structured settlement
18	payment rights under a blanket security
19	agreement entered into with an insured de-
20	pository institution in the absence of any
21	action to redirect the structured settlement
22	payments to such institution (or agent or
23	successor thereof) or otherwise to enforce
24	such blanket security interest as against

1	the structured settlement payment rights,
2	or
3	"(ii) a subsequent transfer of struc-
4	tured settlement payment rights acquired
5	in a structured settlement factoring trans-
6	action.
7	"(4) Factoring discount.—The term 'fac-
8	toring discount' means an amount equal to the ex-
9	cess of—
10	"(A) the aggregate undiscounted amount
11	of structured settlement payments being ac-
12	quired in the structured settlement factoring
13	transaction, over
14	"(B) the total amount actually paid by the
15	acquirer to the person from whom such struc-
16	tured settlement payments are acquired.
17	"(5) Responsible administrative author-
18	ITY.—The term 'responsible administrative author-
19	ity' means the administrative authority which had
20	jurisdiction over the underlying action or proceeding
21	which was resolved by means of the structured set-
22	tlement.
23	"(6) State.—The term 'State' includes any
24	possession of the United States.
25	"(d) Coordination With Other Provisions.—

1 "(1) IN GENERAL.—If the applicable require-2 ments of sections 72, 104(a) (1) and (2), 130, and 3 461(h) were satisfied at the time the structured settlement was entered into, the subsequent occurrence 5 of a structured settlement factoring transaction shall 6 not affect the application of the provisions of such 7 sections to the parties to the structured settlement 8 (including an assignee under a qualified assignment 9 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.".
- 15 (b) CLERICAL AMENDMENT.—The table of chapters
 16 for subtitle E of such Code is amended by adding at the
 17 end the following new item:

"Chapter 55. Structured settlement factoring transactions.".

18 (c) Effective Dates.—

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(1) IN GENERAL.—The amendments made by this section (other than the provisions of section 5891(d) of the Internal Revenue Code of 1986, as added by this section) shall apply to structured settlement factoring transactions (as defined in section 5891(c) of such Code as adopted by this section) en-

- 1 tered into on or after the 30th day following the date of the enactment of this Act. 2 3 (2) Clarification of existing law.—Section 5891(d) of such Code (as so added) shall apply to 5 transactions entered into before, on, or after such 6 30th day. 7 (3) Transition rule.—In the case of a struc-8 tured settlement factoring transaction entered into 9 during the period beginning on the 30th day fol-10 lowing the date of the enactment of this Act and 11 ending on July 1, 2002, no tax shall be imposed 12 under section 5891(a) of such Code if— 13 (A) the structured settlement payee is 14 domiciled in a State (or possession of the 15 United States) which has not enacted a statute 16 providing that the structured settlement fac-17
- United States) which has not enacted a statute providing that the structured settlement factoring transaction is ineffective unless the transaction has been approved by an order, judgment, or decree of a court (or where applicable, a responsible administrative authority) which finds that such transaction—
 - (i) does not contravene any Federal or State statute or the order of any court (or responsible administrative authority), and

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(ii) is in the best interest of the structured settlement payee or is appropriate in light of a hardship faced by the payee, and (B) the person acquiring the structured settlement payment rights discloses to the structured settlement payee in advance of the structured settlement factoring transaction the amounts and due dates of the payments to be transferred, the aggregate amount to be transferred, the consideration to be received by the structured settlement payee for the transferred payments, the discounted present value of the transferred payments including the present value as determined in the manner described in section 7520 of such Code, and 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.

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