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Market-Based Structured Attorney Fees: *Fee Structure Plus®*

By Andrew Fisher, CSSC, Structures, Inc.

While IRC Sections *104(a)(1) and 104(a)(2)*[1] address exclusion from gross income and IRC Section 130(c)[2] addresses the qualified assignment of the periodic payment obligation in physical injury cases, the *Childs v. Commissioner*[3] decision established that attorneys can defer contingency fee income. The Childs decision ruled in favor of an attorney fee deferral arrangement and ruled the attorney did not have constructive receipt of the fee and until the settlement agreement was signed, there was no right to a fee.

Structured attorney fees are traditionally funded with fixed annuities from highly rated life insurance companies. While some believe the rate of return is conservative, it is guaranteed and can provide lifetime income. The benefits of structuring the attorney fee include but are not limited to: immediate tax-deferral, opportunity for tax-deferred gains (future payments are taxed in the years paid as ordinary income), smooths out income streams over up and down years, future payments made before age 59 ½ are not subject to early withdrawal penalties as can be the case with qualified retirement plans, and you are able to have pre-tax dollars working for you!

For the attorney who declines the conservative return of structuring their fee with a fixed annuity product in favor of investing their contingency fee (post-tax) in the market, enter the next evolution of structured attorney fees! *Fee Structure Plus®* is a market-based solution offering the plaintiff attorney tax-deferred periodic payments with the potential for market related returns. *Fee Structure Plus®* was developed by *Structures*; the innovation hub for manufacturing the most cutting-edge settlement solutions and financial programs for plaintiffs and their legal counsel. *Structures* is part of the Integrated Financial Settlements (IFS) family of companies. The IFS companies collectively account for 42% market share of the traditional structured settlement market.

How does this work? Like a traditional structured attorney fee, the future payments must be fixed and determinable per IRC Section 130(c)(2)(A). The Internal Revenue Service refined the definition of *fixed and determinable* in a series of private letter rulings. PLR 199943002 (variable annuities) and 201435006 (fixed annuity with index-linked adjustment rider) stating that payment obligations are *fixed* when set forth in the terms of the settlement agreement and *determinable* when they can be calculated based on an objective formula.

Contingent fee dollars to be structured are allocated as $10 units and the unit value at the time payments are due is determined by the underlying investment. At the time of the settlement the plaintiff attorney decides how many units are to be paid and when they are to be paid. Payment options include quarterly, semi-annually, annually and/or lump sums. While lifetime payments are not available, payments can be scheduled through normal life expectancy. Estate or beneficiary can be named for any remaining periodic payments. As with traditional structured settlements, the defendant/insurer must agree to fund, execute a proper release (with our payment language) and assignment agreement.

Fee Structure Plus® offers an open architecture that allows funds to be invested with the exact risk and return profile desired by attorney or firm. In addition to low cost model portfolios offered thru our program administrator, the attorney has the option to use their own financial advisor allowing investment to work in conjunction with specific needs and overall wealth management strategy.

For additional information please contact an IFS consultant or Structures at info@structures.com or 844.689.3020.

[1] Sections 104(a)(1) and 104(a)(2) of the Internal Revenue Code provides that amounts received by claimants in injury and death claims are excludable from gross income and, thus, are not subject to federal income tax.
[2] Section 130(c) of the Internal Revenue Code describes and allows for the assignment of periodic payments to a third-party assignee.
[3] Childs v. Commissioner, 103 T.C. 634 (1994), aff'd, 89 F.3d 856 (Table) (11th Cir. 1996.)