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What is a Non-Qualified Assignment?

A Non-Qualified Assignment assumes payment obligations as outlined in settlement agreements for damages that do not qualify for tax-free status under either IRC 104(a)(1) or 104(a)(2). The defendant/carrier are completely released from the future periodic payment obligation in the same way as in a physical injury/sickness or qualified case.

The Non-Qualified Assignment was developed to allow the parties to obtain closure in the same way as in physical injury cases. The defendant is able to write off the cost of settlement; and close the file, severing all ties with the plaintiff. Plaintiff is able to defer taxable compensation and legally avoid potentially high taxes in a single year*; substitute a highly rated life insurance company for the defendant; obtain a negotiated benefit stream which is very flexible and possibly settle more easily at a more acceptable cost to the defense.

For detailed information on Non-Qualified Structures please go to these articles by Robert W. Wood:
http://www.woodporter.com/pdf/nonqualified_settlement_ruling.pdf
http://www.woodporter.com/pdf/dtr110508.pdf

How a Non-Qualified Assignment works.

Subsequent to executing a settlement agreement and non-qualified assignment, the defendant transfers sufficient consideration to an assignee to purchase the funding instrument, along with the obligation to make the future periodic payments. The assignee uses the funds to purchase the funding instrument for the non-qualified structure. Annuity funded non qualified assignments include a guarantee by a large, highly rated life insurance company to back up the obligations of the non qualified assignee.

Applicable areas of practice:

Age discrimination
American Disabilities Act
Structured Attorney Fees or Legal Fees
Construction Defects
Divestment
Divorce settlements
Race Discrimination settlements
Wrongful Termination settlements
Sexual Harassment settlements
Environmental claims and clean up settlements
Legal Malpractice or Professional Errors and Omissions
Legal Fee Disputes

NOTE: Any portion of a settlement designated as “wages” cannot be placed in a non-qualified structured settlement.

Example:**

Plaintiff Wins Structured Settlement Despite Award Calling for Lump Sum.

A plaintiff in a wrongful termination suit was granted a non-qualified structured settlement even though the original award called for a lump sum payment and despite objections from attorneys defending the case.
Robert T. Yurchak was fired from his position in the public defender's office of Carbon County, Pa., in January 2002, *The Morning Call*, of Allentown, Pa., reported. Yurchak had worked in the public defender's office for 20 years and had last served as chief public defender.

Yurchak filed his lawsuit in May 2007 asserting that he had been fired after running unsuccessfully for a judgeship, his attorney, Barry Dyller, said. The county maintained that Yurchak had been fired for being an ineffective administrator. Dyller said that the case involved favoritism for the candidate Yurchak had run against.

Yurchak had originally asked for $1.03 million to $1.34 million in economic damages. He was instead awarded $525,000 in a judgment that called for a one-time payment, according to the *Morning Call*. Yurchak refused to sign the settlement papers insisting that he wanted a structured settlement. The county fought the structured settlement stating that it objected to Yurchak benefiting from tax advantages that had not been part of the original settlement.

Judge A. Richard Caputo of the U.S. District Court for the Middle District of Pennsylvania called both sides into chambers and pressured them to settle, the *Morning Call* reported. The defense ultimately relented and agreed that Yurchak would take a lump sum of $62,000 and monthly payments of $1,700 for 20 years. Dyller said that the county's motivation for fighting the structured settlement was rooted in animosity toward his client.

"It actually doesn't cost them anything to do it this way," Dyller said. "Their position was rather silly."

In summary, non-qualified structured settlements can be a very attractive consideration for the defendant, the plaintiff or both in a dispute. The defendant can use a tool that may facilitate settlement more quickly and, potentially avoid trial costs, the risk of punitive damages, exposure to “runaway” juries and the potential for appellate costs. The plaintiff can, potentially, save money on taxes versus a lump sum, choose the periodic payment stream of greatest benefit to him/her, sever all financial ties with the defendant and have the assurance that their payments are guaranteed.

*** Paul and Associates is not, and in no way should be construed to be, a tax advisor. We strongly advise that, prior to considering a non-qualified structured settlement, a professional tax advisor should be consulted.**

**** Excerpt from Pruco (Prudential Financial) newsletter, used with their permission.**