

THE B&B ALERT

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**Begley &
Bookbinder, PC**
ATTORNEYS AT LAW
COMMITTED TO EXCELLENCE
Specializing in Elder & Disability Law

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486b TRUSTS **By Thomas D. Begley, Jr., Esquire**

Section 468(b) of the Internal Revenue Code¹ authorizes the establishment of Designated Settlement Funds or Qualified Settlement Funds. These funds are usually collectively referred to as Qualified Settlement Funds (QSFs). The purpose of these funds is to permit a defendant in certain types of litigation to deposit funds into a trust and to receive a full and complete release of liability. The defendant is entitled to a current income tax deduction for the amount paid into the fund at the time the funds are deposited into the trust. This is an exception to the general rule under which the tax deduction is not permitted until the funds are actually disbursed to the plaintiff, which is normally the time in which the plaintiff has received the “economic benefit” of the settlement.

These QSFs arose out of class action lawsuits. They can be very useful in personal injury actions and other types of cases where there are multiple plaintiffs. Many of these cases also have multiple defendants. The QSF is usually established prior to trial. The parties agree on a maximum amount for a settlement. The defendant pays that amount into the QSF and the parties can then take their time in allocating the settlement among themselves and in dealing with various liens, such as Medicaid, Medicare, and third party subrogation. The QSF could also be established after a jury award, as long as there is an appeal pending.

Advantages of 468(b) trusts include the following:

- *Defendant Removed from Litigation.* Defendants want to be out of the case. By utilizing a QSF a defendant can pay and go. The defendant pays the funds into the QSF and the parties later allocate the settlement between themselves, determine how much should be lump sum and how much to structure, determine whether a special needs trust is required, and wait while a guardian is appointed for an incompetent plaintiff, if required.
- *Defendant Removed from Allocation of Settlement.* Where 468(b) trusts are used, the defendant leaves to the plaintiff the issue of allocating the settlement among injured parties.

¹ I.R.C. §468(b).

- *Plaintiff's Attorney's Fees and Costs.* When a 468(b) trust is used, the plaintiff's counsel can be paid fees immediately from the QSF and litigation expenses can also be paid.
- *Income to Plaintiff.* The plaintiff will immediately begin to receive income from the settlement held by the 468(b) trust. Without the trust, the defendant would be holding the money and the plaintiff would not be receiving the benefit of the income.
- *Deduction to Defendant.* Defendants and their insurers are able to obtain immediate tax deductions, rather than waiting for "economic performance" to occur.
- *Negotiations.* Time is no longer a factor in negotiations with Medicare, Medicaid, and third party insurers. Additional time is available to negotiate and satisfy those liens.



Announcements

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Speakers

If you are interested in having an Elder & Disabilities Law Attorney from Begley & Bookbinder speak at an event, please contact Colleen Caruso at (856) 787-4237.

Begley & Bookbinder

Begley & Bookbinder, P.C. is an Elder & Disability Law Firm with offices in Moorestown, Stone Harbor and Lawrenceville, New Jersey and Oxford Valley, Pennsylvania and can be contacted at 800-533-7227. The firm services southern and central New Jersey and eastern Pennsylvania.

The Firm provides services in connection with protecting assets from nursing home costs, Medicaid applications, Estate Planning and Estate Administration, Special Needs

Planning and Guardianships. If you have a legal problem in one of these areas of law, contact Begley & Bookbinder at 800-533-7227.

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