SFA: Helping Attorneys Invest In Their Financial Futures

Key Reasons to Structure Your Attorney Fees

- Pre-tax investment
- Deferring compensation over time could lead to less income being lost to taxes
- Application of the Alternative Minimum Tax (AMT) can potentially be avoided
- Gives you custom cash flow management and allows you to tailor your own income stream

Attorney Fee Structure

Since 1996, federal courts have recognized an attorney's ability to defer taxation of his or her fees by using an attorney fee structure. Using a fee structure, all or part of your attorney fee can be deferred pre-tax and paid over time. With such a structure, you receive the same tax-deferral benefits as a Qualified Pension Plan without the hassle of having to adhere to the requirements of a qualified plan, including how much money you can put in. You can defer taxes on your fees, as well as the interest that it earns, until the year in which payment is actually received from the fee structure. In addition, spreading fees over several years avoids a higher tax bracket and allows the money saved in taxes to be invested at little or no risk with no money management fees.

Structured attorney fees work very much like a non-qualified deferred compensation plan. At the time the case is settled, the taxes that would usually be paid on the attorney fee earned are deferred. Your attorney compensation then grows without tax. When payments of the fees are eventually received, the entire amount distributed during a year is taxable for that year. Based upon a taxpayer's tax bracket, there may be some distinct tax advantages to entering into this type of arrangement, as opposed to being taxed on the entire attorney fee in the year the fee was earned and investing it after tax. Attorney fees are structured on a tax-deferred basis, not tax-exempt.

Maximizing Income

- ***Defer Taxation of Fees***
- ***Guaranteed Rates of Return***
- ***Control Timing of Income***

TAX IMPACT
Attorney Fee Paid as a Lump Sum
vs.
Structured Fee

	Lump Sum	Deferral
Attorney Fee	**$1,000,000**	**$1,000,000**
Federal Income Tax (35%)	$350,000	$0
Employment Taxes	$26,000	$0
State Income Tax (6%)**	$60,000	$0
Taxes Paid in Year 1	**$436,000**	**$0**
Net to Invest in Year 1	**$564,000**	**$1,000,000**

Attorney will pay taxes on future periodic payments. This tax deferral strategy will greatly enhance the taxable equivalent return.

CONTACT INFORMATION

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Why structure my attorney fee in a fixed interest rate annuity?

Every portfolio should have some portion of the investments in fixed income. An attorney fee structure is a fixed income investment, but unlike all other investments an attorney can make, the fee structure is a **pre-tax** investment. Whether a fee structure is appropriate for you will depend on a variety of factors—including your age, health, risk tolerance, retirement goals, tax bracket, as well as your current and long-term needs.

Does the personal injury victim have to structure a portion of his or her settlement before the attorney fee can be structured?

No, the claimant can take cash and the attorney fee can still be structured on a standalone basis.

Must I structure my entire fee? Do my partners also have to structure their fees?

An attorney may structure all or just a portion of the fee earned on a given case. Your partners need not enter into a structured settlement arrangement for you to do so. Only the portion of the fee that will be put into a fee structure will be paid to the life company. The fees your partners earn will be paid to the law firm, like any other settlement which does not involve a fee structure.

Can I receive the same type of stream of guaranteed payments as the personal injury victim can do with his or her settlement proceeds?

Yes, structured attorney fees can give you lifetime benefits designed to your specific needs. You can choose to receive a stream of payments over a defined period of time, one future lump sum payment or a series of lump sum payments. Choosing a structure provides you the option of selecting immediate or deferred payments in the form of multiple income streams.

Can I only structure contingent fees from a personal physical injury or wrongful death settlement?

An attorney fee structure can be done for nearly any type of settlement.

Are there any limitations on the amount of fees an attorney can defer?

There is no limit to the amount of income deferred. By comparison, there are statutory limits to the amount one can defer in a qualified retirement plan. Even if the attorney participates in a qualified retirement plan or an individual retirement account (IRA), he or she may still defer additional income through an attorney fee structure. Unlike traditional retirement plans, there is no requirement of annual deferments. An added bonus is that the attorney fee structure annuity has enhanced creditor and judgment protection other investments can't provide.

Are there limitations on the number of cases an attorney can elect to defer taxation of their fees?

There is no limitation on the number of fee structures that can be done. An attorney can do it on every case if he or she would like.

What is the legal basis for structuring attorney fees?

The U. S. Court of Appeals for the 11th Circuit affirmed in Richard A. Childs, Et al. v. Commissioner of Internal Revenue Service the Tax Court's ruling that attorneys may structure their fees, and taxes are payable on structured attorney fees when the amounts are received. *See Childs v. Commissioner, 103 T.C. 36, aff'd 89 F.3d 856 (11th Cir. 1996).*

What do I need to do to prepare for structuring my attorney fees?

Your contingency fee agreements should include a provision that gives you the option to elect to receive your fees in the form of future periodic payments. You should negotiate the inclusion of the fee structure when settling the case. The creation of a tax-deferred fee structure does require the cooperation of the defendant, similar to when the personal injury victim's settlement is structured.

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