

# Requirements for Establishing a Qualified Settlement Fund

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## Overview

§ 1.468B-1 of the Internal Revenue Code outlines allowed uses of a qualified settlement fund (QSF). A QSF may be established as a trust.<sup>1</sup> The trust must be held by a corporation (within the meaning of CFR § 301.7701, which establishes the meaning of the term corporation for federal tax purposes<sup>2</sup>). The assets must be segregated from the assets of the transferor unless otherwise specified by state law.

## Requirements

Pursuant to § 1.468B-1, a QSF must satisfy certain requirements to be classified as a QSF.<sup>3</sup> A QSF must:

- i. Be approved by a US government agency or political subdivision subject to the continuing jurisdiction of that governmental authority, including any state, district, territory, possession, or political subdivision, or any agency including a court of law.<sup>4</sup>
- ii. Resolve or satisfy one or more contested or uncontested claims asserting liability under CERCLA, as designated by the commissioner in a revenue ruling or procedure, or arising out of a tort, violation of law, or breach of contract.<sup>5</sup>
- iii. The fund, account, or QSF assets are segregated from other assets belonging to the transferor, or is otherwise considered a trust under your applicable state law.<sup>6</sup>

## Key Takeaways

- i. A governmental agency or instrumentality must approve the petition to establish a QSF.<sup>7</sup>
- ii. A trust created under state law can be used to establish QSF.<sup>8</sup>
- iii. QSFs are widely used to satisfy claims with multiple claimants, but can satisfy claims from a single claimant.<sup>9</sup>

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<sup>1</sup> See Regs. § 1.468B-1

<sup>2</sup> See Regs. § 1.468B-1(b)

<sup>3</sup> See Regs. § 1.468B-1(c)

<sup>4</sup> See Regs. § 1.468B-1(c)(1)

<sup>5</sup> See Regs. § 1.468B-1(c)(2)(i) through Regs. § 1.468B-1(c)(2)(iii)

<sup>6</sup> See Regs. § 1.468B-1(c)(3)

<sup>7</sup> See Regs. § 1.468B-1(c)(1)

<sup>8</sup> A QSF is classified as a trust for purposes under the IRC if the QSF is classified as a trust in accordance to Regs. § 301.7701-4. Also, generally see Regs. § 1.468B-1(c)(1)

<sup>9</sup> See Regs. § 1.468B-1(c)(2)