has remained a testament to the beauty of the family business. in their establishment, quality service is a trait passed down through the generations. Mr. Jack Nelen, who became Kavanagh's president in 1965 and is the grandson of the original founder, began making deliveries for the store when he was just a teenager. The success of a family business can be measured, in part, by the duration of its existence. Kavanagh Furniture has survived and flourished through two world wars, the Great Depression, and several other fluctuations in the economy. They were also able to last during the recession of the early 90s even though furniture was considered a luxury by many. Perhaps more impressive has been Kavanagh's ability to survive the local ''big chain'' competition, while located in an area not supported by mega-mall traffic. In this regard, the Nelen family business can be considered a huge success and a strong example for other family businesses.

Only 1 out of 30,000 retail stores makes it to be 100 years old, and Kavanagh's has now reached its 125th year in the business. Not only has Kavanagh's created lasting personal success for its owners and employees, it has been an enormous asset to the community and neighborhood as well. Its list of civil activities and commitments includes being a catalyst for and taking part in fund raisers for The Children's Miracle Network, Shriner's Hospital, the Red Cross, and the United Way. Kavanagh's once even held a free picinc for over 2,500 city kids.

The Kavanagh Furniture store is an anchor for the community. It has taken care of its customers and has been rewarded with 125 years of business. I wish the Nelen family and all of the folks at Kavanagh's success in continuing a great tradition of excellent service to their customers and the community at large as they embark on the 21st century and another 125 years.

STRUCTURED SETTLEMENT PROTECTION ACT

HON. E. CLAY SHAW, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 23, 1998

Mr. SHAW. Mr. Speaker, today I rise along with my colleague Mr. STARK and a broad bipartisan group of our colleagues from the Ways and Means Committee to introduce the Structured Settlement Protection Act.

The Act addresses serious public policy concerns that are raised by transactions in which so-called factoring companies purchase recoveries under structured settlements from injured victims.

Recently there has been dramatic growth in these transactions in which injured victims are induced by factoring companies of sell off future structured settlement payments intended to cover ongoing living and medical needs in exchange for a sharply-discounted lump sum that then may be dissipated, placing the injured victim in the very predicament the structured settlement was intended to avoid.

As long-time supporters of structured settlements and the congressional policy underlying such settlements, we have grave concerns that these factoring transactions directly undermine the policy of the structured settlement tax rules. The Treasury Department shares these concerns.

Because the purchase of structured settlement payments by factoring companies so directly thwarts the congressional policy underlying the structured settlement tax rules and raises such serious concerns for structured settlements and injured victims, it is appropriate to deal with these concerns in the tax context.

Accordingly, we are proposing legislation to impose a substantial excise tax on the factoring company that purchases the structured settlement payments from the injured victim. The excise tax would be subject to an exception for genuine court-approved hardship cases to protect the limited instances of true hardship.

The following is a detailed discussion of the Bill's provisions.

BACKGROUND

In acting to address the concerns over factoring companies that purchase structured settlement payments from injured victims, the Treasury Department noted that: ''Congress enacted favorable tax rules intended to encourage the use of structured settlements—and conditioned such tax treatment on the injured person's inability to accelerate, defer, increase or decrease the periodic payments—because recipients of structured settlements are less likely than recipients of lump sum awards to consume their awards too quickly and require public assistance.'' (U.S. Department of the Treasury, General Explanations of the Administration's Revenue Proposals (Feb. 1998), p. 122).

Treasury then observed that by enticing injured victims to sell off their future structured settlement payments in exchange for a heavily discounted lump sum that may then be dissipated: ''*These 'factoring transactions' directly undermine the Congressional objective to create an incentive for injured persons to receive periodic payments as settlements of personal injury claims.*'' (Id. at p. 122 [emphasis added].)

The Joint Tax Committee's analysis of the issue echoes these concerns: ''Transfer of the payment stream under a structured settlement arrangement arguably subverts the purpose of the Code to promote structured settlements for injured persons. (Joint Committee on Taxation, Description of Revenue Provisions Contained in the President's Fiscal Year 1999 Budget Proposal (JCS–4–98), (February 24, 1998), p. 223).

The Treasury Department in the Administration's FY 1999 Budget has proposed a 20-percent excise tax on factoring companies that purchase structured settlement payments from injured victims. Under the Administration's proposal, ''any person purchasing (or otherwise acquiring for consideration) a structured settlement payment stream would be subject to a 20 percent excise tax on the purchase price, unless such purchase is pursuant to a court order finding that the extraordinary and unanticipated needs of he original recipient render such a transaction desirable.'' (Treasury General Explanation, at p. 122.) The proposal would apply to transfers of structured settlement payments made after date of enactment.

DESCRIPTION OF THE ACT

1. Stringent Excise Tax on Persons Who Acquire Structured Settlement Payments in Factoring Transactions.

In its analysis of the Administration's proposal, the Joint Tax Committee notes the potential concern that in some cases the imposition of a 20-percent excise tax may result in the factoring company passing the tax along by reducing even further the already-heavily discounted lump sum paid to the injured victim for his or her structured settlement payments. The Joint Committee notes that ''[o]ne possible response to the concern relating to excessively discounted payments might be to raise the excise tax to a level that is certain to stop the transfers (perhaps 100 percent). . . .'' (Joint Committee on Taxation, Description of Revenue Provisions Contained in the President's Fiscal Year 1999 Budget Proposal (JCS–4–98) (February 4, 1998), p. 223).

Factoring company purchases of structured settlement payments so directly subvert the Congressional policy underlying structured settlements and raise such serious concerns for structured settlements and the injured victims that it is appropriate to impose on the factoring company a more stringent excise tax rate applied against the amount of the discount reflected in the factoring transaction (subject to a limited exception described below for genuine court-approved hardships).

Accordingly, the Act would impose on the factoring company that acquires structured settlement payments directly or indirectly from the injured victim an excise tax equal to 50 percent of the difference between (i) the total amount of the structured settlement payments purchased by the factoring company, and (ii) the heavily-discounted lump sum paid by the factoring company to the injured victim.

Similar to the stiff excise taxes imposed on prohibited transactions in the private foundation and pension contexts—which can range as high as 100 to 200 percent—this stringent excise tax is necessary to address the very serious public policy concerns raised by structured settlement factoring transactions.

Unlike the Administration's proposed tax imposed on the purchase price paid by the factoring company, the excise tax imposed on the factoring company under the Act would use a more stringent tax rate of 50 percent and would apply to the excess of the total amount of the structured settlement payments purchased by the factoring company over the heavily-discounted lump sum paid to the injured victim.

The excise tax under the Act would apply to the factoring of structured settlements in tort cases and in workers' compensation.

A structured settlement factoring transaction subject to the excise tax is broadly defined under the Act as a transfer of structured settlement payment rights (including portions of payments) made for consideration by means of sale, assignment, pledge, or other form of alienation or encumbrance for consideration.

2. Exception from Excise Tax for Genuine, Court-Approved Hardship

The stringent excise tax would be coupled with a limited exception for genuine, court-approved financial hardship situations. Drawing upon the hardship standard enunciated in the Treasury proposal, the excise tax would apply to factoring companies in all structured settlement factoring transactions except those in which the transfer of structured settlement payment rights (1) is otherwise permissible under applicable Federal and State law and (2) is undertaken pursuant to the order of a court (or where applicable, an administrative authority) finding that ''the extraordinary, unanticipated, and imminent needs of the structured settlement recipient or his or her spouse or dependents render such a transfer appropriate.''

The exception is intended to apply to the limited number of cases in which a genuinely ''extraordinary, unanticipated, and imminent hardship'' has actually arisen and been demonstrated to the satisfaction of a court

(e.g., serious medical emergency for a family member). In addition, as a threshold matter, the transfer of structured settlement payment rights must be permissible under applicable law, including State law. The Act is not intended by way of the hardship exception to the excise tax or otherwise to override any Federal or State law prohibition or restriction on the transfer of the payment rights or to authorize factoring of payment rights that are not transferable under Federal or State law. For example, the States in general prohibit the factoring of workers' compensation benefits. In addition, the State laws often prohibit or directly restrict transfers of recoveries in various types of personal injury cases, such as wrongful death and medical malpractice.

The relevant court for purposes of the hardship exception would be the original court which had jurisdiction over the underlying action or proceeding that was resolved by means of the structured settlement. In the event that no action had been brought prior to the settlement, the relevant court would be that which would have had jurisdiction over the claim that is the subject of the structured settlement or which would have jurisdiction by reason of the residence of the structured settlement recipient. In those limited instances in which an administrative authority adjudicates, resolves, or otherwise has primary jurisdiction over the claim (e.g., the Vaccine Injury Compensation Trust Fund), the hardship matter would be the province of that applicable administrative authority.

3. Need to Protect Tax Treatment of Original Structured Settlement

In the limited instances of extraordinary and unanticipated hardship determined by court order to warrant relief under the hardship exception, adverse tax consequences should not be visited upon the other parties to the original structured settlement. in addition, despite the anti-assignment provisions included in the structured settlement agreements and the applicability of a stringent excise tax on the factoring company, there may be a limited number of non-hardship factoring transactions that still go forward. If the structured settlement tax rules under I.R.C. §§72, 130 and 461(h) had been satisfied at the time of the structured settlement, the original tax treatment of the other parties to the settlement—i.e., the settling defendant (and its liability insurer) and the Code section 130 assignee—should not be jeopardized by a third party transaction that occurs years later and likely unbeknownst to these other parties to the original settlement.

Accordingly, the Act would clarify that if the structured settlement tax rules under I.R.C. §§72, 130, and 461(h) had been satisfied at the time of the structured settlement, the section 130 exclusion of the assignee, and section 461(h) deduction of the settling defendant, and the Code section 72 status of the annuity being used to fund the periodic payments would remain undisturbed.

That is, the assignee's exclusion of income under Code section 130 arising from satisfaction of all of the section 130 qualified assignment rules at the time the structured settlement was entered into years earlier would not be challenged. Similarly, the settling defendant's deduction under Code section 461(h) of the amount paid to the assignee to assume the liability would not be challenged. Finally, the status under Code section 72 of the annuity being used to fund the periodic payments would remain undisturbed.

The Act provides the Secretary of the Treasury with regulatory authority to clarify the treatment of a structured settlement recipient who engages in a factoring transaction. This regulatory authority is provided to enable Treasury to address issues raised regarding the treatment of future periodic payments received by the structured settlement recipient where only a portion of the payments have been factored away, the treatment of the lump sum received in a factoring transaction qualifying for the hardship exception, and the treatment of the lump sum received in the non-hardship situation. It is intended that where the requirements of section 130 are satisfied at the time the structured settlement is entered into, the existence of the hardship exception to the excise tax under the Act shall not be construed as giving rise to any concern over constructive receipt of income of the injured victim at the time of the structured settlement.

4. Tax Information Reporting Obligations With Respect to a Structured Settlement Factoring Transaction

The Act would clarify the tax reporting obligations of the person making the structured settlement payments in the event that a structured settlement factoring transaction occurs. The Act adopts a new section of the Code that is intended to govern the payor's tax reporting obligations in the event of a factoring transaction.

In the case of a court-approved transfer of structured settlement payments of which the person making the payments has actual notice and knowledge, the fact of the transfer and the identity of the acquirer clearly will be known. Accordingly, it is appropriate for the person making the structured settlement payments to make such return and to furnish such tax information statement to the new recipient of the payments as would be applicable under the annuity information reporting procedures of Code section 6041 (*e.g.*, Form 1099–R), because the payor will have the information necessary to make such return and to furnish such statement.

Despite the anti-assignment restrictions applicable to structured settlements and the applicability of a stringent excise tax, there may be a limited number of non-hardship factoring transactions that still go forward. In these instances, if the person making the structured settlement payments has actual notice and knowledge that a structured settlement factoring transaction has taken place, the payor would be obligated to make such return and to furnish such written statement to the payment recipient at such time, and in such manner and form, as the Secretary of the Treasury shall by regulations provide. In these instances the payor may have incomplete information regarding the factoring transaction, and hence a tailored reporting procedure under Treasury regulations is necessary.

The person making the structured settlement payments would not be subject to any tax reporting obligation if that person lacked such actual notice and knowledge of the factoring transaction.

Under the Act, the term ''acquirer of the structured settlement payment rights'' would be broadly defined to include an individual, trust, estate, partnership, company, or corporation.

The provision of section 3405 regarding withholding would not apply to the person making the structured settlement payments in the event that a structured settlement factoring transaction occurs.

5. Effective Date

The provisions of the Act would be effective with respect to structured settlement factoring transactions occurring after the date of enactment of the Act.

NATIONAL WEATHER SERVICE—OVER 200 YEARS OF FORECASTING, WARNING AND PROTECTING THE AMERICAN PEOPLE

HON. TIM ROEMER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 23, 1998

Mr. ROEMER. Mr. Speaker, I rise to bring to my colleagues' attention the outstanding work of the National Weather Service. Especially during this red-hot summer, we should acknowledge the tremendous work of the National Weather Service to observe, predict, forecast and warn the American people of weather events.

The National Weather Service, as part of the National Oceanic and Atmospheric Administration [NOAA] of the Department of Commerce, utilizes a wide variety of tools, from low-tech to state of the art technology to accurately predict and forecast what will happen in our skies today, tomorrow, and beyond.

It was suggested earlier today that the National Weather Service doesn't have sufficient records of past weather conditions to be able to put this summer's heat wave in proper historical perspective. I would like to remind my colleagues that the NOAA has the world's largest active archive of weather data. Not only can they tell you what the weather was in the 1950's, they can tell you what the temperature and conditions were during the early days of the republic.

How do we now that? The NOAA's National Climatic Data Center has Benjamin Franklin's handwritten observations of the heat and humidity of a Philadelphia summer over 200 years ago.

Not only does the NOAA have an incredible store of historical data, they are receiving 55 gigabytes of new weather information each day—the equivalent of 18 million pages a day.

Armed with this wealth of historical data, and constantly added to and refined with the incorporation of new satellite and computer information, the National Weather Service creates computer models. These models reflect the heritage of past weather systems, to accurately forecast tomorrow's weather. So when the National Weather Service says its going to be hot tomorrow in South Bend, or Dallas or St. Louis, you can count on it.

I commend the NOAA and the NWS on their outstanding work on behalf of the American people.

AMERICA FACES THREAT FROM A BALLISTIC MISSILE ATTACK

HON. NEWT GINGRICH

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 23, 1998

Mr. GINGRICH. Mr. Speaker, as former Secretary of Defense Donald Rumsfeld pointed out earlier this week, America faces a very real and serious threat from a ballistic missile attack. The bipartisan Rumsfeld commission unanimously concluded that the threat is much greater and the warning time available to defend against that threat is much shorter than the Clinton administration has admitted. Finally, the commission expressed concern that