



# Alaska Native Law Section Dividend Withholding

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# Introduction

- ANCSA stock and dividends generally not subject to judgment or attachment
  - Principal exception for child support and spousal support orders
  - It is probable that ANCSA corporations are required to treat support orders served on the settlement trust in the same manner as support orders served on the corporation
- No exception to ANCSA rule against alienability of dividends for the IRS
  - However, pursuant to a policy announced in May 2005, the IRS has taken the position it has the statutory authority to levy ANCSA Corporation dividends

# **ANCSA stock and dividends not attachable, with exceptions**

- In general, ANCSA dividends and stock are not attachable for the debts or obligations of a shareholder
  - 43 USC Section 1606(h)(1)(B) unambiguously provides:  
“Except as otherwise provided Settlement Common Stock, inchoate rights thereto, and rights to dividends or distributions....shall not be...” sold, pledged, subjected to a lien or judgment execution, assigned, or treated as an asset under creditors laws.

# Exceptions

- The exceptions to the general rule against ANCSA Stock being subject to lien or attachment are contained in 43 USC Section 1606(h)(1)(C), which provide:
    - “Notwithstanding the restrictions set forth in subparagraph (B), Settlement Common Stock may be transferred to a Native or a descendant of a Native –
      - (i) pursuant to a court decree of separation, divorce or child support”
- Two other exceptions apply to transfers pursuant to the requirements of a profession or inter vivos transfers to a descendant of the shareholder

# Requirements to Attach Dividend

- Must be a court order
  - An administrative order from the Child Support Services Division is not sufficient – See Doyon v. State of Alaska
  - Foreign (out-of-state) child support orders probably need to be registered and have an Alaska court order issued
  - ANCSA Corporations can recognize Tribal court support orders
    - Orders from Alaska-based Tribes have been recognized
    - Have not yet addressed the issue of out-of-state Tribal court orders

# Requirements to Attach Dividend (cont.)

- Transfer to a Native or descendent\* of a Native – *43 USC Section 1606(h)(1)(C)*
  - Practice is to allow transfer of dividends to non-Native guardian on behalf of Native or descendent as beneficial recipient
  - Transfers to institutional guardians held by Native corporation until a regular guardian is appointed
    - Includes OSC and Tribal courts

\* Native or Descendant of a Native as defined under *43 USC Sec. 1602(b) and (r)*



# ANCSA Settlement Trust Distributions

- Distributions from an ANCSA Settlement Trust generally treated in the same manner as dividend from the ANCSA corporation
  - See 43 USC Sec. 1629e(c)(8)
  - However, Alaska trust law allows for greater creditor protections and whether a distribution is subject to a support order could turn on the Settlement Trust language\*

\*For example, Alaska Statutes Section 34.40.113(b) provides “A discretionary interest in an irrevocable trust is not a property interest or an enforceable right. It is an expectancy that a creditor of a beneficiary may not attach or otherwise reach.”

# ANCSA Settlement Trust Distributions

- Child support orders have for approximately the last five years included language that specifically addresses distributions from settlement trusts
  - Example language from a 2018 child support order:  
“.... Respondent’s rights to dividends, distributions or other periodic monetary benefits of Alaska Native Claims Settlement Act (ANCSA) stock and benefits from an ANCSA settlement trust should be transferred to the child support obligee ....”



# IRS Levies and Garnishments

- The general rule that ANCSA dividends are not attachable does not contain an exception for IRS levies or liens – See 43 USC Sec. 1606(h)(1)(C)
- However, IRS announced a change in policy in May 2005, stating that it has statutory authority for dividend attachment. In effect, the IRS takes the position it has the authority to attach dividends, and that its attachment authority has no exception for ANCSA dividends. See, e.g., 26 USC Sec. 6334

# Procedures for IRS Levies and Garnishments

- IRS administrative levies on ANCSA dividend payments need to be served at the correct time to be payable by the ANCSA corporation
  - The IRS must serve a notice of levy during the interim after the dividend is declared and the record date has passed and before the dividend is paid
  - In general, the IRS is aware of these timelines and typically adjusts to the timing
- Different rules for IRS backup withholding orders

# **Rules on IRS Levies for ANCSA Settlement Trusts**

- Settlement Trust distributions are subject to levy only to the extent that ANCSA Settlement Common Stock distributions are also subject to such action – 43 USC Sec. 1629e(c)(8)
- IRS administrative levies on ANCSA dividend payments need to be served on the correct entity
  - On the ANCSA Settlement Trust, not the corporation
  - IRS Levy - IRS must serve a notice of levy on the Settlement Trust in the interim after the dividend is declared and the record date has passed and before the dividend is paid
  - IRS Withholding Orders – it is unclear whether backup withholding orders apply to ANCSA Settlement Trusts