TRUTH IN SETTLEMENTS ACT
Fact Sheet

Federal Agency Settlements that Allow Tax Deductions

1. The Department of Justice (DOJ) and other entities recently settled a case with ***JPMorgan Chase*** for $13 billion. However, it appears that approximately $11 billion of the settlement amount will be tax deductible, which reduces the ultimate value of the settlement to the taxpayer by up to $4 billion.[1]

2. Two year ago, a district court in Massachusetts refunded $50.4 million in taxes to a ***health care company*** that had settled with the DOJ after allegedly defrauding Medicare and other federal healthcare programs for years. After settling, the company sought to deduct nearly all of its $385 million settlement payment from its taxes. Although the Internal Revenue Service (IRS) initially blocked a portion of the deduction – arguing that the portion was intended to be punitive and therefore was non-deductible – the court reversed the IRS's decision because the DOJ had not clearly specified in the agreement that the payments were to be punitive.[2]

Federal Agency Settlements that Include "Credits" for Routine Conduct

1. In 2013, the Federal Reserve and Office of the Comptroller of the Currency claimed that they settled for $8.5 billion with 13 ***mortgage servicers*** accused of illegal foreclosure practices. Of that $8.5 billion figure, $5.2 billion – over 60% of the settlement value – was in the form of "credits" for what the agencies described as "loan modifications and forgiveness of deficiency judgments." But that vague public statement left out a key detail: servicers could simply rack up those credits by forgiving mere fractions of large unpaid loans. For example, a servicer that wrote down $15,000 of a $500,000 unpaid loan balance would get a credit for $500,000, not $15,000.[3] That undisclosed method of calculating credits could end up cutting the overall value of the $8.5 billion settlement by almost 60%.

2. In February of 2012, the $25 billion ***National Mortgage Settlement*** included $17 billion in credits for activities such as demolishing homes that were already standard practice for the settling banks. Credits represented nearly 70% of the settlement value.[4]

Confidential Settlements

1. The Federal Housing Finance Agency (FHFA) recently reached a settlement with ***Wells Fargo & Co.*** for $335 million for allegedly fraudulent sales of mortgage-backed securities to Fannie Mae and Freddie Mac. That figure is just a fraction of what other big banks paid to settle with FHFA for liability arising from their sale of mortgage-backed securities.[5] But because the agency deemed the settlement confidential,[6] Congress and the public cannot scrutinize the deal.

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[1] Karen Freifeld, Aruna Viswanatha & David Henry, *J.P Morgan Agrees $13 Billion Settlement Over Bad Mortgages*, Reuters (Nov. 19, 2013), *at* http://www.reuters.com/article/2013/11/20/us-jpmorgan-settlement-idUSBRE9AI0OA20131120.
[2] *Fresenius Medical Care, Inc. v. United States*, No. 08-12118-DPW, 2013 WL 2068352 (D. Mass. May 10, 2013).
[3] Julie Schmit, *Foreclosure settlement to distribute $3.6 billion*, USA Today (Feb. 28, 2013), *at* http://www.usatoday.com/story/money/business/2013/02/28/foreclosure-settlement-banks/1954871/.
[4] Shaila Dewan and Jessica Silver-Greenburg, *Foreclosure Deal Credits Banks for Routine Efforts*, N.Y. Times (Mar. 27, 2012), *at* http://www.nytimes.com/2012/03/28/business/foreclosure-deal-gives-banks-credit-for-routine activities.html?adxnnl=1&adxnnlx=1354723516-feqZr2sGpNkDI5QxtMUkYA&_r=0.
[5] Shanydi Rice, *Wells Fargo Settles with FHFA for $335 Million*, Wall Street Journal (Nov. 6, 2013), *at* http://online.wsj.com/news/articles/SB10001424052702304448204579181732009850594.
[6] Dakin Campbell, *Wells Fargo Said to Settle FHFA Claimsfor Less Than $1 Billion*, Bloomberg (Oct. 31, 2013), *at* http://www.bloomberg.com/news/2013-10-31/wells-fargo-said-to-settle-fhfa-claims-for-less-than-1-billion.html.