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 years 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.