Internal Revenue Service

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Department of the Treasury

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CC:IT&A:2 – PLR-122605-98
Date: November 16, 2000

LEGEND:

A =

B =

C =

D =

Trust =

date 1 =

date 2 =

date 3 =

date 4 =

date 5 =

date 6 =

date 7 =

date 8 =

date 9 =

date 10 =

date 11 =

p =

q =

r =

s =

t =

u =

v =

w =

x =

19XX =

Dear Mr. And Mrs.

This is in reply to your request for rulings that you are not required to include in your income under the anticipatory assignment of income doctrine a $t punitive damages award paid from a judgment that you transferred to the Trust. You also request that we rule that you are not required to include the punitive damages income even though $w of the damages were used to pay attorneys fees pursuant to the Contingency Fee Agreement you entered into with your attorney.

FACTS

Your son was one of two teenagers killed and three teenagers injured on date 1 when the car they were riding in collided with a vehicle operated by C.

On date 2, you entered into the Contingency Fee Agreement with an attorney to prosecute claims for damages arising out of the accident. The agreement states in part:

> The undersigned accepts said employment and the attorney's fee shall be a contingency fee qual [sic] to one-third (33 1/3 percent) of any amounts recovered by compromise, settlement, verdict, or otherwise. If no recovery is obtained, no legal fees will be payable to the undersigned attorney.

The Contingency Fee Agreement also provided that the attorney would be reimbursed for all costs and expenses related to prosecution of the claims and could deduct his fee and unpaid expenses from any award.

Trial of the case began on date 3. Pursuant to law there were two distinct phases to the trial – a liability phase and a damages phase. On date 4, the parties entered into a binding stipulation of settlement (“Hi-Lo Agreement”) on the record that was journalized by the court as follows:

> The parties have agreed that they would agree to a binding high-low limit. The low in the case would be [p] dollars for the ... [B] family and ... [A] in the total for the two, the injury and the death claims, each of those; the low would be [q] dollars for ... [B]; the maximum amount, including punitive damages from all the claims, would not exceed [r] dollars.

As of date 4, the Hi-Lo Agreement did not explicitly or implicitly waive the parties right to appeal. That same date, the jury determined that you had established by clear and convincing evidence that the conduct of C was a conscious disregard for the rights and safety of other persons that had a great probability of causing substantial harm.

On date 5, the parties modified the Hi-Lo Agreement to provide that the parties would waive any rights of appeal. Also on date 5, the parties entered into a written stipulation (“Stipulation”) in court that any punitive damage award, less taxes, would be deposited into a charitable trust (“Trust”), whose sole purpose would be to fund the improvement of certain facilities in .

As of date 5, Trust was not in existence. That same date, the jury awarded you both compensatory and punitive damages. The judgment entry on verdict states:

> Pursuant to the verdict of the jury, the plaintiff...[A], as Administrator of the Estate of ...[D], is awarded damages in the amount of $[p] against defendant C ... . Plaintiff, ...[A], Individually, is awarded damages in the amount of $[s] for property damage to his automobile and punitive damages in the amount of $[t] against defendant C.

On date 6, C appealed the verdict. In motions filed after that date C asserted, *inter alia*, that the Hi-Lo Agreement did not waive its appeal rights but, if so, its counsel did not have authority to waive those rights. C further asserted that (i) the jury, in effect, awarded punitive damages on account of D’s wrongful death in violation of law, (ii) substantial punitive damages cannot be predicated on a negligible property damage claim in a wrongful death action and, (iii) a substantial punitive damage award for damage to a car with a low fair market value is an unconstitutional taking of property.

On date 7, during the pendency of C's appeal, you established the Trust, of which you are trustees. The Trust Agreement states, in part, that the Trust's purposes include:

> Supporting and promoting the safety of highway and street vehicular traffic and pedestrians around ... [certain facilities] ..., and supporting programs designed to provide public education and to increase awareness of ... [certain facilities] safety and/or to improve public safety at [certain facilities].
>
> Providing funding for the improvement of [specified facilities] safety, by means of cooperation with the ... and Federal agencies.
>
> Providing funding for the improvement of ... [specified facilities] safety, by means other than as described in Paragraph 2.
>
> Supporting and promoting public charities if and to the extent that the purposes of any said public charity is consistent with the purposes set forth at Paragraphs 1 through 3 herein above.
>
> Taking such actions as it may deem necessary, incidental or ancillary to the accomplishment of any other charitable, religious, educational or scientific purposes.

The Trust Agreement also states:

> The Trustees have established this trust, in part, to receive the proceeds of a jury verdict awarded to this trust. The jury award was made directly to this trust and the Grantors believe, without tax consequence to them. If, however, there is determined for tax purposes, that any portion of the trust estate is attributable to the Grantors, then in that event, the Trustees shall pay to, or on behalf of the Grantors, all funds necessary for payment of any federal, state, local or other taxes for which the Grantors may be liable from the inclusion of any portion of the trust estate as taxable income to them in addition to all sums reasonably necessary for the determination of the same.[1]

On date 9, the Internal Revenue Service informed you that the Trust is exempt from federal income tax under § 501(a) of the Internal Revenue Code as an organization described in § 501(c)(3).

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[1] Although the Trust Agreement states that the award was made directly to the Trust, the judgment entry on verdict states that the award was made directly to you.

On date 8, Court of Appeals dismissed C's appeal stating that, "a binding [Hi-Lo] agreement between the parties terminated the entire litigation, including appeals, once the jury returned its verdict on damages." The litigation ended on date 10, when Supreme Court declined to hear C's appeal due to lack of a constitutional question.

On date 11, C issued a check in the amount of $u to you and your attorney, as co-endorsers, representing the $t punitive damage award plus statutory interest ($v) on the punitive damage award. Your attorney retained one-third of the amount ($w) as his fee and issued the balance ($x) to the Trust.[2]

You represent that under law, judgments are assignable and that an assignment transfers the same right, title and interest of the assignor to the assignee. You also state that law recognizes and enforces gratuitous assignments, and generally will enforce assignments to charities. You also represent that under law, the $t punitive damages judgment was considered transferred by you to the Trust on or after date 7, the date the Trust was created, and before date 10, the date the Supreme Court dismissed C's appeal, notwithstanding that on or after date 7, and before date 10, you did not take any actions to transfer the judgment to the Trust and the Trust did not take any actions to accept the judgment.

statutes do not address liens for payment of attorney fees. courts, however, recognize the existence of an attorney's lien in certain cases. The lien arises where an attorney obtains a judgment or collects funds for a client. The lien attaches to the fruits of the judgment or funds collected for the client and is limited to attorney fees in collecting the fund. courts have recognized the attorney's lien on a judgment in cases in which (i) the party against whom the judgment was rendered filed a set-off motion and (ii) a prevailing client's creditor filed an intervening petition. In addition, court permitted an attorney to enforce the attorney's charging lien to intervene as a party to the suit after final judgment was rendered in favor of his client and his efforts had helped secure the judgment. There is, however, no statutory or common law rule in that gives an attorney a lien on the client's cause of action.

The Supreme Court has adopted certain disciplinary rules. Under these rules a lawyer shall not acquire a proprietary interest in the cause of action or subject matter

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[2] The $p of compensatory damages and interest thereon was previously paid to your attorney about 13 months earlier. Your attorney deducted one-third of such amount as a fee and an additional amount for expenses from that payment. You have not requested, and we are not issuing, a ruling regarding the income tax treatment of the $p of compensatory damages and interest on such amount.

he is conducting for a client, except that he may acquire a lien granted to secure his fee or expenses or contract with a client for a reasonable contingent fee in a civil case.

LAW AND ANALYSIS

This letter addresses two issues. The first issue, addressed in Transfer of Judgment to the Trust, below, is whether you must include in income the $x portion of the $t punitive damages award that was received by the Trust. The second issue, addressed in Attorneys Fees, below, is whether you must include in income the $w portion of the $t punitive damages that was retained by your attorneys pursuant to the Contingency Fee Agreement.

General Principles

Section 61 of the Internal Revenue Code provides that, except as otherwise provided in subtitle A (relating to income taxes), gross income means all income from whatever source derived. Punitive damages are includible in income, including damages received in a case in which a taxpayer has also received compensatory damages for personal injuries. Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955); O'Gilvie v. United States, 519 U.S. 79 (1996).

In general, under the anticipatory assignment of income doctrine, a taxpayer who earns or otherwise creates a right to receive income will be taxed on any gain realized from it, if the taxpayer has the right to receive the income or if, based on the realities and substance of the events, the receipt of the income is *practically certain* to occur *(i.e.*, whether the right basically had become a fixed right), even if the taxpayer transfers the right *before* receiving the income. Ferguson v. Commissioner, 174 F.3d 997 (9th Cir. l999); Jones v. United States, 531 F.2d 1343, 1346 (6th Cir. 1976); Kinsey v. Commissioner, 447 F.2d 1058, 1063 (2d Cir. 1973); Hudspeth v. United States, 471 F.2d 275, 280 (8th Cir. 1972); Est. of Applestein v. Commissioner, 80 T.C. 331, 345 (l983); Lucas v. Earl, 281 U.S. 111, 114-115 (1930). In contrast, a mere anticipation or expectation of the receipt of income is insufficient to conclude that a *fixed right* to income exists. Johnson & Son, Inc. v. Commissioner, 63 T.C. 778, 787-88 (l975).

Transfer of Judgment to the Trust

With respect to the assignment of claims in litigation, a review of the case law shows that anticipatory assignment of income principles require the transferee to include the proceeds of the claim in gross income where recovery on the transferred claim is certain at the time of transfer, but not where recovery on such claim is *doubtful* or *contingent* at the time of transfer. In Doyle v. Commissioner, 147 F.2d 769 (4th Cir. 1945), a taxpayer assigned 60 percent of a claim that he owned to his wife and children *after* the Court of Claims denied application for a new trial and the Supreme Court of the United States denied taxpayer's petition for a writ of certiorari. The government argued that, after the denial of certiorari and before the transfer to the wife and children, the gain that the taxpayer expected to receive was "practically assured" and thus its transfer resulted in an anticipatory assignment of income. Doyle, 147 F.2d at 772. The court, agreeing with the government's argument, held that the taxpayer was in receipt of the profits on his purchase of the interest in the lawsuit because, at the time he made the gifts of his interest in the lawsuit, such profits "had already been rendered *certain* by the judgment of the Court of Claims and denial of certiorari by the Supreme Court." Doyle, 147 F.2d at 773. (Emphasis added.)

Like Doyle, the case of Cold Metal Process Co. v. Commissioner, 247 F.2d 864 (6th Cir.1957), rev'g 25 T.C. 1333 (1956), follows the view that a taxpayer's right to income on a judgment is not earned or does not ripen until all appeals with respect to the judgment have been exhausted. Cold Metal had instituted patent infringement suits for damages against several large producing companies. In 1943, the federal government started a suit in a United States district court seeking cancellation of patents held by Cold Metal (the "Cancellation Suit"). In 1944, the district court enjoined Cold Metal from receiving damages or royalties under the patents until final judgment was rendered in the suit and ordered such monies to be impounded with the court clerk. The district court rendered final judgment for Cold Metal in the Cancellation Suit in 1945. However, the impounding order was restored pending the government's appeal to the Court of Appeals. Several defendants settled with taxpayer and paid money into the impound fund. In 1945, taxpayer was liquidated and its assets, including its patents and any rights to the impound fund, were transferred to a trust (the "Charitable Trust"). In 1947, the Court of Appeals affirmed the district court's judgment dismissing the government's complaint. On June 1, 1948, the Supreme Court of the United States denied certiorari. The district court ordered the impounded funds released but no earlier than June 25, 1948. However, a district court, in a suit brought by the government to have Cold Metal's royalties valued at zero under the Royalty Adjustment Act ("RAA suit"), entered an order preventing the distribution of the monies impounded in the Cancellation Suit. Subsequently the appellate court in the RAA suit ordered such monies paid to the Charitable Trust on condition that it deposit them in a Federal Reserve Bank pending appeals. In 1949, after an opinion adverse to the government, the court of appeals permitted the trustee to withdraw the funds from the bank, it appearing that the government no longer wished to pursue litigation.

The Commissioner determined that the entire proceeds were taxable to Cold Metal when the trustee received them in 1949. Applying assignment of income principles, the Tax Court concluded that Cold Metal was taxable on the portion of funds deposited in the impound fund representing damages received prior to the transfer of its assets to the Trust. Reversing, the Court of Appeals for the Sixth Circuit reasoned that the legal right of Cold Metal to the amounts deposited in the impound fund could not be established while the government was strenuously contesting such right, and thus Cold Metal assigned a chose in action, and not a right to income, to the trustee. The court stated, “If the decision in the Cancellation suit had gone against Cold Metal in 1948 [when the Supreme Court denied certiorari], it would not have acquired the income or at any time been entitled to it. We do not think it can be rightfully classified as having been earned in 1945.” Cold Metal, 247 F.2d at 872. Thus, Cold Metal demonstrates the doubtful and contingent nature of a lower court judgment during the time an opposing party is prosecuting appeals, for the court’s decision turned on the government’s continuing opposition in the appellate courts and not on the fact that the judgment funds were impounded. Citing to Harrison v. Schaffner, 312 U.S. 579 (1941), the court stated that “the rule applicable to an assignment of income applies when the assignor is *entitled* at the time of the assignment to receive the income at a future date and is *vested* with such a right.” Cold Metal, 247 F.2d at 873. In Cold Metal, the court held that, notwithstanding the district court’s 1945 opinion for the taxpayer in the Cancellation Suit, as of the end of that year it had only a “continent right to income ..., payable, if at all, at some indefinite time in the future in an indeterminate amount, with respect to which the assignor had no voice or control whatsoever ... .” Cold Metal, 247 F.2d at 873. Thus, Cold Metal’s assignment did not result in an assignment of income.

In Wellhouse v. Tomlinson, 197 F. Supp. 739 (S.D. Fla. 1961), the court found that the transferor was not taxable on the interest portion of a note because there were doubts whether there ever would be payment by the debtor, and because the creditor divested himself of all rights to the note in the year prior to the year of payment. In reaching this conclusion, the court placed considerable emphasis on the fact that there were certain legal defenses available to the estate of the debtor, even though it was doubtful whether these defenses could ever be raised because of the possibility of waiver on the part of the debtor’s estate. In this regard the court stated, “The point is, however, that there were real *legal doubts* concerning the time and extent of collectibility of the note at the time of the assignment.” Wellhouse, 197 F. Supp. at 742. (Emphasis added.)

Neither Jones v. Commissioner, 306 F.2d 292 (5th Cir. 1962) nor Schulze v. Commissioner, T.C. Memo 1983-263 is to the contrary. In Jones, an insolvent taxpayer-subcontractor made a claim in 1944 through the general contractor against the United States for additional compensation for work done. In February 1953, the taxpayer assigned the claim to a related corporation for $10,000 and the corporation’s agreement to pay the taxpayer’s 1948-1950 tax deficiencies. Thereafter, the corporation assumed the costs of the action. In July 1953, the Court of Claims decided the claim favorably to Jones, which decision became final in October 1953. In April 1954, the taxpayer received an award of $259,936 (net of attorneys’ fees of $79,741) which he endorsed over to the corporation pursuant to the assignment. The court concluded that the taxpayer was not taxable on the award. In so holding the court noted that (1) the claim was contingent and doubtful when it was assigned, (2) no gift was involved, (3) the assignment was made prior to the year the income was received, and (4) the assignment arose out of the exercise of a legitimate business purpose.

With respect to the first enumerated factor, the court stated that the district court opinion "settled all of those contingencies [*i.e.*, Jones' right to the income], but until so settled they were real, vital and active." Jones, 306 F.2d at 303. The court also stated that "the Tax Court was clearly in error in its finding that the assignment was executed on September 3, 1953, which would have been subsequent to judgment of the Court of Claims rendered on July 13, 1953." Jones, 306 F.2d at 302. While these statements could be viewed as setting a standard that a judgment of a lower court results in the taxpayer having "earned" income under the assignment of income doctrine, we believe that such a reading is not required. Since the assignment in Jones occurred prior to the Court of Claims decision, the court's reference can be regarded as being responsive to the specific facts of the case rather than establishing a principle of law.

In Schulze v. Commissioner, T.C. Memo. 1983-263, a taxpayer sued his former law partnership for damages. Subsequently, taxpayer and his wife divorced and agreed to divide their assets equally, including taxpayer's claim against the partnership. The value of the claim was indeterminate at the time of the property division. Subsequently, taxpayer recovered on his claim as a result of an arbitrator's decision and paid a portion to his former spouse. Following, Jones, *supra*, the Tax Court held that taxpayer was not required to include in his gross income the portion of the award paid to his former spouse because: (1) at the time of the assignment, recovery on the claim was uncertain; (2) the recovery did not occur for more than a year after the assignment of the claim; (3) the assignment did not involve a gift or gratuity, and (4) the assignment was made for a legitimate non-tax purpose. The court noted also that the outcome of a lawsuit is rarely, if ever, certain or free of doubt. Since the assignment was made before the arbitrator's decision, and the arbitrator's decision appears to have been final, this opinion is not inconsistent with the principle that income arising from a judgment is contingent until the final decision in a suit is rendered.

The above-cited line of cases support the proposition that, in general, a transferor who makes an effective transfer of a claim in litigation to a third person prior to the time of the expiration of appeals in the case is not required to include the proceeds of the judgment in income under the assignment of income doctrine because such claims are contingent and doubtful in nature.[3] Accordingly, we conclude that your gratuitous

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[3] If, however, the assignment is not effective, then the taxpayer must include the proceeds of the judgment in income. See the discussion of Attorney Fees. Further, in the case of an effective assignment of a transfer of claim in litigation, the transferor generally must include in income any cash and the fair market value of property or services received for the transfer.

transfer of the punitive damages judgment to the Trust, while the case was on appeal by C, does not result in inclusion of $x of the punitive damage award in your gross income.[4]

Attorneys Fees

The remaining issue is whether you must include in income that portion of the punitive damage award (plus statutory interest) that was used to pay your attorneys fees, pursuant to the contingent fee agreement.

You believe that your situation is controlled by Cotnam v. Commissioner, 263 F.2d 119 (5th Cir. 1959), aff'g in part and rev'g in part 28 T.C. 947 (1957). In Cotnam, the taxpayer paid to her attorneys, under a contingent fee arrangement, 40 percent of the amount they recovered on a claim they litigated on her behalf. The court noted that Alabama courts had given full effect to Ala. Code § 64 (1940), which provides that attorneys "shall have the same right and power over suits, judgments, and decrees as their clients … ." The court concluded that, since in Alabama attorneys have the same rights as their clients, the taxpayer could not have received the amount paid to her attorneys even if she settled the case directly with the other party. The court stated that the Alabama statute creates a charge in the nature of an equitable assignment or equitable lien in the cause of action. The court said that an attorney holding such an interest has an equity in, and the recovery under, the cause of action prior to that of a defendant in the judgment to exercise a right of set-off accruing to him after the attorney's interest had attached. In addition, the court stated that the taxpayer was not obligated to pay the attorneys' fee. Instead she fully paid the fee by the assignment of a doubtful claim. See also Srivastava v. Commissioner, 220 F.3d 353 (5th Cir. 2000), rev'g T.C.M. 1998-362 and Davis v. Commissioner, 210 F.3d 1346 (11th Cir. 2000), aff'g T.C.M. 1998-248 (following Cotnam under the Golsen rule).

In Estate of Clarks Ex Rel. Brisco-Whitter v. United States, 202 F.3d 854 (6th Cir. 2000), the court found that an attorney's lien under Michigan law operates similar to an attorney's lien under Alabama law. Thus, the court held that a taxpayer was not

[4] Foster v. United States, 106 F.Supp.2d 1234 (N.D. Ala. 2000), appears inconsistent with these authorities, in that it holds that the assignment of a claim in litigation after a jury verdict but during the pendency of the opposing party's appeals sufficiently fixes the value of the judgment so as to make assignment of income principles applicable. Foster concerned the **arms-length** assignment of an **additional** 50 percent of only the post-judgment interest portion of a claim by a plaintiff to her attorney in exchange for legal services rendered. Here, however, you **gratuitously** transferred to the Trust, pursuant to the Stipulation, your **entire** interest in the punitive damage award (subject to your attorney's lien under the contingency fee arrangement). Based on these factual differences, Foster does not appear to be inconsistent with our conclusion that you are not required to include in income the $x of the judgment received by the Trust.

required to include in income that portion of an award paid to the attorney under a contingent fee contract. In so holding, the court analogized the taxpayer's contingent fee arrangement to a partnership agreement or joint venture under which the taxpayer assigned his lawyer a one-third interest in the venture in order to have a chance to recover the remaining two-thirds.

In Baylin v. United States, 43 F.3d 145 (Fed. Cir. 1995), the court required a partnership to include in income that portion of a settlement that was paid directly to its attorneys under a contingent fee agreement. In so holding, the court stated that the partnership received the benefits of those funds in that the funds served to discharge the obligation of the partnership owing to the attorney for his efforts to increase the settlement amount.

In Bagley v. Commissioner, 105 T.C. 396 (1995), aff'd on other grounds, 121 F.3d 393 (8th Cir. 1997), the court rejected the taxpayers' argument that their contingent fee arrangement created a joint venture between them and the law firm. The court distinguished a situation in which a person receives contingent compensation from one in which each party is a principal and coproprietor, sharing a mutual proprietary interest in the net profits and having an obligation to share the net losses. Based on the record, including the testimony of the attorney, the court found nothing to indicate that the parties intended a joint venture.

In Benci-Woodward v. Commissioner, 219 F.3d 941 (9th Cir. 2000), the court found that under California law an attorney's lien does not confer any ownership interest upon attorneys or grant attorneys any right and power over their suits, judgments, or decrees of their clients. The court cited Isrin v. Superior Court, 403 P.2d 728 (Cal. 1965) which states that "[t]o hold that a contingent fee contract or any 'assignment' or 'lien' created thereby gives the attorney the beneficial rights of a real party in interest with the concomitant responsibility of financing the litigation would be to … distort the purpose of the various acceptable methods of securing his fee." Thus, the court distinguished Estate of Clarks and Cotnam and required the taxpayers to include in income the portion of a judgment they paid to their attorneys.

The Contingency Fee Agreement that you entered into with your attorney on date 2 did not transfer any interest in the judgment or the cause of action to your attorney. Instead, you used the proceeds of that portion of the judgment you had not previously transferred to the Trust to pay your attorney. Both the Contingent Fee Agreement itself and the law of support this conclusion.

First, the Contingency Fee Agreement states the attorney has undertaken a contract of employment with you. Thus, like Bagley and unlike Estate of Clarks there is no indication of a joint venture between you and your attorney.

In addition it appears that in a contingent fee arrangement merely creates a lien upon the proceeds of a client's award. The disciplinary rules provide that an attorney may acquire a lien to secure his fee or expenses or contract with a client for a reasonable contingent fee in a civil case. This lien attaches to the *fruits* of the judgment. *See* Cohen, *supra*. In addition, law does not give an attorney a lien on a client's cause of action. *See* __________, *supra*. Although and Alabama attorneys have a claim on a judgment that is superior to that of a defendant's right to set-off, that common factor does not mean that your attorney could exercise dominion and control over your cause of action or your judgment while it was on appeal. Instead, under your Contingent Fee Agreement, your attorney merely provided services to you and agreed to be paid out of any settlement that you received. Thus, your situation is more like that presented in Benci-Woodward than Cotnam. Finally, as in Baylin, the $w your attorney retained under the Contingent Fee Agreement discharged your obligation to your attorney for his efforts to obtain a damage award.[5] Accordingly, the $w retained by your attorney from the judgment is included in your income in the year 19XX.[6]

HOLDINGS

(1) We conclude that the $x portion of the punitive damages award ($t) that was transferred to the Trust is not includible in your income. Specifically, this ruling is based on the accuracy of all representations made including the representation that, under law, the $t punitive damages judgment was considered transferred by you to the Trust on or after date 7 and before date 10.

(2) We conclude that you must include in income in 19XX, the $w portion of the punitive damages award that your attorney retained under the Contingency Fee Agreement.

CAVEATS:

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter

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[5] Our view is consistent with the longstanding principle that when the liability of a taxpayer is paid by a third party the taxpayer has an accession to wealth in the amount of the liability that has been paid. Old Colony Trust v. Commissioner, 279 U.S. 716 (l929). Your personal liability for the attorneys fees was paid by C out of the punitive damages (plus statutory interest) awarded to you.

[6] Our view is supported by several other cases which hold that that taxpayers must include in income the portions of damage awards that are paid to their attorneys pursuant to contingency fee arrangements. Alexander v. Internal Revenue Service, 72 F.3d 938 (1st Cir. 1995); Estate of Gadlow v. Commissioner, 50 T.C. 975 (1968); Peterson v. Commissioner, 38 T.C. 137 (1962); Coady v. Commissioner, 231 F.3d 1187 (9th Cir. 2000); Kenseth v. Commissioner, 114 T.C. 399 (2000); Sinyard v. Commissioner, T.C.M. 1998-364; Fredrickson v. Commissioner, T.C.M. 1997-125.

ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110 of the Internal Revenue Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Income Tax & Accounting)

By: ______________________________
Michael J. Montemurro
Senior Technician Reviewer, Branch 2

cc: