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Letters to the Editor

APRIL 15, 96

EVEN TAX NOTES ISN'T PERFECT (ALTHOUGH WE CERTAINLY TRY).

To the Editor:

Imagine my surprise when I scanned the cover of the April 8, 1996 Tax Notes and saw the startling article titled "Deductibility of Punitives is Far From Resolved," Vol. 71, No. 2, Tax Notes, Apr. 8, 1996, p. 164. Since I had on more than one recent occasion advised clients that punitive damages could be deducted, I nervously turned to page 164. Happily, there I found that even Tax Notes can mix up the concept of excludability and deductibility. I spend a fair amount of my time advising litigators and clients on tax effects of settlements and judgments, so I am used to this sort of misnomer. But not from Tax Notes!

Such quibblings aside, Michael Moriarty's coverage of the O'Gilvie case beginning on page 164 is helpful. Mr. Moriarty correctly points out the muddied state of the law concerning the scope of section 104, and gives the harrowing procedural detail of the O'Gilvie case. I wish only to correct one oversight.

Mr. Moriarty mentions the IRS's guidance in Revenue Ruling 93-88 (which ruled that Title VII gender and race recoveries are excludable). He does not mention that the Service since suspended that ruling. Your readers should be aware that Notice 95-45 suspended the application of that ruling (you have covered this issue in the past), and no new guidance has yet been released. That leaves the area even more muddied than Mr. Moriarty points out.

You might also mention under the proposed amendments to section 104 (that continue to be stalled), Congress had considered taxing all punitive awards. As far as I know, this provision is not controversial.

In any case, I am afraid there will be a great deal more litigation on the scope of section 104 before all is said and done.

Very truly yours,

Robert W. Wood
San Francisco
April 9, 1996

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