



# letters to the editor

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## Problems Caused by the AMT: One Example

To the Editor:

I applaud the article by Gene Steuerle in the November 30, 1998 *Tax Notes*, "The Individual AMT: More Than a Small Fix Is Needed" (p. 1131). The AMT has surely become the well-fed monster that got out of control in the tax system, and I wish to offer only one specific example of the injustice that the AMT inflicts.

In the context of employment litigation (and many other types of litigation), a plaintiff who hires a contingent fee lawyer and receives a settlement has two choices. One is to receive the full settlement and claim a miscellaneous itemized deduction for the lawyer's fees and costs (which often consume 40 percent or even 50 percent of the gross recovery). The other choice is to attempt to structure a direct payment to the attorney on the theory that the attorneys' fees would have been awardable in the action had the matter reached trial, and on the theory that under state law, the attorney has a lien in the case (and thus in the recovery), from the inception.

It is now well known that there is a split in the circuit courts on the efficacy of such efforts by plaintiffs to avoid the income that would accrue in the first situation. However, there are many cases floating around in our society, some long ago resolved, some recently resolved, and some yet to come, that consistently raise this latent AMT problem. In my experience, the IRS is quite firm in its view that a miscellaneous itemized deduction (and thus the AMT) should apply in all of these cases.

I mention this because it is, in my view, one of the most egregious applications of the AMT, and also one that regularly traps even relatively sophisticated persons. I applaud Mr. Steuerle for his comment that more than a small fix to the AMT is needed. I agree. But even if it is tinkering with the AMT that occurs, let's hope that Congress will at least eliminate attorneys' fees from the long list of items that trigger the AMT.

Very truly yours,

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December 2, 1998