FIRST IN A TWO PART SERIES

By Robert W. Wood

Are Tax Deductible?

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CASE, which they requested guidance is the seminal client-cost-tax-deduction

Baucus and Dick Durbin wrote the Treasury Department requesting clari-

senators involved in passing tax laws. On April 29, 2010, Senators Max

up. Yet the Internal Revenue Service often attacks these deductions and

addition, it is a business expense. After all, the

costs, travel, FedEx, copies, fi ling fees, process servers: it all adds

tally before distributing settlement proceeds.

years before the case settles. Of course, there’s no guarantee the case

money to his client.

dividing the rest. The Court of Federal Claims ruled Boccardo could

split any gross recovery. The IRS still denied Boccardo’s deductions.

bills all costs, and lawyer and client would

split any gross recovery. The IRS told its auditors, IRS lawyers, and other IRS

personnel (in a Field Service Advice) that it would not follow Boccardo

except in the 9th Circuit (where it means), even since then, the IRS has

costs and expenses of the case. Then when the case settles, the lawyer

The 9th Circuit ruled that attorneys in contingent fee cases can

deduct costs as ordinary and necessary business expenses if they have

or rationale of

inconsistent with subsequent Tax Court decisions that do not challenge the hold-

This led Baucus and Durbin to conclude that the IRS position is inconsis-

tent with analogous Tax Court decisions that do not challenge the hold-

or rationale of Boccardo. After more than 5 years, something should

give. According to Baucus and Durbin, the IRS appears to have based

its position (that expenses are nondeductible and must be treated as

non-deductible loans to the client. Then, when the case settles, the lawyer

and client will simply split one-third/two-thirds, 60/40 or 50/50. One

code for cases in the 9th Circuit.

With most contingent fee agreements, the client is assured he will

pay nothing (not even costs) unless there is a recovery. Costs can be

subtracted away from the client’s share, taken off the top before the

cost and client split any gross recovery, or simply paid by the attorneys

and client. In fact, the costs are borne entirely

client is not reimbursing the lawyer. In fact, the costs are borne entirely

by the client or by both the client and the lawyer, depending on whether

the settlement is sufficient in size to absorb all costs.

The result of a fee sharing making no reference to costs is that the

client is not reimbursing the lawyer. In fact, the costs are borne entirely

by the client or by both the client and the lawyer, depending on whether

the settlement is sufficient in size to absorb all costs.

This discussion is not intended as legal advice, and cannot be relied

upon for any purpose without the services of a qualified professional.

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