



Robert W. Wood

THE TAX LAWYER

Sep. 8 2010 - 9:56 am |

Doctors And Lawyers Locking Horns Over Taxes

Doctors and lawyers may both be professionals, but there's often no love lost between them. And mentioning tort reform to either group can prompt an extreme response. Throw taxes into the mix and it's even more interesting. Lawyers are lobbying Washington for better tax treatment for their contingent fee cases, but doctor groups like the AMA have lined up claiming passage will give rise to even more lawsuits, many of them plaguing the healthcare field. See [AMA, 90 Medical Organizations Oppose Tax Changes That Encourage More Lawsuits](#).

The issue is how lawyers deduct costs. Contingent fee lawyers nearly always front all costs in each case, so the client pays nothing unless and until there's a recovery. Costs including filing fees, deposition transcripts, copies, travel expenses, expert fees, and more. In a big case, costs can total hundreds of thousands of dollars and can mount up for years. Paying but not deducting them hurts.

When the case finally pays off, lawyer and client will settle up, with the lawyer usually reimbursed for all costs before lawyer and client split the recovery 60/40 or in whatever percentages they've agreed. Because the lawyer is reimbursed, current tax law treats the costs as loans by the lawyer to the client. That means the lawyer can't claim any tax deduction

until the conclusion of the case. It's costing lawyers billions, making lawsuits much more expensive.

But all that may change. Under [S. 437](#), introduced by Senator Arlen Specter, D-Pa., lawyers would be able to deduct costs immediately as long as their fee agreement calls for a "gross" fee. A companion bill ([H.R. 2519](#)) was introduced in the House by Artur Davis, D-Ala. A gross fee arrangement splits the whole recovery (60/40 or in some other proportion) without any direct reimbursement for costs. Lawyers would be free to factor in the likely costs of the particular type of case in setting their percentage split, but they could have no detailed accounting for costs.

This is a good deal for trial lawyers, and would expand a key but controversial tax case decided 15 years ago. Lawyer groups have championed the provision, but the likelihood of its passage looks dim, even dimmer now that the [AMA](#) and others are sounding a lawsuit floodgates alarm. For more on this brewing tax issues, see:

[Which Client Costs Are Tax Deductible? Part 1 of 2](#), Los Angeles Daily Journal (June 23, 2010), p. 5;

[Which Client Costs Are Tax Deductible? Part 2 of 2](#), Los Angeles Daily Journal (June 24, 2010), p. 5; and

[Lawyers Who Deduct Client Costs: Revisiting Boccardo](#), Vol. 127, No. 11, Tax Notes (June 14, 2010), p. 1287.