

Washington's Attorneys' Lien Law

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In *Banaitis*, 340 F3d 1074 (9th Cir. 2003), petition for cert. granted, 3/29/04, the Ninth Circuit found that contingent attorneys' fees paid directly to a taxpayer's lawyers were not gross income to the taxpayer; see Wood and Daher, "Attorneys' Fee Saga Continues: Maverick Circuit Says, 'Oregon Good, California Bad,'" 2003 TNT189-35 (9/30/03). Relying on *Cotnam*, 263 F2d 119 (5th Cir. 1959), the court held that the taxpayer could exclude such fees. Given the strength of the Alabama lien, the *Cotnam* court found that there had been a transfer of part of the taxpayer's claim, so any recovery by the lawyers was simply gross income to them, not their client. In *Banaitis*, the Ninth Circuit found that Oregon's attorneys' lien law mirrored Alabama's.

Apparently, the Washington Legislature has been following the attorneys' fee issue fairly closely; on June 10, 2004, a new attorneys' lien law went into effect; see the Notes to Wash. Rev. Code Ann. §60.40.010, citing 2004 Wash. Laws, chapter 73, §1. The law's stated purpose is to:

[E]nd double taxation of attorneys' fees obtained through judgments and settlements, whether paid by the client from the recovery or by the defendant pursuant to a statute or a contract. Through this legislation, Washington law clearly recognizes that attorneys have a property interest in their clients' cases so that the attorney's fee portion of an award or settlement may be taxed only once and against the attorney who actually receives the fee. This statute should be liberally construed to effectuate its purpose. This act is curative and remedial, and intended to ensure that Washington residents do not incur double taxation on attorneys' fees received in litigation and owed to their attorneys.

This lien law was designed to replicate those discussed in *Cotnam* and *Banaitis*. Washington's new law not only mirrors Alabama's and Oregon's laws (in that it provides attorneys with generous property interests in settlements and judgments), but actually *surpasses* them, by providing that attorneys' liens in Washington are now superior to *all* other liens (including tax liens); see Wash. Rev. Code Ann. §60.40.010(3). Thus, it appears that Washington's new law may provide the strongest protection yet under the *Cotnam* line of reasoning.