

Of course, before granting certiorari petitions in *Banks* and *Banaitis*, the Court had denied certiorari petitions on no less than five prior occasions (two of which occurred after Prof. Polsky's article was written). See *O'Brien v. Commissioner*, 319 F.2d 532 (3d Cir. 1963), cert. denied 375 U.S. 930 (1963); *Benci-Woodward v. Commissioner*, 219 F.3d 941, Doc 2000-20007, 2000 TNT 144-8 (9th Cir. 2000), cert. denied 531 U.S. 1112 (2001); *Coady v. Commissioner*, 213 F.3d 1187, Doc 2000-16766, 2000 TNT 117-9 (9th Cir. 2000), cert. denied 532 U.S. 972 (2001); *Sinyard v. Commissioner*, 268 F.3d 756, Doc 2001-24862, 2001 TNT 188-11 (9th Cir. 2001), cert. denied 536 U.S. 904 (2002); *Hukkanen-Campbell v. Commissioner*, 274 F.3d 1312, Doc 2001-31455, 2001 TNT 247-75 (10th Cir. 2001), cert. denied 535 U.S. 1056 (2002). It is anyone's guess why the Supreme Court has finally decided to address this issue. It will be interesting to see how the Court comes down on this issue.

Finally, since Professor Polsky first published this piece the number of circuit courts that have addressed the attorney fee issue has grown. See, e.g., *Raymond v. Commissioner*, 355 F.3d 107, Doc 2004-760, 2004 TNT 10-11 (2d Cir. 2004), petition for cert. filed 72 U.S.L.W. 1437 (U.S. April 9, 2004) (No. 03-1415).

No biggie, but maybe these additional points on top of Professor Polsky's fine article will help someone.

Very truly yours,

Robert W. Wood
 Robert W. Wood P.C.
 San Francisco
<http://www.rwwpc.com>
 July 6, 2004

Recent Developments in Contingent Attorney Fee Area

To the Editor:

I'm writing in response to Professor Gregg Polsky's stimulating article, "Contingent Attorney Fees: Enough With the Fruits and the Trees," *Tax Notes*, June 28, 2004, p. 1669. As the article notes at the outset, the full text of this article (which can be found at Doc 2004-12102, 2004 TNT 119-91) originally appeared at 37 *Ga. L. Rev.* 57 (2002). Since that time a few things have changed. I expect Professor Polsky knows these, but I point them out just in case other *Tax Notes* readers might not.

Most importantly, since this article was written the Supreme Court has agreed to resolve the split in the circuits by granting certiorari in *Banaitis v. Commissioner*, 340 F.3d 1074, Doc 2003-19359, 2003 TNT 167-5 (9th Cir. 2003), petition for cert. granted 2004 U.S. LEXIS 2385 (U.S. Mar. 29, 2004) (No. 03-907), and *Banks v. Commissioner*, 345 F.3d 373, Doc 2003-21492, 2003 TNT 190-11 (6th Cir. 2003), petition for cert. granted 2004 U.S. LEXIS 2384 (U.S. Mar. 29, 2004) (No. 03-892).