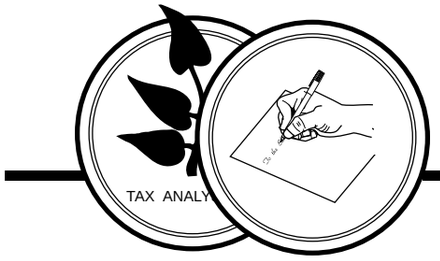

letters to the editor

Sometimes Hoary Cases Are Better Than None

To the Editor:

Since the publication of my recent article "Always Address Tax Issues in Settlement Agreements," *Tax Notes*, Apr. 17, 2000, p. 409, I have considered further the perennial assignment of income doctrine, and a few of the authorities that I cite. It was brought to my attention that there are some interesting issues about the hoary assignment of income cases that I don't address, particularly the distinction between *Lucas v. Earl*, 281 U.S. 111 (1930), and some of the cases that follow the classic income tax cases. Of course, (as I pointed out, and as the Sixth Circuit in *Estate of Clarks* pointed out), the assignment of income in *Lucas* (and in *Helvering v. Horst*, 311 U.S. 112 (1940), too) came after the taxpayer earned the right to receive the income.

I agree that maybe these aren't the best cases for the government to be citing. Specifically, instead of comparing the facts in *Estate of Clarks* with the *Lucas* and *Horst* assignment of income cases, maybe the partnership authorities — specifically the *Campbell* case — would be more appropriate for the government to argue.

The theory that many plaintiff's lawyers espouse (whether after filing a tax lien, drafting a belated amendment, drafting a particularly aggressive fee agreement, drafting a settlement agreement that purports to shift the burden of the payment for the plaintiff's attorneys' fees to the defendant directly, and any number of other devices, all boils down to "we're in this together." The income is not earned, the Sixth Circuit in *Estate of Clarks* ruled, until the case is resolved.

The *Lucas* and *Horst* cases may indeed not be the best vehicle for analyzing this particular situation. Still, taxpayer victories like *Estate of Clarks* have to be nurtured, watered frequently, given fertilizer, and allowed to flourish.

As a mere tax practitioner (and not an academic), I have seen way too many taxpayers receive a settlement that they find largely eviscerated by attorneys' fees and taxes. Sometimes the taxes, especially because of the taxes on attorneys' fees, are larger than they need or ought to be. When added to the taxes they pay on the underlying settlement they receive, it is possible for a client to receive a tax bill that is larger than the total amount of the net settlement they receive. Under anyone's tax system, this should not be possible ("How can I be taxed on two dollars, when I got only one?"). Yet there it is.

In short, there may be some inconsistencies in the application of the assignment of income doctrine in the *Estate of Clarks* case, and probably in my most recent article, too. Yet I still think it is laudable that several circuit courts now have stepped up to the plate, even if some argue they did it ineffectually, to try to stop what I believe is an egregious situation.

Very truly yours,

Robert W. Wood
Robert W. Wood, P.C.
San Francisco
April 21, 2000