

INTERNAL REVENUE SERVICE

November 15, 2002

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Release Date: 12/31/2002
UIL: 56.10-00

CONEX-154911-02
CC:ITA:B4

[REDACTED]

Attention: [REDACTED]

Dear [REDACTED]:

This letter is in response to your inquiry dated September 19, 2002, on behalf of your constituent, [REDACTED]. As you requested, we have responded directly to [REDACTED] [REDACTED]. A copy of our letter is enclosed.

Please call [REDACTED], at [REDACTED], if you have any questions.

Sincerely,

Lewis J. Fernandez
Deputy Associate Chief Counsel
(Income Tax & Accounting)

Enclosure

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Internal Revenue Service

Index No.: 56.10-00

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply To:

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Date:

November 15, 2002

Dear [REDACTED]:

[REDACTED] has asked that I reply to your letter about the amount you paid for attorneys fees being subject to the Alternative Minimum Tax (AMT).

You state that in [REDACTED] you received a lump sum of \$ [REDACTED], which represented 3 years of disability insurance benefits. You paid attorneys fees of \$ [REDACTED] in connection with the receipt of the benefits. However, the Internal Revenue Service recently informed you that the attorneys fees you paid are subject to the AMT.

In general, under § 61 of the Internal Revenue Code, gross income means all income from whatever source derived. The concept of gross income encompasses accessions to wealth, clearly realized, over which taxpayers have complete dominion. Thus, a taxpayer must include in gross income that portion of a taxable recovery paid by or on behalf of the taxpayer as attorneys fees.

In computing regular income tax, an individual taxpayer may claim "miscellaneous itemized deductions" to the extent they exceed 2 percent of adjusted gross income. Miscellaneous itemized deductions are itemized deductions that are not specifically enumerated in § 67(b). Because an expense of the kind you describe is an itemized deduction but is not listed in § 67(b), it is a miscellaneous itemized deduction.

The Congress enacted the AMT, §§ 55 - 59, to establish a floor for tax liability, so that a taxpayer with substantial income pays some tax regardless of the deductions, exclusions, and credits otherwise available under the regular income tax. S. Rept. No. 313 (1986), 99th Cong., 2d Sess., 1986-3 C.B. (Vol. 3) 515, 518. The AMT is paid only to the extent that it exceeds a taxpayer's regular income tax.

In enacting the AMT the Congress specifically disallowed a deduction for any miscellaneous itemized deduction in computing the amount subject to the AMT. Because the deduction for the attorneys fees you paid is a miscellaneous itemized

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deduction, no deduction for the fees paid is allowed for AMT purposes. We are not aware of any specific legislative proposal to amend the AMT provisions to allow a deduction for miscellaneous itemized deductions.

If you have any questions, please call [REDACTED] of this office at [REDACTED].

Sincerely,
Lewis J. Fernandez
Deputy Associate Chief Counsel
(Income Tax & Accounting)

cc: