



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

July 26, 2005

Number: **INFO 2005-0131**

CONEX-136281-05

Release Date: 9/30/05

CC:ITA:B04

UIL: 62.14-00

The Honorable Randy "Duke" Cunningham
U.S. House of Representatives
Washington, DC 20515

Attention: Dusty Strawn

Dear Mr. Cunningham:

I am responding to your letter, dated June 29, 2005, on behalf of your constituent, . In effect, seeks relief from the law taxing the attorney's fees portion of his award from settling a *qui tam* action against his employer.

On October 4, 2004, settled his case for \$ and paid \$ of the settlement award for attorney's fees. entire \$ award was gross income under Section 61 of the Internal Revenue Code ("the Code"). His deduction for attorney's fees was subject to the 2% floor on itemized deductions under Section 67 of the Code and the overall limitation on itemized deductions in Section 68 of the Code. For alternative minimum tax (AMT) purposes, his attorney's fees were not deductible under Section 56 of the Code. Despite the perceived harshness of the rule, the Supreme Court confirmed the legal correctness of that result. *Commissioner v. Banks*, 125 S. Ct. 826 (2005).

The Congress amended Section 62 of the Code to provide relief from the perceived harshness of the previous rule. The American Jobs Creation Act of 2004 added Section 62(a)(20) of the Code effectively exempting deductions for attorneys' fees in unlawful discrimination actions from the 2% floor, the overall limit on itemized deductions, and the AMT disallowance. Taxpayers may now deduct all attorneys' fees ("above-the-line") for actions similar to case. The amendment significantly reduces the net taxable amount of many recoveries.

Unfortunately, the effective date of Section 62(a)(20) of the Code was October 22, 2004, about three weeks after received his settlement. We do not have the authority to grant relief from that statutory cut-off. Only Congress can change the effective date to cover situation.

I hope this information was helpful. If you have further questions, please call me at
, or at .

Sincerely,

George J. Blaine
Deputy Associate Chief Counsel
(Income Tax and Accounting)
