



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

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The Honorable John P. Sarbanes
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Sarbanes:

I am responding to your letter dated September 3, 2010, on behalf of your constituent, . He asked about the deductibility of litigation costs that law firms pay when representing clients on a contingent gross fee basis.

The Ninth Circuit Court of Appeals in *Boccardo v. Commissioner*, 56 F.3d 1016 (9th Cir. 1995), held that a law firm was entitled to deduct the litigation costs it paid under a contingent gross fee contract. In 1997 FSA LEXIS 442, we announced that we would not follow *Boccardo* outside the Ninth Circuit. Over the years, several members of the Congress have asked us to clarify or change this litigating position. We continue to follow the 1997 FSA and, at this time, have no plans to change our position on this issue.

Members of the Congress and the public have asked whether the Department of the Treasury intends to publish formal guidance on the deductibility of litigation costs in contingent gross fee cases. The Treasury Department and the IRS have not yet determined whether additional guidance on this issue is appropriate.

I hope this information is helpful. Please contact me or _____ at _____ if you need further assistance.

Sincerely,

Thomas D. Moffitt
Chief, Branch 2
(Income Tax and Accounting)