



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

OFFICE OF  
CHIEF COUNSEL

August 30, 2010

The Honorable Charles Grassley  
Ranking Member  
Committee on Finance  
United States Senate  
Washington, DC 20510

Dear Senator Grassley:

Thank you for your letter dated July 22, 2010, related to the deductibility of litigation costs paid by law firms representing clients on a contingent gross fee basis. Secretary Geithner asked that I respond to you.

As described in your letter, over the years several members of the Congress have asked the IRS to change its litigating position in contingent gross fee cases, as stated in 1997 FSA LEXIS 442. That FSA announced that the IRS will not follow *Boccardo v. Commissioner*, 56 F.3d 1016 (9<sup>th</sup> Cir. 1995), *rev'g* T.C. Memo. 1993-224, outside the Ninth Circuit. You urge us not to change our litigating position. We have no plans to change the current litigating position announced in the 1997 FSA.

Members of the Congress and the public have also asked whether the Department of the Treasury intends to issue 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 at this time.

I hope this information is helpful. Please contact me at (202) 622-4800 if I can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "George J. Blaine".

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