

Articles

"Supreme Court Update -- Settling A Case? Call Your Tax Lawyer."

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On January 24, 2005, the U.S. Supreme Court released *CIR v. Banks*, holding that a client must pay income tax upon the portion of settlement proceeds that are paid to an attorney under a contingency fee agreement. The Court applied the so-called "anticipatory assignment" rule, which provides that a taxpayer cannot exclude an economic gain by assigning it in advance to another party. The clients had argued that a contingency fee should not be treated as an anticipatory assignment because the value is entirely speculative when assigned. Likewise, income is generally attributed to the one who earns it. A contingency fee arrangement, they argued, is a sort of business partnership, the fee being "earned" solely by the skill and diligence of the attorney.

In rejecting the arguments, the Court noted that the anticipatory assignment rule had never depended upon the speculative nature of the income assigned. Likewise, the attorney client relationship is "the quintessential principal-agent relationship" rather than a partnership. The client has the right and ability to control the case and decide whether to settle. Just like an employer, the amount paid in wages to an agent is not excluded from gross income. Tantalizingly, the Court left open the question of the tax treatment of settlement proceeds allocated directly to an attorney under a fee shifting statute.

Coming Attractions

Much of the buzz concerning the Court is obsessed with whom the President may appoint to replace justices who are still hearing cases and making decisions. The work of the Court goes on:

- The Court has two cases testing constitutionality of secretive "Special Trial Judges" employed by the Tax Court. *Ballard v. CIR* (No. 03-184); *Estate of Kanter v. CIR* (No. 03-1034) [Argued 12/7/04, [click here for Transcript](#)].
- The Court will decide whether "loss causation" must be proved in a securities fraud action claiming "fraud on the market." *Dura Pharmaceuticals, Inc. v. Broudo* (No. 03-932) [Argued 1/12/05, [click here for Transcript](#)].
- The Court has two cases testing the limits of compelled commercial speech under the First Amendment. *Veneman v. Livestock Marketing Ass'n* (No. 03-1164); *Nebraska Cattlemen, Inc. v. Livestock Marketing Ass'n* (No. 03-1165) [Argued 12/8/04, [click here for Transcript](#)].
- On the other side of the free speech question, the Court will adjudicate an injunction prohibiting all future speech about a public figure, awarded as a remedy in a defamation action. *Tory v. Cochran* (No. 03-1488) [Argument 3/22/05].
- The Court will again tread the minefield of religious liberty, deciding whether the "Ten Commandments" monument or similar displays are qualitatively different from the artwork above the Court's own bench. *Van Orden v. Perry* (03-1500); *McCreary County v. ACLU of Kentucky* (03-1693) [Argument 3/2/05].
- The Court will opine on the limits of supplemental jurisdiction where absent class members do not satisfy the minimum amount-in-controversy requirement. *Exxon Corp. v. Allapattah Servs.* (No. 04-70); *Ortega v. Star Kist Foods, Inc.* (04-79) [Argument 3/1/05].
- The Court will even determine whether purported charge error requires a retrial of Arthur Andersen's conviction for witness tampering. *Arthur Andersen LLP v. United States* (04-368) [Granted 1/7/05].

I for one am eagerly anticipating such answers as which crop injury claims are preempted by FIFRA (No. 03-388) [Argued 1/10/05, [click here for Transcript](#)] and whether the ADA applies to companies operating foreign-flag cruise ships in U.S. waters (No. 03-1388) [Argument 2/28/05]. Even if your inner-dweeb is less well developed, your business is bound to be impacted by the Court this term. Stay tuned.

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