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Key Issues Surrounding the IRS's Release of a General Legal Advice Memorandum on December 9, 2022 Regarding the Payment of Legal Fees to a Third Party (the "GLAM")

January 23, 2023

1. What is a "generic legal advice memorandum," or "GLAM"?

According to the Internal Revenue Manual[1], a general legal advice memorandum (or GLAM) is a memorandum written by an Associate Chief Counsel for use by other IRS personnel. A GLAM may be appropriate where a common set of facts applies to a significant number of taxpayers and advice with respect to facts representative of those common facts will assist IRS personnel (including field personnel) in resolving cases more efficiently. When legal advice is requested by a Division Counsel executive (as appears to be the case here), the Associate Chief Counsel must conduct a pre-submission conference with the Division Counsel executive and the program manager. The purpose of a pre-submission conference is to confirm that issuing a GLAM is appropriate and to define the issues on which advice is needed.

Unlike a revenue ruling, a GLAM does not set out an official ruling or position of the IRS and may not be referenced in other documents as precedent. As such, a subsequent decision to adopt a different position on the same or similar legal issue will not require a GLAM to be withdrawn or revoked; rather, a new memorandum setting out current advice will be issued. In addition, and unlike a private letter ruling, a GLAM does not bind any taxpayer.

2. Why was the GLAM issued?

The GLAM likely was issued in response to a request received by the Division Counsel, Tax Exempt & Governmental Entities and a determination by an Associate Chief Counsel executive that issuing advice in the form of a GLAM would promote efficiency, the consistent treatment of similarly situated taxpayers, and sound tax administration. However, the specific impetus for the GLAM at issue here is not generally known.

3. What is a standard attorney fee structure arrangement (a "**Standard Fee Structure**")?

In a Standard Fee Structure, a plaintiff will agree to receive a settlement or damages award as a series of periodic payments over several years rather than as a lump-sum payment in the year the lawsuit is resolved. (This arrangement is informally referred to as a "structure.") The plaintiff's

[1] See I.R.M. section 33.1.2.2.3.5 (04-12-2013). All "Section" and "Code" references are to the Internal Revenue Code of 1986, as amended (the "**Code**").

attorney (who has been retained on a contingent fee basis) also will agree to receive his or her fee as each periodic payment is made. Rather than make the payments itself, the defendant[2] will assign its obligation to do so to a third-party "assignment company," to which it pays a lump-sum for accepting the obligation. The assignment company then uses the payment to acquire a "funding asset" that will produce an income stream that is sufficient to make each future periodic payment to the plaintiff and the attorney. The defendant in turn is released from its obligations to make any future payments. In a variation on the Standard Fee Structure, an attorney may agree at the outset of his/her representation of the plaintiff (or sometime thereafter, but prior to the plaintiff's recovery) to structure his/her fee regardless of whether the plaintiff eventually chooses to structure.

The plaintiff and defendant will enter into a Settlement Agreement and Release that will, among other things, state the schedule of periodic payments to be made; the defendant in turn will enter into an Assignment Agreement with the assignment company, pursuant to which the assignment company will assume the defendant's obligation to make the periodic payments. The Assignment Agreement will state that the assignment company owns the asset which funds the periodic payments and that the plaintiff and/or the attorney has no rights against the assignment company other than those of an unsecured general creditor.

There are two forms of structures for plaintiffs in this area: "qualified assignments" and "non-qualified assignments." In a qualified assignment, a plaintiff who has suffered a physical injury or sickness (where damages are excluded from gross income under Section 104(a)(2) of the Code) and the defendant will allow the defendant to assign its obligation to make periodic payments to an assignment company in exchange for the defendant's payment of a lump-sum thereto. If the various requirements of Section 130 of the Code are satisfied, the arrangement is "qualified" and the assignment company is not taxable on the payment it receives from the defendant. The first two requirements for a settlement to be qualified are that the periodic payments must be fixed and determinable as to amount and timing and cannot be accelerated, deferred, increased, or decreased by the recipient. In addition, the payments must be excludable under Section 104(a)(2) and funded by an obligation of the U.S. government (*i.e.*, T-Bills) or an annuity contract issued by a life insurance company. By contrast, in a non-qualified assignment, the fixed amount and fixed timing requirements still apply, but the damages at issue either are taxable (*e.g.*, a claim of employment discrimination) or the funding asset is something other than an obligation of the U.S. government or an annuity contact. In either case, the plaintiff will recognize each payment as it is received rather than in the year of the settlement or award if restrictions similar to those of Section 130 are imposed.[3] Outside of the traditional litigation context, the IRS held in Revenue Ruling 2003-115, 2003-2 C.B. 105 that claimants of the September 11 Victim Compensation Fund did not realize the economic benefit of the full amount of their claim when approved as long as they irrevocably elected to receive their award as periodic payments prior to when their claim became "substantially complete."

In both a qualified and a non-qualified assignment, the plaintiff consents to the defendant's assignment of its obligation to remit the periodic payments to the assignment company; when an

[2] References to a "defendant" also include the defendant's insurer.

[3] See, e.g., Priv. Ltr. Rul. 200836019 (Sept. 5, 2008) (employment discrimination plaintiff who received periodic payments under a structured settlement arrangement not eligible for Section 130 treatment is not in actual or constructive receipt of the periodic payments until he or she receives each payment).

attorney also agrees to structure its fee, the plaintiff, the defendant, the assignment company, and the attorney are all parties to the arrangement.

4. Are Standard Fee Structures valid under existing tax laws?

Yes. The Tax Court approved a Standard Fee Structure in Childs v. C.I.R., 103 T.C. 634 (1994), aff'd 89 F.3d 856 (11th Cir. 1996). In Childs, the taxpayers were attorneys who represented clients in related personal injury lawsuits on a contingent fee basis. Both the clients and the attorneys chose to receive their damages and legal fees (respectively) pursuant to a Settlement Agreement and Release and Assignment Agreement which satisfied the fixed amount and fixed timing requirements. In addition, the agreements provided that (i) the assignment company owned the funding asset, (ii) the attorneys' rights against the assignment company were no greater than those of a general creditor, and (iii) the attorneys would receive their fee in installments, as each periodic payment was made to each plaintiff, and no amounts were set aside to fund the payments.

The Tax Court held that the attorneys were taxable on their fee as the periodic payments were received, not up front in the year of the settlement. Because the full amount of the fee due to the attorneys was not "funded"—*i.e.*, there was no set-aside of the fee amount by either the insurance company that issued the annuity or the assignment company, the attorneys were unsecured, general creditors of the assignment company. As such, the attorneys received neither cash compensation nor an interest in property under Section 83 of the Code. Section 83(a) generally provides that a service provider who receives an interest in property in compensation for services rendered must recognize that amount; for this purpose, a property interest includes a promise to pay that is funded.[4] The IRS has recognized that Section 83 codifies the judge-made economic benefit doctrine[5], which provides that a taxpayer recognizes income when it receives a nonforfeitable right to receive income in the future and the funds are currently set aside to pay that future amount.[6] In addition, the Tax Court held that the attorneys were not entitled to receive their fees until recovery by their clients was certain, so their right to receive payment arose only after

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[4] See Treas. Regs. Sec. 1.83-3(e), which provides that "property" includes a beneficial interest in money that is transferred or set aside from the claims of creditors of the transferor of such funds.

[5] See IRS Pub. 5528 (Rev. 6-2021), Cat. No. 37690C, "Nonqualified Deferred Compensation Audit Technique Guide," at p. 6 (stating that Section 83(a) "codified elements of the economic benefit doctrine by providing that, generally, if property is transferred to a person as compensation for services, such person will be taxed at the time of receipt of the property when it is either transferrable or not subject to a risk of forfeiture") (emphasis added).

[6] See, e.g., Sproull v. C.I.R., 16 T.C. 244 (1951), aff'd 194 F.2d 541 (6th Cir. 1952). In Sproull, the Tax Court held that the economic benefit doctrine applied where a corporation placed $10,500 in trust for the benefit of its president, representing additional compensation for services previously rendered. The funds were to be paid to the taxpayer in two installment payments over the following two years. Under the economic benefit doctrine, the taxpayer need not have the power to take immediate possession, and need not have something that is readily convertible into cash, in order to recognize income currently. Rather, the critical issue is that the assets set aside are certain to be available to provide the future payments. In contrast to Sproull, the IRS held in Revenue Ruling 72-25, 1972-1 C.B. 127 that an employee is not taxable under the economic benefit doctrine on an annuity contract purchased by his employer to fund its deferred compensation obligations to the employee, provided that the contract (i) remains an asset of the employer subject to claims of its general creditors; (ii) the employer is the applicant, owner, and beneficiary of the annuity contract; and (iii) the employee has no legal interest in the asset.

settlement or disposition of each case.[7] The court held that the clients did not "recover" their damages until either the parties' negotiated settlement was approved by the court or when the settlement agreement became effective, and that the attorneys in turn had no right to receive any moneys prior to such time as their clients "recovered" amounts from their claims. The U.S. Court of Appeals for the Eleventh Circuit affirmed the Tax Court's decision.

The U.S. Supreme Court's decision in C.I.R. v. Banks, 543 U.S. 426 (2005), which held that a plaintiff is taxable on the portion of its settlement or award that represents the payment of an attorney's contingent fee, also supports the Standard Fee Structure. The court held that because the plaintiff owns the claim (which is the income producing asset) and the attorney is the plaintiff's agent, for income tax purposes the plaintiff must be treated as first receiving its money damages from the defendant and then making a payment to the attorney for its fee; as such, a plaintiff cannot avoid taxation on the attorney fee portion of its award (unless the plaintiff's claim is for personal physical injuries or sickness and is thus excluded from income under Section 104(a)).

Thus, it necessarily follows from Banks and Childs that an attorney is not taxable on its fee until the plaintiff's right to recovery has materialized and the payments under that recovery become due and payable by the assignment company (as the assignee of the defendant) pursuant to the Settlement Agreement and Release and Assignment Agreement.

5. Does the GLAM address a Standard Fee Structure?

No. There are no references in the GLAM to an attorney fee structure, structured settlements, qualified or non-qualified assignments, or Revenue Ruling 2003-115. Accordingly, because the scope of the matters raised in the GLAM was discussed between the Associate Chief Counsel and the Division Counsel in a pre-submission conference prior the GLAM's issuance, it is reasonable to conclude that the GLAM is not intended to reach topics that it does not specifically address.

Instead of a Standard Fee Structure, the GLAM addresses a situation (presumably based on actual facts) where a plaintiff opted to accept a single cash payment (of $1,500,000) in settlement of a personal injury lawsuit and the attorney entered into a proprietary deferred compensation arrangement for its fee (of $450,000) with a third party (the "**Deferral Arrangement**") at the same time the settlement was negotiated. Regarding the timing of these various events, the GLAM states that the attorney negotiated the settlement on behalf of the client "[d]uring pendency of the of the case but before trial", the attorney entered into the Deferral Agreement with the third party on June 30, 2021, the settlement agreement was executed on July 1, 2021, the attorney delivered wire instructions for its fee on July 15, and the fee was paid by the defendant to the third party on August 1. Upon receipt of the $450,000 fee, the third party placed the funds in a so-called "rabbi trust," invested them in an investment vehicle of the attorney's choosing, and agreed to make a future lump-sum payment to the attorney on August 1, 2031 of

[7] The Tax Court also held that the attorneys were not in "constructive receipt" of their fees under Treasury Regulations Section 1.451-2, because they had no right to receive anything prior to when their clients recovered amounts from their claims and no fund or property was set aside for them to draw on at a time of their choosing. See Childs, 103 T.C. at 655. The GLAM did not raise any constructive receipt issues with respect to the Deferral Arrangement.

$450,000 plus accumulated investment income. Under the terms of the Deferral Arrangement, the attorney is an unsecured creditor of the third party and has no right to assign, accelerate, defer, change the terms or time of, or transfer or sell the future payment, and third party is the sole owner of the funds held in the trust. The attorney also was permitted to take a loan from the third party, which it did on August 1 in the amount of $200,000; in the event the attorney defaulted on the loan, the third party could reduce the future lump-sum payment by the unpaid principal and interest.

The Standard Fee Structure differs from the Deferral Arrangement in several significant respects. First, in a Standard Fee Structure where both the plaintiff and the attorney agree to structure, the attorney does not assign any rights to a third party; rather, the defendant assigns its obligations to the assignment company and the attorney merely consents to receiving its fee in installments, as the plaintiff receives each of its periodic payments pursuant to the qualified or non-qualified assignment. Second, a Standard Fee Structure does not involve the placement of the fee amount in a rabbi trust,[8] as is the case in the Deferral Arrangement. This difference is significant because a rabbi trust, unlike a typical assignment company, does not assume a payment obligation of the defendant; rather, it merely agrees to be the vehicle for making future payments to the attorney.

6. Why does the GLAM believe that the Deferral Arrangement it reviewed is problematic?

The GLAM takes the position that the Deferral Arrangement was an improper attempt by a taxpayer to divert income to a third party. At the outset, the GLAM (i) states that Deferral Arrangement is not covered by Childs and (ii) concludes that the full $450,000 is taxable to the attorney in the year the full cash settlement became payable to the plaintiff because that is when the attorney's right to receive its fully "funded" payment became absolute. This conclusion appears to be based on the IRS's belief that compensation income is never assignable to a third party; in other words, a taxpayer cannot *permanently shift* to another taxpayer any amount of compensation it has an absolute right to receive for services it has already performed by directing the compensation to someone (or something) else. The GLAM primarily relies on Lucas v. Earl, 281 U.S. 111 (1930), which held that a husband is taxable on compensation for services he performed, even though he had previously entered into a contract with his wife stating that she was entitled to half of it;[9] U.S. v. Bayse, 410 U.S. 441 (1973), which held that physicians were taxable on fee income earned by their partnership but placed in a retirement plan, the terms of which could result in amounts earned by some physicians being forfeited and subsequently paid to other physicians; and Kochansky v. C.I.R., 92 F3d 957 (9th Cir. 1996), which held that a contingent fee earned by an attorney was taxable to him, even though when the fee materialized, half of it was paid to his ex-wife pursuant to a divorce settlement.

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[8] A so-called "rabbi trust," which is authorized by Revenue Procedure 92-64, 1992-2 C.B. 422, is a grantor trust established to support the non-qualified deferred compensation benefits of an employer to its employees.

[9] For the tax years at issue in Earl (1920 and 1921), married couples could not file joint income tax returns as a single economic unit; hence, the outcome of Mr. Earl's assigning half of his compensation income to his wife is that, as a result of the graduated marginal tax rates, he would have paid less income tax. See Raymond v. U.S., 355 F3d 107, 111 n.7 (2d Cir. 2004).

For essentially the same reasons, the GLAM posits that the attorney received the economic benefit of the fee (under both the traditional economic benefit doctrine and Section 83 of the Code) in 2021—when the right to receive a sum certain of $450,000, in cash, from the insurer became absolute and unalterable (or, in technical terms, funded and nonforfeitable, and beyond the reach of creditors)—thus rendering the attorney immediately taxable on the amount.

In addition, the GLAM posits that the Deferral Arrangement failed the requirements of Section 409A of the Code (which establishes requirements for deferred compensation plans to be respected) and that the attorney was not eligible for the "independent contractor" exception under the Section 409A regulations. The GLAM concludes that this failure is yet another basis for denying deferral treatment.

7. Is the GLAM correct?

Several aspects of the GLAM's analysis appear to extend the scope of the authorities it discusses. Perhaps most importantly, the GLAM glosses over the distinction between a *deferral* of income and the *permanent shifting* of income to another taxpayer. This distinction is critical under existing law. In addition, the GLAM's discussion of the independent contractor exception to Section 409A does not apply to Standard Fee Structures.

Anticipatory Assignment of Income Doctrine

The anticipatory assignment of income doctrine does not apply where the same taxpayer—*i.e.*, the attorney—is the only taxpayer who WILL receive the amount that was directed to the third party. In this sense, the GLAM effectively treats a taxpayer's *deferral* of its own income as if it were *permanently shifting* that income to a different taxpayer, thereby reducing the taxpayer's tax liability.[10] As a technical point, the two are fundamentally different. The Lucas, Bayse, and Kochansky decisions involved either an outright exclusion of income (in Lucas, via the taxpayer's overt attempt to divert half his income for services to his wife, and in Kochansky, via the payment of half of the taxpayer's fee income to his ex-wife pursuant to a divorce settlement) or high likelihood that income would be shifted (in Bayse, via the possibility that a physician would separate employment prior to the vesting of his or her retirement benefits, which benefits would in turn be received by other physicians). The court in Bayse stated the principle this way: "The entity earning the income – whether a partnership or an individual taxpayer – cannot ***avoid*** taxation by entering into a contractual arrangement whereby that income is ***diverted*** to some other person or entity. Such arrangements…have frequently been held ineffective as a means of ***avoiding*** tax liability."[11] (Emphasis added.) Although the GLAM correctly notes that the court said in passing "the tax laws permit no such easy road to tax avoidance or deferment," the emphasized language makes clear that the court was only concerned about the exclusion of income from taxation through

[10] In Banks, the Supreme Court specifically described the anticipatory assignment of income doctrine as preventing the ***exclusion*** of income from taxation: "A taxpayer cannot ***exclude*** an economic gain from gross income by assigning the gain in advance to another party. The rationale for the so-called anticipatory assignment of income doctrine is the principle that gains should be taxed to those who earned them." 543 U.S. at 433 (emphasis added; internal citations and quotation marks omitted). Thus, anticipatory assignment of income doctrine is used to determine which of two taxpayers is taxable on a particular item of income.

[11] Bayse, 410 U.S. at 449-50.

the permanent diversion of that income to another taxpayer. However, in an arrangement where the taxpayer is certain to be taxed on the income—such as in a Standard Fee Structure—the risk of income shifting (and thus avoidance of taxation) does not exist.[12] The fact that a third party which assumes an obligation may be interjected into the arrangement does not change this.[13]

Economic Benefit/Section 83

Once the scope of the assignment of income doctrine is clarified, the GLAM's conclusions regarding the traditional economic benefit doctrine and Section 83 with respect to Standard Fee Structures necessarily falls away: if there is no anticipatory assignment and a valid deferral arrangement (be it a Standard Fee Structure or otherwise) is entered into prior to the time the plaintiff's recovery has materialized and before any payments by the defendant under the settlement agreement are due and payable, the attorney cannot have realized the economic benefit of the fee unless the assignment company sets aside funds for the payments.

In particular, the GLAM misconstrues the law in stating that the deferred amount paid to the attorney must be subject to the claims of the *client's* creditors in order to avoid the economic benefit doctrine or Section 83. First, none of the cases the GLAM relies on establish such a strict rule; to the contrary, they leave the point open—in Sproull, the court held that the taxpayer was taxable on the funds set aside for him in part because "No one else had an interest in or control over the moneys"[14]; in U.S. v. Drescher, the court noted that the contract at issue stated that "Neither this contract nor any payment hereunder may be assigned, and the contract and all payments shall be free from the claims of all creditors to the fullest extent permitted by law"[15]; and Our Country Home Enters. v. C.I.R., 145 T.C. 1 (2015) involved a split-dollar life insurance policy such that there were only two parties to the arrangement, an employer and an employee. Consistent with Sproull and Drescher, the Tax Court in Pulsifer v. C.I.R. stated that the amount must be "beyond the reach of the payor's [creditors]."[16] Essentially, the GLAM confuses a sufficient condition for a necessary one—while an amount still subject to the service recipient's creditors is *sufficient* to avoid the economic benefit doctrine (or Section 83), it is not *necessary*. Therefore, in a Standard Fee Structure where there is no anticipatory assignment of income and the periodic payments are subject to the general creditors of the assignment company, existing law is clear that the economic benefit doctrine does not apply.

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[12] Decisions from other courts have recognized this distinction. See, e.g., Oates v. C.I.R., 18 T.C. 570 (1952), aff'd 207 F.2d 711, 714 (7th Cir. 1953) (anticipatory assignment doctrine is not triggered where a taxpayer merely defers income; in such circumstances, the taxpayer has "made no assignment; he took no dominion over the accrued commissions other than to receive them in case installments"). Although the GLAM cites Oates, its analysis does not fully develop the decision's significance.

[13] See, e.g., Rev. Rul. 75-457, 1975-2 C.B. 196 (permitting the substitution of an obligor under an installment note without causing the acceleration of gain to the holder of the note).

[14] 16 T.C. at 248.

[15] 179 F.2d 863, 864 (2d Cir. 1950).

[16] 64 T.C. 245, 246 (1975) (emphasis added). In place of the word "creditors," the opinion uses the word "debtors." This almost certainly is a scrivener's error, as the payor's "debtors" would be parties that are indebted to the payor, not the other way around.

Revenue Ruling 2003-115 (which the GLAM does not cite) also supports the conclusion that the claims of other creditors is relevant to the economic benefit analysis. The ruling held that the economic benefit doctrine does not apply where the United States (the original obligor that established the September 11th Victim Compensation Fund) assigned to an assignment company its obligation to make periodic payments to victims. As in a Standard Fee Structure, (i) the assignment company assumed the original obligor's payment obligation, (ii) the assignment company acquired an annuity contract to fund its payment obligation, and (iii) the annuity contract was "subject to claims of the ***general creditors of the assignment company***." (Emphasis added.) The ruling notes that if a victim had realized the economic benefit of the lump sum paid to the assignment company, only the lump sum, and not the subsequently earned investment income, would be excluded from the victim's income under Section 104(a)(2) or Section 139(f) of the Code. This clearly is not the result under applicable law.

Section 409A

The GLAM's discussion of the independent contractor exception of Section 409A does not apply to Standard Fee Structures. Section 409A(a)(1), added to the Code in 2004, provides certain additional requirements for the deferral of income recognition in nonqualified deferred compensation arrangements. Under the provision, payments received under deferred compensation arrangements are currently includible in gross income unless such payments are either subject to a substantial risk of forfeiture or if the more stringent requirements of Section 409A(a)(2), (3) and (4), including requirements regarding the timing of the election to defer, are met. However, Treasury Regulations Section 1.409A-1(f)(2) generally provides that the regime of Section 409A does not apply under a plan between a service provider and a service recipient if the service provider is actively engaged in providing services other than as an employee and also provides significant services to two or more unrelated service recipients. A "plan" under Section 409A includes any arrangement or agreement that provides for the deferral of compensation (to the extent not otherwise excluded by the Code provision).

In both a Standard Fee Structure and the GLAM's Deferral Arrangement, the service recipient is the client and the service provider is the attorney. Banks states this outright.[17] However, in a Standard Fee Structure, both the plaintiff and the attorney are parties to any "plan," "agreement," or "arrangement" involving the deferral of the attorney's fee, and it can be presumed that the attorney provides services to more than one client. Consequently, Standard Fee Structures qualify for the independent contractor exception and are not governed by Section 409A.

8. What is the GLAM's impact?

The GLAM has not changed the fact that Standard Fee Structures are still valid under existing law. As explained previously, the GLAM does not have precedential effect: it is not binding on the IRS or on any particular taxpayer, the IRS is free to disregard it if its thinking on the issue changes, and it is not binding on any court. While the GLAM appears to question the validity of the Childs decision in at least two places (namely, by noting in footnotes that the Eleventh Circuit affirmed Childs without issuing a precedential opinion and that Banks may call

[17] See 543 U.S. at 436.

part of Childs into question[18]), the GLAM explicitly states that Childs "does not apply" to the Deferral Arrangement—in other words, despite briefly buzzing around it, the GLAM ultimately leaves Childs alone.[19]

The GLAM likely has implications for situations where an attorney seeks to defer its fee through an arrangement with a third party and a "rabbi trust" that are similar to the Deferral Arrangement insofar as it indicates that the IRS may challenge such arrangements in the future. We do not believe, however, that the GLAM or the analysis it presents poses a threat to the long-settled income tax treatment of a Standard Fee Structure.

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[18] In footnote 1 of the GLAM, the IRS states that "[b]ecause no written opinion is available for reference, it is not clear that the Eleventh Circuit affirmance of Childs would have much, if any, persuasive authority in the Eleventh Circuit or any of the other federal Circuit Courts of Appeals." However, there are many reasons why a court of appeals may not issue a precedential opinion, not the least of which is that it agrees with the lower court's reasoning and holding and sees no reason to supplement it. In footnote 11, the GLAM states that it "does not address" whether the Tax Court's treating the insurance companies as the "obligors" in Childs is "now incorrect" in light of Banks. However, Banks did not involve an assignment company or the timing of income received by a plaintiff and/or its attorney; rather, it held only that the plaintiff *is taxable* on all amounts received from the defendant (whether retained or paid by the attorney) in the first instance. In other words, Banks addresses "who" income is taxable to, not "when" it is taxable.

[19] The IRS has previously relied on Childs in both binding and nonbinding guidance. See, e.g., Priv. Ltr. Rul. 200836019; Field Serv. Adv. Mem. 200151003 (Jul. 5, 2001). As far as the authors are aware, the IRS has not sought to relitigate the issues presented in Childs in the almost thirty years since it was handed down.