



Florida NATP

SPRING 2009

Letter From the President

So, here it is the height of crunch time and the Florida Chapter of NATP is hitting you up with a Newsletter! What are they thinking?

Truth be told – only about you. There are a two critical items we need to update you on.

We're not sure how many of you have seen clients that have had, or told you about, their payment from the Engle Settlement Fund. This payment is the result of a settlement with the tobacco industry resulting from a class action lawsuit originating with a 1998 trial that found the tobacco industry guilty of causing a multitude of health issues. The Florida Supreme Court rendered their opinion and that cleared the way, in 2008, for the fund to pay out \$ 9,000 each to roughly 45,000 Florida residents. There will be a second pay out in 2009, currently estimated at \$ 4,000, to these same 45,000 individuals

Because of the size of the settlement, over \$ 600,000,000.00, and the corresponding potential tax revenue, we would expect that the IRS is well aware of these payments. Due to the nature of the settlement the recipient list is probably also available to the IRS.

The process and timing by which the funds were paid and the ultimate court decisions on this court case make understanding the tax consequences of the payment less than straightforward. We have been working with NATP tax research to identify the proper tax treatment for these funds. Apparently a few of you have also contacted them about this issue. NATP's Sara Turner has summarized their research in an article on pages 3 and 4 of this newsletter.

The next critical point is our upcoming educational program.

As you know the IRS, in an effort to "clean up" our profession, has instituted tough new regulations and associated fines on tax preparers. These regulations expand the work we do subject to preparer penalties to virtually the entire gamut of tax forms and returns. They quadruple the fines for preparers and have added additional substantial fines that can be levied against the preparers' firm. All of this effort to force out the ner-do-wells that do not prepare returns in accordance with existing regulations. (So, why the IRS thinks they'll pay attention to the new regulations is unclear – but the rest of us are saddled with them).

Your only defense against this is to be on top of your game in all tax related areas. And continuing education is the vehicle to keep you there. Even if you are not required to get continuing education to meet regulatory requirements you can no longer afford not to.

Your Florida Chapter puts on full day educational programs in the spring and fall. To pass the benefits of membership in NATP on to you, our charges for these programs are significantly below our costs. Please take a minute to check out our spring program and sign up early.

Hoping to see you at our spring conference,

Ken Dowdall

President

**FLORIDA CHAPTER OF NATP
2009 SPRING CONFERENCE, MAY 22, 2009**

**Holiday Inn, 8214 Universal Blvd., Orlando
407-581-9001**

Date and Time: May 22, 2008 at 9:00 AM – 4:00 PM

8:15 – 9:00 am	Registration and Continental Breakfast and Networking
9:00 – 9:50 am	Schedule C
10:00 – 10:50 am	Schedule C
11:00 – 11:50 am	Schedule C
11:50 AM – 1:00 PM	<i>Lunch on your own</i>
1:30 – 1:50 pm	8824
2:00 – 2:50 pm	Engel Settlement Case Discussion with Panel
2:50 – 3:00 pm	Break with Cookies and Networking
3:00 - 3:50 pm	Engel Settlement Case Discussion with Panel

Earn 6 CPE credits

Cost: Members \$85.00 and Non-members \$105.00 and includes materials, continental breakfast and afternoon break (lunch not included).

*Sleeping Room Rates are \$99.00 (plus tax) a night and are limited,
call the hotel to reserve your room now at 407-581-9001!*

Registration:

Name: _____ **Member ID:** _____

Address: _____

City: _____ **Zip code:** _____

Phone: _____ **E-mail:** _____

Please send your registration form with checks made payable to Florida NATP to:

Florida Chapter of NATP, 13015 Spring Hill Dr., Spring Hill, FL 34609

By Credit Card: Amex____ **M/C** _____ **Visa:** _____

Account number: _____ **Exp:** _____ **Panel Code:** _____

Signature: _____

If paying with credit card the registration can be faxed to: 352-686-0215 or E-mailed to johnflnatp@earthlink.net.

All requests for refunds of the registration fee must be made in writing to the Chapter Treasurer by the close of the business on May 15, 2009. The request will be honored after deducting a \$25.00 administration fee. Refunds will not be honored if received after May 15, 2009 close of business. All requests should be mailed to: Stuart Miller, Treasurer, FL Chapter of NATP, 18551 N. Miami Ave, Miami, FL 33169-4526.

The Florida Board has identified an issue that affects all of our State. In the President's Letter, Ken mentioned the Engle Settlement Fund. Since this issue affect 45,000 people from our State, we felt that some explanation was needed. Our team worked with National and National's Sara Turner has written an explanation for our members. We understand it is a busy time of year, but our commitment to you is to make sure you get the full benefits of your NATP membership and this is just one of them. Please take the time to read this article below because it could affect some of your clients now and the next year. This topic will also be discussed at the Spring Conference on May 22, 2009 in Orlando in a panel, so it will be interactive. We are looking out for you!

ENGLE SETTLEMENT FUND

SARA TURNER, JD, CPA

In Florida, distributions have been made to over 45,000 people who were associated with a legal action against the major tobacco companies relating to injuries sustained in the past and present from cigarette smoking. In 2008, the first distribution was made in an amount of \$9,000 to each claimant in the legal action. In 2009, a second distribution is scheduled to be made. The distributions come from a settlement fund that was set up during one of the phases in the litigation and does not represent a jury award. The original verdict and jury award from the initial case was overturned on appeal and remanded back to the trial court but both sides decided to just settle the case rather than assume the costs and risks associated with litigation.

The trustee of the fund was ordered by the court not to issue any Forms 1099-MISC to the recipients of the distribution made in 2008 and many tax return preparers are left with unanswered questions. Are the amounts received taxable to the recipients for federal income tax purposes? Is it not taxable since no one received Form 1099-MISC? Is it partially or completely taxable? Is any of the payment considered punitive damages or interest?

Because this type of settlement fund is considered to be a grantor trust for federal income tax purposes, the fund does not file a tax return nor does it report any distributions to the claimants. However, the taxability of the payments does not relate to whether distributions are reported on Forms 1099-MISC. It depends on what the payments are for.

At this point, background on the settlement fund may be helpful. The trial court approved a verdict against the defendants and awarded a huge judgment that included \$142 billion in punitive damages alone. On appeal the verdict was nullified and the case lost its status as a class action. Rather than try to get the Supreme Court to reinstate the verdict, the plaintiffs decided to settle with defendants rather than risk losing on appeal or trying the case over at the trial court level with individual plaintiff cases.

This case is interesting with the major legal maneuvering that was done on both sides. Apparently the plaintiff's side determined that given the risks inherent in litigation, accepting the proposed settlement of \$600 million was better than risking a loss of everything in an appeal. Class certification in class action litigation is very difficult- especially in a case like this where the issue relates to a product (cigarettes) and each individual plaintiff has very differing individual circumstances. For defendants, the risk of another round of trial court litigation by individual plaintiffs and the risk of even higher punitive damages motivated their decision to settle.

Trustees in this situation who are overseeing the distribution of the funds would be breaching their fiduciary duty if they tried to advise the plaintiffs of the taxability of these settlement dollars. They are not in a position to be familiar with each claimant's tax situation. For example, some of the plaintiffs have had medical problems and others might not have yet, but may in the future. Since

amounts received for physical injury or sickness are excludable from tax under section 104, the question of taxability would seem irrelevant since all of the settlement dollars are supposed to be related to the physical harm caused by smoking. In addition, only a jury can award punitive damages and since this case was settled, none of the settlement could be for punitive damages. Assuming then that the fund is all related to health issues- past, present, and possibly future- they would all be related to physical injury within the meaning of section 104.

So why then would there be any question as to taxability of these amounts? Under the tax benefit rule, if taxpayers receive a tax benefit for an expense deduction and the expense is later reimbursed, the reimbursement would be taxable to the recipient. For example, it is quite possible that some of the plaintiffs that received money from the settlement fund have deducted as medical expenses amounts that they paid for medical expenses related to smoking-related health problems. Since they are now being reimbursed via the settlement fund, they would have to include it in income to the extent they received a tax benefit for the medical expense deduction. For individuals who never claimed medical expenses on Schedule A or only received settlement dollars because they might have future medical expenses, they have never received a tax benefit for deductible medical expenses so they would not have income as a result of having received this money. The trustee of the settlement fund would have no way of knowing which plaintiffs have received tax benefits in the past for deducting medical expenses and would therefore not be able to give tax advice to plaintiffs in this regard. For spouses of smokers who have died and are receiving payments, you would again need to know whether any medical expenses were deducted while the smoker was living that related to health problems from smoking. Again, if there were expenses deducted, the tax benefit rule requires income inclusion to the extent that a tax benefit was derived from the expense. If not, this would not be taxable to the spouse because no past benefit was derived from medical expenses and even though their spouse is now dead, the funds still represent payments on account of physical injury.

With regard to the possibility of interest income, there is probably not an interest element to the payments. If this were a court awarded judgment and interest accrued while the funds were waiting to be distributed, there would be interest since state law provides a statutory interest rate for judgments and it usually starts accruing at the time a legal claim is initiated (rather than when the judgment is awarded). However, the \$600 million fund is from a settlement rather than a court verdict. The interest that accrued between the time the settlement was agreed to and the funds were actually distributed would be a matter of Florida law so you would need to find that out to determine if there is any interest owed to them and if so, how much each plaintiff is receiving.

As you can see, the answers to these questions appear "cut and dried" in terms of the treatment of funds received from this settlement fund. The tax benefit rule, however, puts a level of complexity in the determination of whether any of the distribution is taxable or not. The tax professional will have to be diligent in examining open returns and visiting with clients to determine whether any tax benefit with respect to medical expenses was experienced in the past. Remember those recently passed penalties for understating tax liabilities that have been the subject of much attention this past year. Be careful out there. Document, document, document!

NATP's research department is standing by ready to help you with any further questions you may have regarding this or any other topic.

Sara Turner, JD, CPA
NATP Research Specialist
Tax Knowledge Center



MARK YOUR CALENDARS
UPCOMING NATP EVENTS

Florida Spring Conference - Orlando, Florida

May 22, 2009

National Conference & Expo - Reno, Nevada

July 20-23, 2009

Florida Fall Conference and 20th Anniversary Celebration

Orlando, Florida

October 22-23, 2009



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13015 Spring Hill Dr.
Spring Hill, Florida 34609