

Gingrich explores tax deduction on

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\$300,000 owed to House

At issue is whether the payment is a fine or penalty. The speaker says it isn't. Others aren't so certain.

By Rob Wells
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WASHINGTON — House Speaker Newt Gingrich is exploring whether he can take a tax deduction for the \$300,000 he must pay to settle his House ethics case.

"The tax attorneys that I've talked to indicated that it's deductible," Gingrich's attorney, Randy Evans, said in an interview. Asked if Gingrich had decided to take that route, he said: "We have not yet. . . . We have looked into it."

Last week, Gingrich announced he had arranged for a loan from former GOP presidential candidate Bob Dole to cover the \$300,000 he is to pay to cover costs of the inquiry into his fund-raising activities. He had admitted violating House rules and received a reprimand in the case.

Evans said he and Gingrich plan to investigate the tax-deduction possibility further after drafting the loan documents and presenting the agreement to the House ethics committee for approval.

Some corporate tax accountants say the Georgia Republican could have a case to deduct the payment as a business expense. Others say the case is far from clear.

The tax code permits people to deduct expenses related to their professions — if the money is not designated to pay a fine or a penalty. Thus, the question could turn on how the government defines the payment.

Gingrich has been insistent in describing the \$300,000 as a reimbursement of costs of the ethics panel's investigation, not a penalty or a fine. While there is some dispute over the issue, the Jan. 17 ethics committee report refers to the payment as a "sanction."

The report quotes special counsel James Cole as saying the "appropriate sanction for the conduct . . . is a

reprimand and the payment of \$300,000 toward the cost of the preliminary inquiry." The report says Gingrich and his attorney agreed to this language.

Gingrich and his allies have their own interpretation of the report. Lawyer Evans pointed to comments of Rep. Steven H. Schiff (R., N.M.), who said during Gingrich's sanc-

tions hearing in January: "We thought of a fine as a penalty to deprive somebody of a personal gain. But Mr. Gingrich never gained personally from this effort."

Rep. Porter J. Goss (R., Fla.), who was chairman of the investigative subcommittee in the case, said, "You could argue either way" over whether the payment was a penalty.

Pointing out the ethics committee was silent on this issue, Goss said that in his view "it was not meant as a penalty. It was meant as a reimbursement to taxpayers" for incorrect in-

formation supplied by Gingrich.

"The sanction was the reprimand" voted by the House, Goss said.

Frances Hill, a professor at the University of Miami Law School, said it wasn't clear that a politician could deduct such a payment as an ordinary expense. Hill said there's also a general precedent in common law that says tax deductions aren't available for individuals who have done something contrary to public policy.

"We're in a statutory black hole," Hill said, but added that the question was a close one.

"I don't think it's frivolous or inappropriate for Newt's lawyers to be thinking about this," Hill said.

James Wittenbach, an accounting professor at Notre Dame, said the Gingrich case wasn't "a clear-cut scenario. . . . If he can show it's related to his trade or business of being a politician, there's a possibility of it being deductible."

Thomas P. Ochsenschlager, a partner at the accounting firm Grant Thornton LLP in Washington, said he believed Gingrich "has a pretty good chance at it."

"The very fact it says legal fees and he reimburses it, the immediate reaction is it's a reimbursed business expense to protect his business reputation," Ochsenschlager said. But he cautioned, "It's not a slam dunk."

If the payment were deemed deductible, Gingrich could take the tax deduction for the tax year in which he paid the government — even if the payment was made with borrowed money, said David Roberts, an accounting professor at DePaul University. It's unclear if he could deduct interest, he added.