



The Tax Lawyer

Five More True Tales From A Tax Lawyer

Robert W. Wood, 08.30.10, 4:40 PM ET

Suggesting what tax lawyers do is important, I recently told [five real tax lawyer tales](#). Tax lawyers have plenty of legal moxie and panache, as five more examples show.

1. Tilting at Valuation Windmills.

If you have a loss from a sudden event (think storm or earthquake), you can deduct a casualty loss. And "sudden" is flexible--even termite damage can qualify. The murder of Nicole Brown Simpson and Ronald Goldman was sudden and unexpected, but was what happened to that halcyon neighborhood sudden? A prominent surgeon a few doors from O.J.'s mansion thought so.

Overnight, his swank and fiercely private Brentwood Park haven became a circus with 24/7 news teams, litter, boom lights, paparazzi and gawkers. An enclave inhabited by Whoopi Goldberg, Ted Danson and other privacy revering celebrities was no better than Beverly Hills! The doctor had to erect a perimeter fence, ramp up security, and contend with debris. Figuring his luxury home's value dropped 30%, he claimed it as a casualty loss. The Internal Revenue Service said no.

But I've had more success with wind farms blanketing hillsides. If it costs \$500,000 to build a windmill, but its market value is only \$50,000, how does the local county assess property taxes? It turns out there's considerable variation, and if you're a big wind farm operator, property taxes can be staggering. I helped one operator with a pile of tax bills by presenting historical cost data, market analyses and income streams from power sale contracts. The result was significantly lower property taxes, which should be good for energy prices too.

2. My Dog Ate My Homework.

A one-page "S" election converts a corporation into an "S corporation" taxed as a pass-through. Corporations without S elections face double taxation, one levied on corporate income and the other on shareholders when they receive dividends. So an S election is a corporate tax get-out-of-jail-free card. What happens if you *thought* your S election was filed 15 years ago, but it turns out your dog ate it (or more true to our story, a spurned former girlfriend threw it away)?

Sam and Sally discovered this toxic tax problem when they were about to sell their company. Normally I'd say they were out of luck, but we had testimony the S election was prepared on time and that their lawyer--Sam's former girlfriend--was *supposed* to file it. Plus, the company's S corporation tax returns for 15 years proved Sam and Sally *thought* it was filed. This true story was compelling (and downright sizzling) enough that the IRS made an unheard of exception and made the S election retroactive!

3. Employee or Contractor?

Having employees can trigger a litany of federal and state tax withholding antidiscrimination, health care, pension, worker's compensation and unemployment insurance obligations. You avoid these entanglements by hiring independent contractors, or do you? Labels aren't enough, and the IRS, state tax authorities, labor departments, and insurance companies scrutinize workers' status. Even workers who have accepted pay as independent contractors can *still* sue claiming they are employees! Tax lawyers feature prominently in these messes.

I once defended a night club whose exotic dancers controlled their own schedules, split tips with the house, "rented" stage time, and supplied their own outfits and "paraphernalia." They might not fit your classic idea of independent contractors, but the IRS ruled they qualified. My job may be to defend independent contractors arrangements or attack them. From drivers to jockeys, couriers to facialists, mercenaries to programmers, and newsboys to scientists, the work is fun and there's no one-size-fits-all solution. *How* you do something matters, especially in the tax world.

4. Hobby Horse.

If you lose money in business it's deductible against other income, so the government ends up covering about 40% of your losses. In contrast, you pay for 100% of your hobby. If you spend \$30,000 on a race car this year, your cost is \$30,000. But if it is a *business*, your cost drops to \$18,000 after tax. If you lose money more than three years out of five, you may have a hard time convincing the IRS you're in business and not a hobby.

Yet even some consistent losers can produce deductions. The "hobby loss" appellation can arise anywhere, but prime candidates are part-time farmers, horse operations, and race car drivers. I've seen dog shows, fishing consultants, sports agents, travel book writers, cultural anthropologists, stamp collectors, whippet breeders, recipe inventors, even big game hunters. Tax lawyers are armchair travelers, defending quirky clients against the IRS.

A tax lawyer will tell you to draw up a business plan, keep good books, and behave in a business-like way. These admonitions might decrease your enjoyment, but the IRS even considers how much you *enjoy* the activity. (For more about hobby losses, [click here](#).)

5. Suing Over Taxes.

Private lawsuits raise lots of tax issues for plaintiffs, defendants and their lawyers. And they all call their tax lawyer. When one employee and company settled employment litigation, the company filed IRS Forms 1099 reporting the payment. (For all about Forms 1099, [click here](#).) Miffed, the employee sued the company again, this time over tax reporting. The IRS refused to intervene, leaving it to the parties to resolve. That meant tax lawyers were at the eye of the storm.

Similarly, one father and son sued each other *five* times over their \$100 million family company. How the company distributed profits and was taxed was key. The trial lawyers in this drama got all the glory and headlines, but tax lawyers had to resolve it.

Conclusion

Not every tax matter is quirky or interesting, but you'd be surprised how many are. Tax considerations are everywhere, probably more so today than ever before. In fact, there's a prominent thread in the tax law that arranging your affairs to pay fewer taxes is perfectly appropriate. And speaking of appropriate, tax lawyers deserve more respect!

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