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THE TAX LAWYER

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Helped By WikiLeaks And Julian Assange, Edward Snowden Needs Perry Mason

Whether you revile [Edward Snowden](#) or idolize him, he needs a good lawyer. Snowden revealed National Security Agency phone record mining from telephone carriers. Plus, he leaked the NSA's harvesting from Apple and Google of data on foreign suspects. He fled to Hong Kong but [could be extradited](#). The stakes go up now that he has left [Hong Kong and flown to Moscow](#).



In this handout photo provided by The Guardian, Edward Snowden speaks during an interview in Hong Kong. (Image credit: Getty Images via @daylife)

Where's he really headed? See [With WikiLeaks' Help, NSA Leaker Snowden Seeks Asylum In Ecuador Via Moscow](#). Perhaps he'll be feted in Russia like the previously French actor [Gérard Depardieu](#) who got a Putin-hug. See [New 'Tax Residence' Means Moving \(Just Ask Gerard Depardieu\)](#). You have to hand it to Mr. Snowden for capitalizing on his 15 minutes, and for having curried the interest of a diverse group of acolytes.

Since a legal team seems a given, that will cost. Fortunately, progressives are raising money. See [Progressives Raise Money for NSA Leaker Snowden's Legal Defense](#). It's not yet clear that Snowden won't have to pay for lawyers or

if he does pay, how the legal fees will be treated. There's even debate whether Snowden is a *bona fide* whistleblower.

That threshold makes a big difference how his legal fees get treated under the law. He may not be a whistleblower since the NSA programs may be legal and authorized by Congress under the Patriot Act. But that debate ensues. If Mr. Snowden runs up legal bills as seems inevitable, he'll face these rules:

You Can't Deduct Personal Legal Bills. Personal means nondeductible, so the least desirable legal expenses are those of a purely personal nature. Was this all personal for Snowden, patriotic, perhaps even profit driven? It's hard to tell, but some legal matters of a personal nature can impact business or investment, making some deductible. See [Stars and Their Legal Fees: Another Red Carpet?](#)

Legal Fees in Employment and Whistleblower Cases Are Fully Deductible. Most employment settlements are either wages (on a Form [W-2](#)) or non-wage income (on a Form [1099](#)). If your lawyer takes 40%, you still must include 100% in your income. However, you can deduct the legal fees "above-the-line," before reaching adjusted gross income. That means you have no tax—no regular tax and no AMT—on the legal fees. See [More on Attorney Fees Post-Banks](#).

Fees for Tax Advice Are Deductible. These are always deductible, whether for tax planning or disputes. Any tax qualifies, including income, estate, gift, property, sales, use and excise tax. Plus, despite the general rule on personal legal fees, tax fees are deductible even if the taxes are purely personal. See [10 Things To Know About Taxes On Damages](#).

Business Legal Fees Are Deductible. Legal fees in a trade or business are deductible. However, some fees must be capitalized and added to the basis of assets.

Investment Legal Fees Are Miscellaneous Itemized Deductions. If legal expenses don't relate to your business but only to investments, you can still deduct them but usually only as a miscellaneous itemized deduction. That means a 2% threshold, phase-outs and (worst of all) Alternative Minimum Tax ([AMT](#)). See [AMT Problems For Attorney Fees Remain](#). Some investment legal fees must be capitalized to the basis of the assets (such as legal fees for the purchase of investment property).

Contingent Lawyer's Fees Are Tricky. If you recover \$1 million in a lawsuit and owe 40% to your contingent fee lawyer, you might assume you have \$600,000 of income. How could you ***possibly*** have to pay tax on the full \$1 million? In [*Commissioner v. Banks*](#), the U.S. Supreme Court ruled you've got income when your lawyer is paid. That means you need to worry about how to deduct the fees.

In a pure personal physical injury case (say an auto accident or slip-and-fall), the entire recovery is tax-free so it doesn't matter whether you consider the recovery including legal fees or the net. Unfortunately, there is often confusion about what is tax-free.

Bottom Line? Snowden is likely to have to pay some fees himself even if he has a fund. He might even face tax questioning about whether having someone else pay his legal fees creates income to him. The IRS has occasionally taken that position. Some even argued that should have been applied to Bill Clinton!

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.