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Jussie Smollett Faces Legal Bills, But Can He Write Them Off His Taxes?

Allegations that [Jussie Smollett paid \\$3,500 to stage his attack, hoping to promote his career](#) have caused considerable controversy already. He is only accused at this point, and there are many takes on the story, which probably doesn't make you think about taxes. Yet lawyers can be expensive, and sooner or later, people paying for lawyers usually think about taxes. After all, tax deductions can whittle a high legal bill down to size, or at least make it somewhat less painful. That's where the specific allegations against Mr. Smollett might have a kind of slick tax connection. After all, prosecutors claim that Mr. Smollett's attack was staged *to advance his career*. Does that make this whole thing a business expense?

The cost of even high-priced lawyers can be fully deductible, depending on the circumstances. The hourly rate alone is not the issue, but rather the *nature* of the matter. Personal legal fees are non-deductible, but legal fees that help your business are fair game. Unless you are running a business, most legal fees aren't deductible. Expenses must be [ordinary, necessary and reasonable](#) to satisfy the IRS, but those standards aren't actually too tough. A more delicate question is whether something is really business or not. If it is, even criminal charges don't necessarily prevent tax deductions. Remember [John Edwards' \\$2M in legal fees](#)? The charges in his criminal trial related to his conduct in his chosen trade or business: politics!



Mr. Smollett is facing these charges personally, and the IRS would probably say they are all personal. Still, the direct allegations he is facing focus on a claimed ruse, allegedly *to advance his business*. Dear IRS, that sure sounds business related, doesn't it? If the charges don't relate to your business or profession, some people try to claim deductions based on preserving their reputation. In the show business world, remember [Winona Ryder's](#) shoplifting, [Robert Blake's](#) murder charges, supermodel [Naomi Campbell's](#) phone-throwing, and [Lindsay Lohan's](#) DUIs, probation violations, and alleged theft? Remember, even [Martha Stewart](#) paid huge legal fees on an obstruction of justice charge.

But perhaps the biggest legal fees were paid by Michael Jackson leading up to being acquitted on child molestation charges. His legal expenses were as high as \$20 million, and it's hard to see how he could deduct them. Ironically, though, Dr. Conrad Murray, who was convicted in connection with Jackson's death, could probably deduct *his* legal fees as a business expense. The legal expenses related to his profession, even if he ended up being called the [Michael Jackson Death Doctor](#).

For decades, there was a middle category between personal legal fees (not deductible) and business (deductible). The middle category was *investment* legal fees, and it was a huge one. But under the tax reform law passed at the very end of 2017, now there's a [new tax on lawsuit settlements, since legal fees can't be deducted](#). Yes, even lawsuits that unquestionably have a profit motive

can fail to qualify for a tax deduction for the legal fees. For a case in point, see [how IRS taxes killed plaintiff's \\$289M Monsanto weedkiller verdict](#). It's just one of the strange parts of how legal [settlement awards fare post tax reform](#).

Still, if Mr. Smollett can make the business connection stick, the sheer size of his bills may not matter. Lawyers are expensive, and the IRS knows that. Still, some bills are just too big and considered lavish. A lavish business [expense](#) is significantly higher than what is considered reasonable. Say a company pays triple the market rate for something. That amount may be a lavish or extravagant expense. That makes the portion deemed lavish by the IRS not [tax deductible](#). But high-end doesn't mean unreasonable. The topic comes up most with entertainment expenses, as in [extravagant meals](#). When someone spent \$3.46M for lunch with Warren Buffett, some wondered if [Warren Buffett's \\$3.46M lunch should be deductible](#).

This is not legal advice. For tax alerts or tax advice, email me at Wood@WoodLLP.com.