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Blake Lively Harassment Dismissal Saves Justin Baldoni Taxes



When the [judge dismissed Blake Lively's sexual harassment case against Justin Baldoni](#), he deleted most of her claims against her *It Ends With Us* co-star and director Justin Baldoni. Among other things, [her lawsuit](#) alleged that the movie was supposed to conform to requirements including “no more showing nude videos or images of women to Blake, no more mention of Baldoni’s alleged previous ‘pornography addiction,’ no more discussions about sexual conquests in front of Blake and others, no further mentions of cast and crew’s genitalia, no more inquiries about Blake’s weight, and no further mention of Blake’s dead father.”

Sexual Harassment Claim Dismissed

Even so, the judge said the sexual harassment claims were out, since Lively was an independent contractor rather than an employee. Lively’s thirteen claim lawsuit is now down to three claims, but Lively now heads to trial scheduled for May. Yet the dismissal of her sexual harassment claims are notable, and should save Baldoni a sizable amount of taxes. There will inevitably be tax issues if any money changes hands, for both Lively and Baldoni.

Businesses regularly deduct settlements and legal fees, and Baldoni is certainly in business. However, there are tight restrictions on being able to deduct claims and legal fees relating to sexual harassment. Let’s take Lively first.

Blake Lively Taxes

If Lively recovers any money, most lawsuit settlements are taxable. She claims damages for harm to her reputation and for emotional distress. On the bright side, some tax cases support viewing damage to professional reputation and

damage to one's ability to conduct their business as [capital gain](#) rather than ordinary income. Paying tax at capital gain rates is a lot better than paying tax on ordinary income. But how about her emotional distress damages?

What About Tax Free Damages?

It might be difficult for Lively to claim anything as tax free. Compensatory damages for personal *physical* injuries are tax free under [Section 104 of the tax code](#). Emotional distress damages are taxable, unless they arise from physical injury or physical sickness. But what is physical isn't clear, and tax issues arise in nearly every sexual harassment settlement. Many sexual harassment plaintiffs have a hard time showing enough demonstrably physical injuries to make their settlement tax free.

In some cases, taxes can apply even if there is groping or other assaults. However, a pending [tax bill would exempt sex abuse and assault settlements](#). In the meantime, some plaintiffs claim the harassment gave them post-traumatic stress disorder, and [PTSD is arguably physical](#) for tax purposes.

Baldoni's Tax Savings

The dismissal of the the sexual harassment claims could prove to be a tax win for Baldoni, since harassers face harsher tax treatment. Since 2018, the tax law denies tax deductions for confidential settlements in sexual harassment and sex abuse cases. It is sometimes called the Harvey Weinstein tax, and related legal fees are also not deductible. The legal fees alone can be significant, so the denial of a legal fee deduction can sting.

Businesses are used to deducting legal fees without a problem. The overwhelming majority of legal settlement agreements have a confidentiality

or nondisclosure provision. The idea of the provision is to deny tax deductions for settlement payments and legal fees in sexual harassment or abuse cases, if there is a nondisclosure agreement. Section 162 of the tax code generally lists business expenses that *are* tax deductible. However, now Section 162(q) provides:

(q) PAYMENTS RELATED TO SEXUAL HARASSMENT AND SEXUAL ABUSE. — No deduction shall be allowed under this chapter for — (1) any settlement or payment related to sexual harassment or sexual abuse if such settlement or payment is subject to a nondisclosure agreement, or (2) attorney’s fees related to such a settlement or payment.

In some cases, plaintiff and defendant agree on a particular tax allocation so the defendant can still try to [write off most of a confidential sexual harassment settlement](#). Other defendants assemble a separate “confidentiality preference agreement” that they hope might sidestep the Weinstein tax deduction limits.