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THE TAX LAWYER

Despite Trump Tax Returns, He Is Right To Repeal AMT

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President Trump's [2005 tax return leak](#) has prompted some to say that he should pay much more. In contrast, some say he needs a better tax lawyer. But critics also say that he would have paid far less if the [alternative minimum tax \(AMT\)](#) were repealed, as the President has proposed. That may be true, but it doesn't mean he is wrong to repeal it. Many taxpayers who get stuck paying AMT are not wealthy. It has long been clear that the reach of the AMT has expanded—and continues to expand—dramatically. Back in 2012, one IRS official warned that 100 million of us soon would pay AMT. In 2012, Acting Commissioner of the IRS Steven Miller made the dire warning in this [2012 letter](#), warning that [30 million](#) taxpayers could face AMT.

The AMT can drive up your tax bill much more quickly—and arbitrarily—than a tax rate increase. For many individuals, AMT is considerably more important than the endless debates about top tax rates. The AMT was enacted in 1969 to catch fat cats claiming large and seemingly obscure special kinds of tax deductions. As the years rolled by, the AMT took on a life of its own. Today, the AMT has grown to cover almost everything. And predicting how AMT works isn't easy. You cannot eyeball your exposure. You compute regular tax and AMT. Then, you pay whichever is *higher*. It truly is an *alternative* tax system.



U.S. President Donald J. Trump speaks during the Friends of Ireland Luncheon at the U.S Capitol in Washington, D.C., U.S.

A Congressional Research Service [report](#) (RL30149) also made dire predictions. According to the New York Times, the [AMT is no one's favorite](#). That may be the understatement of the year. The 4.7 million filers paying AMT in 2016 may think so. The Times cites [calculations](#) from the Tax Policy Center that 30 percent of households earning \$200,000 to \$500,000 in 2016 pay AMT. So do 63 percent of those earning \$500,000 to \$1 million. But only a fifth of the total earn more than \$1 million and face the minimum tax.

AMT can sneak up on you and bite in unexpected ways. For example, one perennial problem with lawsuit recoveries is the tax treatment of attorney fees. Say you are yelled at by a City employee, and sue the City for intentional infliction of emotional distress. Your contingent fee lawyer will receive 40%. When the City offers \$100,000, you accept. Do you have \$100,000 of income or only \$60,000?

Usually \$100,000, which means you must figure a way to deduct the \$40,000 paid to your lawyer. Miscellaneous itemized deductions for legal fees are the norm. They are deductible only to the extent they exceed 2% of your adjusted gross income (meaning you can't deduct that 2%). Plus, miscellaneous itemized deductions are subject to phase-outs at certain income levels. These several limitations reduce your deduction so you're actually paying tax on money paid directly to your lawyer.

Most insidiously, though, the legal fees are not deductible—at all—for purposes of the AMT. Once you've computed your regular tax due, you still must determine your Alternative Minimum Taxable Income (AMTI) by adding back certain tax preference items—like legal fees—and then applying a 28% rate. Your AMT is the amount by which these alternative taxes exceed your regular tax.

If much of your income is offset by deductions—like legal fee deductions—you'll often pay AMT. It's hard (if not impossible) to estimate AMT liability, so you have to run the numbers. And the bigger the lawsuit recovery and legal fees, the bigger the AMT problem. If you run examples with a \$1 million or \$10 million recovery and with higher legal fees, say 50%, the AMT can be downright shocking. Costs (travel, court fees, transcripts, copies, expert fees, jury consultants) are treated the same as legal fees, so legal fees can (combined with costs) climb to 70% or 80% in some cases. Some clients actually *lose* money after tax by winning a lawsuit, as occurred in [Spina v. Forest Preserve Dist. of Cook County](#).

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