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THE TAX LAWYER

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### Ebola Confinement Lawsuits? You Bet

The controversy over the propriety and the legality of quarantines has become heated, with questions whether the [feds can slap you in quarantine](#). The law isn't exactly up to date. When New Jersey's Gov. Chris Christie ordered returning aid nurse Ms. Kaci Hickox to be quarantined for 21-days, Mr. Christie surely wanted to best New York. The latter was atwitter over the doctor who returned and used the subway, bowling alley and numerous other public places before taking to his bed.

When she returned from her Doctors Without Borders stint in West Africa, she was isolated, something she [described](#) as scary, disorganized, even cruel. Her lawsuit may have been averted now that she was [released this morning](#). But the legal question remains: is this a civil rights violation? It may come down to the reasonableness of the action and its intent. Some claim that any such quarantine is unwarranted for someone with no symptoms who could not [accidentally infect someone else](#).

Hickox [told](#) CNN she isn't ill. "To put me in prison," she told CNN, "is just inhumane." Being ordered to stay home plays better in New York, New Jersey or anywhere. Still, it is not too far fetched to think that lawsuits will be brought by some during the waves of Ebola fear. Legal claims for false imprisonment can result in significant damages if the imprisonment is unlawful.



*This undated image provided by University of Texas at Arlington shows Kaci Hickox. (AP Photo/University of Texas at Arlington)*

In some cases, even lawful imprisonment can go awry. Consider Daniel Chong, a 25-year old UC San Diego student who settled his suit against the DEA for \$4.1M. Mr. Chong was jailed and left unmonitored in a cell for [five days](#). Chong and eight others were detained April 21, 2012 after DEA agents raided a house in San Diego. The feds seized ecstasy, marijuana, prescription medications, hallucinogenic mushrooms, guns and ammunition.

But it was April 25th before an agent opened the steel door and found Chong still handcuffed in his cell. Mr. Chong was never even formally arrested or charged. He lost 15 pounds and suffered [post-traumatic stress disorder](#). Although Mr. Chong got a nice settlement, there is some question whether the IRS can collect too.

Prisoners may be [exonerated based on DNA](#) evidence or simply released like Mr. Chong. Exonerees may receive compensation via a lawsuit or by statute. Nearly 300 DNA exonerees have served an average of 13.5 years in prison, ranging from less than one year to 35 years. Given the horrors, you might assume taxes would not be added to them, but the tax issues have been surprisingly cloudy.

In the 1950s and 1960s, the IRS ruled prisoners of war, civilian internees and holocaust survivors received tax-free money for their loss of liberty. In 2007, the IRS did away with these rulings and began asking whether a wrongfully jailed person was physically injured/sick while jailed. If so, the damages are tax-free, just like more garden variety personal physical injury recoveries. What if an exoneree isn't physically injured?

In [Chief Counsel Advice 201045023](#), the IRS said a recovery was tax-free, but the IRS sidestepped whether being unlawfully incarcerated is *itself* tax-free. The Tax Court (and [Sixth Circuit](#)) in [Stadnyk](#) suggest that prisoners who are not *physically injured* may be taxed. But the loss of physical freedom *itself* should be tax-free.

Many exonerated individuals experience severe hardship acclimating to society, finding jobs, housing and reconnecting with family. [The proposed Wrongful Convictions Tax Relief Act](#) would prohibit the IRS from taxing compensation awarded to anyone wrongfully convicted and later exonerated. But prospects for passage seem weak.

Most Ebola confinements may be well-intentioned and legal, and hopefully there will be few if any lawsuits. But given the history of the taxation of recoveries, if there are any such suits, successful plaintiffs may have another dispute with the IRS.

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