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How Helms-Burton Act Recoveries Are Taxed

By Robert W. Wood

In Brief

- The Helms-Burton Act created a mechanism for people and companies whose property was confiscated by the Cuban government that took power in 1959 to obtain redress for their damages from private parties that have made economic use of the confiscated property.
- Claims under the Act were first allowed to proceed in 2019, and the 2026 Supreme Court decision *Havana Docks Corp. v. Royal Caribbean Cruises Ltd.* eased the way for such claims.
- Although the IRS taxes most lawsuit settlements, many successful Helms-Burton Act plaintiffs are likely to have good arguments that settlement proceeds should qualify for long-term capital gain treatment.
- There is also a potential tax deferral opportunity through Section 1033 of the Internal Revenue Code, which allows taxpayers to put their gain into repairing or replacing damaged or destroyed property in some cases.

The U.S. Supreme Court has eased the way for people and companies to make claims over the confiscation of Cuban property when Fidel Castro seized power in 1959. Recently, in [*Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*](#), 608 U.S. ____ (2026), the U.S. Supreme Court revived claims filed by a U.S. company, Havana Docks, that operated docks in the Cuban capital.

The suit targeted four cruise lines that brought tourists to Cuba during a brief reopening of Cuban relations that occurred during the Obama administration, using confiscated property claimed by Havana Docks. The pivotal law is the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, commonly referred to as the Helms-Burton Act.

The Helms-Burton Act created a mechanism for victims of Cuba's expropriation of private property to seek redress against private parties that "traffic" in expropriated Cuban property. It thus provides an avenue for plaintiffs to obtain redress for their

damages from nongovernment parties that have made economic use of the confiscated property. Under the Helms-Burton Act, trafficking includes anyone who “purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,” or who “causes, directs, participates in, or profits from, trafficking . . . by another person, or otherwise engages in trafficking . . . through another person, or who holds an interest in or profits from confiscated property.” 22 U.S.C. § 6023(13).

The Helms-Burton Act provides a statutory measurement of damages that are to be paid under the act by the trafficker of confiscated property to the plaintiff who holds the claim for the affected properties. There are heightened damages for defendants who traffic in a confiscated Cuban property if the property was subject to a certified claim under the International Claims Settlement Act of 1949. See 22 U.S.C. § 6082(a)(3). It seems that the rationale for the heightened damages is that the prior certification of the claim provides constructive notice to potential users of the property that they are dealing with property that had been taken from a U.S. person and were subject to claims by the former owners.

Despite the significant liability ostensibly created by the Helms-Burton Act, for twenty-three years, Title III of the act, which provided for the cause of action described above, was suspended by United States presidents of both major political parties in view of broader international implications. It was only in 2019 that the Trump administration ceased the suspension of Title III so that claims under the Helms-Burton Act could proceed.

In addition to activating the law, President Trump imposed travel restrictions that stopped the cruise ships that were at issue in the Havana Docks case.

The trial court in the case awarded Havana Docks more than \$400 million in damages, but a federal appeals court reversed. The Supreme Court held that the cruise lines’ use of the docks was sufficient to establish that they used “property which was confiscated by the Cuban Government” and that “Havana Docks is not required to establish that the cruise lines used its property interest,” and it sent the case back for further argument.

Numerous law firms have filed lawsuits under the Helms-Burton Act, and some plaintiffs are collecting on them. When individual plaintiffs collect damages for property that was confiscated many years ago, it is often the descendants of property owners who are the recipients. And while it might seem that they are just getting back something that was taken from them, they are paid in cash, not with actual property. To the IRS, that means taxes, as the IRS taxes most lawsuit settlements.

However, some settlements can be positioned as capital gain. A suit about damage to or conversion of property is a prime example. From a tax viewpoint, an involuntary conversion occurs if your property is destroyed, stolen, condemned, or disposed of under the threat of condemnation, and if you receive money or other

property in payment. The money may come from insurance, a condemnation award, or a lawsuit settlement.

The tax rules are contained in Section 1033 of the Internal Revenue Code. Federal tax law generally treats these funds as the proceeds of settling your property. Depending on your tax basis in your property, that can trigger gain, as would occur with any other sale. Section 1033 of the tax code allows taxpayers who experience an involuntary conversion to roll over their gain into similar property. It is somewhat analogous to a Section 1031 exchange of real estate, although Section 1033 is full of special rules, timing constraints, and more.

The IRS tends to assume that litigation settlements are ordinary income. However, many successful Helms-Burton Act plaintiffs are likely to have good arguments that settlement proceeds should qualify for long-term capital gain treatment. After all, having property confiscated should mean that a later settlement is effectively paying you for your property. Settlement agreement wording could make that argument even better.

In the case of Helms-Burton Act recoveries, or any other case arising out of a taking or involuntary conversion, one needs to examine the status of the plaintiff/taxpayer. For individuals, ordinary income is taxed at up to 37 percent, while capital gain can be taxed as low as 0 percent and as high as 23.8 percent. Apart from lower tax rates, capital gain can involve recouping basis, too. If you spent \$1 million in costs (such as legal fees) that you have not deducted, that is basis that can be repaid without tax before you start reporting gain.

What about legal entities that are Helms-Burton Act plaintiffs? C corporations do not receive a capital gain rate preference, so C corporations pay tax at the 21 percent federal rate, whether a recovery is ordinary or capital. S corporations, partnerships, and LLCs taxed as partnerships qualify for capital gain rates, with the gain being reported by the shareholders, partners, or members according to their K-1s.

Many Helms-Burton Act plaintiffs may not have a significant tax basis, given the lapse of time since a 1959 confiscation. But there is one other significant tax impact of reporting as capital gain. Nearly all Helms-Burton Act plaintiffs use contingent fee lawyers. When their ship comes in, [the IRS will treat them as receiving not only their net recovery, but the share of the funds that goes to their contingent fee lawyers as well](#). That means most plaintiffs must look for a way to claim a legal fee tax deduction.

That can be tricky in some cases. However, if you recover capital gain, the tax case law is clear that you can capitalize your legal fees and offset them to reduce your gain. That is an added benefit of lawsuit settlements that are taxed as capital gain. Still, not every plaintiff who reports capital gain for a legal settlement has an easy time convincing the IRS. And while Helms-Burton confiscation cases seem

fundamentally about confiscation, what if the bulk of the damage analysis is about loss of income?

It is not uncommon for the IRS in various contexts to say that loss of income claims means that a resulting settlement or judgment is taxable as ordinary income. In some cases, though, an alleged income stream is used as a kind of proxy for the value of the items taken.

Settlement Agreement Wording

In *NCA Argyle LP v. Commissioner*, [T.C. Memo. 2020-56](#), the IRS and the taxpayer Newport Capital Advisors, LLC (“NCA”) faced off over the treatment of a \$23 million legal settlement. The taxpayer claimed that the money was capital gain for its interests in the failed joint ventures at issue in the settled case. The IRS said the money was for the most part really future fees the joint ventures would reap, plus punitive damages, both of which are clearly taxed as ordinary income.

The settlement agreement stated that NCA received all \$23 million in exchange for its interests in the joint ventures. Although settlement agreement wording does not bind the IRS, the Tax Court relied heavily on the express allocation in the settlement agreement. The court agreed with the taxpayer that these were sale proceeds and capital gain.

Tax Deferral

Finally, although it may rarely be invoked in this context, Section 1033 is another potential tax benefit for Cuban confiscation damages. Section 1033 allows you to put your gain into repairing or replacing damaged or destroyed property. There are time limits and requirements, but it is used frequently in property damage and construction defect cases. It could be used in Helms-Burton Act cases as well.

Of course, in the case of individuals, descendants of Cuban property owners paid nearly seventy years after the confiscation may be unlikely to want to reinvest their lawsuit proceeds into other property, even if it saves them taxes. However, even C corporations can claim the benefits of Section 1033, so it is conceivable that a recipient company could evaluate this tax deferral opportunity.

No one wants to go through a protracted legal dispute. After enduring that process, no one wants to go through *another* dispute about taxes on the money they recovered, or the money they had to pay.

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