



Robert W. Wood

THE TAX LAWYER

TAXES 3/21/2016

Hulk Hogan Jury Awards Punitive Damages, Verdict Swells To \$140.1 Million

Only last week, Hulk Hogan won a [\\$115 million verdict](#) against Gawker, its founder, and former editor for posting parts of a Hogan sex tape. Now, the jury awarded Hogan an [additional \\$25.1 million in punitive damages](#). Like a verdict on steroids, it bloats the total damages in the case to a whopping [\\$140.1 million](#). Hogan's real name is Terry Bollea, and you might think that he doesn't need or want much privacy.

But he asked for \$100 million in the invasion of privacy suit, and wound up with \$115 million in compensatory damages. And then are are punitive damages! Under Florida law, the jury could have awarded him up to three times that total in punitive damages, or \$345 million. Gawker [promises to appeal](#), and there is no money changing hands just yet.



Terry Bollea, aka Hulk Hogan, testifies in court during his trial against Gawker Media at the Pinellas County Courthouse on March 8, 2016 in St Petersburg, Florida. Bollea is taking legal action against Gawker in a \$100 million lawsuit for releasing a video of him having sex with his best friends wife. (Photo by John Pandygraft-Pool/Getty Images)

But when it does, lawyers and the IRS will collect big time. Even if Gawker were to pay the \$140.1 million, lawyers fees and taxes will cut Hogan's take dramatically. If Hogan's lawyer gets 40%, you might think that he would collect the rest and just report that net amount to the IRS. Actually, though, he probably has to report it all.

Unless he can claim this suit relates to his business—which could be a stretch—his legal fees are a miscellaneous itemized deduction. That triggers multiple tax traps, including the alternative minimum tax or AMT. When people talk of paying tax on money they never see, the AMT is often responsible. Attorney fees can be a surprising tax trap. The plaintiff is treated (for tax purposes) as receiving 100% of the money, even if the defendant pays the lawyer directly.

The fact that Hulk Hogan is getting punitive damages too adds to his tax problems. Punitive damages and interest are always taxable, even in a *bona fide* physical injury case. It is unclear if Hogan can argue that any of his money is tax-free, but it seems doubtful. Damages for physical injuries or physical sickness are tax-free under [Section 104](#) of the tax code, but the rules are strict. Until 1996, emotional distress recoveries like Hulk Hogan's were not taxed.

But since 1996, an injury must be "physical" to be tax-free. Taxpayers routinely argue in Tax Court that their damages are sufficiently physical to be tax-free, but the IRS usually wins. The IRS says your injuries must be visible, so Mr. Hogan seems out of luck. He could have trouble deducting his attorney fees too. The tax rules for litigants—even successful ones like Hulk Hogan—are complex.

Let's assume he is paying 40% to his lawyer, about \$56 million. He may not be able to deduct his lawyers' fees for purposes of the AMT. That means he is taxed on the whole \$140.1 million—even the money paid to his lawyer—at the 28% AMT rate. So, after paying lawyers and the IRS, Hogan's take could be about \$45 million on that whopping \$140.1 million verdict.

From a tax viewpoint, a settlement is often better than collecting a verdict. At a minimum, one can often shape the tax treatment in settlement documents. And in big cases, taxes are often a big problem. Most lawsuit recoveries are fully taxable, and how they are taxed—sometimes including the lawyers' fees—can be surprising. Could Hogan argue that the bad conduct of Gawker gave him PTSD, post-traumatic stress disorder? It doesn't appear that he argued that, and besides, it isn't clear whether [PTSD a physical injury for tax purposes](#). Taxpayer Advocate Nina Olson has urged the IRS to [treat PTSD as](#)

[physical sickness](#), but the IRS has not yet weighed in.

And tax uncertainty can make settling with more control a wise move. The IRS is not bound by the tax wording of a settlement agreement, but it can help. In a settlement agreement, it is often possible to influence whether and how IRS [Forms 1099](#) will be issued too. Plus, settlement agreements are usually confidential, which can be a big advantage. After all, the IRS can read about verdicts too.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.