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Hulk Hogan Settles \$140 Million Gawker Verdict For \$31 Million, IRS Collects Big

Hulk Hogan has settled with Gawker for \$31 million, plus Gawker's agreement to [remove the sex materials from its website](#) that were the subject of the hard-fought invasion of privacy suit.

FORBES' Ryan Mac has been covering the issue and broke the settlement news yesterday. He noted that the [settlement for \\$31 million](#) comes after four long years of litigation. The deal is subject to approval by Gawker's bankruptcy judge, but that seems likely. Hogan brought his invasion of privacy suit over Gawker's posting of a Hogan sex tape. One of the added dramas of the case was the alleged financing by billionaire Peter Thiel, something [Gawker went on the offensive](#) to pursue.

Hogan's invasion of privacy suit asked for \$100 million. At trial, Hogan received a [\\$115 million verdict](#) against Gawker, \$55 million in economic damages, and \$60 million for emotional distress. Then, the jury [added \\$25.1 million in punitive damages](#), for a total of [\\$140.1 million](#). A \$31 million settlement is still a tidy sum. But then there are legal fees, not to mention taxes owing to the IRS. And the two are inextricably related. Attorney fees can be a surprising tax trap for many successful plaintiffs. When a plaintiff uses a contingent fee lawyer, the plaintiff is treated (for tax purposes) as receiving 100% of the money, even if the defendant pays the lawyer directly.



Hulk Hogan testifies in court during his trial against Gawker Media. (Photo: John Pendygraft/Getty Images)

If the case is fully nontaxable (say an auto accident in which you are physically injured), that normally should not cause any tax problems. But if your recovery is taxable, watch out. Hogan (whose real name is Terry Bollea) did *not* sue for physical injury damages, so he will have to pay taxes on his recovery. In that case, you might assume that the most that Hogan could be taxed on is the amount he actually takes home. That is presumably the \$31 million, less his legal fees. So, if Hogan's lawyer gets 40%, you might think he would collect the rest and just report that *net* amount to the IRS.

Actually, though, Hogan probably has to report it *all* as income, even the share his lawyer collects. Unless he can claim this suit relates to his business—which could be a stretch on these facts in this kind of case—his legal fees are probably a miscellaneous itemized deduction. That is not as good as a full-fledged business expense. A miscellaneous itemized deduction triggers multiple tax traps, including the alternative minimum tax (AMT). When people talk of paying tax on money they never see, the AMT is often responsible.

Let's assume Hogan is paying a 40% fee to his lawyer. He may not be able to deduct his lawyers' fees for purposes of the AMT. That means he is taxed on the whole \$31 million—even the money paid to his lawyer—at the 28% AMT rate. Say Hulk Hogan settles his suit for \$31 million. Say his lawyer gets 40% or \$12.4 million. You might assume that, at most, he would have \$18.6 million

to report to the IRS. Actually, though, he probably would have to report the *entire* \$31 million. Then, he might claim his \$12.6 million of legal fees as a miscellaneous itemized deduction, which triggers the AMT.

That means he is taxed on the whole \$31 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 as small as \$9.72 million on settling that whopping \$140 million verdict. I'm speculating, but whatever Hogan's facts and numbers, the tax bite is probably bigger than you might assume. Often, litigants end up surprised by how little they may end up with after tax from litigation. In a great deal of litigation, any way you slice it, the IRS ends up figuring prominently.

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. 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.