



Robert W. Wood

THE TAX LAWYER

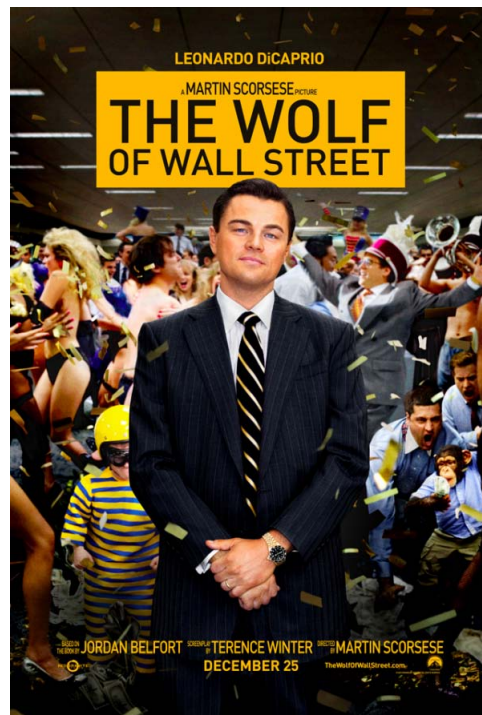
TAXES | 12/29/2013

Real Wolf Of Wall Street's Sweet Pay Deal

Despite a lackluster box office, most critics seem to agree that [The Wolf of Wall Street](#) is a good film and that [Martin Scorsese](#) has outdone himself, at least with a crowd pleaser. But the movie isn't just a tale of excess and greed. It's prompting some to revisit the real life tale of Jordan Belfort, the real wolf played by [Leonardo DiCaprio](#). For some, it's a painful trip down a memory lane that is still littered with financial ruin. Fortunately, there is still at least some money to collect.

Like other movies before it (notably [Boiler Room](#)) this movie showcases real pump-and-dump schemes that have so often hyped otherwise dubious shares. The type of frenzy the movie depicts duped witless investors to join what they were assured was a run-up that couldn't lose. In the case of Mr. Belfort, after his last hurrah 15 years ago, he was supposed to pay it back.

According to reports, though, Mr. Belfort hasn't even come close to fulfilling the restitution required under a 2003 sentencing agreement. Criminal



sentencing in financial crimes often includes a combination of prison time and restitution to victims. In Mr. Belfort's case, he was required to hand over 50% of his income to fund restitution to the 1,513 clients he defrauded.

That number of victims might sound manageable, but their losses were not. In total, Mr. Belfort was required to pay \$110 million, but so far has paid only \$11.6 million. What's worse, the vast majority of that, \$10.4 million, came from property long ago relinquished. That means he hasn't written many checks, and his 50% payback deal lapsed in 2009. Perhaps with movie publicity, more will trickle out.

According to court papers, Mr. Belfort has actually paid back only \$243,000 since 2009. That was despite collecting \$1.7 million from selling books and film rights. He even collected \$24,000 from motivational speaking. But negotiations have been reported suggesting that Mr. Belfort and authorities could make a deal for at least some of this.

Some book and movie income could add to the restitution for victims. As the denouement unfolds, it seems probable that Mr. Belfort will fork over at least something, thus adding his name to the pantheon of wrongdoers who've been forced to return ill-gotten gains. And although this will rub some people the wrong way, he presumably should be entitled to a tax deduction for it, although claiming it and getting the full dollar-for-dollar benefit can be tough.

His victims may have tax problems too. Under U.S. tax law, payments are generally income unless you can show they were rightly yours all along. If you get back your money or property, it generally shouldn't be income. However, if you have previously claimed a tax loss, you may have to report it as income when you recover it.

Conversely, most criminals who are ordered to pay restitution can deduct it, though the mechanics are notoriously nuanced. Recall that 1980s junk bond king [Michael Milken](#) paid \$600 million in fines and restitution after he pled guilty to securities violations. Much of that was restitution—paid back to injured parties. And that generally means business expense deductions, since restitution is different from fines under the tax law.

As recent controversies confirm, even some fines—like much of [JP Morgan Chase's \\$13 B Settlement](#)—can be tax deductible. Punitive damages are

too. [Section 162\(f\)](#) of the tax code prohibits deducting “any fine or similar penalty paid to a government for the violation of any law,” including criminal and civil penalties plus sums paid to settle potential liability for fines.

But the tax law allows businesses and business people to deduct compensatory and remediation payments. Behind the headlines, it’s often not clear what’s being paid even when something is called a penalty, as in the case of convicted hedge fund titan [Raj Rajaratnam](#), ordered to pay a [\\$92.8 million penalty](#). Mr. Rajaratnam was sentenced to 11 years in prison plus \$156 million.

Hopefully Mr. Belfort’s victims will collect some money. And since it’s likely a very small part of what they lost, hopefully they won’t have to pay tax on it.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.