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In this article, Wood makes the case that tax lawyers do interesting things, some even exciting enough to deserve a feature film.

Tax lawyers are rarely portrayed in movies or TV, and if they are, it usually isn't pretty. Think of all the famous lawyer movies you've seen, TV too. The legal lions depicted are usually trial lawyers, district attorneys, or maybe a corporate dealmaker now and then. Tax lawyers are unlikely protagonists, not Perry Mason, not Atticus Finch, not Saul Goodman of *Better Call Saul*, not Arnie Becker of *LA Law*, not Jack McCoy of *Law & Order*, and not Elle Woods of *Legally Blonde*.

Besides, it's often unclear how tax lawyers differ from accountants — if they do at all. And accountants in movies are usually portrayed as bookish or even wormy. One fictional exception is Tom Cruise's portrayal of a suave young tax lawyer in *The Firm*, in contrast with Gene Hackman and the movie's other crook tax lawyers. To make tax lawyers interesting, author John Grisham had to invent a Mafia-controlled law firm run amok in money laundering and murder.

On the Basis of Sex was a great movie in part about a tax case that Ruth Bader Ginsburg took on in real life. The movie's depiction of *Moritz*[1] showed that a tax law limiting a deduction to "a woman, a widower or divorcée, or a husband whose wife is incapacitated or institutionalized" could be successfully challenged and lead to a world of change. You must admit that it made tax law vital. Of course, tax law played a major role in legalizing same-sex marriage too.

Still, Hollywood hasn't exactly rushed to grapple with what real-life tax lawyers do, but it turns out that we do a lot of engaging things that affect real lives. Tax law is more interesting than most people realize, and there are plenty of helpful things tax lawyers do, accountants too. Here are some episodic examples taken from real life, and most other practitioners are likely to have plenty of their own examples.

First Comes Marriage, Then Divorce

A division of property between divorcing spouses is tax free, so neither spouse pays tax until they sell the divided property. Until recently, alimony was deductible to the payer and taxable to the recipient. After decades of law on that subject (and vast numbers of IRS audits of both spouses), as of January 1, 2019, alimony is not income and not deductible. But the tax-free division of property that has been the law for generations is unchanged.

What happens, though, if the couple isn't actually married? You can't take advantage of this tax rule, which is why taxes in palimony and cohabitation disputes among unmarried people can be a nightmare. Until same-sex marriage was legalized, it was also why same-sex divorces were

[1] *Moritz v. Commissioner*, 469 F.2d 466 (10th Cir. 1972), *cert. denied*, 412 U.S. 906 (1973).

so difficult from a tax viewpoint. For a tax lawyer, universal same-sex marriage meant universal tax-free divorce too. If any couple isn't married and has assets and businesses to divide, doing it tax free wasn't easy in the past, and it still isn't.

This true-life story from the 1990s involved Mary and Bob, who were divorcing and dividing a whopping sum of highly appreciated public company stock Bob acquired tax free in a merger that was really a "sale" of a company he founded. It was amicable enough, but a background check revealed that Mary was still married to someone else when she and Bob had tied the knot 10 years earlier. Oops. That "void" marriage meant if they divvied up the stock, one or both would be liable for a huge tax.

Think zero-basis stock worth $100 million, divided 50-50. Some of the tax lawyers at the table had elaborate ideas for how to get around this, but sometimes simplest is best. You guessed it: The couple had a quickie marriage so they could immediately get a quickie divorce and divide the stock tax free. Not surprisingly, the divorce lawyers insisted on an ironclad prenuptial agreement that preserved the terms of the already agreed divorce settlement. One wonders what their vows might have been when the divorce was planned before the wedding.

Animals Have to Eat, Too

In many states, sales tax isn't applied to food. However, a restaurant meal or prepared takeout is usually taxable. So is animal or pet food, but not purchases of raw human food. A wholesale produce seller had a contract with a large city to deliver fruits and vegetables to city schools, hospitals, and the zoo. This wasn't pet food, so it wasn't taxable, and the zoo got the same produce the hospitals and schools did. The produce seller didn't sell any taxable products — just fresh produce — so why would they think about collecting sales tax on produce sold to the zoo?

State sales tax auditors hit the wholesaler with a crippling back sales tax bill for produce delivered to the zoo on the grounds that it was being consumed by animals. That made it taxable, they said, and since the produce seller didn't have a sales tax permit, a whole raft of years was at stake. The zoo had snack bars and a cafeteria for humans, but the wholesaler couldn't show which carrots and bananas were consumed by people, and which by other species. Efforts to reach a compromise with state auditors failed, so we went to a full-blown hearing with witnesses before what was then the California State Board of Equalization.

Someone invited the press because this tax case had entertainment and human (and animal) interest written all over it. Did you know if you tell a supermarket checker that the broccoli you are buying is for your dog, the clerk has no way to charge you sales tax? In the end, the state's position seemed unjust, even silly, and the board voted for the people and the animals, not the tax man.

Prison, Anyone?

Is there any injustice worse than being wrongly convicted of a crime and imprisoned for years? Sometimes convictions are attributable to overwhelmed or incompetent public defenders, but some cases involve prosecutors who break the law by hiding witnesses or burying evidence, for example. Thousands of inmates have been cleared, and laws have steadily been passed to help, such as payments for each year behind bars for a wrongfully convicted person. But in the states where these payments apply, they are usually modest.

For decades, there have been lawsuits and some outsize recoveries. The biggest verdicts and settlements tend to be paid by major cities or other governmental entities involving the most egregious conduct. Big dollars, of course, usually mean big taxes. Yet for decades, it was an awkward dance to say if the newly released inmate about to cash a big check would pay tax on it.

Recoveries for personal physical injuries are tax free, but most everything else is taxable. And unless the inmate was physically injured, damages for being imprisoned were unclear. Some old IRS rulings held that recompense for a loss of liberty (say Japanese Americans who were detained in internment camps during World War II) was tax free. But it wasn't clear that it applied, and the IRS revoked that prior favorable authority in 2007.

The Wrongful Convictions Tax Relief Act was introduced in Congress in 2007, to say that wrongful conviction awards aren't taxed. Yet despite being repeatedly reintroduced, that bill languished until the end of 2015, when it was finally passed. And notably, the law was retroactive in effect.[2] But until then, for decades, exonerees received conflicting tax advice. Some tax advisers told exonerees to pay tax.

Some of us inserted personal physical injury language into releases, supporting nontaxable reporting positions and watchful waiting thereafter. It's hard to think of any injury more physical than being denied your physical liberty. Notably, though, even the Wrongful Convictions Tax Relief Act didn't solve all related situations. Numerous false arrest and wrongful imprisonment recoveries don't qualify for the watershed Wrongful Convictions Tax Relief Act because they lack findings of actual innocence. The tax treatment of those settlements remains unclear, and more generally, there are plenty of other fascinating lawsuit settlements with quirky tax issues.

Sex in Church

Despite the separation of church and state, the IRS has the power to recognize a church and give it a tax exemption. Some churches don't bother asking for IRS recognition, but the stakes of being wrong can be high. For decades the IRS refused to recognize Scientology as a church. After years of litigation, the IRS eventually relented in the face of an avalanche of lawsuits. That remains a controversial decision in some circles even today.

Sometimes, however, it is hard to take church claims too seriously, it seems to me. Take the real case of a new and decidedly different spin on religion offered by a group promoting orgies as religious fulfillment, leading to what they hoped would be a ruling from the IRS agreeing that they were a church. From what I could tell (based, I assure you, solely on reading their materials), all they did during their services was engage in wild sex that was supposed to energize their religious icon at the center of the room, I mean church. They decided not to ask the IRS for a church ruling.

Call the Moving Van or Hospital Jet

Before you sell your company or settle a big lawsuit, it's only natural to tally up how much you'll pay to the IRS and state government. It can be tempting to save money by moving from a state with a high income tax, such as California or New York, to one without one, such as Nevada, Texas, or Florida. But moves should be permanent and orchestrated, and states often try to collect taxes from those who say they have left. Did they really leave in time; was sourcing already fixed?

Out of the vast numbers of residency cases, a few stick out. Take the aging dowager in a high-tax eastern state with kids and grandkids out West. The eastern state had a whopping estate tax, and her advisers were able to get her a private hospital jet to move her out of state before she died. One key legal issue was whether she intended to return. The case eventually settled, but for a fraction of what the eastern state tried to collect.

Or take the tycoon who left California weeks before his company went public. He took some steps toward a bona fide move correctly, but he kept his old residence, leaving his son there to finish school, and he came back to California too frequently. An investigator charted every expense he incurred inside and outside California, which made a good case for his un-California connection. It eventually led to a settlement for a fraction of the tax California wanted.

Tilting at Valuation Windmills

If you have a loss from a sudden event (think storm or earthquake), you can deduct a casualty loss. And "sudden" is flexible — even termite damage can qualify. The murder of Nicole Brown Simpson and Ronald Goldman was sudden and unexpected, but was what happened to O.J. Simpson's halcyon neighborhood sudden? A prominent neighbor near O.J.'s mansion thought so. Overnight, his swank and fiercely private Brentwood Park haven became a circus with 24/7 news teams, litter, boom lights, paparazzi, and gawkers.

A neighbor had to erect a perimeter fence, ramp up security, and contend with debris. Figuring his luxury home's value dropped 30 percent, he claimed it as a casualty loss. The IRS

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[2] *See* Robert W. Wood, "Wrongful Conviction Settlements Are Retroactively Tax Free," *Tax Notes*, Mar. 28, 2016, p. 1595.

said no, but it was fun while it lasted. How about other valuation messes, say wind farms blanketing hillsides? If it costs $500,000 to build a windmill, but its market value is only $50,000, how does the local county assess property taxes? Even those tax disputes can be fun.

My Dog Ate My Homework

A one-page S election converts a corporation into an "S corporation" taxed as a passthrough. Corporations without S elections face double taxation, one tax levied on corporate income and the other on shareholders when they receive dividends. So an S election is a corporate tax get-out-of-jail-free card. What happens if you *thought* your S election was filed 15 years ago, but it turns out your dog ate it or, true to our story, a spurned girlfriend threw it away in spite?

Sam and Sally discovered this toxic tax problem when they were about to sell their company. Normally I'd say they were out of luck, but at times it pays to go hat in hand to the IRS. In this case, we had testimony the S election was prepared on time and that their lawyer — Sam's former girlfriend — was *supposed* to file it. Plus, the company's S corporation tax returns for 15 years proved Sam and Sally *thought* it was filed. This true story was compelling (and downright sizzling) enough that the IRS made an exception and made the S election retroactive.

Employee or Contractor?

Having employees can trigger a litany of federal and state tax withholding, anti-discrimination, healthcare, pension, worker's compensation, and unemployment insurance obligations. You avoid these entanglements by hiring independent contractors, or do you? Labels aren't enough, and the IRS, state tax authorities, labor departments, and insurance companies scrutinize workers' statuses. Even workers who have accepted pay as independent contractors can *still* sue, claiming they are employees, and tax lawyers feature prominently in these messes.

How about defending a nightclub whose exotic dancers controlled their own schedules, split tips with the house, "rented" stage time, and supplied their own outfits and "paraphernalia"? They might not fit your classic idea of independent contractors, but the IRS ruled that they qualified. Tax lawyers may need to defend independent contractor arrangements or attack them. From drivers to jockeys, mercenaries to programmers, and newsboys to scientists, there's no one-size-fits-all solution. *How* you do something matters, especially in the tax world.

Hobby Horse

If you lose money in business, it's deductible against other income, so the government ends up covering a big chunk of your losses. In contrast, you pay for 100 percent of your hobby. If you spend major cash on a personal race car this year, you are out the cash. But if it is a business, your cost can drop by up to half. If you lose money in more than three years out of five, you may have a hard time persuading the IRS you're in business and not a hobby.

Yet even some consistent losers can produce deductions. The hobby loss appellation can arise anywhere, but prime candidates are part-time farmers, horse operations, and race car drivers. I've seen dog shows, fishing consultants, sports agents, travel book writers, cultural anthropologists, stamp collectors, whippet breeders, recipe inventors, and even big game hunters. Tax lawyers can be armchair travelers, defending quirky clients against the IRS.

Suing Over Taxes

Private lawsuits raise lots of tax issues for plaintiffs, defendants, and their lawyers. And they all call a tax lawyer or accountant. Sometimes, they should call sooner. When one employee and company settled employment litigation, the company filed IRS Forms 1099 reporting the payment. Miffed, the employee sued the company again, this time over tax reporting. The IRS refused to intervene, leaving it to the parties to resolve. (All tax lawyers know that the IRS won't intervene in this kind of dispute.) That means tax lawyers are at the eye of the storm.

It happens in arbitration too: disputes over Forms 1099, wage withholding, refusals to supply a Form W-9, backup withholding, and more. These are messy, but they sure are interesting. One father and son sued each other five times over their big family company. How the company distributed profits and was taxed was key. The trial lawyers in this drama got the glory and headlines, but tax lawyers arguably were the ones who had to resolve it.

Conclusion

Not every tax matter is quirky or interesting, that's for sure, but you might be surprised how many are. Tax considerations are everywhere, perhaps more so today than ever before. Tax advisers may never be swashbuckling fixers à la Michael Clayton, but what we do is interesting and fundamental. More brain than brawn, we may need to dive into the nooks and crannies of the tax law, for no one likes to pay more than he must. In 1961 President John F. Kennedy admonished that "the phrase 'it's deductible' should pass from our scene," but over 60 years later, it's unlikely it ever will. As John Maynard Keynes, put it, "The avoidance of taxes is the only intellectual pursuit that carries any reward." ■