



Robert W. Wood

THE TAX LAWYER

TAXES 7/25/2014

Who Scalps Ticket Scalpers? IRS

The IRS taxes just about everything. Barters and trades? You bet. Even swapping tickets of even value can trigger tax. Of course, on a casual basis most people might not even think of taxes in that situation.

But selling a ticket for a big markup for cash? Plainly, the IRS wants its cut. And the fact that the scalping is *illegal* is no excuse for failing to report it. There are plenty of opportunities. The World Cup scandal—not to mention each World Series, Superbowl, and more—suggests that scalping is big business.

Some say there's a fine line between illegal ticket scalping and legal ticket brokerage. But whichever side of the line you're on, it's taxable. Some sources suggest that one of the differences between [Ticket brokers](#) that are legal and ticket scalpers that are not is the fact that scalpers don't report earnings to the government and don't pay taxes.



The Scalpers Are Cheating The Festival (Photo credit: Wikipedia)

But actually, the IRS is clear that whether your income is legal or not, it's still taxable and you still have to report it. If you sell your tickets for more than you paid, the difference between the price you paid and the amount you received is taxed. If you're in the business and buying and selling tickets, it's ordinary income.

If yours is a casual sale, you might just pay capital gain tax. However, unless you purchased the ticket more than a year before you sell it, your profit can still be taxed at the top rate of 39.6%. You might try to outsmart the IRS by a trade. You "give" someone your \$300 ticket and they "give" you back a one week stay in their condo.

This may make your profit harder to detect. The dollars are also harder to tally, since it involves valuation questions, but it's still taxable. Will the IRS know? Maybe not, especially if it's an isolated sale and doesn't involve large amounts.

But if you're a scalper, the IRS may come calling, and failing to report income can be criminal. If you are running an illegal business, it is unlikely that your biggest concern is being prosecuted for tax evasion. Tax crimes may seem tame by comparison to other criminal activity, especially the truly rough stuff.

Yet tax crimes can sometimes be pivotal in bringing tough-to-catch criminals to justice. After all, [Al Capone](#) was never convicted of murder, graft or racketeering. The feds got him for the comparatively milquetoast crime of income tax evasion.

As Al Capone learned the hard way, the tax laws apply to you no matter how you make your living. Taxes are relevant to any business, including the oldest profession in the world. See [United States v. Hoskins](#).

Of course, we generally pay tax on net income, not gross income. For criminals, though, claiming expenses can be a problem. If you report your illegal income—which may be admitting to a crime—tax deductions can be limited. Illegal payments generally aren't deductible.

Finally, check out what the IRS says in [Publication 463 \(2013\)](#), which covers business and entertainment expenses. Even if you're in business and using the ticket appropriately for that purposes, you can't deduct ticket markups beyond the face value of the ticket.

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.