



## Robert W. Wood

THE TAX LAWYER

---

TAXES 7/12/2014

### Cash For Best World Cup Fake Injuries?

Taking a dive sounds like illegal boxing. But in soccer, a flop—a fake injury—is big, so big that every game includes them. In fact, faking is rampant. Sure, playing ability is more important, but becoming Meryl Streep on the field is worth something too. Check out these [Epic Fail Soccer Cheaters Divers Fake Injuries](#).

You writhe in pain, furrowing your brow and gritting your teeth to project a kind of [Sophie's Choice](#) burden. Can you get up and soldier on? [One report](#) claims that the Brazilians at this World Cup were *numero uno* at acting. In only their first two games, Brazilian players went down 17 times before returning to play.

The Wall Street Journal [recorded, and timed, every instance](#) in which a player appeared to be injured and then returned to the game. Is there a strategic element? Sure. In fact, the WSJ report found more injuries—presumably real or otherwise—more prevalent by winning teams. When you are ahead, you have a larger incentive to drain the clock.



Brazil's star [Neymar](#), [has long drawn ire](#) for his acting—before he was badly and truly injured. It's enough to make you wonder about more garden variety injury claims. What you are paying for when you settle them? Inside or outside the game of soccer, there are fakers and exaggerators.

If crying wolf becomes rampant, how do you really *know* what is real and what is not? The U.S. tax code still tries to distinguish the real from the fake, the physical from the emotional. Payments for physical injuries are tax-free under [Section 104](#) of our voluminous tax code. Well, unless there are punitive damages or interest, which are always taxed.

But the injury really has to be *physical*. The rules for what qualifies as physical injuries aren't clear but the IRS normally wants to see "observable bodily harm." Think bruises or broken bones. They really want to *see* it. An injury that is emotional doesn't count.

That means if the IRS were involved in soccer, they might be tougher than the officials. If you settle a lawsuit, the IRS can ask just how physical your injury really was. The defendant paying the claim may not care, but the IRS does.

Of course, some injuries aren't visible to the naked eye or even medical equipment. It can mean the injured party recovers money, but the IRS gets a share. But sometimes the IRS rigid view of such matters fails.

For example, the U.S. Tax Court has ruled that an employee suit can be partially tax-free if the employee has physical sickness from working conditions. It must be much more than merely emotional distress. In one case, stress at work produced a heart attack (see [Is Physical Sickness the New Emotional Distress?](#)).

In another, stressful conditions exacerbated a worker's pre-existing multiple sclerosis. See [Tax-Free Physical Sickness Recoveries in 2010 and Beyond](#). Still, the fact that these people had to go to Tax Court and spend money duking it out with the IRS should tell you that the physical v. emotional line still is controversial.

Plus, the physical v. mental dividing line is becoming increasingly blurred. Take the [tax treatment of PTSD](#). Medical data suggests that PTSD is no mere mental state, but is a physical sickness involving measurable changes in the physical makeup of the brain and nervous system. See [The Biological Effects Of Traumatic Events](#) and [Neuroscientists Say Brain Scans Can Spot PTSD](#). U.S. Taxpayer Advocate Nina Olson has advocated for [treating PTSD as physical sickness](#), meaning that settlements for it would be tax-free.

Whatever happens in soccer games, U.S. tax law could benefit from a little clarity. No, I'm not faking.

*You can reach me at [Wood@WoodLLP.com](mailto: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.*