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Trump Gets $25 Million Tax Write-Off For Trump University Settlement

President-elect Donald J. Trump has agreed to pay $25 million to settle lawsuits over Trump University. In paying off former students and their lawyers, he is admitting no wrongdoing. Yet, he has often said he would *never* settle. The plaintiffs alleged that they paid up to $35,000 in tuition for little in return. And the New York Attorney General complained too, which makes this package deal important for someone with bigger issues to deal with before January.

The deal resolves several pieces of Trump University litigation, including two federal class-action cases. Significantly, it also resolves a separate lawsuit by New York Attorney General Eric T. Schneiderman, who said:

> ‘ I am pleased that under the terms of this settlement, every victim will receive restitution and that Donald Trump will pay up to $1 million in penalties to the State of New York for violating state education laws. The victims of Trump University have waited years for today's result, and I am pleased that their patience — and persistence — will be rewarded by this $25 million settlement.”

In this May 23, 2005 file photo, then real estate mogul and Reality TV star Donald Trump, left, listens as Michael Sexton introduces him at a news conference in New York where he announced the establishment of Trump University. (AP Photo/Bebeto Matthews, File)

Of course, the *real* cost to Mr. Trump is *after tax*, not before it. And most business settlements are fully tax deductible. The only part that arguably may not be here is the $1 million in penalties. But barring express non-deductibility commitments, many penalties can be deducted, too. In general, fines and penalties paid to the government are not deductible. Section 162(f) of the tax code prohibits deducting ''any fine or similar penalty paid to a government for the violation of any law.''

Despite punitive sounding names, though, some fines and penalties are considered remedial and deductible. That allows some flexibility. Companies often deduct 'compensatory penalties,' a maneuver affirmed in a recent Circuit Court ruling. Some defendants insist that their settlement agreement confirms that the payments are not penalties and are remedial. Conversely, some government entities insist on the reverse. Explicit provisions about taxes in settlement agreements are becoming more common.

For example, the Department of Justice did expressly forbid Credit Suisse from deducting its $2.6 billion settlement for helping Americans evade taxes. Ditto for the BNPP terror settlement, which states that BNPP will not claim a tax deduction. Sometimes the government and a defendant split the baby. Of the $13 billion JP Morgan settlement struck in late 2013, only $2 billion was said to be nondeductible. The DOJ doesn't always disclose the terms of settlements either. But that could change.

The proposed Truth in Settlements Act (S. 1898 – fact sheet) would require agencies to report after-tax settlement values. Another bill, S. 1654, would restrict tax deductibility and require agencies to spell out the tax status of settlements. The U.S. Public Interest Research Group tracks the tax implications of legal settlements, and they are not easy on the DOJ, saying that the DOJ should forbid deductibility. A poll released by the U.S. Public Interest Research Group Education Fund says most people disapprove of deductible settlements. U.S. PIRG has also created a fact sheet on Wall Street settlement tax deductions.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.