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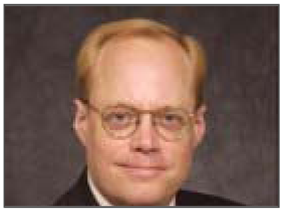

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THE TAX LAWYER

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What Dewey LeBoeuf Lawyers And Jamie Dimon Have In Common: Pay Clawbacks

Failed law firm Dewey & LeBoeuf LLP is in the news for trying to claw back as much as $103.6 million in pay and benefits from former partners. See Dewey Seeks 'Clawbacks'. The proposed deal is said to effect more than 700 former partners. Each would be asked to kick in $25,000 to $3M. That may sound small to JP Morgan Chase CEO Jamie Dimon, who so far seems to have escaped the clawback's grasp despite mounting trading losses.

JPMorgan Chase & Co Chairman and CEO Jamie Dimon testifies before the House Financial Services Committee on Capitol Hill June 19, 2012 in Washington, DC. After testifying before the Senate last week, Dimon answered questions from the committee about his company's $2B trading loss earlier this year. (Image credit: Getty Images via @daylife)

Clawbacks can occur under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Sarbanes-Oxley Act or pursuant to litigation. The tax impact depends on timing and other details. Every year stands on its own, and the tax code allows rescission (simply undoing the original pay) only if done in the same year. See Sell Then Rescind? IRS Respects Some Do-Overs.

You can claiming a tax deduction on giving back pay but it often won't make you whole. Payroll taxes may have been paid so getting them back involves the IRS, the employer and the employee. Depending on your facts, here are some alternatives:

Business Expense? You might claim a business expense deduction for giving back pay. However, it may only be a miscellaneous itemized deduction subject to a 2% adjusted gross income floor. That means alternative minimum tax (AMT). See Will Everyone Pay AMT Next Year?

Amending Prior Year Returns. Amending a prior tax return is only possible within three years of filing the original return or within two years of the date the tax was paid, whichever is later. See Even The IRS Has Time Limits. The pay giveback might be later. Plus, amending a prior return is generally allowed only to correct a mistake, and a pay giveback may not qualify. See 5 Simple Rules to Follow When Amending Your Tax Return.

Salary Reduction? For those who are still employed by the same company, the company could agree to reduce ***current*** salary. Of course, this won't work for ***former*** employees.

Section 1341. Section 1341 attempts to put you back where you would have been had you never received income. You must have reported income in a prior year when you had an unrestricted right to it ***then***. You must learn in a ***later*** year you did ***not*** have an unrestricted right after all (*i.e.*, you have to give it back). This fits clawbacks to a T. But Section 1341 is tricky, and far more nuanced than this thumbnail sketch suggests.

Voluntary Clawbacks? Voluntary givebacks—where you are ***urged*** to give back pay but not ***required*** to—complicate the analysis further. Whatever your situation, get some professional help and be careful.

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