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Trump's \$15 Million Defamation Settlement From ABC Has A Tax Angle



President Elect Donald Trump has had a series of victories recently, and one more as come his way in the settlement of his defamation suit against ABC News and George Stephanopoulos. ABC will pay \$15 million plus an extra \$1 million to Trump's lawyer in the case, Alejandro Brito. A copy of the settlement agreement can be read [here](#). Trump sued ABC News and Stephanopoulos after the latter claimed that Trump was "found liable for rape" by a Manhattan jury in the E. Jean Carroll case.

In reality, while Ms. Carroll had accused Trump of rape, the jury did not make that finding. The jury in Carroll's first suit awarded her \$5 million for defamation and battery. Her second case against Trump ended in an award of \$18.3 million award in compensatory damages for injury to Carroll's reputation, plus \$65 million for punitive damages.

What's the tax angle? There are several. First, although Trump was the plaintiff in the case, he will not be receiving the \$15 million payment, or even the \$1 million paid to his lawyer. The \$15 million is to be paid as a charitable contribution to a "Presidential foundation and museum to be established by or for Plaintiff, as Presidents of the United States of America have established in the past." The settlement agreement makes clear that the recipient entity must be qualified under section 501(c)(3) of the tax code.

It's a clever move, as that way Trump does not have to pay tax on the \$15 million, even though he was the plaintiff throughout the suit. The extra \$1 million paid to his lawyer is not so clear. The IRS would have a good argument that the \$1 million is income to Trump, since those legal fees are part of his obligation to his lawyer. In [Commissioner v. Banks](#), the U.S. Supreme Court held that plaintiffs must generally recognize gross income equal to 100% of their recoveries. even if their lawyers take a share.

Why couldn't Trump just receive the \$15 million and then donate the money himself? The tax laws make that trickier. If Trump received the money, it would be taxable income. Yet even if he turned around and gave it all to charity, he would need to deduct it, and the tax consequences of regifting can be tricky.

You can't deduct charitable contributions exceeding 60% of your adjusted gross income. Assuming that Trump has plenty of other income, he might be able to claim the entire deduction in one year. But other donations can make the planning more complex. That is one reason this direct payment by ABC is much cleaner tax-wise.

Though a regifting of settlement payments sometimes occurs, the direct path is best. Outside of legal settlements, the idea is more established with prizes and awards. Prizes and awards are taxed by the IRS, but it is possible to assign a prize before you take receipt of it. The idea is to keep the prize moving past you, redirecting it to someone else before its tax impact hurts you. The IRS has issued guidance in [Revenue Procedure 87-54](#) how to do this.

The recipient must be a qualified charity. You must make the assignment to charity before the award is presented to you. You can, however, make a partial assignment. You can keep the statuette or plaque, and even some of the cash, as long as it's clear precisely what amount you are assigning. Finally, for your charitable regift to be effective, some special language in the paperwork is required.

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