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## 26 USCS § 104

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### § 104. Compensation for injuries or sickness.

**(a)** In general. Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 [[26 USCS § 213](#)] (relating to medical, etc., expenses) for any prior taxable year, gross income does not include--

- (1)** amounts received under workmen's compensation acts as compensation for personal injuries or sickness;
- (2)** the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;
- (3)** amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer);
- (4)** amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 808 of the Foreign Service Act of 1980 [[22 USCS § 4048](#)];
- (5)** amounts received by an individual as disability income attributable to injuries incurred as a direct result of a terroristic or military action (as defined in section 692(c)(2) [[26 USCS § 692\(c\)\(2\)](#)]); and
- (6)** amounts received pursuant to--
  - (A)** section 1201 of the Omnibus Crime Control and Safe Streets Act of 1968 ([42 U.S.C. 3796](#)); or
  - (B)** a program established under the laws of any State which provides monetary compensation for surviving dependents of a public safety officer who has died as the direct and proximate result of a personal injury sustained in the line of duty, except that subparagraph (B) shall not apply to any amounts that would have been payable if death of the public safety officer had occurred other than as the direct and proximate result of a personal injury sustained in the line of duty.

For purposes of paragraph (3), in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1) [[26 USCS § 401\(c\)\(1\)](#)] (relating to self-employed individuals), contributions made on behalf of such individual while he was such an employee to a trust described in section 401(a) [[26 USCS § 401\(a\)](#)] which is exempt from tax under section 501(a) [[26 USCS § 501\(a\)](#)], or under a plan described in section 403(a) [[26 USCS § 403\(a\)](#)], shall, to the extent allowed as deductions under section 404 [[26 USCS § 404](#)], be treated as contributions by the employer which were not includible in the gross income of the employee. For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213(d)(1) [[26 USCS § 213\(d\)\(1\)](#)]) attributable to emotional distress.

**(b)** Termination of application of subsection (a)(4) in certain cases.

**(1)** In general. Subsection (a)(4) shall not apply in the case of any individual who is not described in paragraph (2).

**(2)** Individuals to whom subsection (a)(4) continues to apply. An individual is described in this paragraph if--

**(A)** on or before September 24, 1975, he was entitled to receive any amount described in subsection (a)(4),

**(B)** on September 24, 1975, he was a member of any organization (or reserve component thereof) referred to in subsection (a)(4) or under a binding written commitment to become such a member,

**(C)** he receives an amount described in subsection (a)(4) by reason of a combat-related injury, or

**(D)** on application therefor, he would be entitled to receive disability compensation from the Veterans' Administration.

**(3)** Special rules for combat-related injuries. For purposes of this subsection, the term "combat-related injury" means personal injury or sickness--

**(A)** which is incurred--

**(i)** as a direct result of armed conflict,

**(ii)** while engaged in extrahazardous service, or

**(iii)** under conditions simulating war; or

**(B)** which is caused by an instrumentality of war. In the case of an individual who is not described in subparagraph (A) or (B) of paragraph (2), except as provided in paragraph (4), the only amounts taken into account under subsection (a)(4) shall be the amounts which he receives by reason of a combat-related injury.

**(4)** Amount excluded to be not less than veterans' disability compensation. In the case of any individual described in paragraph (2), the amounts excludable under subsection (a)(4) for any period with respect to any individual shall not be less than the maximum amount which such individual, on application therefor, would be entitled to receive as disability compensation from the Veterans' Administration.

**(c)** Application of prior law in certain cases. The phrase "(other than punitive damages)" shall not apply to punitive damages awarded in a civil action--

**(1)** which is a wrongful death action, and

**(2)** with respect to which applicable State law (as in effect on September 13, 1995 and without regard to any modification after such date) provides, or has been construed to provide by a court of competent jurisdiction pursuant to a decision issued on or before September 13, 1995, that only punitive damages may be awarded in such an action.

This subsection shall cease to apply to any civil action filed on or after the first date on which the applicable State law ceases to provide (or is no longer construed to provide) the treatment described in paragraph (2).

**(d)** Cross references.

**(1)** For exclusion from employee's gross income of employer contributions to accident and health plans, see section 106 [[26 USCS § 106](#)].

**(2)** For exclusion of part of disability retirement pay from the application of subsection (a)(4) of this section, see [section 1403 of title 10, United States Code](#) (relating to career compensation laws).

## History

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(Aug. 16, 1954, ch 736, 68A Stat. 30; Sept. 8, 1960, [P.L. 86-723](#), § 51, [74 Stat. 847](#); Oct. 10, 1962, [P.L. 87-792](#), § 7(d), [76 Stat. 829](#); Oct. 4, 1976, [P.L. 94-455](#), Title V, §§ 505(b), (e)(1), Title XIX, § 1901(a)(18), [90 Stat. 1567](#), 1568, 1766; Oct. 17, 1980, [P.L. 96-465](#), Title II, § 2206(e)(1), [94 Stat. 2162](#); Jan. 14, 1983, [P.L. 97-473](#), Title I, § 101(a), [96 Stat. 2605](#); Dec. 19, 1989, [P.L. 101-239](#), Title VII, § 7641(a), [103 Stat. 2379](#); Aug. 20, 1996, [P.L. 104-188](#), Title I, § 1605(a)-(c), [110 Stat. 1838](#); Aug. 21, 1996, [P.L. 104-191](#), Title III, § 311(b), [110 Stat. 2053](#); Jan. 23, 2002, [P.L. 107-134](#), Title I, § 113(a), [115 Stat. 2435](#).)

(As amended May 22, 2015, [P.L. 114-14](#), § 2, [129 Stat. 198](#).)

### ▼ Annotations

# Notes

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## Amendments:

**In 2015** , [P.L. 114-14](#), Sec. 2, amended subsec. (a) by deleting "and" following the concluding semicolon at the end of para. (4), substituting "; and" for a concluding period at the end of para. (5), and adding para. (6).

**In 2002** , [P.L. 107-134](#), Sec. 113(a) (applicable to taxable years ending on or after 9/11/2001, as provided by Sec. 113(c) of [P.L. 107-134](#), which appears as a note to this section), amended subsec. (c)(5) by substituting "a terroristic or military action (as defined in section 692(c)(2))." for "a violent attack which the Secretary of State determines to be a terrorist attack and which occurred while such individual was an employee of the United States engaged in the performance of his official duties outside the United States."

**In 1996** . [P.L. 104-191](#), Sec. 311(b) (applicable to taxable years beginning after 12/31/96, as provided by [P.L. 104-191](#), § 311(c), which appears as a note to this section), inserted "(or through an arrangement having the effect of accident or health insurance)" in subsec. (a) (3).

[P.L. 104-188](#), Sec. 1605(a)-(c) (applicable as provided by Sec. 1605(d), which appears as a note to this section), amended subsec. (a) by substituting para. (2) for one which read: "(2) the amount of any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injuries or sickness;" and substituting the sentences beginning "For purposes of paragraph (2) . . ." and "The preceding sentence . . ." for "Paragraph (2) shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness."; redesignated subsec. (c) as subsec. (d); and added new subsec. (c).

**In 1989** , [P.L. 101-239](#), Sec. 7641(a), added the last sentence to subsec. (a), applicable as provided by Sec. 7641(b) of such Act, which appears as a note to this section.

**In 1983** , [P.L. 97-473](#), Sec. 101(a), substituted "whether by suit or agreement and whether as lump sums or as periodic payments" for "whether by suit or agreement" in para. (a)(2), effective for tax. yrs. end. after 12/31/82.

**In 1980** , [P.L. 96-465](#), Sec. 2206(e)(1), substituted "section 808 of the Foreign Service Act of 1980" for "section 831 of the Foreign Service Act of 1946, as amended ([22 U.S.C. 1081](#))" in para. (a)(4), effective 2/15/81.

**In 1976** , [P.L. 94-455](#), Sec. 505(b), redesignated subsec. (b) as subsec. (c) and added new subsec. (b), for tax. yrs. begin. after '76.  
--P.L. 94-455, Sec. 505(e), deleted "and" at the end of para. (a)(3) . . . substituted "; and" for the period at the end of para. (a)(4) . . . added para. (a)(5), for tax. yrs. begin. after '76.

--P.L. 94-455, Sec. 1901(a)(18)(A), deleted "; [60 Stat. 1021](#)" after "[22 U.S.C. 1081](#)" in para. (a)(4) . . . Sec. 1901(a)(18)(B), amended para. (c)(2) as redesignated by Sec. 505(b) of the Act, effective for tax. yrs. begin. after 12/31/76.

Prior to amendment para. (c)(2) read as follows:

"(2) For exclusion of part of disability retirement pay from the application of subsection (a)(4) of this section, see section 402(h) of the Career Compensation Act of 1949 ([37 U.S.C. 272\(h\)](#))."

**In 1962** , [P.L. 87-792](#), added the last sentence of subsec. (a), effective for tax. yrs. begin. after 12/31/62.

**In 1960** , [P.L. 86-723](#), added "or as a disability annuity . . . [60 Stat. 1021](#)" in subsec. (a)(4), effective for tax. yrs. end. after 9/8/60.

## Other provisions:

**Application of Dec. 19, 1989 amendment.** Act Dec. 19, 1989, [P.L. 101-239](#), Title VII, Subtitle F, Part V, § 7641(b), [103 Stat. 2379](#), provides:

"(1) In general. Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to amounts received after July 10, 1989, in taxable years ending after such date.

"(2) Exception. The amendment made by subsection (a) shall not apply to any amount received--

"(A) under any written binding agreement, court decree, or mediation award in effect on (or issued on or before) July 10, 1989, or

"(B) pursuant to any suit filed on or before July 10, 1989."

**Application of Aug. 20, 1996 amendments.** Act Aug. 20, 1996, [P.L. 104-188](#), Title I, Subtitle F, Part I, § 1605(d), [110 Stat. 1839](#), provides:

"(1) In general. Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to amounts received after the date of the enactment of this Act, in taxable years ending after such date.

"(2) Exception. The amendments made by this section [amending this section] shall not apply to any amount received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995."

**Application of Aug. 21, 1996 amendments.** Act Aug. 21, 1996, [P.L. 104-191](#), Title III, Subtitle B, § 311(c), 110 Stat. provides: "The amendments made by this section [amending subsec. (a)(3) of this section and [26 USCS § 162\(l\)\(1\)](#)] shall apply to taxable years beginning after December 31, 1996."

**Application of Jan. 23, 2002 amendments.** Act Jan. 23, 2002, [P.L. 107-134](#), Title I, Subtitle B, § 113(c), [115 Stat. 2435](#), provides: "The amendments made by this section [amending [26 USCS §§ 104\(a\)\(5\)](#) and [692\(c\)](#)] shall apply to taxable years ending on or after September 11, 2001."

## Case Notes

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### ⚡ I. IN GENERAL

#### ⚡ 1. Generally

Unless payments made to taxpayer were received on account of personal injuries, amount paid is includible in his gross income, and most important fact in making that determination, in absence of express personal injury settlement agreement, is intent of payor as to purpose in making payment. [Knuckles v Commissioner \(1965, CA10\) 349 F2d 610, 65-2 USTC P 9629, 16 AFTR 2d 5515.](#)

Where taxpayer received settlement payments for defamation claim, application of amendments to [26 USCS § 104](#) to three payments that were received after amendments' effective date did not amount to retroactive legislation in violation of taxpayer's Fifth Amendment due process rights, because amendments applied only prospectively, to payments made after their date of enactment. [Polone v Comm'r \(2006, CA9\) 449 F3d 1041, 97 AFTR 2d 2780.](#)

Although it is possible for statute with seemingly prospective application to apply retroactively in some circumstances, amendments to [26 USCS § 104\(a\)\(2\)](#) do not because they do not attach new legal consequences to completed payments; on contrary, amendments apply only prospectively, to payments made after their date of enactment. [Polone v Comm'r \(2007, CA9\) 479 F3d 1019, 99 AFTR 2d 1426.](#)

Phase "personal injury" does not apply to corporation, and accordingly corporation cannot exclude from gross income settlement proceeds claim to be attributable to damage to its business reputation. [Boyett Coffee Co. v United States \(1991, WD Tex\) 775 F Supp 1001, 91-2 USTC P 50508, 68 AFTR 2d 5358.](#)

Where individual received periodic payments under structured settlement that was funded by annuity, although individual did not have ownership of annuity (to comply with [26 USCS § 104](#)) or right under contract to assign annuity payments, she had right to assign obligation to make periodic payments under settlement agreement for tort claim. [In re Jackson \(2004, BC WD Mich\) 311 BR 195.](#)

Payment made by closely held corporation in settlement of personal injury claim brought by president of corporation, who together with his wife controlled corporation, is excludible from president's gross income; where parties do not deal at arms length, transaction must be carefully scrutinized, and in determining substance of transaction, court may consider parties' actions in light of what would have occurred had transaction been at arms length. [Maxwell v Commissioner \(1990\) 95 TC 107.](#)

[I.R.C. § 104\(a\)\(2\)](#) is not unconstitutionally vague or ambiguous just because standard may be difficult to apply to particular circumstances. [Allum v Comm'r \(2005\) TC Memo 2005-177, 90 CCH TCM 74.](#)

Physical restraint and physical detention are not "physical injuries" for purposes of [26 USCS § 104\(a\)\(2\)](#); nor is deprivation of personal freedom physical injury for purposes of [26 USCS § 104\(a\)\(2\)](#). [Stadnyk v Comm'r \(2008\) TC Memo 2008-289, 96 CCH TCM 475.](#)

Supreme Court has established two-prong test for determining whether taxpayer is eligible to exclude income under [I.R.C. § 104\(a\)\(2\)](#); taxpayer must demonstrate (1) that underlying cause of action giving rise to recovery is based upon tort or tort-type rights, and (2) that damages are received on account of personal injuries or sickness. [Knoll v Comm'r \(2003\) CCH Unemployment Ins Rep P 17125B, TC Memo 2003-277, 86 CCH TCM 396.](#)

In absence of general federal common law of torts or controlling definitions in Internal Revenue Code, Tax Court looks to state law to determine nature of claim litigated; claim must be bona fide, but it need not be sustainable or valid. [Knoll v Comm'r \(2003\) CCH Unemployment Ins Rep P 17125B, TC Memo 2003-277, 86 CCH TCM 396.](#)

Plaintiff taxpayer could not sue defendant U.S. for tax refund under [I.R.C. § 7422\(a\)](#) because she had not paid her assessed tax deficiency in full, thus, Court of Federal Claims had no jurisdiction over claim under [28 USCS § 1346\(a\)\(1\)](#), and, for same reason, [I.R.C. § 104\(a\)](#), under which taxpayer claimed damages received by suit or settlement could be excluded from her gross income, did not provide alternative basis for jurisdiction. [Jacobs v United States \(2010, Ct Fed Cl\) 106 AFTR 2d 5006, app dismd \(2010, CA FC\) 2010 US App LEXIS 18883.](#)

## **2. Construction**

Plain language of Small Business Job Protection Act of 1996, [Pub. L. No. 104-188, 110 Stat. 1838](#), which amends [I.R.C. § 104\(a\)\(2\)](#), shows that amendment applies to damages received after August 20, 1996, which is Act's enactment date; damages for nonphysical injuries no longer qualify for gross income exclusion under § 104(a)(2) if damages are awarded, either by court or through settlement, on after August 20, 1996. [Lindsey v Comm'r \(2005, CA8\) 422 F3d 684, 96 AFTR 2d 5959.](#)

[26 USCS § 104](#) must be strictly construed, and taxpayer claiming exemption must bring himself or herself clearly within excepted class; pertinent words are to be interpreted in their ordinary and everyday meaning. [Townsend v United States \(1956, SD Ill\) 143 F Supp 150, 56-2 USTC P 9813, 50 AFTR 93.](#)

Although it is generally true that statutes allowing deductions from gross income are strictly construed, it is also recognized that courts have been liberal in construing Congressional enactments intended to give tax relief to injured or sick employees. [Andress v United States \(1961, ND Ohio\) 198 F Supp 371, 61-2 USTC P 9684, 8 AFTR 2d 5544.](#)

In clarifying definition of "personal injury" and eliminating injuries based on emotional distress from exemption, Congress limited scope of its taxation power to damages which were not result of physical injury or sickness; Congress' attempt to clarify law and decrease litigation was within boundaries of its limits under Sixteenth Amendment, and thus, [26 USCS § 104\(a\)\(2\)](#) did not pose constitutional problem under [Sixteenth Amendment. Murphy v IRS \(2005, DC Dist Col\) 362 F Supp 2d 206.](#)

Legislative history of [26 USCS § 104\(a\)\(2\)](#) provided that Congress intended to clarify state of law, as well as decrease litigation for cases that did not involve physical injury or physical sickness; clarifying tax code and decreasing litigation satisfied minimal requirement of "rational basis," and therefore [26 USCS § 104\(a\)\(2\)](#) did not violate due process clause under [Fifth Amendment. Murphy v IRS \(2005, DC Dist Col\) 362 F Supp 2d 206.](#)

Interest on damages is taxable, and is not excludable under § 104; nature of interest is that it is paid because of delay in receipt of funds, and accordingly interest is not component of personal injury. [Ames v Commissioner \(1990\) 94 TC 189.](#)

Court rejected taxpayers' contention that lump-sum payment was not income because there was no accession to wealth and, accordingly, no gain within meaning of [26 USCS § 61\(a\)](#), as taxation of awards received for personal, nonphysical injuries was within power of Congress. [Hennessey v Comm'r \(2009\) TC Memo 2009-132, 97 CCH TCM 1756.](#)

[26 USCS § 104\(a\)\(2\)](#) reflects reasonable exercise of Congress's power to tax, and does not violate Fifth Amendment. *Hennessey v Comm'r* (2009) [TC Memo 2009-132, 97 CCH TCM 1756](#).

United States Tax Court has agreed with Sixth Circuit, and rejected petitioner taxpayers' argument that [26 USCS § 104\(a\)\(2\)](#) violated Equal Protection Clause. *Hennessey v Comm'r* (2009) [TC Memo 2009-132, 97 CCH TCM 1756](#).

Provision in [I.R.C. § 61\(a\)](#) defining "gross income" to mean all income from whatever source derived unless excluded by specific provision of Internal Revenue Code is to be construed broadly, whereas exclusions from gross income such as [I.R.C. § 104](#) are construed narrowly. *Blackwood v Comm'r* (2012) [TC Memo 2012-190, 104 CCH TCM 27](#).

### **3. Burden of proof**

Taxpayer claiming exemption from taxation under [26 USCS § 104](#) must bring himself clearly within excepted class. [Townsend v United States \(1956, SD Ill\) 143 F Supp 150, 56-2 USTC P 9813, 50 AFTR 93](#).

Taxpayer seeking recovery of income tax paid on amount received from another has burden of proving amount received was given for damages sustained by taxpayer and that such transaction comes clearly within one of stated exemptions. [Meyer v United States \(1959, ED Tenn\) 173 F Supp 920, 59-1 USTC P 9409, 3 AFTR 2d 1314](#).

Taxpayer has burden of proving that he is entitled to exclude disability payments from income and must show that benefits were in fact paid to him pursuant to state statutes permitting such payments. *Take v Commissioner* (1985) [TC Memo 1985-388, RIA TC Memo P 85388, 50 CCH TCM 600](#), affd (1986, CA9) [804 F2d 553, 86-2 USTC P 9788, 58 AFTR 2d 6206](#).

Taxpayer failed to substantiate his claim that he could exclude disability benefits, paid under State Teachers Retirement System of Ohio (STRS), from income in amount greater than allowed by Commissioner of IRS where he did not establish that additional benefits were attributable to his after-tax contributions and he failed to show that any amounts contributed by STRS were included in his gross income; in sum, taxpayer did not address requirements of controlling regulation, [26 C.F.R. § 1.72-15\(c\)](#). *Wright v Comm'r* (2005) [TC Memo 2005-5, 89 CCH TCM 662](#).

Where taxpayer received settlement proceeds from lawsuit that did not sound in tort, funds were taxable under [26 USCS § 61\(a\)](#) and not excluded from income under [26 USCS § 104\(a\)\(2\)](#); attorney's fees incurred in obtaining settlement were only deductible as miscellaneous expenses under [26 USCS § 67](#). *Johnson v Comm'r* (2009) [TC Memo 2009-156, 97 CCH TCM 1860](#).

Where taxpayer alleged that amount he received for participating in gout study was excluded from his gross income under either [26 USCS §§ 104\(a\)\(2\)](#) or [102](#), court denied his motion to shift burden of proof to Commissioner of Internal Revenue pursuant to [26 USCS § 7491\(a\)\(1\)](#) and (2) and U.S. Tax Ct. R. 142(a)(2) because did not introduce contract with research company or testify to its terms or cooperate with Commissioner's request to produce contract. *O'Connor v Comm'r* (2012) [TC Memo 2012-317, 104 CCH TCM 571](#).

When taxpayer conceded that received he settlement amount, he bore burden under U.S. Tax Ct. R. 142(a) of showing that amount was not taxable income under [I.R.C. § 104\(a\)\(2\)](#). *Harris v Comm'r* (2012) [TC Memo 2012-333, 104 CCH TCM 700](#).

### **4. Jury instruction as to excludability**

Given absence of complications that instruction would engender, tax consciousness of American public, and general lack of knowledge about statutory exclusion, in personal injury actions trial courts must, in future, upon request by counsel, instruct jury that any award will not be subject to federal income taxes and that jury should not, therefore, add or subtract taxes in fixing amount of any award. [Domeracki v Humble Oil & Refining Co. \(1971, CA3 Pa\) 443 F2d 1245, cert den \(1971\) 404 US 883, 30 L Ed 2d 165, 92 S Ct 212](#).

Defendant railroad company is entitled to have instruction given to jury to effect that any award, if granted to plaintiff, is not subject to federal or state income taxes. [Dempsey v Thompson \(1952\) 363 Mo 339, 251 SW2d 42](#) (superseded by statute as stated in [Tennis v General Motors Corp. \(1981, Mo App\) 625 SW2d 218, CCH Prod Liab Rep P 9177, 26 ALR4th 350](#)).

## **II. PARTICULAR PAYMENTS**

### **A. Damages on Account of Personal Injury or Death**

#### **5. Death**

Interest on wrongful death damages is not excludable from income as element of wrongful death damages under state law. [Kovacs v Commissioner \(1994, CA6\) 74 AFTR 2d 5001, 94 TNT 126-16](#).

Award received by widow of Naval officer killed as result of incident involving USS Liberty on June 8, 1967 pursuant to claim submitted by United States Department of State to Israel Government is tax-free. [Rev Rul 68-649 \(1968\) 1968-2 CB 52](#).

Benefits received by beneficiaries of deceased members of Los Angeles fire or police departments under Los Angeles, California, Charter Article XVII, § 183 are excludable from gross income under [26 USCS § 104](#) if recipient can establish either that benefits are received under service connected death provision, or that benefits are received under retirement provision and that employee on account of whose death benefits are paid was retired under service connected disability provisions at time of that employee's death. [Rev Rul 80-84 \(1980\) 1980-1](#)

Government entity's payment to survivor of mass tort victim who won judgment for wrongful death and intentional infliction of emotional distress was voided per legislation providing compensation for wrongful death was excludable from gross income per [IRC § 104\(a\)\(2\)](#) as same were tort damages based on physical injury per [Treas. Reg. § 1.104-1\(c\)](#). [Private Letter Ruling 201022011, 2010](#) PLR LEXIS 473.

Government entity's payment to survivor of mass tort victim who won judgment for wrongful death and intentional infliction of emotional distress was voided per legislation providing compensation for wrongful death was excludable from gross income per [IRC § 104\(a\)\(2\)](#) as same were tort damages based on physical injury per [Treas. Reg. § 1.104-1\(c\)](#). [Private Letter Ruling 201022009, 2010](#) PLR LEXIS 464.

Amount received by estate for wrongful death was excludable from gross income under [IRC § 104\(a\)\(2\)](#); Court action and claim with Agency sought recovery of damages for wrongful death and intentional infliction of emotional distress based on personal physical injury, which were claims in tort under [Treas. Reg. § 1.104-1\(c\)](#). [Private Letter Ruling 201025027, 2010](#) PLR LEXIS 604.

Amount received from Department by survivor for wrongful death was excludable from gross income under [IRC § 104\(a\)\(2\)](#); Court action and claim with Department sought recovery of damages for wrongful death and intentional infliction of emotional distress based on personal physical injury, which were claims in tort under [Treas. Reg. § 1.104-1\(c\)](#). [Private Letter Ruling 201021016, 2010](#) PLR LEXIS 429; [Private Letter Ruling 201023012, 2010](#) PLR LEXIS 486; [Private Letter Ruling 201022010, 2010](#) PLR LEXIS 460.

Payment to survivor of victim of mass tort after judgment awarding damages for wrongful death and other torts was voided under special legislation providing state-paid compensation to survivor was excludable from gross income per [IRC § 104\(a\)\(2\)](#) as same constituted damages received by reason of personal physical injury per [Treas. Reg. § 1.104-1\(c\)](#). [Private Letter Ruling 201024025, 2010](#) PLR LEXIS 545.

Payment to survivor of victim of mass tort after judgment awarding damages for wrongful death and other torts was voided under special legislation providing state-paid compensation for wrongful death was excludable from gross income per [IRC § 104\(a\)\(2\)](#) because same constituted damages received on account of physical injury or physical sickness. [Private Letter Ruling 201020005, 2010](#) PLR LEXIS 397; [Private Letter Ruling 201020004, 2010](#) PLR LEXIS 399; [Private Letter Ruling 201017028, 2010](#) PLR LEXIS 267; [Private Letter Ruling 201020004, 2010](#) PLR LEXIS 399.

Payment to survivor of victim of mass tort after judgment awarding damages for wrongful death and other torts was voided under special legislation providing state-paid compensation for wrongful death was excludable from gross income per [IRC § 104\(a\)\(2\)](#) because same constituted damages received on account of physical injury or physical sickness. [Private Letter Ruling 201020004, 2010](#) PLR LEXIS 399.

Amount received from Department for wrongful death was excludable from gross income of survivor under [IRC § 104\(a\)\(2\)](#); Court action and claim with Department sought recovery of damages for wrongful death and intentional infliction of emotional distress based on personal physical injury, which were claims in tort under [Treas. Reg. § 1.104-1\(c\)](#). [Private Letter Ruling 201019005, 2010](#) PLR LEXIS 370.

Payment to estate of mass tort victim after judgment awarding damages for wrongful death and intentional infliction of emotional distress was voided per special legislation providing for state-paid compensation for wrongful death was excludable from gross income per [IRC § 104\(a\)\(2\)](#) as same constituted damages for personal physical injury. [Private Letter Ruling 201024041, 2010](#) PLR LEXIS 562.

Payment to the estate of victim of a mass tort after judgment awarding damages for wrongful death and other torts was voided under special legislation providing state-paid compensation for wrongful death was excludable from gross income per [IRC § 104\(a\)\(2\)](#) because same constituted damages received on account of physical injury or physical sickness. [Private Letter Ruling 201017027, 2010](#) PLR LEXIS 309.

Cash payment received by estate from sale of right to compensatory damages and from Department following passive of legislative act to provide fair compensation to all claimants was excludable from estate's income under [I.R.C. § 104\(a\)\(2\)](#); cash payment represented compensatory damages awarded for wrongful death. [Private Letter Ruling 200943014, 2009](#) PLR LEXIS 7585.

Monies paid to estate of mass tort victim following successful litigation of tort claims by independent executor of estate and paid per special legislation that voided tort judgment but provided state-paid compensation for wrongful death were based in tort per [Treas. Reg. § 1.104-1\(c\)](#) and thus were excludable from gross income per [IRC § 104\(a\)\(2\)](#). [Private Letter Ruling 200943026, 2009](#) PLR LEXIS 7593.

Cash payment received by estate from sale of right to compensatory damages and from Department following legislative act passed to provide fair compensation to all claimants was excludable from estate's income under [I.R.C. § 104\(a\)\(2\)](#); cash payment from Department represented compensatory damages awarded for wrongful death. [Private Letter Ruling 200943002, 2009](#) PLR LEXIS 7602.

Cash payment received by estate from sale of right to compensatory damages and from Agency following legislative act passed to provide fair compensation to all claimants, it was excludable from estate's income under [I.R.C. § 104\(a\)\(2\)](#); cash payments represented compensatory damages awarded for wrongful death. [Private Letter Ruling 200943003, 2009](#) PLR LEXIS 7581.

Monies paid to survivor of a victim of a mass tort following survivor's successful litigation of claim of infliction of extreme emotional distress or paid to survivor per special legislation that voided tort judgment but provided state-paid compensation for wrongful death of

survivor's decedent were excludable from gross income per [IRC § 104\(a\)\(2\)](#). [Private Letter Ruling 200942013, 2009](#) PLR LEXIS 7499.

When taxpayer exchanged right to recover portion of court award for immediate cash payment, it was excludable from taxpayer's income under [I.R.C. § 104\(a\)\(2\)](#); following legislative act passed to provide fair compensation to all claimants, cash payment from Department represented compensatory damages awarded for wrongful death. [Private Letter Ruling 200942014, 2009](#) PLR LEXIS 7500.

Monies paid to survivor of a victim of a mass tort following survivor's successful litigation of claim of infliction of extreme emotional distress or paid to survivor per special legislation that voided tort judgment but provided state-paid compensation for wrongful death of survivor's decedent were excludable from gross income per [IRC § 104\(a\)\(2\)](#). [Private Letter Ruling 200942015, 2009](#) PLR LEXIS 7511.

When taxpayer exchanged right to recover portion of court award for immediate cash payment, it was excludable from taxpayer's income under [I.R.C. § 104\(a\)\(2\)](#); following legislative act passed to provide fair compensation to all claimants, cash payment from Department represented compensatory damages awarded for wrongful death. [Private Letter Ruling 200942008, 2009](#) PLR LEXIS 7497.

When taxpayer exchanged right to recover portion of court award for immediate cash payment, it was excludable from taxpayer's income under [I.R.C. § 104\(a\)\(2\)](#); cash payment represented compensatory damages awarded for wrongful death and emotional distress; amount received from Department for wrongful death was also excludable from gross income. [Private Letter Ruling 200941005, 2009](#) PLR LEXIS 7423.

Monies paid to survivor of a victim of a mass tort following survivor's successful litigation of claim of infliction of extreme emotional distress or paid to survivor per special legislation that voided tort judgment but provided state-paid compensation for wrongful death of survivor's decedent were excludable from gross income per [IRC § 104\(a\)\(2\)](#). [Private Letter Ruling 200942041, 2009](#) PLR LEXIS 7501.

When taxpayer exchanged right to recover portion of court award for immediate cash payment, it was excludable from taxpayer's income under [I.R.C. § 104\(a\)\(2\)](#); following legislative act passed to provide fair compensation to all claimants, cash payment from Department represented compensatory damages awarded for wrongful death. [Private Letter Ruling 200942010, 2009](#) PLR LEXIS 7492.

When estate exchanged right to recover portion of court award for immediate cash payment, it was excludable from estate's income under [I.R.C. § 104\(a\)\(2\)](#); following legislative act passed to provide fair compensation to all claimants, cash payment from Agency represented compensatory damages awarded for wrongful death. [Private Letter Ruling 200942011, 2009](#) PLR LEXIS 7495.

Monies paid to survivor of a victim of a mass tort following survivor's successful litigation of claim of infliction of extreme emotional distress or paid to survivor per special legislation that voided tort judgment but provided state-paid compensation for wrongful death of survivor's decedent were excludable from gross income per [IRC § 104\(a\)\(2\)](#). [Private Letter Ruling 200942012, 2009](#) PLR LEXIS 7494.

Monies paid to survivor of a victim of a mass tort following survivor's successful litigation of claim of infliction of extreme emotional distress or paid to survivor per special legislation that voided tort judgment but provided state-paid compensation for wrongful death of survivor's decedent were excludable from gross income per [IRC § 104\(a\)\(2\)](#). [Private Letter Ruling 200940006, 2009](#) PLR LEXIS 7396.

After structured settlement assignment company assumed defendant's obligation relating to death of claimant's father from personal injury, settlement company was not subject to information reporting requirements of [I.R.C. § 6041](#) because each payment was damages received on account of personal injuries or sickness under former I.R.C. § 104(a)(2). [Private Letter Ruling 200918001, 2008](#) PLR LEXIS 4377.

## **📌 6. Future injury**

Sum received by taxpayer from motion picture producer, representing liquidated damages for possible injury to his reputation and invasion of privacy in the future, was not exempt from taxation. [Meyer v United States \(1959, ED Tenn\) 173 F Supp 920, 59-1 USTC P 9409, 3 AFTR 2d 1314.](#)

When worker filed action against transportation company under Federal Employers Liability Act (FELA), [45 USCS §§ 51-60](#), jury returned verdict in his favor and awarded damages; while damages for future lost wages in FELA claims were exempt from taxation under [26 USCS § 104\(a\)\(2\)](#) and [Ky. Rev. Stat. Ann. § 141.010\(9\)](#), trial court was not required to give jury non-taxability instruction; jury did not inflate award of damages future wage loss in mistaken belief that it would be taxed. [CSX Transp., Inc. v Moody \(2010, Ky\) 313 SW3d 72, 30 BNA IER Cas 1411.](#)

## **📌 7. Injury to reputation**

Award is not excludible from gross income under [26 USCS § 104](#) where complaint filed in state court action requested damages for injuries to reputation as well as damages for lost earnings but state court's decision indicated that award was based solely on taxpayer's lost earning. [Wolfson v Commissioner \(1981, CA6\) 651 F2d 1228, 81-2 USTC P 9594, 48 AFTR 2d 5351.](#)

If defamation of individual is personal injury under state law, compensatory damages received by individual in defamation suit are excludible from gross income under [26 USCS § 104\(a\)\(2\)](#). [Roemer v Commissioner \(1983, CA9\) 716 F2d 693, 9 Media L R 2407, 83-2 USTC P 9600, 52 AFTR 2d 5954](#) (superseded by statute as stated in [Rice v United States \(1993, ED Cal\) 834 F Supp 1241, 63 BNA FEP Cas 1189, 63 CCH EPD P 42834, 93-2 USTC P 50488, 72 AFTR 2d 6097](#)) and (superseded by statute as stated in [Hawkins v United States](#)

[\(1994, CA9 Ariz\) 30 F3d 1077, 94 CDOS 5493, 94 Daily Journal DAR 10097, 94-2 USTC P 50386, 74 AFTR 2d 5363, 94 TNT 147-8\).](#)

Injury to taxpayer's reputation is personal injury even though it affects professional pursuits, and as result, compensation for injury to reputation is excludible; personal nature of injury is not defined by its effect and, for example, injury to person's hand or arm is personal injury even though it may affect person's professional pursuits. [Threlkeld v Commissioner \(1988, CA6\) 848 F2d 81, 88-1 USTC P 9370, 61 AFTR 2d 1285.](#)

Plain meaning of § 104(a)(2) does not exclude punitive damages from damages excludable from gross income. [Commissioner v Miller \(1990, CA4\) 914 F2d 586, 90-2 USTC P 50511, 66 AFTR 2d 5620.](#)

Where taxpayer received settlement payments for defamation claim, three payments received after August 20, 1996, effective date of amendments to [26 USCS § 104](#), were taxable as ordinary income because, although claims were settled before effective date, payments were received after effective date; also, preexisting settlement agreement exception and [26 USCS § 1001](#) did not apply to settlement. [Polone v Comm'r \(2006, CA9\) 449 F3d 1041, 97 AFTR 2d 2780.](#)

Payments that cash basis taxpayer received after effective date of amendments to [26 USCS § 104\(a\)\(2\)](#) based on defamation settlement agreement executed prior to effective date of amendments could not be excluded from taxpayer's gross income under [26 USCS § 61\(a\)](#) because [26 USCS § 1001](#) did not apply since defamation claim was not transferable under state law; additionally, application of amendments to payments did not amount to retroactive legislation, thus, there was no violation of taxpayer's [U.S. Const. amend. V](#). [Polone v Comm'r \(2007, CA9\) 479 F3d 1019, 99 AFTR 2d 1426.](#)

Because appellant taxpayer's emotional distress and loss of reputation award in administrative action brought against her former employer focused on mental pain and anguish, it was not received on account of personal physical injuries excludable from gross income under [I.R.C. § 104\(a\)\(2\)](#) and was implicitly included in gross income under [I.R.C. § 61](#). [Murphy v IRS \(2007, App DC\) 493 F3d 170, 2007-2 USTC P 50531, 100 AFTR 2d 5075, reh, en banc, den \(2007, App DC\) 100 AFTR 2d 6049.](#)

Where real estate salesman sues for unpaid commissions and damages for injury to his reputation, and case is settled before trial, portion of settlement representing punitive damages is not excludible from income as damages on account of personal injuries, since there is no showing that settlement is intended to compensate for anything but lost income and related contractual damages. [Villaume v United States \(1985, DC Minn\) 616 F Supp 185, 85-2 USTC P 9540, 56 AFTR 2d 5764.](#)

Because [26 USCS § 104\(a\)\(2\)](#) clearly provided that damages had to be received "on account of personal physical injury or physical sickness," and because mental pain and anguish and damage to reputation were not physical injuries, taxpayer's emotional distress damages were not included within statutory exemption under § 104(a)(2); therefore, taxpayer's entire compensatory damages award of \$ 70,000 was lawfully taxed under § 104(a)(2). [Murphy v IRS \(2005, DC Dist Col\) 362 F Supp 2d 206.](#)

Amount paid in settlement of taxpayer's claim for personal embarrassment, mental and physical strain and injury to health and personal reputation in community, arising from improper termination of his employment as president of corporation which resulted in adverse newspaper publicity, was nontaxable, although there was no allocation made of amount recovered between damages for embarrassment and damages for injury to health and reputation, since embarrassment was incidental to or in aggravation of other element of claim which qualified for nontaxability and, hence, recovery for embarrassment was itself nontaxable. [Seay v Commissioner \(1972\) 58 TC 32, acq.](#)

Lump sum payment given dismissed school superintendent is includable in gross income where payment was intended for compensation for contractual rights rather than on account of injury to personal reputation. [Glynn v Commissioner \(1981\) 76 TC 116, affd, without op \(1982, CA1\) 676 F2d 682.](#)

Damages received by employee from his employer for injury to reputation qualifies as excludable damages for personal injuries under [26 USCS § 104\(a\)\(2\)](#). [Knuckles v Commissioner \(1964\) TC Memo 1964-33, RIA TC Memo P 64033, 23 CCH TCM 182, affd \(1965, CA10\) 349 F2d 610, 65-2 USTC P 9629, 16 AFTR 2d 5515.](#)

Although settlement paid by university to professor subsequent to firing of 103 employees in budget cutback was intended to settle any possible claim including claim for damage to professional reputation; entire amount must be included in income where settlement did not make separate allocations for various possible claims. [Evans v Commissioner \(1980\) TC Memo 1980-142, RIA TC Memo P 80142, 40 CCH TCM 260.](#)

Taxpayer who received severance pay is not entitled to exclude portion of payment as payment made in lieu of threatened libel action where company officials were not aware that taxpayer was contemplating lawsuit, and release agreement would have been drafted differently if they were aware of such plans; most important factor making factual determination between compensation income and tort-type claims is intent of payor in making payment. [Dible v Commissioner \(1989\) TC Memo 1989-589, RIA TC Memo P 89589, 58 CCH TCM 556.](#)

IRS will not follow opinion of Ninth Circuit in [Roemer v Commissioner \(1983, CA9\), reversing 79 TC 398 \(1982\)](#), relating to taxability of compensatory damages awarded in libel suit; IRS will follow decision of Tax Court to effect that compensatory damages are not excludible where taxpayer fails to establish that they are received for injury to his personal, as opposed to professional, reputation. [Rev Rul 85-143](#)

[\(1985\) 1985-2 CB 55](#), [obsoleted \(1998\) 1998-32 IRB 5](#).

## **↑ 8. Interest on award**

Interest on wrongful death damages is not excludable from income as element of wrongful death damages under state law. [Kovacs v Commissioner \(1994, CA6\) 74 AFTR 2d 5001](#), 94 TNT 126-16.

Prejudgment interest awarded in personal injury case is not excludable under § 104, since such interest represented compensation for lost time value of money, rather than for personal injuries. [Brabson v United States \(1996, CA10 Colo\) 73 F3d 1040, 96-1 USTC P 50038, 77 AFTR 2d 572](#), cert den [\(1996\) 519 US 1039, 136 L Ed 2d 533, 117 S Ct 607](#).

Portion of medical malpractice recovery allocated by original court order to prejudgment interest is not excludable, even though parties later stipulated that no part of original award was attributable to pre-judgment interest. [Rozpad v Commissioner \(1998, CA1\) 154 F3d 1, 98-2 USTC P 50672, 82 AFTR 2d 5840](#).

Prejudgment interest awarded under state law in personal injury suit was not excluded from taxation, as such interest was awarded on account of delay in payment; Congress intended [I.R.C. § 104\(a\)\(2\)](#) to exclude amounts received on account of personal injury, so amounts received on account of delay in payment as reparation for lost time value of money were taxable. [Chamberlain v United States \(2005, CA5 La\) 401 F3d 335, 95 AFTR 2d 1069](#).

Federal taxpayer was properly found liable for 20 percent penalty under [I.R.C. § 6662](#) for failing to report as income multimillion dollar litigation settlement that he had entered into with State of Texas to collect jury award in successful whistleblower litigation, because terms of agreement revealed he did not act in good faith when deciding to exclude punitive damages and interest as damages received from income on account of personal injury or sickness under [I.R.C. § 104\(a\)\(2\)](#). [Green v Comm'r \(2007, CA5\) 2007-2 USTC P 50796, 100 AFTR 2d 6595](#).

Interest income on wrongful death award to taxpayer parents for death of child stillborn as result of negligence of mother's employer is includable in income of parents, not in income of child's estate since action was filed on behalf of parents and benefited parents, not estate. [Jarvis v United States \(1995, ED Mich\) 899 F Supp 320, 95-2 USTC P 50452, 76 AFTR 2d 6046](#), 95 TNT 170-4, 95 TNT 170-16.

Summary judgment was granted in favor of government because prejudgment interest on personal injury award was not exempted from taxation; although it could be considered part of damages under state law, [La. Rev. Stat. Ann. § 13:4203](#), it nonetheless was not received on account of personal injuries, but was rather received on account of time delay. [Chamberlain v United States \(2003, ED La\) 286 F Supp 2d 764, 2003-2 USTC P 50711, 92 AFTR 2d 6431](#), affd (2005, CA5 La) [401 F3d 335, 95 AFTR 2d 1069](#).

## **↑ 9. Partly for personal injury, partly for other claims**

Settlement in suit for wrongful discharge is entirely excludable even though settlement might have included compensation for lost wages since elements of damage in suit for wrongful discharge are primarily personal. [Byrne v Commissioner \(1989, CA3\) 883 F2d 211, 50 BNA FEP Cas 1108, 29 BNA WH Cas 747, 51 CCH EPD P 39264, 89-2 USTC P 9500, 64 AFTR 2d 5430](#).

Entire supplemental award received by taxpayers in age discrimination action is excludable from income since such lawsuit is analogous to assertion of tort-type right to redress personal injuries; fact that substantial nonpersonal consequence of age discrimination was loss of wages does not transform discrimination into nonpersonal injury. [Pistillo v Commissioner \(1990, CA6\) 912 F2d 145, 53 BNA FEP Cas 1219, 54 CCH EPD P 40215, 90-2 USTC P 50469, 66 AFTR 2d 5448](#).

Economic damages awarded in age discrimination action are tort-type recoveries for personal injuries, and as such are excludable from gross income. [Redfield v Insurance Co. of N. Am. \(1991, CA9 Cal\) 940 F2d 542, 91 Daily Journal DAR 9550, 56 BNA FEP Cas 977, 57 CCH EPD P 40945, 120 CCH LC P 56779, CCH Unemployment Ins Rep P 16208A, 91-2 USTC P 50385, 68 AFTR 2d 5316](#).

Part of personal injury settlement is taxable as prejudgment interest even though settlement agreement stipulated that no interest was charged where plaintiff won verdict at trial level which included prejudgment interest and, while appeal was pending, settled case for lesser amount; IRS properly concluded that part of settlement was interest, even though settlement agreement specified that no interest was included. [Delaney v Commissioner \(1996, CA1\) 99 F3d 20, 96-2 USTC P 50576, 78 AFTR 2d 6968](#).

Portion of settlement may be allocated by Tax Court to includable punitive damages even though settlement agreement did not allocate any portion to punitive damages and tortfeasor was opposed to any allocation to punitive damages; portion of settlement is properly attributed to punitive damages where jury had awarded substantial punitive award, and even though verdict was overturned, there was probability that another jury would have similarly have awarded punitive damages. [Bagley v Commissioner \(1997, CA8\) 121 F3d 393, 97-2 USTC P 50586, 80 AFTR 2d 5739](#), reh, en banc, den (1997, CA8) [1997 US App LEXIS 27256](#).

Engineer who, as condition of participation in program for early retirement, was paid severance and signed release of all claims cannot exclude any portion of severance as related to claims for personal injury since severance was based on years of service and claims for depression were raised only after release was signed; fact that employer foresaw age discrimination claims arising under early retirement program does not open door to treatment of severance amounts as compensation for physical ailments arising from early retirement.

[Gajda v Commissioner \(1998, CA5 Tex\) 156 F3d 182, 98-2 USTC P 50673, 82 AFTR 2d 5951](#), reported in full (1998, CA5) [158 F3d 802, 22 EBC 2005, 98-2 USTC P 50673](#).

Settlement payment specifically allocated to damages to business reputation is excludable from income under § 104 (prior to its amendment by Small Business Job Protection Act of 1996) where settlement arose from suit against pesticide manufacturer following damage to plants sold by taxpayer's orchard business which damaged their business reputation, which was indistinguishable from their personal reputation, and resulted in the closing of their business. [Fabry v Commissioner \(2000, CA11\) 223 F3d 1261, 13 FLW Fed C 1028, 86 AFTR 2d 5672, 2000-2 USTC P 50682](#).

Punitive damages received in settlement of civil rights action under 18 USCS § 1983 are not excludable from gross income since such damages do not serve any compensatory purposes but are awarded to punish wrongdoer and to deter similar conduct. [Kemp v Commissioner \(1991, ND Ga\) 771 F Supp 357, 91-2 USTC P 50329, 69 AFTR 2d 444](#).

Failure of parties in settlement agreement entered at time when appeal of award of punitive damages was pending to allocate settlement award between compensatory and punitive damages requires court to make allocation based upon consideration of factors surrounding payment, including pleadings, evidence presented, terms of settlement and intent of payor. [Lane v United States \(1995, WD Okla\) 902 F Supp 1439, 95-2 USTC P 50455, 76 AFTR 2d 6085](#), 95 TNT 171-7.

Delay damages added to personal injury award under state law are not excludable under [26 USCS § 104](#). [Francisco v United States \(1999, ED Pa\) 54 F Supp 2d 427, 99-2 USTC P 50625, 84 AFTR 2d 5021](#), affd (2001, CA3 Pa) [267 F3d 303, 2001-2 USTC P 50662, 88 AFTR 2d 6513](#).

Proceeds from sale of land to oil company are not excludable under § 104 as compensation for personal injury even though transfer was motivated by emotional distress caused by proximity to oil production properties and deprivation of enjoyment of property due to nuisance. [Holland v United States \(2000, SD Tex\) 94 F Supp 2d 787, 2000-1 USTC P 50465, 85 AFTR 2d 2174](#), affd (2001, CA5 Tex) [251 F3d 157, 2001-1 USTC P 50291, 87 AFTR 2d 1418](#).

Recovery from legal action or in settlement of threatened legal action which is in part in satisfaction of claim for personal injury, and in part in satisfaction of some other claims for which recovered damages are taxable, such as one for wages due under breached employment contract, can be excluded from taxable income portion of recovery attributable to personal injury claim provided taxpayer can show how much of recovery was in fact intended by himself and defendant as compensation for personal injuries; moreover taxpayer has only to establish nature of his claim for personal injuries, not its validity. [Seay v Commissioner \(1972\) 58 TC 32](#), acq.

Liquidated damages awarded to employee in sex discrimination suit under equal pay act are excludable; backpay awarded to employee in sex discrimination suit is includable in income since backpay is not in nature of damages for tort-type right. [Thompson v Commissioner \(1987\) 89 TC 632, 44 BNA FEP Cas 1457](#), affd (1989, CA4) [866 F2d 709, 48 BNA FEP Cas 1649, 29 BNA WH Cas 181, 49 CCH EPD P 38720, 111 CCH LC P 35198, 89-1 USTC P 9164, 63 AFTR 2d 677](#).

Entire settlement amount received in age discrimination action, including any portion that may have been for lost wages, is excludable from gross income. [Downey v Commissioner \(1991\) 97 TC 150, 56 BNA FEP Cas 897, 57 CCH EPD P 41019](#).

In settlement of case involving claim against employee for breach of contract, and racial discrimination, where language of settlement agreement indicates that payor intended to settle both claims, amount of recover, allocated between each of claims. [Stocks v Commissioner \(1992\) 98 TC 1, 57 BNA FEP Cas 1039](#).

Additional payments to taxpayer were compensation and not excludable as damages for personal injury where hearing of charges against taxpayer, schoolteacher, were suspended and settlement negotiations were entered into between taxpayer and school board which provided that taxpayer was to be paid in full for balance of his contract period and additional amount for all claims which taxpayer had, or ever had in past, there being no allocation of payments made nor indication as to what was contemplated by additional payments. [Dalbo v Commissioner \(1969\) TC Memo 1969-220, RIA TC Memo P 69220, 28 CCH TCM 1171](#).

Proceeds of settlement received by retailer of electronic calculators from manufacturer out of lawsuit alleging antitrust violations and breach of contract are not non-taxable compensation for personal injury to extent of amounts allocated to loss of business reputation since settlement agreement allocated parts of proceeds to injury and parts to loss of business reputation. [O. S. C. Corp. v Commissioner \(1982\) TC Memo 1982-280, RIA TC Memo P 82280, 43 CCH TCM 1430](#).

Lump sum payment made in settlement of controversy arising out of taxpayer's management of apartment complex which is in part recovery for personal injury in damage to business reputation is excludible to that extent; to extent that settlement represents payment for termination and cancellation of management and broker contracts, settlement constitutes taxable payment; in determining excludible portion of settlement, court first determines portion of settlement which is taxable, and subtracts that portion from total settlement. [Matray v Commissioner \(1989\) TC Memo 1989-28, RIA TC Memo P 89028, 56 CCH TCM 1107](#).

Where lump sum severance payment is based on length of service and pay rate, severance payment cannot be excluded, even though employer requested, and employee gave, general release and covenant not to sue. [Sodoma v Commissioner \(1996\) TC Memo 1996-275](#),

Payments received on settlement of wrongful termination claim against former employer are excludable to extent that payments were attributable to mental distress damages, since such damages were based on tort-like claim and were received on account of personal injury. *Barnes v Commissioner* (1997) [TC Memo 1997-25, RIA TC Memo P 97025, 73 CCH TCM 1754.](#)

In context of [I.R.C. § 104\(a\)\(2\)](#) determination, Tax Court refuses to blindly accept parties' allocation of settlement proceeds where allocation is patently inconsistent with realities of underlying claims. *Gerard v Comm'r* (2003) [TC Memo 2003-320, 86 CCH TCM 604.](#)

In context of [I.R.C. § 104\(a\)\(2\)](#) determination, characterization of payment in settlement agreement or other executed document is not always dispositive as, for example, when record proves characterization is inconsistent with realities of settlement. *Gerard v Comm'r* (2003) [TC Memo 2003-320, 86 CCH TCM 604.](#)

Settlement proceeds attributable to claim for tortious interference with contractual rights and prospective business advantages are excludable under [I.R.C. § 104\(a\)\(2\)](#). *Gerard v Comm'r* (2003) [TC Memo 2003-320, 86 CCH TCM 604.](#)

In context of [I.R.C. § 104\(a\)](#) determination, where Tax Court is convinced that settlement payments are on account of both personal injuries and economic injuries, Tax Court uses its best judgment to allocate settlement payments in circumstances where payor (1) takes seriously various claims that taxpayer asserts, (2) believes that taxpayer will litigate claims asserted, (3) was not ever presented with empirical evidence as to extent of taxpayer's personal or economic injuries, and (4) makes settlement payments to discharge all such claims, for personal and economic injuries alike. *Gerard v Comm'r* (2003) [TC Memo 2003-320, 86 CCH TCM 604.](#)

State law controls whether nature of claim is tort or tort type right; federal law controls federal tax consequences pertaining to such interests and rights. *Gerard v Comm'r* (2003) [TC Memo 2003-320, 86 CCH TCM 604.](#)

With respect to [I.R.C. § 104\(a\)\(2\)](#), claims for defamation, infliction of emotional distress, emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life are based on personal injury torts. *Gerard v Comm'r* (2003) [TC Memo 2003-320, 86 CCH TCM 604.](#)

At-will employee may have cause of action in tort for damages for wrongful discharge where discharge is in violation of public policy. *Gerard v Comm'r* (2003) [TC Memo 2003-320, 86 CCH TCM 604.](#)

In context of [I.R.C. § 104\(a\)\(2\)](#) determination, taxpayer's claim for interference with his employment relationship fell within larger category of claims for tortious interference with business relationship where such tort claims were recognized under state law. *Gerard v Comm'r* (2003) [TC Memo 2003-320, 86 CCH TCM 604.](#)

To satisfy second element of *Schleier* test, taxpayer must show that payments are received on account of personal injuries or sickness, [I.R.C. § 104\(a\)\(2\)](#); for this purpose, each element of tort settlement must be examined to determine whether there is direct causal link between tort and personal injury. *Gerard v Comm'r* (2003) [TC Memo 2003-320, 86 CCH TCM 604.](#)

In context of [I.R.C. § 104\(a\)\(2\)](#) determination, express allocation in settlement agreement will generally be followed if parties have entered into agreement in adversarial context at arm's length and in good faith; such express allocation is not necessarily determinative, however, if other facts indicate that payment is intended by parties to be for different purpose. *Gerard v Comm'r* (2003) [TC Memo 2003-320, 86 CCH TCM 604.](#)

Absent express allocation in settlement agreement, most important consideration is payor's intent in making payment. *Gerard v Comm'r* (2003) [TC Memo 2003-320, 86 CCH TCM 604.](#)

Regarding [I.R.C. § 104\(a\)](#), with respect to claim for emotional distress, legislative history distinguishes damages attributable to physical injury or physical sickness, which are excludable, from damages attributable to emotional distress or "symptoms" thereof, which are not excludable. *Parkinson v Comm'r* (2010) [TC Memo 2010-142, 99 CCH TCM 1583.](#)

Insofar as medical center intended settlement payment to compensate taxpayer for his alleged physical injuries or physical sickness, payment was excludable under [I.R.C. § 104\(a\)](#), notwithstanding that underlying claim was based on tort of intentional infliction of emotional distress; because physical injuries were overriding focus of his state court complaint, court had no doubt that those physical injuries figured prominently among "noneconomic damages" for which settlement payment was made; taxpayer had not established, however, that settlement payment did not include elements other than compensation for physical injury or physical sickness, and it was held that one-half of settlement payment that he received in 2005 was made on account of physical injury or physical sickness and was excludable from his gross income under § 104(a)(2). *Parkinson v Comm'r* (2010) [TC Memo 2010-142, 99 CCH TCM 1583.](#)

Entire award in settlement of age discrimination complaint is includible in gross income where award is based upon compensatory damages for lost wages and benefits. *Wirtz v Commissioner* (1989) [10 EBC 2418, 49 BNA FEP Cas 729, TC Memo 1989-139, RIA TC Memo P 89139, 56 CCH TCM 1596.](#)

In allocating backpay award between nontaxable damages for injuries to personal rights and taxable payments of backpay, court examines nature of claim, taking into account what could have been recovered if taxpayer had successfully prosecuted his suit, looking to language of settlement agreement, and intent of the payor as determined from the evidence. [Sparrow v Commissioner](#) (1989) [50 BNA](#)

[FEP Cas 197](#), [TC Memo 1989-315](#), [RIA TC Memo P 89315](#), [57 CCH TCM 816](#), affd (1991, App DC) [292 US App DC 259](#), [949 F2d 434](#), [57 BNA FEP Cas 592](#), [57 CCH EPD P 41108](#), [91-2 USTC P 50567](#), [69 AFTR 2d 325](#), reh den (1992, App DC) [1992 US App LEXIS 10201](#) and cert den [\(1992\) 505 US 1211](#), [120 L Ed 2d 883](#), [112 S Ct 3009](#), [59 BNA FEP Cas 1248](#).

Entire amount received by individual in settlement of suit for personal injuries sustained in accident, including portion of amount allocable to claim for lost wages, is excludible from individual's gross income. [Rev Rul 85-97 \(1985\) 1985-2 CB 50](#).

[IRC § 468B](#) qualified settlement fund won IRS ruling that it was not required to issue information returns pursuant to [IRC § 6041](#) reflecting payments to be made on account of physical injuries or sickness suffered by payees by reason of commission of tort because such payments were not includable in income of such payees pursuant to [IRC § 104\(a\)\(2\)](#). [Private Letter Ruling 200925039](#), [2009 PLR LEXIS 6344](#).

## **10. Periodic payments**

Damages taxpayer received were "on account of" discrimination and not "on account of" physical injuries, so there was no direct causal link between taxpayer's physical injuries and taxpayer's recovery under Americans with Disabilities Act, [42 USCS § 12101](#) et seq.; therefore, taxpayer's front and back pay awards were not excludable from taxpayer's income under [26 USCS § 104\(a\)\(2\)](#). [Johnson v United States \(2002, DC Colo\) 228 F Supp 2d 1218](#), [2002-2 USTC P 50593](#), [90 AFTR 2d 5662](#), motion gr, corrected (2002, DC Colo) [211 FRD 633](#) and affd (2003, CA10 Colo) [76 Fed Appx 873](#), [2003-2 USTC P 50670](#), [92 AFTR 2d 5969](#), cert den (2004, US) [159 L Ed 2d 786](#), [124 S Ct 2888](#).

Taxpayer had no taxable income though income of trust was used to pay his medical bills, because United States government had established trust for purpose of paying taxpayer's medical bills under settlement agreement arising out of his personal injury suit against government. [Rev Rul 77-230 \(1977\) 1977-2 CB 214](#).

Recipient may exclude full amount of payments rather than discounted present value where insurance company purchased and retained exclusive ownership in single premium annuity contract to fund monthly payments stipulated in settlement of damage suit; payments made to estate after recipient's death are also fully excludable. [Rev Rul 79-220 \(1979\) 1979-2 CB 74](#).

Payments for personal injury in settlement with insurance company as result of accident are excludable where insurance company agreed to make 50 consecutive annual payments, each of which would be increased by 5 percent year. [Rev Rul 79-313 \(1979\) 1979-2 CB 75](#).

## **11. Punitive damages**

Punitive damages received by taxpayer in breach of good faith suit against insurance company cannot be excluded since punitive damages are not compensation for personal injuries but were to punish defendant insurance company for its egregious conduct. [Hawkins v United States \(1994, CA9 Ariz\) 30 F3d 1077](#), [94 CDOS 5493](#), [94 Daily Journal DAR 10097](#), [94-2 USTC P 50386](#), [74 AFTR 2d 5363](#), [94 TNT 147-8](#), cert den [\(1995\) 515 US 1141](#), [132 L Ed 2d 827](#), [115 S Ct 2576](#).

Punitive damages received for personal injury are excludable where such damages were received prior to July 10, 1989, the effective date of amendment to § 104(a)(2) which permits exclusion of punitive damages only in cases of physical injury or sickness. [Horton v Commissioner \(1994, CA6\) 33 F3d 625](#), [94-2 USTC P 50440](#), [74 AFTR 2d 5934](#), [94 TNT 171-4](#), [1994 FED App 301P](#) (criticized in [O'Gilvie v United States \(1995, CA10 Kan\) 66 F3d 1550](#), [95-2 USTC P 50508](#), [76 AFTR 2d 6752](#), [95 TNT 203-6](#)).

Punitive damages awarded in malicious prosecution action are not excludable where, under state law, punitive damages are awarded to punish tortfeasor, not to compensate victim for any injury. [Estate of Moore v Commissioner \(1995, CA5\) 53 F3d 712](#), [95-1 USTC P 50299](#), [75 AFTR 2d 2362](#), [95 TNT 109-15](#).

Punitive damages recovered in product liability claim for wrongful death are includable in gross income since exclusions are narrowly construed. [O'Gilvie v United States \(1995, CA10 Kan\) 66 F3d 1550](#), [95-2 USTC P 50508](#), [76 AFTR 2d 6752](#), [95 TNT 203-6](#), affd [\(1996\) 519 US 79](#), [136 L Ed 2d 454](#), [117 S Ct 452](#), [96 CDOS 8883](#), [96 Daily Journal DAR 14737](#), [69 CCH EPD P 44363](#), [96-2 USTC P 50664](#), [78 AFTR 2d 7454](#), [10 FLW Fed S 215](#).

Punitive damages are not excludable under § 104. [O'Gilvie v United States \(1995, CA10 Kan\) 66 F3d 1550](#), [95-2 USTC P 50508](#), [76 AFTR 2d 6752](#), [95 TNT 203-6](#), affd [\(1996\) 519 US 79](#), [136 L Ed 2d 454](#), [117 S Ct 452](#), [96 CDOS 8883](#), [96 Daily Journal DAR 14737](#), [69 CCH EPD P 44363](#), [96-2 USTC P 50664](#), [78 AFTR 2d 7454](#), [10 FLW Fed S 215](#).

Punitive damages awarded in tort action for wrongful death are not excludable under § 104 because such damages are intended to punish reprehensible conduct, not to compensate victim for loss. [Jacobsen v Commissioner \(1996, CA9\) 103 F3d 138](#), reported in full (1996, CA9) [78 AFTR 2d 7453](#).

Application of alternative minimum tax did not violate petitioner taxpayer's right to due process, as it did not nullify outcome of jury trial which awarded economic and punitive damages in taxpayer's action against taxpayer's employers for improper employment termination and interference with employment relationship and economic and punitive damage settlement was includable in taxpayer's gross income under [I.R.C. § 61\(a\)](#), and was not excludable under [I.R.C. § 104\(a\)\(2\)](#). [Banaitis v Comm'r \(2003, CA9\) 340 F3d 1074](#), [2003 CDOS 7785](#),

[2003 Daily Journal DAR 9762](#), [2003-2 USTC P 50638](#), [92 AFTR 2d 5834](#), revd, remanded (2005, US) [160 L Ed 2d 859](#), [125 S Ct 826](#), [94 BNA FEP Cas 1793](#), [2005-1 USTC P 50155](#), [18 FLW Fed S 106](#) and (ovrld as stated in [Forbes v ABM Indus. \(2005, Wash App\) 2005 Wash App LEXIS 696](#)).

IRS' assessment of federal income tax deficiencies against taxpayer who failed to report as income multimillion dollar settlement received from State of Texas as result of successful whistleblower litigation was proper; settlement agreement effectuated parties' intent to compensate taxpayer for punitive damages awarded by jury, plus interest--which were not excludable under [I.R.C. § 104\(a\)\(2\)](#)--rather than as compensation for taxpayer's postjudgment decline in health caused by stress of trying to collect jury award. [Green v Comm'r \(2007, CA5\) 2007-2 USTC P 50796](#), [100 AFTR 2d 6595](#).

Because Texas' wrongful death law, [Tex. Civ. Prac. & Rem. Code Ann. §§ 71.002\(a\)](#), [71.009](#), did not restrict recovery to punitive damages, but rather its Workers' Compensation Act, [Tex. Lab. Code Ann. § 408.001\(a\)](#), (b), did for those who recovered workers' compensation benefits for covered worker's wrongful death, plaintiff surviving wife's wrongful death punitive damages recovery was not exempt under [I.R.C. § 104\(a\)](#), (c), from gross income under [I.R.C. § 61\(a\)](#). [Benavides v United States \(2007, CA5 Tex\) 497 F3d 526](#), [2007-2 USTC P 50638](#), [100 AFTR 2d 5608](#).

Punitive damages awarded on account of personal injury claim are excludable; punitive damages awarded to personal injury claimant for injuries sustained as result of natural gas explosion are excludable. [Horton v Commissioner \(1993\) 100 TC 93](#), affd (1994, CA6) [33 F3d 625](#), [94-2 USTC P 50440](#), [74 AFTR 2d 5934](#), [94 TNT 171-4](#), [1994 FED App 301P](#) (criticized in [O'Gilvie v United States \(1995, CA10 Kan\) 66 F3d 1550](#), [95-2 USTC P 50508](#), [76 AFTR 2d 6752](#), 95 TNT 203-6).

Punitive damages, not compensatory in nature, cannot be excluded from income under § 104; whether punitive damages are compensatory in nature is determined by applicable state law. [Bagley v Commissioner \(1995\) 105 TC 396](#), 95 TNT 241-12, affd (1997, CA8) [121 F3d 393](#), [97-2 USTC P 50586](#), [80 AFTR 2d 5739](#), reh, en banc, den (1997, CA8) [1997 US App LEXIS 27256](#).

No portion of punitive damage settlement from taxpayer's former employer qualified for exclusion under [26 USCS § 104\(a\)](#) because there was no allocation to particular claim and/or punitive damages, taxpayer's claims for fraud and negligent misrepresentation involved economic loss rather than personal injury, and punitive damages were not on account of personal injuries or sickness; taxpayer's exclusion of settlement from gross income was negligent for purposes of [26 USCS § 6662](#); taxpayer's reliance on his attorney's advice that settlement was for punitive damages was not reasonable because advice related only to characterization of settlement, not of tax consequences. [Corrigan v Comm'r \(2005\) TC Memo 2005-119](#), [89 CCH TCM 1313](#).

Payments received by taxpayer pursuant to paragraph of settlement agreement, which provided that state was to fund annuities for "all other damages," including punitive damages and pre-judgment and post-judgment interest, associated with taxpayer's final judgment in his whistleblower lawsuit, could not be excluded under [26 USCS § 104\(a\)\(2\)](#) because taxpayer failed to show that damages were received on account of personal injuries or sickness. [Green v Comm'r \(2005\) TC Memo 2005-250](#), [90 CCH TCM 436](#).

Punitive damages awarded to taxpayer by district court after insurer failed to pay disability benefits were ineligible to be excluded from income under [I.R.C. § 104\(a\)\(3\)](#) because they were not compensating for personal injuries or sickness even if attributable to bad faith accompanying contractual obligation or tortious activity; considering erroneous nature of deduction and amount of resulting underpayment of tax, IRS satisfied burden of producing evidence that penalty under [I.R.C. § 6662\(a\)](#) was appropriate, and taxpayers did not provide any evidence that they relied on professional advice, and they did not disclose their position on their return. [Greenberg v Comm'r \(2011\) TC Memo 2011-18](#), [101 CCH TCM 1058](#).

Any portion of amount awarded to taxpayer from civil litigation that represented punitive damages was not excludable from gross income under [26 USCS § 104\(a\)\(2\)](#). [Montgomery v Comm'r, TC Memo 2003-64](#), [RIA TC Memo P 55071](#), [85 CCH TCM 985](#).

## **12. Settlements**

Backpay awards in settlement of sex discrimination claims under Title VII of Civil Rights Act of 1964 are not excludable as claims for personal injury since Title VII provides only back pay and injunctive relief, and does not provide remedies traditionally available in tort-like personal injury claims, such as damages for pain and suffering, emotional distress, harm to reputation, and other consequential damages. [United States v Burke \(1992\) 504 US 229](#), [119 L Ed 2d 34](#), [112 S Ct 1867](#), [92 CDOS 4452](#), [92 Daily Journal DAR 7085](#), [58 BNA FEP Cas 1323](#), [58 CCH EPD P 41470](#), [92-1 USTC P 50254](#), [69 AFTR 2d 1293](#), [6 FLW Fed S 263](#), on remand, remanded (1992, CA6) [969 F2d 218](#), [71 AFTR 2d 1705](#), on remand, summary judgment gr, dismd (1992, ED Tenn) [1992 US Dist LEXIS 13964](#) and (criticized in [O'Gilvie v United States \(1996\) 519 US 79](#), [136 L Ed 2d 454](#), [117 S Ct 452](#), [96 CDOS 8883](#), [96 Daily Journal DAR 14737](#), [69 CCH EPD P 44363](#), [96-2 USTC P 50664](#), [78 AFTR 2d 7454](#), [10 FLW Fed S 215](#)).

Liquidated damages received in sex discrimination violations of Equal Pay Act are excludable; [United States v Burke \(1992\) 504 US 229](#), [119 L Ed 2d 34](#), [112 S Ct 1867](#), [92 CDOS 4452](#), [92 Daily Journal DAR 7085](#), [58 BNA FEP Cas 1323](#), [58 CCH EPD P 41470](#), [92-1 USTC P 50254](#), [69 AFTR 2d 1293](#), [6 FLW Fed S 263](#), on remand, remanded (1992, CA6) [969 F2d 218](#), [71 AFTR 2d 1705](#), on remand, summary judgment gr, dismd (1992, ED Tenn) [1992 US Dist LEXIS 13964](#) and (criticized in [O'Gilvie v United States \(1996\) 519 US 79](#), [136 L Ed 2d 454](#), [117 S Ct 452](#), [96 CDOS 8883](#), [96 Daily Journal DAR 14737](#), [69 CCH EPD P 44363](#), [96-2 USTC P 50664](#), [78 AFTR 2d 7454](#), [10 FLW Fed S 215](#)).

Severance pay received for choosing termination plan option that included execution of separation agreement and release cannot be excluded from income as damages where employee acknowledged in agreement that employer had not discriminated against employee and employee did not allege age discrimination until after receipt of severance pay. [Taggi v United States \(1994, CA2 NY\) 35 F3d 93, 65 BNA FEP Cas 1347, 65 CCH EPD P 43245, 94-2 USTC P 50470, 74 AFTR 2d 6300](#), 94 TNT 186-12 (criticized in [Greer v United States \(2000, CA6 Ky\) 207 F3d 322, 24 EBC 2347, 16 BNA IER Cas 166, 2000-1 USTC P 50300, 85 AFTR 2d 1876, 2000 FED App 99P](#)).

Payments characterized as severance payments by employer and which are stated by employee in writing not to be accepted in settlement of claim for damages are not excludable. [Lindsey v Commissioner \(1994, CA9\) 74 AFTR 2d 6890](#), 94 TNT 225-14.

Settlement award paid to commercial fisherman by oil company as result of oil spill is not excludable in absence of evidence that award was for personal injuries, rather than business losses. [Every v United States IRS \(1995, CA9 Wash\) 95-1 USTC P 50229, 75 AFTR 2d 1639](#), 95 TNT 72-11.

Proceeds of settlement received by employee under wrongful discharge claim are not excludable as damages received on account of personal injuries. [McKay v Commissioner \(1996, CA5\) 77 AFTR 2d 2085](#).

Settlement proceeds arising from claim by employee against union for failure of union to adequately represent employee is excludable since underlying claim was tort-like and sum was paid on account of personal injuries. [Banks v United States \(1996, CA9 Wash\) 81 F3d 874, 96 CDOS 2650, 96 Daily Journal DAR 4390, 151 BNA LRRM 2999, 96-1 USTC P 50212, 77 AFTR 2d 1789](#).

Settlement of employee's lawsuit against employer for breach of employee's contract rights and violation of backpay statute is not excludable under § 104, even though employee alleged breach of implied covenant of fair dealing, which may be tort-like in nature. [Bennett Burns v United States \(1996, CA9 Nev\) 96-1 USTC P 50179, 77 AFTR 2d 905](#).

Lump sum severance payment conditioned upon employee's release of employer is not excludable where no particular claims have been asserted prior to acceptance of severance. [Ball v Commissioner \(1998, CA5\) 163 F3d 308, 99-1 USTC P 50195, 83 AFTR 2d 301](#).

Proceeds from settlement of class action ERISA claim settled before decision in [Mertens 508 US 248](#) arising from employer's scheme to avoid pension plan liabilities by laying off employees prior to vesting are excludable since proceeds were intended to provide tort or tort-like remedy. [Gerbec v United States \(1999, CA6 Ohio\) 164 F3d 1015, 22 EBC 2297, 99-1 USTC P 50194, 83 AFTR 2d 422, 1999 FED App 16P](#).

Employee's settlement agreement with employer under which employee received payment in consideration of release of any claims is not excludable under [26 USCS § 104](#) since payments were in nature of nonexcludable severance payments, computed on basis of salary and length of service, and settlement agreement did not allocate any portion to tort claims. [Pipitone v United States \(1999, CA7 Ill\) 180 F3d 859, 99-2 USTC P 50600, 83 AFTR 2d 2769](#).

Settlement of age discrimination claims brought under state and federal law by college professor who was forced to resign from tenured position is not excludable under § 104, as in effect prior to 1996 amendments, since age discrimination claims do not sound in tort, and settlement was in lieu of wages that would have been paid to professor. [Reisman v Comm'r \(2001, CA6 Ohio\) 3 Fed Appx 374, 2001-1 USTC P 50210, 87 AFTR 2d 783](#).

Where taxpayer received settlement proceeds from civil rights and employment discrimination suit, taxpayer could not exclude proceeds from gross income under [26 USCS § 104\(a\)\(2\)](#), because, although some of taxpayer's claims were based upon tort or tort-type rights, taxpayer failed to meet burden of showing that [42 USCS §§ 1981](#) and [1983](#) claims were settled on account of taxpayer's personal injuries. [Banks v Comm'r \(2003, CA6\) 345 F3d 373, 2003-2 USTC P 50675, 92 AFTR 2d 6298, 2003 FED App 347P](#), revd, remanded (2005, US) [160 L Ed 2d 859, 125 S Ct 826, 94 BNA FEP Cas 1793, 2005-1 USTC P 50155, 18 FLW Fed S 106](#).

In suit for employment discrimination and wrongful termination, district court did not clearly err in finding that proceeds paid to employee under settlement agreement represented lost wages rather than compensation for personal physical injuries for purposes of [26 USCS § 104\(a\)\(2\)](#) because (1) agreement did not expressly state that damages were intended to compensate employee for personal physical injuries or physical illness; and (2) agreement stated that employee would be paid \$ 40,000 "less all lawfully required withholdings," thereby suggesting that employer intended some or all of damages to constitute back pay. [Rivera v Baker West, Inc. \(2005, CA9 Ariz\) 430 F3d 1253, 97 BNA FEP Cas 4, 96 AFTR 2d 7371](#).

Tax Court properly held that lump sum payment received by taxpayer in settlement of workplace discrimination and retaliation claims was not excludable from her gross income under [26 USCS § 104\(a\)\(2\)](#), as she failed to show that her employer intended to allocate any specific portion of settlement amount for her personal physical injury or physical sickness; nothing in release and settlement agreement indicated that employer reached settlement agreement because it sought to settle dispute over medical costs versus dispute over back pay. [Espinoza v Comm'r \(2011, CA5\) 636 F3d 747, 111 BNA FEP Cas 1662, 2011-1 USTC P 50306, 107 AFTR 2d 1533](#).

Amount paid by employer for release by employee's union of claims relating to violations of collective bargaining agreement arising out of closing of manufacturing facility does not qualify as payment for personal injury since distributions were viewed by parties as additional severance pay. [Ray v United States \(1992\) 25 Cl Ct 535, 92-1 USTC P 50187, 69 AFTR 2d 953](#), affd without op (1993, CA) [989 F2d 1204](#),

reported in full (1993, CA FC) [1993 US App LEXIS 3622](#).

Back pay awarded in settlement of sex discrimination claim under Title VII of Civil Rights Act of 1964 is not excludible from gross income. [Crossin v United States \(1991, ND Ill\) 789 F Supp 906, 92-1 USTC P 50269, 69 AFTR 2d 1375](#).

Extra amount received upon termination of employment for general release by employee is not excludable even though later age discrimination claim brought by employee was dismissed on account of such general release. [Taggi v United States \(1993, SD NY\) 835 F Supp 744, 63 BNA FEP Cas 431, 63 CCH EPD P 42694, 94-1 USTC P 50085, 73 AFTR 2d 1488](#), affd (1994, CA2 NY) [35 F3d 93, 65 BNA FEP Cas 1347, 65 CCH EPD P 43245, 94-2 USTC P 50470, 74 AFTR 2d 6300](#), 94 TNT 186-12 (criticized in [Greer v United States \(2000, CA6 Ky\) 207 F3d 322, 24 EBC 2347, 16 BNA IER Cas 166, 2000-1 USTC P 50300, 85 AFTR 2d 1876, 2000 FED App 99P](#)).

Qui tam relator award that taxpayer received upon settlement of False Claims Act action was considered to be "reward," and was thus taxable income. [Brooks v United States \(2003, ED Ky\) 276 F Supp 2d 653, 2003-1 USTC P 50414, 91 AFTR 2d 1619](#), affd (2004, CA6 Ky) [383 F3d 521, 94 AFTR 2d 5863, 2004 FED App 307P](#).

Although payments realized by taxpayers' son on account of his personal injuries unquestionably were exempt from his income for tax purposes, it did not follow that subsequent expenditures out of those funds when received by others were exempt as well; thus, portion of son's settlement disbursed to parents on account of their care and support of son following accident was not subject to exclusion in [26 USCS § 104](#) regarding compensation for injury or sickness, where parents presented no evidence to establish independent right in settlement proceeds. [Trent v United States \(2005, SD W Va\) 372 F Supp 2d 910, 95 AFTR 2d 2391](#).

Summary judgment was granted against taxpayers on refund suit under [26 USCS § 7422](#) because settlement proceeds were not excludable from gross income under [26 USCS § 102\(a\)](#), since taxpayers did not acquire settlement by gift, bequest, devise, or inheritance, but by settlement of claim in lawsuit against bank, insurer, and accountants for negligence with respect to their duties regarding inter vivos trust, and because there was insufficient evidence that plaintiffs alleged any physical injury or sickness in underlying complaint; thus, they did not prove that they were entitled to exclude settlement under [26 USCS § 104\(a\)\(2\)](#). [Clayton v United States \(2006, ND W Va\) 2006-2 USTC P 50533, 98 AFTR 2d 5839](#).

Pursuant to [Fed. R. Bankr. P. 8013](#), IRS failed to establish that debtors had wrongfully claimed settlement as personal injury award under [26 USCS § 104](#) as there were sufficient facts to support bankruptcy court's finding that tax debt was dischargeable under [11 USCS § 727](#) and should not be excepted from discharge under [11 USCS § 523\(a\)\(1\)\(C\)](#) in that debtors had sufficient reason to believe that settlement was due to personal injuries and that there was no attempt to evade tax liability. [IRS v Jones \(In re Jones\) \(2008, MD Fla\) 381 BR 897, 101 AFTR 2d 457](#).

There was no reason for defendant to require plaintiff to report settlement as plaintiff's recovery was excludable from his gross income under [26 USCS § 104\(a\)\(2\)](#); injuries suffered by plaintiff (personal physical injuries to his lower back) were caused by negligent operation of motor vehicle by employee of defendant. [Chappell v Int'l Steel Group \(2010, ND Ind\) 105 AFTR 2d 1229](#).

Settlement agreement that was structured for debtor before she declared Chapter 7 bankruptcy, which met requirements for achieving favorable tax treatment under [26 USCS §§ 104\(a\)\(2\)](#) and [130\(c\)](#), was part of debtor's bankruptcy estate under [11 USCS § 541](#), even though it contained provision which prohibited debtor from alienating her rights under annuity that was part of agreement; there was no merit to debtor's claim that annuity was not part of her bankruptcy estate under § 541(c)(2) because it was spendthrift trust. [In re Greenly \(2012, BC ED Pa\) 481 BR 299](#).

Corporation may not exclude from income under § 104 amounts received in settlement of tort claims; fact that person affected by business tort was sole shareholder of corporation does not transform claim into claim for personal injuries. [P & X Mkts. v Commissioner \(1996\) 106 TC 441](#), affd (1998, CA9) [98-2 USTC P 50613, 81 AFTR 2d 1081](#).

Cash payment made to teacher in return for her resignation is includible in gross income and does not constitute damages for personal injuries where proceeds did not represent damages for embarrassment or humiliation and it did not appear that school district continued to compensate teacher for personal injuries. [Kurowski v Commissioner \(1989\) TC Memo 1989-149, RIA TC Memo P 89149, 57 CCH TCM 32](#), affd (1990, CA7) [917 F2d 1033, 90-2 USTC P 50585, 66 AFTR 2d 5898](#).

Allocation of lump sum settlement payment is not binding upon IRS where it is made in "statement of agreement" drafted by taxpayer in which other party did not participate; since payor's intent is determinative, allocation which is not in document signed by payor, is not determinative. [Mitchell v Commissioner \(1990\) TC Memo 1990-617, RIA TC Memo P 90617, 60 CCH TCM 1368](#), affd (1993, CA9) [1993 US App LEXIS 10171](#).

Taxpayer is not entitled to exclude amount received in settlement of grievance proceeding arising out of termination of employment where there is no evidence that employer intended to settle any claims based on tort or tort-type rights or personal injury claims, and settlement documents set forth purely contractual claims. [Durrett \(1992\) TC Memo 1992-682, RIA TC Memo P 92682, 64 CCH TCM 1401](#).

Payments received in settlement of claim for fraudulent inducement to sell business are excludable to extent allocated to misrepresentation and emotional distress claims; portion allocated to breach of contract claims is not excludable. [Fitts v Commissioner](#)

(1994) [TC Memo 1994-52](#), [RIA TC Memo P 94052](#), [67 CCH TCM 2136](#), 94 TNT 28-16, affd (1995, CA8) [95-1 USTC P 50254](#), [75 AFTR 2d 2222](#), 95 TNT 104-47.

Settlement received for claims against bankrupt investment corporation are excludable as damages for personal injuries where release included nonspecific personal injury and emotional distress claims and settlement was almost double taxpayer's investment in corporation. Huff v Commissioner (1995) [TC Memo 1995-200](#), [RIA TC Memo P 95200](#), [69 CCH TCM 2551](#), 95 TNT 88-7.

Settlement payment in wrongful dismissal action is not excludable where underlying cause of action was breach of contract, not tort-like personal injury. Osborne v Commissioner (1995) [TC Memo 1995-354](#), [RIA TC Memo P 95354](#), [70 CCH TCM 247](#), 95 TNT 150-4.

Settlement proceeds of suit by farmers against financial institutions which gave false assurances of solvency of dairy processor are excludable as compensation for emotional distress, rather than as lost milk. Knevelbaard v Commissioner (1997) [TC Memo 1997-330](#), [RIA TC Memo P 97330](#), [74 CCH TCM 161](#).

If amounts are received pursuant to settlement agreement, nature of claim that is actual basis for settlement, and not validity of claim, governs whether such amounts are excludable from gross income under [I.R.C. § 104\(a\)\(2\)](#). Gerard v Comm'r (2003) [TC Memo 2003-320](#), [86 CCH TCM 604](#).

Salary continuation severance payments that employer made to taxpayer pursuant to separation agreement were gross income, [I.R.C. § 61\(a\)\(1\)](#) and [Treas. Reg. § 1.61-2\(a\)\(1\)](#), as taxpayer was not able to exclude payments from her gross income under [I.R.C. § 104\(a\)\(2\)](#), as she failed to carry her burden of establishing that she received payments on account of personal physical injuries or physical sickness. Ndirika v Comm'r (2004) [TC Memo 2004-250](#), [88 CCH TCM 407](#).

Proceeds taxpayer received as settlement for his civil rights claims against bank were not excluded from taxpayer's gross income under [I.R.C. § 104\(a\)\(2\)](#) where neither settlement agreement nor complaint established that bank made any portion of settlement payment to taxpayer on account of personal physical injury or physical sickness and even if court assumed that bank made settlement on account of taxpayer's alleged loss of license, that loss was property interest and recovery of such was separate and distinct from recovery for personal injury. Allum v Comm'r (2005) [TC Memo 2005-177](#), [90 CCH TCM 74](#).

Portion of settlement used to pay attorney on contingent fee basis was includable as gross income where taxpayer's "one event relationship" with attorney on civil rights claim against bank provided no meaningful distinction from judicial precedent holding that contingent fees were gross income and there was no evidence that partnership existed between attorney and taxpayer. Allum v Comm'r (2005) [TC Memo 2005-177](#), [90 CCH TCM 74](#).

Taxpayer failed to establish that portion of settlement was excludable under [26 USCS § 104\(a\)\(2\)](#) because it represented settlement of claims for defamation, slander, libel to his business reputation, and intentional infliction of emotional distress, where agreement failed to make any allocation between tort or tort-like claims and non-tort claims, personal injuries were raised "last minute," and taxpayer did not actually allege any personal injury claims in any of lawsuits. Bradley v Comm'r (2005) [TC Memo 2005-223](#), [90 CCH TCM 317](#).

Commissioner of Internal Revenue's determination of deficiency and assessment of accuracy-related penalty under [I.R.C. § 6662\(a\)](#), (d), that arose when taxpayers failed to report settlement on their joint tax return was affirmed because [I.R.C. § 104\(a\)\(2\)](#) did not exclude as gross income under [I.R.C. § 61\(a\)](#) one taxpayer's settlement for adverse employment action from taxation when maladies of migraines, stomachaches, and hand numbness were result of emotional distress rather than physical illness and taxpayer drafted settlement for tax purposes; penalty was correctly assessed because mere fact that taxpayer did not receive IRS Form 1099 did not establish applicability of reasonable cause and good faith exception to [I.R.C. § 6662](#) penalty in light of nonadversarial nature of settlement negotiations and dubious origin of taxpayer's ailments. Goode v Comm'r (2006) [TC Memo 2006-48](#), [91 CCH TCM 901](#).

Settlement proceeds from employment discrimination lawsuit were not excludable from taxpayers' income under [I.R.C. § 104\(a\)\(2\)](#), since proceeds were not compensation for physical injury or sickness and there was no showing that medical expenses were incurred to support exclusion of part of proceeds as compensation for emotional distress. Hawkins v Comm'r (2007) [TC Memo 2007-286](#), [94 CCH TCM 310](#).

Lawsuit settlement that paid \$ 500,000 to taxpayer had to be reported as taxable income because, while underlying suit alleged emotional distress claims among others, because court could not apportion damages among various tort and nontort claims from settlement's general release, no part was excludable under [26 USCS § 104\(a\)](#). Save v Comm'r (2009) [TC Memo 2009-209](#), [98 CCH TCM 57935](#).

Settlement amount taxpayer received from her employer was excludable from gross income under [26 USCS § 104\(a\)\(2\)](#) because taxpayer showed that only reason for \$ 16,933 payment was to compensate her for her physical injuries because (1) \$ 33,308 settlement was segregated into three separate and distinct payments, and differing tax and reporting treatments used for three payments showed that employer was aware that at least part of taxpayer's recovery may not have been subject to tax; (2) taxpayer showed that her work environment exacerbated her existing physical illness; and (3) employer intended to compensate taxpayer for her acute physical illness caused by her hostile and stressful work environment. Domeny v Comm'r (2010) [TC Memo 2010-9](#), [99 CCH TCM 1047](#).

Settlement proceeds arising out of taxpayer's lawsuit against his employer were not excludable from taxable income under [I.R.C. § 104\(a\)\(2\)](#); he neither alleged nor proved that any of settlement proceeds was allocable to physical injuries, nor did he identify any physical

injuries sustained or physical sickness suffered as result of his employer's conduct. *Oliver v Comm'r* (2011) [TC Memo 2011-44, 101 CCH TCM 1201](#).

Payment received by taxpayer in settlement of state court complaint against her employer was not excludable from her gross income under [26 USCS § 104\(a\)\(2\)](#) where payment was for damages on account of her emotional distress; although she was struck by fellow employee with binder, there was no evidence that binder physically injured her or that she suffered other than symptoms of emotional distress; however, she was not subject to [26 USCS § 6662\(a\)](#) penalty because she lacked knowledge and experience in tax law, reasonably believed that portion of her settlement payment was not taxable, and in good faith did not report that portion of settlement payment. *McGowen v Comm'r* (2011) [TC Memo 2011-186, 102 CCH TCM 132](#).

Amount taxpayer received in settlement of lawsuit against her employer alleging, inter alia, employment discrimination and failure to provide potable water and restroom breaks, was not excludable from gross income under [26 USCS § 104\(a\)\(2\)](#), as settlement agreement stated that amount paid was for emotional distress damages only, and court found no intention to compensate for any physical injury; settlement agreement was entered into by adversarial parties acting at arm's length and in good faith, it was translated into Spanish for taxpayer, and it did not reference any physical injury related to potable water, restroom breaks, or otherwise. *Gutierrez v Comm'r* (2011) [TC Memo 2011-263, 102 CCH TCM 480](#).

Proceeds received from settlement of lawsuit arising out of action for, inter alia, partition and breach of contract, were not excludable under [26 USCS § 104\(a\)\(2\)](#), as there was insufficient evidence that settlement was for physical injuries or physical sickness; although other party to lawsuit testified that he paid settlement amount to taxpayer because they had three physical, violent confrontations, taxpayer did not describe any events rising to level of physical injuries or physical sickness in his complaint and complaint did not ask for damages for physical injuries or physical sickness. *Reesink v Comm'r* (2012) [TC Memo 2012-118, 103 CCH TCM 1647](#).

Taxpayer lost bid to exclude, from gross income, entirety of \$ 100,000 payment received from her ex-employer in settlement of her claim of wrongful discharge, alleged by her to have caused relapse of depression-related symptoms like insomnia, migraines and nausea, because those symptoms did not qualify as "physical injury or physical sickness" within meaning of [I.R.C. § 104\(a\)\(2\)](#), but U.S. Tax Court rejected IRS's attempt to impose accuracy-related penalty under [I.R.C. § 6662](#) because taxpayer's exclusion of payment from income had occurred on advice of counsel, which was "reasonable cause" within meaning of [I.R.C. § 6664](#), especially given uncertain state of law on this aspect of § 104. *Blackwood v Comm'r* (2012) [TC Memo 2012-190, 104 CCH TCM 27](#).

Taxpayer was not entitled to exclude settlement amount from income under [I.R.C. § 104\(a\)\(2\)](#); complaint and circumstances surrounding lawsuit demonstrated that settlement amount was intended to compensate taxpayer for extensive property damage and loss of income that he suffered as result of fire, and he failed to introduce credible evidence that any part of settlement amount was intended to compensate him for personal injuries that he might have suffered in fire. *Harris v Comm'r* (2012) [TC Memo 2012-333, 104 CCH TCM 700](#).

Taxpayer's proceeds pursuant to settlement agreement with his employer on his claim that largely alleged employment discrimination were not excludable from his gross income because taxpayer failed to prove that any portion of payments received under settlement agreement was to compensate taxpayer for personal physical injuries or physical sickness. *Molina v Comm'r* (2013) [TC Memo 2013-226, 106 CCH TCM 371](#).

Because taxpayer did not allege that he incurred medical costs, and did not offer evidence in support thereof, no portion of proceeds paid to taxpayer under settlement with his employer on claim that largely alleged employment discrimination could be excluded from gross income on account of emotional distress. *Molina v Comm'r* (2013) [TC Memo 2013-226, 106 CCH TCM 371](#).

Amounts received by surviving spouse and child in consideration of release from liability under wrongful death act, which provided exclusively for payment of punitive damages, are includible in their gross incomes. [Rev Rul 84-108 \(1984\) 1984-2 CB 32](#).

Tax court, after reviewing protracted severance negotiations between taxpayer's employer and taxpayer, concluded that settlement payment was not allocable to intentional infliction of emotional distress (IIED) because IIED settlement language was inserted (1) at end of negotiations, (2) with no quid pro quo to firm, (3) with no specific allocation to IIED versus other torts released, (4) with firm not being aware of extent of husband's claim or ailment, and (5) with no significant increase, if any, in total amount of settlement as opposed to what was negotiated before IIED language was inserted, and because taxpayer's testimony was inconsistent and IIED was not proved to be sole cause of his major depression. [Knoll v Comm'r \(2003\) CCH Unemployment Ins Rep P 17125B, TC Memo 2003-277, 86 CCH TCM 396](#).

Even if taxpayer's intentional infliction of emotional distress tort claim is bona fide, it must also be shown that settlement amount is paid on account of personal injuries. [Knoll v Comm'r \(2003\) CCH Unemployment Ins Rep P 17125B, TC Memo 2003-277, 86 CCH TCM 396](#).

Where medical malpractice settlement agreement did not allocate agreed upon settlement payment between interest and damages, there was no evidence that settlement negotiations had done so, and state law capped damages at certain amount, part of payment was interest that was includable in taxpayers' income for tax purposes. [McCann v Comm'r, TC Memo 2003-36, RIA TC Memo P 55041, 85 CCH TCM 835](#).

## Unpublished Opinions

Unpublished: Taxpayer did not receive settlement payment under [26 USCS § 104](#) from former employer on account of personal physical injuries or physical sickness where letter from employer supported finding that settlement payment compensated taxpayer for waiving right to seek reinstatement. [Tamberella v Comm'r \(2005, CA2\) 139 Fed Appx 319, 2005-2 USTC P 50487, 96 AFTR 2d 5311.](#)

Unpublished: Settlement payment to taxpayer resulting from employment discrimination suit was not excludable from taxpayer's gross income under [26 USCS § 104\(a\)\(2\)](#); taxpayer claimed that workplace harassment contributed to heart attack, but settlement agreement did not allocate any portion of payment to compensation for physical injuries and did not reference any specific physical injury or sickness. [Ahmed v Comm'r \(2012, CA11\) 2012 US App LEXIS 24020.](#)

### **13. Miscellaneous**

Amount paid taxpayer by motion-picture producer for her consent to portrayal of her father, herself, and other members of her family in proposed motion picture did not constitute damages received on account of personal injuries, where there was no evidence that taxpayer's right of privacy had in fact been invaded. [Starrels v Commissioner \(1962, CA9\) 304 F2d 574, 62-2 USTC P 9526, 9 AFTR 2d 1791.](#)

Since primary purpose of suit of employee against employer was collection of amounts due under employment contract and payments were made by employer to avoid publicity incident to trial, payments were not received on account of personal injuries and therefore includible in gross income. [Knuckles v Commissioner \(1965, CA10\) 349 F2d 610, 65-2 USTC P 9629, 16 AFTR 2d 5515.](#)

Recovery in ERISA case for mental anguish, emotional distress and other nonpecuniary losses are not excludable as personal injury recoveries since relief under ERISA § 502(a)(3) is equitable in nature. [Mayberry v United States \(1998, CA8 Mo\) 151 F3d 855, 22 EBC 1513, 98-2 USTC P 50632, 82 AFTR 2d 5511.](#)

Taxpayers were properly assessed deficiency and penalties under [I.R.C. §§ 6651\(a\)\(1\), 6662\(a\)](#), after they failed to include \$ 2 million settlement, arising from terminated business venture, in their gross income where (1) [I.R.C. § 104\(a\)\(2\)](#), as amended by Small Business Job Protection Act of 1996, [Pub. L. No. 104-188, 110 Stat. 1838](#), applied to settlement because settlement agreement was executed after August 20, 1996, which is Act's enactment date; (2) under amended § 104(a)(2), taxpayers could only exclude that portion of settlement that constituted damages for personal physical injuries or physical sickness and could not exclude damages for nonphysical injury, including emotional injury; and (3) taxpayers failed to present any evidence showing that any portion of settlement was paid to compensate for physical injuries. [Lindsey v Comm'r \(2005, CA8\) 422 F3d 684, 96 AFTR 2d 5959.](#)

Taxpayer may exclude from income award obtained through racial discrimination claim only if he first demonstrates that amounts received constitutes "damages"; award of backpay in racial discrimination claim filed under Title VII of Civil Rights Act of 1964 is in nature of equitable remedy of restitution, not legal remedy of damages, and is thus not excludable. [Sparrow v Commissioner \(1991, App DC\) 292 US App DC 259, 949 F2d 434, 57 BNA FEP Cas 592, 57 CCH EPD P 41108, 91-2 USTC P 50567, 69 AFTR 2d 325,](#) reh den (1992, App DC) [1992 US App LEXIS 10201](#) and cert den [\(1992\) 505 US 1211, 120 L Ed 2d 883, 112 S Ct 3009, 59 BNA FEP Cas 1248.](#)

Claim by married couple for federal tax refund was properly denied, where lump-sum payment that wife received from her employer, pursuant to exit-incentive program, was not excluded from income by [26 USCS § 104\(a\)\(2\)](#); although wife had suffered physical injuries and sickness that could form basis of tort claim against employer, and employer was aware of her injuries, payment that she received was based solely on her salary and length of service with employer, and was not designed to compensate her for her specific injuries. [Cook v United States \(2000, CA FC\) 2000-2 USTC P 50770, 86 AFTR 2d 6251.](#)

Liquidated damages received in age discrimination case are excluded from income since underlying claim is tort-type personal injury; punitive damages in age discrimination case are includible in income since punitive damages are not related to injury but on defendant's degree of fault. [Rice v United States \(1993, ED Cal\) 834 F Supp 1241, 63 BNA FEP Cas 1189, 63 CCH EPD P 42834, 93-2 USTC P 50488, 72 AFTR 2d 6097,](#) affd without op (1994, CA9 Cal) [35 F3d 571,](#) reported in full (1994, CA9 Cal) [1994 US App LEXIS 25013.](#)

Severance payment conditioned upon general release from employer is not excludable as consideration for unasserted defamation and discrimination claims. [Aschkenasy v IRS \(1998, SD NY\) 98-2 USTC P 50634, 82 AFTR 2d 5526.](#)

Taxpayer was awarded compensatory damages in 1999 after 1996 version of [26 USCS § 104\(a\)\(2\)](#) took effect; therefore, because taxpayer's damages award took place after amendment, 1996 version of [26 USCS § 104\(a\)\(2\)](#) was properly applied and did not violate taxpayer's due process rights under [Fifth Amendment.](#) [Murphy v IRS \(2005, DC Dist Col\) 362 F Supp 2d 206.](#)

Taxpayers, who sued trustees, estate administrators, and accountants, alleging numerous claims, including breach of duty of care and loyalty, negligence, self-dealing, and other matters with respect to trust, were not entitled to exclude from gross income funds they received in settlement of lawsuit because, although taxpayers provided testimony that they suffered from physical sickness at time of proceedings, they failed to show direct link between personal injuries and settlement recovery; thus, funds were not excludable from their gross income under [26 USCS § 104\(a\)\(2\).](#) [Clayton v United States \(2006, ND W Va\) 2006-2 USTC P 50533, 98 AFTR 2d 5839.](#)

In action arising from claim under uninsured motorist policy, insurer was entitled to summary judgment because there was no violation of good faith when insurer offered to pay pre-tax lost wages, valued insured's general damages, and negotiated to settle; further, policy of

paying net wages rather than gross wages, which would result in tax-free windfall under [26 USCS § 104\(a\)\(2\)](#) and [N.M. Stat. Ann. § 7-2-2](#), did not violate [N.M. Stat. Ann. §§ 57-12-2\(D\)\(17\)](#) and [57-12-3](#) under New Mexico Unfair Trade Practices Act, [N.M. Stat. Ann. § 57-12-1](#) et seq. [Hauff v Petterson \(2010, DC NM\) 755 F Supp 2d 1138](#).

Payment taxpayer received as compensation for undergoing procedures to donate her eggs to infertile couples was not "damages" under exceptions to gross income because pain and suffering she endured was within scope of medical procedures to which she consented, and therefore such payment had to be included in gross income. [Perez v Comm'r \(2015\) 144 TC 51](#).

Deficiencies and accuracy-related penalties were upheld where taxpayer painted his settlement agreement to appear as personal injury award where there was no physical injury; settlement resolved dispute with taxpayers' former employer after he was constructively discharged. [Hess v Commissioner \(1998\) TC Memo 1998-240, RIA TC Memo P 98240, 76 CCH TCM 14](#).

Payments received by taxpayer pursuant to paragraph of settlement agreement, which provided that state was to fund annuities for "additional damages" associated with taxpayer's final judgment in his whistleblower lawsuit, where based on tort or tort-like rights, but taxpayer failed to show that additional damages were received on account of personal injuries or sickness in order to be excluded from taxpayer's gross income under [26 USCS § 104\(a\)\(2\)](#). [Green v Comm'r \(2005\) TC Memo 2005-250, 90 CCH TCM 436](#).

Settlement payment that taxpayer received from her employer was not excluded from income under [26 USCS § 104\(a\)\(2\)](#) where settlement agreement specifically excluded all worker's compensation claims that taxpayer had pending, and taxpayer failed to substantiate her claim that portion of settlement was intended to compensate her for depression and emotional distress. [Bond v Comm'r \(2005\) TC Memo 2005-251, 90 CCH TCM 445](#).

Taxpayer's contention that settlement payment that she received from her employer was excluded from income under [26 USCS § 104\(a\)\(2\)](#) because her employer violated settlement agreement by disclosing its terms to others or by making disparaging remarks about her failing to send IRS Form 1099 to her as was required by settlement agreement, was without merit; this conduct was not relevant to whether she was required include \$ 25,000 in income, and her nonreceipt of Form 1099 required by settlement agreement did not convert taxable item to nontaxable item. [Bond v Comm'r \(2005\) TC Memo 2005-251, 90 CCH TCM 445](#).

Portion of settlement that taxpayer received was excludable from income under [26 USCS § 104\(a\)\(2\)](#) (as in effect prior to its amendment by Small Business Job Protection Act of 1996, [Pub. L. No. 104-188](#), § 1605, [110 Stat. 1838](#)) where claim for emotional distress was part of negotiated settlement and taxpayer was actually emotionally distressed because of position taken by his fellow shareholders and his belief that he was being defrauded. [Estate of Charles Whittaker Wright v Comm'r \(2007\) TC Memo 2007-278, 94 CCH TCM 295](#).

Taxpayer's compensation for nonphysical emotional distress injuries was gross income not excluded pursuant to [26 USCS § 104\(a\)\(2\)](#); U.S. Tax Court rejected taxpayer's contention that award of damages to compensate for emotional distress was not gross income within meaning of [26 USCS § 61\(a\)](#) regardless of exclusions contained in [26 USCS § 104](#) because in order for flush language of [26 USCS § 104\(a\)](#) to have made sense, definition of gross income in [26 USCS § 61\(a\)](#) first needed to include damages for nonphysical emotional distress injuries. [Ballmer v Comm'r \(2007\) TC Memo 2007-295, 94 CCH TCM 338](#).

Because lump-sum payment received by petitioner taxpayers was not compensation for physical injuries or physical sickness (award was intended to make taxpayer "whole" for his losses, which, in addition to loss of wages, consisted of lost promotional opportunities, lost military pension, damage to reputation, and stigma of involuntary separation), under [26 USCS § 104\(a\)\(2\)](#) taxpayers could not exclude lump-sum payment from gross income. [Hennessey v Comm'r \(2009\) TC Memo 2009-132, 97 CCH TCM 1756](#).

Although tax-free long-term disability (LTD) benefits that taxpayer wife received under her employer's plan were reduced when she began receiving social security disability (SSD) benefits and she had to repay part of lump sum SSD payment to plan, full amount of SSD benefits was includible in gross income under [26 USCS § 86\(a\)](#); taxpayers' argument that IRS Pub. 915 (2005) allowed deduction for amount of SSD benefits that they had to repay to employer's plan was unavailing, because deduction was only allowed for part of payment that was included in gross income in earlier year, and taxpayer's LTD benefits were not taxable under [26 USCS § 104\(a\)\(3\)](#). [Seaver v Comm'r \(2009\) TC Memo 2009-270, 98 CCH TCM 493](#).

Pursuant to [I.R.C. § 104\(a\)\(3\)](#), taxpayer would have been entitled to exclude disability benefit payments insofar as he might have shown that they were attributable to his own after-tax contributions, [Treas. Reg. § 1.104-1\(d\)](#), but he failed to make such showing; consequently, he had not shown that he was entitled to exclude disability benefit payments under § 104(a)(3). [Parkinson v Comm'r \(2010\) TC Memo 2010-142, 99 CCH TCM 1583](#).

When punitive damages award to taxpayer by court after insurer failed to pay disability benefits were ineligible to be excluded from income under [I.R.C. § 104\(a\)\(3\)](#), portion of fees and costs related to those damages were also ineligible for exclusion. [Greenberg v Comm'r \(2011\) TC Memo 2011-18, 101 CCH TCM 1058](#).

Taxpayers failed to carry burden of showing that award of noneconomic damages establishing that arbitrator made award on account of personal physical injuries or physical sickness of taxpayer, as required by [26 USCS § 104\(a\)\(2\)](#); accuracy-related penalty as to net damages received by taxpayers, under [26 USCS § 6662\(a\)](#). [Crane v Comm'r \(2011\) TC Memo 2011-256, 102 CCH TCM 427](#).

Damages awarded husband for negligent injury to his wife is tax free, but in computing amount of such award, court may determine reasonable cost of care, medicine and medical attention for injured wife's life expectancy and then award as damages lesser amount representing present value of total costs payable over injured wife's life expectancy, and where this is case, income realized from investment of the lump sum payment is not excludible. [Rev Rul 65-29 \(1965\) 1965-1 CB 59.](#)

Defendant's lump sum payment to taxpayer under settlement agreement signed after appellate reversal of verdict for taxpayer on complaint that conduct on part of defendant's agents and employees had caused physical injury was excludable from gross income per [IRC § 104\(a\)\(2\)](#) as claim was based on tort or tort-type rights per [Treas. Reg. § 1.104-1\(c\)](#). [Private Letter Ruling 201014040, 2009](#) PLR LEXIS 9517.

Taxpayer, a qualified settlement fund, was not required to issue information return for payments to claimants under [I.R.C. § 6041](#) because payments were excludable from gross income under [I.R.C. § 104\(a\)\(2\)](#) as damages received on account of personal physical injury or sickness. [Private Letter Ruling 200912002, 2008](#) PLR LEXIS 3717.

Status of various retirement and disability benefits per welfare plan benefiting public safety employees and survivors under amended statute were reviewed, with IRS concluding that whether payments were excludable by recipient per [IRC § 104\(a\)\(1\)](#) was function of nature of statute under which same were paid, not recipient's particular circumstances. [Private Letter Ruling 200839032, 2008](#) PLR LEXIS 1731.

Payments made by Taxpayer, a qualified settlement fund under [I.R.C. § 468B](#), would be excluded from gross income of claimants under [I.R.C. § 104\(a\)\(2\)](#) because they were damages received on account of personal physical injury or sickness; Taxpayer was not required to issue information return for payments to claimants under [I.R.C. § 6041](#). [Private Letter Ruling 200816014, 2008](#) PLR LEXIS 93.

Payments to disabled police and fire department personnel that were calculated without regard to age, length of service, or contributions were excluded from gross income per [I.R.C. § 104\(a\)\(1\)](#) even though amount was based on payee's actual salary as payments were analogous to workmen's compensation payments under [Rev. Rul. 85-104, 1985-2 C.B. 52](#). [Private Letter Ruling 200625030, 2006](#) PLR LEXIS 394.

## Unpublished Opinions

Unpublished: Tax court's finding that there was deficiency in taxpayer's income tax for 1995 tax year was affirmed because tax court did not clearly err in finding that settlement payment to taxpayer was not excludable from income tax pursuant to [§ 104\(a\)\(2\) of Internal Revenue Code](#) as taxpayer failed to demonstrate that settlement was allocable to claims of personal injury. [Bradley v Comm'r of Internal Revenue \(2006, CA2\) 2006 US App LEXIS 31295.](#)

## B. Statutory Payments to Police Officers and Firefighters

### 14. Disability payments under collective bargaining agreement

Payments received by professional football players under contract provisions determined by state workers compensation bureau to be injury protection payment are not excludable as workers' compensation payments. [Wallace v United States \(1997, SD Ind\) 97-1 USTC P 50476, 79 AFTR 2d 3004](#), affd (1998, CA7 Ind) [139 F3d 1165, 98-1 USTC P 50313, 81 AFTR 2d 1470.](#)

Disability payments received by police officer employed by port authority pursuant to union contract are includible in income because labor contract does not qualify as statute having force and effect of law. [Clemens v Commissioner \(1989\) TC Memo 1989-205, RIA TC Memo P 89205, 57 CCH TCM 286.](#)

Although taxpayer was awarded disability retirement benefits for on-duty injury as police officer, taxpayer's benefits constituted taxable retirement benefits rather than nontaxable disability benefits, since change in state law transformed disability benefits to retirement benefits after taxpayer reached retirement age and number of years elapsed which would have made taxpayer eligible for retirement benefits. [Tateosian v Comm'r \(2008\) TC Memo 2008-101, 95 CCH TCM 1383.](#)

Payments made by county to police officer injured in line of duty pursuant to collective bargaining agreement that was incorporated by reference into county code are excludable from gross income under [26 USCS § 104\(a\)\(1\)](#). [Rev Rul 81-53 \(1981\) 1981-1 CB 439.](#)

Disabled police officer employed by municipality may not exclude from gross income under [26 USCS § 104\(a\)\(1\)](#) payments received under terms of union contract between municipality and patrolmen's benevolent association. [Rev Rul 83-77 \(1983\) 1983-1 CB 37.](#)

### 15. Surviving spouse's benefits

Workmen's compensation exclusion for government employees applies to widow's pensions, since widow's benefits are common part of many workmen's compensation acts. [Rev Rul 72-342 \(1972\) 1972-2 CB 36.](#)

Duty disability payments paid under municipal statute to disabled firefighters prior to their reaching normal retirement age are excludible from gross income under [26 USCS § 104\(a\)\(1\)](#); if disabled firefighter dies prior to normal retirement age, benefits paid under statute to surviving spouse are also excludible for surviving spouse's life. [Rev Rul 80-14 \(1980\) 1980-1 CB 33.](#)

Line-of-duty disability benefits paid to member police officers and firefighters that were paid as lifetime disability benefits or as continuation to survivor were not gross income to recipient pursuant to [IRC § 104\(a\)\(1\)](#); monthly supplemental benefit paid to member was gross income to recipient. [Private Letter Ruling 201025038, 2010](#) PLR LEXIS 609.

## **↑ 16. Miscellaneous**

Municipal ordinance which does not make distinction between occupational disease and ordinary diseases of life and which provides presumption that heart, lung and respiratory system illnesses shall be construed as occupational disabilities of police officers and firefighters is not in nature of workmen's compensation since it does not require proof of occupational causation. [Take v Commissioner \(1986, CA9\) 804 F2d 553, 86-2 USTC P 9788, 58 AFTR 2d 6206.](#)

Payments received by police officer under state program providing benefits for conditions caused by hypertension or heart disease are includable since program provides benefits whether or not condition was work-related. [Green v Commissioner \(1995, CA2 Conn\) 60 F3d 142, 95-2 USTC P 50426, 76 AFTR 2d 5776, 95 TNT 152-9.](#)

Two policemen who requested pensions "by reason of years of service" were ineligible to exclude any portion of their pensions despite finding that they were disabled at time of their retirements and thus could have requested disability pension, notwithstanding their contentions (1) that they should not be penalized merely because they chose to retire without pursuing more complex procedure required to obtain disability pension, and (2) that workers' compensation awards which they received shortly after their retirements were proof of disability at time of their retirements; § 1.104-1(b) specifically deals with this situation and prohibits any exclusion. [Carlton v United States \(1985\) 7 Cl Ct 323, 6 EBC 1137, 85-1 USTC P 9167, 55 AFTR 2d 864, affd \(1986, CA\) 782 F2d 173, 6 EBC 2721, 86-1 USTC P 9164, 57 AFTR 2d 645.](#)

Medical disability payments paid to state trooper who retires due to hypertension are not excludable because state statute governing disability payments did not require that hypertension be work-related. [Smelley v United States \(1992, ND Ala\) 806 F Supp 932, 92-2 USTC P 50595, 71 AFTR 2d 308, affd \(1993, CA11 Ala\) 3 F3d 389, 72 AFTR 2d 6232, 93 TNT 212-7, 7 FLW Fed C 862.](#)

Former police officers cannot exclude disability payments received under state police disability plan where basis for payments is not under statute but is instead under benefit plans adopted under statutory authority. [Craft v United States \(1995, SD Ind\) 879 F Supp 925, 95-1 USTC P 50225, 75 AFTR 2d 1885, 95 TNT 86-10.](#)

Local board's retroactive reclassification of previously-paid benefits, which were originally "received" by retired firefighter with cancer as superannuation benefits under [Mass. Gen. Laws ch. 32, § 5](#) but were later reclassified as disability benefits under [Mass. Gen. Laws ch. 32, § 7](#) and [Mass. Gen. Laws ch. 32, § 94B\(1\)](#), did not entitle firefighter to refund of federal income tax paid on income prior to reclassification. [Wheeler v United States \(2005, DC Mass\) 400 F Supp 2d 300.](#)

Firefighter's entire pension was not excludable from gross income under [26 USCS § 61\(a\)\(11\)](#) and [104\(a\)\(1\)](#) and [Treas. Reg. § 1.104-1\(b\)](#) because, according to [Rev. Rul. 80-44, 1980-1 C.B. 34](#), he was entitled to only exclude from gross income amount to which firefighter was entitled under his service-connected-disability pension; moreover, he was required to report difference between his length-of-service and service-connected-disability pensions, even though he only received one aggregate pension. [Scott v United States \(2013, CD Cal\) 2013-1 USTC P 50300, 111 AFTR 2d 1595.](#)

County firefighter who retired with service-related disability was subject to federal income taxation on that part of his service pension that exceeded his guaranteed disability allowance to which he was entitled under [Calif. Gov. Code § 31727.4](#) because service pension was determined by reference to firefighter's length of service and age and only guaranteed disability portion of pension was exempt from income under [26 USCS § 104\(a\)\(1\)](#) and [26 CFR § 1.104-1](#). [Campbell v United States \(2013, CD Cal\) 111 AFTR 2d 946.](#)

Sick pay paid to deputy sheriff injured on job is excludible workers compensation; as to work-related injuries, it does not matter that payments are available whether or not injury was incurred in line of duty. [Givens v Commissioner \(1988\) 90 TC 1145, acq in part and nonacq in part.](#)

Payments received by policeman for time lost from work do not constitute sick pay excludable from gross income, notwithstanding that time lost resulted from injuries received by policeman on job, where policeman is entitled to same payments whether or not injury is incurred in course of employment and payments thus are not in nature of workers's compensation. [Clifford v Commissioner \(1984\) TC Memo 1984-426, RIA TC Memo P 84426, 48 CCH TCM 824.](#)

Payments received by disabled police officers and fire fighters under § 4-615 of District of Columbia Code, which provides compensation for nonoccupational injury or sickness, are not excludable under [26 USCS § 104\(a\)\(1\)](#); however, with respect to benefits provided by §§ 4-616(a), 4-616(b), and 4-616(e) which authorize benefits to class of employees with service-incurred injuries or diseases resulting in permanent disabilities, total annuity received by employee under subsection (e) is excludable from gross income under [26 USCS § 104\(a\)\(1\)](#), while annuities provided under subsections (a) or (b) are excludable under § 104(a)(1) only to extent they do not exceed 66 and two-thirds percent of employee's average pay, since amounts exceeding 66 and two-thirds percent of salary are attributable to employee's length of service. [Rev Rul 85-104 \(1985\) 1985-2 CB 52.](#)

Pension received by disabled fire fighter under state statute that creates rebuttable presumption that disability was service connected is excludable from gross income to extent pension is not attributable to length of service. [Rev Rul 85-105 \(1985\) 1985-2 CB 53.](#)

## **↑ C. Workers' Compensation Benefits**

### **↑ 17. Generally**

Police or fire pension payments to person retired for disability incurred in line of duty and not for length of service or age are exempt as in nature of workmen's compensation. [Doogan v United States \(1957, SD Ohio\) 154 F Supp 703, 57-2 USTC P 9896, 52 AFTR 520;](#) [Boystel v Commissioner \(1961\) TC Memo 1961-146, RIA TC Memo P 61146, 20 CCH TCM 735.](#)

Pay to policeman retired for disability incurred in line of duty and not for length of service is exempt. [Neill v Commissioner \(1951\) 17 TC 1015,](#) acq.

To qualify for workmen's compensation exemption, payments must be made under workmen's compensation act or under statute in the nature of workmen's compensation act; payments made under private arrangement between corporation and its shareholder-employee are not exempt as being "in the nature of" or "in lieu of" workmen's compensation. [American Foundry v Commissioner \(1972\) 59 TC 231,](#) acq and affd in part and revd in part (1976, CA9) [536 F2d 289, 76-1 USTC P 9401, 37 AFTR 2d 1373.](#)

State statute authorizing compensation to its employees for injuries, whether or not job-related, is not in nature of workers' compensation act, and thus amounts received thereunder are not excludable under section 104. [Burgess v Commissioner \(1986\) TC Memo 1986-228,](#) [RIA TC Memo P 86228, 51 CCH TCM 1138,](#) affd (1987, CA9) [822 F2d 61.](#)

Wage continuation payments under Federal Employees Compensation Act ([5 USCS § 8118](#)) and pay for accumulated sick leave under [5 USCS § 6307](#) are wage continuation payments not excludable from income as workers compensation. [Kopunek v Commissioner \(1987\) TC Memo 1987-417, RIA TC Memo P 87417, 54 CCH TCM 239.](#)

Where court determined that taxpayer fell within first clause of [Ohio Rev. Code Ann. § 145.35,](#) and determined that statute was not in nature of worker's compensation act, taxpayer was not entitled to except from gross income what taxpayer deemed to be disability payments pursuant to [26 USCS § 104;](#) therefore, Commissioner's determination of deficiency for tax year 1999 was proper. [Youngblood v Comm'r \(2005\) TC Memo 2005-43, 89 CCH TCM 832.](#)

Exemption is not lost by turning workmen's compensation over to employer who paid full wages during absence due to injury. [Rev Rul 56-83 \(1956\) 1956-1 CB 79.](#)

Disability payments under statute providing for payments in case worker is permanently unable to do kind of work for which he had been qualified prior to his disability are in nature of workmen's compensation. [Rev Rul 72-44 \(1972\) 1972-1 CB 31.](#)

Exclusion applies to federal statutes in nature of workmen's compensation; accordingly "black lung benefits" paid for claims filed after December 31, 1972 under Title IV of Federal Coal Mine Health and Safety Act of 1969, as amended by Black Lung Benefits Act of 1972, are excludible from income. [Rev Rul 72-400 \(1972\) 1972-2 CB 75.](#)

Disability payments to District of Columbia firefighters and police officers, United States Park police and members of Executive Protection Service (formerly White House Police force) are excluded from gross income. [Rev Rul 75-500 \(1975\) 1975-2 CB 44.](#)

Exempt workmen's compensation includes \$ 50,000 benefits paid surviving dependents of public safety officers killed in line of duty under 1976 Public Safety Officers' Benefit Act. [Rev Rul 77-235 \(1977\) 1977-2 CB 45.](#)

Amounts received as "continuation of pay" pursuant to section 11 of Federal Employees' Compensation Act ([5 USCS § 8118\(a\)](#)) by federal employee who has filed claim for period of wage loss due to traumatic injury are not compensation for personal injuries or sickness and are not excludable from gross income under [26 USCS §§ 104\(a\)\(1\)](#) or [105\(d\).](#) [Rev Rul 78-416 \(1978\) 1978-2 CB 103.](#)

### **↑ 18. Injuries outside line of duty**

State official retired for high blood pressure is not within workmen's compensation provision where evidence does not show incapacitation in line of or as result of duties. [Murphy v Commissioner \(1953\) 20 TC 746.](#)

Exemption is denied where disability resulted from 5 causes, and 4 were not shown to have been in line of duty, unless allocation of payments is determinable. [Brown v Commissioner \(1955\) 25 TC 220.](#)

Normally, retirement pay of policemen or firemen is not exempt even if retirement is for disability, inasmuch as exemption requires injury or sickness causing disability to arise out of regular performance of duties. [McDonald v Commissioner \(1959\) 33 TC 540.](#)

Payments received by a judge from state judges' retirement fund do not qualify for exclusion as "amounts received under workmen's compensation acts as compensation for personal injuries or sickness" because disability did not arise out of nor was incurred in regular performance of his duties, and payments received were not compensation for incapacitating personal injury or sickness incurred in line of duty but were to retire veteran public servant who was no longer able to perform his duties effectively. [Golden v Commissioner \(1971\) TC](#)

Exclusion for workmen's compensation does not apply to compensation payments for nonoccupational injury or sickness, even though, state for its own reasons, places its nonoccupational benefits provisions within confines of its workmen's compensation law. [Rev Rul 72-191 \(1972\) 1972-1 CB 45](#), amplified (1975) [1975-2 CB 43](#) and mod (1981) [1981-2 CB 50](#).

Payments made by District of Columbia pursuant to DC Code § 4-526, to police officers and firefighters who become disabled due to injury received or disease contracted other than in performance of duty are not excludable from gross income under [26 USCS § 104\(a\)\(1\)](#). [Rev Rul 79-147 \(1979\) 1979-1 CB 80](#), superseded (1985) [1985-2 CB 52](#).

## **19. Miscellaneous**

Payments to professional football player following career-ending injury are pursuant to collective bargaining agreement and player contract, and are therefore not excludable as workers' compensation payments. [Wallace v United States \(1998, CA7 Ind\) 139 F3d 1165, 98-1 USTC P 50313, 81 AFTR 2d 1470](#).

[I.R.C. § 104\(c\)](#) did not apply when state law governing wrongful death actions provided that plaintiff could recover both punitive damages and compensatory damages, even if some other law of state, such as Workers' Compensation Act, limited some wrongful death plaintiffs from recovering punitive damages; thus, because Texas' wrongful death law, [Tex. Civ. Prac. & Rem. Code Ann. §§ 71.002\(a\), 71.009](#), did not restrict recovery to punitive damages, but rather its Workers' Compensation Act, [Tex. Lab. Code Ann. § 408.001\(a\)](#), (b), did for those who recovered workers' compensation benefits for covered worker's wrongful death, plaintiff surviving wife's wrongful death punitive damages recovery was not exempt under [I.R.C. § 104\(a\)](#), (c), from gross income under [I.R.C. § 61\(a\)](#), and court noted that workers' compensation death benefits were not taxes under [I.R.C. § 104\(a\)\(1\)](#). [Benavides v United States \(2007, CA5 Tex\) 497 F3d 526, 2007-2 USTC P 50638, 100 AFTR 2d 5608](#).

Like any other Los Angeles County employee who retired with service-connected disability, taxpayer was entitled to receive one-half his final salary based on his injuries, which was excludable from gross income; however, as he had completed 34 years of service, he received additional amounts so that his service-connected disability pension was same as what he would have received as service pension, and additional amounts based on his years of service, not his injury, were not excludable. [Sewards v Comm'r \(2015, CA9\) 785 F3d 1331, 2015-1 USTC P 50299, 115 AFTR 2d 1810](#).

In context of [26 USCS § 104\(a\)\(1\)](#), Commissioner of IRS agrees that [Cal. Gov't Code § 31727.4](#) is in nature of workmen's compensation act. [Sewards v Comm'r \(2015, CA9\) 785 F3d 1331, 2015-1 USTC P 50299, 115 AFTR 2d 1810](#).

Retirement pay of commissioned officer of United States health service who retired due to injuries sustained in line of duty is not exempt from income tax, on ground that it is similar to payment of workmen's compensation. [Waller v United States \(1950, App DC\) 86 US App DC 93, 180 F2d 194, 50-1 USTC P 9141, 38 AFTR 1496, 16 ALR2d 1328](#).

District of Columbia fireman retired for age is not within workmen's compensation provision though he would have been retired for disability if he had not been retired for age. [Simms v Commissioner \(1952, App DC\) 90 US App DC 322, 196 F2d 238, 52-1 USTC P 9277, 41 AFTR 1185](#).

Benefits received by member of District of Columbia Fire Department who had been retired from active duty pursuant to Act of Congress creating "policeman and fireman relief fund" on ground of permanent disability are excludible from such member's income. [Frye v United States \(1947, DC Dist Col\) 72 F Supp 405, 47-2 USTC P 9317, 35 AFTR 1650](#).

Semi-monthly payments pursuant to state labor code to state policeman injured in line of duty and rendered temporarily unable to continue his work, during his absence from duty because of such injury, are not excludible from policeman's gross income as amounts received under workmen's compensation acts, since such benefits are not analogous to workmen's compensation benefits but continuation of regular pay during period of incapacity in manner similar to any other provision for sick leave. [Blackburn v Commissioner \(1950\) 15 TC 336](#).

New York City regulation which provides full salary to teacher injured at work without charging her with sick leave constitutes statute in nature of workmen's compensation law and payments are excludible from teacher's gross income. [Dyer v Commissioner \(1979\) 71 TC 560](#), acq in result and acq in result withdrawn in part, acq in part.

Second-career training given by FAA to air traffic controller who suffered severe depressive reaction to fatal air crash is not payment in nature of workmen's compensation. [Gallagher v Commissioner \(1980\) 75 TC 313](#).

Payments that taxpayer received under Civil Service Retirement Act (CSRA) were not excludable from income under [26 USCS § 104\(a\)\(1\)](#) because CSRA allowed disability retirement whether or not injury occurred on job; CSRA was not in nature of workmen's compensation statute. [Green v Comm'r \(2008\) TC Memo 2008-130, 95 CCH TCM 1512](#).

Payments that taxpayer received under Civil Service Retirement Act (CSRA) were not excludable from income under [26 USCS § 104\(a\)\(2\)](#) because payments were not awarded for injury that he suffered while employed with federal government. [Green v Comm'r \(2008\) TC](#)

Payments under state statute providing that whenever fireman or law enforcement officer is disabled by injuries or illness arising out of his duties he shall be entitled to full pay for up to 1 year, in lieu of normal temporary disability benefits, are excludible under [26 USCS § 104\(a\)\(1\)](#), even though amount received is equal to employee's salary and even though payments exceed normal disability benefits. [Rev Rul 68-10 \(1968\) 1968-1 CB 50.](#)

Child allotment payments received by disabled policemen or fireman pursuant to municipal ordinance wholly unrelated to municipality's workmen's compensation law and terminable at any time at municipality's sole option are taxable income since they constitute voluntary payment rather than providing certain income to work accident victims and their dependents and therefore cannot fall within workmen's compensation exclusions; since dominant reason for making payment is that city feels moral obligation to those who were disabled serving city in hazardous occupations, payments are not gifts. [Rev Rul 73-346 \(1973\) 1973-2 CB 24.](#)

Municipal policeman who elected retirement for length of service under circumstances where he could have elected retirement on account of service-connected disability, and later switched when disability rate was increased, with his retirement records retroactively changed to reflect fact that he was retired on account of disability, is not taxable only on payments received subsequent to date disability payments were approved; prior payments remain taxable, and as to them, he is bound by his election. [Rev Rul 74-582 \(1974\) 1974-2 CB 34.](#)

Duty disability payments paid under municipal statute to disabled firefighters prior to their reaching normal retirement age are excludible from gross income under [26 USCS § 104\(a\)\(1\)](#); if disabled firefighter dies prior to normal retirement age, benefits paid under statute to surviving spouse are also excludible for surviving spouse's life. [Rev Rul 80-14 \(1980\) 1980-1 CB 33.](#)

Lifetime benefits authorized by statute that provides benefits to class restricted to employees with service incurred disabilities are in nature of workmen's compensation benefits and allowance received by employee is excludible from gross income under [26 USCS § 104](#) to extent that allowance, before any reduction to increase survivor's benefit, does not exceed 60 percent of recipient's average final compensation; excess of that allowance is attributable to length of service and is not excludible. [Rev Rul 80-44 \(1980\) 1980-1 CB 34.](#)

Payments made by municipality to disabled police officer who has returned to work, but is assigned to light duty because injury keeps officer from performing regular police duties, are not excludible from gross income under [26 USCS § 104\(a\)\(1\)](#); since officer is assigned to light duty, payments are salary payments and not payments in nature of workmen's compensation. [Rev Rul 80-137 \(1980\) 1980-1 CB 36.](#)

Schoolteacher who is entitled to receive either workmen's compensation for work-related injury or larger disability retirement allowance under statute in nature of Workmen's Compensation Act, and who elects disability retirement allowance is permitted to exclude entire retirement allowance from gross income under [26 USCS § 104](#). [Rev Rul 83-91 \(1983\) 1983-1 CB 38.](#)

Court of Federal Claims rejected U.S. Government's argument that it did not owe interest on money taxpayer was owed to reimburse taxes he made for 20 years before Office of Workers' Compensation determined he should have received disability payments that were not taxable under [26 USCS § 104\(a\)](#). [26 USCS § 6611\(a\)](#) stated that taxpayers would receive interest on overpayments they made, and Congress waived Government's right not to pay interest when taxes were refunded, by enacting that statute. [Schortmann v United States \(2008\) 82 Fed Cl 1, 2008-1 USTC P 50296, 101 AFTR 2d 1686.](#)

Benefits payable to participants in employer-sponsored disability plan that were in nature of workers' compensation and similar survivor benefits were not includable in recipient's gross income per [IRC § 104\(a\)\(1\)](#) though other benefits, including those payable per COLA clause and benefits based on participant's age or contribution, were includable. [Private Letter Ruling 201041003, 2010](#) PLR LEXIS 2163.

Section 806.5 of state statute limited benefits to employees with service-incurred injuries or disease, making it in nature of workmen's compensation act; thus, amounts paid under section, as funded through pension plan in amount of offset provided by section 804(2), were excludable from participant's gross under [I.R.C. § 104\(a\)\(1\)](#). [Private Letter Ruling 200822002, 2008](#) PLR LEXIS 545.

Benefit plan providing service- and disability-related pensions to political subdivision workers won ruling that disability benefits payable under presumption in Statute A were in nature of workers' compensation benefits and excludable per [IRC § 104\(a\)\(1\)](#) by reason of [Rev. Rul. 85-105, 1985-2 C.B. 53](#) while 50% of Statute B benefits were includible. [Private Letter Ruling 200809011, 2007](#) PLR LEXIS 2557.

### **Unpublished Opinions**

Unpublished: Civil service retirement fund under [5 USCS § 8348](#) from which petitioner taxpayer was paid allowed disability retirement whether or not injury occurred on job, thus, respondent I.R.S. Commissioner's determination that it was not exempt from taxable gross income under [I.R.C. § 104\(a\)\(1\)](#) was correct. [Green v Comm'r \(2009, CA5\) 2009-1 USTC P 50355.](#)

### **📌 D. Other Particular Payments**

#### **📌 20. Accident and health insurance payments**

Term "health insurance" must be given its broad general meaning, and is not limited to particular forms of insurance conventionally made available by commercial companies. [Haynes v United States \(1957\) 353 US 81, 1 L Ed 2d 671, 77 S Ct 649, 57-1 USTC P 9536, 50 AFTR](#)

[1566.](#)

Although under employer's plan for employees' benefits, employees were not required to pay fixed periodic premiums, no definite fund was created to assure payment of disability benefits, and amount and duration of benefit varied with length of service, benefits received by employee under this plan are exempted from income tax, and same is true where employer purchased from commercial insurance company health insurance that provided its employees with precisely same kind of protection. [Haynes v United States \(1957\) 353 US 81, 1 L Ed 2d 671, 77 S Ct 649, 57-1 USTC P 9536, 50 AFTR 1566.](#)

Amounts received through accident and health policies assigned by debtor to taxpayer to apply on loan are taxable income. [Peoples Finance & Thrift Co. v Commissioner \(1950, CA5 Ala\) 184 F2d 836, 50-2 USTC P 9479, 39 AFTR 1103.](#)

Life and health insurance plan of life insurance company for benefit of its employees was "insurance" and sick benefits paid to one of its employees are nontaxable. [Epmeier v United States \(1952, CA7 Ind\) 199 F2d 508, 52-2 USTC P 9510, 42 AFTR 716.](#)

Money paid by life insurance company to its president who, although in ill health, worked daily with his secretary on company business at his home, is not excludable as amount received through health insurance. [Hall v United States \(1957, CA7 Ind\) 242 F2d 412, 57-1 USTC P 9522, 50 AFTR 2008, cert den \(1957\) 355 US 821, 2 L Ed 2d 36, 78 S Ct 27.](#)

Contract between corporation and taxpayer, vice president, whereby former agreed to employ latter after certain date for life in consulting capacity at specified salary, and further providing for continuation of such salary for life but at reduced rate if taxpayer became unable to perform services because of permanent ailment or incapacity, constituted "health insurance", and payments received by him after his disability are not taxable. [Kuhn v United States \(1958, CA3 NJ\) 258 F2d 840, 58-2 USTC P 9798, 2 AFTR 2d 5653.](#)

Payments were exempt sick pay where corporation adopted medical reimbursement plan for employees (and dependents) who were not covered by existing health insurance, and all other officers had previously bought such insurance at their own expense, notwithstanding only president and vice president of corporation who were husband and wife and who owned 79 1/2 percent of its stock were in fact covered by corporation's plan. [American Foundry v Commissioner \(1976, CA9\) 536 F2d 289, 76-1 USTC P 9401, 37 AFTR 2d 1373.](#)

Stock option distribution to accountant while accountant was on disability leave was transfer of property under § 83 in exchange for services, rather than income received under accident or health insurance under § 104 or accident or health plan under § 105. [Fisher v Commissioner \(1993, CA1\) 93-2 USTC P 50500, 72 AFTR 2d 5914, 93 TNT 190-11.](#)

Reduction of disability benefits on 25th anniversary of date of hire does not constitute a determination of benefits by means of length of service, thereby removing benefits from exclusion under § 104(a)(1). [Picard v Commissioner \(1999, CA9\) 165 F3d 744, 99 CDOS 702, 99 Daily Journal DAR 887, 22 EBC 2317, 99-1 USTC P 50218, 83 AFTR 2d 616.](#)

Sickness benefits paid by American Telephone and Telegraph Company to taxpayer under its "Plan for Employees' Pensions, Disability Benefits and Death Benefits" are nontaxable, although there was no formal insurance contract. [Herbkersman v United States \(1955, SD Ohio\) 133 F Supp 495, 55-2 USTC P 9623, 48 AFTR 51, affd \(1957, CA6 Ohio\) 245 F2d 244, 57-1 USTC P 9667, 52 AFTR 602.](#)

Health insurance benefits, received in amount of full salary for same period under corporation plan whereby sole contributor was corporation charging contributions to operating expenses, were not health insurance benefits, but were part of corporation wage stabilization program which lacked any characteristic of insurance. [Cary v United States \(1956, DC Neb\) 141 F Supp 750, 56-1 USTC P 9544, 49 AFTR 1592.](#)

Amounts received under plan whereby employer provided for sickness disability benefit payments to all employees of more than 2 years' service and employees paid no premiums are includible in gross income. [Townsend v United States \(1956, SD Ill\) 143 F Supp 150, 56-2 USTC P 9813, 50 AFTR 93.](#)

Both insured and her friends and family members who provided attendant care for her were proper payees of no-fault personal injury protection benefits, pursuant to Mich. Comp. Laws Serv. § 500.3112; there was no reason why insurance company had to take on tax reporting burden under [26 USCS § 6041\(a\)](#) because payments to insured expressly for purpose of insured paying her attendant care provider were not included in that person's gross income, pursuant to [26 USCS § 104\(a\)\(3\)](#), and insurance company did not qualify as care provider's employer, pursuant to [26 USCS § 3401\(d\)](#). [Bajraszewski v Allstate Ins. Co. \(2011, ED Mich\) 108 AFTR 2d 6896.](#)

Payments were not sick pay but dividends where employees of small family corporation were not informed of existence of "plan" and no employee was ever shown copy of resolution concerning sick pay payments made to president and principal stockholder of such corporation during period of severe illness extending over several years, since payments were made to him because of his dominant position as principal stockholder and not because he was employee. [Levine v Commissioner \(1968\) 50 TC 422.](#)

Mere fact that insurance companies pay claims under medical insurance policies does not result in exclusion where evidence raises question as to legitimacy of taxpayer's claims; issue is raised as to legitimacy of claims, and therefore exclusion of amounts paid, where number of hospital admissions, nature of alleged injuries and sickness, location of hospitals in states outside of taxpayer's state of residence, relationship of taxpayer with one of his doctors, and existence of multiple policies over respective tax years strongly suggest that many claims did not relate to actual injuries but were contrived. [Dodge v Commissioner \(1991\) 96 TC 172, affd in part and revd in](#)

part, remanded (1992, CA8) [981F2d 350, 93-1 USTC P 50021, 71 AFTR 2d 412](#), reh, en banc, den (1993, CA8) [1993 US App LEXIS 880](#) and cert den [\(1993\) 510 US 812, 126 L Ed 2d 28, 114 S Ct 58](#).

If there is no express attribution of accident or health benefits to employee contributions under plan, it is presumed that none of employee contributions is used to provide accident or health benefits. *Rembold v Commissioner* (1966) [TC Memo 1966-7, RIA TC Memo P 66007, 25 CCH TCM 19](#).

Payments received by judge from state retirement fund are not excludible from income as amount received through accident or health insurance because contributions to plan were deductible from state's contributions, which were not includible in taxpayer's income. *Golden v Commissioner* (1971) [TC Memo 1971-162, RIA TC Memo P 71162, 30 CCH TCM 691](#).

Disability payments paid to aircraft controller who is declared unfit for duty because of severe emotional problems are taxable since plan authorizing benefits does not limit benefits to disabilities or sicknesses incurred in course of employment and therefore is not similar to payments made under statute in nature of workmen's compensation; in order for exclusion to apply, benefits must be paid only for job-related disabilities. *Abbotts v Commissioner* (1985) [TC Memo 1985-460, RIA TC Memo P 85460, 50 CCH TCM 953](#).

Payments that taxpayer received from Civil Service Retirement and Disability Fund were not excludable under [26 USCS § 104\(a\)\(3\)](#) and [26 USCS § 105\(a\)](#) because Fund did not qualify as "accident or health insurance." *Green v Comm'r* (2008) [TC Memo 2008-130, 95 CCH TCM 1512](#).

Where taxpayer received \$ 52,896 settlement from class action suit against her auto insurer, and basis of claim was her coverage for uninsured and underinsured motorist insurance, proceeds up to policy limits were payment for personal injury and were thus excludable from income for tax purposes under [26 USCS § 104\(a\)\(3\)](#). *Watts v Comm'r* (2009) [TC Memo 2009-103, 97 CCH TCM 1527](#).

Sick benefits received by employee from his employer, premiums for which are funded out of co-workers' earnings are exempt, as where employer had no sick pay plan but paid benefits in accordance with union rules from percentage of earnings withheld from employee's fellow workers; under plan, it is as though contributing members received compensation for their services and paid such compensation into fund maintained by group for payment of insurance benefits so amounts received by certain member represents proceeds of health or accident insurance even though mechanics of plan involve payment to him of these amounts by employer. [Rev Rul 73-347 \(1973\) 1973-2 CB 25](#).

"No fault" insurance disability benefits received for loss of income or earning capacity are nontaxable as amounts received through accident or health insurance for personal injury or sickness; where state law requires payment of disability benefits, to be provided without regard to fault, amounting to 100% of any loss of gross income and loss of earning capacity per individual from inability to work proximately caused by injury sustained by the injured person, unless such benefits are deemed not includible in gross income for federal income tax purposes, in which event benefits shall be limited to 85%. [Rev. Rul. 73-155 \(1973\) 1973-1 CB 50](#).

Benefit payments received by employee pursuant to state's temporary disability insurance law are paid pursuant to wage continuation plan while employee is absent from work due to personal injuries or sickness and are excludable from gross income under [26 USCS § 104\(a\)\(3\)](#) to extent attributable to employee's own contribution. [Rev Rul 75-479 \(1975\) 1975-2 CB 44](#).

Provision of rent-free use of specially designed home to victim of medical malpractice claim is arrangement having effect on accident or health insurance and is therefore excludable. [Private Letter Ruling 9730009](#).

Insurance company seeking to sell long-term care (LTC) rider with annuity won ruling that it constituted qualified LTC contract per [IRC § 7702B](#) and accident or health insurance per [IRC § 104\(a\)\(3\)](#), and generated benefits that were excludable from gross income per § 104(a)(3); also, payments thereunder would reduce [IRC § 72](#) "investment in contract." [Private Letter Ruling 200919011, 2009 PLR LEXIS 5961](#).

Proceeds paid per rider to individual nonparticipating flexible premium adjustable life insurance policy allowing accelerated payment of death benefit if insured became critically ill was properly treated as accident or health insurance so that benefits were excludable from gross income per [IRC § 104\(a\)\(3\)](#) if purchased with after-tax contributions. [Private Letter Ruling 200903001, 2008 PLR LEXIS 2987](#).

Injured party to whom tortfeasor assigned tortfeasor's claim against insurer for bad faith refusal to settle personal injury judgment won ruling that settlement proceeds on account of claims for medical expenses, pain and suffering and lost earnings were excluded from income per [IRC § 104](#) while punitive and similar damages were income per [IRC § 61](#). [Private Letter Ruling 200903073, 2008 PLR LEXIS 2995](#).

Because partnership's self-funded medical reimbursement plan was plan having effect of accident or health insurance under [I.R.C. § 104\(a\)\(3\)](#), payments made to partners were excludable from income under § 104(a)(3) and premium payments made by partners were deductible under [I.R.C. § 162\(l\)](#). [Private Letter Ruling 200704017, 2006 PLR LEXIS 2430](#).

### Unpublished Opinions

Unpublished: Amounts paid to employee for disability benefits were properly included in his income under [26 USCS § 104\(a\)](#) because

record established that employer, not employee, paid premiums on insurance, and payments were based on taxpayer's monthly earnings, and were not computed with reference to nature of his injury. [Connors v Comm'r \(2008, CA2\) 2008-1 USTC P 50356.](#)

## **21. Armed Forces and Public Health Service disability benefits**

If Army colonel's retirement was based on physical disability rather than on longevity, he would be entitled to exemption from income taxation allowed by provision of [26 USCS § 104](#) excluding from gross income amounts received as pension, annuity or similar allowance for personal injuries or sickness resulting from active service in Armed Forces. [United States v King \(1969\) 395 US 1, 23 L Ed 2d 52, 89 S Ct 1501, 69-1 USTC P 9410, 23 AFTR 2d 1358](#) (superseded by statute as stated in Varo, Inc. (1986, DOT BCA) 87-1 BCA P 19430) and (superseded by statute as stated in Grinberg (1987, DOT BCA) 87-3 BCA P 20102) and (superseded by statute as stated in [Russell Corp. v United States \(1988\) 15 Cl Ct 760, 35 CCF P 75589](#)) and (superseded by statute as stated in [United Sales v United States \(1995\) 34 Fed Cl 88, 40 CCF P 76842](#)).

Seventy-five percent allowance to naval officer who was recalled from retired status (in which he had also received 75% allowance) to active service and then returned to retired status on account of disability incurred in such active status is exempt from tax. [McNair v Commissioner \(1957, CA4\) 250 F2d 147, 58-1 USTC P 9102, 52 AFTR 1028.](#)

Navy's unintelligent undue rigidity in adherence to form will not defeat judicial determination that sailor was retired for physical disability so as to entitle him to exemption provided in 26 USCS § 1047(a)(4). [Freeman v United States \(1959, CA9 Cal\) 265 F2d 66, 59-1 USTC P 9358, 3 AFTR 2d 1038.](#)

Taxpayer who retired from Army in 1964 receiving retirement pay and initially determined to be entitled to 10 percent disability compensation and who filed form on which he waived portion of his retirement pay equal to amount of disability pay he was awarded may exclude retroactive disability payments from his gross income even though he received them from Army where he later filed claim for increase in disability pay, was then rated 100 percent disabled in January 1967 as of March 1966, while his claim was under review he continued to receive Army pension unreduced by new amount of disability pay and his previous waiver was forwarded to Army. [Strickland v Commissioner \(1976, CA4\) 540 F2d 1196, 76-1 USTC P 9291, 37 AFTR 2d 998.](#)

Air Force retirement pay which is based on length of service pursuant to [10 USCS § 8911](#) rather than on disability is not excludable under [26 USCS § 104](#). [Sidoran v Commissioner \(1981, CA9\) 640 F2d 231, 81-1 USTC P 9226, 47 AFTR 2d 890.](#)

Social Security disability benefits paid for inability to work because of injury or sickness resulting from active military service do not qualify as amounts received for that injury or sickness for purposes of [26 USCS § 104\(a\)\(4\)](#); Social Security Administration disability benefits are not excludable under § 104(a)(4). [Reimels v Comm'r \(2006, CA2\) 436 F3d 344.](#)

Retirement pay of commissioned officer of United States health service who served entire period in civilian branch prior to its incorporation in armed service, and was retired for injuries sustained in line of duty, is not exempt from income tax on ground that retirement pay was due to injury resulting from service in armed forces, either on ground that allowances in health service was same as in armed service, or on ground of military benefits, since Congress restricted military benefits to service of health officer in designated places not applicable to taxpayer. [Waller v United States \(1950, App DC\) 86 US App DC 93, 180 F2d 194, 50-1 USTC P 9141, 38 AFTR 1496, 16 ALR2d 1328.](#)

Disability retirement payments received by federal judge under [28 USCS § 372](#) after judge developed sleep apnea triggered by job stress are not excludable. [Kane v United States \(1994, CA FC\) 43 F3d 1446, 95-1 USTC P 50060, 75 AFTR 2d 326, 95 TNT 2-15.](#)

Military officer who was retired because of physical disability rated at 10 percent and who received upon such retirement amount equal to 75 per cent of basic pay at time of retirement is fully taxable on portion of monthly payments which exceed 10 per cent. [Espenshade v United States \(1965\) 173 Ct Cl 828, 354 F2d 332, 66-1 USTC P 9120, 16 AFTR 2d 6055.](#)

Amounts of retired pay received by master sergeant, who was retired after 30 years of meritorious service, are properly included in his gross income for federal income tax purposes, where he is not disabled or dependent of anyone who died of disability sustained in military service of United States and his retirement was predicated not upon any of provisions of World War Veteran's Act of 1924 [10 USCS § 1235; former [38 USCS § 421](#) et seq.] but solely pursuant to statutes relating generally to retired army personnel. [Hoeppe v Westover \(1948, SD Cal\) 79 F Supp 794, 48-2 USTC P 9418, 37 AFTR 367.](#)

Retirement pay of commissioned medical officer of regular corps of United States public health service, who has right to same pay and allowances as officer of medical corps of army, is not exempt from income taxes. [Waller v United States \(1948, DC Dist Col\) 81 F Supp 210, 49-1 USTC P 9159, 37 AFTR 756, affd \(1950, App DC\) 86 US App DC 93, 180 F2d 194, 50-1 USTC P 9141, 38 AFTR 1496, 16 ALR2d 1328.](#)

Service person who upon separation receives lump sum payment upon which tax is paid is not entitled to refund where government recoups lump sum payment by withholding disability payments until full amount of lump sum is recovered. [Palm v United States \(1995, MD Ala\) 904 F Supp 1312, 96-1 USTC P 50017, 76 AFTR 2d 8078, 95 TNT 249-12.](#)

Taxpayer who retired from Army on account of longevity in 1967 and who in 1970 received disability pension retroactive to 1967 does not qualify for retroactive sick pay exclusion since his retirement had nothing to do with sickness and he had been employed all through 1969

in civilian capacity so there was no way sick pay exclusion could apply. [Cleary v Commissioner \(1973\) 60 TC 133.](#)

Exemption will not be allowed for continuation pay received from U.S. Army as result of disease incurred by taxpayer during 2 weeks of Army Reserves training; payments constituted salary not pension annuity or similar allowance and enactment of [26 USCS § 112\(a\)\(2\)](#), providing exclusion for pay received by serviceman while hospitalized for wounds, injury or disease incurred in combat, indicates that [26 USCS § 104](#) does not apply to wages involved. [Hernandez v Commissioner \(1979\) 72 TC 1234.](#)

Taxpayer could not exclude his military retirement pay from income under [26 USCS § 104\(a\)\(4\)](#), since he had not established that his retirement pay was received by virtue of his disability or that his hearing loss resulted from active duty with Marines, where, (1) prior to his transfer from active to inactive duty status, taxpayer was found not to have any physical disabilities, (2) it was determined almost 3 years later that he was physically disabled due to hearing loss and he was subsequently retired, (3) he received pension based on his 20 years of service, and (4) his request that his records show he was retired for physical disability was denied. [Umfleet v Commissioner \(1983\) TC Memo 1983-787, RIA TC Memo P 83787, 47 CCH TCM 793.](#)

Since payments made to member of Armed Forces pursuant to [37 USCS § 502](#) need not be paid because of military injuries, such payments are not excludible under [26 USCS § 104\(a\)\(4\)](#), notwithstanding that they are in fact paid because of military injury. [Lonestar v Commissioner \(1984\) TC Memo 1984-80, RIA TC Memo P 84080, 47 CCH TCM 1118.](#)

Civil service disability benefits received by taxpayer who became disabled while serving as both member of armed forces and civilian employee are not excludible from income; civil service disability benefits are not excluded since not paid as compensation or injuries incurred in military service. [Grady v Commissioner \(1989\) TC Memo 1989-55, RIA TC Memo P 89055, 56 CCH TCM 1208.](#)

Taxpayers were collaterally estopped from litigating issue of whether Civil Service Retirement System (CSRS) disability benefits received in 2005 were excluded from income under [26 USCS § 104\(a\)\(4\)](#), as it was identical to sole issue in earlier case with respect to CSRS disability benefits received in 1999, that judgment was final, parties were identical, issue was fully litigated, resolution of issue was essential to judgment, and controlling facts and applicable legal rules remained unchanged; even if collateral estoppel did not apply, benefits paid under CSRS did not provide compensation for personal injuries or sickness incurred in military service so as to be excludable under § 104(a)(4). [Jeanmarie v Comm'r \(2010\) TC Memo 2010-281, 100 CCH TCM 568.](#)

Payments to Vietnam veterans from Agent Orange Settlement Fund are tax free since payments are made due to sickness or disability resulting from exposure to pesticides during tours of duty in Vietnam. Private Letter Ruling (5/16/90) [IR 90-79.](#)

Taxpayer, who retired from branch of Armed Forces in 1976 for years of service and subsequently was awarded retroactive service connected disability rating by Veterans' Administration, may exclude from gross income under [26 USCS § 104\(a\)\(4\)](#) that portion of retirement pay received from branch of Armed Forces during retroactive period that corresponds to amount attributable to Veterans' Administration disability rating. [Rev Rul 78-161 \(1978\) 1978-1 CB 31.](#)

Taxpayer who received lump sum readjustment payment under 10 USCS § 687 and who later received Veterans' Administration award of retroactive disability compensation which will be withheld until Veterans' Administration has recouped 75 percent of readjustment payment may not exclude any portion of adjustment payment from gross income under [26 USCS § 104\(a\)\(4\)](#) and may not deduct any portion of amount recouped by Veterans' Administration as loss under [26 USCS § 165](#); [Rev Rul 78-161](#) distinguished. [Rev Rul 80-9 \(1980\) 1980-1 CB 11.](#)

Court had jurisdiction to correct soldier's "retirement status" along with awarding soldier "retired pay," but court lacked jurisdiction to review Army's decision to award soldier "10 A/C characterization" for "combat-related injury" because that form of equitable relief was not collateral or incidental to "retired pay"; 10 A/C characterization for "combat-related injury" concerned only taxes. [Pearl v United States \(2013\) 111 Fed Cl 301.](#)

## **📌 22. Discrimination claims**

Backpay awards in settlement of sex discrimination claims under Title VII of Civil Rights Act of 1964 are not excludable as claims for personal injury since Title VII provides only back pay and injunctive relief, and does not provide remedies traditionally available in tort-like personal injury claims, such as damages for pain and suffering, emotional distress, harm to reputation, and other consequential damages. [United States v Burke \(1992\) 504 US 229, 119 L Ed 2d 34, 112 S Ct 1867, 92 CDOS 4452, 92 Daily Journal DAR 7085, 58 BNA FEP Cas 1323, 58 CCH EPD P 41470, 92-1 USTC P 50254, 69 AFTR 2d 1293, 6 FLW Fed S 263,](#) on remand, remanded (1992, CA6) [969 F2d 218, 71 AFTR 2d 1705,](#) on remand, summary judgment gr, dismd (1992, ED Tenn) [1992 US Dist LEXIS 13964](#) and (criticized in [O'Gilvie v United States \(1996\) 519 US 79, 136 L Ed 2d 454, 117 S Ct 452, 96 CDOS 8883, 96 Daily Journal DAR 14737, 69 CCH EPD P 44363, 96-2 USTC P 50664, 78 AFTR 2d 7454, 10 FLW Fed S 215\).](#)

Intangible harms of discrimination can constitute personal injury, and compensation for such harms may thus be excludable from gross income under [26 USCS § 104\(a\)\(2\)](#). [Commissioner v Schleier \(1995\) 515 US 323, 132 L Ed 2d 294, 115 S Ct 2159, 95 CDOS 4507, 95 Daily Journal DAR 7760, 19 EBC 1377, 67 BNA FEP Cas 1745, 66 CCH EPD P 43557, 95-1 USTC P 50309, 75 AFTR 2d 2675,](#) 95 TNT 116-8.

Back pay and liquidated damages awarded in age discrimination suit are not excludable since such damages do not redress personal injury. [Downey v Commissioner \(1994, CA7\) 33 F3d 836, 65 BNA FEP Cas 1192, 65 CCH EPD P 43234, 94-2 USTC P 50441, 74 AFTR 2d 6015](#), 94 TNT 176-8, reh, en banc, den (1994, CA7) [1994 US App LEXIS 33068](#) and cert den [\(1995\) 515 US 1141, 132 L Ed 2d 827, 115 S Ct 2576, 68 BNA FEP Cas 64](#).

Settlement payment made to employee for racial discrimination and breach of employment agreement is not excludable from income. [Strong v Commissioner \(1996, CA9\) 96-1 USTC P 50223, 77 AFTR 2d 1428](#).

Plaintiff in sex discrimination case is required to include in income proceeds of settlement, including attorney fees, but can deduct attorney fees as miscellaneous itemized deduction to extent that fees exceed 2 per cent of gross income. [Fredrickson v Commissioner \(1998, CA9\) 99-1 USTC P 50167, 83 AFTR 2d 435](#).

Settlement proceeds of sex discrimination claim paid to member of class who was applicant for employment are not excludable, even though taxpayer was never employee; recoveries of job applicant which represent back and front pay are not excludable as tort recoveries. [Martinez v Commissioner \(1998, CA9\) 99-1 USTC P 50168, 83 AFTR 2d 362](#).

Taxpayers' contention, that settlement payment of claims against former employer under Age Discrimination in Employment Act, [29 USCS § 621](#) et seq., was excludable from gross income under [26 USCS § 104\(a\)\(2\)](#) on grounds that it was made to compensate for damages received on account of personal injuries, was without merit; to extent that settlement payment was in exchange for one of taxpayers giving up his tenure, such award was includable as gross income based on recognition that individual must pay taxes on wages, as required under [26 USCS § 61\(a\)](#). [Reisman v Comm'r \(2001, CA6 Ohio\) 3 Fed Appx 374, 2001-1 USTC P 50210, 87 AFTR 2d 783](#).

Taxpayer's award in action under Americans with Disabilities Act, [42 USCS §§ 12101-12213](#), of forward and back pay for termination by his state employer as result of injury he sustained on job was award for tort for injury to his rights, not for his personal injuries; hence, award was properly included in taxpayer's gross income for federal tax purposes and was not exempt under [26 USCS § 104\(a\)\(2\)](#). [Johnson v United States \(2003, CA10 Colo\) 76 Fed Appx 873, 2003-2 USTC P 50670, 92 AFTR 2d 5969](#), cert den (2004, US) [159 L Ed 2d 786, 124 S Ct 2888](#).

[26 USCS § 104\(a\)\(2\)](#) is unconstitutional under Sixteenth Amendment insofar as it permits taxation of compensation for non-physical personal injury which compensation is unrelated to lost wages or earnings; thus, taxpayers were entitled to refund of income taxes paid because their award for emotional distress and injury to personal reputation as result of employment discrimination claim, although not excludable from gross income under [26 USCS § 61\(a\)](#) because it was not physical injury damages, it was for non-physical personal injury and was unrelated to lost wages or earnings. [Murphy v IRS \(2006, App DC\) 460 F3d 79](#).

Where taxpayer's award of damages in out of court settlement were awarded for claim for employment discrimination, award did not qualify for exclusion from tax under [26 USCS § 104\(a\)\(2\)](#), and she was required to report entire settlement under [26 USCS § 61\(a\)](#), including contingency fee paid to her attorney. [Smallwood v United States Gov't \(2012, CD Cal\) 2013-1 USTC P 50125, 111 AFTR 2d 377](#).

Amounts received in settlement of gender discrimination claim are not excludable under § 104. [Brewer v Commissioner \(1997\) TC Memo 1997-542, RIA TC Memo P 97542, 74 CCH TCM 1337](#), affd without op (1999, CA9) [172 F3d 875](#), reported in full (1999, CA9) [99-1 USTC P 50378, 83 AFTR 2d 1517](#) (criticized in [Srivastava v Commissioner \(2000, CA5\) 220 F3d 353, 2000-2 USTC P 50597, 86 AFTR 2d 5410](#)).

Taxpayer's jury award for compensation from her former employer for discrimination and retaliation was not excludable under [26 USCS § 104\(a\)\(2\)](#) where no portion of jury award was for damages received on account of personal physical injury or physical sickness; portion of award that taxpayer used to pay her attorney was also not excludable. [Green v Comm'r \(2007\) TC Memo 2007-39, 93 CCH TCM 917](#).

Where settlement agreement of lawsuit against taxpayer's former employer provided that amount was for compensation for personal injury (i.e. emotional distress) damages only, amount that taxpayer received in settlement was not excluded from her gross income under [26 USCS § 104\(a\)](#). [Seidel v Comm'r \(2007\) TC Memo 2007-45, 93 CCH TCM 938](#).

Settlement of taxpayer's discrimination claim was not on account of physical injury or physical sickness, and thus not excludable under [26 USCS § 104\(a\)\(2\)](#), where settlement agreement referred to amounts paid as income to be reported on I.R.S. Form 1099; although taxpayer claimed that 21 months after signing of settlement agreement, she was referred to psychiatrist with diagnosis of anxiety disorder and "panic attack," she failed to prove any connection between discrimination charges and disorder, and even assuming there was causal relationship, taxpayer did not show that any of amounts paid to her by her former employer was for cost of her medical care. [Connolly v Comm'r \(2007\) TC Memo 2007-98, 93 CCH TCM 1138](#).

No portion of settlement was excludable from gross income pursuant to [26 USCS § 104\(a\)\(2\)](#) where settlement did not allocate proceeds among taxpayer's claims and taxpayer failed to produce evidence to corroborate his contentions that he had suffered stomach aches and breathing problems; however, because he engaged experienced tax attorney, who advised him that he could exclude portion settlement from taxable income, taxpayer was not liable for accuracy-related penalty pursuant to [26 USCS § 6662](#). [Gibson v Comm'r \(2007\) TC Memo 2007-224, 94 CCH TCM 164](#).

Proceeds from settlement of taxpayer's claims against his employer under Fair Labor Standards Act of 1938, Age Discrimination in

Employment Act of 1967, and Title VII of Civil Rights Act of 1964 were not excludable from gross income under [26 USCS § 104\(a\)\(2\)](#). Phelps v Comm'r (2008) [TC Memo 2008-86, 95 CCH TCM 1336](#).

Proceeds from settlement of taxpayer's claims against his employer under Civil Rights Act of 1991 were not excludable from gross income under [26 USCS § 104\(a\)\(2\)](#); although person who was victim of intentional discrimination could recover compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, term "intentional discrimination" did not include employment practice that was unlawful because of its disparate impact and in taxpayer's claims against his employer, he did not refer to any "intentional discrimination" on part of employer. Phelps v Comm'r (2008) [TC Memo 2008-86, 95 CCH TCM 1336](#).

Where settlement agreement with taxpayer's former employer arising from his termination made no allusion to compensation for physical injury or physical sickness and made no apportionment of any of settlement proceeds to physical injury or physical sickness, award did not qualify for [26 USCS § 104\(a\)\(2\)](#) exclusion. Pettit v Comm'r (2008) [TC Memo 2008-87, 95 CCH TCM 1341](#).

Settlement proceeds were not excludable from gross income under [26 USCS § 104\(a\)\(2\)](#) where provisions in agreement and surrounding circumstances demonstrated that taxpayer and his former employer agreed to settle taxpayer's wrongful termination claim and \$ 65,000 payment was in nature of severance payment; although taxpayer testified that he became depressed and suffered various other maladies as result of his termination and related events, he had not brought any medical problems to attention of his employer or mediator, or sought compensation for any medical expenses in connection with mediation. Moulton v Comm'r (2009) [TC Memo 2009-38, 97 CCH TCM 1151](#).

Taxpayer improperly excluded proceeds of settlement of discrimination lawsuit from gross income as award for personal injuries under [26 USCS § 104\(a\)\(2\)](#), even though taxpayer credibly contended that some of racial discrimination taxpayer suffered as state patrol officer resulted in physical injury; settlement agreement which released state from taxpayer's claims, including claims for pain and suffering, did not indicate award for physical injury rather than non-excludable award for emotional distress, and taxpayer's lawsuit only alleged physical symptoms resulting from emotional distress. Longoria v Comm'r (2009) [TC Memo 2009-162, 98 CCH TCM 11](#).

Payment received by taxpayer as result of settlement agreement with her former employer on retaliation claim was made as damages for emotional distress due to depression and, as matter of law, such damages, not being attributable to physical injury or sickness, but to nonphysical injury, was not excluded from gross income under [I.R.C. § 104\(a\)\(2\)](#). Wells v Comm'r (2010) [TC Memo 2010-5, 99 CCH TCM 1032](#).

Settlement agreement in discrimination lawsuit between taxpayer and Texas Health and Human Services Commission did not allocate her proceeds to claim of personal physical injury or physical sickness; it did not specify any particular claim motivating settlement, so it therefore failed to allocate between claims that qualified and claims that did not qualify under [I.R.C. § 104](#); since settlement was unallocated among multiple claims, many of which were not for physical injuries or physical sickness, settlement proceeds were includable in her income. Espinoza v Comm'r (2010) [TC Memo 2010-53, 99 CCH TCM 1219](#).

Amount received in settlement of employment discrimination lawsuit against county was not excludable from taxpayer's gross income under [26 USCS § 104\(a\)\(2\)](#), as he failed to show that any portion of amount was to compensate him for physical injuries; given that complaint placed little emphasis on taxpayer's physical injuries, that settlement agreement's only mention of "personal injuries" was in boilerplate, and that record contained no other evidence showing that any part of settlement was for personal injuries, taxpayer failed to prove that it was county's intent to compensate him for his physical injuries; rather it appeared that one of county's primary motivations was securing his retirement, and, consequently, at least portion of amount he received had to be considered severance pay. Ahmed v Comm'r (2011) [TC Memo 2011-295, 102 CCH TCM 607](#).

Taxpayer who prevailed in arbitration of his claims against ex-employer for numerous alleged violations of California Fair Employment and Housing Act, [Cal. Govt. Code §§ 12900](#) et seq., receiving net award of \$ 83,746, was not entitled to exclude that amount from his taxable income per [26 USCS § 61](#) because award was not made on account of "physical injuries" within meaning of [26 USCS § 104\(a\)\(2\)](#); however, on these facts, taxpayer demonstrated reasonable cause and good faith within meaning of [26 USCS § 6664](#) sufficient to defeat IRS's imposition of accuracy-related penalty per [26 USCS § 6662](#). Neri v Comm'r (2012) [TC Memo 2012-71, 103 CCH TCM 1357](#).

Back pay for employment discrimination is not excludable under § 104, and [Rev Rul 93-88](#), holding to the contrary, is superseded; amounts received as emotional distress for employment discrimination are excludable only to extent that they are damages paid for medical care attributable to emotional distress. [Rev. Rul. 96-65 \(1996\) 1996-2 CB 6](#).

Although taxpayer suffered physically as result of sexual harassment, settlement only compensated taxpayer for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and nonpecuniary losses, not physical injury and were not excludable from income under [26 USCS § 104\(a\)\(2\)](#). Shelton v Comm'r (2009) [106 BNA FEP Cas 534, TC Memo 2009-116, 94 CCH TCM 1592](#).

### **📌 23. --Age discrimination**

Back pay and liquidated damages recovered under Age Discrimination in Employment Act (ADEA) are not excludable under § 104 since ADEA does not provide a tort-like remedy, and liquidated damages are not received on account of personal injury. [Commissioner v](#)

[Schleier \(1995\) 515 US 323, 132 L Ed 2d 294, 115 S Ct 2159, 95 CDOS 4507, 95 Daily Journal DAR 7760, 19 EBC 1377, 67 BNA FEP Cas 1745, 66 CCH EPD P 43557, 95-1 USTC P 50309, 75 AFTR 2d 2675, 95 TNT 116-8.](#)

Neither backpay half nor liquidated-damages half of proceeds from settlement of Age Discrimination in Employment Act claim were excludable from gross income under [26 USCS § 104\(a\)\(2\)](#), since no part was excludable under plain language of § 104(a)(2), amount was not received in action based upon tort or tort-type rights, and basic requirement of receipt on account of personal injury or sickness was not eliminated. [Commissioner v Schleier \(1995\) 515 US 323, 132 L Ed 2d 294, 115 S Ct 2159, 95 CDOS 4507, 95 Daily Journal DAR 7760, 19 EBC 1377, 67 BNA FEP Cas 1745, 66 CCH EPD P 43557, 95-1 USTC P 50309, 75 AFTR 2d 2675, 95 TNT 116-8.](#)

Liquidated damages received in settlement of age discrimination lawsuit are excludable from gross income as damages received on account of personal injury. [Schmitz v Commissioner \(1994, CA9\) 34 F3d 790, 94 CDOS 6602, 94 Daily Journal DAR 12157, 65 BNA FEP Cas 1195, 65 CCH EPD P 43238, 94-2 USTC P 50455, 74 AFTR 2d 6115, 94 TNT 178-17, vacated, remanded \(1995\) 515 US 1139, 132 L Ed 2d 824, 115 S Ct 2573, 95 Daily Journal DAR 7981, 68 BNA FEP Cas 63, 95-1 USTC P 50322.](#)

Liquidated damages under Age Discrimination in Employment Act are excludable from income. [Schleier v Commissioner \(1994, CA5\) 67 BNA FEP Cas 1744, 74 AFTR 2d 5118, 94 TNT 135-14, revd \(1995\) 515 US 323, 132 L Ed 2d 294, 115 S Ct 2159, 95 CDOS 4507, 95 Daily Journal DAR 7760, 19 EBC 1377, 67 BNA FEP Cas 1745, 66 CCH EPD P 43557, 95-1 USTC P 50309, 75 AFTR 2d 2675, 95 TNT 116-8.](#)

Payments received by airline pilots as back pay and liquidated damages for age discrimination are not excludable. [Estate of Hillelson v Commissioner \(1995, CA11\) 95-2 USTC P 50577, 76 AFTR 2d 5809, 95 TNT 153-60.](#)

Proceeds of settlement of age discrimination claim are not excludable since they are not awarded on account of personal injury. [Jones v Commissioner \(1997, CA10\) 97-1 USTC P 50402, 79 AFTR 2d 2419.](#)

Liquidated damages received in age discrimination case are excluded from income since underlying claim is tort-type personal injury; punitive damages in age discrimination case are includible in income since punitive damages are not related to injury but on defendant's degree of fault. [Rice v United States \(1993, ED Cal\) 834 F Supp 1241, 63 BNA FEP Cas 1189, 63 CCH EPD P 42834, 93-2 USTC P 50488, 72 AFTR 2d 6097, affd without op \(1994, CA9 Cal\) 35 F3d 571, reported in full \(1994, CA9 Cal\) 1994 US App LEXIS 25013.](#)

Liquidated damages awarded to claimant under Age Discrimination in Employment Act are punitive in nature and are not damages resulting from personal injury and are therefore not excludable from income. [Shaw v United States \(1994, MD Ala\) 853 F Supp 1378, 64 BNA FEP Cas 961, 64 CCH EPD P 43028, 94-1 USTC P 50196, 73 AFTR 2d 1942, 94 TNT 89-53.](#)

Proceeds from settlement of age discrimination claim are not excludable from income. [Drase v United States \(1994, ND Ill\) 866 F Supp 1077, 65 BNA FEP Cas 1116, 65 CCH EPD P 43218, 94-2 USTC P 50463, 74 AFTR 2d 5993, 94 TNT 173-7.](#)

Entire amount received in settlement of claim under Age Discrimination in Employment Act is excludable. [Downey v Commissioner \(1991\) 97 TC 150, 56 BNA FEP Cas 897, 57 CCH EPD P 41019.](#)

Lump sum payment received as settlement in age discrimination suit was not excludable from income as amounts received for personal injuries or sickness because lump sum payment was in nature of severance pay; awards given under state (Ohio) law are intended to restore victims to economic position they would have been in but for their employer's discriminatory conduct. [Private Letter Ruling 8836034.](#)

## **↑ 24. Medicare benefits**

Medicare hospital benefits for which all persons over 65 are eligible are not included in gross income and therefore are not subject to tax; medicare doctor bill benefits, for which recipient must have contributed required monthly premium, are in nature of medical insurance proceeds and are not taxable, except to extent that benefits are attributable to (and up to amount of) monthly premiums which were deducted as medical expense for prior taxable year. [Rev Rul 70-341 \(1970\) 1970-2 CB 31, revoked, in part \(1979\) 1979-1 CB 86.](#)

## **↑ 25. Miscellaneous**

[Calif. Gov. Code § 31720](#), which provides for disability retirement benefits for county employees, is in nature of workmen's compensation act for purposes of [26 USCS § 104\(a\)\(1\)](#) and [26 CFR § 1.104-1](#), which excludes from gross income amounts received under workmen's compensation act or under statute in nature of workmen's compensation act, because California act allows disability payments solely for service-related personal injury or sickness; thus, disability retirement benefits received by retiree under [California act are tax free.](#) [Campbell v United States \(2013, CD Cal\) 111 AFTR 2d 946.](#)

Los Angeles, Cal., Admin. Code § 4.177 (Compensation to Be Paid to Members of Fire Department and Police Department Who Are Disabled in Performance of Their Duties), was statute in nature of workmen's compensation act; leave payments, which compensated petitioner for his failure to take vacation with pay that he had earned or sick leave that similarly he had earned (even if in part traceable to benefits accrued during periods of disability leaves of absence), were not paid as workmen's compensation under Workers' Compensation Act (Division IV of California Labor Code (entitled Workers' Compensation and Insurance), [Cal. Lab. Code §§ 3200 et seq.,](#)

and were not excludable from petitioners' gross income pursuant to [I.R.C. § 104\(a\)\(1\)](#). [Speer v Commissioner of Internal Revenue \(2015\) 144 TC 279, 80 Cal Comp Cases 444.](#)

Tax court concluded that joint taxpayers could not exclude from 1994 income under [I.R.C. § 104\(a\)\(2\)](#) husband's former employer's payments to him; payments were substitute for wages, and they were not agreed to be or intended by employer to be paid on account of personal injuries or sickness allegedly caused by that employer not rehiring husband. [Collins v Comm'r \(2002\) TC Memo 2002-115, RIA TC Memo P 54738, 83 CCH TCM 1620.](#)

Disability payments were not excluded from taxpayer's gross income under [26 USCS § 104\(a\)\(3\)](#) where policy specifically stated that plan was paid for by taxpayer's employer; payments were also not excluded under [26 USCS § 105\(c\)](#) because long-term disability benefits were based on taxpayer's monthly basic earnings at time that he became totally disabled. [Connors v Comm'r \(2006\) TC Memo 2006-239, 92 CCH TCM 404.](#)

Although taxpayer's law firm wrote checks that paid for his long-term group disability insurance policy, he reimbursed firm for amount of his premiums by deducting these amounts from his loan to firm; because taxpayer, and not firm, bore economic burden of disability premiums, disability payments that taxpayer received were excludable from income under [I.R.C. § 104\(a\)\(3\)](#). [Cotler v Comm'r \(2007\) TC Memo 2007-283, 94 CCH TCM 305.](#)

Settlement proceeds for claim of false imprisonment were not excludable under [26 USCS § 104\(a\)\(2\)](#) where taxpayer suffered no physical harm during course of her arrest and detention; although being subjected to police arrest procedures could cause physical discomfort, being handcuffed or searched was not physical injury for purposes of § 104(a)(2). [Stadnyk v Comm'r \(2008\) TC Memo 2008-289, 96 CCH TCM 475.](#)

Where settlement agreement provided that \$ 100,000 was for taxpayer's claims of emotional distress and his attorney's fees, that amount was not excludable from gross income under [26 USCS § 104\(a\)\(2\)](#); although taxpayer had sustained some bruises as result of incidents that gave rise to settlement, these injuries were not mentioned in agreement. [Hansen v Comm'r \(2009\) TC Memo 2009-87, 97 CCH TCM 1447.](#)

Commissioner of Internal Revenue was not estopped from litigating whether 2005 disability payment received by taxpayer from Civil Service Retirement System (CSRS) was excludible from income under [26 USCS § 104\(a\)\(4\)](#) because mere acceptance or acquiescence in return filed in previous year, or overlooking of error in that return upon audit did not create estoppel against Commissioner. [Jeanmarie v Comm'r \(2010\) TC Memo 2010-281, 100 CCH TCM 568.](#)

Disability retirement benefits from employer pension plan were not excludable from income under [I.R.C. § 104\(a\)\(1\)](#) because taxpayer received benefits under private collective bargaining agreement, not statute; benefits were not essentially equivalent to workers' compensation. [Zardo v Comm'r \(2011\) TC Memo 2011-7, 101 CCH TCM 1020.](#)

Disability retirement benefits from employer pension plan were not excludable from income under [I.R.C. § 104\(a\)\(2\)](#) because taxpayer did not receive payments through legal suit or settlement based on tortlike claim. [Zardo v Comm'r \(2011\) TC Memo 2011-7, 101 CCH TCM 1020.](#)

Amount received by taxpayer for participating in gout study was not excluded from his gross income under [26 USCS § 104\(a\)\(2\)](#), as he did not allege that he suffered from physical injury or sickness on account of study or prove direct causal link between payment and gout he had suffered from for 25 years. [O'Connor v Comm'r \(2012\) TC Memo 2012-317, 104 CCH TCM 571.](#)

Certain disability retirement payments made under Plan pursuant to state Statute were not excludable from Plan members' gross income under [I.R.C. § 104\(a\)\(1\)](#) because Statute was not statute in the nature of a workmen's compensation act. [Private Letter Ruling 200925036, 2009 PLR LEXIS 6356.](#)

Sums paid as disability retirement pension by local pension plan per state law requiring same were properly excluded from recipient's gross income per [I.R.C. § 104\(a\)\(1\)](#) without regard for fact that pension was computed based on employee's pre-retirement salary as state law mandating payment was in nature of workmen's compensation statute. [Private Letter Ruling 200652031, 2006 PLR LEXIS 2047.](#)

When VA made determination that veteran's income was retroactively converted to disability compensation and thus was nontaxable under [I.R.C. § 104\(a\)\(4\)](#), his refund claims were barred by statute of limitations in [I.R.C. 6511\(a\)](#) even as extended by [I.R.C. § 6511\(d\)\(8\)](#) because court lacked jurisdiction. [Haas v United States \(2012, Ct Fed Cl\) 2012-2 USTC P 50571, 110 AFTR 2d 5997.](#)

Same-gender domestic partner did not qualify as spouse and could qualify as dependent, and taxpayers could rely upon domestic partner certification to establish domestic partner was dependent; coverage and reimbursements provided to domestic partner was excludable from employee's gross income and not included in wages for employment tax purposes, and domestic partner who did not qualify as dependent, neither employee nor domestic partner would include in income any amount received as payment or reimbursement to extent coverage was paid for with after-tax employee contributions. [Private Letter Ruling 200339001](#); 2003 PLR LEXIS 879.

# Research References & Practice Aids

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## Code of Federal Regulations:

This section is referred to in [26 CFR 1.56\(g\)-1](#), [1.61-2](#), [1.61-14](#), [1.72-2](#), [1.72-15](#), [1.85-1](#), [1.104-1](#), [1.105-1](#), [1.105-4](#), [1.105-5](#), [1.105-11](#), [1.122-1](#), [1.213-1](#), [1.401\(a\)-21](#), [1.415\(c\)-2](#), [1.461-4](#), [1.468B-4](#), [1.501\(c\)\(17\)-3](#), [1.6045-5](#), [31.3401\(a\)-1](#), [31.3402\(o\)-3](#), [31.6051-3](#), [32.1](#), [32.2](#), [54.4981A-1T](#), [157.5891-1](#).

## Related Statutes & Rules:

Credit for elderly: reduction of § 22 amount inapplicable to exclusions under this section, [26 USCS § 22](#).

Definition of "taxable year," [26 USCS § 7701\(a\)\(23\)](#).

Military disability retirement pay, treatment under Internal Revenue Code, [10 USCS § 1403](#).

Inclusion in gross income of group-term life insurance purchased for employees, [26 USCS § 79](#).

Amounts received through accident or health insurance, treatment of, [26 USCS § 105](#).

Contributions by employer to accident and health plans, treatment of, [26 USCS § 106](#).

"Employee defined", [26 USCS § 7701\(a\)\(20\)](#).

This section is referred to in [10 USCS § 1403](#); [26 USCS §§ 22](#), [130](#), [5891](#), [6051](#), [7701](#).

## Am Jur:

[22 Am Jur 2d, Damages § 761](#).

[46 Am Jur 2d, Judges § 55](#).

[70A Am Jur 2d, Social Security and Medicare §§ 485, 508](#).

## Am Jur Trials:

47 Am Jur Trials, Taxation of Litigation Recoveries, p. 591.

75 Am Jur Trials, Age Discrimination in Employment Action Under ADEA, p. 363.

## Labor and Employment:

5 [Larson on Employment Discrimination, ch 92](#), Back Pay; Front Pay § 92.09.

5 [Larson on Employment Discrimination, ch 93](#), Compensatory, Punitive, and Other Damages § 93.08.

4 [Labor and Employment Law \(Matthew Bender\), ch 98](#), Back Pay; Front Pay § 98.09.

4 [Labor and Employment Law \(Matthew Bender\), ch 99](#), Compensatory, Punitive and Other Damages § 99.07.

## Federal Taxation:

2 Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 1, The Individual §§ 1.05, 1.07.

2 Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 2, The Corporation § 2.01.

2A Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 7, Aliens and Foreign Income § 7.04.

3 Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 14, Employer and Employee §§ 14.06, 14.20.

3 Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 18, The S Corporation § 18.05.

4 Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 61, Personal Insurance § 61.07.

4 Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 63, Annuities § 63.04.

2 Federal Income Taxation of Corporations Filing Consolidated Returns (Matthew Bender 2nd ed.), ch 62, Alternative Minimum Tax § 62.05.

2 Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 25, Rules on the Source of Income § 25.19.

## Annotations:

Application of [16th Amendment to U.S. Constitution--Taxation](#) of Specific Types of Income. [46 ALR Fed 2d 301](#).

Construction and Application of Agent Orange Act of 1991, [Pub. L. No. 102-4](#), [105 Stat. 11](#) and Regulations Promulgated Thereunder. [48 ALR Fed 2d 439](#).

Damages for allegedly wrongful interference with employment rights as received "on account of personal injuries," so as to be excludible from income tax under [26 USCS § 104\(a\)\(2\)](#). [106 ALR Fed 321](#).

What constitutes amount received under Workmen's Compensation Act within exemption provisions of Federal Income Tax Law. [16 ALR2d 1334](#).

#### **Texts:**

1A Environmental Law Practice Guide (Matthew Bender), ch 9, Federal Tax Considerations § 9.05.

2 Frumer & Friedman, Products Liability (Matthew Bender), ch 14, Punitive Damages § 14.08.

#### **Law Review Articles:**

McKenzie. Handling medical data? Think HIPAA now. 17 Computer Internet Law 15, November 2000.

Frolik. The Convergence of [I.R.C. § 104\(a\)\(2\)](#), Norfolk & Western Railway Co. v. Liepelt and Structured Tort Settlements: Tax Policy "Derailed". [51 Fordham L Rev 565](#), March 1983.

Roach. HIPAA privacy: "individual rights" and the "minimum necessary" requirements. 33 J Health L 549, Fall 2000.

Kanter. Income and estate tax relief granted for victims of terrorist attacks. 19 J Tax'n Invest 267, Spring 2002.

Mayor and Hepburn. The Treatment of Income Taxes in Determining Personal Injury Awards. 18 Jurimetrics J 186, Winter 1977.

Willoughby. The Taxation of Defamation Recoveries: Toward Establishing Its Reputation. [37 Vand L Rev 621](#), April 1984.

## Forms

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13 [Rabkin & Johnson, Current Legal Forms, § 12.12](#), Employment and Compensation.

15 [Rabkin & Johnson, Current Legal Forms, § 13.38](#), Pension Plans and Other Exempt Employees' Plans.

17 Rabkin & Johnson, Current Legal Forms, Form 14.77, Stock Options and Other Incentive Plans.

33 [Rabkin & Johnson, Current Legal Forms, § 25.05](#), Environmental Considerations in Real Estate Transactions.

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