

SCOMM

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To: Representative John Davies
@Fax: 1-907-465-3519
From: A.L. Tamagni, Sr.
Date: 3/17/97
Re: HB 58
Pages: 1, including this

I tried to contact you at your office late this afternoon in regards to an amendment on the above bill regarding the section on periodic payments. I have not seen the amendment and can only comment on what I have been able to view from Aleyscs and conversations therein.

Future medical payments are always considered when planning for a case settlement and this includes unexpected contingencies. Special needs trusts or medical trust are set up with moneys from the cash up front, and a portion of the periodic payments are channeled into these special accounts to achieve the tax exempt benefits and to address predictable and non predictable medical expenses.

Normally these situations do not happen within the first 2 years after settlement as the period of time for settlement continues on longer than 2 years, and the persons are usually stabilized at that point. A good and clear prognosis is then usually fairly predicable and fundable. This is one of the Key Elements of a Settlement that we always advise be addressed by the Plaintiff Counsel and Defense Counsel. Past economic and non-economic damages are usually paid in cash up front or by direct reimbursement.

~~The change in the language could possible trigger an adverse tax consequence for the continued exclusion from gross income of these payments.~~

If you may have any questions, please do not hesitate to call. My home number is 907-349-1736.

Date: 03-17-97

Time: 05:56 PM

To: Jim Sourant

At: 1-907-465-3834

From: Al Tamagni Sr.

At: (907) 561-6250

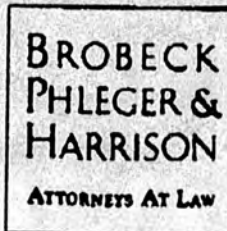
Pages: 2

NOTE:

Sent this to Davies this PM.

(1)

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550 SOUTH HOPE STREET
LOS ANGELES
CALIFORNIA 90071-2604

November 21, 1995

1995 Structured Settlement Legislation/Bulletin No. 7

Dear Structured Settlement Professional:

The House and Senate conferees have finished their structured settlement work. The changes from current law are the same as in the House and Senate bills. Section 104(a)(2), as it will read following enactment of the changes, is attached. The Conference Committee Report describing the change is also attached.

Punitive Damages. Punitive damages will be taxed, whether paid on a physical or non-physical injury. (Alabama wrongful death awards will continue to be untaxed, however, even though Alabama courts have characterized them as punitive.)

Non-physical Injuries. All damages paid on a non-physical injury (e.g., gender, race and age discrimination, wrongful termination) will be taxed. Bystanders and wrongful death recipients will continue to be untaxed, however, because their recovery has its origin in the physical injury of another.

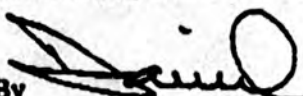
Emotional Distress. Emotional distress damages will not be taxed in a physical injury case. They will be taxed in a non-physical injury case.

The new rules, when signed by the President, will apply to all payments received after 1995, unless received under a settlement agreement in effect on September 13, 1995.

We will keep you informed of developments.

Very truly yours,

BROBECK, PHLEGER & HARRISON

By 
David M. Higgins

BPHLA/DMH/0330582.WP
11/21/95

SAN FRANCISCO PALO ALTO LOS ANGELES ORANGE COUNTY SAN DIEGO NEW YORK AUSTIN DENVER
BROBECK HALE AND DORA INTERNATIONAL OFFICES: LONDON PRAGUE



NEW SECTION 104(a)(2)
OF THE INTERNAL REVENUE CODE^{*/}

✓ "[G]ross income does not include . . . (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 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)) attributable to emotional distress."

CONFERENCE COMMITTEE
OFFICIAL DESCRIPTION OF 104(a)(2) CHANGES

Present Law

Under present law, gross income does not include any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injury or sickness (sec. 104(a)(2)).

The exclusion from gross income of damages received on account of personal injury or sickness specifically does not apply to punitive damages received in connection with a case not involving physical injury or sickness. Courts presently differ as to whether the exclusion applies to punitive damages received in connection with a case involving a physical injury or physical sickness. Certain States provide that, in the case of claims under a wrongful death statute, only punitive damages may be awarded.

Courts have interpreted the exclusion from gross income of damages received on account of personal injury or sickness broadly in some cases to cover awards for personal injury that do not relate to a physical injury or sickness. For example, some courts have held that the exclusion applies to damages in cases involving certain forms of employment discrimination and injury to reputation where there is no physical injury or sickness. The damages received in these cases generally consist of back pay and other awards intended to compensate the claimant for lost wages or lost profits. The Supreme Court recently held that damages received based on a claim under the Age Discrimination in Employment Act could not be excluded from income. In light of the Supreme Court decision, the Internal Revenue Service has suspended existing guidance on the tax treatment of damages received on account of other forms of employment discrimination.

^{*/}This excerpt omits a subsection dealing with Alabama wrongful death recoveries. Although punitive in nature, they will continue to be untaxed, like all other wrongful death recoveries.

House bill

Include in income all punitive damages

The House bill provides that the exclusion from gross income does not apply to any punitive damages received on account of personal injury or sickness whether or not related to a physical injury or physical sickness. The house bill intends no inference as to the application of the exclusion to punitive damages received prior to the effective date of the bill in connection with a case involving a physical injury or physical sickness.

Include in income damage recoveries for nonphysical injuries

The House bill provides that the exclusion from gross income only applies to damages received on account of a personal physical injury or physical sickness. If an action has its origin in a physical injury or physical sickness, then all damages (other than punitive damages) that flow therefrom are treated as payments received on account of physical injury or physical sickness whether or not the recipient of the damages is the injured party. For example, damages (other than punitive damages) received by an individual on account of a claim for loss of consortium due to the physical injury or physical sickness of such individual's spouse are excludable from gross income. In addition, damages (other than punitive damages) received on account of a claim of wrongful death continue to be excludable from taxable income as under present law.

The House bill also specifically provides that emotional distress is not considered a physical injury or physical sickness. Thus, the exclusion from gross income does not apply to any damages received (other than for medical expenses as discussed below) based on a claim of employment discrimination or injury to reputation accompanied by a claim of emotional distress. Because all damages received on account of physical injury or physical sickness are excludable from gross income, the exclusion from gross income does apply to any damages received based on a claim of emotional distress that is attributable to a physical injury or physical sickness. In addition, the exclusion from gross income specifically does apply to the amount of damages received that is not in excess of the amount paid for medical care attributable to emotional distress.

Effective date. The provisions generally are effective with respect to amounts received after December 31, 1995. The provisions do not apply to amounts received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995.

Senate Amendments

Same as the House bill, except that the exclusion from gross income applies to punitive damages received in a wrongful death action, provided that the applicable State law (as in effect on September 13, 1995 without regard to subsequent modification) provides, or has been construed to provide by a court decision issued on or before such date, that only punitive damages may be awarded in a wrongful death action.

Conference Agreement

The conference agreement follows the Senate amendment, except the conference agreement clarifies that the special rule contained in the Senate amendment pertaining to punitive damages received in a wrongful death action only applies if the punitive damages received would have been excludable from gross income under the law in effect before February 1, 1996.

Alaskans For Liability Reform

FAX TRANSMITTAL COVER SHEET

DATE: 3.17.97SENT FROM: (907) 562-1366SENDER'S NAME: A.L. TAMAGNI, SR.**RECEIVER INFO:**NAME: JIM SOLHANICOMPANY: REP PORTERFAX #: 1-907-465-3834NUMBER OF PAGES, INCLUDING THIS COVER: 5COMMENTS: See PAGE 2 + OTHER

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CONTACT THIS OFFICE AS SOON AS POSSIBLE.