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# Asiana 777 Crash At SFO Goes To Lawyers

Lawyers are already fretting over the Asiana crash and trolling for clients. Eventually, the dollars will be large. One aviation accident lawyer estimated that damages could run in the hundreds of millions of dollars. Different passengers will collect different amounts, of course.

Still, airline crash expert Arthur Wolk estimates that all claims are probably worth over \$1M. See [Asiana passengers likely to get millions](#). Everyone seems to agree that [after the Asiana Airlines crash, lawsuits are likely](#). Which courts and what law will apply are less clear. See [Where can Asiana crash victims file lawsuits?](#)

Two died and 182 people were hospitalized with injuries ranging from scrapes to paralysis. Recoveries by passengers who sustained major injuries, and by the families of the two girls who were killed, should be largest. However, even the 123 passengers who escaped **without** physical injuries are likely to see seven-figure settlements due to Post Traumatic Stress Disorder (PTSD), Mr. Wolk said.

Settlements for survivors of airline crashes can be expected even without physical injuries. People respond differently to such events, and some handle



An Asiana Airlines Boeing 777 airplane lies burned on the runway after it crash landed at San Francisco International Airport on July 6, 2013. (Image credit: Getty Images via @dayliffe)

it better than others. It may be premature to judge how these crash victims will react, both physically and psychologically. Yet it is not a stretch to suggest that some survivors may suffer from PTSD.

The fact that some settlement money will be paid for physical injuries while uninjured passengers may get their money for “emotional distress” or PTSD may decide whether the settlements are reduced by taxes. The question is whether the IRS will get a piece of each settlement.

Generally, everything is income, whether a payment is for services, selling property, settling a lawsuit, etc. One of the few exceptions from this broad “all income” rule is for certain lawsuit recoveries, but only if there are **physical** injuries. Damages for physical injuries (say, broken bones from an accident) are tax-free.

What if you only suffer emotional injuries? Money for physical **sickness** is also tax-free, but **not** for physical symptoms caused by emotional distress—say, headaches. Neither the IRS nor Congress has clarified what is physical and what is not. Tax disputes are common, including in court.

In one case, the [U.S. Tax Court](#) overruled an IRS decision to tax a \$350,000 settlement a man received after suing his ex-employer for intentional infliction of emotional distress. See [Parkinson v. Commissioner](#). Why?

The distress led to a heart attack, the court said. See [Tax-Free Physical Sickness Recoveries in 2010 and Beyond](#). In another case, the Tax Court ruled that an employee suit may be partially tax-free if the employee has physical sickness from working conditions. Stressful conditions exacerbated the worker’s pre-existing multiple sclerosis. See [Is Physical Sickness the New Emotional Distress?](#)

If the 123 Asiana passengers who suffered no physical injury are offered a settlement, is it taxable? What if a passenger gets post-traumatic stress disorder and recovers? [Is PTSD a physical injury for tax purposes?](#) Unfortunately, the [tax treatment of PTSD](#) isn’t clear.

Yet medical data suggests PTSD is not a mere mental state. In fact, it is a **physical sickness** involving measurable changes in the physical make-up of the brain and nervous system. See [The Biological Effects Of Traumatic Events](#) and [Neuroscientists Say Brain Scans Can Spot PTSD](#). U.S. Taxpayer Advocate Nina Olson has advocated for [treating PTSD as physical sickness](#), meaning that settlements for it would be tax-free.

How a settlement is reported to a plaintiff (on IRS [Forms 1099](#)) can matter. So can the exact language the parties use in a settlement agreement. There is more flexibility to reduce taxes if you negotiate your settlement agreement with an eye on tax rules. The IRS isn't bound by an agreement's wording, but it can help.

These issues can be surprisingly significant. If you receive a \$3M settlement that isn't taxed, you have \$3M. If taxes apply you may only end up with \$2M. Considering that lawyer fees invariably consume a large portion of legal settlements, losing another large portion to the IRS can be maddening, especially if it can be prevented.

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