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\$450k Settlements To Undocumented Immigrants Separated At Border May Be Tax Free

[The Biden administration is reportedly considering payouts of \\$450,000 to each](#) person separated from their family at the southern border. A *Wall Street Journal* [report](#) on the potential settlements sparked outrage from some, drawing comparisons to 9/11 compensation. If the settlements happen, the federal government would award money for claims that U.S. government policies left the border crossers with lasting psychological effects. Since the deal would be per person and those crossing the border generally included a parent and child, the total per family could approach \$1 million. Approximately 940 families have reportedly filed claims, but how many people will be eligible is not yet clear. The ACLU and others filed lawsuits [alleging](#) that thousands of children and parents impacted by the Trump administration's zero-tolerance [policy](#) have mental health effects from the prolonged trauma.



If the money is awarded, it's worth asking whether the IRS will be able to collect any tax money. Undocumented immigrants are supposed to file tax returns with the IRS if they have income, but overall compliance rates are hard to nail down. Generally, only noncitizens authorized to work in the United States by the Department of Homeland Security can get a Social Security Number. For plaintiffs who do not have SSNs, they can request an Individual Tax ID number (commonly referred to as an [ITIN](#) or TIN) from the IRS. Undocumented immigrants may use ITINs for tax returns because a taxpayer doesn't need to provide immigrant status in order to obtain an ITIN. An [ITIN](#) can be used to complete an IRS Form W-9 and in most other instances where a SSN would be used for tax purposes.

But is this settlement money taxable in the first place? If you sue for physical injuries, compensatory damages are tax-free. But if you sue for emotional distress, your recovery is taxed. Physical symptoms of emotional distress (like

headaches and stomachaches) are taxed, but physical injuries or sickness is not. The tax rules are confusing and [make some cases a kind of chicken or egg](#) issue when it comes to taxes. Sometimes, what gets [taxed comes down to settlement wording](#). What constitutes personal physical injuries or sickness is not defined, but the IRS likes to see “observable bodily harm” such as bruises or broken bones. However, the interactions between physical and emotional injuries and sicknesses are starting to be explored.

For plaintiffs claiming that their border separation caused them to have post traumatic stress disorder, the tax law remains unclear, but there is a good argument that PTSD is physical. Former [President Obama intimated as much](#) when discussing PTSD from military service. Physical confinement with emotional impacts may not actually be a physical injury, but plaintiffs and their lawyers will probably argue that the damages are sufficiently physical not to be taxed. That is especially likely where the plaintiffs have been diagnosed with PTSD. Many plaintiffs take aggressive positions on their tax returns, but that can be a losing battle if the defendant issues an [IRS Form 1099. You can disagree on your tax return, but the IRS may not agree](#). In many cases, plaintiffs are taxed not just on their net recoveries after legal fees, but also on income paid directly to their lawyers. That is not a problem if they are able to deduct their legal fees, but that is not always possible. They may owe [tax on a legal settlement and not be able to deduct the legal fees](#). Since 2018, there’s a new [tax on lawsuit settlements where legal fees can’t be deducted](#).

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