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How Roundup Weed Killer Verdicts Are Taxed By The IRS May Surprise You

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Roundup weed killer has faced an avalanche of lawsuits from gardeners, farmers and homeowners who claim that their use of the product gave them cancer. Many lawsuits have gone to trial, and many have also been settled. The way taxes apply to Roundup and similar legal recoveries might surprise you. If a plaintiff is being awarded damages for a serious illness like cancer, how could the IRS consider it to be taxable income? Fortunately, the tax code is clear that compensatory damages for personal physical injuries or physical sickness are free of tax. This rule is embedded in section 104 of the tax code.

Roundup is manufactured by Monsanto, which is owned by Bayer, and the size of the payouts—and the suits that remain—is truly staggering. Bayer has reportedly paid nearly \$10 billion in settlement proceeds, and there are more than 60,000 additional cases pending. Yet the tax rules could swallow up some of the verdicts plaintiffs might be hoping to collect. The latest big verdict came in Georgia where a jury awarded John Barnes approximately \$2.1 billion. The verdict included \$65 million in compensatory damages and \$2 billion in punitive damages [according to CVN News](#).

Isn't all this tax free to the plaintiff? Hardly. The compensatory damages should be tax free, but punitive damages and interest are always taxable. Bayer will appeal Mr. Barnes case, but if the big verdict is eventually paid, most of the money is taxable. In percentages, nearly 97% of the verdict was for punitive damages, with only about 3% being compensatory. That means most of it will be taxed.

What's more, the real tricky part relates to how legal fees are taxed. Under a tax change that took effect starting in 2018, there is no longer a universal [deduction for legal fees](#). Many legal fees [can no longer be deducted](#), forcing some plaintiffs to pay tax even on monies their attorneys collect. That is so even though the attorney must *also* pay tax on the same money. The math can seem hard to justify. If you are a plaintiff with a

contingent fee lawyer, the IRS treats you as receiving 100% of the money, even if the defendant pays your lawyer directly. If your case is fully nontaxable, that causes no tax problems.

Say you sue over Roundup, claiming that the weed killer gave you cancer. Let's say you collect compensatory damages in the amount of \$10M. Let's assume your lawyer takes 40%. That means you end up with \$6M. Whether you view the total recovery as \$10M or \$6M doesn't really matter. With only *compensatory* damages, the whole \$6M should be tax free. IRS rules clearly say that you can't deduct the \$4M in legal fees. But you don't need to, since the whole thing should be nontaxable.

But there is a big tax problem if punitive damages or interest are awarded. On top of \$10M in compensatory damages, suppose that you are awarded \$40M in punitive damages? Let's assume the same 40% legal fee. That means you net \$30M, and your lawyer takes home \$20M. For what is taxable, you must separate the two damages. Let's assume your \$10M in compensatory damages is tax free. You get \$6M of that, and your lawyer gets \$4M. For the punitive part, you net \$24M after fees.

But the [2018 tax law](#) eliminated tax deductions for many legal fees. Here, although you only get to keep \$24M of your punitive damages, you are taxed on the whole \$40M. In total, you collect \$30M, but you can be taxed on \$40M. These seemingly topsy-turvy numbers can get even worse if there are costs to consider on top of the legal fees (as there usually are), or if the contingent fee is higher than 40%. In short, if a recovery is taxable, all *or in part*, the plaintiff can be taxed on more money than he actually collects. There are [workarounds for plaintiffs despite the new tax law](#) but they require specialized advice.

Not all lawyers' fees face this bizarre tax treatment. If the lawsuit concerns the plaintiffs' trade or business, the legal fees are a business expense. Also, if your

case involves claims against your employer, or certain whistleblower claims, those legal fees are also still deductible. But for other cases, you are out of luck unless you are awfully creative. Increasingly, legal settlements require advice on the [taxation of damage awards](#), preferably before the case settles. There are some ideas how to address this [new tax on litigation settlements here](#), but you'll need professional tax help.