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In Kobe Bryant Crash Settlement, IRS Taxes And Fees Could Take 90%

The family of the late [Kobe Bryant](#) agreed to a \$28.5 million settlement with Los Angeles County to resolve remaining claims in their lawsuit over deputies and firefighters [sharing grisly photos](#) of [the NBA star](#), his 13-year-old daughter and other victims killed in a 2020 helicopter crash. The figure includes a \$13.5 million payment from the county, plus \$15 million awarded to Bryant's widow, Vanessa Bryant, in a jury trial. How does the IRS and the California Franchise Tax Board make out?

The taxman gets a piece of most lawsuit recoveries, and how taxes play out can seem unfair. The basis of the suit was that emergency responders took and shared grisly photos of the bodies, even though the photos were never made generally available to the public. Vanessa Bryant accused LA County of negligence and "violating her constitutional right to privacy." The suit asked for \$75 million for emotional distress from the photos, but there was apparently no argument that the photos made the plaintiffs physically sick or

caused them post-traumatic stress disorder. That makes the verdict taxable, but is that after legal fees are subtracted, or before?



Vanessa Bryant [testified](#) that news of the photos compounded her grief and that she had panic attacks, but that is probably not enough for a tax exclusion. The payment is taxed as ordinary income, so up to 37% goes to the IRS and 13.3% to California. That cuts the payment in half. And even though Bryant is likely paying her lawyers 40% or so of what she collects, the tax rules for lawyers fees are especially tricky.

In taxable settlements, the tax treatment of legal fees presents a problem. Since 2018, many plaintiffs are taxed on their gross recoveries, not merely on their net after legal fees. Some call it a new tax on legal settlements. Being creative is needed and checklists of ways to deduct legal fees can help. Why worry about deducting legal fees in the first place? If the lawyer is entitled to 40%, the plaintiff generally will receive only the net recovery after the fees.

But under *Commissioner v. Banks*, a 2005 U.S. Supreme Court case, 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*. It's just one of many odd rules about how legal settlements are taxed. A tax deduction for legal fees is easy in employment and whistleblower cases, but in many cases, there is no [deduction for legal fees](#). Some plaintiffs pay tax on monies their attorney collects, even though the attorney must *also* pay tax on the same money.

Let's assume that of the \$28.5 million total, 40% goes to the lawyers. That amounts to \$11,400,000, whittling the remainder down to \$17.1 million. Then, figure about 50% for taxes between the IRS 37% and California's 13.3%. But most tax advisors would say that 50% tax bite must be applied to the full \$28.5 million figure, including the legal fees. That meant taxes of approximately \$14.25 million. Subtracting that tax from the \$17.1 million left after legal fees yields a net take home of \$2.85 million, just 10% of the gross settlement amount. Taking 90% for taxes and legal fees sounds confiscatory.

The math gets a lot better if Vanessa Bryant can deduct her legal fees. Arguably her [civil rights were violated so she should be able to write off her legal fees on her taxes](#). After all, [civil rights are broad and can provide](#) a way to avoid paying tax on 100%, even though the lawyer collects 40%. Of course, it is even better if the money wasn't taxable in the first place, but that looks tough on these facts. Under the tax code, damages for personal physical injuries or physical sickness are tax free, but damages for *emotional* injuries are taxable.

So if you sue for intentional infliction of emotional distress, your recovery is taxed. Physical symptoms of emotional distress (like headaches and stomach aches) are taxed, but physical injuries and sickness are not. The rules [involve chicken or egg issues](#) with many judgment calls, and what constitutes personal

physical injuries or sickness is not defined. Damages for PTSD should arguably also qualify as tax free, though the tax law is not clear.

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