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THE TAX LAWYER

September 27, 2025

Majority Of Amazon's \$2.5 Billion FTC Settlement Is Tax Deductible



The Federal Trade Commission is proud of its record-breaking settlement with Amazon over allegations that the company enrolled millions of consumers in Prime subscriptions without their consent, and that Amazon then made it difficult for consumers to cancel their Prime membership. The FTC is requiring Amazon to pay a \$1 billion civil penalty, plus provide \$1.5 billion in refunds back to consumers harmed by what the FTC has characterized as Amazon's deceptive Prime enrollment practices. Amazon is also required to cease unlawful enrollment and cancellation practices for Prime. The details are in the FTC's [historic \\$2.5 Billion settlement with Amazon](#).

\$1 Billion Penalty and \$1.5 Billion Restitution

The \$1 billion civil penalty is the largest ever in a case involving an FTC rule violation. The \$1.5 billion in consumer redress is expected to provide full relief for an estimated 35 million consumers impacted by unwanted Prime enrollment and by the difficulty and delays in canceling Prime. [The settlement](#) also requires Amazon to make meaningful changes to its Prime enrollment and cancellation with a clear and conspicuous button for customers to decline Prime. Under the settlement, Amazon can no longer have a button that says, "No, I don't want Free Shipping." Amazon must also make it easy for consumers to cancel Prime.

The \$2.5 billion in payments are big, but the tax laws will soften the actual cost to Amazon. Most people don't think about tax issues first, but there are clearly tax considerations at play here. For decades, Section 162(f) of the tax code has prohibited deducting any fine or similar penalty paid to a government for the violation of any law. That includes criminal and civil penalties, as well as sums paid to settle potential liability for a fine. This sounds absolute, but the law was riddled with exceptions.

Available Tax Deductions

However, many of those exceptions were finally eliminated in 2018, so it seems unlikely that Amazon could find a way to deduct its \$1 billion fine. The \$1.5 billion in restitution, though, is a different matter. Sec. 162(f)(1) stipulates that tax deductions are generally disallowed for any payments made to, or at the direction of, a government or governmental entity in connection with the violation of any law. However, Sec. 162(f)(2)(A) provides an exception to this rule for amounts that are either restitution or payments made to comply with the law.

To qualify for this exception: (1) The taxpayer must demonstrate that the amounts were paid or incurred as restitution or to come into compliance with a law (establishment requirement), and (2) the amounts must be identified in a court order or settlement agreement as restitution, remediation, or payments made to come into compliance with a law (identification requirement).

The deal Amazon struck with the FTC involves Amazon issuing refunds of the \$1.5 billion to customers under the procedures set out in the Stipulated Judgment. And Amazon should be able to deduct those refunds as business expenses. That reduces the after tax cost to Amazon. The \$1 billion penalty is a different matter.

But interestingly, Amazon doesn't have to pay all the \$1 billion penalty immediately. The first \$500 million must be paid within 14 days of the FTC order. But the other \$500 million in penalties is not due for 18 months. Notably, [the Stipulated Order filed in the proceeding](#) contains the express statement that: "Amazon agrees that the civil penalty judgment in this Order represents a civil penalty owed to the government of the United States and is not

compensation for actual pecuniary loss.” That means no tax deduction. The \$1.5 billion in restitution, however, should be fair game for a tax deduction.