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President Obama Was Right, PTSD Is Physical

On September 28, 2016, in a [CNN Presidential Town Hall](#) over veterans, national security and foreign policy issues impacting the U.S. Military, President Obama was asked about post-traumatic stress disorder (PTSD). President Obama [said](#):

- 6 The first is I have instructed the Joint Chiefs and up and down the chain of command that they have a responsibility to destigmatize mental health issues and issues of PTSD and help to explain to everybody in all of the units under their command that there's nothing weak about asking for help. If you break your leg, you're going to go to a doctor to get that leg healed. If, as a consequence of the extraordinary stress and pain that you are witnessing, typically, in a battlefield, something inside you feels like it's wounded, it's just like a physical injury. You've got to go get help. And there's nothing weak about that. That's strong. And that is what will allow you then to continue to – with your service and there shouldn't be a stigma against it.



The Department of Veterans Affairs' National Center for PTSD estimates that [7.8% of Americans will suffer from PTSD](#) at some point in their lives. The National Center for PTSD reports that 11% to 20% of veterans who served in Iraq and Afghanistan suffer from PTSD in a given year. Yet, an estimated 85% of PTSD cases result from an event outside the military. And that brings us to payments for PTSD and taxes.

If you are physically injured in military service or as a private citizen, payments you receive to compensate you for your injuries are tax-free. If you receive payments for an injury that is *not* physical or has no outward signs such as bruises or broken bones, the rules are less clear. PTSD can aggravate other problems and lead to joblessness, homelessness and suicide. A compensatory payment for physical injuries or physical sickness is tax-free under [Section 104](#). However, payments for punitive damages and interest are taxed.

If you sue for discrimination or harassment at work, wage loss will be subject to tax withholding. Plus, any other monies are likely to be taxed too, reported to the plaintiff on an IRS Form 1099. Such are the sometimes complex tax rules governing [taxes on damages](#) and legal settlements. The rules are the same whether your case is settled or proceeds to judgment. Even so, if you get tax advice before your settlement is documented you can often improve on the tax result. The IRS is not bound by the parties' tax characterization, but often respects it if it is reasonable.

Yet, many people do not know how to treat damages for PTSD, and the IRS has not yet ruled on the point. What constitutes personal physical injuries or sickness is not clear, but the IRS normally wants to see "observable bodily harm." Think bruises or broken bones. If the case arises out of employment, the IRS usually says recoveries are taxable. However, the Tax Court has ruled that an employee suit may be partially tax-free if the employee has physical sickness from working conditions. It must be much more than merely emotional distress. In one case, stress at work produced a heart attack, that was sensibly viewed as [physical sickness](#).

In another case, stressful conditions at work exacerbated the worker's pre-existing multiple sclerosis, so that money was [tax-free](#). Even so, the [tax treatment of PTSD](#) isn't clear. Yet medical data suggests PTSD is no mere mental state. In fact, it is a physical sickness involving measurable changes in the physical makeup of the brain and nervous system. So says [the biological effects of traumatic events](#), and [neuroscientists who say that brain scans can](#)

spot PTSD.

Fortunately, U.S. Taxpayer Advocate Nina Olson has advocated for [treating PTSD as physical sickness](#). This should mean that settlements for PTSD would be tax-free. That should be true whether the PTSD is caused by military service overseas, witnessing a family member run down in traffic, or being harassed at work. It remains to be seen whether the IRS will agree.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.