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# Scoring Damages In NFL Painkiller Lawsuit

More than 500 former NFL players have gotten behind a lawsuit that could become [a class-action](#) against the NFL. Former NFL players named so far include Richard Dent, Jim McMahon, Jeremy Newberry, Roy Green, J.D. Hill, Keith Van Horne, Ron Stone, and Ron Pritchard. They allege the NFL supplied them with illegally prescribed painkillers throughout their careers. The players allege that:

1. The NFL illegally and unethically supplied serious pain medications, including addictive opioids, and NSAIDs such as torodol.
2. The NFL did so for money, to keep them in competition rather than allowing them to rest and heal.
3. The NFL fraudulently concealed the dangerous side effects of the drugs.
4. The painkillers led to dangerous medical conditions, including addiction, stage 3 renal failure and high blood pressure.

It's too early to count the money the players—or the lawyers—will get. But assuming that the players collect, the type of damages they have will impact whether the IRS will get a piece of any settlement. Taxes often whittle down the results of litigation. After all, generally, everything is income, including money for settling a lawsuit.



(Photo credit: Dougtone)

But one of the few exceptions from this broad “all income” rule is for lawsuit recoveries for physical injuries. Damages for physical injuries (say, broken bones from an accident) are tax-free under [Section 104](#) of the tax code. So are damages for physical sickness.

But only *physical* injuries and *physical* sickness qualify. Damages for emotional distress are taxed. Well, unless the emotional distress *emanated* from physical injuries or physical sickness, in which case it’s tax-free. Confused?

It’s no wonder. And disputes with the IRS are common. If you sue for discrimination or harassment at work, your wage loss will be taxed. But if you suffer physical injuries or physical sickness from workplace harassment, maybe not. Money for physical *symptoms* caused by emotional distress—say, headaches, is taxed.

But how one should interpret this confusing law is often debated, and real dollars can turn on the debate. In one case, the [U.S. Tax Court](#) overruled an IRS decision to tax a \$350,000 settlement a man received after suing his ex-employer for intentional infliction of emotional distress. See [Parkinson v. Commissioner](#). A suit for emotional distress sounds fundamentally taxable, so why the result?

The distress led to a heart attack, the court said. See [Tax-Free Physical Sickness Recoveries in 2010 and Beyond](#). In another case, the Tax Court ruled that an employee suit was partially tax-free where she had physical sickness from working conditions. Stressful conditions exacerbated her pre-

existing multiple sclerosis. These case suggest that NFL players who recover for serious medical conditions allegedly caused by drugs should receive their money tax-free.

But those with addiction or other issues may be less clear. And what if a former player gets post-traumatic stress disorder? PTSD often manifests itself in physical ways, but there has been debate whether [PTSD a physical injury for tax purposes](#). And surprisingly, the [tax treatment of PTSD](#) isn't clear. Taxpayer Advocate Nina Olson has suggested [treating PTSD as physical sickness](#).

How a settlement is reported to plaintiffs on IRS [Forms 1099](#) influences the tax treatment too. So does the exact wording of a settlement agreement. The IRS isn't bound by that wording, but it can help.

Do taxes make that big a difference if you're a plaintiff? You bet. If you receive a \$3M settlement that isn't taxed, you have \$3M. If taxes apply you could end up with only half.

How legal fees are treated under the tax law can make your tax bill even higher. Usually, plaintiffs are treated as receiving money deducted by your contingent fee lawyer. That means you have to find a way to deduct those legal fees. Some plaintiffs end up paying taxes on money they never saw.

The NFL players' painkiller lawsuit just started. But before even a quick settlement, these tax issues will need to be addressed. Plaintiffs who fail to handle this part of the case carefully can end up in yet another dispute with the IRS. And you don't want to mess with the IRS.

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