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THE TAX LAWYER

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Settling Arby's Scalding Urinal Case

An Arby's customer, Mr. Kenneth DeJoie, is plenty steamed. He claims that while standing at a urinal at Arby's in Monument, Colorado, he had a kind of epiphany. He was doing his business when the urinal fired a jet of steam back at him, burning his genitals.

The steam job took place May 28, 2010, but DeJoie didn't sue until two years later. Perhaps he needed to build up a head of steam. Don't believe me? See [DeJoie v. Arby's](#).

This is no tit for tat steam bath. The suit claims Arby's employees **knew** the urinal regularly shot out scalding steam. Like the birds in the Alfred Hitchcock classic, maybe this urinal had just had enough.

Among other claims Mr. DeJoies and his wife (represented by [David Stevens](#)) are seeking damages for loss of consortium. While some of this sounds both steamy and seamy, I'll bet the DeJoies will recover both physically and financially. If I'm right, will the IRS take its pound of flesh?



It shouldn't. After all, damages for personal injuries like an auto accident, slip and fall or garden variety steaming urinal case are tax-free if there's physical injury. See [IRS Issues New Rules For Tax-Free Legal Settlements](#). Damages for physical sickness are too. See [IRS To Collect on Italian Cruise Ship Settlements](#).

Still, only recoveries for **physical** injuries or **physical** sickness qualify. If damages aren't physical enough, they are taxed. See [Is Physical Sickness the New Emotional Distress?](#) What if you suffer only emotional injuries? Some of it can seem like splitting hairs.

Compensation for physical **symptoms** caused by emotional distress are taxable. Yet neither the IRS nor Congress has clarified what's physical and what's not. Tax disputes are common.

In 2010, 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](#). The distress led to a heart attack, the court said. That's pretty physical. See [Tax-Free Physical Sickness Recoveries in 2010 and Beyond](#).

Assuming Arby's settles, I'm betting Mr. DeJoies won't be taxed at least if he has medical reports and photos to prove his injuries. Suppose he doesn't but is diagnosed with post-traumatic stress disorder from his ordeal? The jury is still out on this one, but it's arguable that [PTSD is a physical injury for tax purposes](#).

For more, see:

[Don't Fail To Consider Taxes When Settling Litigation](#)

[Damages Are Taxable, Even for "Political Discrimination" Says IRS](#)

[What If A Taxpayer Doesn't Have Receipts?](#)

[Duke Lacrosse Tax Lien Highlights How Lawsuits Are Taxed](#)

[Tax Issues in Employment Mediations](#)

[Six Tax-Wise Ways To Reduce Your Legal Bills](#)

[Tax-Free Physical Sickness Recoveries in 2010 and Beyond](#)

[Is Physical Sickness the New Emotional Distress?](#)

[Watch Your Mail For 1099s](#)

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