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Tax On Wrongful Imprisonment Needs Reform

It is hard to imagine a more terrifying nightmare than being wrongfully convicted and imprisoned. It is comforting that there's been a dramatic increase in wrongfully convicted persons gaining their freedom, often after a decade or more of wrongful imprisonment. Yet it is appalling that so many lives are destroyed. And more and more cases are being uncovered.

Exonerees may later seek redress from the cities, states and officials whose actions precipitated their wrongful conviction. They may receive payment under federal or state civil rights and compensation statutes or under the common law of false imprisonment. The biggest payouts usually involve prosecutors who have unlawfully buried witnesses and destroyed evidence. See [\\$18 Million to Man Wrongly Imprisoned](#), [Wrongly Convicted Man Gets \\$7.95, Million Settlement](#), and [City to Pay \\$9.9 Million Over Man's Imprisonment](#).

The changes in an exoneree's life from this physical and mental ordeal are incalculable. But if an exoneree eventually recovers damages, are they taxable? The Internal Revenue Code exempts payments received on account of personal physical injuries and physical sickness. That means settlements for auto accidents are tax-free. Yet appallingly, some exonerees have been forced to pay taxes on their awards, ostensibly because there is nothing "physical" about being locked up.

Plainly, even if never beaten, assaulted or mistreated in prison, the victim suffers a deprivation of liberty that is manifestly physical. In the 1950s, the IRS issued a series of rulings according tax-free status for payments to survivors of Nazi persecution, U.S. prisoners of war, and Japanese-American internees. Then, in 2007 the Internal Revenue Service abruptly cancelled these rulings.

More recently, the U.S. Tax Court, affirmed by Sixth U.S. Circuit Court of Appeals, ruled that “[p]hysical restraint and physical detention are not ‘physical injuries’. . . . Nor is the deprivation of personal freedom a physical injury.” These platitudes leave exonerees with few options. Congress has tried to ameliorate this disparity, most recently in the Wrongful Convictions Tax Relief Act of 2010, [H.R. 4743](#). Yet like previous legislative efforts to provide relief to exonerees, it failed to become law. See, e.g., the Wrongful Convictions Tax Relief Act of 2007, [S. 2421](#), introduced by Senators Schumer and Brownback.

It’s time for the IRS or Congress to fix this. Justice demands it.

For more reading see:

[Why the *Stadnyk* Case on False Imprisonment Is a Lemon](#)

[Should False Imprisonment Damages Be Taxable?](#)

[Why False Imprisonment Recoveries Should Not Be Taxable](#)

[A ‘Get Out of Jail’ Card That’s Far From Free](#)

[Are False Imprisonment Recoveries Taxable?](#)

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