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Robert W. Wood

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Taxes Slash $2 Billion Roundup Weedkiller Verdict To $27.5 Million

Another Roundup verdict is in, and once again, bizarre new tax rules make the IRS the biggest winner. This time, a Northern California jury found that Monsanto failed to warn users that Roundup was dangerous, awarding Alva and Alberta Pilliod $55 million in compensatory damages and a whopping $2*billion* in punitive damages. Alva and Alberta Pilliod used Roundup on their San Francisco Bay Area property for 35 years. They were both diagnosed with non-Hodgkin lymphoma, but are currently in remission. This is the largest jury award in the U.S. so far this year, and the eighth-largest ever in a product-defect claim, according to Bloomberg. Last year, jurors gave $289 million to a man they say got cancer from Monsanto's Roundup. That verdict was later reduced, and is on appeal. In early 2019, jurors awarded Edwin Hardeman $200,000 for economic losses, $5 million for past and future pain and suffering, and $75 million in punitive damages. Bayer has said it would appeal the jury award. Monsanto faces over 13,400 claims, and is fighting hard. But even if Monsanto pays up, new tax rules could swallow up many of the verdicts plaintiffs might be hoping to collect.

President Trump's tax bill passed in late 2017 imposes a new tax on litigation settlements in the form of no deduction for legal fees. Amazingly, many legal fees can no longer be deducted. That means many plaintiffs must pay taxes even on monies their attorneys collect. Of course, the attorneys must *also* pay tax on the same money. Here's the bizarre tax math. The Pilliods were awarded approximately $55 million in compensatory damages and $2 billion in punitive damages. Their combined legal fees and costs might total as much as 50%. If so, they would get to keep half, or $27.5 million of the $55 million compensatory award. Since it is for their claimed non-Hodgkin's lymphoma, that part for physical injuries should not be taxed. Of the $2 billion punitive award, $1 billion could go to legal fees and costs, with $1 billion to the Pilliods. So *before* taxes, the plaintiff's could take home $1,027,500,000. The case will be appealed, so no money will be paid for quite a while. Even so, it's worth reviewing the math to see how this could come out.

So what about *after* taxes? The $2 billion in punitive damages are fully taxable, with *no deduction* for the legal fees to their lawyer. Between federal taxes of 37% and California taxes of up to 13.3%, the Pilliods could lose about 50% to the IRS and California's Franchise Tax Board. That could make their after-tax (and after legal fee) haul from a $2.55 *billion* verdict only about $27.5 *million*. Does that seem fair? $27.5 million isn't pocket change, but it is a shocking result. So is being taxed on money you do not receive. The bizarre result comes from the Trump tax law, which kills tax deductions like Roundup for many legal fees. Notably, compensatory damages for physical injuries or physical sickness are still tax-free, but what injuries are “physical” can be a chicken or egg issue.

When punitive damages or interest enter the picture, many plaintiffs cannot deduct their legal fees. It can mean being taxed on their gross recoveries, even if the lawyer is paid first. According to a 2005 U.S. Supreme Court tax case, if you are the plaintiff with a contingent fee lawyer, the IRS treats you as receiving 100% of the settlement or judgement, even if the defendant pays your lawyer *directly*. If your case is fully nontaxable, that causes no tax problems. But if your recovery is taxable, all *or in part*, you could be taxed on more money that you actually collect. Up until the end of 2017, you could claim a tax deduction for your legal fees. In 2018 and after, there may be *no* deduction for these legal fees. Fortunately, not all lawyers' fees face this terrible tax treatment.

If the lawsuit concerns a plaintiffs' trade or business, the legal fees are a business expense. If the case involves claims against the plaintiff's employer or certain whistleblower claims, those legal fees are also still deductible. But in other cases, plaintiffs are out of luck unless they are awfully creative. In some cases, there may be ways to circumvent these tax rules, but you'll need sophisticated tax help to do it. Advice on the taxation of damage awards before the case settles is best if you hope to avoid a terrible tax result.

This is not legal advice. For tax alerts or tax advice, email me at Wood@WoodLLP.com.