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Pay Vaccine Mandate Fines, Take Tax Write-Off?

The Biden Administration's COVID employee vaccine mandate is still being tested in court, with a [U.S. appeals court affirming the hold on Biden COVID-19 vaccine](#) mandate. But some people are looking ahead to whether they might have to pay a fine. President Biden announced that employers of 100 workers or more will be required to have their employees fully vaccinated or submit to weekly COVID testing by Jan 4. Those that don't comply will be subject to a series of fines. Each employee that violates the mandate will cost the employer \$13,653 per violation. What's more, more significant fines of up to \$136,532 apply to "willful violations," according to a [White House media briefing](#). Enforcing the employee COVID vaccine mandate is going to be run by OSHA, the Occupational Safety and Health Administration. [A Cato Institute article speculated](#) that a company could theoretically be liable for fines of up to \$1.36 million for a willful, repeated violation, plus \$136,532 per day that they failed to correct it (up to a maximum of 30 times the daily violation, or a further \$4.10 million).

If people and companies start paying, are these fines and penalties tax deductible? After all, that would cut the cost, and perhaps feel like you are

giving the government a little of its own medicine. The tax Code generally says no to tax deductions for fines and penalties paid to a government for the violation of any law. This may sound straightforward, but the regulations and case law make it less so.



In fact, the tax law on deducting fines and penalties has been muddled for years, so Congress at the end of 2017 tried to cut back on which fines and penalties can be deducted. Under the clarified law, it seems likely that these fines cannot be deducted, although people may try. The new law says that you can't deduct any amount paid to the government "in relation to" the violation of any law or the investigation or inquiry by the government into the potential violation of any law. That's awfully broad, but there are exceptions for amounts that constitute restitution, and for amounts that are paid to come into compliance with any law which was violated or involved in the investigation or inquiry.

Historically, plenty of companies have argued that a fine was really not meant to punish, but rather to encourage compliance with the law. If that seems like a slippery slope, it has been. Some fines and penalties are meant to punish. Others are designed to be remedial, not penal. Even if called a fine or penalty, they may be paid into a fund to be used for remediation. In short, like so much else in the tax law, one cannot go by name alone. In the past, big companies have often managed to deduct fines and penalties, despite what seem to be prohibitions in the tax code. Tax deductible settlements are one reason for the proposed Truth in Settlements Act ([S.1109](#)), which has still not been passed. It would require federal agencies to disclose the tax deductibility of settlements. It would also require corporations to disclose deductible settlements.

Most legal settlements in business are tax deductible, part of how the [IRS taxes legal settlements and legal fees](#). Under the old rules, BP probably could have written off a majority of its [\\$20.8 billion out-of-court settlement](#) related to the Gulf Oil spill. The deal designated only about one quarter, \$5.5 billion, as a non-tax-deductible Clean Water Act penalty. One big critic of such deals is U.S. Public Interest Research Group, which often rails against tax deductions claimed by corporate wrongdoers. The organization has a research report [here](#) on settlement deductions. But the present tax code allows businesses to deduct damages, even punitive damages. Restitution and other remedial payments are also fully deductible.

A [poll](#) released by the U.S. PIRG Education Fund says most people disapprove of deductible settlements. Explicit provisions about taxes in settlement agreements are becoming more common. The Department of Justice [expressly blocked](#) Credit Suisse from deducting its \$2.6 billion settlement for helping Americans evade taxes. Ditto for the BNPP terror [settlement](#), which stated that BNPP will not claim a tax deduction.

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