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Student Detained 5 Days Without Food Or Water By DEA Settles For \$4.1M

Daniel Chong, a 25-year old UC San Diego student, settled his suit against the DEA for \$4.1M. He was jailed and left unmonitored in a cell for [five days](#). Chong and eight others were detained April 21, 2012 after DEA agents raided a house in San Diego. The feds seized ecstasy, marijuana, prescription medications, hallucinogenic mushrooms, guns and ammunition. See [Daniel Chong, forgotten in DEA cell, settles suit for \\$4.1 million](#).



But it was April 25th before an agent opened the steel door and found Chong still handcuffed in his cell. Chong was never even formally arrested or charged. He said he was visiting a friend and knew nothing about the drugs or guns. He drank his own urine to survive and convinced he would die, wrote a farewell note to his mother.

He lost 15 pounds and suffered [post-traumatic stress disorder](#). Although Mr. Chong got a nice settlement, it's worth noting the debate over whether the IRS can get a piece of it. Prisoners may be [exonerated based on DNA](#) evidence

or simply released like Mr. Chong, and their compensation may come in various ways.

Exonerees may receive compensation via a lawsuit or by statute. See [Ex-Inmate Struggles to Cash In on Texas Law That Pays for Years of Wrongful Imprisonment](#). Anyone who endures false imprisonment or wrongful conviction endures harrowing experiences, sometimes for years. Nearly 300 DNA exonerees have served an average of 13.5 years in prison, ranging from less than one year to 35 years. See [Congressmen Sam Johnson and John Larson Press Release](#).

Given the horrors, you might assume taxes would not be added to them, but the tax issues have been surprisingly cloudy. In the 1950s and 1960s, the IRS ruled prisoners of war, civilian internees and holocaust survivors received tax-free money for their loss of liberty. In 2007, the IRS did away with these rulings and began asking whether a wrongfully jailed person was physically injured/sick while jailed. If so, the damages are tax-free, just like more garden variety personal physical injury recoveries. See [IRS To Collect on Italian Cruise Ship Settlements](#).

What if an exoneree isn't physically injured? In IRS [Chief Counsel Advice 201045023](#), the IRS said a recovery was tax-free, but the IRS sidestepped whether being unlawfully incarcerated is *itself* tax-free. The Tax Court (and [Sixth Circuit](#)) in [Stadnyk](#) suggest that prisoners who are not *physically injured* may be taxed. See [Why the Stadnyk Case on False Imprisonment Is a Lemon](#).

People subjected to long-term incarceration often end up with physical injuries and sickness. But if they don't, or if the bulk of their compensation is purely for being locked up, taxes may apply. If an exoneree gets \$50,000 for physical injuries and \$450,000 for being unlawfully behind bars, is the \$450,000 taxable?

Probably, if you follow the IRS' statements. Plainly, though, the loss of physical freedom should be tax-free in its own right. Many exonerated individuals experience severe hardship acclimating to society, finding jobs, housing and reconnecting with family.

Congressmen [Sam Johnson](#) (R-TX) and [John Larson](#) (D-CT) introduced legislation to prohibit the IRS from taxing compensation awarded to anyone

wrongfully convicted of a crime and later exonerated. [The Wrongful Convictions Tax Relief Act](#) would insure that exoneree awards are tax-free. According to [Congressman Larson](#), they shouldn't have to pay Uncle Sam a share of any compensation they receive. But prospects for passage seem weak.

That contributes to the confusion over whether Daniel Chong's \$4.1M will be taxed. He'll lose a portion to attorney fees, but beyond that, tax professionals disagree. As for the IRS, it is mum except to say that if there are physical injuries that are observable, that shouldn't be taxed.

In short, not unlike his experience with the DEA, Mr. Chong could have a hard time with the IRS standards. And although it might help his tax position that he was diagnosed with post traumatic stress disorder (PTSD), even that is no tax guarantee. Whether PTSD recoveries should be tax free is debated too. See [Post Traumatic Stress Disorder And Taxes](#).

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.