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THE TAX LAWYER

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### Who Caused Rosie O'Donnell's Heart Attack? The View, Today, OWN?

I don't know what caused [Rosie O'Donnell's heart attack](#), but heredity and diet may have played a role. Admirably, she and others are using the scare to urge women to be proactive. Don't just take aspirin, call 911. Get checked out frequently.

While Ms. O'Donnell isn't suggesting that **any employer** gave her the heart attack, what if she did? Stress induced medical claims are becoming common and can be quite real. They can have a curious impact on workplace claims.

Damages for personal physical injuries from an auto accident or slip and fall are tax-free under tax code [Section 104](#). So are damages for physical sickness. Only interest and punitive damages are taxed. See [Tax-Free Wrongful Death Punitive Damages?](#)

But only **physical** injuries and **physical** sickness qualify. See [Is Physical Sickness the New Emotional Distress?](#) Damages for emotional



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distress are taxed. Emotional distress **emanating** from physical injuries or physical sickness? Tax free. It's like splitting hairs, yet the IRS hasn't clarified what's physical enough.

Tax disputes are common. If you sue for discrimination or harassment at work, your wage loss will be taxed. But if you suffer physical injuries or physical sickness from workplace harassment, maybe not.

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. Since that was physical, his recovery was tax-free. See [Tax-Free Physical Sickness Recoveries in 2010 and Beyond](#).

The law seems to be slowly moving toward a broader damages exclusion. See [Is Post-Traumatic Stress Disorder Physical Injury for Tax Purposes?](#) However, factual details matter. So does language in the settlement agreement. See [10 Things to Know About Taxes on Damages](#).

Because of taxes, your take-home from a modest tax-free settlement may be better than a larger taxable one. See [Disability Pay: Some Taxable, Some Tax-Free](#). So get tax advice **before** you settle. See [Address Taxes When You Mediate Civil Disputes](#). The IRS isn't bound by settlement agreement wording but it can help enormously. So can explicitly addressing reporting on IRS Forms 1099. See [Watch Your Mail For 1099s](#).

**Attorney Fees Taxed Too.** A taxable settlement can be doubly painful. If you hire a contingent fee lawyer, the tax law treats you as receiving 100% even if the defendant pays your lawyer directly. See [Six Tax-Wise Ways To Reduce Your Legal Bills](#). You can deduct the fees but generally only as a miscellaneous itemized deduction, subject to a 2% floor and alternative minimum tax. See [The Only Good Legal Fees Are Tax Deductible Legal Fees](#). You may end up paying tax on money you never saw.

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