

6-27-1996

Dotson v US

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Dotson v. U.S., 87 F.3d 682 (1996)

78 A.F.T.R.2d 96-5436, 65 USLW 2054, 96-2 USTC P 50,359...



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Disagreed With by [Gerbec v. U.S.](#), S.D.Ohio, January 9, 1997

87 F.3d 682

United States Court of Appeals,
Fifth Circuit.

Elton E. DOTSON and Alrethia
Dotson, Plaintiffs–Appellants,

v.

UNITED STATES of America, Defendant–Appellee.

No. 95–40289.

I

June 27, 1996.

Synopsis

Taxpayers brought action to get refund from income and wage taxes paid on class action settlement award entered in litigation under Employee Retirement Income Security Act (ERISA). The United States District Court for the Southern District of Texas, [Samuel B. Kent, J.](#), [876 F.Supp. 911](#), granted summary judgment to government, and taxpayers appealed. The Court of Appeals, [Dennis](#), Circuit Judge, held that: (1) damages payable under settlement reached when broader recovery was believed available under ERISA qualified for personal injury exclusion to income tax, despite postsettlement clarification that tort-like damages were not available under ERISA, and (2) damages for loss in earning capacity were not subject to wage taxation under Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA).

Vacated and remanded.

[Jerry E. Smith](#), Circuit Judge, filed separate opinion concurring in part and dissenting in part.

West Headnotes (8)

[1] Federal Courts Summary judgment

[170B](#) Federal Courts

[170BXVII](#) Courts of Appeals

[170BXVII\(K\)](#) Scope and Extent of Review

[170BXVII\(K\)2](#) Standard of Review

[170Bk3576](#) Procedural Matters

[170Bk3604](#) Judgment

[170Bk3604\(4\)](#) Summary judgment

(Formerly [170Bk776](#))

Summary judgment rulings are reviewed de novo.

[2] Internal Revenue Damages

[220](#) Internal Revenue

[220V](#) Income Taxes

[220V\(D\)](#) Incomes Taxable in General

[220k3124](#) Damages

To come within personal injury exclusion to gross income, under federal income tax scheme, statutory damages must both be on account of personal injury and stem from tort or tort-like claim; first requirement tests whether damages received were due to personal injury rather than mere economic loss, and second examines legal basis of claim for tort-like characteristics, focusing on scope of remedies available under statutory scheme. [26 U.S.C.A. § 104\(a\)\(2\)](#);

[26 C.F.R. § 1.104–1\(c\)](#).

6 Cases that cite this headnote

[3] Internal Revenue Compromise of claim or liability

Internal Revenue Damages

[220](#) Internal Revenue

[220V](#) Income Taxes

[220V\(D\)](#) Incomes Taxable in General

[220k3123](#) Compromise of claim or liability

[220](#) Internal Revenue

[220V](#) Income Taxes



[220V\(D\)](#) Incomes Taxable in General

[220k3124](#) Damages


Fact that subsequent legal decisions more narrowly interpreted relief available under ERISA for retaliatory discharge did not affect characterization of damages payable under settlement as stemming from tort-like claim, for purposes of personal injury exclusion to federal

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income tax, where settlement was good faith, arm's length settlement based upon reasonable potential for recovery of personal injury damages under then extant jurisprudence indicating that compensatory damages were available under ERISA; postsettlement judicial clarification of remedies available under ERISA did not change fact that taxpayer prosecuted and actually received settlement which compensated tort-type personal injuries.  26 U.S.C.A. § 104(a)(2); Employee Retirement Income Security Act of 1974, §§ 502(a), 510,  29 U.S.C.A. §§ 1132(a), 1140.

10 Cases that cite this headnote

[4] **Internal Revenue**  **Compromise of claim or liability**

Internal Revenue  **Damages**

220 Internal Revenue
220V Income Taxes
220V(D) Incomes Taxable in General
220k3123 Compromise of claim or liability
220 Internal Revenue
220V Income Taxes
220V(D) Incomes Taxable in General
220k3124 Damages


Characterization of damages received, for purposes of personal injury exclusion to federal income tax, is not affected by shifting sands of statutory interpretation after bona fide settlement has been reached or damage award rendered; characterization of settlement depends upon determination that damages were received through prosecution of legal suit or action based upon tort or tort-type rights, and fact that such remedy may no longer exist is irrelevant to determination of character of settlement to be taxed.  26 U.S.C.A. § 104(a)(2);  26 C.F.R. 1.104-1(c).

7 Cases that cite this headnote

[5] **Internal Revenue**  **Compromise of claim or liability**

Internal Revenue  **Damages**

220 Internal Revenue
220V Income Taxes
220V(D) Incomes Taxable in General
220k3123 Compromise of claim or liability
220 Internal Revenue
220V Income Taxes
220V(D) Incomes Taxable in General
220k3124 Damages



Because settlements offer opportunity for parties to benefit at expense of government by describing damages as excludable from gross income as damages received on account of personal injury, characterization of settlement cannot depend entirely on intent of parties.  26 U.S.C.A. § 104(a)(2).

2 Cases that cite this headnote

[6] **Internal Revenue**  **Compromise of claim or liability**

Internal Revenue  **Damages**

220 Internal Revenue
220V Income Taxes
220V(D) Incomes Taxable in General
220k3123 Compromise of claim or liability
220 Internal Revenue
220V Income Taxes
220V(D) Incomes Taxable in General
220k3124 Damages



Portion of damages under agreement settling ERISA retaliation claim designed to compensate for dignitary injuries and nonpecuniary loss, but not portion designed to compensate for back wages, was “on account of personal injury,” for purposes of income tax exclusion for personal injury damages.  26 U.S.C.A. § 104(a)(2); Employee Retirement Income Security Act of 1974, §§ 502(a), 510,  29 U.S.C.A. §§ 1132(a), 1140.

4 Cases that cite this headnote



[7] **Internal Revenue**  **Damages**
Internal Revenue  **Taxes in general**

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220 Internal Revenue
220V Income Taxes
220V(D) Incomes Taxable in General
220k3124 Damages
220 Internal Revenue
220XIV Taxes on Specific Articles and Transactions
220XIV(D) Employment Taxes
220k4374 Taxes in general
Damages not includable in Internal Revenue Code's definition of "income" are not considered "wages," and as such are not taxable under Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA).  26 U.S.C.A. §§ 3121(a),  3306(b).

3 Cases that cite this headnote

[8] **Internal Revenue**  Damages
Internal Revenue  Taxes in general
220 Internal Revenue
220V Income Taxes
220V(D) Incomes Taxable in General

220k3124 Damages
220 Internal Revenue
220XIV Taxes on Specific Articles and Transactions
220XIV(D) Employment Taxes
220k4374 Taxes in general

Damages attributable to loss in earning capacity were not subject to wage taxation under Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA), even if such damages were otherwise subject to income tax.

 26 U.S.C.A. §§ 3101,  3111,  3121(a),  3306(b).

4 Cases that cite this headnote

All Citations

87 F.3d 682, 78 A.F.T.R.2d 96-5436, 65 USLW 2054, 96-2 USTC P 50,359, 20 Employee Benefits Cas. 1484, Pens. Plan Guide (CCH) P 23922D