

INTERNAL REVENUE SERVICE

September 23, 2002

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CONEX 138672-02
CC:ITA

[REDACTED]

Attention: [REDACTED]

Dear [REDACTED]:

This letter is in response to your inquiry dated July 11, 2002, on behalf of your constituent, [REDACTED]. You asked whether [REDACTED] may exclude from gross income under § 104(a)(2) of the Internal Revenue Code damages she received in settlement of a class action lawsuit. You also asked whether Rev. Rul. 93-88, 1993-2 C.B. 61, applies to her situation.

[REDACTED] interviewed with [REDACTED] before they denied her employment [REDACTED]. Several years later, [REDACTED] was notified of a class action lawsuit against [REDACTED] alleging gender discrimination under Title VII of the Civil Rights Act of 1964 (Title VII). On [REDACTED] the lawsuit was settled. In that year, [REDACTED] received a payment in full settlement of her claims against [REDACTED]. The Internal Revenue Service required [REDACTED] to include the award in her income and imposed a lien to collect the tax.

At the time your constituent received her damage award, § 104(a)(2) generally excluded from gross income the amount of any damages received (whether by suit or agreement) on account of personal injuries or sickness.

Section 1.104-1(c) of the Income Tax Regulations provides that the term "damages received (whether by suit or agreement)" means an amount received (other than workmen's compensation) through prosecution of a legal suit or action based upon tort or tort type rights, or through a settlement agreement entered into in lieu of such prosecution.

We believe Rev. Rul. 93-88 does not apply to your constituent's situation. Rev. Rul. 93-88, obsoleted by Rev. Rul. 96-65, 1996-2 C.B. 6, pertained to Title VII after it was

amended by § 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a (1991 Act). Section 102 of the 1991 Act amended Title VII to provide that a complaining party may recover compensatory and punitive damages against an employer who engaged in disparate gender discrimination. The amendment applies only to conduct occurring on or after the date of enactment of the 1991 Act. *Landgraf v. USI Film Products*, 511 U.S. 244 (1994). Because of this change, damages received for disparate treatment gender discrimination under Title VII are now based on tort or tort type rights. Therefore, such damages are eligible for exclusion from income if they meet the other requirements of § 104(a)(2).

However, before the 1991 Act, Title VII limited recoveries to backpay. Therefore, these recoveries were not based on tort or tort type rights. Because your constituent received her payment in a class action suit settled under Title VII, before its amendment by the 1991 Act, Rev. Rul. 93-88 does not apply to her case and the damages she received do not qualify for exclusion from gross income under § 104(a)(2).

The United States Tax Court came to the same conclusion in [REDACTED]

[REDACTED] The Tax Court rejected her argument and held that because the payment was made to settle a claim alleging gender discrimination under Title VII (as in effect before its amendment by the 1991 Act), the payment was not based on tort type rights. Therefore, the court held that the taxpayer could not exclude the settlement proceeds from her gross income under § 104(a)(2).

I hope this information is helpful. Please call me or Shareen S. Pflanz, Identification Number 50-23623 at (202)-622-4920, if you have any questions.

Sincerely,

Robert A. Berkovsky
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)