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[Bills / Acts] [1]: Product Liability / Minimum Wage Bill

Stack:	Row:	Section:	Shelf:	Position:
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STATEMENT BY THE PRESIDENT

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This is important and long overdue legislation that provides a badly needed pay raise for millions of Americans and their families who struggle to make ends meet while working at the minimum wage. The Act boosts the minimum wage in two steps -- a fifty cent increase from $4.25 to $4.75 an hour that takes effect October 1, followed by an additional forty cent rise to $5.15 an hour on September 1, 1997. This increase will help some 10 million of our hardest pressed working families build a better future. It is true to the basic American bargain that if you work hard you ought to have food on your table and a living wage in your pocket. It is the right thing to do.

I should note that I disagree with certain provisions added to this section of the Act, such as the provision creating a new subminimum wage for young people and the one denying increased cash wages to most employees who rely on tips for part of their income. Still, those defects do not obscure the central accomplishment of this Act -- securing the first minimum wage increase since 1991.

Beyond raising the minimum wage, this Act represents real progress on a number of other fronts.

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Second, the Act gives a boost to small business by increasing the amount of capital that small businesses can write off as an expense. I proposed a $15,000 increase in 1993 in order to encourage the kind of investment that creates new growth and jobs. The Congress passed half of what we advocated then and this legislation gives us the other half. Although the measure in this Act is phased in more slowly than I proposed, it will still give small businesses a good incentive for capital investment.

Third, the Act extends the research tax credit, an important measure for a high-tech economy that will retain its competitive edge in the 21st century only if we remain committed to innovation and the research that underlies it. I wanted the Congress to go further than it did, reinstating the research

credit retroactively to July 1, 1995, when it last expired, and making it permanent. But this extension, through May of next year, is an important step forward.

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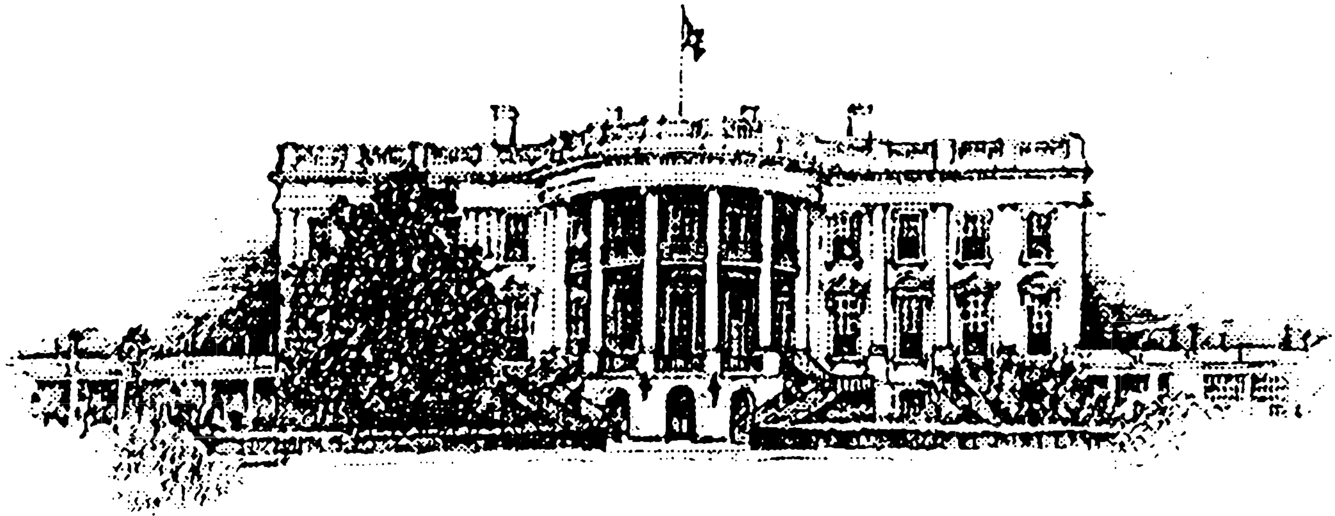
THE WHITE HOUSE

WASHINGTON



COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

DATE: 8/20/96

TO: ROGER BALLENTINE

FACSIMILE NUMBER: 457-6315

TELEPHONE NUMBER: 457-5666

FROM: Jon Y.

TELEPHONE NUMBER: 456-7911

PAGES (WITH COVER): 6

COMMENTS: Roger — see p. 5.
Talk to you soon Jon

PLEASE DELIVER AS SOON AS POSSIBLE

BRL's Proposed Language for Inclusion
in Presidential Statement
Accompanying H.R. 3448

I have reservations about the aspect of Section 1605 which repeals the federal tax exclusion for damages not attributable to physical injuries or sickness. Civil damages which are paid to compensate for an injury, whether the injury is physical or not, are meant to make ~~the~~ injured person whole -- not to enrich them. As such, these damages, should not be considered a source of revenue.

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August 19, 1996

MEMORANDUM

To: Jack Quinn
Bruce Lindsey
Todd Stern

From: Jonathan Yarowsky

Re: Tort/Tax Provision in Minimum Wage Legislation

Late Friday, we were notified that a tort recovery/tax issue was "buried" in the minimum wage legislation, H.R. 3448.

Attached is the language that Chairman Archer added quietly in conference. The provision found in subsection 104(b) would tax as income any compensatory damage for emotional distress or "nonphysical" injury (above that for "medical care" to treat the non-physical injury, e.g., psychotherapy). Thus, damages for emotional pain and suffering resulting from misconduct such as sexual harassment or racial discrimination would be subject to federal taxation as distinct from damages awarded for harm suffered from physical injury. The provision appears to continue the assault on non-physical damage awards that was part of the larger product liability reform effort of the 104th Congress.

Section 104(c) deals with repealing the tax exclusion of punitive damage awards -- a much more volatile issue. Given the shortness of time before the bill signing ceremony tomorrow, it may be prudent at this time to consider brief language addressing only the non-physical damages provision.

Politically, consumer groups would probably prefer a statement of reservation on both the punitive damages and non-physical damage provisions. The trial lawyers have only weighed in on the provisions relating to damages not attributable to physical injuries and, officially, take "no position" on punitives.

Suggested language for the Presidential Statement is also attached.

H.R. 3448, THE SMALL BUSINESS JOB PROTECTION ACT

SEC.1605.REPEAL OF EXCLUSION FOR PUNITIVE DAMAGES AND FOR DAMAGES NOT ATTRIBUTABLE TO PHYSICAL INJURIES OR SICKNESS

(a) IN GENERAL.-Paragraph (2) of section 104(a) (relating to compensation for injuries or sickness) is amended to read as follows:

"(2) the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;".

(b) EMOTIONAL DISTRESS AS SUCH TREATED AS NOT PHYSICAL INJURY OR PHYSICAL SICKNESS.-Section 104(a) is amended by striking the last sentence and inserting the following new sentence: "For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213 (d)(1)) attributable to emotional distress."

(c) APPLICATION OF PRIOR LAW FOR STATES IN WHICH ONLY PUNITIVE DAMAGES MAY BE AWARDED IN WRONGFUL DEATH ACTIONS.-Section 104 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) APPLICATION OF PRIOR LAW IN CERTAIN CASES.-The phrase (other than punitive damages)' shall not apply to punitive damages awarded in a civil action-

"(1) which is a wrongful death action, and

"(2) with respect to which applicable State law (as in effect on September 13, 1995 and without regard to any modification after such date) provides, or has been construed to provide by a court of competent jurisdiction pursuant to a decision issued on or before September 13, 1995, that only punitive damages may be awarded in such an action.

This subsection shall cease to apply to any civil action filed on or after the first date on which the applicable State law ceases to provide (or is no longer construed to provide) the treatment described in paragraph (2).".

(d) EFFECTIVE DATE.-

(1) IN GENERAL.-Except as provided in paragraph (2), the amendments made by this section shall apply to amounts received after the date of the enactment of this Act, in taxable years ending after such date.

(2) EXCEPTION.-The amendments made by this section shall not apply to any amount received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995.

PROPOSED LANGUAGE FOR INCLUSION IN PRESIDENTIAL STATEMENT ACCOMPANYING H.R. 3448

"I do have strong reservations about one aspect of Section 1605, repealing the federal tax exclusion for damages not attributable to physical injuries or sickness. It is unfair for the federal government to tax damages paid to a person to compensate for an injury, whether the injury is physical or not. Civil damages are meant to make injured parties whole -- not to enrich them -- so these damages are inappropriate as a source of revenue.

ROGER

Cell 321-4686

Home 337-1463

Off 457-5666

CURRENT

Phil Buchanan
944-2815

cell (301) 404-2900
home (301) 871-2900

Code → Exclusion for "personal injury and sickness" (compensatory)

Code → Distinction in §104 btw punitive awards for physical and non-physical (taxed)

S.Ct → made distinction btw compensatory damages under Age Discrimination Act

distinction btw statutory scheme + (taxed) those from tort damages

(Now IRS looking at this real broadly in their advisory

Suspended their advisory on all statutory schemes)

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Re: Tort/Tax Provision in Minimum Wage Legislation

Late Friday, we were notified that a tort recovery/tax issue was "buried" in the minimum wage legislation, H.R. 3448.

Attached is the language that Chairman Archer added quietly in conference. The provision found in subsection 104(b) would tax as income any compensatory damage for emotional distress or "nonphysical" injury (above that for "medical care" to treat the non-physical injury, e.g., psychotherapy). Thus, damages for emotional pain and suffering resulting from misconduct such as sexual harassment or racial discrimination would be subject to federal taxation as distinct from damages awarded for harm suffered from physical injury. The provision appears to continue the assault on non-physical damage awards that was part of the larger product liability reform effort of the 104th Congress.

Section 104(c) deals with repealing the tax exclusion of punitive damage awards -- a much more volatile issue. Given the shortness of time before the bill signing ceremony tomorrow, it may be prudent at this time to consider brief language addressing only the non-physical damages provision.

Politically, consumer groups would probably prefer a statement of reservation on both the punitive damages and non-physical damage provisions. The trial lawyers have only weighed in on the provisions relating to damages not attributable to physical injuries and, officially, take "no position" on punitives.

Suggested language for the Presidential Statement is also attached.

H.R. 3448, THE SMALL BUSINESS JOB PROTECTION ACT

SEC.1605.REPEAL OF EXCLUSION FOR PUNITIVE DAMAGES AND FOR DAMAGES NOT ATTRIBUTABLE TO PHYSICAL INJURIES OR SICKNESS

(a) IN GENERAL.-Paragraph (2) of section 104(a) (relating to compensation for injuries or sickness) is amended to read as follows:

"(2) the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;".

(b) EMOTIONAL DISTRESS AS SUCH TREATED AS NOT PHYSICAL INJURY OR PHYSICAL SICKNESS.-Section 104(a) is amended by striking the last sentence and inserting the following new sentence: "For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213 (d)(1)) attributable to emotional distress."

(c) APPLICATION OF PRIOR LAW FOR STATES IN WHICH ONLY PUNITIVE DAMAGES MAY BE AWARDED IN WRONGFUL DEATH ACTIONS.-Section 104 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) APPLICATION OF PRIOR LAW IN CERTAIN CASES.-The phrase (other than punitive damages)' shall not apply to punitive damages awarded in a civil action-

"(1) which is a wrongful death action, and

"(2) with respect to which applicable State law (as in effect on September 13, 1995 and without regard to any modification after such date) provides, or has been construed to provide by a court of competent jurisdiction pursuant to a decision issued on or before September 13, 1995, that only punitive damages may be awarded in such an action.

This subsection shall cease to apply to any civil action filed on or after the first date on which the applicable State law ceases to provide (or is no longer construed to provide) the treatment described in paragraph (2).".

(d) EFFECTIVE DATE.-

(1) IN GENERAL.-Except as provided in paragraph (2), the amendments made by this section shall apply to amounts received after the date of the enactment of this Act, in taxable years ending after such date.

(2) EXCEPTION.-The amendments made by this section shall not apply to any amount received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995.

PROPOSED LANGUAGE FOR INCLUSION IN PRESIDENTIAL STATEMENT ACCOMPANYING H.R. 3448

"I do have strong reservations about one aspect of Section 1605, repealing the federal tax exclusion for damages not attributable to physical injuries or sickness. It is unfair for the federal government to tax damages paid to a person to compensate for an injury, whether the injury is physical or not. Civil damages are meant to make injured parties whole -- not to enrich them -- so these damages are inappropriate as a source of revenue.

August 19, 1996

MEMORANDUM

To: Jack Quinn
Bruce Lindsey
Todd Stern

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OPPOSE ANY EFFORT TO TAX COMPENSATORY DAMAGES STEMMING FROM "NONPHYSICAL" INJURIES

The Senate will soon consider a small business tax bill (H.R. 3448) containing a provision that would include in income compensatory damages recovered for nonphysical/emotional injuries. This provision should be stripped from the bill in the Senate for the following reasons:

- This provision would tax as income any compensatory damages that happen to stem from emotional or "nonphysical" injuries. Unlike punitive damages which are intended to punish the defendant, compensatory damages are intended to compensate the victim for real losses and damages that they have personally incurred. Taxing such compensatory damages -- physical or nonphysical -- is wholly inappropriate.
- It should also be made clear that the emotional damages targeted for taxation by this provision are not necessarily economic damages (such as lost wages) that the person would be paying taxes on anyway. Rather, emotional harm and suffering stemming from sexual harassment or racial discrimination constitutes non-wage, noneconomic loss that is not a substitute for income and, therefore, not appropriate for taxation.
- This provision discriminates against persons who recover damages for serious emotional harm, yet happen to not have any physical injuries (*e.g.*, sexual harassment and discrimination cases). For example, the individual who suffers employment discrimination and emotional distress as a result, would have their damages award taxed. The woman who has been sexually harassed and suffers indignity and emotional distress would also have her damages award taxed. A victim of date rape would, for example, be faced with the humiliation of proving that she suffered "physical" harm. These are the kinds of perverse results that would stem from such a provision.
- To illustrate the arbitrary and discriminatory nature of this provision, consider two examples of sexual harassment cases. Assume the first case involves a woman who was repeatedly grabbed and touched in an offensive manner that resulted in bruises on her body. The second case involves sexually offensive and demeaning verbal remarks and gestures that do no lead to any physical effects such as bruising. Under this provision, the damages awarded to the woman in the first case would not be taxable as income because she had the physical injury of a bruise, yet the second women who has suffered purely emotional damages would have the amount of her award taxed.
- Under this provision, not only must citizens suffer the trauma of their injuries, but they must then endure a potentially enormous tax increase. Upon receiving their damages for emotional distress, the tax brackets of these innocently harmed citizens could increase according to the level of their award and, thus, many ordinary middle class Americans instead may share the same tax bracket as the most wealthy.
- This provision could also result in an increased level of litigation by: (1) making it more expensive for defendants to settle cases (*i.e.*, a case that would have settled for $100,000 would now have to be settled for $130,000 due to tax implications), and (2) setting the stage for complex questions as to which damages are "physical" versus "nonphysical".

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(In the context of a generally laudatory statement on the passage of H.R. 3448, the Small Business Job Protection Act/Minimum Wage Act).

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§ 104. Compensation for injuries or sickness.

(a) In general. Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include—

(1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;

(2) the amount of any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injuries or sickness;

(3) amounts received through accident or health insurance for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer);

(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 808 of the Foreign Service Act of 1980; and

(5) amounts received by an individual as disability income attributable to injuries incurred as a direct result of a violent attack which the Secretary of State determines to be a terrorist attack and which occurred while such individual was an employee of the United States engaged in the performance of his official duties outside the United States.

For purposes of paragraph (3), in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1) (relating to self-employed individuals), contributions made on behalf of such individual while he was such an employee to a trust described in section 401(a) which is exempt from tax under section 501(a), or under a plan described in section 403(a), shall, to the extent allowed as deductions under section 404, be treated as contributions by the employer which were not includible in the gross income of the employee. Paragraph (2) shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness.

(b) Termination of application of subsection (a)(4) in certain cases. (1) In general. Subsection (a)(4) shall not apply in the case of any individual who is not described in paragraph (2).

(2) **Individuals to whom subsection (a)(4) continues to apply.** An individual is described in this paragraph if—

(A) on or before September 24, 1975, he was entitled to receive any amount described in subsection (a)(4),

(B) on September 24, 1975, he was a member of any organization (or reserve component thereof) referred to in subsection (a)(4) or under a binding written commitment to become such a member,

(C) he receives an amount described in subsection (a)(4) by reason of a combat-related injury, or

(D) on application therefor, he would be entitled to receive disability compensation from the Veterans' Administration.

(3) **Special rules for combat-related injuries.** For purposes of this subsection, the term "combat-related injury" means personal injury or sickness—

(A) which is incurred—

(i) as a direct result of armed conflict,

(ii) while engaged in extrahazardous service, or

(iii) under conditions simulating war; or

(B) which is caused by an instrumentality of war.

In the case of an individual who is not described in subparagraph (A) or (B) of paragraph (2), except as provided in paragraph (4), the only amounts taken into account under subsection (a)(4) shall be the amounts which he receives by reason of a combat-related injury.

(4) **Amount excluded to be not less than veterans' disability compensation.** In the case of any individual described in paragraph (2), the amounts excludable under subsection (a)(4) for any period with respect to any individual shall not be less than the maximum amount which such individual, on application therefor, would be entitled to receive as disability compensation from the Veterans' Administration.

(c) Cross references. (1) For exclusion from employee's gross income of employer contributions to accident and health plans, see section 106.

(2) For exclusion of part of disability retirement pay from the application of subsection (a)(4) of this section, see section 1403 of title 10, United States Code (relating to career compensation laws).

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Lumber Co., 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

COMMISSIONER OF INTERNAL REVENUE

v.

SCHLEIER et al.

Certiorari to the United States Court of Appeals for the Fifth Circuit.

No. 94-500.

Argued March 27, 1995

Decided June 14, 1995

On his 1986 federal income tax return, Erich Schleier (hereinafter respondent) included as gross income the backpay portion, but not the liquidated damages portion, of an award that he received in settlement of a claim under the Age Discrimination in Employment Act of 1967 (ADEA). After the Commissioner issued a deficiency notice, asserting that the liquidated damages should have been included as income, respondent initiated Tax Court proceedings, contesting that ruling and seeking a refund for the tax he had paid on his backpay. The Tax Court agreed with respondent that the entire settlement constituted ``damages received . . . on account of personal injuries or sickness'' within the meaning of Section(s) 104(a)(2) of the Internal Revenue Code and was therefore excludable from gross income. The Court of Appeals affirmed.

Held: Recovery under the ADEA is not excludable from gross income. A taxpayer must meet two independent requirements before a recovery may be excluded under Section(s) 104(a)(2): the underlying cause of action giving rise to the recovery must be "based upon tort or tort type rights", and the damages must have been received "on account of personal injuries or sickness." Respondent has failed to satisfy either requirement. Pp. 4-14.

(a) No part of respondent's settlement is excludable under Section(s) 104(a)(2)'s plain language. Recovery for back wages does not satisfy the critical requirement of being ``on account of'' any personal injury, and no personal injury affected the amount of back wages recovered. In addition, this Court explicitly held in Trans World Airlines, Inc v. Thurston, 469 U. S. 111, 125, that Congress intended the ADEA's liquidated damages to be punitive in nature; thus, they serve no compensatory function and cannot be described as being ``on account of personal injuries.'' Pp. 4-9.

(b) There is also no basis for excluding respondent's recovery from gross income under the Commissioner's regulation interpreting Section(s) 104(a)(2). Even if respondent were correct that this action is based on ``tort or tort type rights'' within 26 CFR Section(s) 1.104-1(c)'s meaning, this requirement is not a substitute for the statutory requirement that the amount be received ``on account of personal injuries or sickness''; it is an additional requirement. Pp. 10-11.

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(c) Nor is respondent's recovery based upon ``tort or tort type rights'' as that term was construed in Burke, where this Court rejected the argument that a taxpayer's backpay settlement under pre-1991 Title VII of the Civil Rights Act of 1964 should be excluded from gross income. Two elements that distinguish the ADEA from pre-1991 Title VII-namely the ADEA rights to a jury trial and liquidated damages-are insufficient to bring the ADEA within Burke's conception of a ``tort or tort type righ[t],'' for the statute lacks the primary characteristic of such an action: the availability of compensatory damages. Moreover, satisfaction of Burke's ``tort or tort type'' inquiry does not eliminate the need to satisfy the other requirement for excludability discussed herein. Pp. 11-13. 26 F. 3d 1119, reversed.

Stevens, J., delivered the opinion of the Court, in which Rehnquist, C. J., and Kennedy, Ginsburg, and Breyer, JJ., joined. Scalia, J., concurred in the judgment. O'Connor, J., filed a dissenting opinion, in which Thomas, J., joined, and in Part II of which Souter, J., joined.

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SUPREME COURT OF THE UNITED STATES

No. 94-500

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

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ADEA make it unlawful for an employer, inter alia, to discharge any individual between the ages of 40 and 70 "because of such individual's age." 29 U. S. C. Section(s) 623(a)(1) and 631(a). The ADEA incorporates many of the enforcement and remedial mechanisms of the Fair Labor Standards Act (FLSA). Like the FLSA, the ADEA provides for "such legal or equitable relief as may be appropriate to effectuate the purposes of this chapter." Section(s) 626(b). That relief may include "without limitation judgments compelling employment, reinstatement or promotion." Ibid. More importantly for respondent's purposes, the ADEA incorporates FLSA provisions that permit the recovery "of wages lost and an additional equal amount as liquidated damages." Section(s) 216(b). See generally McKennon, 513 U. S., at __ (slip op., at 4-5).

Despite these broad remedial mechanisms, there are two important constraints on courts' remedial power under the ADEA. First, unlike the FLSA, the ADEA specifically provides that "liquidated damages shall be payable only in cases of willful violations of this chapter." 29 U. S. C. Section(s) 626(b); see Trans World Airlines, Inc. v. Thurston, 469 U. S., at 125. Second, the Courts of Appeals have unanimously held, and respondent does not contest, that the ADEA does not permit a separate recovery of compensatory damages for pain and suffering or emotional distress.*fn2

Respondent's ADEA complaint was consolidated with a class action brought by other former United employees challenging United's policy. The ADEA claims were tried before a jury, which determined that United had committed a willful violation of the ADEA. The District Court entered judgment for the plaintiffs, but that judgment was reversed on appeal. See Monroe v. United Air Lines, Inc., 736 F. 2d 394 (CA7 1984). The parties then entered into a settlement, pursuant to which respondent received $145,629. Half of respondent's award was attributed to

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"backpay" and half to "liquidated damages." United did not withhold any payroll or income taxes from the portion of the settlement attributed to liquidated damages.

When respondent filed his 1986 federal income tax return, he included as gross income the backpay portion of the settlement, but excluded the portion attributed to liquidated damages. The Commissioner issued a deficiency notice, asserting that respondent should have included the liquidated damages as gross income. Respondent then initiated proceedings in the Tax Court, claiming that he had properly excluded the liquidated damages. Respondent also sought a refund for the tax he had paid on the backpay portion of the settlement. The Tax Court agreed with respondent that the entire settlement constituted "damages received . . . on account of personal injuries or sickness" within the meaning of Section(s) 104(a)(2) of the Code and was therefore excludable from gross income. Relying on a prior Circuit decision that had in turn relied on our decision in United States v. Burke, 504 U. S. 229 (1992), the Court of Appeals for the Fifth Circuit affirmed. Because the Courts of Appeals have reached inconsistent conclusions as to the taxability of ADEA recoveries in general and of the United settlement in particular, compare Downey v. Commissioner, 33 F. 3d 836 (CA7 1994) (United settlement award is taxable) with Schmitz v. Commissioner, 34 F. 3d 790 (CA9 1994) (United settlement award is excludable), we granted certiorari, 513 U. S. __ (1994). Our consideration of the plain language of Section(s) 104(a), the text of the regulation implementing Section(s) 104(a)(2), and our reasoning in Burke convinces us that a recovery under the ADEA is not excludable from gross income.

II

Section 61(a) of the Internal Revenue Code provides a broad definition of "gross income": "Except as otherwise provided in this subtitle, gross income means all income from whatever source derived." 26 U. S. C. Section(s) 61(a). We have repeatedly emphasized the "sweeping scope" of this section and its statutory predecessors. Commissioner v. Glenshaw Glass Co., 348 U. S. 426, 429 (1955). See also United States v. Burke, 504 U. S., at 233; Helvering v. Clifford, 309 U. S. 331, 334 (1940). We have also emphasized the corollary to Section(s) 61(a)'s broad construction, namely the "default rule of statutory interpretation that exclusions from income must be narrowly construed." United States v. Burke, 504 U. S., at 248 (Souter, J., concurring in judgment); see United States v. Centennial Savings Bank FSB, 499 U. S. 573, 583-584 (1991); Commissioner v. Jacobson, 336 U. S. 28, 49 (1949); United States v. Burke, 504 U. S., at 244 (Scalia, J., concurring in judgment).

Respondent recognizes Section(s) 61(a)'s "sweeping" definition and concedes that his settlement constitutes gross income unless it is expressly excepted by another provision in the Code. Respondent claims, however, that his settlement proceeds are excluded from Section(s) 61(a)'s reach by 26 U. S. C. Section(s) 104(a).*fn3 Section 104(a) provides an exclusion for five categories of "compensation for personal injuries or sickness." Respondent argues that his settlement award falls within the second of those categories, which excludes from gross income "the amount of any damages received . . . on account of personal injuries or sickness." Section(s) 104(a)(2).

In our view, the plain language of the statute undermines respondent's contention. Consideration of a typical recovery in a personal injury case illustrates the usual meaning of "on account of personal injuries." Assume that a taxpayer is in an automobile accident, is injured, and as a result of that injury suffers (a) medical expenses,

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(b) lost wages, and (c) pain, suffering, and emotional distress that cannot be measured with precision. If the taxpayer settles a resulting lawsuit for $30,000 (and if the taxpayer has not previously deducted her medical expenses, see Section(s) 104(a)), the entire $30,000 would be excludable under Section(s) 104(a)(2). The medical expenses for injuries arising out of the accident clearly constitute damages received "on account of personal injuries." Similarly, the portion of the settlement intended to compensate for pain and suffering constitutes damages "on account of personal injury."*fn4 Finally, the recovery for lost wages is also excludable as being "on account of personal injuries," as long as the lost wages resulted from time in which the taxpayer was out of work as a result of her injuries. See, e.g., Threlkeld v. Commissioner, 87 T. C. 1294, 1300 (1986) (hypothetical surgeon who loses finger through tortious conduct may exclude any recovery for lost wages because "[t]his injury . . . will also undoubtedly cause special damages including loss of future income"), aff'd, 848 F. 2d 81 (CA6 1988). The critical point this hypothetical illustrates is that each element of the settlement is recoverable not simply because the taxpayer received a tort settlement, but rather because each element of the settlement satisfies the requirement set forth in 104(a)(2) (and in all of the other subsections of Section(s) 104(a)) that the damages were received "on account of personal injuries or sickness." In contrast, no part of respondent's ADEA settlement is excludable under the plain language of Section(s) 104(a)(2). Respondent's recovery of back wages, though at first glance comparable to our hypothetical accident victim's recovery of lost wages, does not fall within Section(s) 104(a)(2)'s exclusion because it does not satisfy the critical requirement of being "on account of personal injury or sickness." Whether one treats respondent's attaining the age of 60 or his being laid off on account of his age as the proximate cause of respondent's loss of income, neither the birthday nor the discharge can fairly be described as a "personal injury" or "sickness." Moreover, though respondent's unlawful termination may have caused some

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psychological or "personal" injury comparable to the intangible pain and suffering caused by an automobile accident, it is clear that no part of respondent's recovery of back wages is attributable to that injury. Thus, in our automobile hypothetical, the accident causes a personal injury which in turn causes a loss of wages. In age discrimination, the discrimination causes both personal injury and loss of wages, but neither is linked to the other. The amount of back wages recovered is completely independent of the existence or extent of any personal injury. In short, Section(s) 104(a)(2) does not permit the exclusion of respondent's back wages because the recovery of back wages was not "on account of" any personal injury and because no personal injury affected the amount of back wages recovered.

Respondent suggests, nonetheless, that the liquidated damages portion of his settlement fits comfortably within the plain language of Section(s) 104(a)(2)'s exclusion. He cites our observation in Overnight Motor Transportation Co. v. Missel, 316 U. S. 572 (1942), that liquidated damages under the FLSA "are compensation, not a penalty or punishment," and that such damages might compensate for "damages too obscure and difficult of proof for estimate." Id., at 584-585; see also Brooklyn Savings Bank v. O'Neil, 324 U. S. 697, 707 (1945). He argues that Congress must be presumed to have known of our interpretation of liquidated damages when it incorporated FLSA's liquidated damages provision into the ADEA, and that Congress must therefore have intended that liquidated damages under the ADEA serve, at least in part, to compensate plaintiffs for personal injuries that are difficult to quantify.

We agree with respondent that if Congress had intended the ADEA's liquidated damages to compensate plaintiffs for personal injuries, those damages might well come within Section(s) 104(a)(2)'s exclusion. There are, however, two weaknesses in respondent's argument. First, even if we assume that Congress was aware of the Court's observation in Overnight Motor that the liquidated damages authorized by the FLSA might provide compensation for some "obscure" injuries, it does not necessarily follow that Congress would have understood that observation as referring to injuries that were personal rather than economic. Second, and more importantly, we have previously rejected respondent's argument: We have already concluded that the liquidated damages provisions of the ADEA were a significant departure from those in the FLSA, see Lorillard v. Pons, 434 U. S., at 581; Trans World Airlines, Inc. v. Thurston, 469 U. S., at 126, and we explicitly held in Thurston: "Congress intended for liquidated damages to be punitive in nature." Id., at 125.*fn5

Our holding in Thurston disposes of respondent's argument and requires the conclusion that liquidated damages under the ADEA, like back wages under the ADEA, are not received "on account of personal injury or sickness."*fn6

III

Respondent seeks to circumvent the plain language of Section(s) 104(a)(2) by relying on the Commissioner's regulation interpreting that section. Section 1.104-1(c) of the Treasury Regulations, 26 CFR Section(s) 1.104-1(c) (1994), provides:

"Section 104(a)(2) [of the Internal Revenue Code] excludes from gross income the amount of any damages received (whether by suit or agreement) on account of personal injuries or sickness. 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."

Respondent contends that an action to recover damages for a violation of the ADEA is "based upon tort or tort type rights" as those terms are used in that regulation, and that his settlement is thus excludable under the plain language of the regulation.

Even if we accept respondent's characterization of the action, but see infra, at __, there is no basis for excluding the proceeds of his settlement from his gross income. The regulatory requirement that the amount be received in a tort type action is not a substitute for the statutory requirement that the amount be received "on account of personal injuries or sickness"; it is an additional requirement. Indeed, the statutory requirement is repeated in the regulation. As the Commissioner argues in her brief, an exclusion from gross income is authorized by the regulation "only when it both (i) was received through prosecution or settlement of an `action based upon tort or tort type rights'. . . and (ii) was received `on account of personal injuries or sickness.'" Reply Brief for Petitioner 2.*fn7 We need not decide whether the Commissioner would have authority to dispense entirely with the statutory requirement, because she disclaims any intent to do so, and the text of the regulation does not belie her disclaimer. Thus, respondent's reliance on the text of the regulation is unpersuasive.

IV

Respondent also suggests that our decision in United States v. Burke, 504 U. S. 229 (1992), compels the conclusion that his settlement award is excludable. In Burke, we rejected the taxpayer's argument that the payment received in settlement of her backpay claim under the pre-1991 version of Title VII of the Civil Rights Act of 1964 was

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excludable from her gross income. Our decision rested on the conclusion that such a claim was not based upon "tort or tort type rights" within the meaning of the regulation quoted above. For two independent reasons, we think Burke provides no foundation for respondent's argument.

First, respondent's ADEA recovery is not based upon "tort or tort type rights" as that term was construed in Burke. In Burke, we examined the remedial scheme established by the pre-1991 version of Title VII. Noting that "Title VII does not allow awards for compensatory or punitive damages," and that "instead, it limits available remedies to backpay, injunctions, and other equitable relief," we concluded that Title VII was not tort-like because it addressed "`legal injuries of an economic character.'" 504 U. S., at 238, 239.

Respondent points to two elements of the ADEA that he argues distinguish it from the remedial scheme at issue in Burke: First, the ADEA provides for jury trial, see 29 U. S. C. Section(s) 626(b); Lorillard v. Pons, 434 U. S., at 585; but cf. Lehman v. Nakshian, 453 U. S. 156 (1981); and second, the ADEA allows for liquidated damages. We do not believe that these features of the ADEA are sufficient to bring it within Burke's conception of a "tort type righ[t]." It is true, as respondent notes, that we emphasized in Burke the lack of a right to a jury trial and the absence of any provision for punitive damages as factors distinguishing the pre-1991 Title VII action from traditional tort litigation, id., at 238-240. We did not, however, indicate that the presence of either or both of those factors would be sufficient to bring a statutory claim within the coverage of the regulation.

In our view, respondent's argument gives insufficient attention to what the Burke Court recognized as the primary characteristic of an "action based upon . . . tort type rights": the availability of compensatory remedies. Indeed, we noted that "one of the hallmarks of traditional tort liability is the availability of a broad range of damages to compensate the plaintiff `fairly for injuries caused by the violation of his legal rights.'" Id., at 235. We continued: "Although these damages often are described in compensatory terms . . . , in many cases they are larger than the amount necessary to reimburse actual monetary loss sustained or even anticipated by the plaintiff, and thus redress intangible elements of injury that are deemed important, even though not pecuniary in [their] immediate consequence[s]." Ibid (internal quotation marks omitted). Against this background, we found critical that the pre-1991 version of Title VII provided no compensation "for any of the other traditional harms associated with personal injury, such as pain and suffering, emotional distress, harm to reputation, or other consequential damages." Id., at 239.

Like the pre-1991 version of Title VII, the ADEA provides no compensation "for any of the other traditional harms associated with personal injury." Monetary remedies under the ADEA are limited to back wages, which are clearly of an "economic character," and liquidated damages, which we have already noted serve no compensatory function. Thus, though this is a closer case than Burke, we conclude that a recovery under the ADEA is not one that is "based upon tort or tort type rights." Second, and more importantly, the holding of Burke is narrower than respondent suggests. In Burke, following the framework established in the IRS regulations, we noted that Section(s) 104(a)(2) requires a determination whether the underlying action is "based upon tort or tort type rights." United States v. Burke, 504 U. S., at 234. In so doing, however, we did not hold that the inquiry into "tort or tort type rights" constituted the beginning and end of the analysis. In particular, though Burke relied on Title VII's failure to qualify as an action based upon tort type rights, we did not intend to eliminate the basic requirement found in both the statute and the regulation that only amounts received "on account of personal injuries or sickness" come within Section(s) 104(a)(2)'s exclusion. Thus, though satisfaction of Burke's "tort or tort type" inquiry is a necessary condition for excludability under Section(s) 104(a)(2), it is not a sufficient condition.*fn8

In sum, the plain language of Section(s) 104(a)(2), the text of the applicable regulation, and our decision in Burke establish two independent requirements that a taxpayer must meet before a recovery may be excluded under Section(s) 104(a)(2). First, the taxpayer must demonstrate that the underlying cause of action giving rise to the recovery is "based upon tort or tort type rights"; and second, the taxpayer must show that the damages were received "on account of personal injuries or sickness." For the reasons discussed above, we believe that respondent has failed to satisfy either requirement, and thus no part of his settlement is excludable under Section(s) 104(a)(2).

The judgment is reversed.

It is so ordered.

Justice Scalia concurs in the judgment.

Justice O'Connor, with whom Justice Thomas joins and with whom Justice Souter joins with respect to Part II, dissenting.

Age discrimination inflicts a personal injury. Even under the principles set forth in United States v. Burke, 504 U. S. 229 (1992), the damages received from a claim of such discrimination under the Age Discrimination in Employment Act of 1967 (ADEA) are received "on account of" that personal injury and therefore excludable from taxable income under 26 U. S. C. Section(s) 104(a)(2). Unless the Court reads Section(s) 104(a)(2) to permit exclusion only of damages received for tangible injuries (i. e., physical and mental injuries)-a reading rejected by eight Members of the Court in Burke and contradicted by an agency's reasonable interpretation of the statute it administers-the inescapable conclusion is that ADEA damage awards are excludable.

I

It is not disputed that the damages received by petitioners constitute gross income under 26 U. S. C. Section(s) 61(a) unless excluded elsewhere; the question is whether such damages fall within Section(s) 104(a)(2), which excludes from taxable income "the amount of any damages received (whether by suit or agreement and whether as lump sum or periodic payments) on account of personal injuries or sickness . . . ." What constitutes "damages received on account of personal injuries" is not obvious from the text or history of the statute, and since 1960 Internal Revenue Service (IRS) regulations have defined the phrase with reference to traditional tort principles: "The term `damages received (whether by suit or agreement)' means an amount received . . . 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." 25 Fed. Reg. 11490 (1960); 26 CFR Section(s) 1.104-1(c) (1994).

At one point in time, determining whether damages received from a lawsuit were excludable under Section(s) 104(a)(2) and the applicable regulation was a fairly straightforward task. In Threldkeld v. Commissioner, 87 T. C. 1294, 1299 (1986), aff'd, 848 F. 2d 81 (CA6 1988), the Tax Court, in a 15-1 decision, set forth the test as follows:

"Section 104(a)(2) excludes from income amounts received as damages on account of personal injuries. Therefore, whether the damages received are paid on account of 'personal injuries' should be the beginning and the end of the inquiry. To determine whether the injury complained of is personal, we must look to the origin and character of the claim . . ., and not to the consequences of the injury." 87 T. C., at 1299.

Thus, under Threldkeld, damages from a lawsuit were excludable under Section(s) 104(a)(2) so long as they were received "on account of any invasion of the rights that an individual is granted by virtue of being a person in the sight of the law." Id., at 1308.

Under this standard, ADEA damages surely are excludable. "[D]iscrimination in the workplace causes personal injury cognizable for purposes of Section(s) 104(a)(2), . . . and there can be little doubt on this point." Burke, supra, at 249 (O'Connor, J., dissenting). We have recognized that "racial discrimination . . . is a fundamental injury to the individual rights of a person." Goodman v. Lukens Steel Co., 482 U. S. 656, 661 (1987). Such offense to the rights and dignity of the individual attaches regardless of whether the discrimination is based on race, sex, age, or other suspect characteristics. See, e. g., Price Waterhouse v. Hopkins, 490 U. S. 228, 265 (1989) (O'Connor, J., concurring in judgment) ("[W]hatever the final outcome of a decisional process, the inclusion of race or sex as a consideration within it harms both society and the individual"); EEOC v. Wyoming, 460 U. S. 226, 231 (1983) (Age discrimination "inflict[s] on individual workers the economic and psychological injury accompanying the loss of the opportunity to engage in productive and satisfying occupations"). Thus, prior to 1992, courts generally relied on Threldkeld to hold that damages awarded under the ADEA were excludable from income because they were received on account of personal injuries. See, e. g., Pistillo v.

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