

1735 DAMAGES: NOT TAXABLE AS INCOME

In determining the amount of damages for personal injuries, you must not include in the award, or add to it, any sum to compensate the plaintiff for state or federal income taxes, since damages received as an award for personal injuries are not subject to income taxes. You will not, of course, subtract from, or exclude from, your award of damages any amount because the plaintiff is not required to pay income taxes.

COMMENT

This instruction was approved by the Committee in 1960. The comment was updated in 1981 and reviewed without change in 1990.

This instruction was approved in Behringer v. State Farm Mut. Auto Ins. Co., 6 Wis.2d 595, 603-04, 95 N.W.2d 249, 254 (1959). The last sentence was suggested in the Behringer case and in Hardware Mut. Casualty Co. v. Harry Crow & Son, Inc., 6 Wis.2d 396, 407-08, 94 N.W.2d 577, 583 (1959), both of which held that it is not error to refuse to give this instruction.

The federal rule, which was changed in Norfolk & Western Ry. Co. v. Liepelt, 444 U.S. 490 (1980), appears to be substantially different from the current Wisconsin rule. Suits brought in state courts under the federal statutes, such as the Federal Employers Liability Act, are governed by the federal rule which requires that the jury be advised as to the nontaxability of an award for future earnings.

The Wisconsin rule which holds it is not error to refuse to advise the jury of the tax consequences of an award remains unchanged in all actions except those brought under federal statutes governed by federal substantive law.