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Recommended Citation

Edwin Knachel, Jury Instructions on Tax Exemption in Personal Injury Cases, 6 Clev.-Marshall L. Rev. 71 (1957)

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Jury Instructions on Tax Exemption in Personal Injury Cases

*Edwin Knachel**

THE PRACTICAL ASPECTS of instructing a jury that the amount of its verdict in a personal injury case is exempt from federal income taxation, of course, relate to the trend of the times. Jury verdicts in personal injury cases throughout the United States have been increasing in amount due to the booming economy of our times and the inflation of the dollar. Furthermore, in recent years the general public has become conscious of the fact that large sums of money are being deducted for federal income taxation, through the medium of both radio and television, in the popular "\$64,000 Question" program, and in other similar programs which have caught the public fancy. The newspapers have followed the radio and television shows with "human interest stories" with respect to the effect upon the winner himself of the winning of a large amount of money.

A typical example of what "prospective jurors" read in the newspapers is found in an article contained in the *Cleveland Plain Dealer* on February 5, 1956:

Former Plain Dealer Carrier Collects
WINS \$100,000; TAX TAKE \$67,000

A song which ended "all alone and feeling blue" left young George L. Wright III far from blue last night.

George, a former *Cleveland Plain Dealer* carrier, won the top prize of \$100,000 on the NBC television quiz show, "The Big Surprise."

His prize, which came after two previous failures, was only the second top award in the history of the show. The other was won by an adult.

An internal revenue spokesman in Washington told the United Press that George would get about \$33,000 of his prize after income taxes. If he had missed he would have received his previous winnings of \$25,000 before taxes.

From the foregoing, it may be reasonably stated that the public expects Internal Revenue to take a substantial amount of any award received by any person.

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In order to bring this question formally before the courts in Ohio, the author of this article submitted a written request to charge before argument at the trial of the case of *John R. Maus, plaintiff v. The New York, Chicago & St. Louis Railroad Co.*, defendant.¹ The written request to charge before argument was phrased as follows:

"I charge you as a matter of law that by virtue of the Internal Revenue Act of 1954, any amount received by the plaintiff as compensation for personal injuries is exempt from Federal Income taxation, and you must take this fact in consideration in arriving at the amount of your verdict in this case."

The trial court refused to grant the defendant's written request to charge before argument. The jury returned a verdict in the sum of \$35,000.00. The motion for new trial was overruled and the Court of Appeals affirmed the judgment of the trial court on the sole ground that the written request to charge before argument was not "pertinent to the issues in the case."

The Supreme Court of Ohio allowed the defendant-appellant's motion to certify and wrote an opinion affirming the lower courts. The opinion was authored by Judge Hart and concurred in by Chief Justice Weygandt and Judges Matthias and Zimmerman. A separate concurring opinion was authored by Judge Bell and concurred in by Judges Stewart and Taft. Both the opinion of Judge Hart and the opinion of Judge Bell leave the door open for further litigation with reference to this important question.

The author of this article urged throughout this litigation that the defendant was not attempting to deduct an amount from the verdict arrived at by the jury under the charge of the trial court on damages, but that it was protecting itself against the eventuality that the jury, having arrived at a verdict under the court's charge on damages, might add to this sum an amount to cover federal income taxes.

The defendant further urged that you may no longer assume that all twelve on any panel will know as a matter of law that the amount of their verdict is exempt from federal income taxation. In this respect, it was urged that if some jurors thought that the verdict was tax free and others thought that it was not, there was created an issue of fact for the jury, which should never exist, because legally there was no issue of fact on this

¹ *John R. Maus, Plaintiff v. The New York, Chicago & St. Louis Railroad Co.*, 165 Ohio St. 281, 135 N. E. 2d 253 (1956).

subject to be decided by a jury. To illustrate this point, the defendant set forth in its brief the following hypothetical case:

"The Federal Statute which says that the Verdict of the Jury is tax free is a law of this land covering the Verdict in the instant case. Since it covers the Verdict in the instant case, the Jury should be apprised as a matter of law that this is true.

As practical trial lawyers, we may soon be faced with the following hypothetical dilemma:

Suppose twelve jurors agree in their jury room that the damages in a certain personal injury case should be in the sum of \$50,000.00. Eight of those jurors argue that they should return a verdict of \$80,000.00 in the case in order that an allowance be made for plaintiff's income tax. The other four jurors remonstrate and say flatly that the verdict of the jury is tax free, and therefore, the verdict to be returned by the jury of twelve should be in the sum of \$50,000.00.

One of the Jurors suggests that the Foreman request instructions from the Trial Court as to whether or not the verdict is tax free. The jury files out of its deliberation room into the Court Room and asks the Trial Court whether or not the verdict is tax free.

1. *Will the Trial Court send the jury back into its deliberation room without any further instruction, thereby creating an issue of fact among the Jurors on a subject which has already been settled by a Federal Statute?*

2. *Or, will the Trial Court tell the Jury that under the Internal Revenue Act of 1954, Title 26, U. S. C. A., Sec. 104, its verdict is tax free?*

If the Trial Court fails to instruct the Jury as to the truth of the matter, then the Jurors must then return to their Jury Room and 'wrangle' among themselves until they finally reach a verdict.

Then let us suppose that these same Jurors are dismissed from service as Jurors. Since they are intelligent people, let us suppose that they immediately go to an income tax expert, who discloses to them that the verdict is tax free. *What will those Jurors think of the administration of justice under the circumstances referred to above?"*

With reference to the hypothetical case referred to above, it is pertinent to note that Judge Hart concluded his opinion with the following statement:

"Perhaps it should be noted that this case does not present the question as to what a trial judge's response should be if and when the jury asks him whether it should consider the matter of income tax."

Upon this question it should be stated that one of the Judges of the Supreme Court of Ohio stated, at the time of the oral arguments, that when he was a Trial Judge, the foremen of several juries asked this specific question. The Judge did not indicate what his instruction was to the jurors on those occasions.

In the separate concurring opinion authored by Judge Bell, we find the following interesting statement:

"We concede that a proper charge on this subject could be drawn and properly given if it went only to the extent of warning the jury not to consider income tax liability on the award which it might make."

Trial lawyers will be shooting at this target with written requests to charge before argument, until this question is finally determined by the Supreme Court of Ohio.

At this time, the question is particularly interesting in view of the fact that over forty states in the Union have not litigated this question. The federal courts of review have not to this date settled the question.

Any student of the law who cares to research this question further may start with the following law review articles, which exhaust the question quite thoroughly:

Note, 33 *Chicago-Kent Law Review*, 377 (1955);

Note, 15 *O. S. Law Journal*, 83 (1954);

Standard Federal Tax Reporter, 1956, Vol. 1. Compensation for Injuries or Sickness—Sec. 104 (pages 14, 111);

Note, 4 *Syracuse Law Review*, 350, 351 (1952-53);

Note, 32 *Texas Law Review*, 108, 110 (1952).

Kelner, Taxable Status of Business Tort Recoveries, 5 *Cleveland-Marshall Law Review*, 93 (1956).

Fingerhut, Instructions on Taxes in Personal Injury Suits, 5 *Cleveland-Marshall Law Review*, 97 (1956).

The most interesting state court decisions may be found in:

Dempsey v. Thompson, 251 S. W. 2d 42 (Sup. Ct. Mo., 1952);

Hall v. Chicago and N. W. Ry. Co., 349 Ill. App. 175, 110 N. E. 2d 654 (1953);

Hall v. Chicago and N. W. Ry. Co., 5 Ill. 2d 135, 125 N. E. 2d 77 (1955).