

**MarketWatch**

# Harvey Weinstein's accusers will most likely pay a hefty tax bill on any settlement money

By [Andrew Keshner](#)

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Some critics say the tax code is stacked against sexual harassment victims



Harvey Weinstein leaving a recent court date in Manhattan Supreme Court. He's awaiting a criminal trial and a civil settlement with many accusers could be near.

While disgraced movie producer Harvey Weinstein worries he's being "forgotten," federal tax authorities sure won't be forgetting their cut from Weinstein's accusers if a \$25 million settlement materializes.

Weinstein won't personally pay money under the reported terms of a tentative \$25 million settlement to end most of the sexual misconduct lawsuits against him and his former movie studio (the studio's insurance company will foot the settlement bill, the New York Times reported) — but his accusers sure will be paying taxes if the lawsuits are similar to other emotional distress and sexual harassment cases.

The settlement money that Weinstein's accusers receive will likely count as taxable income, legal observers say. After attorney's fees, taxes could potentially leave some women with

less than half of their proceeds, one added.

"The victims presumably would be taxed on their share of the settlement payout unless the payout covered compensatory damages for physical injuries," University of Chicago Law School Professor Daniel Hemel told MarketWatch.

'Unlike personal injury cases where personal injury victims are not taxed on the amount they recover, people who are sexually harassed discriminated and retaliated against are re-penalized because they have to pay tax on any amount recovered for emotional harm.'

— Washington D.C.-based employment lawyer Linda Correia

"Is there a tax issue out there for these women? Yes there is," said Rebecca Pontikes, a Boston-based employment lawyer with no involvement in the Weinstein case. Between taxes and legal fees, "it's kind of like a death by a thousand cuts" for sexual harassment victims in general, Pontikes said.

The settlement isn't guaranteed. Some of Weinstein's accusers have said they don't plan to settle, and any settlement must be approved by the court. But whatever happens, Weinstein's accusers won't be catching a break from the federal tax code. It's another example, critics say, of how tax laws favor the rich and men.

Case in point, they argue: If you're physically hurt on the job, the worker's compensation or legal settlement you receive generally isn't taxable, according to IRS rules. But if you're sexually harassed at work, the IRS says any settlement based on non-physical suffering including mental anguish or "emotional distress" counts as taxable income.

More men than women are physically injured on the job, while women file more sexual harassment complaints than men, the National Women's Law Center noted in a recent report. In the wake of the #MeToo movement — fueled by the Weinstein allegations — some lawmakers are trying to end sexual harassment victim's supposed disadvantage within the tax code.

The settlement sum in a harassment case is applied to someone's gross income, which is taxed at whichever rate the person falls under that year. Tax brackets range from 12% to 37%, and a sudden surge of money can bump someone into a tax bracket with a higher rate.

## Sexual harassment settlements are taxed differently than personal injury cases

"Unlike personal injury cases where personal injury victims are not taxed on the amount they recover, people who are sexually harassed discriminated and retaliated against are re-penalized because they have to pay tax on any amount recovered for emotional harm," said Washington D.C.-based employment lawyer Linda Correia, speaking generally.

Correia is a board member of the National Employment Lawyers Association, a bar association that's advocated amending tax code disparities on settlements payouts.

Attorneys' fees in a sexual harassment settlement count as an above-the-line deduction, meaning the expense can be subtracted from gross income, Hemel, the law professor, noted.

But the varying facts of the Weinstein cases could make some women pay a steep price. If an accuser settled on emotional distress claims and wasn't a Weinstein Company employee, she "most likely would not be able to deduct attorneys' fees, leading to very high effective tax rates."

If a lawyer took a third of a settlement award from that alleged victim who was already in the highest 37% tax bracket, theoretically more than half of the settlement money would go to federal taxes, Hemel said. And that's not even counting the possibility of state-level income taxes in states levying their own income tax, he noted.

## Weinstein says he 'pioneered' making movies about women

While the fallen movie mogul awaits a Manhattan criminal trial next month on rape and sexual assault charges, a tentative deal is reportedly in the works to settle nearly all of the civil litigation alleging Weinstein's sexual misconduct, enabled by his studio, The Weinstein Company. The civil litigation claims against Weinstein vary from sexual harassment allegations to civil claims of sexual assault.

Weinstein, 67, has maintained his innocence and he wouldn't admit liability in the tentative settlement. [Any pact](#) would require court approval from a judge overseeing a class-action case against Weinstein and a judge handling the Weinstein Company's bankruptcy proceedings.

Roughly \$6 million would be split between 18 alleged victims, and no individual payouts would exceed \$500,000, according to the details first reported by The New York Times. A separate \$18.6 million fund would be earmarked for the plaintiffs in a class-action lawsuit, a case filed by the New York Attorney General, and future claims. Attorneys for some of the accusers and the lawyers representing the class-action plaintiffs could not be reached immediately for comment.

Phyllis Kupferstein, a lawyer for Weinstein in the civil proceedings, could not be reached for comment. When Weinstein said he and his work were being forgotten in a Friday interview with the Post, he refused to comment on the allegations against him.

"I made more movies directed by women and about women than any filmmaker, and I'm talking about 30 years ago. I'm not talking about now, when it's in vogue. I did it first! I pioneered it!," he told the Post.

## Some lawmakers want to make it harder to tax sexual harassment settlements

Attorneys' fees and taxes can sometimes eat up more than half of sexual harassment settlements, underscoring the need for legislative changes, Correia said.

Correia's organization was one of the groups pushing in years past for the "[Civil Justice Tax Fairness Act](#)," which would have made employment and discrimination settlements tax-free, just like physical injury cases. The bill didn't pass.

More recently, the organization is one of the groups supporting the “Ending the Monopoly of Power Over Workplace harassment through Education and Reporting Act.” Sen. Lisa Murkowski, a Republican from Alaska, and Sen. Kamala Harris, a Democrat from California — and onetime presidential candidate — sponsored the [EMPOWER Act](#).

The bill would exclude sexual harassment settlements from gross income calculations at tax time. The 2019 version of the bill, and its companion in the House of Representatives, were introduced earlier this year and [referred to committees](#).

The Tax Cuts and Jobs Act of 2017, the Trump administration's tax code overhaul, discusses sexual harassment and tax issues. It said employers can't get a tax write-off on sexual harassment settlements where the payout is covered by a non-disclosure agreement. [Critics](#), however, say the clause is not clearly drafted.

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## Andrew Keshner

Andrew Keshner is a personal finance reporter based in New York.

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