SUPREME COURT OF THE UNITED STATES

No. 91–42

UNITED STATES, PETITIONER *v.* THERESE A. BURKE, CYNTHIA R. CENTER, AND LINDA G. GIBBS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[May 26, 1992]

JUSTICE BLACKMUN delivered the opinion of the Court.

In this case we decide whether a payment received in settlement of a backpay claim under Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 Stat. §2000e *et seq.*, is excludable from the recipient's gross income under §104(a)(2) of the federal Internal Revenue Code, 26 U. S. C. §104(a)(2), as ``damages received . . . on account of personal injuries.''

The relevant facts are not in dispute. In 1984, Judy A. Hutcheson, an employee of the Tennessee Valley Authority (TVA), filed a Title VII action in the United States District Court for the Eastern District of Tennessee alleging that TVA had discriminated unlawfully in the payment of salaries on the basis of sex. The Office and Professional Employees International Union, which represented the affected employees, intervened. Among the represented employees were respondents Therese A. Burke, Cynthia R. Center, and Linda G. Gibbs.

The complaint alleged that TVA had increased the salaries of employees in certain male-dominated pay schedules, but had not increased the salaries of employees in certain female-dominated schedules. In addition, the complaint alleged that TVA had lowered salaries in some female-dominated schedules. App.

in No. 90–5607 (CA6) (hereinafter App.), pp. 28–32 (Second Amended Complaint). The plaintiffs sought injunctive relief as well as backpay for all affected female employees. *Id.*, at 33–34. The defendants filed a counterclaim against the Union alleging, among other things, fraud, misrepresentation, and breach of contract. *Id.*, at 35.

After the District Court denied cross-motions for summary judgment, the parties reached a settlement. TVA agreed to pay $4,200 to Hutcheson and a total of $5,000,000 for the other affected employees, to be distributed under a formula based on length of service and rates of pay. *Id.*, at 70–71, 76–77. Although TVA did not withhold taxes on the $4,200 for Hutcheson, it did withhold, pursuant to the agreement, federal income taxes on the amounts allocated to the other affected employees, including the three respondents here.[1]

Respondents filed claims for refund for the taxes withheld from the settlement payments. The Internal Revenue Service (IRS) disallowed those claims. Respondents then brought a refund action in the United States District Court for the Eastern District of Tennessee, claiming that the settlement payments should be excluded from their respective gross incomes under §104(a)(2) of the Internal Revenue Code as ``damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injuries or sickness.'' The District Court ruled that, because respondents sought and obtained only backwages

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[1]The pre-tax figures for the three respondents ranged from $573 to $928; the federal income tax withheld ranged from $114 to $186. App. to Pet. for Cert. 25a. Although respondents also sought a refund of taxes withheld from their incomes pursuant to the Federal Insurance Contributions Act (FICA), 26 U.S.C. §3101 *et seq.*, neither the parties nor the courts below addressed the distinct analytical question whether backpay received under Title VII constitutes "wages" subject to taxation for FICA purposes. See 26 U.S.C. §3101(a) (imposing percentage tax on "wages"), §3121(a) (defining "wages" as "all remuneration for employment"). Hence, we confine our analysis in this case to the federal income tax question.

due them as a result of TVA's discriminatory underpayments rather than compensatory or other damages, the settlement proceeds could not be excluded from gross income as ``damages received . . . on account of personal injuries.'' 90–1 USTC ¶50,203 (1990).

The United States Court of Appeals for the Sixth Circuit, by a divided vote, reversed. 929 F. 2d 1119 (1991). The Court of Appeals concluded that exclusion under §104(a)(2) turns on whether the injury and the claim are ``personal and tort-like in nature.'' *Id.*, at 1121. ``If the answer is affirmative,'' the court held, ``then that is the beginning and end of the inquiry'' (internal quotation omitted). *Id.*, at 1123. The court concluded that TVA's unlawful sex discrimination constituted a personal, tort-like injury to respondents, and rejected the Government's attempt to distinguish Title VII, which authorizes no compensatory or punitive damages,[2] from other statutes thought to redress personal injuries. See *id.*, at 1121–1123. Thus, the court held, the award of backpay pursuant to Title VII was excludable from gross income under §104(a)(2).

The dissent in the Court of Appeals, 929 F. 2d, at 1124, took the view that the settlement of respondents' claims for earned but unpaid wage differentials—wages that would have been paid and would have been subjected to tax absent TVA's unlawful discrimination—did not constitute compensation for ``loss due to a tort,'' as required under §104(a)(2). See *id.*, at 1126.

We granted certiorari to resolve a conflict among the Courts of Appeals concerning the exclusion of Title VII backpay awards from gross income under

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[2]The Civil Rights Act of 1991 recently amended Title VII to authorize the recovery of compensatory and punitive damages in certain circumstances. See nn. 8 and 12, *infra*.

§104(a)(2).[3] ___ U. S. ___ (1991).

The definition of gross income under the Internal Revenue Code sweeps broadly. Section 61(a), 26 U. S. C. §61(a), provides that ``gross income means all income from whatever source derived,'' subject only to the exclusions specifically enumerated elsewhere in the Code. As this Court has recognized, Congress intended through §61(a) and its statutory precursors to exert ``the full measure of its taxing power,'' *Helvering* v. *Clifford*, 309 U. S. 331, 334 (1940), and to bring within the definition of income any ``accessio[n] to wealth.'' *Commissioner* v. *Glenshaw Glass Co.*, 348 U. S. 426, 431 (1955). There is no dispute that the settlement awards in this case would constitute gross income within the reach of §61(a). See Brief for Respondents 9–10.

The question, however, is whether the awards qualify for special exclusion from gross income under §104(a), which provides in relevant part that ``gross income does not include-

> ``(2) the amount of any damages received (whether by suit or agreement and whether as lump sums or periodic payments) on account of personal injuries or sickness . . . .''[4]

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[3]Compare the Sixth Circuit's opinion in this case with *Sparrow* v. *Commissioner*, ___ U. S. App. D.C. ___, 949 F. 2d 434 (1991) (Title VII backpay awards not excludable), and *Thompson* v. *Commissioner*, 866 F. 2d 709 (CA4 1989) (same). See also *Johnston* v. *Harris County Flood Control Dist.*, 869 F. 2d 1565, 1579–1580 (CA5 1989) (noting, for purposes of district court consideration of tax liability in computing damages, that Title VII backpay awards may not be excluded under §104(a)(2)), cert. denied, 493 U. S. 1019 (1990).

[4]Section 104, entitled ``Compensation for injuries or

Neither the text nor the legislative history of §104(a)(2) offers any explanation of the term ``personal injuries.''[5] Since 1960, however, IRS regulations formally have linked identification of a personal injury for purposes of §104(a)(2) 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 §1.104–1(c) (1991). See *Threlkeld* v. *Commissioner*, 87 T.C. 1294, 1305 (1986) (``The essential element of an exclusion under section 104(a)(2) is that the income involved must derive from some sort of tort claim against the payor. . . . As a result, common law tort law concepts are helpful in deciding whether a taxpayer is being compensated for a `personal injury'''') (internal quotation omitted), aff'd, 848 F. 2d 81 (CA6 1988).

A "tort" has been defined broadly as a "civil wrong, other than breach of contract, for which the court will provide a remedy in the form of an action for damages." See W. Keeton, D. Dobbs, R. Keeton & D. Owen, Prosser and Keeton on the Law of Torts 2 (1984). Remedial principles thus figure prominently in the definition and conceptualization of torts. See R. Heuston, Salmond on the Law of Torts 9 (12th ed.

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sickness,'' provides similar exclusions from gross income for amounts received for personal injuries or sickness under worker's compensation programs (§104(a)(1)), accident or health insurance (§104(a)(3)), and certain federal pension programs (§104(a)(4)).

[5]See, *e.g.*, H.R. Rep. No. 1337, 83d Cong., 2d Sess., 15 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess., 15–16 (1954).

1957) (noting that "an action for damages" is "an essential characteristic of every true tort," and that, even where other relief, such as an injunction, may be available, "in all such cases it is solely by virtue of the right to damages that the wrong complained of is to be classed as a tort"). Indeed, 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.'' *Carey* v. *Piphus*, 435 U. S. 247, 257 (1978). Although these damages often are described in compensatory terms, see *Memphis Community School Dist.* v. *Stachura*, 477 U. S. 299, 306 (1986), 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].'' D. Dobbs, Remedies 136 (1973). Cf. *Molzof* v. *United States*, ___ U. S. ___, ___ (1992) (slip op. 4–5) (compensatory awards that exceed actual loss are not prohibited as ``punitive'' damages under the Federal Tort Claims Act).

For example, the victim of a physical injury may be permitted, under the relevant state law, to recover damages not only for lost wages, medical expenses, and diminished future earning capacity on account of the injury, but also for emotional distress and pain and suffering. See Dobbs, at 540–551; *Threlkeld* v. *Commissioner*, 87 T.C., at 1300. Similarly, the victim of a ``dignitary'' or nonphysical tort[6] such as

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[6]Although the IRS briefly interpreted §104(a)(2)'s statutory predecessor, §213(b)(6) of the Revenue Act of 1918, 40 Stat. 1066, to restrict the scope of personal injuries to physical injuries, see S. 1384, 2 C.B. 71 (1920) (determining, on basis of statutory text and ``history of the legislation'' that ``it appears

defamation may recover not only for any actual pecuniary loss (*e.g.*, loss of business or customers), but for ``impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering.'' *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323, 350 (1974). See also Dobbs, at 510–520. Furthermore, punitive or exemplary damages are generally available in those instances where the

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more probable . . . that the term `personal injuries,' as used therein means physical injuries only''); Knickerbocker, The Income Tax Treatment of Damages, 47 Cornell L. Q. 429, 431 (1962), the courts and the IRS long since have recognized that §104(a)(2)'s reference to ``personal injuries'' encompasses, in accord with common judicial parlance and conceptions, see Black's Law Dictionary 786 (6th ed. 1990); S. Speiser, C. Krause, and A. Gans, The American Law of Torts 6 (1983), nonphysical injuries to the individual, such as those affecting emotions, reputation, or character, as well. See, *e.g.*, *Rickel* v. *Commissioner*, 900 F.2d 655, 658 (CA3 1990) (noting that "it is judicially well-established that the meaning of `personal injuries' . . . in this context encompasses both nonphysical as well as physical injuries"); *Roemer* v. *Commissioner*, 716 F.2d 693, 697 (CA9 1983) (noting that §104(a)(2) "says nothing about physical injuries," and that "[t]he ordinary meaning of a personal injury is not limited to a physical one"); Rev. Rule 85–98, 1985–2 C.B. 51 (holding that the §104(a)(2) exclusion ``makes no distinction between physical or emotional injuries''); 1972–2 C.B. 3, acquiescing in *Seay* v. *Commissioner*, 58 T.C. 32, 40 (1972) (holding that damages received for ``personal embarrassment,'' ``mental strain,'' and injury to ``personal reputation'' may be excluded under §104(a)(2), and noting prior rulings regarding alienation of affections and defamation). See also B. Bittker and L. Lokken, Federal Taxation of Income,

defendant's misconduct was intentional or reckless. See *id.*, at 204–208; *Molzof* v. *United States*, *supra*.

We thus agree with the Court of Appeals' analysis insofar as it focused, for purposes of §104(a)(2), on the nature of the claim underlying respondents' damages award. See 929 F. 2d, at 1121; *Threlkeld* v. *Commissioner*, 87 T.C., at 1305. Respondents, for their part, agree that this is the appropriate inquiry, as does the dissent. See Brief for Respondents 9–12;

Estates and Gifts 13–11 (2d ed. 1989); Burke & Friel, Tax Treatment of Employment-Related Personal Injury Awards, 50 Mont. L. Rev. 13, 21 (1989).

Congress' 1989 amendment to §104(a)(2) provides further support for the notion that "personal injuries" includes physical as well as nonphysical injuries. Congress rejected a bill that would have limited the §104(a)(2) exclusion to cases involving ``physical injury or physical sickness.'' See H.R. Rep. No. 101–247, pp. 1354–1355 (describing proposed §11641 of H.R. 3299, 101st Cong., 1st Sess. (1989)). At the same time, Congress amended §104(a) to allow the exclusion of *punitive* damages only in cases involving "physical injury or physical sickness." 26 U.S.C. §104(a), as amended, Pub. L. 101–239, §7641(a), 103 Stat. 2379 (1989). The enactment of this limited amendment addressing only punitive damages shows that Congress assumed that other damages (*i.e.*, compensatory) would be excluded in cases of both physical *and* nonphysical injury.

Notwithstanding JUSTICE SCALIA's contention in his separate opinion that the term "personal injuries" must be read as limited to "health"-related injuries, see *post*, at 3–4, the foregoing authorities establish that §104(a)(2) in fact encompasses a broad range of physical and nonphysical injuries to personal interests. JUSTICE SCALIA implicitly acknowledges that the plain meaning of the statutory phrase can support this well-established view. See *post*, at 2–3.

post, at 2.[7] In order to come within the §104(a)(2) income exclusion, respondents therefore must show that Title VII, the legal basis for their recovery of backpay, redresses a tort-like personal injury in accord with the foregoing principles. We turn next to this inquiry.

Title VII of the Civil Rights Act of 1964[8] makes it an unlawful employment practice for an employer ``to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.'' 42 U. S. C. §2000e-2(a)(1). If administrative remedies are unsuccessful, an aggrieved employee may file suit in a district court, §2000e-5(f)(1), although the Courts of Appeals have held that Title VII plaintiffs, unlike ordinary tort plaintiffs, are not entitled to a jury trial. See, *e.g.*,

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[7]The dissent nonetheless contends that we "misapprehen[d] the nature of the inquiry required by §104(a)(2) and the IRS regulation" by "[f]ocusing on [the] remedies" available under Title VII. See *post*, at 2. As discussed above, however, the concept of a "tort" is inextricably bound up with remedies—specifically damages actions. Thus, we believe that consideration of the remedies available under Title VII is critical in determining the "nature of the statute" and the "type of claim" brought by respondents for purposes of §104(a)(2). See *post*, at 2.

[8]As discussed below, the Civil Rights Act of 1991, Pub. L. 102–166, 105 Stat. 1071, amended Title VII in significant respects. Respondents do not contend that these amendments apply to this case. See Tr. of Oral Arg. 35–36. We therefore examine the law as it existed prior to November 21, 1991, the effective date of the 1991 Act. See Pub. L. 102–166, §402(a), 105 Stat. 1099. Unless otherwise indicated, all references are to the ``unamended'' Title VII.

Johnson v. *Georgia Highway Express, Inc.*, 417 F.2d 1122, 1125 (CA5 1969). See also *Curtis* v. *Loether*, 415 U.S. 189, 192–193 (1974) (describing availability of jury trials for common law forms of action); *id.*, at 196–197, n. 13 (citing Title VII cases). If the court finds that the employer has engaged in an unlawful employment practice, it may enjoin the practice and ``order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay . . . or any other equitable relief as the court deems appropriate.'' §2000e-5(g).

It is beyond question that discrimination in employment on the basis of sex, race, or any of the other classifications protected by Title VII is, as respondents argue and this Court consistently has held, an invidious practice that causes grave harm to its victims. See Brief for Respondents 35–39; *Griggs* v. *Duke Power Co.*, 401 U. S. 424 (1971). The fact that employment discrimination causes harm to individuals does not automatically imply, however, that there exists a tort-like ``personal injury'' for purposes of federal income tax law.

Indeed, in contrast to the tort remedies for physical and nonphysical injuries discussed above, Title VII does not allow awards for compensatory or punitive damages; instead, it limits available remedies to backpay, injunctions, and other equitable relief. See §2000e-5(g); *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 182, n. 4 (1989) (noting that a plaintiff in a Title VII action is ``limited to a recovery of backpay''); *Great American Fed. Sav. & Loan Assn.* v. *Novotny*, 442 U. S. 366, 374–375 (1979); *Sparrow* v. *Commissioner*, ___ U. S. App. D.C. ___, ___ -___, 949 F. 2d 434, 437–438 (1991) (collecting cases). An employee wrongfully discharged on the basis of sex thus may recover only an amount equal to the wages the employee would have earned from the date of discharge to the date of reinstatement, along with

lost fringe benefits such as vacation pay and pension benefits;[9] similarly, an employee wrongfully denied a promotion on the basis of sex, or, as in this case, wrongfully discriminated against in salary on the basis of sex, may recover only the differential between the appropriate pay and actual pay for services performed, as well as lost benefits.

The Court previously has observed that Title VII focuses on ``legal injuries of an economic character,'' see *Albemarle Paper Co.* v. *Moody*, 422 U. S. 405, 418 (1975), consisting specifically of the unlawful deprivation of full wages earned or due for services performed, or the unlawful deprivation of the opportunity to earn wages through wrongful termination. The remedy, correspondingly, consists of restoring victims, through backpay awards and injunctive relief, to the wage and employment positions they would have occupied absent the unlawful discrimination. See *id.*, at 421 (citing 118 Cong. Rec. 7168 (1972)). Nothing in this remedial scheme purports to recompense a Title VII plaintiff 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 (*e.g.*, a ruined credit rating). See *Walker* v. *Ford Motor Co.*, 684 F. 2d 1355, 1364–1365, n. 16 (CA11 1982).

No doubt discrimination could constitute a ``personal injury'' for purposes of §104(a)(2) if the relevant cause of action evidenced a tort-like conception of injury and remedy. *Cf. Curtis* v. *Loether*, 415 U. S. 189, 195–196, n. 10 (1974) (noting

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[9]Some courts have allowed Title VII plaintiffs who were wrongfully discharged and for whom reinstatement was not feasible to recover "front pay" or future lost earnings. See, *e.g.*, *Shore* v. *Federal Express Corp.*, 777 F. 2d 1155, 1158–1160 (CA6 1985).

that ``under the logic of the common law development of a law of insult and indignity, racial discrimination might be treated as a dignitary tort'' (internal quotation omitted)). Indeed, the circumscribed remedies available under Title VII stand in marked contrast not only to those available under traditional tort law, but under other federal antidiscrimination statutes, as well.[10] For example, 42 U. S. C. §1981 permits victims of race-based employment discrimination to obtain a jury trial at which ``both equitable and legal relief, including compensatory and, under certain circumstances, punitive damages may be awarded.'' *Johnson* v. *Railway Express Agency, Inc.*, 421 U. S. 454, 460 (1975). The Court similarly has observed that Title VIII of the Civil Rights Act of 1968, whose fair housing provisions allow for jury trials and for awards of compensatory and punitive damages, ``sounds basically in tort'' and ``contrasts sharply'' with the relief available under Title VII. *Curtis* v. *Loether*, 415 U. S., at 195, 197; 42 U. S. C. §3613(c).[11]

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[10]Title VII's remedial scheme was expressly modeled on the backpay provision of the National Labor Relations Act. See *Albemarle Paper Co.* v. *Moody*, 422 U. S. 405, 419–420, and n. 11 (1975); 29 U. S. C. §160(c) (Board shall order persons to ``cease and desist'' from unfair labor practices and to take ``affirmative action including reinstatement of employees with or without back pay''). This Court previously has held that backpay awarded under the Labor Act to an unlawfully discharged employee constitutes ``wages'' for purposes of the Social Security Act. See *Social Security Board* v. *Nierotko*, 327 U. S. 358 (1946).

[11]Respondents' attempts to prove that Title VII redresses a personal injury by relying on this Court's characterizations of other antidiscrimination statutes are thus unpersuasive in light of those statutes'

Notwithstanding a common-law tradition of broad tort damages and the existence of other federal anti-discrimination statutes offering similarly broad remedies, Congress declined to recompense Title VII plaintiffs for anything beyond the wages properly due them—wages that, if paid in the ordinary course, would have been fully taxable. See L. Frolik, Federal Tax Aspects of Injury, Damage, and Loss 70 (1987). Thus, we cannot say that a statute such as Title VII,[12]

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differing remedial schemes. For example, respondents' reliance on *Goodman* v. *Lukens Steel Co.*, 482 U. S. 656 (1987), is misplaced, as that case involved the interpretation of §1981. See Brief for Respondents 35–37. Respondents' attempt to apply the Court's statement in *Curtis* v. *Loether*, 415 U. S. 189 (1974), that Title VIII ``sounds basically in tort'' to the Title VII context similarly fails. See Brief for Respondents 32. Indeed, *Curtis* itself distinguishes Title VII from Title VIII on a host of different grounds. See 415 U. S., at 196–197. The dissent commits the same error as respondents in attempting to analogize suits arising under Title VII to those involving other federal antidiscrimination statutes for purposes of §104(a)(2). See *post*, at 3–5.

[12]Respondents contend that Congress' recent expansion of Title VII's remedial scope supports their argument that Title VII claims are inherently tort-like in nature. See Brief for Respondents 34. Under the Civil Rights Act of 1991, victims of intentional discrimination are entitled to a jury trial, at which they may recover compensatory damages for ``future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses,'' as well as punitive damages. See Pub. L. 102–166, 105 Stat. 1073. Unlike respondents, however, we believe that Congress' decision to permit jury trials and compensatory and punitive damages under the

whose sole remedial focus is the award of backwages, redresses a tort-like personal injury within the meaning of §104(a)(2) and the applicable regulations.[13]

Accordingly, we hold that the backpay awards received by respondents in settlement of their Title VII claims are not excludable from gross income as ``damages received . . . on account of personal injuries'' under §104(a)(2). The judgment of the Court of Appeals is reversed.

It is so ordered.

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amended act signals a marked change in its conception of the injury redressable by Title VII, and cannot be imported back into analysis of the statute as it existed at the time of this lawsuit. See, *e.g.*, H.R. Rep. No. 102–40, pt. 1, pp. 64–65 (Report of Committee on Education and Labor) (``Monetary damages also are necessary to make discrimination victims whole for the terrible injury to their careers, to their mental and emotional health, and to their self-respect and dignity.''); *id.*, pt. 2, p. 25 (Report of Committee on the Judiciary) (``The limitation of relief under Title VII to equitable remedies often means that victims of intentional discrimination may not recover for the very real effects of the discrimination.'').

[13]Our holding that damages received in settlement of a Title VII award are not properly excludable under §104(a)(2) finds support in longstanding rulings of the IRS. See, *e.g.*, Rev. Rule 72–341, 1972–2 C.B. 32 (payments by corporation to its employees in settlement of Title VII suit must be included in the employees' gross income, as the payments ``were based on compensation that they otherwise would have received'').