

## Damages and Settlement Payments (including Insurance Proceeds)

### *General Rules*

- What do the damages replace? (“In lieu of what”?)
  - If replace income (profit), gross income
  - If replace gift (e.g., will contest), then gift
  - If replace property, treat as sale of property -IRC § 1001
  - If restore damage to property, treat as partial sale (return of basis)
  - If replace nothing, *Glenshaw Glass!*

### *Section 104(a)(2)*

- Requires personal *physical* injury
  - Includes wrongful death
- If no physical injury, no exclusion
  - Exception: Reimbursement for medical expenses (e.g., psychiatrist)
- If physical injury, damages for resulting emotional distress also excluded
  - But *not* damages for harm to property
- Punitive damages *included* in gross income

## **§ 139F. Certain amounts received by wrongfully incarcerated individuals**

**(a) Exclusion from gross income.**—In the case of of any wrongfully incarcerated individual, gross income shall not include any civil damages, restitution, or other monetary award (including compensatory or statutory damages and restitution imposed in a criminal matter) relating to the incarceration of such individual for the covered offense for which such individual was convicted.

**(b) Wrongfully incarcerated individual.**—For purposes of this section, the term “wrongfully incarcerated individual” means an individual—

**(1)** who was convicted of a covered offense,

**(2)** who served all or part of a sentence of imprisonment relating to that covered offense, and

**(3)(A)** who was pardoned, granted clemency, or granted amnesty for that covered offense because that individual was innocent of that covered offense, or

**(B) (i)** for whom the judgment of conviction for that covered offense was reversed or vacated, and

**(ii)** for whom the indictment, information, or other accusatory instrument for that covered offense was dismissed or who was found not guilty at a new trial after the judgment of conviction for that covered offense was reversed or vacated.

**(c) Covered offense.**—For purposes of this section, the term “covered offense” means any criminal offense under Federal or State law, and includes any criminal offense arising from the same course of conduct as that criminal offense.