

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

COMMISSIONER OF INTERNAL REVENUE v. SCHLEIER
ET AL.
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT
No. 94-500. Argued March 27, 1995—Decided June 14, 1995

On his 1986 federal income tax return, Erich Schleier (hereinafter respondent) included as gross income the backpay portion, but not the liquidated damages portion, of an award that he received in settlement of a claim under the Age Discrimination in Employment Act of 1967 (ADEA). After the Commissioner issued a deficiency notice, asserting that the liquidated damages should have been included as income, respondent initiated Tax Court proceedings, contesting that ruling and seeking a refund for the tax he had paid on his backpay. The Tax Court agreed with respondent that the entire settlement constituted “damages received . . . on account of personal injuries or sickness” within the meaning of §104(a)(2) of the Internal Revenue Code and was therefore excludable from gross income. The Court of Appeals affirmed.

Held: Recovery under the ADEA is not excludable from gross income. A taxpayer must meet two independent requirements before a recovery may be excluded under §104(a)(2): the underlying cause of action giving rise to the recovery must be “based upon tort or tort type rights”, and the damages must have been received “on account of personal injuries or sickness.” Respondent has failed to satisfy either requirement. Pp. 4-14.

(a) No part of respondent's settlement is excludable under §104(a)(2)'s plain language. Recovery for back wages does not satisfy the critical requirement of being “on account of” any personal injury, and no personal injury affected the amount of back wages recovered. In addition, this Court explicitly held in *Trans World Airlines, Inc v. Thurston*, 469 U. S. 111, 125, that

Congress intended the ADEA's liquidated damages to be punitive in nature; thus, they serve no compensatory function and cannot be described as being "on account of personal injuries." Pp. 4-9.

COMMISSIONER v. SCHLEIER

Syllabus

(b) There is also no basis for excluding respondent's recovery from gross income under the Commissioner's regulation interpreting §104(a)(2). Even if respondent were correct that this action is based on "tort or tort type rights" within 26 CFR §1.104-1(c)'s meaning, this requirement is not a substitute for the statutory requirement that the amount be received "on account of personal injuries or sickness"; it is an additional requirement. Pp. 10-11.

(c) Nor is respondent's recovery based upon "tort or tort type rights" as that term was construed in *Burke*, where this Court rejected the argument that a taxpayer's backpay settlement under pre-1991 Title VII of the Civil Rights Act of 1964 should be excluded from gross income. Two elements that distinguish the ADEA from pre-1991 Title VII—namely the ADEA rights to a jury trial and liquidated damages—are insufficient to bring the ADEA within *Burke's* conception of a "tort or tort type righ[t]," for the statute lacks the primary characteristic of such an action: the availability of compensatory damages. Moreover, satisfaction of *Burke's* "tort or tort type" inquiry does not eliminate the need to satisfy the other requirement for excludability discussed herein. Pp. 11-13.

26 F. 3d 1119, reversed.

STEVENS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and KENNEDY, GINSBURG, and BREYER, JJ., joined. SCALIA, J., concurred in the judgment. O'CONNOR, J., filed a dissenting opinion, in which THOMAS, J., joined, and in Part II of which SOUTER, J., joined.