

**8.48 TAX CONSEQUENCES OF PERSONAL INJURY AWARD**  
(Adopted 1/97; Revised 3/01)

A personal injury damage award is not subject to Federal or state income tax.

Therefore, if you decide to award the plaintiff damages for his/her personal injury, you should not add or subtract any tax in fixing the amount of the award.

***NOTE TO JUDGE***

Upon request, the trial court must give this charge in a personal injury case. *Domeracki v. Humble Oil & Refining Co.* 443 F.2d 1245, 1251 (3rd Cir. 1971), *cert. den.* 92 S. Ct. 212 (1971); *Bussell v. DeWalt Products Corp.*, 105 N.J. 223 (1987); *Tenore v. Nu Car Carriers*, 67 N.J. 466, 495 (1975).

It is unclear to the Committee whether economic damage awards and/or emotional distress damage awards under the New Jersey law Against Discrimination are subject to either Federal and/or New Jersey State income taxation. *See generally*, 26 U.S.C. §104(a); IRS Rev. Ruling 96-56; *United States v. Burke*, 504 U.S. 229, 112 S. Ct. 1867 (1992); and *Commissioner v. Schleier*, 515 U.S. 323, 115 S. Ct. 2159 (1995), regarding Federal taxation of awards under Federal discrimination law. Thus, it is unclear to the Committee whether the statement in the Charge that an award for lost earnings (Charge 8.11C) and an award for personal injury (Charge 8.48) is “not subject to Federal or state income tax” is accurate with respect to awards under the New Jersey Law Against Discrimination. In *Wachstein v. Slocum*, 265 N.J. Super. 6, 24 (App. Div. 1993) *certif. denied*, 134 N.J. 563 (1993), the Appellate Division noted the “present uncertainty of the law in this area” and observed that “we believe the wisest course would be for the trial court to omit any reference to taxability in its instructions to the jury.” *See also, Abrams v. Lightolier, Inc.*, 50 F. 3d 1204, 1220 (3rd Cir. 1995) (citing *Wachstein*, the court states that “we are confident that the New Jersey courts would not require that the award be calculated on net income”). The Committee believes that the nature and scope of instructions, if any, on the tax consequences of these awards should await further guidance from the appellate courts.