The Plaintiff Recovery Trust

...recover more

Eastern Point Trust Company®
Plaintiffs often keep less than half of what they should. You pay tax on winnings you keep and also on winnings paid to your lawyer – who then pays tax on the same money. The Plaintiff Recovery Trust avoids the Double Tax, often increasing net recoveries by 50%-150%.

**The Plaintiff Double Tax**
If you pay $4 to make $10, you should owe tax on $6. But in many types of lawsuits, you can't deduct expenses – so you pay tax on all $10.

**The Cost of the Double Tax**
It costs half your net recovery if you pay a typical contingent fee of 40% and are subject to a typical tax rate of 40%. But not when you use the Recovery Trust.

**Avoiding the Double Tax**
To avoid the Double Tax you cannot “own” your lawsuit or directly receive the recovery. Instead, Eastern Point creates a specialized trust in your name and for your benefit.

The trust owns your lawsuit, receives your recovery, and pays your fees. You receive the net amount and need no deductions.

Transfer includes Net Recovery plus cash to pay taxes.
A TRUSTED SOLUTION

Courts regularly rely on Eastern Point. We serve as fiduciary for countless plaintiff trusts and manage settlement trusts for lawsuits against name-brand companies.

Settlements We Manage

- Medtronic
- VIZIO
- VIAGRA
- Volkswagen
- bp
- NFL
- Air Philippines
- NUVARING
- Bernard L. Madoff Investment Securities LLC
- Lipitor

Trusts We Administer

- Court Restricted Trusts
- Special Needs Trusts
- Medicare Set-Aside Trusts
- Settlement Protection Trusts
- Qualified Settlement Trusts
- Custom Solution Trusts

STRUCTURED SETTLEMENTS

The Recovery Trust supports deferral arrangements of all kinds. Once created, the Trust distributes ownership of your future payments.

The Typical Structure
When You Need the Recovery Trust

Plaintiffs’ need for the Recovery Trust depends entirely on their case. Use it if any part of your recovery will be subject to the Plaintiff Double Tax.

### Example Claims That Need the Recovery Trust

- Punitive damages, penalties, & interest
- Alimony & child support
- Emotional distress without physical injury
- Fraud, negligence, breach of contract
- Interference with property/contract
- Defamation, libel, privacy violations
- Professional malpractice
- Opt-in class actions

### Example Claims That Don’t Need the Recovery Trust

- Physical injury without punitives/interest
- Claims brought as part of your business
- Some discrimination claims
- Some employment claims

Our Fees Are Paid by Your Tax Savings

Our fee is 20% of your tax savings. We typically work with cases expecting $100,000 or more of taxable damages, but can accept smaller cases with a minimum fee.

The fee doesn’t apply to the tax-free portion of your case – so keep your claims together.

Knowing the Recovery Trust Works

The Recovery Trust has been discussed in several journals, including Bloomberg Tax. Tax counsel at law firm Faegre Drinker Biddle & Reath (1,300+ advisors) helped design it to address the Double Tax and to create creditor protections. They offer plaintiffs a formal written tax opinion for $4,000.

If you work with an estate planner they’ll recognize the Recovery Trust’s structure. It adapts a commonly used trust arrangement to pay your lawyer’s fee.
Mechanics of the Recovery Trust

The Recovery Trust follows a commonly used trust arrangement. Your lawsuit claim is transferred to a newly created Recovery Trust, naming you as primary beneficiary. Your lawyer continues the lawsuit, now with you and the Recovery Trust as clients.

At settlement or award, funds are transferred to the Recovery Trust. It pays administrative fees, legal fees, and costs, then distributes the net proceeds to you. Because you don’t pay any fees or costs, there’s no need for deductions.

Enactment of the Double Tax

Congress passed the Plaintiff Double Tax in 2017 as part of a package to “reduce and simplify taxes.” In order to give everyone a “standard deduction” of ~$12,000, Congress eliminated deductions for many types of expenses (often called “miscellaneous itemized deductions”). The lost deductions include legal fees in many lawsuits brought by individuals as well as fees charged by investment advisors.

You can read about the tax law change in articles by American Bar Association, Bloomberg Tax, and The Tax Adviser. It can have a devastating impact on taxable cases, even resulting in fees and taxes costing more than the ultimate settlement or award.

Tax Rate Impact on the Double Tax

The cost of the Double Tax increases with your state and federal tax rates. It cuts your net recovery by half if you pay a typical contingency fee (40%) and a typical tax rate (40%). But not when you use the Recovery Trust.
Failed Alternatives to Avoid the Double Tax

Since 2017 many have tried and failed to work around the Plaintiff Double Tax. When it became clear that none would work, Eastern Point created the Recovery Trust. Here are several approaches that do not work.

1. First, many plaintiffs and plaintiff lawyers don’t attempt to avoid the Double Tax at all. Whether they don’t know about it, or couldn’t find a solution, it’s a problem that many simply don’t solve. For now, it looks like it’s here to stay.

2. Second, some draft the plaintiff-lawyer fee agreement to transfer a portion of the lawsuit claim to the lawyer. If effective, the plaintiff would not “receive” that portion of the recovery and therefore have no need to deduct legal fees. Unfortunately, this strategy was largely nullified by the U.S. Supreme Court in Commissioner v. Banks (2005). The Court wrote that a plaintiff’s income “includes the portion of the recovery paid to the attorney as a contingent fee.”

3. Third, some have suggested that the relationship between plaintiff and lawyer can act as a “business partnership.” The U.S. Supreme Court rejected this characterization in Banks, writing that, instead, the plaintiff-lawyer relationship “is a quintessential principal-agent relationship.”

4. Finally, some have suggested that plaintiffs could benefit from IRS rulings for clients receiving free legal help. Plaintiffs represented by free legal clinics are not taxed on legal fees awarded by a court because those plaintiffs were never obligated to pay fees. However, for-profit law firms and their clients cannot take advantage of these rulings for many reasons, including the economic substance doctrine.

PROTECTIONS & DEFERRAL

The Recovery Trust follows a commonly used estate planning arrangement that provides other non-tax benefits. For example, it will largely protect your lawsuit from creditors. It is easily incorporated in your estate plans. And, upon your request (and fee), your lawsuit can be managed by professional fiduciaries at Eastern Point.

In addition, the Recovery Trust can often defer tax to the next year by delaying distribution, or defer tax for many years, by entering into a structured settlement.
Can I use a Recovery Trust just before settlement or award?
Yes. However, to avoid the Double Tax you must transfer your claim before finalizing the settlement or award. Otherwise, the IRS might treat you as the “owner” of money received. Fortunately, there are several helpful court decisions. For example, in Jones vs. Commissioner (1962), the U.S. Fifth Circuit Court of Appeals respected the transfer of a lawsuit claim pursued for 9 years, and then transferred 5 months before a court ruled on the claim. To be conservative, it’s better to act early.

What do I do to use a Recovery Trust?
Contact us. We’ll discuss savings and next steps. In short, you’ll sign documents to effect three actions: (1) create a Recovery Trust in your name, (2) transfer your claim to your Recovery Trust, and (3) add the Recovery Trust as a co-client for your lawyer.

What if I end up not needing the Recovery Trust?
If you’re uncertain, we suggest that you use one. A Recovery Trust assures you of tax benefits if you do need them (e.g. because your recovery includes punitive damages). If you don’t need the benefits, you only pay a minimum fee. Think of the Recovery Trust as providing you with “tax insurance.”

How quickly will the Recovery Trust distribute money to me?
Typically, you’ll receive the net recovery within 30 days. However, in some cases it might benefit you to delay distribution to address outstanding issues, like liens.

Can I elect a “structured settlement” through the Recovery Trust?
Yes. The Recovery Trust can enter into any traditional or alternative plaintiff transactions.

Can I use the Recovery Trust if some of my recovery will be tax-free?
Yes. The lawsuit claim should “stay together.” The Recovery Trust will avoid the Double Tax on the taxable portion and not affect the rest. Our fees don’t apply to the tax-free portion.

Can my lawyer elect a “structured fee” through the Recovery Trust?
Yes. The Recovery Trust can enter into any traditional or alternative fee arrangement.

Eastern Point does not provide tax or legal advice. Counsel is available to provide a formal written tax opinion.