

Jury Awards Fresenius \$95M Tax Break

Fresenius sued the federal government in 2008, seeking to deduct \$126 million of the False Claims Act civil settlements from its taxes. The company argued that the figure represented payments that were made to compensate the government, which are deductible under the Internal Revenue Code. Section 162(f) of the code prohibits taxpayers from deducting settlement payments made to pay "a fine or similar penalty." The [Internal Revenue Service](#) had disallowed Fresenius' bid to deduct \$126 million from its taxes. "We are pleased with the jury's verdict," Fresenius spokesman Jonathan Stone said in an email Thursday. In a motion for judgment as a matter of law filed before the jury began deliberations, the government argued that Fresenius hadn't proven that the \$126 million were compensatory payments. The [U.S. Supreme Court](#) held in the 2003 case *U.S. v. Cook County* that the multiple damages provision of the FCA is both penal and compensatory. If the payment serves both purposes, the fact that one purpose is penal disqualifies it as a deduction under Section 162(f), unless the government agrees to strip the penal aspect from the payment, the government argued. "Fresenius has failed to present evidence that the government agreed to strip all or a portion of the payment of its penal purpose and therefore, as a matter of law, it has failed to prove that all or a portion of the payment is deductible despite the provisions of Section 162(f) of the Internal Revenue Code," the government's brief said. In its own motion for judgment as a matter of law, Fresenius argued that the Supreme Court held in the 1976 case *U.S. v. Bornstein* that the compensatory purpose of the multiple damage provision of the FCA include the recovery of prejudgment interest. Witnesses during the trial acknowledged that the civil settlement payment included recovery for presettlement interest, the company said. Additionally, the Supreme Court's ruling in *Cook* held that triple damages under the FCA are both compensatory and punitive, but double damages are merely compensatory, Fresenius said. During the trial, U.S. District Judge Douglas P. Woodlock told the government, "I think we do have to distinguish between doubles and trebles in any question," according to Fresenius' brief. "The government, however, never once elicited any testimony, even from its own witnesses, that would allow the jury to conclude that doubles were 'punishment,'" the brief stated. "In fact, the testimony showed that the government considered only the high multiples to be punishment. "Fresenius, which provides kidney dialysis services, agreed in 2000 to pay a \$101 million criminal fine and \$385 million in civil payments to settle FCA allegations. The company made payments required by the civil settlement agreements in the 2000 and 2001 tax years, according to court records. Fresenius is represented by James F. Bennett and Megan S. Heinsz of Dowd Bennett LLP and William

H. Kettlewell and Maria R. Durant of [Collora LLP](#). The case is Fresenius Medical Care Holdings Inc. v. USA, case number [1:08-cv-12118](#), in the U.S. District Court for the District of Massachusetts.--Editing by Katherine Rautenberg.