

June 10, 2020

The Honorable Catherine Cortez Masto
U.S. Senate
Washington, DC 20510

Re: The End Double Taxation of Successful Consumer Claims Act

Dear Senator Cortez Masto:

We, the undersigned public interest organizations, write in strong support of S. 3913, the End Double Taxation of Successful Consumer Claims Act. Consumers who win civil cases against entities that caused them harm are being burdened by an illogical and unjust tax law interpretation. For too long, taxpayers have been subject to unexpected penalties when they successfully hold unscrupulous businesses accountable in court. This important legislation would ensure that consumers are not unfairly penalized when they obtain justice for harm caused by unlawful corporate acts.

When consumers are deceived, cheated, or otherwise injured by predatory lending, debt collection and credit reporting abuses, illegal foreclosures, and other unscrupulous business practices, they can seek to bring a civil case to defend their rights. To ensure continuous enforcement and to make legal help accessible to consumers, the vast majority of federal and state consumer protection statutes include provisions that allow winning consumers to recover their legal expenses from the other side.

Despite Congress's intention to empower consumers to enforce consumer protection laws in court, consumers have actually suffered further harm when they win their cases. Under current tax law, individuals can be taxed on awarded legal expenses even though this money never reaches them. In fact, reimbursed legal expenses go to the winning consumers' attorneys, who pay taxes on these funds as well. Therefore, as a result of this baffling policy, the same set of funds are taxed twice.

The consequences of this unjust tax hike are devastating for many consumer-taxpayers. In some cases, they end up paying more in taxes than they actually recover in their winning cases, leaving them financially worse off than if they had never tried to stand up for their rights. In addition, low-income consumers may even lose eligibility for crucial income-dependent tax credits and other benefits due to the fact that reimbursed legal fees, which they do not receive, artificially inflate their reported income. Before the enactment of the Tax Cuts and Jobs Act of 2017, consumers could apply the Miscellaneous Itemized Deduction to their reimbursed legal expenses, and obtain a partial reduction. Now, because the TCJA has suspended a range of available deductions, consumers are required to pay the full amount of taxes on legal fees awarded.

Congress has acted before to lift a similar tax penalty from victims of discrimination. In 2004, Congress amended the tax code to create an above-the-line deduction for individuals who brought successful civil rights claims. The amendment clarified that reimbursed legal expenses were not income for discrimination victims, and therefore not taxable. Reimbursed fee awards are their attorneys' income. Congress recognized that double taxing recovered legal fees in civil rights cases undermined congressional intent and had a chilling effect on legitimate discrimination claims.

Similarly, the End Double Taxation of Successful Consumer Claims Act would create an above-the-line deduction for all legal fees reimbursed in consumer protection cases and rectify this serious tax flaw for consumers who stand up for their rights. The bill will reinforce Congress' intent behind

important consumer protection statutes, enabling consumers to obtain legal assistance and seek remedies for harm they incurred without being hit with an unfair tax penalty.

We appreciate all of your efforts to remove this consumer tax burden, and look forward to working with you on this important legislation.

Sincerely,

Americans for Financial Reform
Center for Justice & Democracy
Consumer Action
Consumers for Auto Reliability and Safety
Consumer Federation of America
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
National Employment Lawyers Association
Public Citizen
Public Justice
Tax March
U.S. PIRG