



October 17, 2019

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

Re: The End Double Taxation of Successful Civil Claims Act

Dear Senator Cortez Masto:

The National Association of Consumer Advocates (NACA) thanks you for introducing the **End Double Taxation of Successful Civil Claims Act**, which would ensure that American consumers are not unfairly penalized when they obtain justice for harm caused by bad actors. NACA is a national nonprofit association actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means. For too long, consumers have been subject to unexpected tax penalties when they successfully hold unscrupulous businesses accountable in court.

When consumers are deceived, cheated, or otherwise harmed by corporate wrongdoing, they should be able to fight back by bringing legal claims against the companies that abused them. To effectively defend their rights, consumers need some means to afford legal help. Congress stated as much when it enacted important consumer protection statutes such as the Fair Debt Collection Practices Act and the Fair Credit Reporting Act that allow successful consumers to recover their legal fees from entities that violate the law.<sup>1</sup>

Despite Congress's intention to empower consumers to stand up for themselves in court, many consumers end up financially worse off after winning cases. Currently, the Internal Revenue Service treats a consumer's reimbursed legal fees as income to the consumer even though the fees are paid directly to the consumer's attorney. As a result, the consumer may be compelled to pay income tax on money they never actually receive.

This unjust tax consequence can be devastating for consumers, especially low-income people. In some cases, a consumer may pay more in taxes on reimbursed fees than they recover in their winning case, leaving them worse off than if they had never fought back. Some consumers may lose eligibility for crucial tax credits like the Earned Income Tax Credit and other benefits because the reimbursed fees artificially inflate their income for the year.

Congress has recognized a similar problem before and fixed it. Victims of discrimination and other abuses who recovered their legal fees under civil rights and employment laws

---

<sup>1</sup> S. REP. NO. 95-382 (1977).

were subject to the same confusing and unjust tax treatment.<sup>2</sup> Realizing that this undermined congressional intent, hindered the enforcement of important laws, and harmed victims further, Congress amended the tax code to create an above-the-line deduction for those victims so the fees they recovered would not be included in their income.<sup>3</sup>

Similarly, the **End Double Taxation of Successful Civil Claims Act** would create an above-the-line deduction for all legal fees reimbursed in civil cases including consumer protection cases, thus rectifying this serious tax flaw for consumers who successfully fight back against corporate misconduct. The congressional intent behind important consumer protection statutes and other laws will be restored and consumers will no longer have to fear unexpected tax penalties. We applaud your efforts and look forward to working with you on this important legislation.

Sincerely,

Sophia Huang  
Advocacy & Outreach Associate

Christine Hines  
Legislative Director

---

<sup>2</sup> For examples of fee-shifting civil rights and employment statutes, see Civil Rights Attorney's Fees Awards Act, Pub. L. No. 94-559, 90 Stat. 2641 (1976) (codified at 42 U.S.C. 1988(b)) (amending the Civil Rights Act of 1866), Fair Housing Act, 42 U.S.C. §3612(p).

<sup>3</sup> American Jobs Creation Act of 2004, I.R.C. § 62(a)(20).