



February 10, 2025

Dear Senator:

The National Association of Consumer Advocates strongly supports [S. 467](#), a bill that would clarify an unfair tax policy imposed on Americans for asserting their rights. The bill would ensure that they would no longer be subjected to unfair and unjustified penalties after they successfully hold lawbreakers accountable. We urge you to support the End Double Taxation of Successful Consumer Claims Act, sponsored by Sen. Catherine Cortez Masto (NV).

James and Kathryn Eiler, a married Nevada couple, brought successful cases against the big three consumer reporting companies under the federal Fair Credit Reporting Act (FCRA), asserting that they reported inaccurate information and failed to correct the reports after the Eilers' multiple attempts to fix them without litigation.¹ When the Eilers obtained justice, the attorneys who assisted them were paid for their work by the companies as required under the FCRA.² Yet, years after the case ended, the Eilers received a "deficiency notice" from the IRS claiming they owed additional taxes on legal fees paid directly to their attorneys.³ These unfair taxes would be enough to wipe out the Eilers' entire financial restitution and leave them worse off than before they successfully vindicated their rights.

When Congress enacted important privacy and financial laws such as the FCRA, the Fair Debt Collection Practices Act, the Electronic Fund Transfer Act, and the Fair Credit Billing Act, they included provisions intended to encourage individuals to privately enforce the protections knowing that federal and state enforcement authorities are often unavailable to assist those directly harmed by the frauds.⁴ Specifically, the statutes require lawbreakers to pay legal fees to the legal representatives of the individuals who win their cases.

Earned legal fee awards are limited to well-founded claims with merit. The individuals in these winning cases never receive the funds for these fees, the funds are never within their control, and they derive no economic advantage from them. Rather, it is the attorneys who receive awarded fees for their work in successful actions, who, in turn, pay income tax on their income.

Yet, under recent interpretations of tax law, these individuals are expected to pay income tax on the awarded legal fees in their successful cases.⁵ That is, they are required to pay taxes on their attorney's income. As a result, individuals are being unfairly double taxed on funds they never receive. This approach imposes an unfair tax burden that punishes fraud victims for receiving help. This could never have been Congress's intent.

¹ Brief of Petitioners, *Eiler v. Comm'r of Internal Revenue*, *United States Tax Court* (filed Dec. 30, 2024) at 11-12.

² *Id.* at 13-15.

³ *Id.* at 7-8.

⁴ 15 U.S.C. §1681n(a)(3); 15 U.S.C. §1692k(A)(3).

⁵ Taxable and Nontaxable Income, I.R.S. Pub. No. 525, (2024), <https://www.irs.gov/pub/irs-pdf/p525.pdf>.

This policy has other terrible implications for taxpayers.⁶ It artificially inflates the individual's taxable income, making it appear as if they earned more than they did. It also creates obstacles for persons attempting to rightfully access their tax refunds, tax credits, and other benefits.⁷ During a time when American families, including seniors, servicemembers, and veterans, are coping with rising costs, they should not have to face an additional and unjustified tax bill.

Double taxing earned legal expenses can also make similar financial restitution difficult because the unfair double tax burden forces harmed taxpayers to focus on mitigating the financial effects in their cases, which creates greater costs for consumers, businesses, and the courts.

Congress has previously removed similar unfair tax penalties for victims of discrimination. Led by Sen. Chuck Grassley (IA), Congress recognized that unfair taxes could have a chilling effect on individuals with legitimate claims.⁸ It amended the tax code so that people with employment and civil rights claims would not be taxed on the legal expenses awarded to their attorneys.⁹ S. 467 would similarly clarify the tax code, making it consistent with Congress' intent behind laws protecting individuals from actions related to fraud, deception, and abuse in the marketplace.

We seek your support of S. 467 to remove this individual tax burden and to restore common-sense tax fairness. Please contact Sen. Cortez Masto's office to become a co-sponsor. If you have questions, feel free to contact me at christine@consumeradvocates.org.

Thank you for considering our views.

Sincerely,

Christine Hines
Senior Policy Director
National Association of Consumer Advocates

⁶ See Joanna Laine, *Consumer Protection and Tax Law: How the Tax Treatment of Attorney's Fees Undermines the Fair Debt Collection Practices Act*, 40 N.Y.U. Rev. L. & Soc. Change 754-759.

⁷ Id. at 725-726.

⁸ Sen. Chuck Grassley, *Grassley Works to End Unfair Taxation in Civil Rights Cases* (May 12, 2003), <https://www.grassley.senate.gov/news/news-releases/grassley-works-end-unfair-taxation-civil-rights-cases>.

⁹ USDOL, *Civil Rights Tax Relief Provision of the American Jobs Creation Act of 2004*, https://www.dol.gov/agencies/oalj/PUBLIC/RULES_OF_PRACTICE/REFERENCES/STATUTES/HR_4520_703.