

## FROM A UNION PERSPECTIVE

BY JOSH F. BOWERS, Esq.

### **Demand Your Congressional Representative Stop taxation of Compensation in Civil Rights Cases.**

In 1996, the conservative members of Congress agreed to support an increase in the minimum wage. In exchange, the conservative Congressional members demanded taxation of pain and suffering and other damages in civil rights cases. It was like patting the working person on the back with one hand and sticking in the knife with the other hand. The same conservatives are always crying and wailing that taxes are too high. The conservative's ill-spirited ploy to tax working people blew-up in their faces. The taxation of employee compensation in civil rights cases caused employers to pay dramatically higher amounts to settle civil rights cases. In effect, businesses and federal agencies pay the tax and not the employees because employee advocates adjust their settlement demands to account for the taxation. Regrettably, employee advocates are not always successful in passing on the tax burden to the employers, but it is a hard fought issue in each and every case.

The taxation of damages in civil rights cases is unfair because the employee is subjected to a "*triple whammy*" taxation on each portion of their monetary recovery. First, while damages received because of an automobile collision caused by *negligence* are tax free, damages are taxed for an employee who received compensation for psychological harm caused by *intentional discrimination* in a civil rights case. Second, employees who receive back wages in a lump sum are required to pay more taxes on the wages than they would have if they received the wages under their regular pay scale, because the lump sum payment pushes them into a higher tax bracket. Finally, employees who have been targets of discrimination must pay taxes on the part of their award that goes directly to their attorney, even though the attorney will be paying taxes on that money as well.

The "*triple whammy*" taxation significantly increases the difficulty of settling a case and results in unnecessarily protracted litigation. Under current law, it costs a federal agency \$107,000 to settle a case that would net the employee the same amount as a \$50,000 settlement prior to the change in the tax law. In another case, it cost the agency \$910,000 to compensate a group of employees. Without taxation, the employees would have recovered the same net amount with a \$450,000 settlement. Employment and civil rights attorneys are not usually tax lawyers. Negotiations often break down over the tax issue. Resolution is delayed and bills run up while the advocates for both sides seek out experts to evaluate the taxation impact on settlement offers. As a result, judicial resources are wasted and our courts and administrative forums are clogged with unnecessary trials.

Today, an odd coalition of business and employee advocates, including the U.S. Chamber of Commerce, the AARP, labor unions, the NAACP and others, have joined together to support the Civil Rights Tax Fairness Act which, if passed, will repeal the taxation in civil rights cases.

There are days when a one paragraph letter can change the course of human events. This is one of those days. Last week, I met with a Congressional representative who looked me in the eye and said, "*My office does not have a position on the Civil Rights Tax Fairness Act, but if we receive one or two letters from our constituents it will help us determine our position.*" Today, with your one paragraph letter, you can stop the wrongful taxation of civil rights damages. I urge you to call, write or email your Congressional representative and demand they support the Civil Rights Tax Fairness Act. Your congressional representative's name, phone number and address can be easily obtained by calling the Congressional telephone switchboard at (202) 225-3121 and giving the operator your zip code. Thank you for taking a few minutes to send your very important letter to Congress. Today, with your one paragraph letter, you can help correct the egregious and wrongful taxation of damages compensation in civil rights cases.

Joshua F. Bowers is an attorney in private practice representing Federal employees across the United States. Mr. Bowers is available for an office consultation in Washington, D.C. or review of documents by mail for a fee. (202) 408-8360/JBdcLaw@aol.com. FROM A UNION PERSPECTIVE is only for general information and should not be considered legal advice. If an employee has a problem, please see your union representative or a private attorney for guidance. For permission to republish this issue of FROM A UNION PERSPECTIVE, please contact Mr. Bowers.