

**PROPOSED COMMENTS OF THE LABOR AND EMPLOYMENT LAW SECTION
OF THE DISTRICT OF COLUMBIA BAR ON SUPPORT FOR
H.R. 840/S. 917 – "CIVIL RIGHTS TAX RELIEF ACT"**

to be filed with

Charles E. Grassley, Chairman and Max Baucus, Ranking Minority Member of the Senate
Finance Committee, and

William M. Thomas, Chairman, and Charles B. Rangel, Ranking Minority Member
of the House Ways and Means Committee

One-Page Summary for D.C. Bar Reviewers

In the Small Business Act of 1996, which increased the minimum wage, Congress made taxable all damage awards not based on "physical injuries or physical sickness." Unlike personal injury awards for wages and physically-based emotional distress, employment discrimination awards involving either back wages or non-physical injuries (including emotional distress) are now taxable, regardless of how the injuries are designated in the award or settlement agreement. This discriminates against both parties involved in civil rights cases. While damages received for psychological injuries stemming from a barroom brawl or a slip-and-fall, often caused simply by negligence, are tax free, damages to compensate for the very same types of psychological injury caused by intentional unlawful employment discrimination, are not. As a result, the government and attorneys often take a higher percentage of the award than the person whose rights were violated.

The Civil Rights Tax Relief Act (CRTRA) would eliminate taxation of emotional distress awards in discrimination cases by excluding such damages completely from taxable gross income. If enacted, the CRTRA would prevent workers subjected to illegal discrimination from paying higher taxes on lump-sum wage awards. It also greatly enhances the chances of settlements in discrimination cases, as often employees will insist upon a higher sum to compensate them for the additional taxes to be paid. Furthermore, it would also benefit employers who would not have to continue to pay increased amounts in settlement agreements because of the employees' tax liability.

The CRTRA also provides for income averaging of back pay awards that would permit those individuals recovering back wage awards to be taxed over the number of years for which the award was designed to compensate. This would eliminate the requirement that awards be taxed in the year received which may place employees in a higher tax bracket than would have applied if they had received their wages over the years they had worked. At present, income averaging is not allowed.

In addition, the CRTRA would eliminate the taxation of attorney fees awards by eliminating attorney fees from the individual's gross income. At present, employees who bring civil rights cases can also be taxed on the portion of the award paid to their attorney as fees even though the attorneys are also taxed on that amount as well. Under current law, deductions for attorney fees often trigger the alternative minimum tax, making more of the award, including the attorney fees, taxable to the individual whose rights were violated.

The proposed Public Statement of the DC Bar Labor and Employment Law Section, as attached, supports the passage of the CRTRA.

Honorable William H. Thomas, Chairman
Committee on Ways and Means
United States House of Representatives
Washington, D.C. 20515-0101

Honorable Charles B. Rangel
Ranking Minority Member
Committee on Ways and Means
United States House of Representatives
Washington, D.C. 20515-0101

Dear Representatives Thomas and Rangel:

On behalf of the District of Columbia Bar's Labor and Employment Law Section, we are writing to express our support for H.R. 840, The Civil Rights Tax Relief Act (CRTRA). The views expressed herein represent only those of the Labor and Employment Law Section of the District of Columbia Bar and not those of the D.C. Bar or its Board of Governors.

In the Small Business Act of 1996, which increased the minimum wage, Congress made taxable all damage awards not based on "physical injuries or physical sickness." Unlike personal injury awards for wages and physically-based emotional distress, discrimination awards involving either back wages or non-physical injuries (including emotional distress) are now taxable, regardless of how the injuries are designated in the award or settlement agreement. This discriminates against both parties involved in civil rights cases. While damages received for psychological injuries stemming from a barroom brawl or a slip-and-fall, which are often caused simply by negligence, are tax free, damages to compensate for the very same types of psychological injury caused by intentional employment discrimination, are not. As a result, the government and attorneys often take a higher percentage of the award than the person whose rights were violated.

The CRTRA would eliminate taxation of emotional distress awards in employment discrimination cases by excluding such damages completely from taxable gross income. If enacted, the CRTRA would prevent workers subjected to illegal discrimination from paying higher taxes on lump-sum wage awards. It would also greatly enhance the chances of settlements in discrimination cases, as often employees will insist upon a higher sum to compensate them for the additional taxes to be paid. Furthermore, it would also benefit employers who would not have to continue to pay increased amounts in settlement agreements because of the employees' tax liability.

The CRTRA also provides for income averaging of back pay awards which would permit those individuals recovering back wage awards to be taxed over the number of years for which the award was designed to compensate. This would eliminate the requirement that awards be taxed in the year received which may place employees in a higher tax bracket than would have applied if they had received their wages over the years they had worked. At present income averaging is not allowed under IRS regulations.

In addition, the CRTRA would eliminate the taxation of attorney fees awards by eliminating attorney fees from the individual's gross income. At present, employees who bring civil rights cases can also be taxed on the portion of the award paid to their attorney as fees even though the attorneys are also taxed on that amount as well. Under current law, deductions for

attorney fees often trigger the alternative minimum tax, making more of the award, including the attorney fees, taxable to the individual whose rights were violated.

For all of the foregoing reasons, the DC Bar Labor and Employment Law Section strongly supports the passage of the CRTRA. Please do not hesitate to contact us if you would like more information about these comments or if we can be assistance in any other way.

Very truly yours,

Connie N. Bertram, Esq.
Section Co-Chair

Denise Clark
Section Co-Chair

Edward H. Passman, Esq.
Member, Section's Steering Committee
(Principal Author)

cc: Honorable Deborah Pryce
Committee on Ways and Means
United States House of Representatives
Washington, D.C. 20515-0101