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## **Protecting Your Legal Rights-Civil Rights Tax Relief Act of 2004**

by: Joette S. Doran, J.D.

On October 22, 2004, President George W. Bush signed the Civil Rights Tax Relief Act (CRTRA), a provision included in the American Jobs Creation Act of 2004 (H.R. 4520). The CRTRA ends the double taxation of attorneys' fees and costs applied to individuals who win or settle employment discrimination and related cases. Section 703 allows plaintiffs to exclude attorneys' fees and costs from their adjusted gross income, ending double taxation of fees and costs and avoiding any problems with the Alternative Minimum Tax. The law applies to civil rights cases, employment discrimination cases, Fair Labor Standards Act and other wage and hour cases, ERISA benefits cases, and cases under any Federal, State or local statute, or common law, regulating the employment relationship.

Until the passage of the CRTRA, complications existed with nearly every settlement of an employment discrimination case since the IRS required a civil rights plaintiff who won or settled a case to pay taxes on the entire award or settlement including the payment that went to the plaintiff's attorney. For instance, if the plaintiff won an award of \$100,000, the plaintiff would be required to pay tax on the entire amount even though a contingent fee of \$30,000 went to the plaintiff's attorney and even though the plaintiff's attorney would have to pay taxes on the \$30,000.

The IRS position was that since the entire award went to the client it should be taxed to the client regardless of whether the client actually received the money since it was money received to extinguish a debt owed by the plaintiff to the attorney. The plaintiff argued that IRS position did not take into account that there would be no recovery without the assistance of the attorney creating a "joint venture" between the attorney and the plaintiff. This issue has been the subject of numerous court cases throughout the country with mixed results. Some circuits followed the "joint venture" approach siding with the plaintiff however, in the majority of the courts, including our Seventh Circuit, the IRS position has prevailed.

Although the law is now in effect, in early November when the United States Supreme Court heard oral argument on the issue in a case where both plaintiffs won awards in employment disputes and challenged the IRS based on tax bills based on the full amount of the recovery including attorney's fees. The Supreme Court's decision remains important to the issue since the CRTRA applies to fee payments made after October 22, 2004, when the law became effective. As such, plaintiffs who have received awards or settlements before October 22, 2004 do not benefit from the new enactment. A decision is not expected from the Supreme Court until the spring of 2005. For further information, please visit our web site at [www.joettedoran.com](http://www.joettedoran.com)

*This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.*

MS. DORAN IS LICENSED IN ILLINOIS, ALL ILLINOIS FEDERAL COURTS AND IS A MEMBER OF THE FEDERAL TRIAL BAR. SHE IS THE PAST CHAIRPERSON OF THE EMPLOYMENT LAW COMMITTEE FOR THE NORTHWEST SUBURBAN BAR ASSOCIATION AND IS THE PAST PRESIDENT OF BARRINGTON AREA PROFESSIONAL WOMEN.

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