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September 26, 2013

Senator Ben Cardin
509 Hart Senate Office Building
Washington, DC, 20510

Senator Susan Collins
413 Dirksen Senate Office Building
Washington, DC 20510

*Re: Association of Corporate Counsel supports Civil Justice Tax Fairness Act,
S. 1224*

Dear Senators Cardin and Collins:

Your bill to create the Civil Justice Tax Fairness Act, S. 1224, will remove tax obstacles that often thwart efficient settlements of lawsuits over employment discrimination. On behalf of the Association of Corporate Counsel and its Employment and Labor Committee, we strongly support S. 1224 and encourage you to do everything you can to persuade Congress to pass it or its companion bill, H.R. 2509.

ACC is a global bar association that promotes the common professional and business interests of in-house counsel, with over 30,000 members employed by over 10,000 organizations in more than 75 countries. ACC's Employment and Labor Committee represents nearly 6,000 in-house lawyers who handle employment matters for a broad range of companies, including many Fortune 500 firms. Our members have extensive experience representing their companies in employment discrimination suits. And they have seen first-hand how the current tax system can prevent settlements and draw out expensive litigation.

Our members have noticed that the current tax law creates two problems in employment discrimination cases. First, the law taxes settlements and court awards for lost wages, and also for non-economic damages such as emotional distress. The law doesn't treat recoveries for physical torts the same way – in fact, the law specifically excludes settlements and awards for physical injuries and sickness from the definition of taxable gross income.

Second, the law taxes lost wages at an especially high rate. That happens because a person who receives a lump-sum payment for lost wages must attribute the wages to a single taxable year. This can trigger higher tax rates, even though the employee would have paid lower annual taxes if she or he had received the wages year-by-year.

ACC's members know from experience that, together, these two tax problems can make it difficult for their companies to settle employment discrimination cases. This occurs because employees consider their potential tax bill before they agree to any settlement. An employee who anticipates higher taxes will demand a higher settlement. Naturally, companies more readily agree to lower settlements than higher ones. So, by imposing extra taxes on settlements, the tax code makes them more expensive and therefore less likely. Worse, when the parties to a dispute fail to settle, they often face long and costly court battles.

The bill you authored would stop both of the harms that the tax code now causes in employment discrimination disputes. For non-economic damages, your bill excludes them from taxable income. And for lost wages, your bill allows employees to average the income across the years that the payments cover.

ACC has supported related bills in the past, both last year and also in 2008. Since then, the need for change has not gone away. Now as then, parties face multiple obstacles to resolving employment discrimination disputes. Your bill will eliminate the tax code as one of those obstacles. In the process, both employers and employees will benefit.

Thank you for strongly supporting S. 1224, and working to enact it into law.

Sincerely yours,



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