Pro Bono, Pro Se

A Report on Baltimore, Maryland’s Pre-Calendar Call Program

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I. Introduction.

The Pre-Calendar Call Program (also called the Pro Se Clinic or Pro Bono Clinic,) is sponsored by the Maryland State Bar Association’s Tax Section, Maryland Volunteer Lawyer Services L.I.T.C., the University of Maryland L.I.T.C., and the University of Baltimore L.I.T.C., (“Program Sponsors”).

The I.R.S. Office of Chief Counsel, Baltimore, is also an essential participant in the Pre-Calendar Call Program.

The Pre-Calendar Call Program (“The Program”) acts as an extension of the Calendar Call Program. Volunteers are expected to conduct themselves according to the Court’s rules for Calendar Call programs.¹

On “Clinic Days,” volunteer attorneys and law students speak privately with pro se petitioners to discuss their case pending before the U.S. Tax Court. The clinic day is typically 6 to 8 weeks before the Calendar call.

At least one Attorney from the I.R.S. Chief Counsel’s Office, Baltimore (“I.R.S. Counsel”) is present to, if appropriate, discuss the case, accept discovery from the Petitioners, and negotiate a settlement.

From a volunteer’s perspective, the value of this program is being able to get legal information and advice to Petitioners when the Petitioner still has time to meaningfully act upon that information and advice.

II. Getting Ready for a “Clinic Day”

1. Setting the Date.

The work to set up a clinic day begins four to six months from the date of the calendar call. The Directors of the Program Sponsors (“Program Directors”) and I.R.S. Counsel identify a mutually convenient evening to have the “Clinic Day.”

Ideally, the Clinic Day is 4 to 8 weeks before the Calendar Call.

The most important consideration is when facilities are available to host the Clinic Day. The Program is fortunate, as both of the academic L.I.T.C.s have facilities to host, which are normally available.

The academic schedule is the second most important consideration in choosing a day, as two of the Program Sponsors are law school L.I.T.C.s and law students compose a sizeable percentage of the volunteers.

¹ http://www.ustaxcourt.gov/clinics_calendar_call.htm
Tertiary concerns are holidays or other major events (i.e. street festivals, professional football games) that may negatively impact the ability of petitioners, volunteers, and I.R.S. Counsel to reach the Clinic Day location, or find parking once there.

2. Announcement

Once a date and place is selected, one of the Program Directors will draft a “stuffer letter” announcing the clinic’s date, time and services to the Petitioners. The letter usually omits the location of the Clinic Day, to encourage Petitioners to make an appointment and discourage walk-ins.

The stuffer letter is then given to I.R.S. Counsel, who mails it to Pro Se petitioners. This ideally occurs 4-5 weeks before the Clinic Day. The reason I.R.S. sends the letter is they have the contact information for the petitioners, but cannot disclose it to the Program, per I.R.C. §6103.

The stuffer letter invites the petitioner to call or e-mail to set an appointment. Keeping track of scheduling typically falls to the staff of M.V.L.S. or the hosting school.

At or around the same time as the stuffer letter goes out, the M.S.B.A. Tax Section Calendar call Director will announce the Clinic Day to bar membership, via the Tax Section e-mail list serve, and ask for volunteers.

3. Scheduling & Lead-Up to Clinic Day.

Pro Se petitioners interested in taking advantage of the Clinic Day contact the appropriate party, and set an appointment for that day.

Attorneys contact the M.S.B.A. organizer to volunteer. Volunteers typically will do so for a certain block of time, and not the whole Clinic Day.

The Program Directors continue to co-ordinate to achieve ideal staffing levels for the event. The academic L.I.T.C. Directors are concerned to make sure their students have the opportunity to participate.

The M.S.B.A. Director, mindful of the value of the volunteers’ time, lets prospective volunteers know if they will be needed or not. The current M.S.B.A. Director worries overstaffing, over time, may erode bar participation if surplus volunteers felt their time is being wasted.

I.R.S. Counsel will gather the files of the attending petitioners to bring with them to the Clinic Day.

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2 An example Stuffer letter is appended to this report.
Some volunteers bring laptops or copies of the I.R.C. Most only bring a notepad. It is the author’s opinion that there should be at least one copy of the I.R.C., or access to an electronic version, on hand for volunteers to refer to, if needed.

III. Clinic Day

1. Layout of the Clinic

The Clinic Day typically occurs during the work week, starting at 2 p.m. with the last meetings scheduled to begin at 6 p.m. Meetings are schedules to last one hour. It is not unusual for a meeting to run long.

Clinic day typically uses 6 or 7 rooms. There is a reception/waiting room. One or two of the program directors are posted in the reception area to greet and direct volunteers and petitioners. Nearby there are four or five small conference rooms where volunteers meet with petitioners. Past those rooms is an office or conference room where I.R.S. Counsel is positioned.

2. A Typical Meeting (to the extent there is such a thing).

The Petitioner meets in one of the conference rooms with volunteers. The ideal arrangement is to have a volunteer attorney paired with a law student.

After making introductions, the volunteers ask the petitioners to sign an agreement. This agreement is substantially similar to the model agreement posted to the A.B.A. Tax Court Calendar Call webpage.³

The volunteers and the petitioners speak on the petitioner’s matter. Each petitioner is different. Commonly encountered issues include:

1. Educating the petitioners on the rules of evidence and the rules of procedure (discovery, in particular).

2. Educating the petitioner on the substantial law of the case. In particular, identifying “the call of the question” for the petitioner. Many petitioners live complicated lives, and have trouble isolating the issue before the Court from issues irrelevant to the Court.

3. Correcting unrealistic expectations the Petitioner may have of their case (both overly optimistic and overly pessimistic).

4. Organizing the Petitioner’s documents and arguments so Petitioner may present them more effectively.

³ http://www.americanbar.org/groups/taxation/tax_pro_bono/pro_bono_resources.html
If appropriate, and if the Petitioner approves, the volunteers will request that I.R.S. counsel join the conference with the volunteers and the Petitioner. The primary objective is to learn the I.R.S.’ position in the case. The secondary objective of conversing with I.R.S. Counsel varies with each case. Common secondary and tertiary objectives of volunteers speaking with I.R.S. Counsel include:

1. Facilitating discovery.
2. Lay ground work for better I.R.S.-Petitioner communications going forward.
3. Negotiating a possible settlement.

The author wishes to stress that it is not always appropriate for volunteers to speak with I.R.S. Counsel. Even then, a volunteer does not approach I.R.S. Counsel without permission from the Petitioner.

IV. Benefits of the Program

1. Benefits to the Petitioners

A Petitioner can profit from his or her participation in the Program in many ways.

First, Petitioners are better educated about the laws of evidence and procedure, and the tax law. As opposed to the traditional Calendar Call program, they also have the time to apply their learning.

Second, many petitioners are able to settle their case before the day of the Calendar Call, and several cases have been settled at a Clinic Day. The value of a petitioner not having to take a day or more off work to go to Court should not be ignored.

Third, the well-being of some petitioners seems to improve. The unknowns of litigation can be stressful even for an experienced attorney. It is not uncommon for a Petitioner to be visibly confused or upset by their situation. The volunteer’s help reduces the number of unknowns for the petitioner, which may mitigate the stress they experience.

Fourth, some of the Petitioners learn they qualify for assistance from an L.I.T.C., and are able to get representation.

2. Benefits to the I.R.S.

Resolving cases before the Calendar call permits I.R.S. Counsel to re-allocate manpower and other resources that otherwise would have been applied to the cases.

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4 DISCLAIMER: the author is not trained in Psychiatry, Psychology, nor Social Work. This observation is a layman’s.
Even if a case does not settle, I.R.S. Counsel reports that participating Petitioners are easier to do business with (i.e. improved communications). The petitioners better understand what the Court expects of them (i.e. cooperate on discovery), and that relieves I.R.S. Counsel of the un-enviable task of explaining the how-and-why of litigation procedure to an adversarial party.

3. Benefits to the Court

The Program benefits the Court in facilitating settlement (where appropriate) and reducing the Court’s docket.

For the cases that do go to trial, the Petitioner is better prepared to meet the Court’s expectations (e.g. cooperate on discovery, have evidence with them, and make a reasonable and relevant argument.)

4. Benefits to the Volunteers

The Clinic Day is an excellent opportunity to perform limited-scope pro bono work. This is attractive to civically minded volunteers who want to provide pro bono service, but without an open-ended commitment.

For the volunteer law students and less experienced attorneys, it is also an excellent forum to apply their knowledge, build experience, and be mentored by more experienced attorneys. With the dearth of associate positions in today’s economy, the value of experience and mentoring cannot be overstated.

V. Elements of Success

The Pre-Calendar Call Clinic Day is not unique to Maryland. It has been tried elsewhere with varying degrees of success and failure. The author wishes to use this section to discuss factors which, in his opinion, made Baltimore Pre-Calendar Call a success.

First is and foremost is the commitment of the Area Counsel to have a presence at Clinic Days. The I.R.S.’ presence give volunteers the opportunity to get a fuller picture of the Petitioner’s case, better advise the petitioners, and makes settlement possible.

Second are the petitioners who accept the offer of help. Other programs have found persuading petitioners to participate to be a challenge. The author speculates that 1) geography plays a role (see next page), and; 2) given the outsized role of the Federal government, government contractors, and large non-profits in the area economy, Marylanders are more comfortable dealing with lawyers and bureaucracy than other Americans.
Third are the three excellent L.I.T.C. programs in Baltimore, who have the resources to organize and host these Clinic Days. The value of having professional support staff take care of petitioner intake and scheduling is significant.

Fourth is the civic-mindedness of the Maryland Tax Bar. When a call for volunteers goes out, the bar responds (which is all the more remarkable as pro bono service is not required of Maryland attorneys).

Fifth is the geography and population density of the state. 45% of the state’s population lives in the Baltimore Metropolitan Area. Nearby D.C. suburbs Prince George’s and Montgomery Counties together account for an additional third of the state’s population. Because the population is so geographically compact, it is not difficult to get I.R.S. Counsel, volunteers, and petitioners in one place at one time.

Some programs serving more geographically dispersed populations have used Skype or other video-conferencing tools.

VI. Conclusions

The Pre-Calendar Call Program has been, and continues to be, a very effective program. By having the program in advance of the Calendar call, Petitioners have the time to make best use of the help they receive from the volunteers.

The Pre-Calendar Call Program benefits the Service and the Court by helping settle some cases before the Calendar call, and by improving the knowledge and ability of petitioners to meet the expectations of litigation. In both cases, the resource that must be applied to those petitions is, if not reduced, then at least applied in a more productive way.

There have been similar efforts in other cities, with mixed results. The Program works here in Maryland because its set-up takes advantage of local strengths. We are lucky in that the original Program Directors appear to have got it right the first time.

The author is confident that other cities may have successful Pre-Calendar Call Programs. However, those programs may need a trial-and-error period to tailor the program to the strengths of their own localities.

Appendix

Example “Stuffer” Letter.

March 15, 2016

Re: Free Help With Your Case Available on April 19.

Dear Sir or Ma’am:

I represent the Maryland State Bar Association Calendar Call Program (“The Program”). I write to you because it appears you filed a petition with the U.S. Tax Court, but are not represented by a tax professional, such as a lawyer. I believe your case is set for trial the week of June 13, 2016.

The Program has teamed with Maryland Volunteer Lawyers Service, and the Low-Income Taxpayer Clinics of the University of Maryland & the University of Baltimore Law Schools to offer a free one-day clinic on Tuesday, April 19, 2016 from 2 p.m. to 7 p.m. in downtown Baltimore. The clinic is for pro se (without a lawyer) petitioners who want help with their cases pending before the U.S. Tax Court.

At the clinic, our volunteer attorneys and law students can explain the rules and procedures of the Tax Court, discuss the issues in your case, review your documents, and explain your options (i.e. settle or go to trial). If you want to settle, our volunteers can help you reach a settlement on-site with an I.R.S. attorney. If you want to go to trial, our volunteers can help you organize your documents and arguments.

Please know, our volunteers will not enter their appearance in your case, nor will an attorney-client relationship be formed between you and our volunteers. However, our volunteers will offer independent assistance in an effort to help you present your case at trial, or settle it before trial.

If you would like to attend the clinic, please contact The University of Maryland Law Clinic at (410) 555-5555 on or before April 18, 2016 to set an appointment.

Please bring the following documents to your appointment:

1. The complete Statutory Notice of Deficiency or Notice of Determination issued by the I.R.S. in your case.
2. The petition you filed with the U.S. Tax Court.
3. Any supporting documents (e.g. receipts, tax returns) relevant to your case.
4. Any correspondence from I.R.S. or the Court related to your case.
5. Any other documents you think are important to your case.

Thank you for considering this opportunity. I know asking for help is not the easiest thing to do. We look forward to being of some good service to you.

Respectfully,

Eric M. Bielitz, Attorney
Program Director, MSBA Calendar Call Program
Example Agreement.

Agreement of Pro Se Participant In the
Maryland State Bar Association Tax Section Pro Bono Program

I, the undersigned, agree and understand that Participating Attorneys in the Section of Taxation of the Maryland State Bar Association Pro Bono Program are volunteering their time free of charge to provide legal instruction to me related to my case pending before the United States Tax Court. I further understand that said Participating Attorneys are not being hired by me and will not be entering an appearance on my behalf in my case before the United States Tax Court. I understand and agree to the following:

1) I will not be charged for the legal instruction given to me during the day of the calendar call of my case before the United States Tax Court.

2) The Participating Attorney signing below is agreeing to help me evaluate any settlement offers from Area Counsel of the Internal Revenue Service; and, if a settlement cannot be achieved, to instruct me on procedural issues related to trying my case pro se before the United States Tax Court.

3) The Participating Attorney will not hold any discussions with Internal Revenue Service personnel regarding my case without me being present.

4) I am not hiring said Participating Attorney and agree not to bring any legal action related to the pro bono legal instruction given during the day of the calendar call of my case or thereafter.

Date:

Printed Name of Pro Se Petitioner: ____________________________

Signature of the Pro Se Petitioner: ____________________________

Printed Name of Participating Attorney: ________________________

Signature of Participating Attorney: ____________________________
End Matter.

About the Author.

Eric M. Bielitz is a solo practitioner in Baltimore, Maryland. He graduated from the University of Baltimore (J.D. ’13, LL.M. ’15). His practice focuses on tax planning and controversy. He is Member of the Maryland State Bar Association’s Tax Section Executive Council, where he serves as the Director of the Bar’s U.S.T.C. Calendar Call Program, Chairs its Pro Bono committee. His paper on the Sentencing of Federal Tax Offenders was given an honorable mention in the 2015 Donald C. Alexander Tax Writing Competition, sponsored by the Federal Bar Association. He may be reached at eric@embtaxlaw.com, or (410) 703-5125.

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Arlene Blume, Esquire, our most reliable and experienced volunteer. She is the 2016 J. Ronald Shiff Memorial Pro Bono Award winner, selected by the M.S.B.A. Tax Section Council.

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