Tools You Can Utilize to Create Positive Change

- Request for Taxpayer Advocate Assistance
  - OARs and TAOs
- IRS Systemic Advocacy Management System (SAMS)
- Litigation
  - Collection Due Process Hearings – IRC 6320 and 6330
  - Taxpayer Bill of Rights Arguments – IRC 7803(a)(3)
Using TAS, OARs and TAOs to Effectuate Change

- Submitted an Offer in Compromise (OIC) with Low Income Certification.
  - Disclosed household members and household income.
- IRS threatened to return OIC unless taxpayer submitted OIC filing fee and down payment.
  - IRS denied use of household members for Low Income Certification but included household members income.
Systemic Issue – IRS Failure to Follow IRM with OIC Low Income Certification

- IRS OIC Unit ignored advocate’s response and Internal Revenue Manual guidance.
- Filed a 911.
- TAO issued an OAR. When IRS was unresponsive to OAR, Taxpayer Advocate issued TAO.
- OIC Unit accepted Low Income Certification.
  - TAS issued memo to OIC Unit re issue.
  - Issue incorporated in next OIC Unit training.
Operations Assistance Request (OAR)/Taxpayer Assistance Order

- TAO issued an OAR. When IRS was unresponsive to OAR, Taxpayer Advocate issued TAO.
- OIC Unit accepted Low Income Certification and OIC.
  - TAS issued memo to OIC Unit re issue.
  - Issue incorporated in next OIC Unit training.
Using IRS SAMS to Effectuate Change

  - Eligible veterans have right to seek refund of taxes paid on disability severance pay.
  - IRS Letter 6060 sent to eligible veterans.

- Taxpayer received IRS Letter 6060 on 7/13/18. He filed a 1040X and refund claim of around $1,750 on 7/20/18.

- Taxpayer never received a response from the IRS.
Systemic Issues – No Response, No Appeal Rights, Misapplication of Law

- LITC met veteran at Operation Stand Down event on 2/27/19.
- LITC contacted IRS regarding claim.
- IRS issued denial letter on 3/11/19. It did not provide appeal rights.
- On 3/18/19, LITC filed SAMS report since rejection could affect multiple taxpayers and taxpayer rights, leading to taxpayer burden.
SAMS Report Led to Internal IRS Guidance and Favorable Case Outcome

- SAMS representative and TAS Technical Advisor worked issue leading to additional internal guidance.
  - Identified systemic issues (no response, no appeal rights, wrongful denial when low taxable income).
- We filed a 911. TAO representative used guidance to obtain favorable result.
- Taxpayer received a refund of around $8,000!
Taxpayer suffering from IRS Levy.

Convinced IRS to place in CNC status and remove levy. CNC placement generated Notice of Tax Lien Filing.

Filed for CDP Hearing in response to Notice of Federal Tax Lien Filing.

At first blush, CDP request may seem unnecessary.

Submitted an OIC after CDP request.
Identifying Systemic Problems

- While processing OIC, IRS OIC Unit violated taxpayer’s
  - Right to Retain Representation,
  - Right to Quality Service and
  - Right to Challenge the IRS’s Position and Be Heard

- During CDP, IRS Appeals failed to provide
  - Right to Appeal IRS Decision in an Independent Forum
Pushing Issues for Court Review

- IRS Counsel filed Motion to Remand
- Filed Objection since a remand would be unnecessary and unproductive.
  - Argued Tax Court should consider whether IRS’s failure to follow TBOR is a *per se* abuse of discretion in a CDP hearing.
- Judge Guy denied government’s motion, moving issue toward court review.
- IRS resurrected OIC and accepted it 30 days before trial.
What Did Litigation Accomplish in Freels?

- Provided an additional venue for appeal and judicial review.
- Set precedent for that it may not be appropriate to remand back to IRS Appeals if case has implications of TBOR violations.
- Put TBOR issues on Tax Court’s radar screen.
  - Can IRS violation of TBOR could be a *per se* abuse of discretion in a CDP hearing involving collection alternatives?
- Led to $25 settlement of $21,000 tax liability.
Using Litigation to Effectuate Change – Vinatieri v. Commissioner, 133 T.C. No. 16.

- Domestic violence victim received IRS Levy Notice and filed *pro se* request for CDP hearing.

- IRS Appeals refused to withdraw levy because taxpayer was not compliant in filing all tax returns.
  - IRS Appeals relied on IRM that contradicted IRC 6343(a)(1)(D).

- Appealed to US Tax Court.
The Outcome

- IRS cannot refuse to remove levy when taxpayer is facing economic hardship, regardless of tax compliance. IRC §6343(a)(1)(D); Vinatieri v. Commissioner, 133 T.C. No. 16.

- Levy can be removed when taxpayer is not compliant with tax filing requirement if taxpayer is facing economic hardship. Office of Chief Counsel Notice CC-2011-005 issued November 22, 2010.

- Revised Internal Revenue Manual
What Did Litigation Accomplish in Vinatieri?

- Favorable precedent from US Tax Court
- A favorable change in IRS Policy, revisions to Internal Revenue Manual
- A favorable Chief Counsel Notice
- Positive systemic impact for taxpayers suffering from economic hardship who may not be compliant with tax law.
- Removal of tax liability.
Using Litigation to Effectuate Change – Marlow v. Commissioner, T.C. Memo. 2010-113

- IRS issued Final Notice of Intent to Levy.
- Although LITC could have pursued CNC placement without asking for a CDP hearing, LITC filed for CDP hearing.
  - While waiting for IRS Appeals to schedule CDP, LITC investigated liability defenses and prepared an OIC.
- At CDP hearing
  - Challenged the liability and validity of assessment
  - Argued taxpayers qualified for CNC placement
  - Submitted an OIC
Collection Due Process Hearing

- IRS Appeals issued Notice of Determination finding economic hardship and agreeing to place in CNC.
  - NOD refused to consider challenges to liability or validity of tax assessment.
- Rather than accept CNC, LITC appealed case to US Tax Court.
- Obtained *de novo* review of assessment challenge.
What Did Litigation Accomplish in Marlow?

- Clarification on 22 legal issues.
  - Challenges to validity of assessment results in *de novo* review in US Tax Court, regardless of whether raised in CDP hearing.
  - Taxpayers who file jointly are treated separately when determining validity of assessment.
  - A waiver of assessment by one spouse does not constitute waiver by the other spouse.
  - IRS must send SNOD to each spouse before assessing tax.
  - Taxpayer affirmations under oath can overcome secondary evidence.
What Did Litigation Accomplish in Marlow?

- If tax assessment without SNOD, the legal and procedure requirements an IRS Appeals Officer must verify at the CDP hearing.
- Appeals Officer’s (AO) determination to proceed with collection without verification deficiency procedures were followed is an abuse of discretion.
- Minimum documents AO must rely on to verify assessment.
- Remand to appeals is not appropriate when unnecessary and will be unproductive.

- Removed tax liability of over $50,000.