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ABA Tax Section Midyear Meeting  
January 31, 2020  

“I just wanted to check in and see if you had heard anything … I am honestly getting a bit anxious because my transmission just went out in my only vehicle.”  

• Email from client of Washington & Lee University  
  School of Law Tax Clinic
Importing Ideas from Other Countries

New Zealand: Working for Families Tax Credits (WfFTC regime)

- In-Work Tax Credit is conditioned on minimum number of hours in paid employment per week; Family Tax Credit (slightly higher credit that increases based on number of children) does not require work
- Administered by tax agency, but application process is separate from tax return
- Frequency: weekly, fortnightly, or annual lump sum
- Both credits are paid to principal caregiver (not worker)
- Based on estimate of current year’s income

Canada: Working Income Tax Benefit (WITB) and Canada Child Benefit (CCB)

- Both are income-based, but only the less valuable WITB requires work
- Administered by tax agency; application process for CCB is separate from tax return
- Frequency: CCB is monthly; up to 50% of WITB can be received in advance on quarterly basis
- WITB paid to worker; CCB paid to primary caregiver (rebuttable statutory presumption that this is the mother)
- Based on prior year’s income
Reimagining the Credit

• How we frame the EITC matters, both to:
  • recipients (Epley and Gneezy: framing of windfalls influences consumption)
  • and to the broader public (work requirement makes it politically viable)

• Simplifying the structure of the credits would make them more coherent and also reduce unintentional noncompliance

• Split into work-support credit (remains part of the tax return/refund) and family-support portion

• Decouple the family-support portion from return filing process) and deliver periodically
  • Recipients will no longer conflate EITC with refund of withholding payments
  • Timing would provide IRS longer window to verify income
  • Cuts out the middleman, the paid preparer/removes immediate incentive to cheat
  • Create very simple application form, no need to ask about income
    • Require affirmative statements to show what changed
  • If U.S. moves to split credits for shared custody, the form could capture that too

• Keep CTC with tax return
Other proposals to consider for reimagination
(inspired by Canada and New Zealand)

• Calculate credits based on household income
  • move away from using marriage as a proxy
  • include income of cohabitating parent to determine amount of benefit

• Allow parents who split custody to split the EITC
  • Shared parenting increasingly common in U.S., but EITC is zero-sum
    • (possible for custodial parent to waive the CTC and thereby split the two credits
  • Canada and New Zealand provide a split credit in shared custody situations
    • Canada: each parent receives 50% of the CBB they would otherwise be entitled to receive

• Adjust credits regionally for cost of living
The Case for Year-Round EITC Delivery

• Periodic payments would better match budgetary needs

• Periodic payments would remove return preparers from equation, reduce incentives for false returns (identity theft)

• Periodic payments would decrease the stakes when there is an overpayment or frozen refund (less money owed/held)

• Design questions:
  • Periodic for all, or opt-in, or opt-out?
  • What frequency?
  • Calculate based on anticipated earnings, or prior year earnings?
Protecting the Anti-Poverty Element

“Would there be any way to see if they would only take half of it considering that I use most of that money for my son’s school stuff, sports, and Christmas?”

- Tax refunds, including refundable credits, are subject to full offset against outstanding tax debts and other federal and state debts under the Treasury Offset Program.

- Sorenson v. United States (1986) – Supreme Court held that the EITC is part of an “overpayment” for purposes of IRC §6402.
  - “ordering of competing social policies is a quintessentially legislative function”

- Congress should revisit this question in light of EITC’s subsequently expanded function as an anti-poverty supplement.
  - Especially if EITC delivered periodically – wage garnishment analogy.
  - Look to examples of SNAP, OASDI, SSI overpayment recoupment.

- Policy consideration as to different types of offsets (past-due child support v. federal student loan debt).