U.S. Tax Court Pro Bono Programs

Presented by
The ABA Section of Taxation
Panelists

- Nancy C. Carver, SB/SE IRS, Washington, D.C.
- Stephen C. Lessard, Orrick, Herrington & Sutcliffe LLP (NYCLA Tax Court Pro Bono Program coordinator), New York, NY
- Frank Agostino, Agostino & Associates, Hackensack, NJ
U.S. Tax Court Pro Bono Programs

Hon. Peter J. Panuthos, U.S. Tax Court, Washington, D.C.
Introduction

- Tax Clinics and Bar Related Pro Bono Programs
  - History of U.S. Tax Court involvement
  - High percentage of Pro-Se petitioners
  - Many petitioners cannot afford to pay a practitioner to represent them
Importance of Pro Bono Attorneys

- Pro Bono Attorneys key to providing otherwise unrepresented taxpayers assistance
- How the Calendar Call works
- Types of Cases
Tax Court Calendar Call Programs

- How to get approved as a tax court pro bono program
  - Academic Clinics
  - Non-Academic Clinics
  - Bar Related Pro Bono Programs

http://www.ustaxcourt.gov/clinics.htm
Tax Court Pro Bono Programs

Nancy C. Carver
Associate Area Counsel (SB/SE)
Office of Chief Counsel
Internal Revenue Service
Perspective from Office of Chief Counsel (SB/SE)

- SB/SE handles more than 90% of docketed Tax Court cases for the IRS.

- The majority of the petitioners in these cases are pro se.

- The cases often involve relatively simple issues that can be resolved just by obtaining information and documents.
Perspective from Office of Chief Counsel (SB/SE)

For Example:

- Unreported Income from W-2 or 1099 sources
- EITC, CTC, dependents
- Sch. A, substantiation of claimed expenses
- Sch. C, substantiation and §183 issues
- Sch. E, substantiation
- Passive Activity Losses
- Penalties under IRC § 6662 and IRC § 6654
SB/SE attorneys like to resolve cases.

Our goal in resolving cases is to get to the correct answer, i.e., determine the proper amount of tax and penalties due under the IRC.

SB/SE’s single largest challenge in resolving cases is getting taxpayers to give us information and documents.
Perspective from Office of Chief Counsel (SB/SE)

- Attorneys in my office enjoy working with the local pro bono tax clinics.

- In our Washington office, we mostly work with American University’s Janet Spragen’s tax clinic and the UDC tax clinic.
Perspective from Office of Chief Counsel (SB/SE)

- The law students we see participating in the clinics have often gone through VITA training and seem well prepared to handle the cases they are assigned.

- The students are able to get taxpayers to give them documents and information needed to resolve the case.

- Most of the cases handled by the clinics involve basic tax issues where the case law is well established and there is no dispute about how the statute and regulations are applied.
Perspective from Office of Chief Counsel (SB/SE)

- As you might expect, petitioners seem more willing to accept the fact that they will owe some taxes when they have their own attorney explaining the tax law to them.

- The IRS is able to fully concede some cases based upon information and documents secured by students at the clinics.

- Either way, it is much better than taking a case to trial when a simple exchange of documents and information should resolve a case.
Perspective from Office of Chief Counsel (SB/SE)

Our office occasionally works with a law firm in a case where the firm has taken on the tax case pro bono.

As with our experience working with clinics, this usually facilitates a smooth exchange of documents and information and enables the parties to reach a settlement.
Perspective from Office of Chief Counsel (SB/SE)

- The one difference we sometimes see with large firms taking on pro bono cases is a tendency to over-litigate.

- Handling small dollar basic tax cases is much different than representing a large corporation with a $10 million tax shelter dispute.

- Most of the cases will be “S” cases subject to the Tax Courts small case procedures.
Perspective from Office of Chief Counsel (SB/SE)

- Informal discovery, exchanged through telephone conversations along with the exchange of documents is usually enough to allow the parties to reach a settlement.

- Formal discovery is rarely used. If you want to know the IRS position on an issue in the case, just pick up the telephone and call the assigned government attorney.
Creating and Running a Tax Court Bar-Related Pro Bono Program

Stephen Lessard
New York County Lawyers Association, Tax Court Pro Bono Program Coordinator
Creating a Bar-Related Program

■ Determine sponsoring organization committee
  – Pro bono, taxation

■ Solicit interest in the program
  – Query membership
  – Query non-members in local tax bar

■ Draft program rules
  – Tax Court requirements
  – Look to other programs
Creating a Bar-Related Program

- Submit request to Board/Officers
- Submit request letter to Tax Court
  - Sample letter on Tax Court website
- Build cadre of initial volunteers
  - Experienced tax controversy practitioners
- Provide a training/mentoring program
Running a Calendar Call

Before the Calendar Call
- Volunteer orientation
  - ABA mock calendar call video
- Determine the calendar call dates/personnel
- Talk to IRS Calendar Administrator
- Email the presiding Judge
- Email volunteers
- Coordinate logistics requirements
  - Meeting space, computer, printer, references, coffee
Running a Calendar Call

At the Calendar Call
– Assemble volunteers
– Meet IRS Calendar Administrator
– Meet the presiding Judge
– Assign volunteers

After the Calendar Call
– Keep track of paperwork
– Promote the good work done
Other Activities

- Annual letter to the Tax Court
- Provide training
  - CLE credit
  - Firm sponsorship
- Liaise with LITCs
- Tax bar networking
Starting a Tax Clinic

Frank Agostino, Agostino & Associates, Hackensack, NJ
The Benefits of Volunteering

- Tremendous satisfaction
  - in knowing that you are making a positive impact on an individual’s life.

- At the calendar call you are at the center of the tax controversy community which includes judges, government attorneys, LITCs, students, and private practitioners.
  - Opportunity to keep in touch with other practitioners and to learn from others.
  - Ability to be mentored and to mentor younger attorneys and students
Volunteers: Everyone Can Help

Have at least one former government attorney at each calendar call.

- Experienced Tax Controversy Attorneys (including former counsel attorneys) can:
  - Meet with the government attorney to prepare stipulation of facts and/or have a settlement conference
  - Debrief *Pro Se* Petitioner

- Young Attorneys can:
  - Prepare witnesses, serve subpoenas, or assist with interviews

- Students can:
  - Write first draft of briefs

- Return Preparers & EAs can:
  - Prepare quick settlement computations
Training:
The IRS is Our Partner

- Focus on small tax cases and CDP
- Provide free CLE/ CPE for volunteers
- Include government attorneys on the CLE speaker panels
- Include LITC attorneys and volunteers in planning CLE topics
Petitioner’s Counsel’s Room Must Be Fully Equipped

Set up the “war room” to enable attorneys to prepare for settlement or trial quickly.

- Students need:
  - Computer with internet access
  - Printer/Copier

- Attorneys need:
  - Coffee & refreshments for pro se petitioners and volunteers
  - Lunch arrangements for afternoon trials

Don’t underestimate the importance of having food available at the Petitioners’ counsel’s room.
Working with LITCs

- Cases that need to be continued will be handed off to LITCs

- LITCs that need help on trials
  - Experienced attorneys can meet with LITCs after the calendar call to discuss docketed cases for future calendars
How to Improve the Clinic Program

- **Respondent's Counsel:**
  - can advise *pro se* petitioners that the Clinic volunteers will be available at the calendar call and to appear early in order to consult with volunteers
  - can send the Clinic coordinator Respondent's trial memos on the *pro se* cases

- **The Court:**
  - can have Court Clerks create a check-in procedure at the calendar and advise *pro se* petitioners of the Clinic’s availability before the calendar
  - can start the Calendar Call with represented taxpayers first and then proceed with *pro se* petitioners at 10:30 A.M.

- **The Clinic:**
  - can organize formal dinners with judges, government attorneys, volunteers, LITCs and private practitioners on the first night of the calendar