

PRO BONO MATTERS

"The Hardest Thing in the World to Understand Is the Income Tax." — Albert Einstein

By Francine J. Lipman*

There are almost 11 million working poor in America today. While this is the highest number since the Bureau of Labor Statistics started keeping track in 1987, it would be much higher if it included those unable to meet basic needs despite having an income just above the poverty threshold. And the child-poverty rate in America is higher than the same rate in Japan, Canada, or any European country except Romania.

America's most effective anti-poverty programs for working poor families are the earned income tax credit (EITC) and the child tax credit. These credits overwhelmingly lift millions of working poor families out of poverty. In 2010, working poor families received \$55 billion in EITCs and \$23 billion in child tax credits.

Notably, all of these life-changing refunds are paid only to those who file a tax return through the income tax system. As Albert Einstein has famously affirmed, the income tax system is enormously complex, especially for those without access to education, resources, or justice. America needs your help, and the Section is your vehicle to meet the exploding need for tax compliance and tax controversy assistance and to aid in the war on poverty. Laura Newland, the Section's new Pro Bono Counsel, has the passion, drive, and dedication to help us continue the Section's excellent good work assisting our underserved neighbors and community members with their tax matters.

In Her Own Words: Laura Newland, Pro Bono Counsel

After obtaining a degree in political science from Kalamazoo College in Michigan, I held a variety of public interest jobs, including working at a domestic violence shelter and a small jail-based voter education and registration nonprofit.

I decided to go to law school because of my interest in legal theory and also because, having worked with lawyers, I saw first-hand how powerful a law degree can be in advocacy work.

I must admit that taxation was the farthest subject from my mind when I started law school, but I found myself being drawn to tax once I realized the importance of the tax system in looking at issues such as income disparities, social programs, and taxpayer incentives.

The Section announced its Public Service Fellowship program around the same time that I was trying to figure out how to meld my new-found tax interest with a public service job. I applied for the fellowship during my last year of law school, which began my relationship with the Section.

The Section brought me to the Midyear Meeting after they awarded me the fellowship. I remember being pretty intimidated being around all the successful tax attorneys, but everyone I met was so great and welcoming. I am still impressed with how dedicated the membership is to

serving low-income taxpayers and volunteering for pro bono work.

The Pro Bono and Tax Clinics Committee would like to expand the Calendar Call program to provide full coverage in every city that the Tax Court sits. We are also working on expanding our Adopt-A-Base Program, and there are lots of opportunities across the country for firms to Adopt-A-Base by training Military VITA volunteers on base.

I am very fortunate to be Pro Bono Counsel for the Section, which currently has a number of great pro bono programs, and the Pro Bono and Tax Clinics Committee is very active in promoting pro bono work. If any member has ideas for pro bono work that the Section is not currently involved with, I would love to hear from him/her. If someone is interested in a specific topic or specific population, please contact me or Keith Fogg, the Chair of the Pro Bono and Tax Clinics Committee, to discuss possible pro bono opportunities.

There is a great need for pro bono services (e.g., immigrant/migrant tax issues, substantive military tax issues, tribal tax issues, access to tax services in rural areas, state and local tax issues, exempt organizations), so it's my goal to help meet that need through innovative program design. The prior Pro Bono Counsels have laid a strong foundation for me to build on, and I look forward to continuing to grow the Section's pro bono programming through the Pro Bono and Tax Clinics Committee. ■

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An Access to Justice Milestone

By T. Keith Fogg*

An important milestone in taxpayer access to justice occurred in October 2012. Low income tax clinics (LITCs) now have agreements with the Tax Court for every city in the country in which the Tax Court sits. This means that every pro se individual filing a Tax Court petition will receive correspondence from a tax clinic offering the opportunity of free legal services to assist in the resolution of his or her Tax Court matter.

As we approach the 50th anniversary of *Gideon v. Wainwright*, the pivotal case in establishing representation for criminal defendants, the existence of Tax Court agreements with clinics in all cities now allows civil tax cases to pass a milestone in access to justice for low income individuals.

Approximately 70% of petitioners to the Tax Court are pro se. Around 1980, the Tax Court began working with the early LITCs, all of which were academic clinics in law schools, to allow students to represent pro se taxpayers before the court. Gradually, that relationship expanded into more formal agreements through which the court notified pro se petitioners of the existence of clinics willing to represent low income taxpayers. The notification initially took place at the calendar call in cities where clinics existed and then moved to notification at the outset of the case. To formalize the agreement and assure a level of quality, the Tax Court eventually began entering into agreements with clinics; these agreements are renewed each year. If a clinic enters into an agreement with the Tax Court, the court will send a letter to pro se petitioners requesting place of trial

in the city covered by the clinic. The notice to pro se taxpayers is a letter written by the clinic (or clinics) covering a specific city, which is placed in the envelope with the Tax Court's letter to the petitioner acknowledging receipt of the Tax Court petition. The letter is called a "stuffer notice."

Thanks to the efforts of Nina Olson and the late Janet Spragens (for whom the Tax Section renamed the Pro Bono Award in honor of her lifetime

until finally, in October 2012, full coverage of all cities was reached.

Although an important milestone has been achieved, more can be done to assist pro se taxpayers—and the ABA Section of Taxation's Pro Bono and Tax Clinics Committee is leading the way. Most of the clinics representing low income taxpayers rely on local attorneys to accept pro bono cases to allow the clinics to provide representation for all of the clients seeking assistance.

Additionally, many low income taxpayers fail to obtain representation prior to the trial of their case despite the existence of stuffer notices. They arrive at the Tax Court calendar call in need of assistance. The Committee has worked with bar associations and LITCs around the country to set up Calendar Call programs to assist taxpayers at this critical

juncture in their case. The Tax Court sits at more than 70 different locations across the United States, and there is a Calendar Call program in more than 60 of those locations.

If you would like to volunteer to assist in representing a low income taxpayer by working with a clinic on its pro bono panel of attorneys or by assisting at calendar call, please contact Tax Section Pro Bono Counsel Laura Newland at 202-442-3425 or by e-mail at laura.newland@americanbar.org. The Committee hopes that there can be 100% coverage of the Calendar Call program to match the success of the LTC agreements with the Tax Court. ■

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commitment to low income taxpayers), Congress created grant funds to assist in the development of LITCs. This funding caused clinics to grow from 16 in 1998, when the grant funds were created, to approximately 160 today. (For a comprehensive history of LITCs, see *History of Low-Income Taxpayer Clinics* at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2142144.) Thanks to the efforts of Chief Special Trial Judge Peter Panuthos over the past two decades and Chief Judge John Colvin during his tenure from 2008–2012, the Tax Court has engaged in significant efforts to assist the pro se taxpayers coming before it. Over the past several years, the number of clinics reaching an agreement with the Tax Court has grown

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