

The United States Tax Court and Calendar Call Programs

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I. Introduction

Thank you for providing me an opportunity to help commemorate the 75th anniversary of the Tax Section. I have been asked to discuss the role of the “calendar call programs” that provide assistance to taxpayers who would otherwise represent themselves.¹ Before 2009, the Tax Court routinely referred to the opportunity to obtain legal counsel in Tax Court cases as the “pro bono program” and to the attorneys who provided such counsel as “pro bono lawyers.” Recognizing that many self-represented Tax Court petitioners have no legal training and might not understand what a pro bono program is or how to find one, the Tax Court began in 2007 to use the terms “calendar call programs” and “calendar call lawyer” in the hope that such terms more clearly convey the nature of these legal assistance programs. Bar-sponsored calendar call programs are organized by lawyers who volunteer their time. To become a “participating” calendar call program, an organization must comply with the Tax Court’s requirements, discussed later in this Article.

II. What Is a Calendar Call?

The United States Tax Court sits in 74 cities throughout the United States. When a taxpayer files a petition in response to a notice from the Service, the taxpayer requests one of these many cities as the place of trial.² The Tax Court regularly creates a “calendar” for a city by designating the city as a trial site and collecting the cases to be heard in that city. For example, the Tax Court might schedule 100 cases on a calendar for a trial session in New York City. A notice of trial will be issued to each of the 100 petitioners, as well as to the Commissioner of Internal Revenue (respondent), approximately five months in advance of the intended trial session.

Before the trial session commences, many cases are resolved by settlement or other disposition. The first order of business on Monday morning at the

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¹Others have submitted articles about the importance of having an advocate to help navigate controversies with the Service (Nina Olson, National Taxpayer Advocate) and the role of academic tax clinics (Professor Les Book).

²Section 7446 provides that times and places of hearings and trials shall be prescribed by the Chief Judge with a view to securing a reasonable opportunity to taxpayers to appear before the Tax Court with as little inconvenience and expense to taxpayers as is practicable.

commencement of the trial session is the calendar call. The trial clerk of the Tax Court calls through the list of cases on the trial calendar. When each case is called, the taxpayer (now referred to as petitioner by virtue of having filed a petition) or petitioner's representative appears by stating his or her name. An attorney for IRS Chief Counsel appears on behalf of respondent. Using information provided to the Tax Court by the parties,³ the judge at the calendar call will schedule cases for hearing and trial at specific dates and times during the session. Thus, the term "calendar call" describes the Tax Court's process of calling the list of cases on a session to schedule hearings and trials during that particular session.

III. The Demographics of Petitioners

The number of self-represented⁴ petitioners filing Tax Court petitions has continued to increase. Current statistics reflect that more than 70% of petitioners file petitions without the assistance of counsel. At a small tax case⁵ calendar, 95% of petitioners might be self-represented, whereas in a regular case calendar, approximately 50% of petitioners are self-represented. While the Tax Court has taken significant steps in providing information to self-represented petitioners via printed information and the Tax Court's website, the fact remains that because of the complexity of our tax system and the difficulty of the litigation process taxpayers are often overwhelmed with the prospect of prosecuting their own cases.⁶

IV. History of Calendar Call Programs

Over 40 years ago, tax practitioners began to develop ways of assisting unrepresented petitioners in Tax Court. In his excellent and comprehensive article published in *The Tax Lawyer, Taxation with Representation: The Creation and Development of Low-Income Taxpayer Clinics*, Keith Fogg fully discusses the history of the development of tax clinics commencing in 1974.⁷

³Before the calendar call the parties submit documents to the court such as pretrial memoranda and final status reports.

⁴For purposes of this Article the use of the term "self-represented petitioner" refers to any petitioner not represented by someone admitted to practice before the Tax Court. "Unrepresented petitioner" and "petitioner appearing pro se" or "without counsel" are some of the other terms commonly used.

⁵Section 7463 authorizes the so-called small case or "S case" proceedings for cases in which the amount in dispute does not exceed \$50,000. A taxpayer eligible for small case treatment must request such treatment either on the Tax Court Petition or prior to trial. The benefits of small case treatment include somewhat relaxed rules of evidence and some extra trial venues. Decisions in small cases cannot be appealed either by the Service or the taxpayer.

⁶See Keith Fogg, *Taxation with Representation: The Creation and Development of Low-Income Taxpayer Clinics*, 67 *TAX LAW.* 3, 41 n.187 (2013) (referencing numerous writings by Nina Olson, National Taxpayer Advocate, Professor Nancy Abramowitz, and the late Professor Janet Spragens).

⁷*Id.* at 4-59; see also Michael Hirschfeld, *The Tax "Life-Preserver" for the Poor: Low-Income Taxpayer Clinics*, 33 *NEWSQUARTERLY*, no. 3, 2014, at 3.

The very early programs involved academic clinics that assisted petitioners before trial. The clinic directors also often came to calendar call with groups of students. The presiding judge might announce the availability of the clinicians to assist unrepresented petitioners. In 1979, lawyers in Los Angeles, working with the Los Angeles and Beverly Hills Bar Associations, began organizing efforts to provide pro bono services to petitioners at calendar call. Lawyers in San Francisco organized a program in conjunction with the State Bar of California Taxation Section, and the Community Tax Law Project began to organize tax lawyers in Richmond, Virginia.⁸ The lawyers assisted petitioners in communicating with the Service as well as with the Tax Court. Other independent bar-sponsored calendar call programs followed, including the very successful program serving all cities in Texas.⁹

V. What Is a Participating Calendar Call Program?

The Tax Court's website¹⁰ provides the following concise and helpful description of the tax clinics and the calendar call programs available to provide taxpayers with legal representation before the Tax Court:

Many petitioners cannot afford to pay a practitioner to represent them. Rule 6.1(a) of the American Bar Association Model Rules of Professional Conduct, to which persons admitted to practice in the Court are subject, states that every lawyer should aspire to render at least 50 hours of pro bono legal services per year. The rule also states that a substantial majority of the 50 hours of service should be devoted to persons who are unable to pay for such services or to organizations assisting such persons.

Some Bar associations, integrated Bars, and other professional organizations administer Bar sponsored calendar call programs through which volunteer tax practitioners provide free legal assistance to self-represented petitioners. The United States Tax Court (the Court) recognizes the impor-

⁸R. Anthony Bauman, "Your Honor, I Think I Better Talk To One of the Free Lawyers": *California County Bar Associations' Pro Se Programs Provide Valuable Community Service to the Public, the Tax Court and the Community*, 14 CAL. TAX LAW., no. 2, 2005 at 22-23. The Los Angeles pro bono program has been managed by Steve Mather and Paul Weisman. *Id.* In 2004, Karen Hawkins received the ABA Section of Taxation's Pro Bono Award for her pro bono efforts in San Francisco. See Fogg, *supra* note 6, at 49 n.227. The Community Tax Law Project later became a participating tax clinic.

⁹In 2009, Elizabeth Copeland was honored by the ABA Section of Taxation as the Janet Spragens Pro Bono Award recipient for her efforts at organizing lawyers to appear at calendar calls in five Texas cities. It is difficult to include every lawyer who has provided pro bono assistance; however, I do not want to omit other private practitioners who are ABA Section of Taxation Pro Bono Award recipients. They are: Elizabeth Atkinson and Victoria Bjorklund (2002), Peter Lowy (2003), Joseph Barry Schimmel (2008), Caroline Ciraolo and Juan Vasquez, Jr. (2010), Frank Agostino (2012), and Carlton Smith (2013). Other Janet Spragens Pro Bono Award recipients, some of whom are clinicians, have not been included. The complete list of award recipients is included at <http://www.americanbar.org/groups/taxation/awards/probono.html>.

¹⁰<https://www.ustaxcourt.gov>.

tant assistance that calendar call programs provide to self-represented petitioners.

These programs assist petitioners in prosecuting a case in this Court. For calendar call programs which agree to abide by the requirements stated herein, the Court may announce at the start of a trial calendar that volunteer tax practitioners associated with the calendar call program are available to consult with and assist self-represented petitioners, and the Court may introduce the volunteers who are present in the courtroom

. . . .

To participate[,] a Bar sponsored calendar call program shall:

- a. Constitute a program organized by a Bar association, integrated Bar, or similar professional organization in which volunteer tax practitioners provide pro bono consultation services to self-represented petitioners at Tax Court calendar calls. Each such program shall have a program director/coordinator who shall be responsible for overseeing program operations and serve as a point of contact for communications to and from the Court.
- b. Establish guidelines for assisting self-represented petitioners, including therein the objectives of public service and judicial and administrative economy.
- c. Submit to the Chief Judge, on or before February 15 of each year, a letter [containing information about the program].¹¹

VI. How a Calendar Call Program Works

Assuming that the participating calendar call program has satisfied the participation requirements, the director or a designated pro bono attorney of such a participating program will normally contact the Tax Court by conference call or send a letter to the presiding judge with a copy to the IRS Chief Counsel attorney advising that the pro bono attorney(s) will appear at the calendar call and be available to consult with self-represented petitioners. The Tax Court will be asked to make an announcement regarding the availability of the pro bono attorneys at the commencement of the calendar call, usually as follows:

The Court has a special announcement for taxpayers who are not represented by an attorney. Representatives from [name of organization] are in the Courtroom this morning. Please stand so that we can know who you are. [Lawyers stand.]

These lawyers [and law students] are here to consult with you if you choose to seek their assistance and if you qualify for their services. No pay-

¹¹ *Clinical, Student Practice & Calendar Call Program: Bar Sponsored Calendar Call Programs*, UNITED STATES TAX COURT, Jan. 28, 2015, https://www.ustaxcourt.gov/clinics_calendar_call.htm.

ment is required to talk with them. They do not work for the Court or the IRS.

When your case is called for trial or hearing this morning, if you decide that you would like to talk with one of the lawyers, please indicate that, and the Court will give you this opportunity.

It is not at all unusual to have some self-represented petitioners ask the judge for an opportunity to speak with one of the pro bono lawyers. The judge will often recall the case later in the day after petitioner has spoken with pro bono counsel. There will often be some conversation between a Service representative and the pro bono attorney in the presence of petitioner. These conversations often lead to settlement or a narrowing of the issues for trial.

VII. Where We Are Today

Calendar call programs are alive and well today. In 2007, independent calendar call programs served three cities. At the end of 2014, in addition to the 21 cities that are served by independent calendar call programs, many of the 110 participating tax clinics also appear at calendar call and volunteer legal services to self-represented petitioners. In 2007 and 2008 the Tax Court made substantial changes to its website, including the clinic and calendar call program requirements. The Tax Court also appointed Betty Scott-Boom as its administrator of clinic and calendar call programs. Betty Scott-Boom was part of the team that created and launched the Tax Court's revamped program. She is the go-to person at the Tax Court—she communicates with all the programs and keeps the system functioning. While most federal and state courts are each in a particular city, managing clinic and calendar call programs for the Tax Court is a major undertaking because the Tax Court sits in 74 cities.

Because of the Tax Court's commitment to access to justice for all petitioners, the Tax Court has given these programs a high level of attention to ensure that every self-represented petitioner is provided an opportunity to consult with counsel. The Tax Court recently acknowledged the important work of this program by honoring Betty Scott-Boom with the Howard A. Dawson Award.¹²

Representatives of the Court Procedure and Practice and the Pro Bono and Tax Clinics Committees of the ABA Section of Taxation, the Taxpayer Advocate Service, and the IRS Office of Chief Counsel have been important links in making the calendar call programs operate effectively. A few years ago, the ABA Section of Taxation hired a pro bono counsel to assist in the

¹²The Howard A. Dawson award was established in 2009. It is bestowed from time to time upon an employee who has made an outstanding contribution to the work of the United States Tax Court. It is quite fitting that the award retains the name of Judge Dawson, who was appointed to the Tax Court by President John F. Kennedy in 1962. Since his appointment, Judge Dawson has consistently worked at providing access to justice for all taxpayers.

coordination of all pro bono work of the section, and the individuals who have held this position have helped to expand the reach of the calendar call programs. The Tax Section's commitment to the calendar call programs and pro bono service by its members has been an important part of the success of these programs. Of course, ultimately the success is due to the willingness of representatives admitted to practice before the Tax Court to volunteer their time to offer assistance to petitioners on the Monday of a calendar call.¹³

VIII. Conclusion

It is difficult to measure the success of calendar call programs statistically. There is no doubt that many cases settle before trial. Nevertheless, at virtually every trial session, cases where the parties seem far apart on settlement are substantially advanced by the intervention of pro bono counsel. It is often the first time that a self-represented petitioner has had an independent professional adviser review his or her case. Without this professional review and assessment, a self-represented petitioner may not have a realistic picture of potential outcomes. This service provided by pro bono representatives and clinical programs is invaluable and improves outcomes for petitioners and provides a measure of access to justice not otherwise available to taxpayers.

If you are admitted to practice before the United States Tax Court and are interested in participating in a calendar call program, you may contact either the United States Tax Court (<https://www.ustaxcourt.gov/TaxClinics/ContactUs.aspx>) or Derek Wagner, Pro Bono Counsel, Tax Section, ABA (Derek.Wagner@americanbar.org), for further information.

¹³In some cities, pro bono attorneys have been willing to enter appearances and try cases, as well as work cases through the Service's administrative system for trial or settlement. In some instances, the pro bono attorneys have traveled significant distances and incurred significant expenses to assist petitioners. See T. Keith Fogg, *A Calendar Call Staffing Success Story*, 33 NEWSQUARTERLY, no. 2, 2014, at 13; Andrew R. Roberson, *The Calendar Call*, 33 NEWSQUARTERLY, no. 2, 2014, at 13.