

# Villanova University Charles Widger School of Law

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## Academic Clinics: Benefitting Students, Taxpayers, and the Tax System

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# Academic Clinics: Benefitting Students, Taxpayers, and the Tax System

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It is an honor to write a brief article discussing academic tax clinics in the context of this spring issue of *The Tax Lawyer*, which looks at the Tax Section's role in public service. The Tax Section has been a staunch supporter of tax clinics and has nurtured clinicians and clinics since the beginning of tax clinics in the late 1960s and 1970s. In this Article, I will discuss my personal connection to the Tax Section and tax clinics, briefly review the current state of academic tax clinics, and offer some suggestions for the future, including how the Tax Section can continue its leadership role with tax clinics generally and academic tax clinics specifically.

## I. A Little Personal Background

I will start with a brief personal note: in 1997, as a young tax controversy lawyer attending my first ABA Tax Section meeting, I attended a panel presentation that was organized by the late Professor Janet Spragens, who at the time was the Chair of the Low Income Taxpayer Committee. Joining her on the panel was Nina Olson, who at the time was heading the Community Tax Law Project. They were discussing tax clinics and encouraging tax lawyers to take on tax cases pro bono.

I had no idea what tax clinics were. Janet described how she supervised second- and third-year law students who worked for credit and represented mostly low-income taxpayers in exams, appeals, and in Tax Court. Nina described how she ran a freestanding clinic that relied on her energy and passion and the efforts of volunteer lawyers who also represented taxpayers in all facets of controversy matters.

The idea was astonishing to me. I was practicing at a large law firm in New York City and had satisfied my pro bono itch by litigating special education cases. I did not connect tax with broader issues of poverty law, nor did I think my work as a controversy attorney had a direct connection to low-income taxpayers in need of representation.

The panel and the ABA Tax Section changed my life. Within three months of my attending that presentation, I left my law firm and became director of a tax clinic. By 2001, I became Chair of the Tax Section's Low Income

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Taxpayer Committee. It spurred a ten-year run for me directing tax clinics, first at Quinnipiac and then at Villanova Law School.

## **II. The Broader Context—The Growth of Tax Clinics Following Welfare Reform and RRA 98**

More important than my personal story was how the mid-1990s overhaul of our nation's welfare system contributed to federal legislation in the IRS Restructuring and Reform Act of 1998 (RRA 98) that promoted tax clinics.<sup>1</sup> With 1996 welfare reform legislation imposing limitations of how long a person could receive traditional welfare benefits and a new federal emphasis on rewarding low-wage work, Congress began a vast expansion of the Earned Income Tax Credit (EITC). This expansion pushed the Code into the role of one of the major vehicles for delivery of benefits to the working poor, a role it still plays. Unlike traditional welfare agencies, which rely on upfront eligibility checks, the Code makes the eligibility checking part of the return filing process, backed up by correspondence-based examination procedures.

The shift to a greater reliance on the Code for benefits and a resulting congressional concern with high error rates in the EITC has resulted in a difficult marriage between poor taxpayers and the Service filing and compliance processes. Dealing with a tax audit is hard enough for anyone, but throw in literacy and language barriers, fear and distrust of government, and lack of access to technology—characteristics of many lower-income taxpayers—and you have a recipe for a system that does not work. Add to the mix tax procedures designed for affluent taxpayers over decades prior to the injection of low-income taxpayers into the process, and you have even bigger problems.

These circumstances and persuasive advocacy by leaders such as Janet Spragens and Nina Olson led to Congress in RRA 98 to provide tax clinics with partial subsidies through matching grants of up to \$100,000. These clinics have the principal job of representing low-income taxpayers in disputes with the Service about the amount or existence of a liability or refund, and they also tackle collection cases. For many taxpayers, adequate representation is the difference between correct and incorrect tax adjustments; Taxpayer Advocate Service (TAS) research from a few years ago persuasively shows just how important a representative can be to ensure that the correct result is reached. When benefits such as the EITC can mean the difference between living in and out of poverty, it is easy to understand that while many of RRA 98's provisions are still steeped in controversy, there is general bipartisan support for the work that clinics do.

After 1998, there was a major expansion of tax clinics around the country. Professor Keith Fogg's excellent article *Taxation With Representation: The Creation and Development of Low-Income Taxpayer Clinics* (published in

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<sup>1</sup>Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685.

the Fall 2013 issue of *The Tax Lawyer*) details the history of tax clinics.<sup>2</sup> By contrast to the mile-high perspective of this brief reflection, Professor Fogg carefully details the origins and development of clinics through the current time. He notes the spectacular post-1998 growth in clinics at Legal Services Corporation (LSC)-funded offices: In 1998, prior to the funding provided by RRA 98, there were no clinics at LSC offices; by 2012 over 60% of LSC-funded programs had a tax clinic.

There has been less growth in academic clinics, though there still has been an increase. According to Professor Fogg, in 1998, seven percent of law schools had a tax clinic; by 2012, 17% (about 35) of law school clinical programs had a tax component.

I commend the whole article to readers; Professor Fogg explains how, throughout the history of clinics, the Tax Section has supported clinics and public interest work generally. The following is an incomplete list of the support provided by the Tax Section, which has:

- Helped the idea of clinics gain traction in its formative stages by recommending federal funding for clinics as early as 1978;
- Provided funding for training conferences and publishes the widely-used book *Effectively Representing Your Client Before the IRS* (which is given to clinics free of charge);
- Sponsored and funded fellows who work at public interest organizations; and
- Awarded scholarships to nonacademic clinicians to allow them to attend and participate in Tax Section meetings.

### III. Additional Thoughts on Academic Clinics: Benefits and Challenges

I have not been asked, however, to discuss clinics overall. Rather, in this brief Article my specific task is to discuss academic clinics, a subset of the larger clinic category. Academic clinics are clinics that are housed primarily in law schools (though some are at business schools) where students work for credit under the supervision of a full-time or adjunct faculty member. Most academic clinics are part of the federally funded low-income taxpayer clinic program, a program based on section 7526, added by RRA 98 and mentioned above. As Professor Fogg describes, low-income taxpayer clinics began in law schools, first at Harvard in the late 1960s and then at Hofstra by pioneering tax professor Stu Filler who emerges as somewhat of an unsung and prophetic visionary in Professor Fogg's account.

There are some immediate and well-known benefits of academic clinics. In addition to helping clients, they serve a key educational role for students. As a vehicle for teaching important lawyering skills such as interviewing,

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<sup>2</sup>Keith Fogg, *Taxation with Representation: The Creation and Development of Low-Income Taxpayer Clinics*, 67 *TAX LAW.* 3 (2013).

counseling, and advocacy, the academic clinics help train students to perform as competent and ethical lawyers. Probably of even greater importance, though, is that for many students experience in a tax clinic is the first exposure to the power that legal representation can bring for those with fewer resources. It opens their eyes to the power of a law degree to do good, a goal that many entering law students hope to attain but that sometimes gets lost in the mess of exams, debt, and job pressures. The gratitude of a client who gets a refund she was entitled to receive but was unable to prove without the efforts of a student, for example, goes a long way in inspiring students to continue doing work that is at the core of the ABA and the Tax Section's values. In fact, some of today's young Section leaders had their first taste of public interest work as a student attorney in a tax clinic, and many of the Service's Public Interest Fellows (including a former student of mine) got their start in student tax clinics.

Apart from the benefits to students and taxpayers themselves, academic clinicians also have served key leadership roles in the low-income taxpayer community. Many academics working in clinics bring with them years of tax practice experience. Those academic clinicians formally and informally mentor legal service attorneys who may have extensive experience with low-income legal practice generally. Academics in clinics have been active on list-serves, organized and participated in practical conferences, and drafted and edited chapters in the valuable ABA-published resource *Effectively Representing Your Client Before the IRS*.<sup>3</sup> Many dedicated clinicians at legal service organizations have gained confidence in their ability to adequately represent taxpayers through the various ways that academics share their knowledge and experience. This training aspect is important; as Professor Fogg notes, much of the growth in clinics following 1998 is housed at legal service organizations that traditionally had no meaningful tax practice. (I might add the benefits flow both ways; the perspective that legal service attorneys provide to traditional tax lawyers allows tax lawyers to better appreciate the impact of, for example, agency rules or statutes that are directed at lower-income taxpayers.)

Academic clinicians often have the knowledge and the resources to assist nonacademic clinicians who tend to have little supervisory support on site and limited research and other support. Part of the challenge for the greater tax community, one that the Section has embraced through panels and workshops, for example, is finding ways to turn poverty lawyers into tax lawyers and finding ways to make poverty lawyers think of tax problems their clients encounter.

There are other aspects of academic clinics worth mentioning. Academic clinicians have taken leadership positions in the ABA Tax Section, including the previously mentioned Professor Janet Spragens and now, Professor Keith Fogg, who was previously chair of the Low Income Taxpayer Committee and

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<sup>3</sup>KEITH FOGG, ABA SECTION OF TAXATION, *EFFECTIVELY REPRESENTING YOUR CLIENT BEFORE THE IRS* (2011).

is now a member of the Section's governing Council. Academic clinicians have also produced scholarship that informs policymakers and other academics about issues unique to low-income taxpayers. These articles often bring a perspective that other academics or practicing tax attorneys do not share and can highlight the importance of tax administration and substantive tax provisions on the welfare of lower-income clients. In fact, Professor Fogg and I cofounded (with Steve Olsen, a former tax clinic student of mine) the legal blog *Procedurally Taxing*<sup>4</sup> in part to discuss procedural issues that are relevant for lower-income taxpayers, as we felt that there was a lack of informed discussion on issues most germane to practitioners working with that community. While Professor Fogg rightfully notes that perhaps academic clinicians can be doing more in terms of scholarship, clinicians have made an important contribution on issues such as enforced collection and collection due process, innocent spouse, EITC, and other matters. In addition, academic clinicians have often taken leadership roles on Section comment projects, thus leveraging the Section's access and prestige to assist the Service, Treasury, and Congress on important tax issues.

#### IV. Concluding Thoughts

This is a particularly challenging time in legal education. Rather than looking to expand services, with student enrollments continuing to decline, law schools are hard-pressed to keep costs down. Clinics generally and tax clinics in particular are expensive. There is a continuing demand on academics to share their experience with other clinicians who may not have the practical or substantive tax background of academic clinicians. Supervising students is labor-intensive, and it is much cheaper for law schools to fill an 80-person classroom than to have one faculty member supervising at most ten tax clinic students. That academic clinics have grown at a rate far less than tax clinics at legal service organizations is not surprising; one fear is that even with partial federal funding, law schools will look to cut academic clinics such as tax clinics because of their very high cost.

With the expansion of the tax system's role in delivering parts of the Affordable Care Act, it seems that the work of tax clinics, and the Section as one of clinics' main supporters, will only grow in importance in the lives of low-income Americans.

Across the country, courts and agencies confront the challenges of the many who lack adequate representation. There is a national crisis when it comes to access to justice in most areas of civil litigation. The tax bar and the Tax Section can justifiably be proud of the role clinics play in ensuring that low-income taxpayers have greater access to legal representation in tax controversies than in many other essential civil matters.

There is not much that organizations like the ABA Tax Section can do to help with shrinking law school budgets and the need to cut costs. But the bar

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<sup>4</sup><http://www.procedurallytaxing.com>.

can remind the academy and Congress how valuable clinics can be and the immense impact that clinics can play in the lives of students and taxpayers and in the tax system generally.