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An Access to Justice Milestone

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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 LITC 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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