STATEMENT OF

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before the

IRS OVERSIGHT BOARD

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Panel 2: Enforcement Challenges

Madam Chairwoman and Members of the Board:

My name is Janet Spragens. I am a tax professor at the American University, Washington College of Law, and the Director of our pro bono Federal Tax Clinic.

THE AMERICAN UNIVERSITY FEDERAL TAX CLINIC

Background

The Federal Tax Clinic is an academic course offered to third year law students at our law school. The students each receive 6 hours of credit toward their J.D. degree for working as student-attorneys on clinic matters. The students do not do tax return preparation for the clients. Their work is, rather, post-filing representation, involving assisting their clients in administrative controversies and litigation.

The American University Federal Tax Clinic has been in existence since 1990 and was one of the first clinics in the country to offer tax pro bono legal services to clients. As you are aware, in 1998 (in the IRS Restructuring and Reform Act of 1998) Congress created a matching grant program to support the activities of low income taxpayer clinics (LITCs) such as ours as well as to encourage the creation of new ones around the country. This year the grant program gave funds to over 140 LITCs. Since the grant program began, the American University has applied for and received 5 matching grants under it, for a total of $455,000.

From the beginning, the American University Federal Tax Clinic has been a leader in

the tax clinic movement. In addition to pioneering the use and availability of tax clinics, we have testified in favor of their funding on numerous occasions, and also have consulted with staff and members of Congress on tax clinic issues in particular and legislative issues relating to low income taxpayers in general. In addition, each May, the American University, in conjunction with the American Bar Association Section of Taxation, and with generous assistance from the law firm of Skadden, Arps, Slate, Meagher, & Flom, has organized an annual workshop for tax clinicians around the country. The fifth such Workshop will be held this May.

Our Client Profile

Through its student-attorneys, the American University Federal Tax Clinic has, over the years, represented hundreds of low income taxpayer clients and has given advice and informal assistance to scores more. These clients are, among others, maintenance workers, child care providers, waiters and waitresses, nurses, bus and cab drivers, kitchen workers, tour guides, postal employees, and small entrepreneurs who own their own businesses — all of whom are being audited by the IRS. Their issues range from the earned income tax credit, filing status, dependency exemptions and child credits, to self employment tax, casualty losses, charitable contributions, cancellation of indebtedness income (often from predatory loans), substantiation, gambling income and loss, alimony, automobile recordkeeping, and disability payments. Large numbers of these taxpayers are fairly recent immigrants to this country with limited education, literacy skills, and command of the English language. Some come to us with no English proficiency whatever and need translators to communicate with us.

The overwhelming majority of these taxpayers are honest, hardworking and conscientious individuals, who have tried to the best of their abilities to comply with the tax laws of this country. Strikingly, almost all of our clients, no matter what their income level, have had their returns prepared by a paid preparer. Most find the experience of being audited extremely stressful, confusing and frightening, and they often have great difficulty understanding and navigating the administrative controversy resolution system.

We are proud of our record of service to these taxpayers and believe that we are making a significant and positive contribution to the income tax enforcement system as a whole. It is hard to describe how scared and alone taxpayers feel when they walk through the clinic doors, particularly those with limited competency in the English language. Through the efforts of our student-attorneys, we are helping to ensure that our clients leave the audit experience with the feeling that they have been treated fairly by the IRS; and that all of their relevant facts and information have been put on the table in a timely and competent manner. We also believe that our presence in the system helps to resolve cases in an efficient and equitable manner.

IRS MODERNIZATION AND LOW INCOME TAXPAYER CONTROVERSY RESOLUTION

Having been in business both before and after IRS Modernization, our clinic has a special perspective and vantage point from which to address some taxpayer issues that face low income taxpayers under this massive reorganization. I would like to direct my comments today to a number of those issues and to make a few suggestions toward easing the burden on low income taxpayers who find themselves part of the tax controversy process.

Remote Audits

Following the 1998 reorganization of the IRS, known as IRS Modernization, we have found it far more difficult to resolve administrative audits in a reasonable and timely fashion. A principal reason for this is the remote location of examination and appeals officers under Modernization, and the resulting dependency on telephone, fax, and electronic communication.

One feature of Modernization is that it has, to a large extent, eliminated local walk-in offices where low income taxpayers could sit down with an examiner or appeals officer, present their documentation, and answer the questions that are involved in their case. In the new electronic age of the IRS under Modernization, taxpayer classification has replaced function and geography as an administrative organizing principle. As it relates to the tax controversy system, we now see our client base of taxpayers being asked to mail or fax requested information to remote offices, to seek telephone conferences if they wish to discuss their cases, and to deal with an elaborate maze of gateway phone trees, recorded messages, and faceless names and phone numbers on IRS notices.

As an initial matter, low income taxpayers to a very large extent are not part of the new electronic age which is the centerpiece of Modernization. They do not have computers, fax machines, Palm Pilots, Blackberrys, and email addresses. They cannot afford Fed Ex packages, certified mail charges, and long distance phone and fax bills. Many do not even have access to regular and stable telephone service since their phone lines are often turned off for lack of payment. So communicating long distance with them is not something that is done easily.

In addition, many of our clients are ESL (English as a second language) taxpayers. Having to communicate in a foreign language about complicated tax issues is difficult in any language. But for these individuals, having to communicate by phone rather than in person adds immeasurably to the difficulty they have in understanding what the IRS requires of them and what they need to do to satisfy the documentary and other requests placed upon

them.

Beyond these barriers, however, taxpayers (both English speaking and ESL) regularly describe to us their experiences of (1) calling long distance numbers and listening to long descriptions of options on an automated phone tree; (2) leaving multiple voicemail messages without any return calls; (3) sending in documents (birth certificates, school records, leases, etc) and never receiving any confirmation that they have been received or considered; and (4) responding to requests for information (e.g., birth certificates, school records, etc.) which they believe resolves their audit, only to be notified by subsequent correspondence that (without explanation) they have a deficiency in tax for the year. These problems are particularly acute in the IRS "call centers."

In our attempts to represent taxpayers in the process, we run into many of the same problems.

A few recent examples from our Clinic:

Example 1: The taxpayer/client was a legal immigrant from an African country. He was married and had several children all of whom came to the US with him. On his 2000 tax return, which he filed jointly with his wife, the taxpayer claimed the earned income tax credit and dependency exemptions for his children. In response to a letter inquiry generated in the Philadelphia IRS office, the taxpayer carefully collected, photocopied and sent to the IRS the following: copies of his and his family's social security cards, green cards, passports, his marriage certificate, a letter from his employer attesting to his employment and wages in 2000, letters from the children's school, phone records, his lease agreement, and canceled rent checks.

After several weeks of not having heard anything, the taxpayer tried repeatedly to phone the person whose name appeared on the examination letter. None of the taxpayer's calls were returned although the taxpayer stated that he attempted to call on "at least 10 occasions," and left several messages. Subsequently, the taxpayer received a notice of deficiency disallowing the credit as well as the dependency exemptions claimed for his children. The case is now docketed in the US Tax Court.

It may well be that the Service has a reason why the taxpayer's 2000 return was deemed incorrect although we cannot figure it out from the letters he has received, and the taxpayer does not know it. The student-attorney assigned to the case has already made a few unsuccessful tries to reach the Philadelphia office to discuss the case, but has mostly met the same hurdles the taxpayer described to us. Since the case has now been filed in the Tax Court, we are simply waiting for the administrative file to be transfered from Philadelphia to Washington Area Counsel's Office, so that we can deal with a real person in a face to face setting.

Example 2: The taxpayer is a 47 year old single unemployed computer electronics expert who has been laid off of several jobs since the end of the tech bubble. She has gone through most of her savings and is currently living on unemployment compensation. During the tax year in issue, she withdrew funds from her IRA to pay for living expenses, thereby subjecting herself to an income tax event as well as a 10% early withdrawal penalty. The taxpayer paid the tax due on the withdrawn amount, and after receiving a bill from the IRS for the 10% penalty, paid that as well. The taxpayer has cancelled checks attesting to the above facts, but the IRS has continued to send her notices that she still owes the tax and penalty. The taxpayer has tried continually to contact the Service and resolve this matter — all unsuccessfully. Her phone calls and letters have not been returned/answered, and the documentation she has submitted has not been acknowledged. She is now in the US Tax Court, although there is no apparent factual or legal issue in her case that would require judicial review. We are representing her in the Tax Court.

Example 3: The taxpayer brought into the Clinic collections notices he had received for tax years 1996 and 1997 based on allegedly erroneous claims he had made involving the earned income tax credit, dependency exemptions for his children and head-of-household filing status. The taxpayer is separated from his wife. During his audit, he had been asked to provide a court document stating that he had legal custody of the children. The taxpayer did not know how to get such a document (as there never was a custody proceeding in court) and never responded to the IRS request. He subsequently received a 90 day letter and let the time pass without filing a petition in the Tax Court. The taxpayer's 1998 and 1999 refunds were witheheld and applied to the 1996 and 1997 deficiencies.

The student-attorney assigned to the case was successful in getting the 1996 deficiency abated by the Baltimore Exam Reconsideration Office after providing extensive documentation showing that the taxpayer was entitled to the credit and other items. The subsequent years (1997-1999), however, were being handled by the Philadelphia Exam Reconsideration office. In May, 2001, just before graduating, the student-attorney submitted the taxpayer's documentation and the results of the Baltimore office review to Philadelphia. We were informed that the Philadelphia review would take 6-8 weeks.

Over the summer, the client brought into the clinic a new examination notice, for the 2000 tax year, with a call back number in Philadelphia. The items challenged were the same: the earned income tax credit; dependency exemptions; and filing status.

At the beginning of the fall, 2001 semester, a new student-attorney was assigned to the case who immediately began to place calls to the Philadelphia office. After leaving numerous messages, the student attorney reached the person whose name appeared on the 2000 notice, who told the student that she was only handling the 2000 year. She directed the

student to call the "call center" for the earlier years.

Various calls to the "call center", when answered, prompted (1) requests for the student attorney to fax his power of attorney, which was done despite the fact it had already been faxed previously; (2) a statement that 1997-99 had been reassigned a new person, and a promise to leave a phone message for that person; (the new person never returned the call); (3) another request for the power of attorney which was faxed another time (4) no information about the status and whereabouts of the documentation that had been sent to Philadelphia.

The student-attorney, after many hours of effort, was ultimately able to resolve the case the the client's favor. In a memo to me describing the events, the student wrote:

> "Overall I found the call center employees nice, but generally unable to give any information. Over the 2 months that I have been handling [the client's] case, I have faxed my POA at least 4 separate times. It was not entered until November 13, I believe by [Ms. X] in the Collections Department. I have found hold times for the call center unreasonaly high, and have spent more than 30 minutes on hold in the past. I have also been disconnected while holding on numerous occasions. I have been disconnected while entereing the prompts on the automated system."

It is clear to us that left to his own devices, the client would not have been able to resolve this case, and would now be facing significant collections activity on the part of the IRS.

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The use of remote audits also prevents taxpayers from using "demeanor" evidence to persuade the examiner about the issues involved. Low income taxpayers are not good record keepers and often lack the documentation necessary to justify various deductions they have claimed. Moreover, family status issues, such as residence or relationship, are oftentimes not easily proved through taxpayer documents. A common practice of the AU Tax Clinic in these circumstances is to bring the client to a settlement conference and let the IRS ask him/her whatever questions they want concerning the tax issues involved. This gives the taxpayer a forum to speak their mind and explain their circumstances (which they always seem to want to do); and simultaneously gives the IRS an opportunity to obtain important oral information supporting the taxpayer's claimed return positions. These meeting also allow the IRS to evaluate the taxpayer's credibility as a future courtroom witness, which can be a factor in settlement negotiations with Area Counsel.

In summary, we believe that the remote locations low income taxpayers must use

under Modernization is having a significant chilling effect on the fair resolution of cases. We also know that many taxpayers give up rather than fight the system. The result is that they are paying taxes they do not owe, losing refunds to which they are entitled, and incurring penalties and interest that should not be imposed. In addition, many cases are not resolved until they reach the Tax Court, although they should have been resolved much earlier in the process.

Separate Year Deficiency Notices

Compounding the problems of remote audits and the lack of face to face communication opportunities, is that subsequent tax years, when audited, are routinely *not* assigned to the same person or even to the same office conducting the earlier year audit or collections matter. Not only does this make resolutions more time consuming, complicated, and stressful for taxpayers (they become relieved that they have resolved one year, only to receive a new notice in the mail challenging the same items for a different year); but the present practice of reviewing one year at a time also raises important logistical problems.

In our experience, there is frequently no coordination between the two audits, which are often generated from different service centers, in different parts of the country. As a result, documentation submitted in connection with the first audit has to be resent by the taxpayer to the second examiner, since most of the examiners are dealing with computer screens, not hard copy files, and the existence of taxpayer documents is not entered on the computer. In addition, once a subsequent year is selected for audit, the taxpayer's refund for the first year — even if the taxpayer is determined entitled to it and the two audits involve exactly the same issue — will be frozen against the proposed liability for the second year and not released until the second year is resolved. On a number of occasions, we have had clients with more than $8,000 in EITC frozen refunds held up because of subsequent year audits by different examiners in different parts of the country all involving the same issue. For a maintenance worker with two children earning, say, $12,000 per year, that is a very significant sum to be denied.

Earned Income Tax Credit Audits

By far the most common audit issue brought to us by taxpayers is the earned income tax credit. These audits usually also involve challenges to the taxpayers filing status, dependency exemptions, and sometimes also the child credit and child care credit. All of these are family status issues, and therefore involve unique types of proof.

Some EITC audits are generated because of double claiming of the credit by two members of a household for the same qualifying child, requiring application of the tiebreaker

rules. Some are generated because the taxpayer mistakenly did not use the right filing status on the return (*e.g.*, a taxpayer who files a married-filing-separately return is ineligible for the EITC; married persons must file jointly to get the credit). Because entitlement to the EITC is dependent on showing that the child lived with the taxpayer for more than ½ of the year, some cases *(e.g.*, shared custody arrangements) may involve issues whether the child resided with the taxpayer for more than ½ of the year. The latter type of audit is particularly difficult for taxpayers to respond to, since most taxpayers, including low income taxpayers, do not keep records of where their children resided each day during the year. Moreover, even where records exist, day counting issues can be complicated: e.g., how do you count the day in which the child moved from one parent to the other? days in which the child had sleepover dates with friends? holidays, where the child might have spent time with both parents?

In still other cases, the Service may just want "substantiation" of the existence of the child, his/her relationship to the taxpayer, and his/her residence for the year (e.g., birth certificates, medical and school records, social security cards, etc.)

One continuing problem low income taxpayers experience in these EITC audits is that the IRS asks for the taxpayer's "substantiation" information first , and then, after it is provided, the IRS may disallow the credit on one of the other grounds without clearly informing the taxpayer of the reason for the disallowance. The taxpayers who come to us in this posture are always confused because they have provided all information requested, only to be informed that their credit is still denied.

Although we sustain the credit for most of the cases that come to the clinic, we also see a number of technical, unintentional errors in connection with the credit. One of our recent cases, for example, involved a 22 year old taxpayer who had, with the assistance of a preparer, mistakenly claimed the "childless" EITC; the statute has an age requirement for this credit of from 25-65 years old, althought the regular EITC has no age limitation. Another of our cases involved a taxpayer who rented out part of her house during the year and received rental income; the Service denied the credit because she had exceeded the "excessive investment income" limitation of the statute. Other taxpayers have mistakenly believed that if they are entitled to claim the dependency exemption for a child, that the child is also a "qualifying child" for EITC purposes. (The critical tests are support versus residency). Still other taxpayers claim the credit on a married-filing-separately return.

Even when taxpayers have correctly claimed the credit, proving their entitlement to it on audit can be extremely difficult because the issues involve family status and residence, not financial transactions. Traditionally, when IRS performs audits, it asks for supporting documents, cancelled checks, and other taxpayer books and records. EITC audits are approached the same way: the IRS does not do home visitations; rather, they will request

documents and records which demonstrate the relationship/age/residency/support tests used in the statute. Such requested records will include records that show a child's home address, such as medical and school records; birth certificates; social security cards; and child care records on the provider's letterhead.

It is predictable that these audits would be difficult for low income taxpayers to comply with. First, to the extent there are school records (*i.e.,* the child may be too young to go to school), such records usually relate to the academic year, not the calendar year and so the taxpayer may send in the requested records which don't prove residency for the full year. In addition, school records often contain an erroneous address because the parents have used a relative's or friends's address or get the child into a better school district, or to qualify for before- or after-school care.

Medical records may also be problematic. Such records may also be nonexistent because the parent's employer does not offer a health plan and the family is uninsured; or because the taxpayers have no regular doctor, and use the emergency room for medical care. Bills may be paid in cash or with money orders, leaving no paper trail. In addition, taxpayers oftentimes also find that their audits are hampered because they have used relatives for child care, and the IRS will not accept their word. They believe the child care providers are lying to help the parent claim the tax benefits.

For those issues where support needs to be documented (such as dependency exemption items and head-of-household filing status), low income taxpayers trying to comply with document and substantiation requests may also have difficulty. The reason is that such taxpayers often do not have bank accounts, may use cash or money orders rather than checks, and have difficulty demonstating financial records supporting their expenses.

Low income taxpayers also struggle with complicated and confusing definitions of a child, which, under current law, is different for the various child based benefits. Dependency exemptions and the dependent care credit, for example, require a showing of that the taxpayer supported the child; whereas the EITC uses a residency test. Head of household filing status used both. Proposals to unify the definition of a child for all child based benefits are currently pending in Congress.

In a recent report studying the EITC, the overclaim rate for 1999 was found to be between $9.7 billion and $11.1 billion (an error rate of between 30.9% and 35.5%). It was not made clear whether the error rate was due to honest error or fraud. Nor was it explained how difficult it is for low income taxpayers to prove entitlement to the credit, or how many might have simply given up legitimate claims to the credit in the face of extraordinarily difficult factual and procedural obstacles.

In the 2002 Report of the National Taxpayer Advocate, a Georgia Tax Clinic

indicated that its experience with EITC audits was far better than the 1999 study figures, that it sustained the credit for its clients in more than 80% of its cases. The experience of our clinic is similar. Based on this anecdotal evidence, one has to wonder whether the methodology of the 1999 and earlier EITC studies, particularly in light of the targeted population, was fair and accurate.

THE TAX CLINIC FUNDING PROGRAM NEEDS ATTENTION

Grants Under the Program Should be Given to Tax Controversy Assistance Organizations Only, Not Tax Preparation Organizations

As I testified last year, when the Tax Clinic funding program was statutorily created under RRA 98, there is no question that what Congress had in mind was to give monetary grants to organizations that would provide tax *controversy* assistance — not tax return preparation assistance — to low income taxpayers. At the time, low income taxpayers who needed filing assistance had several possible sources of help, including the free VITA and TCE programs operated around the country through the IRS; other nonprofit preparers around the country, such as Community Tax Aid, Inc. in Washington DC and the Center for Law and Human Services in Chicago, Illinois; and large institutional paid preparers such as H&R Block and Jackson/Hewitt which charged moderate fees.

By contrast, taxpayers who were being audited and needed legal assistance to resolve their tax matters had few options in the legal community. To retain an attorney was normally out of the question for economic reasons. Moreover, even if a low income taxpayer could afford to retain a legal representative, because of the (relatively) small amounts in dispute, say $500 to $5000, it usually made no economic sense to do so, since the legal costs would usually equal or exceed the deficiency in question. Public Defenders and Legal Services offices across the country, who might be available to assist with, say, a criminal indigency defense, a landlord tenant problem, a domestic violence issue, a consumer fraud problem, or other similar civil issue, did not handle tax disputes. These organizations routinely considered tax to be "rich people's law," and as a result tax controversy assistance was not a service area offered by the nonprofit legal community.

I would like to tell you that controversy assistance for these taxpayers was not a significant need because audits of low income taxpayers were rare, and that where they occurred, the issues were simple and could be quickly resolved. In fact exactly the opposite was and is true. The FY 2002 National Taxpayer Advocate's Report continues to list 7 low income issues among the top ten most litigated issues by taxpayers. Newspaper stories in the New York Times and elsewhere, moreover, have made clear what IRS statistics already had shown: that the number of low income audits now exceeds the number of high income

individual and businesses being audited.

When these audits occurred, they were extremely stressful for taxpayers who found themselves under attack and totally lost and alone in a complex administrative and judicial world. On the other side, these cases were taking up significant enforcement resources of the Internal Revenue Service as taxpayers (many of them non-English speakers) were failing to show up for meetings, not responding to audit letters, and generally not being able to organize their cases and present the appropriate information necessary to defend their return positions and resolve their cases.

In the few places where Tax Clinics existed prior to 1998, it was found that the Clinics not only assisted taxpayers; in addition, by providing this low-income group with representatives, the clinics also facilitated the resolution of matters, which assisted the IRS as well. Taxpayers involved in these audits also uniformly felt better about the process and the "justice" they had received.

The legislative history of Section 7526. The animating idea behind Internal Revenue Code Section 7526 (the authorizing statute for the LITC funding program), *i.e.,* to promote organizations which provided free tax controversy assistance to low income taxpayers through matching grants, originated in the final report of the Restructuring Commission. The Report was introduced as legislation in the US House of Representatives in HR 2676, a bill which later became RRA 98. HR 2676 passed the House in late 1997.

When this bill reached the Senate, the Senate Finance Committee voted it out with the tax clinic funding provision intact. As passed by the House and the Senate Finance Committee, the Bill defined a qualified LITC as including a law school program or section 501(c)(3) organization which either (A) represented low income taxpayer clients in controversies with the Internal Revenue Service; or (B) referred such taxpayers with controversies to qualified representatives.

Subsequently the Restructuring Bill was considered on the Senate floor, and at that time the Senate adopted a floor amendment sponsored by New Mexico Senator Jeff Bingaman (Floor Amendment 2385) which amended the Senate Bill to add a third category of LITC, as follows:

> "(C) a volunteer income tax assistance program which is described in section 501(c) and exempt from tax under section 501(a) and which provides tax preparation assistance and tax counseling assistance to low income taxpayers."

The Senate passed the Restructuring Bill with the Bingaman amendment.

In conference, however, *this amendment was defeated* and the statute was passed without

it. Because this issue is so critical, I have quoted in full the relevant language in the Conference Report to HR 2676, released on June 24, 1998:

> *G. Low Income Taxpayers Clinics (sec. 361 of the House bill and sec. 3601 of the Senate amendment)*
>
> *Present Law*
>
> *There are no provisions in present law providing for assistance to clinics that assist low-income taxpayers.*
>
> *House Bill*
>
> *The House bill provides that the Secretary is authorized to provide up to $3,000,000 per year in matching grants to certain low-income taxpayer clinics. No clinic could receive more than $100,000 per year. Eligible clinics would be those that charge no more than a nominal fee to either represent low-income taxpayers in controversies with the IRS or provide tax information to individuals for whom English is a second language.*
>
> *A "clinic" includes (1) a clinical program at an accredited law school, in which students represent low income taxpayers, or (2) an organization exempt from tax under Code section 501(c) which either represents low-income taxpayers or provides referral to qualified representatives.*
>
> *Effective Date.--Date of enactment.*
>
> *Senate Amendment*
>
> *The Senate amendment is the same as the House bill, except that the Secretary is authorized to provide up to $6,000,000 per year in matching grants. A clinic also includes an accredited business school or an accredited accounting school. Grants can also be made to volunteer income tax assistance programs. Grants can also be made to training and technical assistance programs, up to 7.5 percent of total amount available for grants, and without regard to the $100,000 per clinic limitation.*
>
> *Effective Date. — Same as the House bill.*
>
> *Conference Agreement*
>
> *The conference agreement follows the House bill, except that the overall limit is*

$6,000,000 and clinical programs of accredited business schools or accounting schools would be eligible for grants.

IRS Misinterpretation of the Statute. It could hardly be clearer from this legislative history that Congress considered and specifically rejected organizations which provide tax preparation assistance as being eligible for LITC grants as part of this program. Nonetheless, the IRS has inexplicably but consistently interpreted the statute to include tax preparation assistance to ESL taxpayers as an eligible activity for funding, and has made multiple grants to such tax preparation organizations and community service groups which are not controversy organizations. The Service has also recently published a regulation exempting low income taxpayers clinics from preparer penalties.

On July 12, 2001, the Oversight Subcommittee of the House Ways and Means Committee held IRS oversight hearings on the administration of the LITC program. In that hearing, at which I testified, Congressman Rob Portman, a member of the Restructuring Commission and a principal sponsor of section 7526, specifically questioned the IRS' continuing award of LITC grants to tax preparation organizations. After expressing strong support for the LITC program, he stated:

"But I have to make the point, that when we put this together it was about controversies with the IRS. It was not about tax preparation. You remember, Ms. Spragens, when we came up with this idea was a new idea building on an old system [pro bono tax preparation assistance] that has been out there for years...

But it was to focus not on the broader issue of how to prepare your taxes but when people with low income got involved with the controversy with the IRS where they could go. And some of the testimony, Mr. Book and others, have said, several of you have said we should perhaps set up a separate program for tax preparation or put more money in here for tax preparation. That is something we need to think about and talk about as a Subcommittee. Because that may be a different mission that what we at least had anticipated...

It is under the ESL part of the statute that the IRS has expanced into tax preparation which isn't really — I don't think was the intent of the Congress.

When the principal author and champion of the LITC program, Congressman Rob Portman, states , "I don't think [funding tax preparation] was the intent of the Congress," I believe that the IRS needs to address that concern.

Significantly, supervision of the tax clinic funding program has recently been moved from the Wage & Investment Division to the Office of the National Taxpayer Advocate.

We believe that this is an important step in the right direction. Since the Wage & Investment Division does not handle controversy work, giving it supervisory authority over a controversy assistance program seemed misplaced.

More Publicity of Clinic Services is Needed

Having committed significant sums of money to support tax clinics, the IRS should give much more attention than they currently are to publicizing the availability of clinic services, including where LITCs are located, how to reach them, what their income guidelines are, and what services they provide. No list of clinics and their phone numbers can currently be found on the IRS webpage. This should change. The webpage is a perfect location to provide this information. In addition the IRS should be informing its field offices to refer cases to the LITCs, including putting clinic notices in mailings to taxpayers. Many of the LITCs have found local offices reluctant to inform taxpayers about an LITC in their area or to include an LITC stuffer notice in mailings to taxpayers.

The Tax Section of the ABA is currently working on a project to provide an 800 phone number to anyone seeking assistance from an LITC. The IRS should give the ABA Tax Section its full support on this project, and should require the LITCs, as a condition of receiving a grant, to participate.

In summary, it seem irrational to spend millions of dollars funding LITCs to help taxpayers, and then not assist those taxpayers who could benefit from their services from getting that help.

In its pronouncements, however, the IRS should take care NOT refer to the LITCs as "partners" of the IRS, and should avoid symbols linking the two. The clinics participate in the controversy process as adversaries to the IRS, not partners, and references to the LITCs as partners confuses that relationship and perception.

SUMMARY OF RECOMMENDATIONS

1. Decentralize adminstrative audits and reinstate localized, face-to-face controversy resolution procedures for low income taxpayers. This may be less efficient than the centralized model, but decentralization better serves tax justice for this population. Alternatively, work to carefully monitor and seek affirmative feedback on how Modernization procedures are affecting low income taxpayers, and methods to assist the fair resolution of cases for this population.

2. Use multi-year audits, rather than single year audits of taxpayer returns.

3. Consolidate all audit years of a single taxpayer with the same examiner.

4. Institute 1-800 fax numbers for taxpayers to furnish information to the IRS.

5. Eliminate call centers.

6. Clarify EITC disallowance notices.

7. Interpret the LITC funding program, consistent with its legislative history, as excluding funds for tax preparation assistance.

8. Publicize the availablity of LITC services, including on the IRS webpage.

9. Maintain sensitivity to the large numbers of taxpayers who have no or limited proficiency in the English language.

10. Eliminate all references to LITCs as the IRS's "partner."