

Statement of Janet Spragens
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before the
IRS Oversight Board
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Panel 1: Enforcing Compliance

Mr. Chairman and Members of the Board:

Thank you for inviting me to testify today on the issue of compliance and the efficient and effective use of IRS enforcement resources. I plan to talk about three compliance issues: administration of the LITC program; problems created by long distance audits; and the proposed user fees for filing offers-in-compromise.

Let me begin by introducing myself. My name is Janet Spragens. I am a tax professor at the American University, Washington College of Law and Director of the American University Federal Tax Clinic. The American University Federal Tax Clinic is an academic clinical program. The program is open to third year law students who receive 6 hours of course credit toward their degree for working as student attorneys on controversies for low income taxpayer clients. We do not do tax preparation work.

The clinic charges no fees for its services. Since the inception of our program in 1990, the clinic has represented over 700 taxpayer-clients and has given advice and informal assistance to many more. The American University Federal Tax clinic predates the Low Income Taxpayer Clinic (LITC) funding program (Internal Revenue Code section 7526) which was created in the IRS Restructuring and Reform Act of 1998 ("RRA 98"). Since the enactment of that program the American University Federal Tax Clinic has received four grants under it, totaling \$370,000.

When the American University Federal Tax Clinic first began representing clients in 1990, there were only 13 other such clinics in the country. Since 1998, the year Congress enacted Section 7526, the number has grown exponentially, to 141 clinics. The enormous growth in the number of clinics spurred by the 1998 legislation represents an important commitment by the Congress and the entire tax community to ensure that fair results are reached in tax controversies involving taxpayers at all income levels, not only for those in upper income brackets.

Having worked on low income taxpayer controversies for over 11 years as the Director of the Clinic, and having testified before Congress and before the National Commission on Restructuring the IRS ("Restructuring Commission") in conjunction with the LITC funding legislation, I believe that I have a special vantage point and perspective on some of these issues that

I would like to share with Oversight Board.

As you know, the job of collecting taxes and enforcing the tax laws is never popular. In recent years, it seems to have brought an unprecedented spate of criticism and political attacks that have discredited an agency everyone is already predisposed to hate. These attacks have also sometimes generated an atmosphere of public cynicism and distrust toward the tax collector that makes the job of the Internal Revenue Service all the more difficult.

In the wake of these attacks, I believe that Commissioner Rossotti has brought important credibility, integrity and responsiveness to the tax enforcement function, and has worked hard to rebuild trust in the agency — and I commend his efforts at doing so. I also want to pay tribute to the many hardworking and excellent employees at the IRS my students and I have had the pleasure of working with — who are quietly protecting the nation’s revenue.

Despite my overall respect for the agency and its employees, however, I would like to say that I believe that some of the agency’s recent policies and decisions could profit from your review and intervention and it is these that I would like to talk about today.

I. THE LITC FUNDING PROGRAM IS OFF TRACK

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

Background of the Program. Let me begin my remarks on this subject with a short history and background of the LITC program. When this 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.¹ The FY 2001 National Taxpayer Advocate's Report lists several low income issues among the top ten most litigated issues by taxpayers.² Recent newspaper stories in the New York Times, 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

¹The number of audit issues faced by low income taxpayers is practically endless. The list includes, among many others, the earned income tax credit, dependency exemptions, filing status, innocent spouse claims, gambling losses, tip income, self employment income, employee/independent contractor issues, charitable deductions, automobile expense deductions, substantiation, cancellation of debt income (often from predatory lenders); and Schedule C income and expense.

²The Report lists Dependency Exemptions as #3; Collections Due Process as #6; and the Earned Income Tax Credit as #7.

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, even those that provide no tax controversy assistance whatever. For example, in the most recent list of grant recipients there are large numbers of tax preparers on the list, including some VITA providers. Ironically, this year because of the limited funds available to the program, many of the tax controversy programs were cut back in their funding in order to fund tax preparation organizations.

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 expanded 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 LTC program, Congressman Rob Portman, states, "I don't think [funding tax preparation] was the intent of the Congress," I believe that this Board should listen carefully. I further believe that it is within this Board's oversight role to investigate whether LTC funds are being improperly distributed to organizations whose mission is inconsistent with the intent of Congress.

II. LONG DISTANCE AUDITS OF LOW INCOME TAXPAYERS ARE CAUSING DIFFICULTIES

The new internal structure of the IRS that was created as a result of RRA 98 has abandoned "geography and function" as an organizing principle, in favor of one based on taxpayer classification. Taxpayers are now grouped into four Divisions according to types of enterprise and types of reporting to the IRS. The IRS has concluded that in the current era of fast communications through the internet, emails, faxes and inexpensive telecommunications, physical proximity to the office in which taxpayers do business takes on less importance.

Notwithstanding the organizational efficiencies and customer service advantages promised by Modernization, our experience is that low income taxpayers who have controversies with the IRS are having difficulty accommodating to the new structure. These taxpayers do not have fax machines, fast computers, internet access, or budgets for long distance phone bills and federal express packages. To a very large extent they are not part of the new electronic age. Moreover, for the many low income taxpayers who are ESL, communicating by phone in a foreign language is more difficult than communicating in a face to face setting.

The clinic has also experienced problems in representing these taxpayers long distance, including delays in processing mailed documentation and other requests for information; having to deal with many different individuals for different tax years (all involving the same taxpayer and same issue); inability to reach IRS personnel at "call centers"; inability to determine who is assigned to the case; delays in processing Powers of Attorney; long hold times on the telephone; phone disconnections while holding; and lack of call backs.

One of our cases (that is still being processed) is instructive. The particular taxpayer involved, Mr. A, came to the Clinic in the Spring of 2000 because of collections notices he had received for tax years 1996 and 1997. The taxpayer, who was separated from his wife and lived with his two minor children, had claimed the earned income tax credit, dependency exemptions for his children, and head-of-household filing status. During the examination of his returns the IRS had asked him for 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 was never a custody decree), and never responded to the IRS request. The IRS subsequently sent the taxpayer a 90-day letter, and the taxpayer let the time pass without filing a Petition in the Tax Court. The taxpayers 1998 and 1999 refunds were withheld and applied to his 1996 and 1997 liabilities.

After a considerable investment of time and effort by two student attorneys in different semesters, the Clinic was able to get the 1996 year abated by the Baltimore Exam Reconsideration Office. This occurred after we had collected and submitted extensive documentation (birth certificates, school records, etc) and had many conversations with the Baltimore office. Having resolved 1996, however, the student attorney found that the 1997-99 years were being handled by the Philadelphia Exam Reconsideration office.

In May, 2001 the Clinic submitted the taxpayer's documentation to a Ms. X of the Reconsideration Office in Philadelphia. In the meantime, over the summer, 2001, the taxpayer came in to tell us that he had received an examination notice for his 2000 year, with a call back number in Philadelphia.

A new student-attorney was assigned to the case at the beginning of the fall 2001 semester. Ms. X had told the earlier student attorney that it would take between 6-8 week to resolve the matters involving 1997-99. As of August 31, 2001, the beginning of the new semester, neither the clinic nor the client had heard anything.

On September 6, the new student attorney placed a call to Ms. Y in Philadelphia Examinations, the reference name on the 2000 audit notice. She was not there, and the student left a message.

A week later, not having heard from Ms Y, the student-attorney called back and left another message.

A week after that Ms. Y returned the call when the student-attorney was out of the Clinic. The student-attorney called back within 5 minutes, but Ms. Y had left. The student-attorney left another message.

Shortly thereafter, the student attorney called a fourth time. This time she was successful in reaching Ms. Y, who said she was only handling the tax year 2000, and directed her to call the "call center" about the other years. She said Ms. X was no longer assigned to the earlier years.

The student-attorney called the "call center" and spoke to Mr. L. He asked her to fax her power of attorney (even though she said it had previously been sent) and he said he would call back. She faxed another copy of the power, but never heard from him.

A few days later, the student attorney called the 'call center' again and spoke to Mr. M. who said a totally new person, Ms. Z, was in charge of the case and would call her.

The next day, not having heard from Ms. Z, she called the call center again to try to find Ms. Z. The call center would not forward the call to Ms. Z's voicemail and would not release her phone number because Ms. Z is a manager. They said they would give her the message.

Later the same day, the student attorney called Ms. X who confirmed that she was no longer working on the 1997-99 tax years. The student attorney then placed another call to Ms. Z. No response.

A few days later the student-attorney called another 800 number to see if she could get anywhere, and ended up speaking with a Mrs. R in the Collections Branch in Texas, who informed her that a Notice of Deficiency had been mailed to the client for tax year 2000. She also called the Philadelphia call center a few more times during the day, finally getting a recording saying the office was closed.

The next day the student-attorney left another message for Ms. Z.

At this point, the student-attorney gave up on phone communication and began to draft a letter for Ms. Z to find out the status of the case.

In a memo to me describing these 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 [Mrs. R.] in the Collections Department. I have found hold times for the call center unreasonably 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 entering the prompts on the automated system.”

This case has a happy ending. The Service has conceded all years, although the taxpayer has yet to receive his withheld refund checks. But the time and difficulty in dealing with a growing list of individuals at remote phone banks was extremely wearing both for the taxpayer and for the student attorneys. I can also say with a fair degree of certainty that this taxpayer, who is a maintenance worker and not a well educated person, could not have achieved this result without the Clinic’s help.

It is distressing that the system in place is so hard to navigate. For unrepresented taxpayers with limited education and literacy skills, and for those for whom English is not a first language, it is likely that these taxpayers may simply concede their cases rather than follow through such a complicated system.

It would be very helpful if the IRS could assign all tax years of a particular taxpayer to the same person. In addition, it would be helpful if the call centers were made more responsive instead of being simply initial gateways into the system.

III. IMPOSING USER FEES ON OFFERS IN COMPROMISE IS INADVISABLE

At the January, 2002 LITC conference in New Orleans, Louisiana, the IRS announced that it intends to charge user fees in connection with the filing of Offers-in-Compromise. These fees will be used to cover costs involved in processing the offers and to discourage submission of offers that are not genuine and submitted only to delay legitimate collection activity. The user fee will consist of 2 parts: first, a fixed \$100 charge payable in all events; and second, a variable amount which is 10% of the assessed liability, not to exceed \$371. The maximum charge will thus be \$471.

Taxpayers who are below the HHS poverty guidelines, would not be required to submit a fee. Taxpayers whose offers are accepted can deduct the second part of the charge from the computation of Reasonable Collection Potential (RCP). Thus in the majority of cases, the taxpayer will not pay an additional amount over the amount offered, with the exception of the initial \$100.

LITCs are permitted under section 7526 to represent taxpayers with incomes up to 250% of HHS poverty guidelines. Many of our clients fall within 100% - 250% of the poverty guidelines and would be affected by this fee. It has estimated that 20% of offers-in-compromise are made by taxpayers at or below 100% of poverty, and would not be subject to the fee. If the exempt population were increased to include those at or below 250% of poverty, 50% of all offers would not have to pay the fee.

The \$100 user fee may seem modest to members of the Board, but it is a significant amount of money to a maintenance worker, a bus driver, a recent prison parolee, or a single mother working two jobs and supporting 3 children. I am concerned that the imposition of a fee may have a chilling effect on the submission of bona fide offers and I would like to raise the question whether a user fee is the best way either to defray costs of processing offers, or to police the offer-in-compromise program, the purposes of the fee program.

In any event, I offer for consideration a reference to the US Tax Court which charges a \$60 fee for filing a Petition, but will waive the fee on a showing of inability to make such payment. See Tax Court Rule 20(b). The IRS might consider adopting a similar rule here.

Conclusion

I appreciate the opportunity to present my views today. I hope that my comments have been useful to the Board.