

PRO BONO CLINICS FOR CASH-POOR INQUIRERS

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“One-stop shopping” often seems an important goal to a potential client. But with the modern trend of focused practice areas in hopes of higher attorney billing rates, potential clients may fear legal assistance is simply beyond their reach in these economic times.

As an alternative, several pro bono clinics exist in the Bay Area that serve the needs of the modern-day economically challenged household. Many unemployed or underemployed folks see their limited unemployment benefits wither away over time and watch mounting debt shake their finances to the core. Many who valued their home as their primary investment have seen it eventually lost to foreclosure or short sale.

Pro bono clinics might just be the answer for your cash-poor potential clients, including the Bankruptcy Pro Bono Project (BPBP) and the Tax Appeals Assistance Program (TAAP).

BANKRUPTCY

The Bankruptcy Pro Bono Project of the United States Bankruptcy Court of the Northern District of California consists of four clinics in the Bay Area, including San Francisco, Pleasant Hill, Oakland, and San Jose. Clients often refuse to face the reality of their finances until the eleventh hour just before the foreclosure sale. Many spend all their retirement funds paying on mounting credit card debt, which is accruing interest at 29.99 percent, but getting nowhere fast.

Nothing is sadder than to hear potential clients weep-

ing out of despair and frustration when they learn that they could have survived bankruptcy with their \$20,000 or \$100,000 retirement funds intact had they just faced the music a year prior and sought competent legal advice. But no, they didn't want to spend any money on legal fees . . . and look what that cost them. Some are proactive and have time to plan their financial future, yet others delay until their exempt assets are completely gone.

From a tax perspective, many practicing bankruptcy and tax attorneys suggest that more favorable tax treatment results when clients file before the inevitable foreclosure instead of after.

When your potential client has no money and yet you'd like to help, consider referring him or her to one of the four Bankruptcy Pro Bono Project clinics in the Bay Area. These clinics cannot provide legal representation, but they do offer specific legal advice and general education in bankruptcy law. Top certified bankruptcy specialists volunteer at these clinics, which proves very valuable for both clients and volunteer law students. Considering it's a gallon of gas or a couple of bucks on Muni, learning about the options is well worth your client's time and effort. The clinics are held at John F. Kennedy University in Pleasant Hill, and clients should arrive before 4:45 p.m. as private consultations are first-come, first-served. Find more details at <http://www.canb.uscourts.gov/bankruptcy-pro-bono-project-bpbb-faq>.

TAX CONSEQUENCES AND TAX APPEALS

Many borrowers are clueless about the form 1099-C they received documenting \$100,000 of principal reduction in their loan modification last year. They were so proud of themselves then, but now harsh reality sets in as they fear the tax collector will come knocking to the tune of tens of thousands of dollars in taxes, penalties, and interest.



Bankruptcy

CLIENTS OFTEN REFUSE
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Most of us with an LL.M. degree in taxation or our CPA designation know that IRC § 108(a)(1) provides relief from cancellation of debt income (CODI) under one of several exclusions. Yet taxpayers must make the right election on the proper form in a timely filed return, including extensions, to be eligible for avoiding CODI as taxable income.

Many CPAs offer erroneous advice by not fully understanding the law as modified by the Mortgage Forgiveness Debt Relief Act that President George W. Bush signed in December 2007. The most commonly used exclusion is the principal residence exclusion, the most misapplied is the insolvency exclusion, and the ripest on appeal is the qualified real property business indebtedness exclusion (whether rental properties qualify as a “trade or business”). While it works for net operating losses, it’s not for CODI purposes.

The LL.M. program in taxation at Golden Gate University School of Law offers free legal representation before the State Board of Equalization (BOE) on appeals of sales and use taxes and appeals from actions by the Franchise Tax Board (FTB), up to \$20,000 in controversy. Again, the legal representation is well worth the price of admission.

The State of California determined that it saves money when appellants are represented by law students supervised by BOE attorneys, compared to dealing with taxpayers in pro per. Just watch the monthly BOE hearings if you have a hard time with that concept. Besides being bored to tears, you’ll be amazed at the taxpayer protestors and their outlandish arguments.

Most attorneys would not know the full ins and outs of bankruptcy, real estate, and tax law sufficiently to cover all the issues raised by loan modifications, short sales, and foreclosures. A taxpayer-debtor with significant debt cancellation income needs specialty advice in several areas. So when your potential client can’t afford your fees, consider making that referral to one of several pro bono clinics in the Bay Area.

Jeff Johnston’s practice focuses on federal and California state income tax, with a niche on tax implications of loan modifications, short sales, and foreclosures. He can be reached at jeff@johnstontaxgroup.com.

BASF’s Legal Advice and Referral Clinic (LARC) is an additional resource. Held twice a month, the clinic’s volunteers give brief legal advice and referrals to agencies that might be able to help. www.sfbare.org/larc.