



JDC'S TAX PROJECT:

A PRO BONO OPPORTUNITY FOR TAX PRACTITIONERS

Matthew Miller

240

Number of taxpayers who received assistance from JDC's Low Income Taxpayer Clinic (LITC) in 2014.

100

Number of clients who received full scope representation from JDC's volunteer attorneys and tax professionals in 2014.

40

Number of pro se litigants who received limited scope representation at the U.S. Tax Court's Calendar Call Program from volunteer attorneys in 2014.

962

Number of pro bono hours donated by LITC volunteer attorneys in 2014.

\$379,908

Amount of reduction in federal taxes for LITC's low income clients in 2014.

Congress authorized funding for the Low Income Taxpayer Clinic (LITC) grant program as a part of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998. The program is designed to provide access to representation for low income taxpayers, so that achieving a correct outcome in an IRS dispute does not depend on the taxpayer's ability to pay for representation. As of 2009, the Justice & Diversity Center's (JDC) LITC has been providing full and limited scope representation for low income individuals at all stages of tax controversy including audits, appeals, collections, and litigation before the United States Tax Court and the Ninth Circuit Court of Appeal.

Each year JDC's staff and panel of volunteer attorney and tax professionals serve 240 taxpayers whose income is less than 250 percent of the federal poverty level. LITC clients, many of whom are disabled or low wage earners, are struggling with debt while attempting to navigate a complicated and overwhelming legal proceeding. Recently, an associate of Hone Maxwell, Alexis Binazir, encountered a unique issue during her representation of a Salvadoran national while working on a JDC case.

Her client, a monolingual Spanish-speaking U.S. permanent resident, worked for the Salvadoran consulate in San Francisco throughout 2011. As a citizen of El Salvador, he believed his job duties were performed exclusively on consular territory. The taxpayer sought the advice of a tax preparer prior to filing his 2011 income tax return, and the tax preparer assured him that the income earned at the consulate was not taxable in the United States as it was earned on Salvadoran territory. Based on this advice the taxpayer did not report the income on his 2011 return. The IRS audited his 2011 income tax return and proposed an adjustment to include this income as ordinary taxable income. The taxpayer attempted to resolve the matter on his own, but the IRS did not provide a Spanish translator or Spanish-language translations of the complex audit documentation, so he did not understand the issues. Fortunately he was referred to LITC and Binazir accepted the pro bono matter.

The IRS's informational guidance for international taxpayers sets forth a limited exemption for income tax purposes where income is earned by a taxpayer who is not a U.S. citizen, the taxpayer works for a foreign government in the United States, and the foreign government grants a similar exemption for similar services performed by U.S. government employees in the other country. This treatment requires certification from the U.S. Department of State to the Department of Treasury that a reciprocal exemption exists.

El Salvador imposes tax on domestic source income, including income from services performed in El Salvador. Services performed by an employee of the U.S. Embassy on the embassy premises in El Salvador are rendered on U.S. territory, and not in El Salvador, arguably exempting such income from tax. Although the requisite exemption appears to exist under Salvadoran law, El Salvador has not entered into an income tax treaty or a bilateral consular

convention with the United States. As a result, there appears to be no "certification" of the exemption sufficient for U.S. income tax purposes.

Alexis Binazir is continuing to work with the U.S. Department of State, the U.S. Embassy in El Salvador, and the Salvadoran consulate in the United States in an effort to get the best result for her client. She points out that the value of providing pro bono representation is underscored by this case in which the resolution of the low wage worker's tax issue required an understanding of both the U.S. tax code and international law.

Matthew Miller is the supervising attorney for JDC's Low Income Taxpayer Clinic. For more information about the clinic, or if you are interested in volunteering, please email mmiller@sfbar.org.

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