WELCOME
In this issue of the Pro Bono & Tax Clinic Committee (“PB&TC”) newsletter, we provide a recap of the 2015 ABA Tax Section May Meeting, preview the Joint Fall CLE Meeting in Chicago, and note upcoming deadlines and events. The newsletter and other content is also posted on our committee webpage.

2015 MAY MEETING RECAP
This year’s May Meeting in Washington, D.C. was packed full of timely and informative programming and great networking opportunities. Through generous funding from the ABA Tax Section, four Low Income Taxpayer Clinic (“LITC”) advocates were provided funding to attend the meeting. The recipients, listed below, contributed to the composition of this newsletter:

Ed Dobson, DNA (Dinébe’iihá Náhiíhna be Agha’diit’ahii), Monument Valley, UT
Helen Hall, Pine Tree Legal Assistance, Bangor, ME
Ariel Stevenson, Bet Tzedek Legal Services, Los Angeles, CA
Nicholas Xanthopoulos, Nevada Legal Services, Las Vegas, NV

The Meeting featured a Low Income Taxpayer Workshop on Thursday, followed by committee programming on Friday and Saturday. Here are a few of the highlights:

Low Income Taxpayer Workshop
On the afternoon of Thursday, May 7, the Pro Bono & Tax Clinic Committee presented a controversy themed workshop, which provided useful and engaging information for new and seasoned practitioners alike. Speakers include distinguished academics, low-income taxpayer clinicians, Tax Court Judges, private practitioners, and government officials. The workshop covered topics ranging from filling out a client intake, to petitioning and litigating cases in the Tax Court, and finished with a discussion of innocent spouse litigation under I.R.C. Section 6015. The opening session used roleplaying to simulate the experience of gathering information from the “honest taxpayer.” Jane Zhao, of McDermott Will & Emery, played the role of the honest taxpayer. Professor Robert Nassau, of Syracuse University College of Law, and Jamie Andree, of Indiana Legal Services, aptly played the roles of the “honest lawyers,” questioning Ms. Zhao on her salon business expenses as well as tax-related family matters. Professor Nassau offered the helpful tip of filling out a family tree with clients, to ensure a clear understanding of all familial relationships. The panel also discussed the nuts and bolts of filing a Freedom of Information Act (“FOIA”) request as well as petitioning the Tax Court.

Footnote:
1 Four scholarships are awarded to full time non-academic LITC clinicians. Recipients must be ABA members and will receive $100 per diem for up to three days, $10 in intra city travel, hotel reimbursement for up to three days at the host hotel (room and tax only, no incidentals or parking), and most airfare based on a zone chart. To apply for a scholarship, please email Andrew VanSingel, PB&TC Vice-Chair, at avansingel@pslegal.org and request the scholarship application. Please note the deadline for the Fall Joint CLE Meeting is July 17, 2015.
The following three panels discussed Tax Court litigation in greater detail, addressing pre-trial practice, trials, appeals, and issues that arise in handling a Section 6015 case. In the Tax Court Pre-Trial Practice session, panelists addressed whether and how to avoid having IRS Chief Counsel immediately transfer the case to the IRS Office of Appeals. Importantly, Professor Keith Fogg, of Villanova University, advised that practitioners who have particularly clear-cut cases can send all material to the IRS Chief Counsel immediately after filing a Tax Court petition. This can result in the IRS conceding the case in the Answer. Practitioners were also advised, when necessary, to call the Chief Counsel’s office as soon as a case is assigned to an attorney, to request that the case not be transferred to Appeals.

Panelists in the Tax Court Pre-Trial Practice session stressed the importance of filing a pre-trial memo, particularly in small tax cases, as this may be the only opportunity to engage in written advocacy. The panel on Tax Court Trial and Appeals echoed this sentiment, but added that pre-trial memos also describe scheduling needs for trial. This panel also addressed the importance of stipulations and motions practice as methods to narrow the trial issues. The key, they stressed, to putting forward a strong case at trial is to determine precisely what facts are in dispute, and then identify and present the best witnesses to support those facts.

The workshop wrapped up with a panel titled Litigating a Section 6015 Case, addressing issues that come up in tax litigation when taxpayers seek judicial relief from joint and several liability. Panelists discussed when and how an intervening spouse may arise and how to address privacy concerns. Interestingly, they also spent time addressing ethical considerations that occur in joint representation of a Section 6015 case, as a client’s interests may simultaneously align with and diverge from the other spouse. If you missed this workshop, fear not, as the workshop will be presented again at the annual LITC Grantee Conference in December. To prepare, you may access the workshop materials online at www.americanbar.org/groups/taxation/events_cle/taxiq_meeting_materials_archives/may15.html.

An Evening with the Tax Court
On Thursday, May 7, the Administrative Practice, Civil and Criminal Tax Penalties, Court Procedure and Practice, and Pro Bono and Tax Clinics Committees co-sponsored a program hosted by the U.S. Tax Court in the Tax Court’s Center Courtroom. The program, entitled “No Pain—Big Gain: Assisting Self-Represented Petitioners at Calendar Call,” provided a humanizing role-play of the stresses that pro bono volunteers and clinic litigators encounter at Calendar Call. Tax Court judges and practitioners portrayed typical attitudes presented by self-represented taxpayers, and offered suggestions based in applied psychology to finesse and refine these typical attitudes to the framework and culture of the Tax Court. They also demonstrated the balance of forbearance and discipline required of the bench to facilitate bloodless compliance results. The role-play was designed and proved effective to help settle the nerves of litigators new to Calendar Call volunteer service. With Mitchell Horowitz moderating, the role-players included Hon. Lewis Carluzzo, Hon. Daniel Guy, Elizabeth Copeland, Frank Agostino, Keith Fogg, Larry Sannicandro, and Derek Wagner. Agostino Law Firm provided the detailed 31-page primer to Calendar Call service.

Court Procedure and Practice – Chair: Mark D. Allison, Caplin & Drysdale
The Court Procedure and Practice Committee presented a very engaging roundtable discussion on First Time Tax [Court] Litigation. Frank Agostino, appearing for the petitioner, moderated the discussion and actively participated in it. Thomas Travers, appearing for the respondent, also offered his insight, as did
Judge Buch and Judge Chiechi. For those accustomed to other judicial fora, the panel emphasized the importance of stipulations of fact in Tax Court litigation. Mr. Agostino encouraged petitioners’ counsel to start stipulating early. The roundtable also discussed motions. After a panelist mentioned that a motion to remand is usually the only worthwhile one, Judge Chiechi reminded the attendees to also include a motion to continue. Judge Buch also spent some time on discovery motions: following a second-long pause, he told the audience that that’s about all the time they merit.

The panelists also discussed expert reports, reminding attendees that counsel should at least be familiar with their contents. One solution offered in cases where experts are unable to reconcile their opinions was to submit a report detailing what they do and do not agree on. During the last part of the discussion, the roundtable turned to briefs. One piece of advice in brief writing is one the PB&TC committed wished it had heeded in writing this article: start while what happened is fresh in your memory. Do not wait to receive the trial transcript; use it to polish your brief, not to begin it.

Pro Bono & Tax Clinics Committee – Chair: Andrew R. Roberson, McDermott Will & Emery

The session started with Chief Special Trial Judge, Peter Panuthos, who reported that self-represented petitioners make up a large percentage of the Tax Court filings each year and that the number of tax clinics participating in the Court Calendar Call Program has grown significantly over the past decade. At the suggestion of the clinics, the Court is including a second stuffer notice with the 30-day letter sent to remind pro se petitioners of their Court date, to alert them that free legal assistance may be available to them. Stuffer notices are letters sent to all pro se Tax Court petitioners, which include information about all nearby low-income taxpayer clinics. They are drafted by each participating clinic, and encourage petitioners to reach out for legal assistance prior to their court date.

The session continued with a spirited discussion about the signs that a case may be headed for criminal prosecution. Sara Neill pointed out that if an agent has been aggressively pursuing your client and then suddenly stops, it may indicate that they are ready to refer the case for criminal prosecution. She suggested that a better way to determine if your case has potential criminal issues is to submit a FOIA request for the agent’s notes. Mark Matthews agreed, saying he once received a FOIA response that included an agent’s note about “meeting with criminal unit for possible referral”. Professor Scott Schumacher added that on one occasion he had to make a noisy withdrawal from a case when the client, after several conversations, finally did not fully disclose all of his assets. Professor Schumacher pointed out that determining whether your case has potential criminal issues can be of value even to Legal Services Corporation (“LSC”) funded clinics, which cannot represent clients in criminal cases. Noticing such an issue may give enough lead time for the client to obtain new counsel.

The session continued with a discussion on Worker Classification Issues. The panel pointed out that taxpayer representatives may see an increase in worker classification disputes as the implementation of Employer Shared Responsibility provisions are phased in this year. Some of the disadvantages to an independent contractor classification mentioned were not being eligible for workers compensation or unemployment benefits and lower Social Security benefits at retirement. It was also mentioned that if contractors fail to pay their self-employment tax within 3 years and 15 days from when it is due, it will

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2 As the comprehensive outline points out, the panelists spoke for themselves, not for the Court, the Service, or the Office of Chief Counsel.

3 Ms. Neill substituted for Miriam Fischer, who could not attend.
not be credited to their Social Security accounts resulting in even lower benefits at retirement. The panel discussed the effect of the Section 530(b)\(^4\) Safe Harbor for employers, which limits the IRS’s ability to regulate worker classification for purposes of employment taxes. At least one panelist thought the Safe Harbor cancels out any effective remedy by the employee.

The session continued with Hot Topics from Andrew VanSingel and Molly Recar from Prairie State Legal Services. They briefly touched on penalty relief to advance payments of the premium tax credit for 2014 as it had already been covered in the individual and family law session. They also shared that the Internal Revenue Manual (“IRM”) at 5.8.9.3(1) has been revised to include that the taxpayer’s failure to report or pay an individual shared responsibility payment will not default an accepted OIC and clarified that a lien withdrawal request made after completion of an OIC can be withdrawn prior to the completion of the 5 year compliance period. There was some discussion of the IRM revision on using a percentage method to calculate the taxpayer’s household expense when living with a non-liable person. Also, Professor Diana Leyden discussed her use of a FOIA request for an individual master file on-line transcript (“IMFOLT’) to obtain a client’s collection statute expiration date (“CSED”). The session ended on a lighter note with some amusing fictional IRS tweets.

Pro Bono Booth
During the conference, the PB&TC Committee staffs its Pro Bono Booth, which includes information regarding pro bono opportunities for practitioners, including participation in the Calendar Call program, Adopt-A-Base, Low Income Tax Clinics, and Migrant Farm Workers. (More information about pro bono opportunities is available at www.americanbar.org/groups/taxation/tax_pro_bono.html.)

While staffing the Pro Bono booth, we were struck by the amount of attorneys that were ready, able, and willing to take on Pro Bono cases, referrals from LITCs, and the amount that participate or will participate in Tax Court calendar calls. We also learned that the ABA has funded half of the Tax Assistance Public Service (“TAPS”) Endowment Fund and is looking for donations to supplement the other half. Besides pledges to donate time and resources, we were struck by how many of our fellow tax attorneys were prepared to make financial contributions to the fund.

2015 ABA JOINT FALL CLE MEETING PREVIEW
The PB&TC is busy planning programming for the Joint Fall Meeting in Chicago. The PB&TC Committee will also hold its Committee meeting on Saturday, September 19, from 8:30 am to 11:45 pm. The final spotlight is still being planned by the Committee; however, the tentative topics include:

- **Update from the U.S. Tax Court** – Special Trial Judge Panuthos will provide an update of recent U.S. Tax Court developments of interest to low-income taxpayers and their representatives.
- **Adopt-a-Base Update** – Wells Hall and other panelists will provide an update on volunteer opportunities to teach at Armed Forces bases throughout the country on tax filing matters.
- **State Tax Issues** – Discussion of state statutes of limitation, due process, and the collection options (or lack thereof) provided by state departments of revenue.
- **Hot Topics** –This panel will cover a discussion of the recent traffic on the ABA Tax Section listserv, and other current topics of interest.

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\(^4\) Section 503 of the Revenue Act of 1978 is codified in a note to I.R.C. § 3401.
U.S. TAX COURT JUDICIAL CONFERENCE
On May 20-22, the Tax Court held its Judicial Conference at Duke University. The event was attended by over 350 individuals, including Tax Court Judges, non-Tax Court judges, government officials, private practitioners, and low-income taxpayer clinicians. The kick-off panel was titled “Access to Justice” and featured Chief Special Trial Judge Panuthos, Nina Olson, Keith Fogg, and Andrew Roberson. The panelists discussed opportunities to provide support to the low-income taxpayer community and shared their experiences. After the panel, several law firms expressed interest in providing assistance and a plan is being formulated to try and pair some of these firms with underserved LITCs. The remainder of the conference featured excellent panels on subjects ranging from privilege issues to the precedential value of IRS authorities and various types of court opinions and dispositions. Justice Scalia of the Supreme Court was the featured guest at the dinner on May 21, and shared some interesting, insightful, and humorous stories from his time on the Court. If you did not have a chance to attend, we strongly suggest trying to make it next time (the conference will likely be held again in two years).

TAX SECTION PRO BONO COUNSEL
As of January 2015, the ABA has filled its vacancy for Pro Bono Counsel by hiring Derek Wagner. Derek is originally from Long Beach, Mississippi, and attended undergrad at Tulane University in New Orleans, where he majored in English. He attended law school at George Washington University Law School and graduated in 2012. After law school, Derek clerked at the U.S. Tax Court before accepting his role as Pro Bono Counsel with the ABA Tax Section. In this capacity, Derek will continue to expand the Tax Section’s efforts to provide assistance to low-income taxpayers at all stages of tax proceedings. Derek can be reached at Derek.Wagner@americanbar.org. Please contact him if you have any questions or ideas regarding the Tax Section’s current pro bono efforts, including Adopt-A-Base, Low Income Taxpayer Clinics, the Tax Court Calendar Call Program, and VITA. On behalf of the PB&TC Committee, we welcome Derek to the ABA Tax Section, and look forward to collaborating with him in the future.

UPCOMING DEADLINES / DATES
July 17, 2015 – Deadline for Joint Fall CLE Meeting Scholarship
September 17-19, 2015 – ABA Tax Section Joint Fall CLE Meeting in Chicago, IL
*December 7, 2015* [TENTATIVE] – Low Income Taxpayer Workshop, Washington, DC
January 28-30, 2015 – ABA Tax Section Midyear Meeting in Los Angeles, CA

CALL FOR LEADERSHIP
The PB&TC leadership is looking for motivated individuals to get involved with the Committee for the 2015-2016 bar year. This is a great opportunity for individuals to learn more about the PB&TC Committee and become part of the committee leadership.

TAX ASSISTANCE PUBLIC SERVICE (“TAPS”) FUND
Earlier this year, the ABA Section of Taxation created the TAPS endowment fund, which will provide stable, long-term funding for its tax-related public service programs for underserved taxpayers. The PB&TC Committee encourages all of our members to support the TAPS fund. 100% of the PB&TC leadership has donated or pledged to donate in 2015. For more information about the TAPS fund, please visit www.americanbar.org/groups/taxation/taps_endowment.html.
FINAL NOTES
We appreciate any feedback that you have about the Committee and any ideas that you have to improve low-income taxpayers’ access to pro bono services. Please note that opportunities always exist to participate in the Tax Court Calendar Call program and to partner with a local Low Income Taxpayer Clinic. Please contact the Committee Chair or any of the Vice-Chairs for more information on pro bono opportunities. Thank you for your support and efforts in providing access to pro bono services for low-income taxpayers.

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