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

2015 JOINT FALL CLE RECAP
This year’s Joint Fall CLE in Chicago was packed full of timely and informative programming and great opportunities to network and unwind. Through generous funding from the ABA Tax Section, four Low Income Taxpayer Clinic (“LITC”) advocates were provided funding to attend the meeting1. The recipients, listed below, contributed to the composition of this newsletter:

Matthew Erdman, Legal Aid Services of Oregon, Portland, OR
David Galin, Legal Aid Society of Northeastern New York, Inc.
Phillip Rosenkranz, The Legal Aid Society of Milwaukee, Milwaukee, WI
Derek Wheeler, Erie County Bar Association Volunteer Lawyers Project, Inc., Buffalo, NY

Individual & Family Taxation – Chair: Phyllis Horn Epstein, Epstein Shapiro & Epstein, PC
The Individual and Family session began with a panel focused on Household Employee Tax Compliance, also known as the “Nanny Tax.” The panel first discussed employee versus independent contractor classification, noting that Section 3506 addresses only placement services and not the service recipient. The worker’s classification as to the service recipient remains subject to the common law test of factors generally grouped into the behavioral control, financial control, and relationship categories. The panel suggested strategies to help service recipients establish their intended worker classifications and then transitioned to the consequences of misclassification and additional obligations of employers. The panelists discussed required and optional withholdings, stressed the need to obtain an Employer Identification Number, and provided sample calculations of FICA and FUTA demonstrating the withholding requirements over a range of employee income levels.

The next panel focused on taxpayer filing status. The panelists discussed the pros and cons of filing a joint return and the potentially negative effects it can have on separating taxpayers. Other taxpayer filing status issues included how non-residents, immigrants, and refugee/asylees view themselves in the tax code and the complications that arise in making filing status determinations for those taxpayers. Adding to the adverse consequences taxpayers face, multiple non-compatible filing statuses may result

1 Four scholarships are awarded to full time non-academic LITC clinicians. Recipients must be ABA members and 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 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 November 20, 2015.
in flagged accounts. The panelists continued with how preparers sometimes flub their responsibilities in determining whether taxpayers may properly claim credits or exemptions and the ways exemptions and credits can be allocated between divorcing or separating spouses. They finished by discussing Affordable Care Act issues related to filing status and a discussion of the Eighth Circuit’s recent decision in Ibrahim, which dealt with amending taxpayer filing status after a Tax Court petition is filed.

The last panel in the Individual and Family Taxation committee focused on penalties. The panelists began by discussing failure to file and failure to pay penalties, including when reasonable cause relief may be available. They followed up by discussing the accuracy-related penalty under §6662 and reasonable cause relief. The panel also touched on the civil fraud penalty under §6663 and erroneous refund and credit claims, which apply only to income tax returns.

Administrative Practice Committee – Chair: George Hani, Miller & Chevalier
During Friday morning’s first session, moderator Mary Slonina led a vibrant discussion regarding what some would consider an afterthought – the appropriate signature on a tax return and implications for the lack thereof. Panelists Michael Kummer and Ashton Price reminded practitioners that if a tax return is not properly signed the tax return is treated as invalid, even if it is timely submitted and the only item missing is the correct signature. The panelists delved into different issues that can arise if a signature is invalid or missing, including: if the signature is typewritten, if a partnership return is signed by a non-partner agent, or where a return is submitted without a signature but includes a check for the payment of tax due. Also covered were situations where a U.S. Tax Court petition was dismissed because it was not signed by the taxpayer, but only by the taxpayer’s representative. Lastly, the panelists covered the confusion caused by following the instructions on Form 1065 in regards to who has the authority to sign the form. As the panelists admitted, this scenario is contrary to the rule that the Internal Revenue Code and Treasury Regulations are superior to form instructions.

The Administrative Practice session next turned toward the frugality of the Internal Revenue Service, specifically Large Business and International’s (LB&I’s) shift toward “issue-based examinations” in light of continuous budget cuts at the IRS. Moderator Sheri Dillon, along with panelists Sergio Arellano, Gary Wilcox, and Eli Dicker, informed attendees that the IRS has experienced over $1 billion in budget cuts and a thirteen-percent staff reduction since 2010. Additionally, fifty percent of LB&I executives are working in an “acting” capacity. In order to perform more efficient corporate audits in the face of an 8.3 percent decrease in total corporate audits from 2013 to 2014, LB&I will utilize a “risk-based” approach. Mr. Arellano, Acting LB&I Deputy Commissioner (Domestic), admitted that while it is still unclear how risk will be determined, there are several potential changes to the LB&I organizational chart. He provided an updated regional chart for LB&I, which divides the country into four quadrants with each quadrant hosting two smaller regional offices.

Turning to Kovel, moderator Colleen Romero and panelists Guinevere Moore, Joseph McGowan, Rebecca Perlmutter, and Mark Cottrell discussed the important limitations of this often-used, and often misapplied, application of attorney-client confidentiality to accountants and other parties engaged by the taxpayer. The panelist reminded practitioners that Kovel will work to keep attorney-client privilege intact, even in the presence of a third-party, as long as the third-party is necessary to interpret information presented within the course of the attorney-client relationship. Kovel will not extend attorney-client privilege to the third-party if the third-party is brought into the relationship for mere “accounting services.” Prior relationships were also touched on, as the panelists mentioned that prior
relationships between the client and the third-party accountant can make it much harder to establish privilege based on Kovel. Lastly, the panel reminded the audience that Kovel engagement letters are extremely important and should be used out outline the services the accountant will provide. The panelists also reminded practitioners that a Kovel engagement letter should state that the third-party is being retained by the attorney, and not the client.

Last, but certainly not least, the session wrapped up with Administrative Practice – Important Developments. Moderator Lee Meyercord and panelists Rochelle Hodes and Drita Tonuzi touched on a number of different updates, including those involving court decisions and IRS and Department of the Treasury regulations and guidelines. The panel informed practitioners that, for tax returns and statements due after December 31, 2016, Form 1098 will be required to include the outstanding mortgage principal due at the beginning of the calendar year, the address of the property securing the mortgage, and the mortgage origination date, if the individual paid more than $600 in mortgage interest during that calendar year. For tax years beginning after December 31, 2015, Form 1065 and Form 1120S will now be due on the 15th day of the third month following the close of the partnership or S Corporation’s fiscal year. Also new for tax years beginning after December 31, 2015, is the new maximum extension for the filing due dates of Form 1041 is 5 ½ months. The panel also delved into Ibrahim. There, the Eighth Circuit held that the Head of Household return did not constitute a “separate return” under IRC § 6013(b)(1). At least with respect to cases appealable to the Eighth Circuit, a married taxpayer is allowed to incorrectly submit a Head of Household return, receive a notice of deficiency, file a U.S. Tax Court petition, and then submit a Married Filing Jointly return to correct the underlying issue. It remains to be seen whether the Tax Court, which was reversed by the Eighth Circuit in Ibrahim, will continue to adhere to its decision or will change its stance on the issue.

Pro Bono & Tax Clinics Committee – Chair: Andrew R. Roberson, McDermott Will & Emery
The Pro Bono & Tax Clinics committee began with an update from IRS Counsel. The panelists acknowledged the recent Knudsen case, in which the Ninth Circuit decided that a concession by the IRS is not a settlement for purposes of avoiding the qualified offer rule and the resulting fees. The panelists next advised attendees of CC-2015-006 instructing attorneys to continue asserting venue outside of the D.C. Circuit in appeals of U.S. Tax Court nonliability cases despite the recent Byers decision. The panelists raised questions as to the efficacy of Answers filed in U.S. Tax Court cases under small case procedures and attendees enthusiastically engaged in the discussion, concluding that additional research is necessary to determine the best approach.

The first panel then quickly provided updates on hot topics. In King v. Burwell the U.S. Supreme Court decided that qualifying individuals in all states may receive the Premium Tax Credit, regardless of whether the state has formed its own health benefits exchange. The Court declined to hear Kuretski v. Commissioner, which upheld the President’s power to remove Tax Court judges. The panelists then discussed how tax preparation and software firms and other third parties will share data with IRS in an attempt to reduce identity theft in the 2016 filing season. The panelists also provided recommendations in response to issues raised on the LITC listserv. They provided a list of alternative IRS contact numbers, and specifically provided additional information for the IRS Penalty Assistance Line.

The next session featured a discussion on developing pro bono projects within law firms. The panel started by presenting information about the growing Adopt-a-Base Military VITA program. This collaboration between the ABA Section of Taxation, IRS, and Armed Forces Tax Council began with two
bases and two firms in 2013 and by 2015 had already grown to twenty-three firms serving thirty-two bases. The panelists explained that volunteers are needed to train preparers on the basics of relevant tax laws before the filing season begins. They discussed attorney volunteers’ ease of learning the relevant materials for certification in the program, reduced requirements for continuing in future years, and predictable, scheduled commitments. They noted that South Carolina now has volunteers for all bases and they hope to achieve this in all states soon. The second half of the panel discussed the many benefits to communities and practitioners working with the VITA program, including how to raise interest in pro bono and overcome barriers within large companies, particularly through partnerships with local organizations. They concluded with descriptions of successful law firm pro bono activities, the experiences gained by the pro bono attorneys, and the benefits to the communities served. The panelists also highlighted the new “Partnering for Pro Bono” initiative which aims to pair law firms with LITCs to provide assistance to low-income taxpayers. On October 30, this panel was reprised for an ABA Section of Taxation webinar which had over 60 participants. For more information regarding this program, interested LITCs can contact Andrew Roberson as aroberson@mwe.com.

The final panel, featuring an all-star lineup of Nina Olson, Keith Fogg, and Mary Gillum as panelists and Anna Tavis as moderator, discussed basic collection procedures and emerging issues. First, the panelists discussed certain failures by the IRS to provide proper notice and demand to taxpayers. As a result, the IRS may “false start” on collection action, resulting in an improper Notice of Federal Tax Liens or improper levy actions being taken. Professor Keith Fogg pointed out that the filing of a premature Notice of Federal Tax Lien prior improperly may be a disclosure violation by the IRS. Further, the panelists all agreed that appeals and settlement officers should be verifying IRS compliance with all collection procedures. The panelists raised a major concern that low-income clients were being advised by IRS employees that they should not be exercising their due process rights. All agreed this is an alarming trend. At the very least, clients should have the ability to exercise due process in an equivalency hearing. The panelists noted that certain periods should be equitably tolled and advised clinicians to assert due process rights to get the case into court. Lastly, the panelists touched on allowable income and expenses issues impacting collection alternatives, such as Railroad Benefits (which may not be levied) and gifts. The panelists finished by discussing whether certain standards used by the IRS should be changed to better reflect the realities low-income taxpayers face on a monthly basis, specifically with new health care legislation in effect.

Plenary Session and Luncheon
The keynote speaker was National Taxpayer Advocate Nina Olson. In her address, Ms. Olson addressed the breakdown of customer service between the IRS and the public. Ms. Olson provided an example of a taxpayer who spent 33 minutes on hold to speak to someone about an installment agreement, and after failing to speak with someone, being informed of likely facing lien or levy action. She pointed out this was the wrong message for the IRS to send to the public, and the cumulative effect of such incidents will lead to a breakdown of trust between taxpayers and the IRS. In that vein, Ms. Olson announced that in 2016, she will hold public hearings around the U.S. on IRS customer service, where she will listen to taxpayers and solicit feedback on ways the IRS should deal with this issue in the future.

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

Staffers at the booth were struck by the number of attorneys that were ready, able, and willing to take on Pro Bono cases and referrals from LITCs, and by the number of attorneys that currently participate or will participate in Tax Court calendar calls.

2015 LOW INCOME TAXPAYERS REPRESENTATION WORKSHOP PREVIEW
On Monday, December 7, the PB&TC Committee will be providing a controversy themed workshop (a repeat of the workshop held at the May Meeting earlier this year). Sutherland Asbill & Brennan LLP is hosting the workshop at its Washington, D.C. office located at 700 6th Street, N.W. from 1:00pm to 5:00pm. This workshop is separate from the LITC Grantee Conference, but attendees are encouraged to attend the workshop. The workshop will feature the following sessions:

- Client Intake to Filing a Tax Court Petition
- Tax Court Pre-Trial Practice
- Tax Court Trial and Appeals
- Settling a Case in Tax Court

The cost is $30.00 ($20.00 for full time LITC staff), and you can register by clicking here.

2016 ABA TAX SECTION MIDYEAR MEETING PREVIEW
The PB&TC is busy planning programming for the Midyear Meeting in Los Angeles. The PB&TC Committee will also hold its Committee meeting on the morning of Saturday, January 30. The final spotlight is still being planned by the Committee; however, the tentative topics include:

- **Hot Topics** – this panel will cover a discussion of the recent traffic on the ABA Tax Section listserv, and other current topics of interest.
- **Immigration Issues** – this panel will discuss tax issues in the immigration context.
- **Earned Income Tax Credit Issues** – this panel will focus on issues related to the Earned Income Tax Credit Issue.

UPCOMING DEADLINES / DATES (Click on Date for more information)

- **November 13, 2015** – Deadline for the 2016-2018 Christine A. Brunswick Public Service Fellowship
- **November 18-19, 2015** – International Conference on Taxpayer Rights, Washington, D.C.
- **November 20, 2015** – Deadline for ABA Tax Section Midyear Meeting Scholarship
- **November 20, 2015** – Deadline for Nominations for the 2016 Janet Spragens Pro Bono Award
- **December 4, 2015** – Deadline for Nominations for the 2016 Nolan Fellowships
- **December 7, 2015** – Low Income Taxpayer Workshop, Washington, DC
- **January 28-30, 2016** – 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 2016-2017 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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