

National Taxpayer Advocate Public Forum

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Written Statement from Michael Such, Law Clerk at Lewis & Clark Low Income Taxpayer Clinic

The Lewis & Clark Low Income Taxpayer Clinic offers “low income” individuals free legal advice and representation in controversies with the IRS. Although almost all of our clients are considered “low-income,” as a group they embody a large and diverse swath of Portland’s and Oregon’s citizens. Some are highly educated, some have very little education; some are native Oregonians, some are natural born Americans, and some are immigrants; some are black, some are white, some are Hispanic, some are Asian; some are men and some are women. They all need help; they seek help when faced with IRS collection, or IRS Exam, or after a separation from an abusive or domineering spouse who left them with a massive joint tax liability. Lewis & Clark LITC provides that help. Often our clients come to us after trying and failing to resolve their controversies with the IRS themselves. After reading the National Taxpayer Advocate’s 2015 year-end report, it’s no wonder that they still need help after trying to navigate the treacherous waters of an IRS dispute.

The most eye opening, and frankly appalling, thing I read in the report was that around 62% of calls to Accounts Management and 63% of calls to Installment Agreements and Balance Due are never answered. When I came across this in the report, I had to read the section over multiple times. The numbers are so staggeringly horrible that they defied my internal logic. “The IRS doesn’t take 62% of calls from people willingly and actively trying to give them money or settle disputes?” Sixty-Two Percent. A large portion of these calls, I assume, are repeat callers, because they received a “courtesy disconnect” and had to try again. From the first day I started working at the Clinic, Jan, the Clinic Director, told me that we never call the IRS unless we have a direct number for a specific person, we will mail or fax. Now I see why. Also, if a real IRS person is reached, they do not know anything about a client’s specific tax problem, and they have no authority to fix it. Clearly there is a problem which must be addressed.

The IRS seems to be trying to address this problem with its “Future State” plan. What the IRS has released regarding this plan is commendable and forward looking. As a millennial I see the opportunity in technology and online interactions to address the issue of limited availability of person to person interactions (taxpayers calling the IRS and visiting Taxpayer Assistance Centers (TAC)). However, ironically, I see the IRS’s current “Future State” vision helping those already “in the know” of tax administration and procedure far more than those who likely call the IRS or go to the TACs. From my perspective, as a part of an LITC, being able to work with the IRS online would be a major benefit in many ways. If implemented the right way, with taxpayer accounts and past and ongoing notices available online, access to commonly used functions of the IRS, and, as a student, access to information regarding whatever issue with which I may be assisting a taxpayer, the “Future State” could make work at the LITC much more efficient. The potential to submit forms, such as

Form 433-F for a CNC request or Form 8857 for a Request for Innocent Spouse Relief or submitting evidence regarding the Earned Income Tax Credit, online, directly to the correct IRS office, would be a large benefit for the LITC. However, if the IRS wants the online features to be used by the average taxpayer and as a means to cut down on person to person interactions, drastic, very un-IRS actions must be taken.

As pointed out by Andrew Van Singel, Director of the Low Income Tax Clinic at Prairie State Legal Services, in a previous Public Forum, the IRS is apparently incapable of simplifying a message so that the average taxpayer may understand it. I believe this would be the largest hurdle for the IRS in making an online experience that is accessible and useful to the average taxpayer. I am reminded of a scene in the movie *Ocean's Twelve* in which a meeting takes place, and the person they are meeting "has got his own language." During the meeting there are three characters who "speak the language" and one who does not. The three who speak the language say phrases such as, "A doctor, who specializes in skin diseases, will dream he has fallen asleep in front of the television. Later, he will wake up in front of the television, but not remember his dream," or, "If all the animals along the equator were capable of flattery, then Thanksgiving and Halloween would fall on the same day," and, "when I was four years old, I watched my mother kill a spider... with a teacosy. Years later, I realized it was not a spider – it was my Uncle Harold." The three characters "in the know" take these phrases to mean something beyond the words themselves; the one character that is not in the know, is confused beyond measure. These characters are all analogous to what we do daily with the IRS; the IRS is the one with its "own language," those here on the panel and other tax practitioners also speak this language and can conduct meaningful dialogue with the IRS, but the average taxpayer does not understand the language and can only sit there, befuddled and concerned about what they are saying, about the taxpayer no less. This is a major issue the IRS must address in its "Future State" plans, a way to meaningfully interact with the average taxpayer, not to those of us on the panel. Accordingly, my personal vision for a working and effective online experience regarding the IRS's "Future State" is one in which the IRS undertakes a paradigm shift in its interactions with the average taxpayer. Currently, it seems the IRS wants the average taxpayer to understand their "language," rather than trying to speak to the taxpayer on the taxpayer's level. Forcing the taxpayer to speak the IRS language is an unreasonable expectation, and it is not because the average taxpayer is stupid or uneducated. Here at the Lewis & Clark LITC I have seen very educated people not grasp what the IRS means until described or broken down into laymen's terms. An example of this is how I will sometimes direct clients to various IRS Publications, so they may understand their tax issue, but when I do so, I must also layout in non-IRS lingo the gist and meaning of the section to which I am referring them. These IRS publications are meant to clarify issues for taxpayers, not further shroud them, but clearly that is not the case. Technology offers an opportunity and a means of communication which the IRS has not effectively leveraged before. The advantage in technology is it can break down the big, confusing, frightening system into constituent parts. The taxpayers can move through the bite size sections and steps at their own pace. The advantage is in moving step by step, rather than simply throwing a mass of information at the taxpayer, in a language they do not understand, and having them attempt to figure it out. If the IRS fails to adjust accordingly, by speaking to the taxpayers on the taxpayers' level, then the average taxpayer trying to use the system

will quickly become frustrated and give up on using the system; they will invariably end up calling the IRS, which is largely what the IRS is trying to avoid with its current “Future State” plans.

Regarding the “Future State,” our needs, “our” being tax practitioners, do not truly align with our clients, even if our goals do align. I believe the IRS’s “Future State” could easily meet our needs and assist us in better assisting clients, but it would be very challenging for the IRS to develop the “Future State” in a way that would directly benefit the average taxpayer and those who ultimately seek assistance from LITCs, because what those taxpayers need or would find useful is not the same as what the practitioners need or would find useful.

As a millennial, online is how I connect with the financial services I use. I was surprised to read in the National Taxpayer Advocate’s report that 72% of bank customers had visited a branch and spoken with a teller within the preceding month. I, on the other hand, have not visited my bank’s branch in over a year. Now this may be particular to me and few others, but this may be why I can fathom a world where my personal ongoing interaction with the IRS is online.

Of course, there are major concerns which must be considered when the “Future State” is being planned and implemented. Security, taxpayers without access to the internet or low technology literacy, and the potential for a “pay to play” system in which third party assistance increasingly becomes a necessity for the average taxpayer if the IRS will not be there to assist, are all significant hurdles. The National Taxpayer Advocate addressed these issues very well in her year-end report. Throw on top of these hurdles the IRS’s constrictive budget and there is serious doubt as to whether IRS’s “Future State” can be implemented as intended to get the benefits it needs, namely limiting person to person interactions in order that more taxpayers are given “quality service,” which they are entitled under the Taxpayer Bill of Rights. Conversely, the IRS already has a significant problem with person to person interaction availability and must leverage technology to try to address the problem. Not doing so would be equally detrimental, as it seems likely that demand for some type IRS interaction will continue to increase, as seen in the 59% increase in calls to the IRS from FY 2006-FY 2015.

Related to the security concern, there is the potential issue for taxpayers in the “Future State” involving tax preparer fraud and granting access to sensitive information to unscrupulous actors. Currently at the Lewis & Clark LITC, we have no cases involving tax preparer fraud or elder fraud. This may be in part due to Oregon requiring all paid tax preparers to be licensed. Despite not having any first-hand experience in this area, it is clear that the “Future State” needs to be very careful in who is granted access to taxpayers’ personal accounts and information. The “Future State” offers even greater opportunity for bad actors to take advantage of low-income taxpayers and the elderly unless strict security measures and limitations on non-regulated tax preparers are in place.

If the goal of the “Future State” is to make quality service more available to all, offloading some of the person to person service to other modes of communication is a step in the right direction. It will not solve all the problems faced in granting and improving access to all taxpayers, but if more are able to do what they need through online services, that will benefit others seeking service through

other means. Obviously this is only possible if the IRS continues to provide the same person to person interaction service, in at least the same quantity, on top of also providing greater internet communication availability. Based upon what the National Taxpayer Advocate stated in her 2015 report, this is not the IRS's vision; rather it seems the IRS is trying to abandon person to person interactions as much as possible. This is not a viable solution. Providing both types of service, however, is an opportunity to improve service to all. As long as those who are unable or unwilling to conduct business with the IRS online are still offered service in some person to person format, their experiences can be improved by the implementation of the IRS's "Future State." What may be most important however is that the availability of person to person interactions remain the IRS's focus for the time being until greater adoption of an online format takes place, which will necessarily be an ongoing determination. A robust and effective online experience can relieve pressure on the more traditional modes of communication with the IRS, which especially low income taxpayers use. If the IRS implements the "Future State" plans as "one but not the other," then of course all taxpayers will be disadvantaged, with low-income and elderly taxpayers disproportionately affected, unless they can afford third party assistance. If, on the other hand, the IRS implements the plan with both the existing person to person communications and the "Future State" services working in tandem, then these same taxpayers may see a net benefit, despite not personally using the "Future State" implemented services. And to reiterate, the way to encourage use of any online system begins with ease of use and the IRS communicating with the taxpayers on their level and in their language, not the IRS's.

An issue with the IRS's Vignettes on the "Future State" is the downright comical and ironic exclusion of any sort of taxpayer disagreement. Neither addresses what a taxpayer's experience would be if they disagreed with the IRS's proposed changes. Rather, both simply accept their fate, perhaps erroneously, that they were wrong on their tax return. The irony is that it makes the IRS appear incredibly short sighted, as if the IRS thinks, "Of course the taxpayer will accept our determinations, they always do." This is especially troublesome or unrealistic in the Small Business Vignette as the taxpayer, "Small Business Bennett," had a third party preparer; this preparer simply lays down when the IRS points out some potential issues. While this definitely does happen, the alternative, wherein the preparer stands by her original determination of expenses and tax due, must be equally likely, yet the Vignette does not address this possibility whatsoever. This is where the "Future State" seems likely to breakdown. Resolving a dispute is impossible with a computer, and this further illustrates the need for the current person to person interactions to be maintained and ideally have a reduced burden through implementation of the "Future State." Quite simply not all problems can be solved with a computer.

More tangentially, there are some issues with which the Lewis & Clark LITC often deals which may be affected by the IRS's "Future State." In particular, given the lousy condition of the IRS person to person interactions, our Clinic never uses the phone when addressing a taxpayer's controversy through Appeals. We have found telephone conferences to be a waste of time, except on the rare occasion we have a Portland Appeals Officer (AO). The AOs who are not in a field office, like those at the Fresno Campus, seem more interested in processing cases out of their inventory than in

actually resolving them. Rather, the more effective and efficient method of dealing with Appeals is to send a letter (in 2016...); we attach any relevant documents we have to prove the facts, where necessary we tell the Appeals Officer that “xyz” facts will be proved by testimony, we discuss the law where necessary, and we make an offer to settle based upon our discussion or we state that based upon the discussion, we believe the IRS should concede the case. The final sentence of the letter then simply states, “If you do not agree with this, please send the case to Counsel for trial preparation;” and they usually do. The AOs who are on the phones, particularly at the IRS Fresno Campus, do not understand the Hazards of Litigation. This may be in part because they do not watch the trial of “their” cases. They do not follow what happens after the case has moved on from Appeals. In speaking with the IRS Fresno Campus, only one time have they considered the Hazards of Litigation and accepted our settlement offer. Effectively, this is simply “Exam #2.” The Clinic has never tried a case that went through Fresno Campus because counsel has always ended up settling the cases on the basis the FA should have.

Another common issue our Clinic addresses is the IRS denying income on the grounds that the taxpayer is inventing the income in order to qualify for the Earned Income Tax Credit (EITC). The Clinic has represented a few clients who are exotic dancers; these women are not paid by the club owners, rather the dancer must pay “stage fees” and the only income they earn is in the form of tips. Unless the dancer kept a contemporaneous record of the amount of tips earned each night, the Clinic struggles to prove the income. The best method of proving this income is through bank statements, if available, though it is somewhat rare that they deposit much money into bank accounts, or through proving expenses, i.e. if the dancer is spending money, she must be earning income somewhere. We have also had clients who do child care and yard work where income was similarly disallowed. We have never seen a client yet who has reported fictitious income in order to qualify for the EITC.

From our LITC perspective both of these common issues could be at least expedited by the IRS’s “Future State” if it is implemented well. Being able to digitally submit items showing proof of income could potentially reduce the time it takes to provide the necessary documentation to the IRS and the time in which we find out if we were successful. Though perhaps not significant, there is some small advantage to this. Alternatively, for the actual taxpayers in the above situations, the “Future State” is fraught with risks. For example, the dancer may be unaware of how to prove her income. Or a person trying to deal with Appeals online may not fully understand what the problem is with their tax return. Both of these issues however may be potentially remedied through effective online and digital communication by the IRS, the type of communication the IRS has, to this point, been unable to effectively accomplish. Making instructions, steps, and explanations clear, concise and palatable (they mustn’t choke on the language) to the taxpayer is mandatory. The question is simply, could our client have been able to easily accomplish this same task without our assistance? If the answer is yes, then the “Future State” has the potential to be a success.

Overall, I see great opportunity and promise in the IRS’s “Future State,” but whether it will legitimately improve the situation for the average taxpayer is unclear. If implemented correctly, it

could easily help my colleagues and me in assisting our clients. However, unless the IRS changes its tune and its “language” when interacting with the average taxpayer, the problem of an overburdened person to person interaction system will not be addressed, and the pay to play system and de facto requirement of 3rd party help will become even more entrenched as taxpayers will rely on professionals even more if the IRS is not there to assist in the way they currently do. Additionally, the “Future State” must not be implemented to the further detriment of the person to person communication system currently in place, and by extension to the detriment of millions of Americans who currently lack reliable access to the “Future State” mediums. This could have dire consequences on voluntary compliance because if taxpayers continue to struggle to understand or gain access to the medium through which to pay their tax, if that is not the easiest step in the process, then fewer will participate. As the National Taxpayer Advocate stated in her 2015 year-end report, the goal should be to promote willingness to pay into the system, not undermine the taxpayers’ attempts to do so. The first step in ensuring that the “Future State” gets off on the right foot is to open the planning stage up to the public for input from taxpayers and those in the industry, which as yet the IRS has not done and apparently does not intend to do. Not opening this discussion to the public forecloses upon the possibility of developing a system that works for the IRS *and* taxpayers. Public input will likely make clear that the IRS must understand that these services are compliments, *not* substitutes. Working together the services will improve one another; alternatively, either will struggle and fail (remember that 63% of calls to Account Management do not get through, so this system is already failing) if not propped up by the other. There is no functional “Future State” that does not include resources continuing to be devoted to person to person communications in addition to resources being directed toward developing a forward looking complementary piece, in part envisioned and designed by the taxpayer.