Written Statement from Andrew VanSingel, Director of the Low Income Tax Clinic at Prairie State Legal Services, Inc. – March 9, 2016.

The Low Income Tax Clinic at Prairie State Legal Services provides free legal advice and representation in tax controversies to low-income individuals. The Clinic provides services to individuals residing in 36 counties in northern and central Illinois outside of Cook County. The work that we do at the Clinic is of critical importance to many low-income individuals and families. Some of the issues that clients face are: denial of anti-poverty credits (such as the Earned Income Tax Credit); tax problems stemming from identity theft; tax problems related to domestic abuse; penalty and subsidy issues relating to the Affordable Care Act; and wage and benefit garnishments imposed by the IRS.

There is no "typical" client in the Clinic. On any given day, we represent working families, single parents, retirees, or those who are near retirement. We represent those who have lived a lifetime of poverty, the once wealthy, and those who just seem to get by, but for a significant life event, such as an illness, job loss, or divorce, are in need of the Clinic's assistance.

Our clients' education levels vary. I can think of one client who had her Ph.D. and was a pharmacist. She suffered a closed head injury, which forced her out of the profession, and led to a discharge of her six-figure student loan (which was a taxable event, and effectively exchanged a student loan bill for a tax bill). I also have clients who are illiterate or who have intellectual/developmental disabilities. Despite the diversity in the clients whom we see at our Clinic, they share a common bond. They are unable to navigate the issues that they have with the IRS without the help of a professional.

Unfortunately, the IRS can take a message as simple as, "you did not add your unemployment income on your tax return…so we added it to your return, and as a result, you owe us $900," and turn that into a 7-page notice. The Service also sends misleading correspondence to taxpayers. Take IRS notice CP71, for example. This is an annual reminder notice for taxpayers who are not required to make any payments on their tax debt based on their financial situation. The IRS will not pursue collection activity during this time, but it will send the CP71 notice stating in bold type, "AMOUNT DUE" and in much smaller print above it, it says "Reminder of Amount Due."

With the implementation of the Affordable Care Act, we see other misleading or confusing notices sent to taxpayers. For instance, a client recently received a notice from the IRS stating that there is a mismatch between the health care information they reported on their tax return and the information reported on their Form 1095-A, which is the statement that reports the Advanced Premium Tax Credit subsidy to the taxpayer, among other things. In this case, the issue was an incorrect Social Security Number on the Form 1095-A. This error prevents the IRS from correctly matching the information on the taxpayer's return with the information on the Form 1095-A. As a result, the IRS denied the taxpayer's healthcare subsidy of $1,400, and froze his much-needed refund of $800. Luckily, this taxpayer knew his rights, and filed a petition in the United States Tax Court. At that point, the taxpayer sought our help, and our LITC was able to work with the assigned Appeals Officer to resolve the case.

That resolution came despite lack of proper assistance from IRS agents. We first conferenced in a representative from the Healthcare Marketplace, who read their internal guidance which stated that the information contained on Form 1095-A was "for guidance only" and instructed us to disregard the incorrect information on the 1095-A, and to "just enter the correct information on the tax return and Form 8965." When we asked to speak to a manager, the Tier II agent confirmed the information originally provided. The Appeals Officer reached out to an IRS Subject Matter Expert, but none of these experts or agents were able to provide any meaningful information as to how to resolve the matter. So here you have an IRS Appeals Officer and an IRS Subject Matter Expert, both uncertain as to how to resolve this matter. Without representation, the IRS would have undoubtedly denied this taxpayer his health care subsidy; he would have lost his refund, and had a balance due. To the Service's credit, the Appeals Officer looked at the evidence provided, and determined that there was a high likelihood that the taxpayer was entitled to the APTC, and the case will be settled; however, the taxpayer is still waiting for the refund he should have received over a year ago.

Another client comes to mind, and this case is special to me because of the incredible facts and circumstances of the case, the length of time it took to resolve, and the ultimate outcome. It involved an ESL taxpayer who claimed the Earned Income Tax Credit for his son for tax years 2009 through 2011. The IRS conducted an audit and denied the dependency exemption, Child Tax Credit, and EITC for three years. These denials led to an assessment from the IRS of over $17,000. The IRS also imposed a two-year ban from claiming the EITC for his "reckless disregard" under IRC Section 32(k). Apparently, a single father who claims his only son on his tax return, and has a paid preparer file his returns is acting with "reckless disregard," according to the IRS.

What was interesting about this case was that it was abundantly clear that the taxpayer was entitled to the EITC at all times during the examination. The client's ex-wife was not claiming the child (she had died), and there was no other person claiming this child. During the audit, the taxpayer moved from Texas to Illinois, and he requested a transfer of his case to a local IRS representative. When the IRS denied that request, he drove down to Texas with his brother to visit with the examiner, who would not speak to him because he did not have an appointment.

Thankfully, the taxpayer contacted our Clinic, and we submitted a request for Audit Reconsideration, which substantiated the claim he made on his tax return. After the IRS failed to answer the request for over 18 months, the client required intervention from the Taxpayer Advocate Service to get someone to review the request. Several months later, and with the help of TAS, we were able to get someone at the IRS to look at the Audit Reconsideration request, and the Service summarily reversed its prior position. As a result, the IRS removed the taxpayer's assessments, and he received refunds of $13,000 for subsequent years that offset his assessed liability. However, this was not the end of the story. The Clinic also had to litigate the EITC for tax year 2013, and had to litigate the two-year ban in 2014, in two separate Tax Court matters. The Service repeatedly made material errors during this journey, including depriving the taxpayer of his right to representation, departure from clear provisions in the Internal Revenue Manual requiring managerial approval in 32(k) bans, and summarily denying dependency exemptions and the Child Tax Credit in the year that he was only subject to the EITC ban.

The most heart wrenching part of representing this client was the helplessness expressed by the taxpayer. Let me share with you two messages I received from this client via e-mail while representing this taxpayer (with his permission):

> "I know they denying the EIC for my son, but how is it possible if I am the only parent, we live together by ourselves, and I pay for

> everything since he is only twelve! So that would be head of household right? They have birth certificates, socials, driver's license, what else do they need for proof? How can it be possible for them to violate taxpayer's rights this way? Can't we take them to court, jury court, something? It's an obvious mistake by them, and a no win for them right! So is this just government corruption? If it can't be won, just let me know so I can just stop stressing over it? I just can't believe it happens to people who already don't make much! I can see it being a good business if there is a bunch of us though. Don't they make enough off the people illegally working, and not collecting? Is it because of my race? Sorry I just don't understand?"

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> "How can they deny my own son as a dependent, after I sent them all the proof? So the 2014, and 2015 is going to be denied too right? Because if they are denying my son, 2014 isn't going to be enough either! So it's going to be at least till 2015 or 2016 to resolve, or longer?"

Not all messages were of despair. When I communicated to the taxpayer that all issues were resolved, I received the following message: "Thank you so much! I was ready to give up."

Both the EITC case and the ACA case discussed above involve taxpayers who *tried their best on their own to resolve the matter*, but were unable to do so, and needed representation. Without the benefit of a trained advocate, they would have undoubtedly lost their claims. The issues raised in these two matters are not oddities either, considering 27.5 million taxpayers claimed the EITC in 2014, and 6.7 million taxpayers claimed the Premium Tax Credit in the same year.

Unfortunately, unlike these taxpayers who knew they had rights and tried their very best to assert them, most of the clients in our Clinic are unaware of their rights or unaware how to navigate the complexity of the tax code on their own.

The IRS Future State Vision may provide opportunities for many taxpayers to resolve matters without having person-to-person contact. For many taxpayers, this will be an expedient and effective means of maintaining compliance and resolving controversies. However, this assumes a lot from the “average taxpayer.” It assumes that the taxpayer trusts the IRS enough to create an online account (despite multiple IRS security breaches over the past few years). When a bank has a security breach, it can issue the customer new debit or credit card. What can the IRS do in the event of a breach? Will it issue a new Social Security number? Not likely. What happens when there are compromises to the integrity of the online interface? Will the average taxpayer still want to interact with the IRS in this manner?

Many of my clients have accessibility issues. They have limited access to a computer or the internet, or do not have the skills to navigate a computer or the internet. My clients also have various disabilities, such as vision impairments or low cognitive function that may prevent accessibility to this online interface.

The Future State Vision assumes the average taxpayer is tech savvy, tax savvy, and will resolve issues solely through the online interface. The online interface, although couched as “for everyone” is far from serving the needs of all taxpayers. The most vulnerable populations, such as the poor, the disabled, and the elderly, will not have the same access to service as their educated, tech-savvy counterparts. This effectively creates a class system in tax administration, as stated by the National Taxpayer Advocate in her 2015 Annual Report to Congress, where “[t]he compliant or trying-to-comply taxpayers will be left either struggling for themselves or paying for assistance they formerly received for free from the IRS.”

The system compromises the Taxpayer Bill of Rights for these vulnerable populations by denying to them, at the very least, the Right to Be Informed, the Right to Quality Service, and the Right to a Fair and Just Tax System.

The Future State Vision is not all doom and gloom. As a practitioner, I believe that the online interface has potential to change how the LITC represents clients, especially in correspondence exams. However, there still may be the need for practitioners to depart from the online interface and interact with someone over the phone. When this time comes, will the Service have adequate resources in place to answer these calls? Will those answering the calls have adequate training?

It also raises questions about the use of unregulated preparers, who may have access to taxpayer information in this new interface. What happens when these unregulated preparers breach the trust of their client, or misuse their information? What sanctions would these individuals face?

At this point, it seems that there are more questions than answers. The online interface may be a valuable tool for millions of taxpayers. However, it may also exclude many taxpayers, particularly those in vulnerable populations such as the poor, the disabled, and the elderly. These individuals will not be able to navigate the future online interface that the IRS envisions, requiring use of traditional methods of communication, such as written correspondence and the telephone. When those letters and calls come, will the IRS be on the other end?