

THE TAX COURT PRO BONO PROGRAM

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Chair, Pro Bono Committee*

The complexity of the American legal system makes pro bono efforts an important part of our obligations as lawyers. The website for the State Bar of Texas states: “The lawyers of the State of Texas are committed to Equal Access to Justice for All and to giving back to the justice system, their state, and their local communities.” One of the ways that the State Bar of Texas, Section of Taxation does that is through our Tax Court Pro Bono program.

Most cases in the United States Tax Court are filed by taxpayers who are not represented by counsel. *Pro se* petitioners are unfamiliar with tax law and court procedures; even what we consider basic fundamentals are mysteries to them. As a result, they often get worse results than they might with representation. Recognizing a need, Elizabeth Copeland developed our program in 2008. It covers all five Texas cities that the Tax Court visits – Dallas, El Paso, Houston, Lubbock, and San Antonio. Our program was the first state-wide program of its kind. One of the best indications of the importance and value of the program is the national recognition and publicity that it has received. It was featured at the September 2008 meeting of the Section of Taxation of the ABA, where Elizabeth described our program to representatives from other states. Our Pro Bono Committee assisted the Maryland Bar in setting up a similar program. The program was also featured prominently when the ABA Section of Taxation awarded Elizabeth the 2009 Janet Spragens Pro Bono award, and when Tax Analysts named her one of the national finalists for the 2012 Tax Person of the Year.

Our program provides volunteers to help the taxpayers evaluate the case, negotiate with IRS Counsel, and prepare for trial. Occasionally volunteers may enter an appearance and assist at trial, but that is entirely at the discretion of the volunteer. It’s usually not as difficult or complicated as this description may sound. Many of our volunteers are experienced tax litigators, but even those who aren’t have found that they can add real value.

In 2012, we assisted 41 taxpayers. We first hear about the case the morning of the calendar call and some of the taxpayers don’t have a very strong case, so we didn’t always get a good result for them. But often we did make a difference. Here are just a few examples from 2012:

- The taxpayer’s case involved several substantiation issues. However, little progress had been made before the trial date. **Jaime Vasquez** entered an appearance, obtained a continuance, and then worked with the taxpayer and IRS Counsel to resolve many of those issues. Those efforts reduced the deficiency by about \$9,400, or more than half. In addition, Jaime also helped negotiate language in the decision document regarding an investment; this will help the taxpayer claim a bad debt deduction in subsequent years. Congratulations, Jaime!
- The taxpayer’s daughter and two grandchildren had lived with her for most of the year, and she provided all their support. She claimed head of household filing status, three

dependents, and Earned Income credit. But she was unaware that her daughter had filed a joint return for that year, which invalidated all of that. I helped her through the stress of a short trial, but the law was clear and the judge had to rule for the government. **Lee Meyercord** offered to assist her for negotiations with Collections. Lee persuaded the Revenue Officer to place the deficiency in “uncollectible” status. Congratulations, Lee!

- As part of a divorce decree, the taxpayer’s husband was ordered to pay credit card bills in her name. When the ex-husband didn’t pay, the credit card company issued a Form 1099 to the taxpayer and IRS issued a notice of deficiency based on cancellation of indebtedness income. The income was clearly hers for tax purposes, despite the divorce decree, so the government’s case looked strong. But **Dustin Whittenburg** spotted an issue – the cancellation of the debt actually took place in an earlier year, which was now closed. He coached the taxpayer in how to present evidence to the court and raise the statute of limitations issue. After the judge heard the evidence and told IRS Counsel that a ruling would not be in the government’s favor, the case immediately settled. Congratulations, Dustin!
- The taxpayer real estate developer did not file a return and claimed additional business and personal deductions after the IRS prepared a substitute for return. This was a substantiation issue, and the taxpayer and IRS Counsel had agreed on a motion to continue in order to gather additional information. But the judge denied the motion on the basis that “this has gone on too long.” **David Gair** met with the taxpayer and determined that he was unprepared and would lose if the case went to trial that day. David helped him prepare an effective motion to reconsider, which persuaded the judge to grant the taxpayer a continuance. The parties eventually filed a stipulated decision reflecting no deficiency. In David’s words, “Never thought that I would feel like getting a motion to continue granted would be a big victory – but it was in this case.” Congratulations, David!

The taxpayers whom we assist, even if we can’t help them get a good result, genuinely appreciate our assistance. If nothing more, we help make a mystifying process less intimidating. The Tax Court judges like the program as well; they believe a pro bono attorney helps a more effective resolution of cases. Even IRS Counsel like to see us at the calendar calls. Their job is not to advocate for taxpayers, but they genuinely want to see the right result. Inserting a neutral third party into the process helps with communication, and pro se taxpayers sometimes are more comfortable accepting an assessment of their case if they hear it from us rather than from the IRS attorney. Many of the positive results we get for taxpayers could not have been achieved without a cooperative attitude from IRS Counsel.

The strength of our program is the attorneys who volunteer their time to come to the calendar calls and advise the taxpayers. Our volunteers in 2012 were:

- In Dallas: **Nancy Allred, Peter Anastopulos, Carolyn Dove, David Gair, Amber Gajjar, Laura Grimball, Jennifer Gurevitch, Amber Haque, Chip Hider, Matt Hunsaker, and Lee Meyercord.**

- In Houston: **Pat Bunch, Carol Cantrell, Pat Cantrell, Finis Cowan, Ed Hartline, Bill Lee, Derek Matta, Rob Morris, Charlie Wist, and Juan Vasquez.**
- In San Antonio: **Gerald Brantley, Barbara Lamar, Katherine Noll, Jamie Vasquez, and Dustin Whittenburg.**

And of course, no list of volunteers would be complete without **Elizabeth Copeland** and **Pete Lowy**, who coordinate the program in San Antonio and Houston respectively.

It's a great program and contributes to the Tax Court, the IRS, and the community. If you would like more information, or would like to participate, please contact me, Elizabeth, or Pete.