

How Do Poor People Have Tax Problems?

by Elaine Javonovich and Elizabeth J. Atkinson

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It's a question many individuals ask when they first learn about the services of the Community Tax Law Project (CTLTP), a nonprofit that provides low-income Virginians with pro bono legal representation in federal and state tax disputes. Yet requests for clinic services have reached an all-time high. During the first six months of 2009, CTLTP's caseload increased by 52 percent over the same period last year, causing the clinic to limit its assistance to emergency situations such as garnishments and immediate procedural deadlines.

The CTLTP staff believes much of this increase is due to the effects of the economic downturn. Taxpayers who have fallen on hard times due to job loss and other family income changes have been hardest hit. Some taxpayers are facing tax consequences as a result of dipping into their retirement funds to make ends meet. Others are incurring tax liabilities from cancellation of debt income due to home foreclosure, car, medical, or credit card debt. Taxpayers who have existing payment arrangements are defaulting on their agreements due to changes in their family income.

In one case, an 84-year-old taxpayer who did not file a return was unaware he had a tax liability related to cancellation of debt imputed income from his home foreclosure. A pro bono volunteer prepared his tax return claiming the insolvency exclusion and later followed up when the Internal Revenue Service demanded proof of the taxpayer's insolvency. As a result, the taxpayer owed nothing, instead of the \$25,000 alleged by the IRS. The volunteer also prepared the taxpayer's 2007 return so that the taxpayer received the \$300 economic stimulus payment.

Self-employed taxpayers and small-business sole proprietors, who were rare among CTLTP's clients a few years ago,

now make up a noticeable portion of the clinic's caseload. Generally, these taxpayers are experiencing difficulty in making federal and state estimated tax payments. CTLTP staff anticipate this trend will continue as workers in the building trades, independent truck drivers, and those who provide personal services — such as landscapers and housekeepers — are affected by reduced consumer spending.

The Virginia Department of Taxation has increased collection activity in response to the state budget crunch. This trend began in 2008 and often focused on taxpayers carrying liabilities longer than ten years. The CTLTP represented taxpayers in 121 Virginia tax matters in the first six months of 2009, a 181 percent increase from the same period last year.

In addition to cases related to the current economic downturn, the CTLTP helps recover federal tax refunds and credits wrongfully withheld from taxpayers. Many of these cases involve family-status tax issues. The CTLTP's clients prevail in many of these cases, resulting in substantial refunds and credits that help these low-wage Virginians maintain their housing, feed and clothe their children, and pay medical and other bills. Much of this money is spent in the communities where these families live and work.

The CTLTP relies on a strong network of volunteer attorneys located throughout Virginia and the District of Columbia. Clinic staff and pro bono volunteers work with the IRS and Virginia Department of Taxation to get the right result for a taxpayer. Because a number of the CTLTP's clients are unable to pay their liabilities, the clinic's services save the IRS and the commonwealth valuable resources that would best be focused in other areas.

Many CTLTP volunteers are esteemed tax attorneys who provide their expertise

in U.S. Tax Court advising and representing pro se litigants. For example, in March, CTLTP staff and pro bono attorneys provided eighteen petitioners with advice or representation that enabled them to settle their cases without trial. One taxpayer who had lost his job withdrew substantial amounts of money from investment accounts in order to pay his bills. The IRS calculated the tax liability on the gross amount of the taxpayer's investment accounts and did not take into account his basis in the assets. With the CTLTP's advice, the taxpayer was able to determine his cost basis and significantly lower his tax liability.

The CTLTP receives federal funding and a state appropriation administered by the Virginia State Bar. However, due to recent budget cuts and reduced access to new funding, the clinic has had to implement its own cutbacks during a time of increasing need. The clinic is committed to continuing to provide outstanding tax legal services to a population that is underserved in Virginia. The project is actively recruiting pro bono legal and other assistance in response to the need for increased services.

Despite the large caseload, CTLTP staff remain optimistic. "It's very rewarding for us and our volunteers to see how grateful our clients are," said Paul R. Harrison, the CTLTP's clinic coordinator. "These are folks experiencing extreme financial hardship because of a tax problem. They're doing the best they can to resolve the problem and move forward. With our help, it's like the weight of the world is lifted from their shoulders."

Virginia Lawyers Honored for Work on Behalf of Service Members

Five Virginia civilian lawyers have been honored by the Naval Legal Service Office (NLSO) Mid-Atlantic for helping U.S. Navy lawyers advocate for low-income service members in consumer matters in the Hampton Roads area.

Lawyers recognized are:

- Robin A. Abbott, a partner in the Newport News law firm Consumer Litigation Associates PC. She has advised navy lawyers about options for service members who face mortgage foreclosure. “She is also one of the few attorneys in Hampton Roads who represent service members in actions against unscrupulous automobile dealers,” according to a press release from the NLSO.
- Tricia Lund Batson, managing attorney of the Legal Aid Society of Eastern Virginia. She trained navy attorneys in landlord-tenant law. She helped in case development and litigation tactics for the Expanded Legal Assistance Program in Hampton Roads. And she helped develop do-it-yourself pleadings for divorce.
- Leonard A. Bennett, senior partner of Consumer Litigation Associates PC. He is a litigator experienced in many federal courts nationally, and he helps legal assistance attorneys work through complex consumer law problems.
- Dale W. Pittman who concentrates his Petersburg practice on the Fair Debt Collection Practices Act. He has advocated in the General Assembly for military and civilian consumer rights, and he has represented military members in consumer cases. He also teaches legal assistance attorneys in Hampton Roads and at the army and navy judge advocate general schools.
- James W. “Jay” Speer, executive director of the Virginia Poverty Law Center in Richmond. In the General Assembly, he led efforts to curtail payday loans, title lending, and deceptive consumer practices. He also has trained attorneys and low-income clients in these areas.

“Consumer law problems are some of the most prevalent legal issues our service members face,” the press release stated. “Each of the civilians honored ... has provided the Hampton Roads military legal community the intellectual tools needed to support and protect the service members we service.”

The presentations were made during the Mid-Atlantic Joint Services Consumer Law Symposium on June 12, 2009.

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