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Practical Considerations in Starting and Operating an Academic Low-Income Taxpayer Clinic

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Abstract

Low-income taxpayer clinics (“LITCs”) provide legal assistance to underserved clients with active federal tax controversies, conduct educational outreach to low-income and English-as-a-second-language taxpayers, and work to ensure the fairness and integrity of the tax system. Despite the availability of IRS grant funding for LITCs and the alignment of LITC goals with the core values that underlie clinical legal education, a relatively small percentage of U.S. law schools currently operates an LITC. Moreover, many law school LITCs have closed within the past ten years, demonstrating that, even if started, academic LITCs are challenging to sustain.

This Article incorporates the authors’ experiences in launching and directing the UC Hastings Low-Income Taxpayer Clinic: (1) to demonstrate the value an LITC can add to both a law school’s clinical offerings and its tax curriculum; (2) to give prospective LITC founders factors to consider in deciding whether to start an academic LITC; and (3) to provide guidance on how to effectively launch and operate an academic LITC.

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I. Introduction

Low-income taxpayer clinics (“LITCs”) provide legal assistance to underserved clients with active federal tax controversies, conduct educational outreach to low-income and English-as-a-second-language taxpayers, and work to ensure the fairness and integrity of the tax system.¹ Despite the availability of IRS grant funding for LITCs and the alignment of LITC goals with the values that underlie clinical legal education, a relatively small percentage of U.S. law schools currently operates an LITC.² Moreover, approximately 24 academic LITCs have closed within the past ten years, demonstrating that, even if started, academic LITCs are challenging to sustain.³

This Article incorporates the authors’ experiences in launching and directing the UC Hastings Low-Income Taxpayer Clinic to demonstrate the value of academic LITCs, consider why there are not more academic LITCs, and provide guidelines to reliably support academic LITCs once they are established. Our work is intended to be a resource for those considering starting academic LITCs, and for those seeking ways to promote the successful, long-term operation of existing LITCs. Our specific goals are: (1) to demonstrate the value an LITC can add to both a law school’s clinical offerings and its tax curriculum; (2) to give prospective LITC founders factors to consider in deciding whether to start an academic LITC; and (3) to provide guidance on how to effectively launch and operate an academic LITC.

This Article proceeds as follows: Part I provides an overview of the IRS’s LITC Program, including a brief history, requirements for obtaining funding, and the unique role of academic LITCs. Part II discusses the benefit that academic LITCs can provide for law schools, students, and the community. Part III gives an overview of important factors to consider before launching an academic clinic, such as funding, staffing, and obtaining matching funds. Part IV discusses effective LITC operation, including how to structure the classroom component, find synergies with other law school clinics, and ensure supervisory continuity.

¹ I.R.C. § 7526(b)(1)(A)(ii); INTERNAL REVENUE SERVICE, PUBLICATION 3319 at ii.

² Approximately 43 of 204 law schools (approximately 21 percent) operate an LITC.

³ See INTERNAL REVENUE SERVICE, PUBLICATION 4134 (2012-2022); LITCs based at legal services organizations (“LSOs”), in contrast, generally have greater staying power.

II. LITCS: An Overview

A. *History and Background of LITCs*

Organizations assisting taxpayers with matters before the IRS have existed since at least 1974, when a low-income taxpayer clinic was formed at Hofstra University School of Law.⁴ Between then and 1998, nearly all LITCs existed at law schools, with 13 of the 17 LITCs operating as academic clinics, and three operating as legal services organizations.⁵ During that time period, there was high turnover in LITC openings and closures, with approximately half of the LITCs open in 1990 closing by 1998, with seven new clinics taking their place.⁶

In 1998, Congress enacted Internal Revenue Code Section 7526, which authorized grants of up to \$100,000 to LITCs that met certain criteria, including having sufficient low-income clients, obtaining matching funds, and conducting educational programs for taxpayers for whom English is a second language.⁷ Section 7526 was a turning point in how LITCs were funded and resulted in 34 LITCs obtaining funding in 1999, doubling the number of LITCs compared to the previous year.⁸

The availability of Internal Revenue Service (“the Service”) grants motivated legal service organizations (“LSOs”) to launch LITCs as part of the palette of services already being offered to existing clients.⁹ A LSO already assisting a client with a non-tax legal issue could now also assist that client with their tax issues via the LSO’s in-house LITC. Since the LITC would be housed within the preexisting LSO, the marginal overhead expense of providing LITC services was minimal. The Service grant funds could thus be used for additional salary for LSO attorneys now assisting with LITC matters, or for additional staff specializing in tax matters.¹⁰

In the years following LITC grant availability, the number of LITCs grew significantly. In 1998 there were 17 LITCs total, and in 2010 there were approximately 160, a nearly ten-fold increase.¹¹ But the proportion of

⁴ Keith Fogg, *Taxation with Representation: The Creation and Development of Low-Income Taxpayer Clinics*, 67 TAX LAW. 5 (2013) (hereinafter “Fogg, *Taxation*”). Readers desiring a detailed history of low-income taxpayer clinics would be well-served to read Prof. Fogg’s article in its entirety.

⁵ Fogg, *Taxation*, *supra* note 4, at 31.

⁶ Fogg, *Taxation*, *supra* note 4, at 19.

⁷ I.R.C. §7526; Pub. L. 105–206, title III, §3411(c), 112 Stat. 751 (1998).

⁸ INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 3 (2020); Fogg, *Taxation*, *supra* note 4, at 31.

⁹ Fogg, *Taxation*, *supra* note 4, at 31 (speaking to the emergence of legal service organizations into the LITC landscape upon the issuance of grants in 1999).

¹⁰ Fogg, *Taxation*, *supra* note 4, at 32–33 (noting that many post-1998 LITCs suffered issues with having adequately trained directors).

¹¹ Fogg, *Taxation*, *supra* note 4, at 4.

academic LITCs has declined—of these 160 LITCs in 2010, only about 44, or 27 percent, were LITCs affiliated with an academic institution.¹² Since 2010 the absolute number of academic LITCs has remained relatively constant, with 43 academic LITCs operating in 2020. This represents about 33 percent of all LITCs, of which there are approximately 131, about 30 fewer than there were in 2010.¹³

The Service LITC grant, as a potential source of \$100,000 of renewable annual funding, has significantly affected the growth and type of LITCs. By imposing operational restrictions and requirements on grantees, the grant has also affected the kinds of matters performed and the types of clients represented. These details are discussed in the following section.

B. *LITC Activities*

An LITC's core function is to assist low-income taxpayers with their tax controversies. But LITCs operate within somewhat narrow constraints since obtaining (and renewing) a Service grant requires that the grantee LITC adhere to certain requirements concerning clients seen, matters undertaken, and activities conducted.¹⁴ Although a legal clinic is not required, of course, to obtain IRS grant funding to operate, the majority of LITCs do.¹⁵

The mission of the Service's LITC Program is to ensure the fairness and integrity of the tax system for taxpayers who are low-income or speak English as a second language ("ESL") by: (1) providing pro bono representation on their behalf in tax disputes with the Service; (2) educating them about their rights and responsibilities as taxpayers; and (3) identifying and advocating for issues that impact these taxpayers.¹⁶ How these objectives are operationalized is discussed in the following sections.

1. *Income Limits for Clients*

LITCs are statutorily obligated to represent low-income taxpayers. At least 90 percent of the LITC's clientele must have incomes below 250 percent of the federal poverty level.¹⁷ "Income" for this purpose means total

¹² Data on file with authors.

¹³ Data on file with authors.

¹⁴ A full discussion of the grant application process is discussed later in this Article. *See infra* Part III.A.

¹⁵ A "low-income taxpayer clinic" could set whatever criteria they want for client selection and matters taken, provided they do not accept a Service grant. But, as a general matter, nearly all legal clinics describing themselves as "Low-Income Taxpayer Clinics" receive a Service grant, and are thus obligated to represent mostly poor clients, perform educational outreach, and obtain matching funds, etc.

¹⁶ INTERNAL REVENUE SERVICE, PUBLICATION 5066 at 10 (2020).

¹⁷ I.R.C. § 7526(b)(1)(B)(i); INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 47 (2021) (noting that the LITC Program uses Health and Human Services definition of federal poverty

annual cash receipts before taxes, and includes gross salaries, net business income, alimony, unemployment benefits, rents, scholarships, and dividends, among other income items.¹⁸ Up to 10 percent of an LITC's clientele can be clients whose income exceeds the income cap, but taking on these matters should still support the overall mission of the LITC Program to provide representation, education, and advocacy to low-income and ESL taxpayers.¹⁹

2. *Jurisdiction and Amount at Issue*

LITCs are intended to support low-income taxpayers in their controversies with the Service.²⁰ LITCs are permitted to assist clients with matters with state and local tax authorities, but only if the LITC is representing the taxpayer in a related controversy with the IRS.²¹ LITCs are thus precluded from assisting taxpayers with state and local tax issues if the federal statute of limitations has rendered the related federal controversy moot.²²

The amount in controversy for which LITCs can offer assistance is capped at \$50,000.²³ This limit provides another mechanism by which LITC representations are limited to under-resourced taxpayers; taxpayers with amounts in controversy in excess of \$50,000 are arguably not low-income. Despite this stated limit, LITCs are permitted to accept the occasional case where the amount in controversy exceeds \$50,000, as long as the reason for acceptance is documented and reported on the required grant reports.²⁴ The novelty of the issues presented, the pedagogical value of the representation, and the financial need of the taxpayer are factors that could favor the LITC making an exception.

3. *Collection Issues*

About 40 percent of LITC representation concerns collections, or IRS requests for the taxpayer to pay additional taxes owed.²⁵ These requests are often made via automated correspondence from the IRS alerting taxpayers

level). For a household of one, the federal poverty level is \$12,880. 86 Fed. Reg. 7732 (Feb. 1, 2021).

¹⁸ INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 50 (2021). Gifts and loans are excluded.

¹⁹ INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 53 (2021).

²⁰ INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 47 (2021).

²¹ INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 47 (2021).

²² State and local statutes of limitation are often longer than the typical three-year federal statute of limitations. *See, e.g.*, Cal. Rev. & Tax. Code § 19255 (establishing 20-year statute of limitations to collect unpaid tax debts).

²³ I.R.C. §§ 7463, 7526(b)(1)(B)(ii).

²⁴ INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 53 (2021).

²⁵ INTERNAL REVENUE SERVICE, PUBLICATION 5066 at 16 (2021).

of the balance owed.²⁶ Taxpayers receiving these notices who are unable to pay or contest the balance stated then often turn to LITCs for assistance with reducing the amount owed or to arrange acceptable payment plans.²⁷ In 2019, approximately 8,500 clients received collection relief assistance from LITCs, for an aggregate of approximately \$50 million in liabilities saved.²⁸

This LITC assistance with collections can take several forms. If the taxpayer meets the criteria for financial hardship, the deficiency can be placed in “currently not collectible” (“CNC”) status. The liability is not forgiven, but the Service stops attempting to collect the debt.²⁹ Critically, the Service’s window to collect continues to run while the taxpayer is in CNC status, meaning that the tax liabilities of taxpayers with continuing financial hardship will eventually have their liabilities expire.³⁰ During 2019 and 2020, CNC issues represented about 20 percent of the issues worked by LITCs, the highest single category.³¹

LITCs also assist taxpayers in arranging alternative methods for resolving their tax debts. Offers in Compromise (“OICs”) permit taxpayers to settle their tax debts for less than stated amount owed.³² Eligibility for OICs generally depend on the taxpayer’s current and future inability to pay their tax debt. OICs save the Service resources otherwise expended on collection efforts for taxpayers without the ability to pay and allows tax-defaulted taxpayers the opportunity to resolve their tax debts based on their reasonable collection potential.³³

Taxpayers can also request to repay their tax liability over a period of time. These installment agreements are payment plans tailored to the

²⁶ Manoj Viswanathan, *Tax Compliance in A Decentralizing Economy*, 34 GA. ST. U. L. REV. 283, 333 (2018) (“The IRS’ first pass at enforcement is of minimal cost and done via its Automated Underreporter and Automated Substitute for Returns programs.”).

²⁷ INTERNAL REVENUE SERVICE, PUBLICATION 5066 at 16 (2021). (“[T]axpayers[s] may not be able to pay the balance shown as due in an IRS notice, understand the notice, or communicate effectively with the IRS to provide needed information to dispute the amount owed or negotiate a collection alternative.”).

²⁸ INTERNAL REVENUE SERVICE, PUBLICATION 5066 at 18 (2021).

²⁹ Bryan T. Camp, *The Failure of Adversarial Process in the Administrative State*, 84 IND. L.J. 57, 65 (2009) (“[Currently not collectible status] puts a hold on most collection activity but leaves the assessment on the books.”).

³⁰ See I.R.C. § 6502(a) (providing a default ten-year window for the IRS to collect on tax debts).

³¹ INTERNAL REVENUE SERVICE, PUBLICATION 5066 at 17 (2021) (showing CNC issues representing 18% of issues worked); INTERNAL REVENUE SERVICE, PUBLICATION 5066 at 15 (2020) (showing CNC issues representing 22% of issues worked).

³² Shu-Yi Oei, *Getting More by Asking Less: Justifying and Reforming Tax Law’s Offer-in-Compromise Procedure*, 160 U. PA. L. REV. 1071, 1077 (2012).

³³ INTERNAL REVENUE SERVICE, PUBLICATION 5066 at 19 (2021). OICs represented approximately 19 percent of the issues worked by LITCs in 2020. *Id.* at 17.

taxpayer's specific situation. When the Service approves an installment agreement request, it agrees to allow the taxpayer to make monthly payments on the tax liability in exchange for the taxpayer's assurance to timely make payments and stay current on all other tax obligations.³⁴ LITCs help taxpayers navigate the installment agreement process and assist them in determining what monthly payment they can afford, and what payment plan the Service will accept.³⁵

4. *Consultations and Short-Term Engagements*

LITC assistance to taxpayers need not occur solely through formalized lawyer/client relationships. Taxpayers frequently contact LITCs to ask substantive tax questions that do not necessarily result in the LITC representing the taxpayer.³⁶ These taxpayer consultations are typically provided via drop-in hours or via telephone intake. These consultations are counted and included in the information submitted to the IRS as part of the grant renewal process.³⁷

LITCs also provide short-term, limited scope representation to taxpayers via the U.S. Tax Court's calendar call program.³⁸ An overwhelming majority of taxpayers litigating small dollar amount controversies are *pro se* petitioners.³⁹ Through the calendar call program, these small tax case litigants receive real-time legal assistance with their *pro se* petitions from LITC staff, volunteers, and students.⁴⁰ The calendar call representation performed by LITCs results in better outcomes for taxpayers (by reducing liabilities) and for both the Tax Court and the Service's Office of Chief Counsel (by reducing the number and expense of *pro se* trials that occur).⁴¹

³⁴ INTERNAL REVENUE SERVICE, Form 9465 (describing installment agreement process).

³⁵ INTERNAL REVENUE SERVICE, PUBLICATION 5066 at 16 (2021).

³⁶ One of the main reasons consultations do not result in representation of the taxpayer is due to the income guidelines.

³⁷ See *infra* Part III.A (discussing grant application and renewal); see also INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 46 (2021).

³⁸ See generally Peter J. Panuthos, *The United States Tax Court and Calendar Call Programs*, 68 TAX LAW. 439 (2015) (providing summary of calendar call program).

³⁹ *Id.* at 440 (stating that 95 percent of "small" tax case litigants are self-represented). A "small" tax case is one where less than \$50,000 is in dispute; see also U.S. TAX COURT, *Guidance for Petitioners: Starting a Case*, How do I decide whether to elect regular or small tax case procedures?, last accessed Sept. 25, 2022, https://www.ustaxcourt.gov/petitioners_start.html#START12 [<https://perma.cc/9P7D-X6DX>].

⁴⁰ W. Edward Afield, *Social Justice and the Low-Income Taxpayer*, 64 VILL. L. REV. 347, 352 (2019).

⁴¹ T. Keith Fogg, *Every Taxpayer Counts: Nina Olson's Impact on Low-Income Taxpayer Clinics*, 18 PITT. TAX REV. 53, 89–90 (2020).

5. *Litigation*

LITCs primarily assist taxpayers through administrative channels, but also represent taxpayers in court proceedings.⁴² Most of these proceedings are in U.S. Tax Court, which permits taxpayers to contest tax determinations without first paying the liability alleged to be owing.⁴³ Given the overlap between litigants that qualify for LITCs services and litigants that would otherwise appear *pro se*, LITCs are able to assist many taxpayers that would otherwise face challenges navigating the legal process.⁴⁴ Approximately nine percent of LITC matters involve litigation, with the bulk of those matters proceeding in Tax Court.⁴⁵

6. *Educational Activities*

LITCs are required to engage in educational outreach to low-income and ESL taxpayers.⁴⁶ This outreach is intended to inform taxpayers about their rights and responsibilities, and to present information on tax topics of relevance.⁴⁷ These education activities can take the form of workshops or trainings to taxpayers directly, or to other organizations that assist low-income and ESL individuals.⁴⁸ Information about these educational activities is reported directly to the LITC Program. In 2019, LITCs hosted over 1,800 educational activities involving over 41,000 attendees.⁴⁹

III. The Value of Law School LITCs

This section discusses the unique value that LITCs can add to law schools. An LITC not only supplements a law school's clinical offerings but can also forge important connections with a law school's doctrinal tax curriculum. The resulting benefits inure to existing clinics, students, and the community.

⁴² INTERNAL REVENUE SERVICE, PUBLICATION 5066 at 24 (2021) (“LITCs represent taxpayers in the U.S. Tax Court.... U.S. district courts, the U.S. Court of Federal Claims, U.S. Courts of Appeals, and even the U.S. Supreme Court.”).

⁴³ Deborah A. Geier, *The Tax Court, Article III, and the Proposal Advanced by the Federal Courts Study Committee: A Study in Applied Constitutional Theory*, 76 CORNELL L. REV. 985, 1016 (1991) (“The Tax Court, on the other hand, requires no payment prior to adjudication.”).

⁴⁴ Fogg, *Taxation* at 49 (describing overlap between *pro se* litigants and low-income taxpayers).

⁴⁵ INTERNAL REVENUE SERVICE, PUBLICATION 5066 at 24 (2021).

⁴⁶ See, e.g., INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 6 (2021).

⁴⁷ Example topics include “filing requirements, tax recordkeeping, family status issues, refundable credits, the Affordable Care Act, worker classification, identity theft, information about the audit and appeals process, and collection alternatives.” INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 6 (2021).

⁴⁸ INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 6 (2021).

⁴⁹ INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 25 (2021).

A. Law School Synergies

1. Synergies with Existing Clinics

An LITC is usually not the first clinical experience a law school chooses to offer. More typically, law schools start their clinical programs with clinics that specialize in the legal practices found in community law clinics.⁵⁰ Criminal defense, housing, and immigration assistance are common practice areas within community law clinics and are thus frequently practice areas for law school clinics.⁵¹ Community law clinics have historically provided the training that aspiring clinicians then mirrored for interested law schools. Because community law clinics did not, until the advent of the LITC Program, prioritize assisting taxpayers with their tax problems, there was no wellspring of tax lawyers familiar with low-income taxpayer work available to start LITCs. A law school launching an LITC thus typically has several other legal clinics already in operation.

Because academic LITCs are usually joining an existing clinical program, these LITCs can work collaboratively with the law school's other clinics to holistically serve client needs. Clinic clients often need assistance with more than one legal issue. Holistic representation addresses not just the instant legal issue that brings the client to the clinic's door, but other issues that make clients vulnerable to the justice system.⁵² Tax issues will not, as a general matter, result in incarceration, but an unresolved tax issue often results in economic insecurity via property liens, garnished wages, or levied assets.⁵³ Although a client might first be represented by a different clinic, law schools with LITCs will have an additional instrument in their toolkit to more completely address the client's legal needs.

We have observed these intra-clinic synergies first-hand. Clients of other UC Hastings clinics with IRS issues are connected directly to the UCH LITC. The UCH LITC can also assist these clients without necessarily engaging in formal representation. For instance, the UC Hastings

⁵⁰ Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 998 (2004) ("Many of the lawyers who started building and teaching in clinics...had worked in legal aid and public defender programs and in civil rights and other public interest advocacy programs.").

⁵¹ See, e.g., Chester L. Mirsky, *The Political Economy and Indigent Defense: New York City, 1917-1998*, 1997 ANN. SURV. AM. L. 891, 1017 (1997) (describing legal areas of the Neighborhood Defender Service of Harlem as including criminal defense, housing, domestic relations, and immigration).

⁵² James M. Anderson, Maya Buenaventura & Paul Heaton, *The Effects of Holistic Defense on Criminal Justice Outcomes*, 132 HARV. L. REV. 819, 825 (2019) ("A holistic defender might help clients enroll in drug treatment, access mental health services, maintain employment, preserve housing, or file immigration applications.").

⁵³ Chaya Kundra, *The Life Cycle of a Federal Tax Controversy*, 39 MD. BAR J. 38, 41 (Nov./Dec. 2006).

Individual Representation Clinic represents clients in wage-and-hour cases that often result in cash settlements; the UCH LITC consults regularly with the IR Clinic to provide guidance on possible tax consequences for these low-income clients.

2. *Synergies with Existing Tax Curriculum*

Law schools with an already established tax curriculum will benefit from the addition of an LITC. An LITC permits students to apply what they have learned in their doctrinal tax courses to real-world situations. This expanded tax curriculum is responsive to student demand for both more tax courses and clinical opportunities and is especially useful at law schools where J.D. students can specialize in tax law.⁵⁴ To the extent a law school is interested in expanding not just its clinical offerings, but also its tax-focused courses, an LITC can assist on both fronts.

B. *Community Benefits*

An LITC can also help a law school be a better community member. To the extent a law school is located in a low-income community, the neighborhoods surrounding the law school can be a source of LITC clients. Although San Francisco has a relatively high median income, approximately 12 percent of its residents were living below the poverty line between 2012 and 2016.⁵⁵ The specific neighborhood in which UC Hastings is located, the Tenderloin, has a poverty level of 19 percent.⁵⁶ Although the UCH LITC is not limited geographically in the clients it can serve, many of its clients are drawn from the surrounding areas.

The community benefits of an LITC are not limited to cities and urban areas. Low-income rural areas also have a need for assisting their residents with tax issues. The areas of “special consideration” – places that the Taxpayer Advocate Service has identified as especially needing LITCs – are predominantly located outside of urban areas.⁵⁷ In addition, since much of

⁵⁴ See UC Hastings, Tax Law Concentration (last accessed September 23, 2022), <https://www.uchastings.edu/academics/jd-concentrations/tax-law/> [https://perma.cc/8BH6-FA8Z]. The UC Hastings tax concentration ensures there is a significant amount of students (approximately 20) interested in pursuing tax law. These concentrators are all guaranteed an experiential opportunity in tax.

⁵⁵ U.S. CENSUS BUREAU, *QuickFacts: San Francisco, California*, last accessed Sept. 25, 2022, <https://www.census.gov/quickfacts/fact/table/sanfranciscocitycalifornia,US/IPE120221> [https://perma.cc/H7C2-38EU].

⁵⁶ *Id.* The Tenderloin’s Zip Code is 94102.

⁵⁷ INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 2 (2020). States or localities identified as areas of special consideration include Arizona (Gila County), Florida (Brevard, Citrus, Flagler, Hernando, Lake, Orange, Putnam, Seminole, and Sumter counties), Idaho (Ada, Adams, Bannock, Bear Lake, Bingham, Boise, Bonneville, Butte, Canyon, Caribou, Clark, Clearwater, Custer, Franklin, Fremont, Gem, Idaho, Jefferson, Latah, Lemhi, Lewis, Madison, Nez Perce,

LITC representation can be performed remotely, LITCs are able to assist clients who may have difficulty with transportation and/or mobility.⁵⁸

C. Student Benefits

LITCs can give students what they want from their clinical experiences. According to a recent survey, the top three reasons for student interest in clinics are a desire to (1) improve skills; (2) increase marketability post-graduation; and (3) more deeply learn the substantive area of law taught in the clinic.⁵⁹ LITCs offer benefits in all three areas.

LITCs, like nearly all clinical experiences, give students the opportunity to practice real-world lawyering such as client interviewing, negotiation, legal research, and client counseling.⁶⁰ But LITCs' focus on tax law, an area of law generally neglected in clinical legal education,⁶¹ enables LITCs to provide students with additional benefits specific to the practice of tax law. Students enrolling in an LITC obtain experience that prepares them for a variety of potential careers in tax controversy.⁶² Despite being a practice area in which lawyers can build a career, few students graduate with experience in the field. LITC participation gives students a valuable head start in developing these skills.

LITC work gives students intense practice doing tax-based legal research. Even students with a deep interest in tax law seldom do tax research in their doctrinal classes. Most typically, doctrinal tax classes read statutes, regulations, and the occasional Service ruling. In contrast, LITC work requires that students consult a diverse set of research databases, including

Oneida, Owyhee, Payette, Power, Teton, Washington, and Valley counties), Montana, Nevada, North Dakota, Pennsylvania (Bradford, Clinton, Lycoming, Monroe, Northumberland, Pike, Snyder, Sullivan, Susquehanna, Tioga, and Wyoming counties), Puerto Rico, West Virginia, and Wyoming.

⁵⁸ See *infra* Part IV.H.5.

⁵⁹ Robert R. Kuehn & Margaret Reuter, CTR. FOR THE STUDY OF LEGAL EDUC., 2019-20 SURVEY OF APPLIED LEGAL EDUCATION at 16 (2020). In general, student interest in clinics remains high, with over 90-percent of schools recently reporting that, over the past three years, student demand for clinical experiences has either increased or remained constant. *Id.*

⁶⁰ See Deborah N. Archer, *Political Lawyering for the 21st Century*, 96 DENV. L. REV. 399, 424 (2019) (noting that these skills, though prevalent in clinics, are not necessarily sufficient for accomplishing social justice goals).

⁶¹ Only about 21 percent of law schools have an LITC. See *supra* note 3 and accompanying text. LITCs make up the overwhelming majority of clinical experiences in tax. Alina Ball & Manoj Viswanathan, *From Business Tax Theory to Practice*, 24 CLINICAL L. REV. 27, 55-57 (2017).

⁶² Such experience is viewed favorably, for instance, in the selection process for the Service's Chief Counsel Honors Program. See INTERNAL REVENUE SERVICE, *Chief Counsel Honors Program*, (last accessed September 25, 2022) <https://www.jobs.irs.gov/resources/job-descriptions/honors-program-entry-level-attorneys> [<https://perma.cc/6ZJG-WTL9>].

those (such as Checkpoint) that are common in practice but virtually unknown to law students.

Students enrolled in LITCs are also permitted to work on public policy issues that implicate larger issues of social justice. Per LITC Program guidelines, LITCs must also engage in educational outreach activities in addition to client representation. Participating in this outreach gives students direct exposure to the issues that directly affect underserved communities and informs the views that students can have on tax law policy. This work develops not just practice experience, but also students' abilities to make normative inquiries about the area of law in which they are working.

LITC work also gives tax-interested students a window into a side of tax law that they would otherwise miss. Students enrolling in the UCH LITC have remarked that representing LITC clients showed them that a facially neutral legal system can have disproportionate effects on underserved communities. Doctrinal tax law courses, with their focus on statutory interpretation and application, often elides over this reality.

The goal of the preceding section is to detail the value that an LITC can provide to law school curricula, students, and the community. In the following section we consider how to most effectively start an LITC and identify possible challenges in the process.

IV. Launching an LITC

Concluding that an LITC is a good fit for your law school is but the first step in launching the clinic. There are many considerations specific to starting an LITC (as opposed to a clinic generally) that warrant discussion. For instance, launching an LITC requires, for most schools, applying for and obtaining the Service grant. Although previous articles have provided guidance on starting law school clinics,⁶³ none have discussed the particulars of starting an LITC. This section highlights factors clinicians should consider before launching their LITC.

⁶³ See, e.g., Stephen R. Miller, *Field Notes from Starting a Law School Clinic*, 20 CLINICAL L. REV. 137 (2013) (describing launch of a new Economic Development Clinic); Philip Schrag, *Constructing a Clinic*, 3 CLINICAL L. REV. 175 (1996) (positing basic structural questions that a clinic founder should consider when launching a clinic); Daniel M. Schaffzin, *(B)light at the End of the Tunnel? How a City's Need to Fight Vacant and Abandoned Properties Gave Rise to a Law School Clinic Like No Other*, 52 WASH. U. J.L. & POL'Y 115 (2016) (discussing the launch of an anti-blight clinic).

A. LITC Funding and the IRS Grant

There are some law schools whose clinical programs do not operate in a resource-constrained environment.⁶⁴ For everyone else, funding for additional clinical programs can be difficult to find.⁶⁵ For schools with established clinical programs, even administrators who care about clinical education might question allocating funds for another low-enrollment clinic versus other relatively inexpensive forms of experiential education.⁶⁶ For this reason, clinicians contemplating launching an LITC generally rely on the annual renewal of the Service grant.⁶⁷ Indeed, the availability of grant funding is often what motivates the launch of an LITC.⁶⁸

IRS Publication 3319 provides a complete description of the LITC grant application, including deadlines and required materials for submission.⁶⁹ The grant application, which requires describing the planned LITC in detail, is generally due in mid-June of the year preceding the year in which the LITC would launch. Successful applicants are notified in November. First-time grantees are awarded a one-year grant, while renewal awards are generally for a three-year period. The grant application due in June 2023, for instance, contemplates an LITC that would launch on January 1, 2024, with successful applicants notified in November 2023.⁷⁰

Because the application is (in part) an information-collection exercise needing the involvement of various law school personnel, starting the grant application process as early as possible is recommended. Although the current year's application materials are only available in May, much of the work in preparing the application can be done before the application is

⁶⁴ See, e.g., Jonathan D. Glater, *Harvard Law, Hoping Students Will Consider Public Service, Offers Tuition Break*, N.Y. TIMES (Mar. 18, 2008), <https://www.nytimes.com/2008/03/18/us/18law.html> [<https://perma.cc/JQ3H-PQ59>] (stating that Harvard Law School's 2008 endowment was \$1.7 billion).

⁶⁵ See, e.g., Margaret Martin Barry et al., *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 26–27 (2000) (“[A]ny shift of resources from other parts of the law school budget to the clinics is likely to provoke considerable resistance from the constituencies that are adversely affected.”).

⁶⁶ Stephen F. Befort, *Musings on A Clinic Report: A Selective Agenda for Clinical Legal Education in the 1990's*, 75 MINN. L. REV. 619, 626 (1991) (“Some law school administrators advocate simulated skills courses and externship placements as cheaper alternatives to the in-house clinic.”).

⁶⁷ Although the IRS grant is a key funding source for the LITC Director's salary, the amount available is significantly lower once indirect costs are taken into account. See *infra* notes 88–89.

⁶⁸ Relying on grant funding to support a clinic has its associated perils. See Befort, *Musings*, *supra* note 66, at 626 (“[T]he continued reliance on grant funding may inhibit a permanent law school commitment to clinical education.”).

⁶⁹ INTERNAL REVENUE SERVICE, PUBLICATION 3319 (2021); see *infra* note 75 and accompanying text.

⁷⁰ See *infra* Part III.E (discussing challenges associated with the integrated calendar year and academic year schedules).

officially released. Even though the grant application is updated annually, many time-consuming application components vary little (if at all) from year to year.⁷¹ Elements such as the draft budget worksheet and explanations, the LITC narrative, and the required organizational documents, for instance, can be assembled well in advance of the May release date.

The LITC grant application is helped by obtaining buy-in not just from the relevant administrators at the law school, but also from the various constituencies potentially affected by the launch of the LITC. This includes existing clinicians, who might express concern at how an additional clinic could affect their enrollment, and other tax professors, who might have an opinion on how the LITC fits into the existing tax curriculum. Since the grant applicant is often not the permanent LITC Director, obtaining this broad institutional support will make the transition to the permanent LITC Director much smoother.

The Service grant comes with its own set of challenges. The grant unquestionably facilitates the launch of academic LITCs, but the need for its periodic reapplication means that LITC funding beyond the grant window (one year initially and three years subsequently) is never assured. Without hard money funding, the LITC Director is usually a marginalized member of the faculty, with less job security, lower status, and less pay than other clinical colleagues.⁷² These issues can only be addressed with funding beyond the grant itself, either from the law school or from other guaranteed sources.⁷³

B. *LITC Grant Application Specifics*

The LITC grant application requires detailed information from the grantee organization, including a description of the grantee's experience with representing, educating, and advocating for low-income and ESL individuals.⁷⁴ For law schools with existing clinical programs, providing this information is relatively straightforward since the infrastructure for

⁷¹ See INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 16 (2022).

⁷² See Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 HOW. L.J. 31, 37 (1993) (“[S]chools have had second thoughts about pursuing outside funding [for clinics] due to the uncertainty of outside sources, the loss of control over the program, the marginalization of the faculty, and the administrative expenses.”). One solution, of course, would be for the law school to allocate funds to the LITC sufficient to make the LITC Director a permanent member of the clinical faculty. But this runs into the funding priority challenges discussed earlier. See *supra* notes 66-67 and accompanying text.

⁷³ See Donald N. Duquette, *Developing A Child Advocacy Law Clinic: A Law School Clinical Legal Education Opportunity*, 31 U. MICH. J.L. REFORM 1, 30 (1997) (providing normative view that law schools should serve as guarantors of funding for clinics when certain “soft money” sources are not consistently available).

⁷⁴ INTERNAL REVENUE SERVICE, Form 13424-M (2019).

providing legal assistance is already established, and because the clientele of the LITC will overlap considerably with the clients typically served by the extant clinical program.⁷⁵

Significant portions of the application are devoted to providing assurances that the grantee organization has the administrative wherewithal to manage federal grants and run a legal practice. The financial portion of the application should be completed in coordination with the law school department responsible for accounting and finance. Audited financial statements must be included as part of the submission. The taxpayer services portion of the application requires a detailed description of procedures relating to intake, client eligibility, and case tracking.⁷⁶

The LITC grant application requires providing names for the three LTC positions: Qualified Business Administrator (“QBA”), Qualified Tax Expert (“QTE”), and Clinic Director. The QBA is responsible for grants administration and is typically an administrator with an accounting background or experience with grants administration.⁷⁷ The QTE is someone with sufficient tax law expertise to supervise substantive tax matters.⁷⁸ The Clinic Director may also be the QTE and QBA, if they are so qualified.⁷⁹

As part of the narrative describing clinic operations, grant applicants must provide numerical goals for representations, consultations with low-income and ESL taxpayers, and educational activities. The LITC Program is sensitive to the fact that academic LITCs have pedagogical goals in addition to client representation goals, and the numerical targets provided should reflect this reality.⁸⁰

C. *Matching Funds*

LITC grant guidelines require that the grantee organization obtain dollar-for-dollar matching funds for all grant monies received.⁸¹ Matching

⁷⁵ The application materials for the UCH LITC are available (upon email request) to any clinician considering launching an LITC.

⁷⁶ For law schools with established clinical programs, this information is relatively straightforward.

⁷⁷ If these duties are managed by a department, the name of staff member overseeing the department should be provided. INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 191 (2020).

⁷⁸ INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 120 (2020).

⁷⁹ INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 35–36 (2020). These roles need not be fixed. The UCH LITC grant application listed the grant applicant as the QTE and interim Clinic Director, with the expectation that the permanent Clinic Director would be subsequently hired.

⁸⁰ In our experience, the LITC Program is supportive of academic LITCs, and was a very helpful resource during the grant application process.

⁸¹ See INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 13 (2020).

funds need not be cash and can take various forms, including donations, services provided by volunteers, and pro-rated salaries of law school personnel spending time on LITC activities who are not paid with grant funds.⁸² Tracking of, and reporting on, matching funds is a main administrative duty of LITC grantees.

A common source of matching funds comes from LITC matter placements with pro bono attorneys. Although an academic LITC prioritizes student-focused pedagogical goals, many academic LITCs have enough matters to both meet student fieldwork needs and place clients with volunteers. These pro bono placements, though especially useful when law school classes are not in session, can occur year-round. To the extent volunteer pro bono attorneys take on LITC matters, these hours are valued at up to \$210 per hour.⁸³ At this billable rate, 500 volunteer hours fully satisfies the matching funds requirement.

Assembling a roster of pro bono volunteers should be done well in advance of the submission of the LITC grant application. Doing so allows for client placements as soon as the LITC launches on January 1 of the applicable calendar year.⁸⁴ These volunteers can be solicited from law school alumni, local practitioners, and retired attorneys interested in pro bono work. Matters can be placed with the pro bono panel even during the academic year when the LITC course is in session. This is especially helpful if experienced tax controversy attorneys are on the pro bono panel; these lawyers can accept complicated matters that are potentially beyond the scope of what students can reasonably be expected to do.

To the extent that law school personnel not paid by the LITC grant spend time on matters of LITC administration, the labor costs associated with these hours are treated as matching funds. The full-time equivalent for each person spending time on LITC administration is multiplied by the person's salary and cost of benefits to determine the matching funds amount.⁸⁵ Because the LITC's launch will likely require significant oversight from existing law school personnel, this category of matching funds is especially significant during the first year of the LITC's operation.

D. *Indirect and Direct Expenses*

LITC grant funds can be used for both direct and indirect expenses. Direct costs are expenses that can reasonably be allocated to LITC activities, such as the salary and benefits of the LITC Director and other LITC staff.⁸⁶

⁸² See INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 26 (2020).

⁸³ INTERNAL REVENUE SERVICE, Rev. Proc. 2020-45, 2020-46 I.R.B. 1016 (2020).

⁸⁴ LITC grants operate on a calendar year schedule; hence the January 1 start date for any newly-formed LITC.

⁸⁵ INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 105-107 (2020).

⁸⁶ This assumes that the LITC Director's only responsibility is operating the LITC.

Indirect costs are overhead costs that are shared with other operations of the organization. Typical indirect costs include salary for administrative staff and facility, facility occupancy costs, and office supplies.⁸⁷

Organizations already receiving federal grants typically use an Indirect Cost Rate Agreement (“ICRA”) to determine indirect costs. The ICRA calculates indirect costs as a percentage of the permitted direct costs attributable to the grant. An organization with an ICRA of, say, 46 percent receiving a \$100,000 grant will only have \$68,493 to use for direct costs.⁸⁸ The \$31,507 difference goes directly to the law school for the administrative expenses associated with hosting the LITC. The post-ICRA funds are often not sufficient to fund a permanent LITC Director’s salary.⁸⁹ Thus, additional arrangements must typically be made if the LITC grant is the primary source of funding for the LITC.

It is possible to negotiate with the law school for a return of some portion of the indirect cost allocation back to the LITC.⁹⁰ For most law schools with established clinical programs, the marginal cost of administering the LITC is likely not the amount allocated to the law school via the ICRA. Thus, the indirect cost allocation is often a windfall for the law school. If the law school keeps the full amount of the indirect cost allocation, the remaining funds are likely insufficient to support any reasonable salary plus benefits.⁹¹ Any portion of the indirect cost allocation that the law school returns to the LITC is treated as a direct allocation and therefore counts as matching funds.⁹²

E. *LITC Staffing*

The timing of the LITC grant application and notification of award recipients can be particularly challenging for academic LITCs. For most applicants, failure to receive the grant precludes the launch of the LITC since grant funds are needed for the LITC Director’s salary. To the extent the LITC will be staffed by a new hire (rather than by faculty already

⁸⁷ See INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 108 (2020).

⁸⁸ Direct costs of \$68,493 result in $(\$68,493) \times (46\%) = \$31,507$ of indirect costs, totaling \$100,000. 46% is the amount ICRA UC Hastings uses for its federal grants.

⁸⁹ An ICRA of 46% permits \$68,493 to be used for both salary and benefits. At Hastings, benefits cost approximately one-third of salary. Thus, funding the LITC Director’s salary solely with the IRS grant results in a maximum salary of approximately \$51,370 ($\$51,370$ plus one-third of $\$51,370 = \$68,493$).

⁹⁰ In arguing for a return to the LITC of some portion of the ICRA allowance, it is persuasive to emphasize that, without this return, the LITC would fail to operate and, thus, require a return of the grant. Without the grant, the ICRA allocation would be zero.

⁹¹ At UC Hastings, for instance, the cost of employee benefits is approximately one-third of salary.

⁹² The UCH LITC receives back from UC Hastings the full indirect cost allocation, permitting the UCH LITC to use the full \$100,000 towards LITC expenses.

working at the law school), the search for a permanent LITC Director can thus only begin in November, after grantees are notified of their award amounts. Per the grant requirements, LITCs are supposed to operate on a calendar year schedule and therefore must formally launch on January 1 of the year following the grant award.⁹³ This timeline poses a significant challenge, as Thanksgiving and the winter holidays render it difficult, if not impossible, to find a permanent, full-time LITC Director by the formal launch date.

This staffing issue can be resolved by using an interim LITC Director until a permanent Director can be hired. Ideally, the permanent LITC Director would be hired sometime during the spring semester of the year in which the LITC formally launches. This gives the interim LITC Director sufficient time to orient themselves to their new position, plan the seminar portion of the clinic, and reflect upon the various non-client aspects of the job.⁹⁴ With this timeline, the first offering of the LITC clinical course can reasonably occur in the fall of the year after the LITC grant application was submitted.⁹⁵

Since students will not be involved in the LITC during its first semester of operation, all client work must be done by the interim LITC Director or by volunteer pro bono attorneys.⁹⁶ This is not problematic from the LITC Program's perspectives—so long as clients' controversies are addressed and educational activities are performed, the LITC is satisfying its grant obligations. This approach does, however, place extra burdens on the interim LITC Director, whose LITC duties are in addition to their pre-existing teaching and scholarship obligations.⁹⁷

Other staffing models are also possible. The permanent LITC Director could be an existing faculty member that adds the LITC to his or her existing teaching duties, with the grant used to supplement his or her existing income. The LITC Director could also be an adjunct professor or a

⁹³ See INTERNAL REVENUE SERVICE, PUBLICATION 3319 at i (2020) (“[F]unding is provided for one-year periods (January 1–December 31).”).

⁹⁴ See Stephen R. Miller, *Field Notes from Starting a Law School Clinic*, 20 CLINICAL L. REV. 137, 152 (2013) (discussing non-client serving components of clinics).

⁹⁵ UC Hastings was notified of its grant award on November 4, 2020, and launched the UCH LITC (with an interim-Director) on January 1, 2021. The permanent UCH LITC Director was hired in February 2021, and the first LITC course was offered during the fall 2021 semester.

⁹⁶ These volunteer hours go toward the matching funds requirement.

⁹⁷ Although the interim UCH LITC director performed these duties in addition to their existing workload, it would be reasonable to request course and/or service relief for shouldering these additional obligations.

clinical fellow that is hired for periodic contracts with no expectation of long-term employment.⁹⁸

Regardless of the staffing model chosen, a key challenge is the grant requirement that the LITC operate year-round. Thus, even when client representations aren't being performed by students, the LITC Director must coordinate other means by which matters are resolved. During the summer months this could be effectuated by hiring paid summer interns or by including the LITC clinical course as part of the law school's summer course offerings.⁹⁹ Summer representations could also be handled by volunteer pro bono attorneys instead of students, which provides the additional benefit of counting towards the matching funds requirement.

Budget permitting, many LITCs hire staff attorneys or fellows to assist with casework, grant reporting, and student supervision. The American Bar Association ("ABA") Section of Taxation, for example, offers a two-year fellowship for recent law school graduates working in tax-related public service.¹⁰⁰ The fellowship covers substantially all of the costs of the fellow's employment, making this an attractive option for under-resourced LITCs wishing to increase staffing.

Having assistance with grant management is particularly helpful and can come from sources within the law school. Establishing relationships with the law school's finance department and, if available, grants department, is key to ensuring accurate reporting of the financial aspects of managing the Service grant. This permits the LITC Director to focus on managing cases, supervising students, and operating the LITC.

V. Effectively Operating an LITC

Ensuring funding and finding staffing for the LITC are but prologue for the LITC's main functions: representing clients and educating students. This section discusses important considerations in how to most effectively operate a law school LITC. What is best for a given LITC is context dependent—whether an LITC is joining a developed clinical program, for example, would affect the operational decisions made. The practices

⁹⁸ But any staffing model which relies primarily on grant funding to pay for the permanent LITC Director is subject to the vagaries of "soft money" funding, which include lack of permanence and diminished status. See Wallace J. Mlyniec, *Developing A Teacher Training Program for New Clinical Teachers*, 19 CLINICAL L. REV. 327, 345 fn. 25 (2012). Ideally, the LITC grant would supplement funding offered by the law school to permanently endow the LITC Director position.

⁹⁹ The UCH LITC has used both of these options in providing representation over the summer.

¹⁰⁰ *Christine A. Brunswick Public Service Fellowship*, AMERICAN BAR ASSOCIATION, last accessed Sept. 22, 2022, <https://www.americanbar.org/groups/taxation/awards/psfellowship/> [<https://perma.cc/94RC-KRND>].

outlined below are intended to be a starting point for reflection and not prescriptive mandates.

Several existing articles discuss starting and effectively operating new law school clinics.¹⁰¹ Our focus is on issues and concerns specific to LITCs. Although, for instance, developing a clinical manual, teaching interview skills, and fostering effective teamworking strategies are all important elements of a successful LITC, this section's emphasis is on the special considerations unique to LITCs.¹⁰²

A. *Grant Data Tracking*

Ensuring compliance with LITC grant recordkeeping is an essential part of LITC operations. To the extent possible, the case management software ("CMS") used by the LITC should be customized with fields that correspond to the LITC grant report Forms 13424-A, -B, -C, and/or -K.¹⁰³ These forms include metrics about the number of consultations and cases the LITC handles in the year; it is therefore helpful to add a field to the CMS categorizing each matter as a consult or a case. The B and K forms also require details on the number of cases, the type of tax issues in the case, where the case is located at the Service, among other similarly specific details.¹⁰⁴ Tracking the relevant data will allow you to quickly pull reports and easily tabulate the necessary numbers, saving an immense amount of time when preparing the mid-year and annual grant reports.

The Service requires reporting of certain data not tied to specific clients. These data include educational activities reported and certain consultations on Form 13424-A and most of the information reported on Form 13424-C related to advocacy efforts throughout the year.¹⁰⁵ For these items, an LITC "client" can be created in the CMS that holds the data for non-client activities. Alternatively, this information can be stored in an external document or spreadsheet.¹⁰⁶

¹⁰¹ See generally Stephen R. Miller, *Field Notes from Starting A Law School Clinic*, 20 CLINICAL L. REV. 137 (2013) (providing guidance for clinicians starting new law school clinics); Philip G. Schrag, *Constructing A Clinic*, 3 CLINICAL L. REV. 175 (1996) (discussing the pedagogical and operational considerations in designing a clinic course); Deborah Maranville et al., *Re-Vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517 (2012) (introducing a conceptual framework to assist in the process of experiential curriculum design).

¹⁰² To review the UCH LITC Clinical manual (which was one of the most time-consuming projects at the outset of starting the UCH LITC) please contact litc@uchastings.edu.

¹⁰³ INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 73 (2020). Some CMS systems, such as LegalServer, have a built-in, LITC-specific module. See LITC – Low Income Taxpayer Clinic, LEGALSERVER, <https://www.legalserver.org/features/litc/> [<https://perma.cc/62D5-ARQ3>].

¹⁰⁴ INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 73 (2020).

¹⁰⁵ INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 73 (2020).

¹⁰⁶ At UC Hastings, we use a combination of these two options.

B. *Designing the LITC Course Structure*

Academic LITCs are distinguished from LSO (legal service organization) LITCs by the role that students have in clinic operation. Although an LITC's mission is to represent clients in their tax disputes with the Service and educate them about their rights and responsibilities as taxpayers, there are several choices concerning LITC structure that affect how students' involvement accomplishes these goals.

Decisions concerning course details, such as credit hours and class size, will often be influenced by existing law school norms. In a survey of 19 academic LITCs, the average number of credits ranged between three and six units, with the units roughly divided between seminar and fieldwork components.¹⁰⁷ At UC Hastings, clinical courses are generally one-semester clinics for six to eight units, with approximately four credits devoted to fieldwork.¹⁰⁸ The UCH LITC takes between six to eight students per regular semester, and four when the LITC is offered during the summer session.

Offering an "advanced" LITC option wherein students can optionally re-enroll in the clinic for an additional semester (or semesters) provides continuity on matters taking more than one semester to complete. This is especially useful for matters involving litigation in the Tax Court because trials are often scheduled months after initiating the case. Students invested in the client's outcome may wish to continue their representation until the matter is resolved.

Any "advanced" clinical course must comply with ABA Standard 304, which mandates that law clinics "provide a classroom instructional component; or, for a field placement, a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection."¹⁰⁹ Since advanced students have already completed the full LITC course, retaking the substantive portion of the seminar confers little pedagogical benefit. Advanced students can instead satisfy Standard 304 through weekly supervisory meetings where students discuss their cases and are provided an opportunity for reflection. Advanced students can also join seminar students for case rounds. By so doing, first-time enrollees can benefit from the added experience of the advanced students.

¹⁰⁷ Data on file with authors. When the UCH LITC is offered during the summer, it is a four-unit course.

¹⁰⁸ UC Hastings Course Catalog 2022-2023 (last accessed September 23, 2022) <https://www.uchastings.edu/wp-content/uploads/2022/06/Course-Catalog.pdf> [<https://perma.cc/W53E-9TSB>].

¹⁰⁹ AMERICAN BAR ASSOCIATION, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 304 (2021-2022).

C. *Planning and Teaching the LITC Seminar*

Tax controversy is a unique area of clinical education because of the sheer variety of cases that come through the LITC. While tax law is at the center of all tax controversies, the specific knowledge and skills students need to be successful in their fieldwork is seemingly endless. There is simply not enough time in a semester to cover the breadth of information needed, particularly in one-semester clinics. As a result, the LITC Director must carefully select the topics to cover during the LITC seminar.

1. *Substantive and Procedural Tax Law*

The most common topics covered in LITC seminars are collection procedures, along with representing clients in audits, Service appeals, and Tax Court litigation.¹¹⁰ Each of these categories include numerous substantive topics that could be covered, such as dependent-related credits, relief from joint and several liability, worker classification, and penalty abatement. The additional substantive topics chosen may depend on common issues your LITC sees or on the LITC Director's specialization.¹¹¹ LITCs may focus, for instance, on matters involving farm workers, immigrants, or Native American populations, and therefore pay special attention to the tax issues commonly encountered by these populations.¹¹²

The topics covered each semester may vary depending on trends in cases arriving to the LITC. However, some substantive and procedural topics (*e.g.*, collection cases) are fundamental to the representation of low-income taxpayers and should be covered every semester. Cases involving head-of-household filing status, the earned income tax credit, and the child tax credit are also common enough to warrant regular inclusion. The tax procedure topics of audits, appeals, and Tax Court pre-trial litigation are taught every semester for similar reasons.

For many of these substantive and procedural topics, students can learn through the practical application of the law and relevant procedure by filling out sample Service forms or by drafting sample protests and petitions. In a section on innocent spouse relief or worker classification, for instance, students can complete Forms 8857 or SS-8, respectively, to better understand how to use substantive law to obtain relief for a client. Other possibilities for teaching these skills include drafting a response to a CP75 Notice requesting substantiation for the earned income tax credit or the child tax credit, or drafting a Tax Court petition. These practical

¹¹⁰ Based on a few publicly available syllabi.

¹¹¹ The UCH LITC has received a large increase in representation requests from incarcerated individuals and has devoted increased attention to this topic.

¹¹² William Schmidt, *The Variety of Work in Low-Income Taxpayer Clinics* 38 ABA TAX TIMES 19, 19-23 (2019).

application exercises allow students to see how tax attorneys use tax law and procedure to directly assist their clients.

2. *Transferrable Lawyering Skills*

As with all academic clinics, LITCs should strive to develop in students transferable lawyering skills in addition to tax-specific knowledge. Much has been written on what lawyering skills could generally be taught in a clinical seminar. This section presents suggested topics to help narrow down the choices of what to teach based on the skills most relevant to LITC fieldwork.

Skills related to client interviewing and counseling, fact development and presentation, and problem-solving all naturally arise within the tax system. The LITC also allows students to explore the uncertainties in tax practice. When asking students why they are interested in taking the LITC, they often remark that tax “has an answer” or is “more certain” than other areas of law they studied in their doctrinal classes. While tax practice is statutory-based, uncertainty still exists, especially since most taxpayer issues are resolved administratively without a public record. Exploring these themes in class and teaching students how to manage this uncertainty and exercise their judgment makes them better lawyers and increases their confidence in their legal abilities.

Of particular note to LITC students is teaching how to build rapport, use active listening, and express empathy to clients. Many clients with Service controversies have feelings of anxiety, shame, and helplessness, and are also facing other financial challenges with, for example, employment and housing. Low-income taxpayers may struggle with mental health or substance abuse that led to tax non-compliance or nonpayment, while other clients may be victims of domestic violence seeking assistance with innocent spouse relief. Teaching these communication skills help adequately prepare students to support their clients through a potential resolution of the tax controversy involved.

a. Other Lawyering Skills. Some traditional lawyering skills are less likely to be encountered in the students’ fieldwork due to the nature of the tax system. Teaching these skills in the seminar may not be the best use of limited classroom time; instead, instruction can be provided individually to the specific students who will need to use them.¹¹³ As the Service moves more toward correspondence audits and away from in-person meetings for less complex cases, students have less need for honing their face-to-face

¹¹³ Students involved in a Collection Due Process (“CDP”) Hearing or a docketed Tax Court case, for example, would benefit from such individualized instruction.

negotiation skills.¹¹⁴ For fieldwork purposes, students are better served by practicing written persuasion, as responding to Service letters and notices is more common in this practice area.

While students may work on docketed Tax Court cases, their fieldwork will not generally take them inside a courtroom. Tax Court is a traveling court, sometimes visiting a city (or even a state) only once or twice per year.¹¹⁵ Even if your LITC is in a major city with frequent Tax Court visits,¹¹⁶ courtroom experience still may be limited because over 90 percent of Tax Court cases are resolved without trial.¹¹⁷ Thus, teaching students trial skills in the seminar may be of little value in their fieldwork. To the extent required, however, courtroom skills can certainly be taught to the specific students who are preparing for a Tax Court trial.

b. Lessons About the Human Aspects of Lawyering. Social justice in tax is a theme that can and should be discussed throughout the semester. As has been widely reported over the years, the Service audits some of the lowest-income individuals at nearly the same rate as the top one percent.¹¹⁸ The issues related to underserved taxpayers have become even more apparent during the COVID-19 pandemic, as taxpayers face significant delays in receiving their refunds or stimulus checks.¹¹⁹ To further the students' understanding of social justice and community assistance, it is useful to incorporate an education, outreach, and advocacy project into the LITC seminar.¹²⁰ The projects have a dual purpose—to help meet stated LITC

¹¹⁴ Due to positive student feedback, the UCH LITC still teaches negotiation in a module about IRS appeals.

¹¹⁵ Per the Tax Court Fall 2021 and Winter 2022 calendars, states visited only once included Nevada, Idaho, New Mexico, and many others. See *Trial Sessions*, UNITED STATES TAX COURT, last accessed Sept. 5, 2022, https://www.ustaxcourt.gov/trial_sessions.html [<https://perma.cc/R5Y9-GVfy>].

¹¹⁶ Pre-pandemic, the Tax Court visited San Francisco between 10-12 times per year.

¹¹⁷ Comm. on Court Procedure, ABA Tax Sec., *Office of Chief Counsel, IRS, FY 2018 & FY 2019 2d Quarter*, Power Point Presentation Slide 18, last accessed Sept. 23, 2022, <http://procedurallytaxing.com/wp-content/uploads/2019/08/Group-I-Releasable.pdf> [<https://perma.cc/E4BN-EEVD>] (hereinafter *ABA Court Procedure Committee Presentation*).

¹¹⁸ Paul Kiel, *IRS: Sorry, but It's Just Easier and Cheaper to Audit the Poor*, PROPUBLICA (Oct. 2, 2019), <https://www.propublica.org/article/irs-sorry-but-its-just-easier-and-cheaper-to-audit-the-poor> [<https://perma.cc/88BS-2PZN>]. However, Commissioner Rettig has vehemently disagreed with this analysis of the data. *IRS in the Pandemic: Hearing Before the Subcomm. on Gov't Operations of the Comm. on Oversight & Reform*, 116th Cong. 32-34 (2020) (video available at <https://www.youtube.com/watch?v=LHCdw2GhVM4> [<https://perma.cc/37YP-RLJP>]).

¹¹⁹ TAXPAYER ADVOC. SERV., NATIONAL TAXPAYER ADVOCATE ANNUAL REPORT TO CONGRESS 2020, last accessed Sept. 25, 2022, https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_FullReport.pdf [<https://perma.cc/B9BG-KQ5P>] (hereinafter *NTA Annual Report 2020*).

¹²⁰ This is discussed in more detail below.

grant goals for education and outreach, and to allow students to approach lawyering from a different perspective.

In the UCH LITC, we require students to complete an education, outreach, or advocacy project as part of the clinical responsibilities. Students choose and design their own project, often based on their fieldwork or other specific personal interests. Education and outreach assignments range from presenting a workshop to organizations assisting low-income taxpayers to developing and distributing written informational materials in multiple languages that describe taxpayer rights and responsibilities. Students who are multilingual find this exercise particularly rewarding, as it is a way to use their life experiences to give back to the community.¹²¹

Advocacy projects provide students the opportunity to gain skills in policy and advocacy work. Through these projects, students learn to think critically about the law, moving beyond simply applying the law and showing them how they can advocate for, and possibly effectuate, positive changes. Students can draft and submit an issue to the Service's Systemic Advocacy Management System ("SAMS") to report issues that involve Service systems, policies, and procedures.¹²² If submitted early enough in the semester, a SAMS report allows students to speak directly to the Service about the issue involved and practice oral advocacy skills. Another popular advocacy project is drafting an amicus brief in a case that impacts low-income taxpayers, letting students sharpen their brief writing skills within the advocacy context. The opportunities for student advocacy in the LITC are nearly limitless due to frequent tax code changes and Service updates to policies and procedures, often in a manner that negatively impacts low-income taxpayers.

D. Tax Court Calendar Call

Provided your law school is located near a Tax Court travel location (or you attend a remote virtual trial session),¹²³ the LITC can and should participate in the Tax Court's Academic Calendar Call Program ("CCP").¹²⁴ The CCP provides the opportunity to meet with *pro se*

¹²¹ *Students Help Demystify Tax Rules*, UC HASTINGS LAW: CLINICS BLOG (Dec. 16, 2020), <https://www.uchastings.edu/2020/12/16/students-demystify-tax/> [https://perma.cc/37WU-5LNS].

¹²² *Systemic Advocacy Management System (SAMS)*, INTERNAL REVENUE SERVICE, last accessed September 25, 2022, <https://www.irs.gov/advocate/systemic-advocacy-management-system-sams> [https://perma.cc/93QR-WFR9].

¹²³ U.S. Tax Court Admin. Order No. 2021-01 (Aug. 27, 2021), https://ustaxcourt.gov/resources/administrative_orders/Administrative_Order_2021-01.pdf [https://perma.cc/9LUW-SAQ3].

¹²⁴ U.S. Tax Court, Clinics & Pro Bono Programs: Academic Clinical Programs (Law School), last accessed Sept. 25, 2022, https://www.ustaxcourt.gov/clinics_academic.html [https://perma.cc/4UBD-AW29].

taxpayers during calendar call to provide advice and guidance about their case or the Tax Court process more broadly. Requiring LITC student attendance at the CCP as a part of the course requirements is an excellent way to expose the students to the courtroom. Since over 90% of Tax Court cases are resolved without trial,¹²⁵ the CCP may be the only opportunity for students to see the courtroom proceedings.

During calendar call, students sit in the Tax Court courtroom to observe the judicial process.¹²⁶ At the beginning of each session, the Tax Court Judge announces the LITC's presence and availability to provide advice and possible representation to any *pro se* petitioners appearing in the courtroom. *Pro se* petitioners are given the opportunity to privately meet with the LITC either before or after their case is called by the judge for a status update. If the *pro se* petitioner is interested in meeting with the LITC, they notify the judge and the LITC conducts a limited scope representation to assist with the case.

The informal consultations with *pro se* petitioners provide a fantastic opportunity for the LITC to model lawyering practice to students. Since any *pro se* petitioner, regardless of income eligibility, may meet with the LITC during the CCP, the cases often cover topics that the students may not have enough experience with to assist the petitioners directly.¹²⁷ In these instances, students observe the LITC Director as the Director interviews the petitioner, reviews relevant documents, advises the petitioner on their options, and negotiates with IRS Counsel.

However, there are still opportunities for students to be directly involved with the informal calendar call consultations. Students can, for instance, review and organize documents presented by the petitioner. If the petitioner's case involves a topic the students are comfortable with from their own casework or the LITC seminar, students can participate in the interviewing and fact-development processes. At a minimum, the LITC Director can debrief with students post-consultation and ask them to reflect on the experience.

E. LITC Fieldwork and Client Representation Considerations

LITC students will, of course, spend significant time directly representing clients with their tax controversies. Below are some suggestions on how to structure client representations to maximize efficiency and quality of service.

¹²⁵ ABA Court Procedure Committee Presentation, *supra* note 117.

¹²⁶ The Tax Court courtroom may be either in-person or over the Zoom.gov platform.

¹²⁷ In the first year of the UC Hastings LITC, most of the petitioners we met with during virtual Calendar Calls were advancing tax protestor-type arguments.

1. *Student Collaboration in Fieldwork*

Many LITCs and other legal clinics have students work in teams of two. This helps students develop teamwork skills and also results in higher quality client representation. Collaboration is an important part of legal practice, and giving students experience in working with others prepares them for the realities of the practice of law. Additionally, students may be more motivated in pairs because of the increased accountability they feel when working with a peer. Moreover, students may also feel more comfortable asking questions and discussing their own fears when paired with someone they trust.

Students working in pairs also serves an important function specific to LITCs: ensuring that at least one student on a team receives a Centralized Authorization File (“CAF”) number and IRS E-Services account, which are necessary for students to call the IRS and receive transcripts through the Practitioner Priority Service (“PPS”). Every semester, a few students are unable to either receive a CAF number or register for IRS E-Services for various reasons. In these situations, they can rely on their teammate to fill in this gap. Without this redundancy, the LITC Director may need to make calls to PPS to obtain taxpayer information and transcripts whenever that student’s client records are needed. This is an additional burden on the LITC Director’s time and deprives the students of the experience of interacting with the IRS.

2. *Client Selection*

When recruiting students for the UCH LITC, we often hear of their desire for “start-to-finish” experiences. Unfortunately, that is seldom (if ever) possible due to the nature of tax cases. This has been even more apparent during the pandemic, when cases are generally taking longer due to significant IRS delays.¹²⁸ Instead, balancing the client docket with cases at varying stages in the tax controversy cycle will allow students to submit one or more deliverables to the client or tax agencies, but will also permit students to have meaningful discussions during case rounds.

The number of cases each student team can work on during a semester varies. During some semesters, students can only work on two cases due to the complexity of the cases, the timing of IRS deadlines, or the need to prepare for trial. The UCH LITC usually assigns students two cases at the start of the semester, or occasionally one if the case has an upcoming deadline and needs more upfront preparation. We always give the student

¹²⁸The National Taxpayer Advocate’s 2020 report discusses several issues concerning significant delays across the IRS, including holdups in processing tax returns and in responding to taxpayer communications regarding correspondence exams. See *NTA Annual Report 2020*, *supra* note 119.

team at least one new case where the students can initiate the attorney-client relationship. The other case is a transfer case that was worked in a prior semester or supervised by the LITC Director. Assigning two cases allows the students to practice time and case management for multiple matters, a valuable skill for practicing attorneys. Time and energy permitting, the students may be assigned a third case after the semester's work is up and running.

Another reason to assign students more than one case is to ensure that they have enough case work in the semester. As has been widely reported, the IRS is experiencing record backlogs of processing and responding to taxpayer and practitioner correspondence.¹²⁹ Part of the backlog is due to the impacts of the COVID-19 pandemic but is also due to longstanding IRS staffing issues.¹³⁰ The IRS's unpredictability in responding makes it difficult to forecast how much work the students can accomplish in a given semester. Assigning more than one case to the student teams will help alleviate any downtime in cases while waiting for IRS responses.

The UCH LITC always assigns at least one collection case to the students. As discussed earlier, collection cases are a large proportion of the cases that come into the LITC.¹³¹ Since we use collection-based simulations to teach various lawyering skills throughout the semester, students are often more familiar with (and comfortable with) the IRS collection process than other less-discussed topics. These cases are also excellent vehicles for students to engage in some of the core goals of the clinical experience: confronting problem-solving, approaching the human aspects of the law, and practicing the lawyering skills introduced in class.¹³²

Collection cases help students hone their problem-solving skills by grappling with questions of uncertainty related to the law. Students are taught in non-clinical classes to learn and understand the law through reading cases, statutes, and regulations. Students are often shocked at the lack of case law on collection alternatives when they conduct case research. Because the cases appearing in Tax Court are only in the Collection Due

¹²⁹ For example, amended tax returns are taking more than one year to process in some instances, when in a typical year the processing time is 16 weeks. *See* TAXPAYER ADVOC. SERV., NATIONAL TAXPAYER ADVOCATE ANNUAL REPORT TO CONGRESS 2021, https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_Full-Report.pdf [<https://perma.cc/424B-NLAV>].

¹³⁰ *See* TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, NO. 2022-40-015, PLANS TO CLOSE THE AUSTIN TAX PROCESSING CENTER SHOULD BE HALTED UNTIL HIRING CHALLENGES AND SUBSTANTIAL BACKLOGS AT REMAINING CENTERS ARE ADDRESSED (2022), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_Full-Report.pdf [<https://perma.cc/3AJM-GHWS>] (discussing hiring challenges contributing to the IRS backlog).

¹³¹ *See supra* Part II.B.3.

¹³² *See* SUSAN BRYANT, ET AL., TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 256-260 (2014).

Process context, they are only reviewed under an abuse-of-discretion standard; as such, the cases often provide little guidance on how to analyze the client's collection alternatives. This permits students to develop their own unique approaches to client representation and leads to interesting discussions in case rounds and supervision.

Students begin to develop their professional judgment in collection cases by making decisions about facts or circumstances that are uncertain. Since a client's financial circumstances are rarely straightforward, students can immediately start developing their professional judgment on how to present the case to the IRS. A client may, for example, have fluctuating income or be living in a multi-generational family where household expenses are split unevenly or inconsistently. These situations require students to make legal arguments based on ambiguous facts, a common occurrence in LITC work.

Collection cases also allow students to practice empathy and assist clients without judgment. Clients who are seeking collection alternatives from the IRS may be experiencing discomfort or shame about owing the IRS, which may have led the client to avoid the issue for years, compounding the tax debt. Collection clients may also have mental or physical disabilities impacting their ability to pay their debt. Working with this type of client is new to many LITC students, who may struggle to understand the client's situation.

3. *Intake and Consultation*

Clients interested in receiving services must be screened for eligibility under the guidelines previously discussed. To the extent an inquiry does not ripen into a representation, however, the LITC is still permitted to provide the taxpayer with a consultation. Consultations are included in the grant reporting information regularly submitted to the IRS.

Participation in the Tax Court's "Stuffer Notice" program (described immediately below) will increase the number of inquiries received by the LITC and give the LITC opportunities for both representations and consultations.¹³³ Each February, the LITC notifies the Tax Court of its intent to participate in the program.¹³⁴ Once the LITC obtains approval, all *pro se* petitioners in the participating city receive a letter with the LITC's contact information. Many taxpayers contact the UCH LITC as a direct result of receiving this letter and receive LITC assistance concerning their matters.

The specific way an LITC conducts its initial intake and screening may vary based on the structure of the clinical department and the LITC itself.

¹³³ See U.S. Tax Court, Clinics & Pro Bono Programs: Academic/Clinical Programs (Law School), last accessed Oct. 25, 2021, https://www.ustaxcourt.gov/clinics_academic.html [<https://perma.cc/4UBD-AW29>].

¹³⁴ *Id.*

Many LITCs have students conduct initial intakes and screening, giving students the opportunity to gain experience with a case from the initial client inquiry. We have found, however, that this method leads to significant delays in representing clients, since we have to wait for clients to provide the necessary documents and information in their case, particularly while using a remote or hybrid representation model. For various reasons, some clients struggle to make copies of their voluminous documents or convert them to electronic format, and may also be unable to visit the office in person due to work, childcare, or travel time and cost. This often leads to delays of weeks to months between initial consultation and representation.

A method we have used to alleviate delays when the client is unable to attend an in-person interview is for the Clinic Director or other staff to conduct the initial client intake and screening *before* assigning the case to the students. During the initial intake, the screener can request and gather necessary case-related documents. Only after the client returns the requested items is the case then assigned to a student team. The students are able to start work immediately on the case with the documents required already at their disposal.

4. *Transferring Cases Between Semesters*

Due to the nature of tax controversy cases, the life cycle of an LITC case can take years and span numerous semesters. This poses a few challenges in determining how many times to transfer a case between students and in monitoring the cases by the LITC Director.

Transferring cases between semesters requires considering the needs and desires of the particular client. Some clients build a strong relationship with a specific student team and may feel abandoned or rejected when their case is transferred between semesters.¹³⁵ These feelings are particularly pronounced in clients who have experienced prior abandonment or other traumas in their life.¹³⁶ Clients may also feel frustration in repeating themselves to different student teams. In order to minimize any negative effects on clients, the LITC should pay particular attention to properly ending the attorney-client relationship between the client and student teams before transferring the matter to a new student team.¹³⁷

For typical cases, we recommend limiting transfer between two (or at most three) student teams before transferring the matter back to the LITC Director or a volunteer tax professional to complete the case, although the

¹³⁵ Susan L. Brooks, *Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients and Communities*, 13 CLINICAL L. REV. 213, 223 (2006).

¹³⁶ *Id.* at 224.

¹³⁷ See Gail E. Silverstein, *All's Well That Ends Well: The Importance of Full and Effective Closure in Lawyer-Client Relationships*, 19 CLINICAL L. REV. 555, 556 (2013) (exploring how to effectively end client relationships).

number of times to transfer will depend on the specific client and the type of work required in the case. Certain cases lend themselves better to transfers between legal teams. For example, a deficiency case where the case is transferred through the administrative ranks of the IRS through Tax Court with the eventual goal of an OIC (offer in compromise) is a matter that can be transferred to a new team with minimal transaction costs. More generally, transferring cases while the matter is awaiting an IRS response can help ease some of the stressors on the clients.

5. Monitoring Cases for IRS Response

Often, LITC cases will need to be transferred back to the LITC Director for monitoring between semesters, which poses its own challenges. For instance, when a student team prepares and files an OIC or a request for a CDP hearing, it may take nearly a year until the Service contacts the LITC to discuss the matter. Due to the uncertainty in Service response times, the LITC Director must monitor these cases until additional work is required.

A key challenge in monitoring cases is knowing when to reassign the case to a student team. Although the Service may take months to respond to a submission, their eventual response often includes a very short deadline by which the LITC must respond. In the OIC context, the offer examiner issues an initial contact letter to which a response is required within ten calendar days. This leaves little time for a student team to get up to speed on the case before an answer is due. Similar issues arise in Tax Court litigation, due to the timing of contact from the Internal Revenue Service Appeals for an appeals conference after a petition is filed. The pandemic and funding-related delays at the Service have further exacerbated the uncertainty in response times.

Developing and maintaining a case monitoring system can help mitigate these timing issues. The LITC Director should consider keeping a separate spreadsheet or adding a field to her case management system to track the submission dates to the tax agencies, which will help predict when cases might receive a response. The LITC Director should also track correspondence from the Service that provides timelines for responses. For example, the Service regularly sends a letter indicating that an offer examiner will contact the client within 90 days of the date of the letter. While this is only an estimate, tracking the estimated timeframe for a response can assist in determining whether to assign the case to students or a volunteer.

F. Ensuring a Viable LITC

The unique nature of an LITC (relative to other academic clinics) requires thinking about other factors to maximize the viability of the LITC. This section describes details beyond course structure and fieldwork that the LITC Director may want to consider as the LITC gets up and running.

1. *Cultivating the LITC Pro Bono Panel*

Many academic LITCs develop a pro bono panel of tax professionals and other outside volunteers to assist with various aspects of the LITC. The pro bono panel can accept referrals for case representation or consultations at no cost. The pro bono panel must consist of qualified representatives, defined by the LITC grant as attorneys, CPAs, or enrolled agents.¹³⁸ Volunteers can help an LITC meet its required case and consultation numbers with the Service and lessen the burden on the LITC Director, staff, and student attorneys, allowing the LITC to provide higher quality service to clients. Other outside volunteers can assist with administrative or other grant-related tasks, such as client intake or education, outreach, and advocacy projects.

Volunteer tax professionals who provide case representation are treated as providing matching funds valued at \$210 per hour.¹³⁹ Time spent by volunteers on non-representation issues are valued at a variable rate based on the type of activity or task.¹⁴⁰ While most academic LITCs do not need volunteer hours to obtain their matching funds, volunteer hours can add significantly to this dollar amount.

A pro bono panel also creates and strengthens relationships with tax law firms, providing a potential source of networking opportunities for students. Volunteers supervising student teams get to know students in the LITC and can help them find positions either at the volunteers' own firms or at other employers with which the volunteers might have connections. Even if the volunteers do not directly assist with student employment, students benefit simply from having regular contact with an experienced attorney working in a specialized field.

The biggest drawback to a pro bono panel is the time commitment required to build and maintain it. Early into the launch of the LITC, the LITC Director or other staff should reach out to local firms to determine if they are interested in providing pro bono services. Outreach is usually conducted through pro bono coordinators at mid- to large-sized firms but can also be done through alumni of the law school.

2. *Monitoring the Pro Bono Panel*

The arrangement for pro bono services varies per firm. At UC Hastings, we email a list of available matters to all members of the pro bono panel who have expressed interest in taking cases. This email includes a brief summary of the case and the type of work that might need to be conducted. Including details about the clients' particular circumstances can help

¹³⁸ INTERNAL REVENUE SERVICE, PUBLICATION 3319, at 8 (2021).

¹³⁹ INTERNAL REVENUE SERVICE, PUBLICATION 3319, at 27 (2021).

¹⁴⁰ INTERNAL REVENUE SERVICE, PUBLICATION 3319, at 27 (2021).

persuade firms to accept the cases. After the case is assigned to the volunteer, the LITC is obligated to monitor the case to ensure the matter is worked in accordance with the LITC Program's guidelines. This includes, for example, not charging a fee for representation.¹⁴¹ The recommended minimum number of times to touch base with the pro bono volunteer is once per quarter, but checking in more frequently can be advisable, especially if the volunteer is relatively inexperienced with tax controversy work.

3. *Building Connections to Other Community Partners and Programs*

Building connections to other community partners who assist low-income clients is essential to ensuring a resilient LITC. The relationships the UCH LITC fosters with other service providers, for instance, gives us a source of referrals and case assistance with mutual clients, consultations, a client base for educational programs, and possible case assistance for tax preparation.

Whether the community partnership provides legal or non-legal services, community partners can serve as a pipeline for mutual client referrals. Often, an LITC receives referrals from a client's case manager or social worker at these partner organizations. These contacts, by virtue of their existing relationship with the client, are often more successful in ensuring that the client obtains the documents necessary for the LITC to conduct an effective representation. Community partners can also help ensure the client stays engaged in resolving their tax controversies by providing up-to-date contact information for clients or by allowing clients to use their telephone or address to receive our correspondence. Beyond full-blown representations, community partners can also provide referrals for general technical assistance consultations.

It is also helpful for the LITC to build partnerships with the local Volunteer Income Tax Assistance ("VITA") and Tax Counseling for the Elderly ("TCE") sites. Since LITCs cannot provide tax preparation services unless necessary to resolve a tax controversy,¹⁴² LITCs often need to refer a client to an outside provider for tax preparation. Even if the tax preparation is necessary to resolve a tax controversy, the LITC may still want to refer the client to a VITA site if the LITC does not have the software, resources, or time to prepare the tax returns. The UCH LITC has built relationships with several VITA sites where we can refer clients for tax preparation year-round, but we also refer clients to our in-house UC Hastings VITA site. This allows for expedited tax filings for clients who may be under a deadline.

¹⁴¹ INTERNAL REVENUE SERVICE, PUBLICATION 3319, at 42 (2021).

¹⁴² Due to the COVID-19 pandemic, a temporary safe harbor exception to this was granted through October 15, 2021. *Id.* at 62.

Finally, building relationships with other LITCs can be a wonderful source of support for your LITC. For new LITC Directors, the LITC Office may suggest or require formal mentorship with another LITC Director to provide support on case- or grant-related questions. Networking and brainstorming sessions for academic LITCs are always held during the annual LITC grantee conference, as well as during the American Association of Law Schools Clinical Conference. The ABA Tax Pro Bono & Tax Clinics listserv is an invaluable resource for new and experienced LITCs alike.¹⁴³ Because the prevailing norm in the LITC community is one of mutual assistance to accomplish a shared mission, members of the community are overwhelmingly supportive of others' success in the program.

4. *Summer Coverage*

The LITC grant requires year-round operation, so academic LITCs must continue to represent clients over the summer. Additionally, summer is often a busy time for taxpayer representation. After the April 15 filing deadline, the Service starts to process returns and send letters for balances due and examination notices, resulting in increased demand for LITC services. In addition to these new matters, cases carried over from the academic year also need to be monitored and worked on as needed. LITCs typically have three paths for summer coverage: (1) the LITC Director/staff attorney providing coverage; (2) hiring summer interns; or (3) offering a summer LITC course.

Many LITCs rely on the LITC Director or other staff attorney for summer coverage. Depending on the LITC's caseload, this might be the simplest option. With this arrangement, LITCs often do not accept new cases over the summer or accept only a limited number of new matters. The LITC Director will monitor and work cases for clients who may have deadlines over the summer and need assistance while students are not in class. Volunteer attorneys may also provide additional coverage.

Summer interns are another option for summer coverage. During the first summer of the UCH LITC's operation, we had two summer interns assist with new and existing cases. Internships provide unique summer opportunities to students, including first-year students who have expressed an interest in pursuing a career in tax. If the students are not paid from the grant, their pay can be used as matching funds.¹⁴⁴

¹⁴³ ABA Tax Section Tax Pro Bono & Tax Clinics Community, last accessed Sept. 25, 2022, https://www.americanbar.org/groups/taxation/committees_task_forces/probono_taxclinics/ [<https://perma.cc/7MAF-EWKR>].

¹⁴⁴ As paid workers, the matching funds for student works is their actual hourly wage, rather than the higher wage allocated to volunteers. One significant benefit of summer students is

Summer coverage can also be filled by offering a summer version of the LITC class, for either new or advanced students. At UC Hastings, our summer LITC course is a condensed version of the regular, semester-long version of the class that runs the entire summer. First-time students earn four credits over the summer, as opposed to the seven credits earned during the fall and spring semesters. The advanced LITC students can earn between one and four units, depending on their caseload.

Like summer internships, a summer LITC course gives students experience working in tax while also letting them earn required experiential units. For law schools with a tax concentration (such as UC Hastings), the LITC summer course enables tax-interested students to complete concentration requirements at a faster pace. To receive the UC Hastings tax concentration, students are required to take 22 credit units in tax-related courses, nearly all of which are offered only during fall and spring semesters. Offering the summer LITC course allows students potentially to concentrate in tax even if they got a late start on their required courses or only decided to concentrate at the end of their 2L year.

The biggest drawback to offering a summer LITC course is the time commitment required of the LITC Director in order to satisfy ABA Standard 304 for experiential units. Even though the summer version of the clinic might be fewer credits and/or have fewer students than the fall or spring terms, the instructor still must provide the same level of instruction and training to the students to satisfy ABA Standard 304. Student interest in the summer course may also be low, or impact the ability to fill the fall or spring offerings of the term-time LITC.

5. *Education Requirements*

As described previously, LITCs are required to perform educational outreach to the community about taxpayer rights and responsibilities.¹⁴⁵ Educational activities meant for low-income taxpayers can be challenging for academic clinics to promote, particularly because academic clinics often do not have robust online presences that are regularly updated. Even if the clinic website is updated, generalized web searches do not always return the information desired. If clients search for “UC Hastings Tax Clinic,” for example, the top search results include information directed towards the UC Hastings community—particularly for students who may be interested in taking the LITC—rather than for clients. While other academic clinics’

obtaining their assistance with casework and intake without needing to satisfy the additional burdens imposed by ABA Standard 304 for students earning experiential units.

¹⁴⁵ INTERNAL REVENUE SERVICE, PUBLICATION 3319 at 6 (2019) (Before 2020, education events included presentations to other organizations who provide services to low-income taxpayers. However, the LITC office changed the educational numerical goals to focus on educational activities directly to low-income taxpayers).

websites may also include information directed towards clients, many, if not most, public-facing websites are first and foremost directed to prospective students.

Because connecting directly to low-income taxpayers may be difficult for academic clinics, more creative solutions can be employed. Many non-academic LITCs have used Facebook Live events to reach the community during the pandemic, an option that can also work for academic clinics. For instance, due to the difficulty of searching for their LITC on the web, the Oregon LITCs have created a joint Facebook page, to widen their reach to low-income taxpayers.¹⁴⁶ Other forms of social media might also be effective ways to disseminate information about LITC educational activities to interested parties.

The challenges of attracting clients to educational events can be mitigated by working with other organizations that have a large reach to low-income taxpayers. This is where relationships with other community organizations can be most beneficial. One avenue where the UCH LITC has had success is through the San Francisco Public Library (“SFPL”). The SFPL, which is located two blocks from UC Hastings, hosts many community events and has a large subscriber base for their newsletter. Including information about the UCH LITC in SFPL messages helps ensure that our events are well-attended. Providing educational information at in-person events held by other organizations is another way to reach attendees. For example, the LITC can present on collection alternatives or the Earned Income Tax Credit at in-person VITA Clinics.

If at all possible, students should participate in the educational events of the LITC. Since student participation is limited to the weeks that they are actually enrolled in the clinic, this is not always an option. But planning educational activities well in advance, and in anticipation of what targets are required pursuant to the LITC grant, will relieve the burden that otherwise falls on the LITC Director.

6. *Preventing Issues Surrounding LITC Closures*

Over the last ten years, 22 academic LITCs have closed and suspended services.¹⁴⁷ Although the total number of academic LITCs have stayed consistent in the same time period, the closure rate is noteworthy given that the number of clients needing services is likely not decreasing. In 2020, the U.S. saw the sharpest increase in the poverty rate since the metric was first tracked in 1960,¹⁴⁸ resulting in more clients eligible for LITC services. The

¹⁴⁶ Low Income Tax Clinics of Oregon, FACEBOOK, last accessed July 17, 2021, <https://www.facebook.com/oregonlitc> [<https://perma.cc/T8QK-NRFRK>].

¹⁴⁷ Data on file with authors.

¹⁴⁸ Heather Long, *Nearly 8 Million Americans have Fallen Into Poverty Since the Summer*, WASH. POST: ECONOMY (Dec. 16, 2020),

delays at the Service due to funding shortages, plus the complex tax provisions related to low-income taxpayer benefits, also saw increases in client calls to LITCs in 2020. So why have academic LITCs suffered from closures? Some possible reasons include LITC funding, lack of leadership upon departure of the LITC Director, or low enrollment issues.

As discussed earlier, the LITC grant provides grantees a maximum of \$100,000 per year. Since many, if not most, law schools have an ICRA, this leaves little funding remaining to pay the LITC Director (let alone staff) to manage the LITC. This issue is exacerbated if the law school does not contribute additional funding to support LITC operations. One obvious solution is to increase the maximum award of the LITC grant, which hasn't been increased since the program was founded in 1998. In a report of LITCs conducted by the Office of the Taxpayer Advocate Service, a funding increase of \$150,000, adjusted annually for inflation, has been recommended to Congress as the new funding cap to help offset the funding problems with LITCs.¹⁴⁹ To offset the potentially onerous matching funds requirement, a relaxing of the one-to-one matching funds requirement was also proposed.¹⁵⁰

Additional LITC funding could be found at the state level. In both Massachusetts¹⁵¹ and Maryland,¹⁵² state legislatures have provided additional funding to LITCs to supplement federal funding. The Massachusetts statute provides discretionary funding, whereas in Maryland qualifying clinics receive a pro rata portion from a state account funded partially by abandoned property. Whatever the particulars of the legislation, state-level funding could be used to supplement LITC operations.

Funding from external, non-governmental sources could also be available. If the law school has a dedicated grants coordinator, it is helpful for the LITC to discuss the extent to which additional grant funding could be secured. It is important to ensure, however, that the requirements of any additional grant funding do not conflict with the requirements of the Service grant.¹⁵³ Complying with grant requirements from multiple sources can be an administrative challenge; to the extent these duties can be performed by personnel other than the LITC Director, that would provide more time for client representation and student supervision.

<https://www.washingtonpost.com/business/2020/12/16/poverty-rising/> [<https://perma.cc/JRX9-9552>].

¹⁴⁹ OFFICE OF THE TAXPAYER ADVOCATE SERVICE, REP. TO THE COMM. ON APPROPRIATIONS U.S. H.R. AND COMM. ON APPROPRIATIONS U.S. S., at 9 (April 26, 2021).

¹⁵⁰ *Id.* at 10.

¹⁵¹ MASS. GEN. LAWS ANN. ch. 14, § 13 (West 2022).

¹⁵² M.D. CODE ANN., TAX-GEN § 1-207 (West 2021).

¹⁵³ This assumes that keeping the Service grant is a priority for the LITC.

Another reason for LITC closures is the departure of the LITC Director from the LITC. This person, by having the institutional knowledge to keep operations successfully going, is frequently the keystone without which the LITC falters. This issue is compounded if the institution is in a hiring freeze that may be tied to outside funding reductions.¹⁵⁴ One solution is to provide a clear succession plan, supported with buy-in from the institution. The LITC could, as a stopgap measure, use VAPs or legal fellows, with the intention that they take over the position when the primary LITC Director leaves. Another more long-term solution is to hire the LITC Director on a permanent basis, either long-term contract or clinical tenure track, to ensure the Clinic's longevity.

Some LITC closures might be driven by a lack of student demand. Not all law schools have a strong contingent of tax students that are consistently interested in taking a tax clinic. Even in schools that require federal income taxation as a required course, student enrollment in the LITC may remain low.¹⁵⁵ Many students attending law school have no interest in tax law and may actually be deterred from taking the LITC due to a perceived mismatch between the LITC and other professional goals. This can be addressed by emphasizing the social justice components or the generally transferrable skills to recruit students who may not initially be interested in tax.

G. Remote Working Considerations

The UCH LITC was launched on January 1, 2020, just prior to the COVID-19 pandemic. This forced us, like many other clinics, to quickly adapt LITC operations to an online teaching, learning, and working environment. Most notably, conducting operations online results in students having less spontaneous access to clinic staff (and each other) to ask questions about administrative procedures. As a result, the UCH LITC recorded three- to five-minute videos demonstrating various basic procedures, like how to send a fax, log communications in our CMS, use Service E-services, and calendar deadlines. While detailed instructions for these tasks are also in the LITC Manual, providing the videos as a companion piece has been successful, particularly for students who see themselves as visual learners.

The LITC's communication methods were adjusted so that faculty and students could seamlessly communicate with each other, clients, and tax agencies. Using a VoIP like Microsoft Teams or other another provider allows access to making and receiving calls and voicemails from any

¹⁵⁴ OFFICE OF THE TAXPAYER ADVOCATE SERVICE, REP. TO THE COMM. ON APPROPRIATIONS, *supra* note note 149, at 6.

¹⁵⁵ Christian A. Johnson and Mary Grossman, *The Tax Law Clinic: Loyola Chicago's Decade of Experience*, 50 J. LEGAL EDUC. 376, 392 (2000).

computer with an internet connection.¹⁵⁶ Students each semester are given an individual Teams telephone number with which to communicate with clients so that personal cell phone numbers need not be distributed. Our physical fax machine was also replaced by a HIPPA-compliant, secure electronic fax (“eFax”) solution, to which we can receive and send Service faxes through either an online portal or by email.¹⁵⁷

Conducting intake online allowed the UCH LITC to provide quality service to more clients, particularly those who are not able to visit our office in person due to various reasons, such as distance, lack of reliable transportation, or health limitations. Similar to the UCH LITC, many LITCs are not constrained by geography. Virtual services not only save LITC staff and clients time and travel expense, but also allow LITCs to represent taxpayers within states without an LITC. Since Service issues are a matter of federal law, clients can in theory be located anywhere in United States territory.

It is important to note that moving to online representation will not benefit all clients. Some individuals do not have access to the technology necessary to participate in video interviews—whether they are the 14 million Americans without access to high-speed internet¹⁵⁸ or are one of the approximately 24 percent of Americans earning less than \$30,000 who don’t own a smartphone.¹⁵⁹ Even with technology access, many clients struggle using video chat software, particularly connecting to audio or video when beginning a call. However, for those that have the means, virtual meetings can be a beneficial tool for LITCs.

VI. Conclusion

Academic LITCs can play a vital role in a law school’s clinical program. In addition to giving tax-interested students an experiential option more aligned with their subject-area interests, LITCs can also give students meaningful client-facing interactions while furthering important social justice objectives. Given the availability of annual Service funding to support LITCs, the resources required to launch and operate an academic LITC might be lower than otherwise expected.

¹⁵⁶ MICROSOFT TEAMS PHONE, last accessed Oct. 25, 2021, <https://www.microsoft.com/en-us/microsoft-teams/voice-calling> [https://perma.cc/VVP3-4JBD]. Many other VoIP options are available.

¹⁵⁷ See RINGCENTRAL, last accessed Oct. 25, 2021, <https://www.ringcentral.com/> [https://perma.cc/J2PJ-PCWE].

¹⁵⁸ FED. COMM. COMM’N, F.C.C. 21-18, FOURTEENTH BROADBAND DEPLOYMENT REPORT (2021).

¹⁵⁹ PEW RESEARCH CENTER, *Americans with lower incomes typically have lower levels of technology adoption* (June 21, 2021), https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/ft_2021-06-22_digitaldivideincome_01/ [https://perma.cc/3E9Q-W8ZX].

This Article helps prospective LITC founders assess whether or not to launch an academic LITC, and if so, how to effectively set up and operate it. Although the prospect of starting a new clinic, particularly one requiring federal grant management, requires a significant time commitment, the benefits to your students, law school, and the community have the potential to be significant.

