Assisting Low Income Taxpayers

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Summary. The return of a low income taxpayer presents two primary challenges.

- The interview is of heightened importance because there is no ongoing relationship and because of prejudices on the part of both the taxpayer and preparer.
- Tax complexity. This will be illustrated by a series of vignettes involving foster children. The vignettes are based on the author's experiences as an AARP-Tax Aide volunteer[1] in Oakland, California.

These challenges illustrate the need for more participation by tax professionals. Participation is limited by the perception that the low income programs compete with paid preparers. Professionals are also dissuaded by the focus on the Spring filing season, by computer-related issues and by the absence of mechanisms whereby professionals could provide *ad hoc* assistance.

The primary benefit from assisting low income taxpayers is the personal satisfaction derived from helping others. But technical challenges make volunteering fun. And CPE credit is available for EAs and CPAs.

The second hour of this evening's presentation will address the taxation of non resident aliens and elections that can reduce the tax liability of low income non residents. See also "Elections Make Quick Work of Nonresident Returns," the *EA Journal*, January-February, 2003, available at www.naea.org.

The Interview. A preparer usually knows a great deal about a returning client. Prior returns are available and often workpapers as well. As a result, there may be no need for a formal interview if the questions in the "organizer" have been answered completely and if the taxpayer has provided the appropriate documentation. Low

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[1] AARP-Tax Aide is the largest of the Tax Counseling for the Elderly (TCE) grantees. It has about thirty thousand volunteers, assists more than 1.7 million taxpayers annually and e-files more than 180,000 returns. The program is available to taxpayers with middle and low income with special attention to those aged sixty and older. Program costs are shared between the AARP Foundation and the IRS. Local sponsors provide additional assistance. (Source: *2001 Annual Report of the AARP Foundation* at www.aarp.org/foundation/01annrpt.pdf.)

The IRS also sponsors the Volunteer Income Tax Assistance (VITA) program. The TCE/VITA programs have a total of about seventy thousand volunteers and assist 3.5 million taxpayers. (Source: *2001 Volunteer's Assister Guide*, Publication 1155, Internal Revenue Service.)

Unofficial statistics suggest that these programs experienced a big increase in e-filed returns last Spring.

The author's experiences may not be representative of the low income assistance programs and his opinions may not represent the views of the program sponsors or of the individuals mentioned herein.

income taxpayers seldom establish an ongoing relationship with a preparer and thus the taxpayer interview must usually start from scratch.

An interviewer's first task is to gain the taxpayer's confidence. This is especially important when dealing with low income taxpayers since they generally know nothing about the preparer in front of them but they do know that the size of their refund depends on how the return is prepared.

It is not uncommon for the taxpayer to try to get things moving in what they think is the right direction by announcing something like "I'm Head of Household and I've got three dependents and I got three thousand back last year."

It is easy to be intimidated by such declarations but the experienced interviewer knows that it is their job to manage the interview so as to get the information needed to prepare an accurate return.

This low income mother is probably not telling the whole story. There is almost certainly other income or another earner in the household. I dread this presentation because an accurate return means intrusive questioning of the taxpayer and the result may not live up to her expectations of how the return should be prepared.

But perhaps it is not necessary to dot ever i and cross every t. Must the return be accurate in every detail if filing "Head of Household with three dependents" results in the same tax liability? That's something each preparer must decide for themselves.

The taxpayer's preconceived notions can increase their tax liability. A elderly woman informed me rather tartly that "The distribution from my limited partnership goes on Schedule B, just like the volunteer did last year." I suppressed my instinctive response and insisted that she go home and find the partnership's K-1. I got to amend three returns for my trouble and I earned this woman's undying gratitude.

It is hard to escape the suspicion that an answer is sometimes influenced by the effect that the response has on the amount of the refund. For this reason, the experienced interviewer will have developed techniques to elicit information without it being obvious why a question is being asked. Apparently innocuous small talk about the difficulty in finding reasonably priced accommodations or day care arrangements may elicit information about the taxpayer's household which a direct question might not.

Marital status is an area where I encounter inaccurate responses with some frequency. I have had better luck asking 'Have you ever been married?" than I have had asking "Are you married?" If the response is "No." or if the taxpayer explains that their spouse died or that they were divorced some years ago, this strategy does not gain additional information.

But it is not uncommon for the response to be "Yes, but I file as Single

- "because he disappeared years ago."
- "because my spouse's only income is Social Security."
- "because my spouse does not live in this country."

in which case the interviewer has learned that they need to determine the appropriate filing status. When the response is "Yes, but we are separated" or "Yes, but I got a divorce last year," the interviewer has learned that they need to address the allocation

of community income and that they may not be able to prepare the return without information from both spouses.

An interviewer has their own prejudices and the challenge is to not let these prejudices influence the questioning. I get a lot of quizzical looks because I've made it a habit to ask everyone "Are you age sixty five or older?" But I suffer these looks because of the working woman who appeared middle-aged and whose response was "Young man, I'm eighty two!"

Who would have thought that a low income cook with limited English skills would have had a thousand dollars in interest income! Or that a student would have owned, let alone sold, a multiunit apartment building in South America!

A comprehensive interview is better than a quick interview. A comprehensive interviewer means testing each section of the Form 1040, even topics about which the interviewer only knows enough to ask a question. The experienced interviewer learns to ask questions in a priority order, focusing first on determining whether a tax return is required or might be required. The experienced interviewer also considers materiality and tailors the subsequent questions accordingly.

The experienced interviewer focuses on the things that the computer does not know. If a W-2 is missed, the document matching program will pick it up. But if the interviewer gets the filing status wrong, no one will know unless the return is audited.

An interviewer needs to manage their own anxieties. My fear is that I will misapply some rule. (As a volunteer at the Oakland Main Library, I don't have a computer to stop me from doing something dumb.) My solution is to bookmark specific topics and diagrams in Publication 17 and to check the rules with every taxpayer.

Pretending to look something up is a good ploy when you need a couple of seconds to evaluate what you are being told. Looking things up can also be used to deflect the taxpayer's disappointment. After all, <u>you</u> were ready to give the taxpayer the Earned Income Tax Credit (or whatever) but the <u>chart</u> says she does not qualify.

Conclude with an open ended question like "Did anyone pay you for something that we have not talked about?" It was a question like this that surfaced the sale of the South American apartment building.

The IRS's *Volunteer Assister's Guide* and the FTB's *California Volunteer Reference Manual* are the training guides for the TCE/VITA programs. They run to hundreds of pages but devote less than two pages to interviewing. To correct this deficiency, I spend an hour discussing interviewing with the Oakland volunteers[2]. I also advise the volunteers that a taxpayer need not amend a return if they discover an honest error.

<u>Foster Children</u>. Consider the following vignette.

Jack and Jill are unmarried and they share their home with Jill's child. Jill has some income but Jack is the primary breadwinner. Who may claim the child as a dependent?

[2] See www.lingane.com/tax/seminars/interview.pdf for the handout used in this training.

The child is Jack's dependent because Jack provides more than half of the child's support and because the child lives with Jack for the entire year[3]. It is immaterial whether the child is also Jack's foster child.

Who is entitled to claim the child for the Earned Income Tax Credit (EITC)?

To qualify for the EITC, a taxpayer must have a Social Security card which allows employment. The taxpayer cannot be a non resident alien, cannot be Married Filing Separately and cannot be excluding foreign income. There are limitations on both earned and investment income[4]. The taxpayer must be between the ages of 25 and 64 unless a "qualifying child" lives with the taxpayer for more than half of the year. A qualifying child must generally be less than age 19 but need not be a dependent.

The child is Jill's qualifying child. The child is also, potentially, Jack's qualifying child or more precisely Jack's qualifying "foster child." Thus we have a potential competition for the same qualifying child. The tie-breaker rule was that the taxpayer with the higher AGI got to claim the EITC. The new tie-breaker rule, as revised for 2002, is that the parent gets priority[5].

But we don't have to get into breaking ties. This child is not Jack's foster child for EITC purposes because she was not placed in the home by an authorized agency[6].

May Jack or Jill file as Head of Household?

To file as head of household[7],

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[3] IRC §152(a)(9)

[4] Beginning in 2002, earned income means taxable earned income. Cf. IRC §32(c)(2)(A)(i). It is no longer necessary to adjust earned income for elective deferrals to a 401(k) pension, for example.

It is no longer necessary to adjust or modify the AGI. Cf. IRC §32(a)(2)(B).

The limit on taxable and non taxable interest and dividends is $2,550. IRC §32(i); Rev. Proc. 2001-59.

Separate, slightly more generous tables will apply for married taxpayers. Cf. IRC §32(b)(2).

[5] IRC §32(c)(1)(C). 2 or more claiming qualifying child.

(i) In general. Except as provided in clause (ii), if (but for this paragraph) an individual may be claimed, and is claimed, as a qualifying child by 2 or more taxpayers for a taxable year beginning in the same calendar year, such individual shall be treated as the qualifying child of the taxpayer who is—

(I) a parent of the individual, or

(II) if subclause (I) does not apply, the taxpayer with the highest adjusted gross income for such taxable year.

(ii) More than 1 claiming credit. If the parents claiming the credit with respect to any qualifying child do not file a joint return together, such child shall be treated as the qualifying child of—

(I) the parent with whom the child resided for the longest period of time during the taxable year, or

(II) if the child resides with both parents for the same amount of time during such taxable year, the parent with the highest adjusted gross income.

[6] IRC §32(c)(3)(B)(iii).

[7] IRC §2(b).

1. An individual must be unmarried as of the end of his taxable year. An individual is considered unmarried when determining filing status if
   - They were never married.
   - They are divorced or legally separated under a decree of separate maintenance.
   - They are married to a non resident alien.
     - They live apart from their spouse for the last six months of the year, file a separate tax return and otherwise meet the requirements for head of household status based on a child who is their dependent.
2. You can't claim Head of Household status if you can file as a Qualifying Widow(er) or Married Filing Jointly with a deceased spouse.
3. A Head of Household filer cannot be a non resident alien.
4. The individual must provide more than half of the cost of keeping up a home.

   The home can be the taxpayer's home if the home is also, for more than half of the taxable year, the principal abode of the taxpayer's child or qualifying relative.

   The home can be the home of a parent if the home is the parent's principal abode for the entire year and if the parent is the taxpayer's dependent.

   A child is the taxpayer's son or daughter, or stepson or stepdaughter, or adopted son or daughter, or the descendant of a son or daughter, or foster child[8].

   Generally, a qualifying child does not need to be a dependent. However, a qualifying married[9] or foster child or a qualifying relative must be a dependent.

Jill cannot file as Head of Household because she does not provide more than half of the cost of the home. Jack can file as Head of Household if Jane is his foster child.

The federal definition of foster child appears in the regulations. The child must be the taxpayer's dependent and

> A "foster child" is a child who is in the care of a person or persons (other than the parents or adopted parents of the child) who care for the child as their own child[10].

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[8] Rev. Rul. 84-89. This ruling addressed the conditions under which a foster child qualifies someone as Head of Household but it did not address the definition of "foster child."

A Revenue Ruling is an interpretation of the IRC and its regulations. It is binding on the IRS but can be challenged (usually unsuccessfully) by a taxpayer.

[9] A married child is a qualifying child if they would be a dependent except that the dependency exemption has been released to the non custodial parent by a Form 8332 or by a pre-1985 written agreement.

[10] Regulation §1.152-2(c)(4). "For purposes of determining the existence of any of the relationships specified in section 152(a) or (b)(1), a foster child of an individual (if such foster child satisfies the requirements set forth in paragraph (b) of §1.152-1 with respect to such individual) shall, for taxable years beginning after December 31, 1969, be treated as a child of such individual by blood. For purposes of this subparagraph, a foster child is a child who is in the care of a person or persons (other than the parents or adopted parents of the child) who care for the child as their own child. Status as a foster child is not dependent upon or affected by the circumstances under which the child became a member of the household."

The U.S. Tax Court held, in the same facts as the Jack and Jill scenario, that Jack is entitled to Head of Household status[11].

The California State Board of Equalization (SBE) has refined the federal definition[12].

> A foster child is a child who is in the care of a person or persons (other than the parents or adopted parents of the child) who care for the child as their own child[13].
>
> The foster relationship with the individual must have begun while the individual was a minor (i.e., under the age of 18)[14].
>
> The circumstances under which the child became a member of the household does not affect his or her status as a foster child[15].
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> A foster child is considered your child by blood if you are entitled to a dependent exemption for the child, your home was the main home of the child for the entire year, and the child's parent did not live in your home[16].
>
> However, if a government or a tax-exempt child placement agency makes payment to you as a foster parent, the child cannot be claimed as your dependent and you will not qualify for the head of household filing status on the basis of this child[17]
>
> If a child who was not your own child lived with you, and at the same time the child's parent lived with you; the child cannot be considered your foster child. Such a child cannot qualify you for the head of household filing status, even if the child lived with you during the entire year, you paid all of the household expenses, and you paid all of the child's support.

A definition in a regulation discussing the dependency exemption is relevant to Head of Household status because a youngster is not a qualifying child for Head of Household status if §152(a)(9) applies and this section applies unless the youngster is a foster child for purposes of the dependency exemption.

[11] Samuel K. Rasco v. Commissioner, TC Memo 1999-169, May 18, 1999, relating to the 1995 tax year.

The case originated from Nevada. The judge knew that the mother lived in the same household but he did not address the implications of the mother's presence.

[12] Downloaded from www.ftb.ca.gov/hoh/selftest/definitions.html#12. Citations were added by the author.

[13] Reg. 1.152-2(c)(4) *op. cit*. The Board interprets this to mean that the child "is removed from his parents." See *Appeal of Curtis* (97-SBE-012) and *Appeal of Halvas* (97-SBE-013). These cases relate to 1993 and 1994 respectively.

The *Appeal of Tierney* (97-SBE-006a) and the *Appeal of Godek* (98-SBE-006) concluded that a parent may include one half of the time during which spouses or ex-spouses occupied the same household for purposes of determining their child's principal place of abode for more than one-half of the year.

The more important Board decisions are available at http://www.boe.ca.gov/legal/legalopcont.htm.

[14] *Appeal of Lobo* (99-SBE-001). Taxes would be a mite less complex if the Board had said "The answer should be under age 18 but we will use under age 19 for consistency with the dependency exemption."

[15] IRS Reg. 1.152-2(c)(4).

[16] The dependency and one year requirements are mandated by IRC §152(c). For the requirement that the child's parent not live in the same household, see footnote 13.

[17] It is unclear why the agency's payment invalidates the foster relationship if the taxpayer provides more than half of the total support.

The FTB sends Form 1540e to a substantial fraction of the Head of Household filers. This questionnaire asks whether the child's parent lives in the household and the FTB routinely disallows Head of Household status the child's parent lives in the household.

Jack should not play audit roulette unless he is prepared to appeal the disallowance of this filing status. Such an appeal will fail absent new arguments or extenuating facts[18]. Low income taxpayers do not have the resources to contest the California definition of foster child. Jack should file as "Single" on his California return.

Must Jack use the same filing status on his federal and California returns?

Typically, the IRS will look to local law for the definition of family relationships and the IRS would be within its rights to deny Jack Head of Household status on his federal return by virtue of California's definition of foster child. However, the IRS is only required to use the state's definition when it is enshrined in statue or sanctioned by the state's highest court. The IRS is not bound by a SBE definition.

If I were Jack, I would be prepared to argue that the Treasury regulation should be interpreted to include situations where the child is in the joint care of both the parent and the non parent and I would prepare the return accordingly.

A situation where the primary breadwinner, a child and the child's parent reside in the same household is one of those relatively rare instances[19] when it is permissible to prepare the California and federal returns with different filing statuses.

As tax professionals, we know that the proper tax treatment is often influenced by the facts and circumstances. We see the preparer as the taxpayer's advocate when the

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[18] In the *Appeal of Curtis* (97-SBE-012), the Board wrote "In fact, in 1993 Steven's mother also lived in appellant's home, and we believe it was she who 'cared' for 19 year old Steven during 1993." This phrasing suggests that the Board might have reached a different decision if the facts had shown the non parent to be the primary care giver. The parent might be ill, for example.

The *Appeal of Hisserich* (99-SBE-002) also suggests that the Board is willing to reconsider given extenuating facts. In *Hisserich*, the Board interpreted "daughter" to include the child of a woman's registered domestic partner in the special circumstances where the taxpayer "intended from the outset to be Madaline's parent and continued to exhibit her intent to parent after Madeline's birth, that Madeline otherwise qualifies as a qualified individual under the head of household rules, and that no one else can claim Madeline as a dependent." The Sacramento Superior Court (*Proposition 22 Legal Defense Fund vs. California State BOE and FTB*, Case 01CS00718, Sept 14, 2001) ruled that this interpretation is outside the scope of Rev & Tax "17042, is unauthorized by relevant statutory and case law, and therefore is invalid" and that *Hisserich* cannot be cited as precedent for other taxpayers with similar facts.

The normal procedure to appeal a SBE decision is to pay the assessment and to then file a claim for refund. The FTB would deny this claim and this denial provides the basis for an appeal. The *Appeal of Hisserich* broke new ground because this was the first time that a judge had ruled that a court had jurisdiction to review a SBE decision other than a refund claim. This case is also important in that the suit was brought by a third party, in a sort of citizen's arrest, and this had not happened previously either.

[19] Rev & Tax §18521(a)(1) Except as otherwise provided in this section, an individual shall use the same filing status that he or she used on his or her federal income tax return filed for the same taxable year.

However, the "correct" status must be used on the California return if the status on the federal return is "incorrect." Rev & Tax §18521(a)(2) If the Franchise Tax Board determines that the filing status used on the taxpayer's federal income tax return was incorrect, the Franchise Tax Board may, under Section 19033 (relating to deficiency assessments), revise the return to reflect a correct filing status.

The California Codes are available on-line at http://www.leginfo.ca.gov/calaw.html.

decision is not clear cut. I'd like to see these points included in the official training materials for the low income assistance programs

Turning Immigrants into Residents. Residents and non residents are taxed by different rules. Oakland is a city of immigrants and those who come to the Oakland Library for tax assistance reflect this. Some will be taxed as residents because they have been here for years. Some will be non residents and others will have become residents during the current tax year.

It is usually better for a low income immigrant to be taxed as a resident. It is also better from a tax preparation standpoint since few preparers see enough non residents to become proficient in this specialized arena.

We will address the taxation of non residents in the second half of this presentation.

Attracting Tax Professionals to the Low Income Assistance Programs. Volunteering is personally rewarding because the programs benefit low income taxpayers and those who need encouragement to complete their own returns. Volunteering is intellectually stimulating because the returns are complex and because of the opportunity, especially with immigrants, to turn this complexity to the taxpayer's advantage.

But volunteering with the low income assistance programs has its frustrations, most of which have to do with the fact that there are too few volunteers.

- There are too few volunteers with the result that low income individuals are turned away. For example, the Tax-Aide program has had to reduce the days of operation at the Oakland Main Library from four to three days per week.
- Too few volunteers means no quality assurance. I'm not talking about math errors these since the computer corrects these automatically. My concern is the errors that the computer cannot detect (such as filing status or the taxable pensions or partnership distributions or the treatment of immigrants).

  I amend returns for at least one taxpayer each season as a result of an error by a prior preparer. Refunds are typically $500 to $1000 which is serious money to a low income taxpayer. This leads me to suspect that we make a dozen or more serious and undetected errors each year at the Oakland Main Library.

  A way to detect these errors is for experienced volunteers to sit in on the interviews or otherwise supervise those with less experience. This takes a lot of volunteers.
- The long term solution to too few volunteers is to change the law so that low income returns are less complex. This would have a couple of advantages. First, we lose new volunteers each year because they are scared away by the complexity. In addition it would be easier for low income taxpayers to learn to self-prepare if their returns were less complex.

  We will see a bit less complexity in 2002 with the changes to the EITC. Let's make this a trend by reducing the number of definitions for "child" and "foster child" and

by revising age criteria so that they can be properly understood by the general population[20].

- Establishing priorities would allow too few volunteers to assist more of the targeted clientele. Evans Young already enforces a "seniors first" policy at the Oakland Main Library. The next step is to establish an income priority.

  This is a difficult issue. Should priorities be comparable to median incomes or to the lower Section 8 limits or to a multiple of the poverty level[21]? Should regional differences be addressed? What about family size and non taxable income like Social Security? Should priorities be based on income or on AGI? What about those with low incomes who own homes or have substantial investment portfolios?

  Because of these practical and philosophical complexities, we should probably think in terms of local guidelines rather than national limits and we need guidelines which is simple enough to be easily understood.

  My suggestion is to give priority to seniors and to link the income guideline for others to the EITC limit. This is currently about $33,000[22].

  Whatever the limit adopted, it should be posted at the site so that individuals don't wait for hours only to be told that they don't meet the guidelines.

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[20] Calendar anomalies cause "age" to be measured from the day before one's calendar birthdate. Because the Internal Revenue Code sets out age-related criteria in a simple fashion, the taxpayer is forced to deal with the complexity.

For example, Publication 17 defines Rule 10 (EITC without a qualifying child) as "You must be at least age 25 but under age 65." I doubt that many taxpayers realize that this means that the credit is limited to individuals whose 25th birthday is no later than January 1st and whose 65th birthday is no sooner than January 2nd, both measured in the year immediately following the taxable year.

My suggestion is to revise IRC §32(c)(1)(A)(ii)(II) to read "...has attained age 25 plus one day but has not attained age 65 plus one day before the close of the taxable year ..." With this change, Rule 10 in Publication 17 would come to mean what the casual reader presently thinks that it does mean.

[21] The 2002 median income for a family of four is $54,000 nationally, $61,000 for California and $75,000 for the Oakland, California "income limit area" which represents the Alameda and Contra Costa counties. The Section 8 income limit is $22,000 for a family of four in the Oakland area. The 2001 national federal poverty thresholds are $14,000 and $18,000 for families of three and four respectively. (References: www.huduser.org/datasets/il/fmr02/medians.pdf for the methodology and for the national and California data; www.huduser.org/datasets/il/fmr02/prts801_02.pdf for the Oakland data; www.census.gov for the poverty thresholds. Numbers have been rounded to reflect forecasting uncertainties.)

[22] The IRS used an EITC-linked guideline at its Oakland site last Spring and they were referring taxpayers to the Tax-Aide program when incomes exceeded their guidelines. The tax clinic sponsored by the IRS sponsors at Cal State Hayward bases their income guideline on 250% of the poverty level considering family size (www.sbe.csuhayward.edu/acct/taxclin.html). This is $45,000 for a family of four.

An income guideline linked to the EITC limit would qualify about a fifth of the families in Alameda and Contra Costa counties for assistance. (For 2002, the 10th, 20th, 30th and 70th income percentiles are $22,000, $37,000, $50,000 and $104,000 respectively for a family of four in the Oakland income limit area. Reference: www.huduser.org/datasets/il/fmr02/prt02med.pdf.).

Using an AGI guideline rather than an income guideline would favor seniors because less than half of Social Security benefit is generally taxable at these income levels, but it would be complex to implement. Most of the seniors assisted at the Oakland Library are low income and few seniors would be affected if the application of the income guidelines was left to the discretion of individual volunteers.

- The focus of the national training syllabus is on "basic returns[23]" of no more than moderate income. I suspect, but do not know, that our too few volunteers would go further if the training were focused on low income returns of no more than moderate complexity[24].

  For example, training on splitting community income[25] would mean that the Tax-Aide program would no longer routinely turn away low income taxpayers with marital difficulties from the Oakland Main Library. I'd make time in the schedule by de-emphasizing existing topics which appear infrequently on low income returns.

  Even if there were no changes to training, the programs could handle more of the low income returns which arise if there were some mechanism, a questionnaire perhaps, to identify the returns which are beyond the scope of the training so that they could be routed to the appropriate volunteers.

The low income assistance programs could assist more low income taxpayers if they were to recruit more professionals into the programs or if they were to establish partnerships with those professionals who are willing to accept *pro bono* referrals.

Since my audience are tax professionals this evening, let me address what I think needs to happen to encourage more professionals to participate in the low income assistance programs. Since low income returns often involve refunds, the more complex returns could be addressed by a professional after the Spring filing season. My suggestion is to operate the low income programs year round and to rely primarily on professionals during the off season.

Income guidelines might change the perception that the low income assistance programs are competing with paid preparers.

I'd revise the program materials to say that quality tax assistance is not a commodity. The reason that professional assistance is better than the assistance of a volunteer is not that the professional has better training or more experience. The benefit from professional assistance is that the relationship is a continuing one. A continuing relationship means quality assurance, audit support and malpractice protection.

We should explore ways for low income taxpayers to obtain assistance outside of the context of existing programs. For example, we should consider paying preparers from the tax refund, and perhaps even subsidizing low income returns, via an electronic

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[23] "Through the assistance of trained volunteers from the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs, the Internal Revenue Service is able to offer free tax help to people who cannot afford professional assistance. Volunteers help prepare basic tax returns for taxpayers with special needs, including persons with disabilities, those with a low income, non-English speaking persons and elderly taxpayers." From a letter beginning "WELCOME, VOLUNTEERS!" by Mark E. Pursley, Director, Stakeholder Partnerships, Education and Communication, IRS, October 15, 2001.

[24] Volunteers are not liable for harm caused if they're acting within the scope of their responsibilities and if the harm was not willful. But personal risk is possible if a volunteer prepares a return which is outside of the national guidelines. This is not of concern to a professional with liability insurance.

[25] The training materials include an example which was designed to illustrate the deductible IRA limits for a married couple filing separately. The IRS-approved answer is wrong in a community property state.

payment to the preparer of e-filed returns. I suspect that EITC compliance would improve if the IRS knew how to get to preparer's bank accounts[26]!

It is becoming increasingly burdensome to prepare returns by hand. Any Tax-Aide volunteer in the Bay Area who wishes to prepare returns on a computer can probably do so. But computer preparation presents its own difficulties, difficulties which must be resolved if more professionals are to be attracted to the program.

- Computer preparation in the context of a low income program is less efficient than in private practice because there is no practical way at present to roll over a *pro forma* return from the prior year. Don Irvine estimates that the sites could, potentially, assist 40% more taxpayers if returns could be rolled forward.
- A volunteer is going to think twice about using a computer if he has to lug the equipment home at night from a site which does not provide secure storage and a telephone line for e-filing. Not withstanding this difficulty, volunteers like Evans Young lug a laptop and printer to and from the Oakland Main Library.
- It takes time to learn tax software. Maybe it is only a few hours but this learning curve is one more thing to dissuade a busy professional. And, since the software is chosen by low bid, a volunteer might have to learn different software every year!
- Some professionals already have tax software loaded onto a laptop computer. They might be willing to prepare returns at a low income site using their laptop and to e-file the returns from their office using a TCE e-FIN. This is a only partial solution since it does not make a printer available at the site and there will be a difficulty if the professional has not purchased an unlimited software license.

  The license issue might be resolved if the program sponsors asked the vendors to allow their existing customers to use the vendor's software in the low income assistance programs. Permitting such use would not cost the vendors a penny and they could create a tagline in the paid preparer area which reads "TCE 9461208. Software provided as a public service by ABC Company."

Encouraging professional participation is a bit of a chicken and egg situation. Professionals are reluctant to participate without program changes and program sponsors are reluctant to consider changes without the assurance of professional participation. Someone has to make the first move.

I have appealed to your charitable instincts and to your intellectual curiosity. Let me close by appealing to a more base motivation: free CPE. Northern California EA and CPA volunteers can earn 18 hours of CPE by completing the free training, passing the open book examination and fulfilling the minimum commitment of forty hours during the tax season. EAs and CPAs in active status, who do not desire CPE credit, can volunteer in these programs without the training and examination.

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[26] Unlicensed and unsupervised preparers have the poorest EITC compliance record. See Michael A. O'Connor, CCH's *Journal of Tax Practice and Procedure*, as reproduced in the *EA Journal*, **19**(3) and **19**(4), 2001.

The subsidy cost would be offset by reduced demand for low income tax assistance, which O'Connor estimates costs the IRS as much as $60 per return or by slowing the annual increase in the EITC limits.

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There would be no low income tax assistance programs without those unsung heroes who volunteer four and five days a week during tax season.