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February 9, 2016

Senator James B. Eldridge
State House, Room 218
Boston, MA 02133

Senator Jason M. Lewis
State House, Room 511B
Boston, MA 02133

**Re: An Act for Low Income Working Families to Obtain Representation in Tax Disputes
and Improve the Administration of Refundable Tax Credits**

Dear Senators Eldridge and Lewis,

On behalf of the over 400,000 low income taxpayers in Massachusetts and the 4 existing Low Income Taxpayer Clinics, thank you for meeting with us and for the opportunity to present this proposal to you.


The proposal is very similar to the current structure of the federal LITC program. If funded, this grant will allow the existing clinics to expand the representation to taxpayers before the Department of Revenue, the Appellate Tax Board, and local courts. If approved, *Massachusetts would be the first state to fund the work of low income tax clinics* and in this way, assist with the efficient administration of tax law, and promote trust in our state tax system. Representation also ensures that important tax credits get into the hands of the taxpayers who earned them and into our local economy.

We will be in touch to discuss the next steps. For this fiscal year, our hope is that you are able to include this funding in the budget for the DOR or the Appellate Tax Board, or whichever avenue you find most suitable.

Thank you for your assistance in this important work.

Sincerely

On behalf of the Bentley University LITC, GBLS LITC; Legal Services Center of Harvard Law School LITC, and Springfield Partners LITC,



Luz Arevalo, Esq.

cc. John Warren, President Massachusetts Society of Enrolled Agents



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The Honorable James B. Eldridge
State House, Room 218
Boston, MA 02133

The Honorable Jason M. Lewis
State House, Room 511B
Boston, MA 02133

Subject: Assistance for Low Income Taxpayers

Dear Senators:

Thank you very much for hosting the low income tax clinicians at a meeting on January 26, 2016. We found the meeting productive and were encouraged by your support. We look forward to working with you to extend the work that we do on behalf of taxpayers in Massachusetts to include representation of individuals with tax issues involving the Massachusetts Department of Revenue.

At the conclusion of our meeting, you asked if we could put together a proposal for the creation of a tax clinic system in Massachusetts similar to the system created by the United States for federal taxes. Enclosed is a draft of legislation together with an explanation of the need for such legislation. Also included is a stand-alone fact sheet which provides further information about the need for the proposal and resources on the issue of low income taxpayer representation as well as the earned income tax credit.

Please feel free to contact me or any of the low income taxpayer clinicians. We look forward to working with you on this legislation.

Sincerely,

A handwritten signature in black ink that reads "T. Keith Fogg".

T. Keith Fogg

Attachments: Proposed Legislation
Fact Sheet

The Commonwealth of Massachusetts

—————
In the One Hundred and Eighty-Ninth General Court
(2016-2017)
—————

An Act for Low Income Working Families to Obtain Representation in Tax Disputes and Improve the Administration of Refundable Tax Credits..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. To provide for a grant program providing funds for low income taxpayer clinics to serve low income individuals who have a dispute with the Department of Revenue concerning the amount of the liability that they owe or their ability to pay an assessed liability. The United States has a parallel grant program for low income taxpayer clinics four of which currently operate in the State. These clinics provide legal assistance to individuals who have some form of controversy with the Internal Revenue Service. The grant from the United States permits the low income taxpayer clinics to assist individuals with state tax problems but only if those problems have a nexus with a federal tax controversy. Many citizens in Massachusetts who would otherwise qualify for the services of these clinics have a tax controversy with the Department of Revenue that is not ancillary to the federal tax controversy. Because these citizens are targeted for the earned income tax credit and because the Department of Revenue examines almost every return of individuals in Massachusetts receiving the earned income tax credit, many of these individuals must defend their request for the earned income tax credit before the Department of Revenue even though they do not necessarily need to do so before the Internal Revenue Service. If they fail to successfully defend their claim of the earned income tax credit before the Department of Revenue, these individuals may fail to claim the earned income tax credit on both their federal and state tax returns in future years even though they may be entitled to the credit. As discussed below, the earned income tax credit provides a critical buffer in the effort to lift individuals out of poverty. Providing adequate assistance to these individuals

to allow them to make determinations concerning the proper claim of the earned income tax credit is important to the well being of these individuals and their families. Further, if they fail to claim the credit on their federal returns, Massachusetts loses important federal funds in its fight against poverty. Through the assistance of low income taxpayer clinics, individuals facing a challenge to the appropriate claim of the earned income tax credit will have the resources to appropriately defend challenges to claim of the credit; obtain a neutral review of the claim of the credit, and obtain advice on how to properly claim the credit in future years if it was not properly claimed in the year at issue. The low income tax clinics will assist the Department of Revenue by marshalling information needed to prove the claiming of the credit or other tax controversy matter and providing guidance on quick resolution of the issue when a controversy exists..

SECTION 2.

Massachusetts Low Income Taxpayer Clinics

Low income taxpayers in Massachusetts have audit and collection issues with the Department of Revenue; however, they have few options in seeking representation to assist them in working with the Department. Frequently, the cost of representation, even if the individuals had the money to pay for it, would exceed the cost of the amount in controversy. Yet, the importance of the matter, if it involves a continuing or potentially continuing item such as the earned income tax credit, could have a significant monetary impact over time. Congress created a grant fund to encourage the development of low income taxpayer clinics to assist in controversy matters before the Internal Revenue Service. Taxpayers in Massachusetts have many of the same or similar problems at the state level but lack clinic resources to assist them in resolving those problems. Massachusetts has the opportunity to become the first state to create a system of clinics for its citizens as they try to resolve their state tax controversies.

Low income taxpayers with representation have a much higher chance of success in their tax controversy disputes.¹ Because both the Massachusetts and the federal tax systems operate to distribute necessary social benefits, success in a dispute for a low income taxpayer can mean the difference between receiving the benefits and moving above the poverty line or losing them. In some instances, the dispute can impact the taxpayer for ten years or more because of the length of the collection period. A simple request for documentation to support a claimed benefit on a tax return can transform into a decade long trip to purgatory if the taxpayer fails to timely and properly respond to the request.

For many low income taxpayers understanding the request and obtaining the necessary documentation to respond proves quite difficult. Their failure often does not reflect that the claim of the tax benefit was correct initially. Now both the taxpayer and the Department of Revenue become engaged in a protracted and expensive relationship that need not have existed if the taxpayer had received representation at the outset (or even during the period) of collection in order to obtain the necessary documents and set the matter straight. The failure to resolve such matters can drive individuals from the tax system and this, in turn, has a many negative consequences including the failure to obtain benefits being delivered through the tax system.

Congress recognized in 1998 that changes it had made to the Internal Revenue Code in the early to mid 1990s to bring many hundreds of thousands of individuals into the tax system in order to deliver benefits meant that some attention needed to be paid to those individuals as they struggled to deal with the tax system. Taxes strike fear in the hearts of many citizens and cause them to freeze in their efforts to resolve problems. Taxpayers brought into the tax system for benefit delivery purposes also lack the skills to address tax problems. Many, in fact a significant majority, rely upon return preparers to prepare their returns claiming the benefits offered through the tax system. They spend a significant percentage of their refund simply

¹ Nat'l Taxpayer Advocate, *EITC Examinations and the Impact of Taxpayer Representation*, 1 2007 Ann. Rep. to Cong. 222, 226 (2007) ("Low-income taxpayers with representation were twice as likely as their non-represented counterparts to emerge from an IRS audit with no change in their claimed EITC...")

applying for it; however, when their claim for a refund is challenged, return preparers generally lack the expertise to assist them in the tax controversy process and more expensive and more specialized assistance becomes necessary. To address the situation, Congress created a grant fund for low income taxpayer clinics.

Low income taxpayer clinics not only assist individuals in their cases but have the capacity, and the responsibility, to identify systemic problems in the tax system as it relates to low income individuals. Because the clinics see a host of cases, they have a perspective on the system that no single taxpayer has. Because they represent a class of taxpayers that would otherwise go largely unrepresented, they also see problems in the system that practitioners representing more affluent taxpayers do not encounter. As a result, low income taxpayer clinics not only assist individual, they assist the tax system in two significant ways. By assisting on individual cases they resolve case that would otherwise go unresolved. This allows taxpayers to feel the system has treated them fairly and allows the tax administrator to remove from its books cases likely to produce little to no tax payments, and instead generate large administrative costs. By commenting upon and working with the tax administrator on systemic issues, the low income taxpayer clinics allow the system to identify and rectify problems much earlier and more effectively than would occur without the existence of the clinics.

The numbers of low income taxpayers using the tax system for the delivery of benefits is significant. Attached as an addendum to this SECTION is data on those numbers. The importance of the benefits delivered through the tax system to the welfare of the citizens of the state is also significant. Attached as an addendum to this SECTION is data on the importance of those benefits.

SECTION 3. This provision does not amend a prior provision of the General Laws

SECTION 4. Chapter ___ of the General Laws is hereby amended by adding the following section ___:

(a) In general

The Department of Revenue may, subject to the availability of appropriated funds, make grants to provide funds for the development, expansion, or continuation of qualified low-income taxpayer clinics providing assistance on tax controversy matters to individuals engaged in a dispute with the Department of Revenue.

(b) Definitions For purposes of this section—

(1) Qualified low-income taxpayer clinic

(A) In general

The term “qualified low-income taxpayer clinic” means a clinic that—

- (i)** does not charge a fee for its services (except for reimbursement of actual costs incurred); and
- (ii)** represents low-income taxpayers in controversies with the Department of Revenue.

(B) Representation of low-income taxpayers

A clinic meets the requirements of subparagraph (A)(ii) if—

at least 95 percent of the taxpayers represented by the clinic have incomes which do not exceed 350 percent of the poverty level, as determined in accordance with criteria established by the Director of the Office of Management and Budget of the United States; and

(2) Clinic

The term “clinic” includes—

(A) a clinical program at an accredited law, business, or accounting school in which students represent low-income taxpayers in controversies arising under this title; and

(B) an organization described in section 501(c) of Title 26 of the United States Code and exempt from tax under section 501(a) of Title 26 of the United States Code which satisfies the requirements of paragraph (1) through representation of taxpayers or referral of taxpayers to qualified representatives.

(3) Qualified representative

The term “qualified representative” means any individual (whether or not an attorney) who is authorized to practice before the Department of Revenue or the applicable court.

(c) Special rules and limitations

(1) Aggregate limitation

Unless otherwise provided by specific appropriation, the Department shall allocate \$500,000 per year (exclusive of costs of administering the program) to grants under this section.

(2) Multi-year grants

Upon application of a qualified low-income taxpayer clinic, the Department is authorized to award a multi-year grant not to exceed 3 years.

(3) Criteria for awards In determining whether to make a grant under this section, the Secretary shall consider—

(A) the numbers of taxpayers who will be served by the clinic, including the number of taxpayers in the geographical area who have limited English proficiency;

(B) the quality of the program offered by the low-income taxpayer clinic, including the qualifications of its administrators and qualified representatives, and its record, if any, in providing service to low-income taxpayers; and

(C) whether the clinic receives a grant pursuant to section 7526 of Title 26 of the United States Code.

Addendum 1: Value of the EITC and CTC

Massachusetts has a fixed (regressive) income tax rate of 5.15% of taxable income and a sales tax of 6.25%

Of the several tax credits available to individual taxpayers and corporations in Massachusetts, the 2 credits designed to help low-income residents are the Earned Income Tax Credit and the Circuit Breaker Credit, both of which are refundable.

The federal EITC (designed to reward work and offset FICA taxes)

For Tax Year 2014, 27.5 million taxpayers claimed this credit

For a total payment of \$66.7 billion,

With the average EITC being \$2,400

Massachusetts EITC

For Tax Year 2014, 404,000 Massachusetts residents claimed this credit

For a total payment of \$841 million

With the average payment being \$2,081

Source, Internal Revenue Service website <https://www.etc.irs.gov/EITC-Central/eitcstats>

Circuit Breaker Tax Credit (available to senior citizens and low income taxpayers to offset the cost of property taxes)

For Tax Year 2010, 82,623 Massachusetts residents claimed this credit

For a total payment of \$63,933,929

With the average taxpayer payment being \$774

Source: Mass Department of Revenue website <http://www.mass.gov/dor/individuals/seniors-students-and-military-personnel/seniors-and-retirees>

Addendum 2: Social and economic benefits of the EITC

The Earned Income Tax Credit (EITC) is the SINGLE MOST EFFECTIVE anti-poverty program in the country, lifting almost 6.2 million individuals nation-wide out of poverty, including 3.2 million children, in 2013. Over 402,000 Massachusetts households claimed this credit in 2014. The credit, of up to \$6,000, rewards work and stimulates the local economy.

The documented benefits of the EITC include:

- Improving the health of children and mothers.** Researchers have found a strong association between EITC participation and mothers receiving prenatal care. This improves both maternal health (e.g. lower smoking rates) and infant health (e.g. fewer children born at low weights).
- Boosting academic performance.** Children in families receiving EITC support have shown higher test scores, especially for elementary and middle school students; higher high school graduation rates; and higher college attendance rates. Specifically, “a child in a family eligible for the largest EITC expansion in the early 1990’s would have a 4.8 percentage-point higher probability of completing one or more years of college by age 19—an improvement comparable to the effect of major educational interventions such as reducing classroom size.”
- Increasing the earning potential for future generations.** Long-term studies of kids raised in EITC-supported households find that since they tended to grow up healthier and do better in school, they also tend to earn more when they are working adults. In one study “researchers projected that each dollar of income through tax credits may increase the real value of the child’s future earnings by more than a dollar.”
- Increasing Social Security benefits.** By increasing direct earnings during one’s career, the EITC also leads to stronger retirement benefits, including Social Security benefits, since much retirement earning rises proportionally with income. 6

Source: Center on Budget and Policy Priorities, EITC Research Findings, March 2015:
<http://www.cbpp.org/cms/index.cfm?fa=view&id=3793>

A February 2016 report prepared for Members and Committees of Congress concluded that the EITC

- Encourages single mothers to work.** This in turn has reduced some welfare workloads. Single mothers would rather work and receive the EITC than apply for welfare.
- Has significantly reduced poverty among families with children.**

Source: Crandall-Hollick, Margot L., Analyst in Public Finance, *The Earned Income Tax Credit (EITC): An Economic Analysis*, Congressional Research Service, February 1, 2016.

An Act For Low Income Working Families to Obtain Representation in Tax Disputes and Improve the Administration of Refundable Tax Credits

Given the increased use of the tax code for social policy, the Department of Revenue must collect taxes and also administer anti-poverty programs by disbursing refundable tax credits, such as the Earned Income Credit and the Circuit Breaker Tax Credit. The EITC has complex rules and formulas that make it difficult for taxpayers to access the credit and for the DOR to administer it. Despite these challenges, the law permits the DOR to use severe measures to penalize taxpayers who incorrectly claim these credits or who fail during audit to properly document their claims. Many of the individuals subjected to disallowance of these claimed benefits and penalties cannot afford legal representation and feel at total loss, in fear, and powerless to take on a government agency.

The DOR adopted a Bill of Rights promising fair treatment to taxpayers and assistance when warranted. But legal representation is needed so low-income and vulnerable taxpayers can properly defend their rights.

Why is this bill needed?

- ✓ To ensure fairness in the execution of tax laws. Taxes must be linked to ability to pay them, but many taxpayers find it close to impossible to document their inability to pay. This results in Massachusetts spending resources on low-yield cases, while eroding public trust in the system.
- ✓ Many others face audits by the Commissioner of Revenue. Workers without legal representation are less likely to prevail in this adversarial process, and the stakes are high because the Commissioner aggressively pursues tax collection cases and has enormous power to levy bank accounts, garnish wages, and suspend and revoke driver's and professional licenses.
- ✓ Eligible taxpayers who do not claim these tax credits or who have the credits unjustly denied, are depriving the state from much needed federal funds that not only improves the taxpayer's personal income but also stimulates our local economy.
- ✓ Access to representation increases confidence in the fairness of the system and inspires higher compliance with tax laws.
- ✓ Access to representation saves the DOR precious resources it currently uses to deal with taxpayers who are ultimately found financially unable to pay their tax bills.

What does the bill do?

- ✓ Funds low income taxpayer clinics in Massachusetts to provide legal representation to low wage working families, and to advocate for agency reforms to improve the administration of tax credits.
- ✓ Funds low income taxpayer clinics to promote education about tax rights and responsibilities, increase awareness about available tax credits and free tax preparation services, and reduce the potential fraud by fly by night unscrupulous tax preparers.
- ✓ Ensures that eligible Massachusetts residents receive the tax benefits that Massachusetts has allocated to alleviate and eliminate poverty. By having 100% participation in claiming the EITC, this outreach campaign will bring an additional economic stimulus package of approximately \$208 million federal dollars into the Massachusetts economy.
- ✓ Legal representation is cost effective. The GBLS LTC in Massachusetts reported for tax year 2013 obtaining \$384,865 in tax credits and refunds for clients.

Sources

Massachusetts Legal Assistance Corporation (MLAC), State Report 2013

Crandall-Hollick, Margot L., Analyst in Public Finance, The Earned Income Tax Credit (EITC): An Economic Analysis, Congressional Research Service, February 1, 2016.

Jonathan P. Schneller, Adam S. Chilton, and Joshua L. Boehm, The Earned Income Tax Credit, Low Income Workers, and the Legal Aid Community, *Columbia Journal of Tax Law*, Vol 3:177

Internet: Brookings Institute, <http://www.brookings.edu/research/interactives/eitc>

Center for Budget and Policy Priorities, <http://www.cbpp.org/research/federal-tax/policy-basics-the-earned-income-tax-credit>