

CC-2022-004

January 6, 2022

**Subject:** Referring Taxpayers to Low Income  
Taxpayer Clinics

Upon incorporation into  
**Cancel Date:** the CCDM

## Purpose

This Notice provides a change in instructions for Office of Chief Counsel employees who wish to refer taxpayers (and Taxpayer Advocate Service (TAS) employees assisting taxpayers) to a low income taxpayer clinic (LITC).

## Background

Pursuant to Internal Revenue Code (IRC) § 7526, subject to the availability of appropriated funds, the IRS may award matching grants for the development, expansion, or continuation of LITCs. LITCs are programs that provide representation to low-income taxpayers for free or a nominal fee to assist them in resolving controversies with the IRS. In addition, LITCs provide education and outreach for taxpayers who speak English as a second language.

The Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury prohibit Counsel employees from recommending or referring taxpayers to specific attorneys or accountants. In this regard, “Employees of the IRS or TIGTA shall not recommend, refer or suggest, specifically or by implication, any attorney, accountant, or firm of attorneys or accountants to any person in connection with any official business which involves or may involve the IRS.” 5 C.F.R. § 3101.106(a). The Office of Chief Counsel takes the position that an LITC is similar enough to a firm of attorneys or accountants to fall within the scope of the regulation.

In addition, the Office of Government Ethics’ Standards of Ethical Conduct for Employees of the Executive Branch prohibit Counsel employees from endorsing any product, service or enterprise, and thus further limit the ability to refer taxpayers to tax professionals. See 5 C.F.R. §§ 2635.702(c); 2635.101(b)(8). Consistent with these standards and principles, the CCDM prohibits a Counsel employee from directing a TAS employee to a specific LITC. See CCDM 33.1.2.4.3(2).

TAS is an independent organization within the IRS that helps taxpayers and protects taxpayers’ rights. IRC § 7803(c). TAS employees work to resolve taxpayers’ issues

---

|                |                      |  |
|----------------|----------------------|--|
| Distribute to: | Tax Litigation staff | Tax Litigation staff & Support personnel |
|                | X All Personnel      | X Electronic Reading Room                |

---

Filename: CC-2022-004 File copy in: CC:FM:PMD

within the IRS. When trying to resolve a taxpayer's issue, a TAS employee may interact with a Counsel employee. Although the TAS employee does not represent the taxpayer, the TAS employee is nonetheless an advocate for the taxpayer. So just like a Counsel employee cannot refer a taxpayer to a particular LITC, a Counsel employee cannot refer a TAS employee to a specific LITC when the TAS employee is assisting the taxpayer.

In 2019, Congress passed the Taxpayer First Act (TFA), Pub. L. No. 116-25, 133 Stat. 981 (2019). Recognizing the important role that LITCs play in ensuring taxpayers have access to representation and are educated about their rights and responsibilities as taxpayers, Congress amended IRC § 7526(c) by adding at the end the following new paragraph:

- (6) PROVISION OF INFORMATION REGARDING QUALIFIED LOW-INCOME TAXPAYER CLINICS.—Notwithstanding any other provision of law, officers and employees of the Department of the Treasury may—
- (A) advise taxpayers of the availability of, and eligibility requirements for receiving, advice and assistance from one or more specific qualified low-income taxpayer clinics receiving funding under this section, and
  - (B) provide information regarding the location of, and contact information for, such clinics.

Pub. L. No. 116-25, § 1402, 133 Stat. 981, 997 (2019). This TFA provision became effective on July 1, 2019. This change in the law now allows Counsel employees to refer a taxpayer to a particular LITC without violating the applicable standards of ethical conduct. Likewise, when TAS employees are assisting taxpayers in trying to resolve issues with the IRS, Counsel employees can suggest that the TAS employee direct the taxpayer to a particular LITC.

## **Procedure**

The following text is a revision to CCDM 33.1.2.4.3(2), Procedures for Providing Legal Advice to TAS:

### **CCDM 33.1.2.4.3(2), Procedures for Providing Legal Advice to TAS**

- (2) When a taxpayer is involved in tax litigation with the Service or the United States (whether in the Tax Court, the U.S. Court of Federal Claims, a U.S. Court of Appeals, a U.S. district court, the U.S. Supreme Court, or a federal bankruptcy court), jurisdiction over the case rests with either the Office of Chief Counsel or the Department of Justice, and the litigation matter is assigned to an attorney in the appropriate office. Once a taxpayer becomes involved in this litigation, TAS employees have no jurisdiction over the issues involved in the litigation. Thus, if a TAS employee contacts a Counsel employee for assistance after litigation has commenced, the Counsel employee will remind the TAS employee that TAS does not participate in the litigation process and that the taxpayer (or the

taxpayer's representative) must be referred to the attorney assigned to the case. If the Counsel employee learns that the taxpayer is not represented in the litigation, the Counsel employee will remind the TAS employee that the taxpayer may be eligible for representation from a Low Income Taxpayer Clinic. See Publication 4134 for a list of organizations that receive a low income taxpayer clinic matching grant from the IRS. A Counsel employee may direct the TAS employee to a specific clinic.

## Questions

Any questions concerning the foregoing may be directed to Special Counsel Susan L. Hartford, at 202-317-4124.

\_\_\_\_\_/s/  
Rosty Shiller  
Division Counsel/Associate Chief  
Counsel (National Taxpayer  
Advocate Program)