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MEMORANDUM FOR JIM GRIMES
DIRECTOR, FIELD OPERATIONS, SPEC (W&I)

FROM: *for* Mark S. Kaizen *Hunt*
Associate Chief Counsel (GLS)

SUBJECT: Solicited and Unsolicited Referrals of Low-Income Pro Se
Taxpayers to Low-Income Tax Clinics

This responds to your request for advice regarding whether Service employees may inform low-income pro se taxpayers, either verbally or in writing, of free services provided by select low-income tax clinics in the taxpayers' surrounding geographic area. In your memorandum to us, dated July 3, 2001, you refer to two prior opinions issued by our office, GLS-113953-01 (May 9, 2001) and GLS-107191-00 (May 16, 2000), in which we provided advice regarding the permissibility of informing taxpayers, through flyers included in mailings, of low-income clinics that are partially funded by the Service. You indicated in your memorandum that while you plan to adopt our prior advice, you would like for us to expand our advice to include situations where the availability of low-income taxpayer clinics is communicated verbally.



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Treasury Standards and Standards of Conduct

As we stated in our prior opinions, cited above, the Treasury Supplemental Standards of Conduct ("Treasury Standards") for Service employees prohibit the recommendation or referral of attorneys or accountants, as follows:

Employees of the IRS 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). In addition, the Office of Government Ethics' Standards of Ethical Conduct for Employees of the Executive Branch ("Standards of Conduct") provide that an employee shall not use or permit the use of any authority associated with the employee's public office to endorse any product, service, or enterprise. 5 C.F.R. § 2635.702(c).¹ Employees must also act impartially and not give preferential treatment, or the appearance thereof, to any private organization or individual. 5 C.F.R. § 2635.101(b)(8) and (14). Both the specific Treasury Standard and the more general Standards of Conduct are intended to ensure that employees avoid creating the appearance of the use of a Government position to serve the private interests of those whose services are recommended and the perception that the persons recommended have some special influence or connection to the Service. 58 Fed. Reg. 41193, 41195 (Aug. 3, 1993).

In your July 3, 2001, memorandum you state that in your opinion the above standards should not be interpreted to apply to the agency as a whole because this would lead to the inability of IRS employees to effectively communicate to taxpayers the availability of low-income tax clinics, and would appear to be in direct conflict with Congress's intent of mandating the establishment of a low-income taxpayer clinics to be partially funded by the Service. Employees are required to follow the ethical standards both in the performance of their official duties and in the conduct of their personal activities. While it is true that adhering to the above standards would require some extra time and effort on the part of IRS employees, they would not prevent IRS employees from effectively communicating to taxpayers about the availability of low-income tax clinics. There is no basis for arguing that adherence to the ethical standards is in conflict with the Internal

¹ There is an exception to this endorsement restriction where an agency has statutory authority to promote products, services, or enterprises. 5 C.F.R. § 2635.702(c)(1). For example, the IRS has the statutory authority to promote the electronic filing of tax returns. I.R.C. § 6011(f)(1), as amended by the IRS Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685 (July 22, 1998)

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Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, 775 (July 22, 1998) ("RRA") or the Internal Revenue Code.²

On its face, the above Treasury Standard would seem to apply only to recommendations or referrals of specific attorneys or law firms. In our opinion, however, tax clinics are similar enough to law firms, such that they fall within the prohibitions of the Treasury Standard. While it is true that a tax clinic is distinguishable from a typical law firm in that the clinic serves as a training vehicle for law students or as a social service agency and does not seek to profit from its activities, these clinics are similar to law firms in that they have fiduciary duties to individual taxpayers, provide legal advice, and represent taxpayers. In instances where the Service has referred taxpayers to pro bono sources of assistance, steps have been taken to avoid any possible misperceptions by taxpayers that based on their choice of these sources, they may either be advantaged or disadvantaged in cases involving tax controversies that are before the Service. Although the low-income taxpayer clinic is a Congressionally authorized assistance program, we believe that the need still exists to mitigate any possible misperceptions.

In light of the above authorities, in our opinion it would be permissible for Service employees to provide either solicited or unsolicited information, both verbally and in writing, regarding the availability of low-income tax clinics to taxpayers, as long as precautions are followed. 

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² As you know, pursuant to the authority under the RRA, the Secretary of Treasury is authorized, subject to the availability of appropriated funds, to make matching grants up to \$100,000 per year to a qualified low-income taxpayer clinic, which includes law school clinics and tax-exempt 501(c)(3) organizations. I.R.C. § 7526(a) as amended by section 3601 of the RRA. A clinic may qualify as a low-income taxpayer clinic if, among other requirements, the clinic charges no more than a nominal fee for its services and represents low-income taxpayers in controversies with the Service. *Id.* § 7526(b)(1)(A).

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Deliberative process privilege