

## Meeting Uncle Sam the Hard Way: Educating Immigrants About the U.S. Tax System

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# PRACTITIONERS' CORNER

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There is predictable misunderstanding within the immigrant population when it comes to the U.S. tax system. This misunderstanding arises because of social barriers, language limitations, and differences in cultural norms and ethnic traditions. Unfortunately, noncompliance with the tax law can lead to large penalties and a widening tax gap.<sup>1</sup> This article addresses what can be done to improve immigrant compliance with the federal tax system.<sup>2</sup>

### Common Tax Mistakes

Low-income taxpayer clinics (LITCs) offer advice and informal assistance to thousands of low-income taxpayers.<sup>3</sup> To support LITCs and their clients, Congress created the IRS Restructuring and Reform Act of

1998, a matching grant program.<sup>4</sup> LITC clients include maintenance personnel, construction workers, day-care providers, restaurant workers, nurses, and small-business entrepreneurs.<sup>5</sup> The tax issues addressed at the clinics include the earned income tax credit, filing status, dependency exemptions and child credits, self-employment tax, casualty losses, charitable contributions, cancellation of indebtedness income (often from predatory loans), substantiation, gambling income and loss, alimony, automobile record-keeping, and disability payments.<sup>6</sup> Complicating matters are the immigrant taxpayer's possibly limited educational background, poor literacy skills, and weak command of the English language.<sup>7</sup>

Kathy Doan, former legal department director at the Central American Resource Center of Washington (CARECEN), a community-based organization and LITC offering legal, educational, housing, citizenship, and civic participation programs to the Central American and Latino community, highlighted three tax problems plaguing the immigrant community: failure to

<sup>1</sup>IRS, "Understanding the Tax Gap," Mar. 2005, available at <http://www.irs.gov/newsroom/article/0,,id=137246,00.html>. The tax gap has been estimated at \$345 billion. *IRS and the Tax Gap: Hearing Before the H. Comm. on Budget*, 108th Cong. (2007) [hereinafter George testimony] (testimony of Treasury Inspector General for Tax Administration J. Russell George).

<sup>2</sup>The research done for this article comes from my own experiences working with low-income taxpayers as well as from interviews with experts in the field.

<sup>3</sup>Janet Spragens, "Professor Offers Suggestions on Low-Income Taxpayer Clinics," *Tax Notes*, Feb. 24, 2003, p. 1275, *Doc 2003-4877*, or *2003 TNT 37-24*.

<sup>4</sup>*Id.*

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

<sup>7</sup>*Id.* Many immigrants need translators to communicate with the clinicians.

properly report dependents, failure to report cash income, and failure to use the correct filing status.<sup>8</sup>

### Failure to Properly Report Dependents

This problem is commonly seen by law students at LITCs working with immigrant clients who have run afoul of their tax obligations because they misunderstood the law. Consider the following hypothetical: A documented immigrant comes to his initial appointment with unopened letters from the IRS labeled "Urgent" and "Open Immediately." After interviewing the immigrant and examining the correspondences, the law student discovers that the immigrant erroneously claimed deductions for dependents not living in his place of residence. The immigrant explains that in his culture, dependents include extended family members not living under the same roof as the primary breadwinner. He did not open the letters because he feared he had done something wrong. The immigrant's cultural misinterpretation and his fear of dealing with a problem head-on combined to create an unintentional but serious tax violation.

### Improperly Reporting Cash Income

While some immigrants fail to report cash income to avoid paying taxes, others fail to do so because of ignorance. This is often revealed when the immigrant applies for U.S. citizenship. When an immigrant lists his past employers on the citizenship application, the IRS becomes aware of the difference between the taxpayer's cash earnings and what was reported by the worker.

### Wrong Filing Status

Immigrant families with children often err by having each spouse file as head of household,<sup>9</sup> with each claiming a deduction for the children. It is also com-

mon for cohabiting unmarried couples to file their return as married despite lacking formal marriage documentation.<sup>10</sup>

## Why Do Immigrants Make These Mistakes?

### Lack of Information

Some of the volunteer organizations dedicated to assisting immigrants with social services and health and citizenship concerns also help them secure employment, pay bills, and pay taxes. Many, however, lack the funding to offer formal tax orientation to immigrants and can offer only informal advice at best. As a result, many immigrants are unaware of their tax obligations.

### Reliance on Other Immigrants

Immigrants often trust the wrong people. For example, members of the Hispanic community typically take their taxes to a *notario*, a common practice in many Latin American countries, including Mexico.<sup>11</sup> The problem is that in Mexico, a *notario publico* is a skilled attorney, whereas in the United States, the primary duty of a notary public is to certify signatures and to administer oaths.<sup>12</sup> This cultural disparity allows less scrupulous notaries in the United States to take advantage of unsuspecting immigrants by performing a host of services for which they are unqualified and untrained to administer.<sup>13</sup> Filling out tax returns is one such service. All too often the returns are rife with errors.<sup>14</sup>

There are also numerous unscrupulous (and well-known) storefront tax preparers doing a disservice to the immigrant community. Despite the high price of their services, they often leave the honest taxpaying immigrant with tax liabilities and improperly completed returns.<sup>15</sup> Enacting legislation may help; however, these problems can be prevented from occurring in the first place with a few strategies.

<sup>8</sup>Interview with Kathy Doan, deputy director and program manager for Legal and Community Support Services, Central American Resource Center of Washington, in Washington (Oct. 12, 2006).

<sup>9</sup>According to the IRS, to qualify for head of household status:

You must be unmarried and you must have paid more than half the cost of maintaining as your home a household that was the main home for a qualifying person for more than half the year. You may *also* qualify for head of household status if you, *though married*, file a separate return, your spouse was not a member of your household during the last six months of the tax year, and you provided more than half the cost of maintaining as your home a household that was the main home for more than one half of your tax year of a qualifying person. [Emphasis added.]

IRS, "Topic 353 — What Is Your Filing Status?" *available at* <http://www.irs.gov/taxtopics/tc353.html>.

<sup>10</sup>*Id.* Filing in this manner would be an erroneous representation.

<sup>11</sup>See Farmworkers Legal Services of Michigan, "Michigan Notary Public Law Begins Protecting Immigrants on April 1" (Mar. 2004), *available at* <http://www.farmworkerlaw.org/document.2005-05-30.0700240789> [hereinafter Michigan Farmworkers].

<sup>12</sup>*Id.*

<sup>13</sup>*Id.*

<sup>14</sup>Interview with Prof. Jacqueline Lainez, director of the Federal Tax Clinic, David A. Clarke School of Law at the University of the District of Columbia (Sept. 27, 2006).

<sup>15</sup>Once while working at an LITC, I had a client who received a notice from the IRS demanding payment because he had received the EITC despite being ineligible for it. When I asked him why he filed for it, he told me that his tax preparer, a well-known storefront operation, had prepared his tax return and had simply asked him if he had any children. They did not inquire further to determine whether he was eligible for the EITC.

## Fixing Mistakes by Fixing Causes

According to the Pew Research Center, the foreign-born population in this country is nearing 36 million.<sup>16</sup> Targeted legislation can deal with unscrupulous tax preparers (such as *notarios*). The state of Michigan recently passed a law to curb unscrupulous *notarios*. The Michigan Notary Public Act<sup>17</sup> has four key provisions:

- prohibiting a notary public from claiming to have powers or qualifications that it does not have;
- prohibiting a notary from directly translating terms like “notary public,” “licensed,” “attorney,” or other similar terms into a foreign language in its documents, advertisements, letterhead, or business cards;
- declaring that a notary who is not a barred attorney, yet advertises “notarial” services in a foreign language, must include in the advertisement, letterhead, or business card that the notary is not an attorney and is not authorized to give advice on immigration or other legal matters; and
- prohibiting the notary from using the term *notario publico* or any equivalent non-English term in any business card, advertisement, notice, or sign.<sup>18</sup>

Other states have passed similar legislation.<sup>19</sup>

However, more can be done. Four plausible approaches to fixing the causes of immigrants' tax mistakes are:

- community groups disseminating information to incoming immigrants;
- the IRS sending critical information about taxpaying to newly arrived immigrants;
- employers educating their new employees; and
- the U.S. Citizenship and Immigration Services (USCIS) providing information about the tax system and tax obligations — translated into various languages — to newly arrived immigrants.

The following three criteria could be used to analyze and determine the feasibility of these four approaches:

- the capability with which the provider may offer assistance;
- the likelihood that immigrants will trust the provider of tax assistance; and
- the incentives for the provider to offer accurate information.

## Community Groups

Because community groups are typically staffed by members fluent in other languages, their communication is greatly enhanced. Immigrants also trust community groups because they understand that they are neutral nongovernmental and nonprofit organizations. Community groups also tend to be motivated because they exist to help members of their community. However, relying on community groups to disseminate tax information to immigrants has not proven effective. There are some exceptions, such as CARECEN; however, most community groups lack the resources to adequately educate immigrants about tax obligations and cannot reach a broad enough base of immigrants.

## The IRS

The IRS easily meets the incentive criteria for providing information to immigrant taxpayers: Better-informed taxpayers increase the number of properly filed returns and, as a consequence, can reduce the tax gap.<sup>20</sup> However, increasing the IRS's responsibilities is easier said than done. The IRS is a bureaucracy, and changes come slowly. Relying on the IRS as a provider of tax information also presents feasibility problems. How would the tax information be disseminated? Mail is often neither read nor understood; community workshops would have to be held at times and locations that will not create work conflicts or transportation difficulties; and the IRS would have to increase its budget for ESL grants and tax clinics. There is also the practical concern of trust. Many documented immigrant workers emigrated because of persecution at the hands of a totalitarian government and either fear or mistrust government agencies.

## Relying on Employers

If employers played a significant role in resolving the immigrant tax problem, it would benefit their workers, the IRS, and themselves. The immigrant worker would feel more in control of his own life and less worried about possible governmental problems. The IRS would spend less time and resources pursuing misinformed and uninformed immigrant taxpayers, and the employer would have a workforce that is appreciative and focused.

Regarding feasibility, employers could offer in-house training programs with on-site information centers.

<sup>16</sup>Shirin Hakimzadeh, *Who Are the Immigrants? A Statistical View of the Foreign-Born Population at Mid-Decade*, Pew Hispanic Center Report, Oct. 17, 2006, available at <http://pewresearch.org/pubs/261/who-are-the-immigrants>.

<sup>17</sup>This act has been codified at Mich. Comp. Laws section 55.291 (LexisNexis 2006).

<sup>18</sup>Michigan Farmworkers, *supra* note 11.

<sup>19</sup>Several states have passed similar statutes. See, e.g., Ark. Code Ann. section 4-109-102 (LexisNexis 2006); Cal. Gov't Code section 8219.6 (Deering 2006); Colo. Rev. Stat. section 12-55-110.3 (LexisNexis 2006); Ind. Code Ann. section 33-42-2-10 (LexisNexis 2006); Neb. Rev. Stat. section 64-105.3 (LexisNexis 2006); Nev. Rev. Stat section 240.085 (LexisNexis 2006); N.M. Stat. Ann section 14-12A-15 (LexisNexis 2006); Okla. Stat. section 6 (2006); Or. Rev. Stat. section 194.162 (2006); Tex. Gov't Code Ann. section 406.017 (2006).

<sup>20</sup>See George testimony, *supra* note 1.

Funding could be obtained from the employer or by applying for IRS assistance. The Disney Corp. set up a largely volunteer program similar to the Volunteer Income Tax Assistance (VITA) organization. According to one IRS official, Disney offers a yearly, free, on-site VITA clinic during tax season to help its employees with their tax preparations and concerns. Because VITA is staffed by volunteers, many of whom are university students, Disney's operating expenses for the VITA clinic are low.<sup>21</sup>

Because it stands to benefit, the IRS would be smart to pressure employers to provide tax assistance to their employees. The IRS could do this by offering tax benefit incentives or, depending on the percentage of immigrant employees, make such programs mandatory with penalties for noncompliance.

### The USCIS

The USCIS — which is charged with the “administration of immigration and naturalization adjudication functions and establishing immigration services, policies, and priorities”<sup>22</sup> — may also play a role. New immigrants must go to the USCIS to secure green cards and working papers. The USCIS could provide documented immigrant workers with pamphlets and

other information critical to a basic understanding of the tax system and workers' taxpaying obligations. The only cost to the USCIS would be that of creating the pamphlets, such as research and printing. Immigrants would enter the workforce already supplied with basic knowledge of their potential income tax liability. At that point, further on-site education provided by employers would be even more effective. At the least, the employees would enter the workforce with some elementary knowledge of the tax system.

Using the USCIS as a tax assistance provider would also meet the other two criteria of trustworthiness and incentive. Immigrants are more likely to trust the USCIS than other government organizations. As for the USCIS's incentive for providing these services, in the context of the overall duties of the organization, providing critical tax information promotes immigrants' assimilation into the American culture and workforce.

### Conclusion

Of the four options considered, the latter two together effectively address the problem of immigrant employees failing to comply with U.S. tax laws. The IRS spends countless hours pursuing low-income taxpayers who have not honored their tax obligations because they lacked the basic knowledge of how the U.S. income tax system works. This problem plagues immigrants who enter this country with every intention of seeking an honest living and contributing to their new country, but instead find themselves pursued by a system that they do not understand. This problem can be remedied by providing basic information. A great deal of money can be saved, and stress avoided, by taking a proactive approach to the problem. ♦

<sup>21</sup>According to an IRS official, Disney provides only the essentials (such as tables, chairs, and stationery) and light refreshments.

<sup>22</sup>USCIS, “About Us,” available at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=2af29c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextchannel=2af29c7755cb9010VgnVCM10000045f3d6a1RCRD>.