Legislative Recommendation #63

Expand the Protection of Taxpayer Rights by Strengthening the Low Income Taxpayer Clinic Program

SUMMARY

- *Problem:* In 1998, Congress created the Low Income Taxpayer Clinic (LITC) grant program to provide free or nominal-cost representation to low-income taxpayers involved in controversies with the IRS and to provide education about taxpayer rights and responsibilities to taxpayers who speak English as a second language (ESL taxpayers). The law capped the grant that could be awarded to any clinic at $100,000 per year. That amount was not indexed for inflation and has never been raised. As a result of this limitation and certain others, the LITC program is not as effective as it could be in assisting the maximum number of eligible low-income taxpayers.
- *Solution:* Eliminate the $100,000 per-clinic funding cap and make certain other changes described below to better assist qualifying taxpayers.

PRESENT LAW

IRC § 7526 authorizes the Secretary, subject to the availability of appropriated funds, to provide matching grants for the development, expansion, or continuation of LITCs. The LITC Program was authorized as part of the IRS Restructuring and Reform Act of 1998 to provide free or nominal-cost representation to low-income taxpayers who are involved in controversies with the IRS and education about taxpayer rights and responsibilities in multiple languages for ESL taxpayers.

IRC § 7526(c)(1) imposes an annual aggregate limitation of $6 million for LITC grants "[u]nless otherwise provided by specific appropriation."

IRC § 7526(c)(2) imposes an annual limitation on grants to a single clinic of $100,000.

IRC § 7526(c)(5) limits the amount of LITC funding a clinic may receive to the amount it raises from other sources (*i.e.*, a 100 percent matching funds requirement). The match may be in cash or third party in-kind contributions (*e.g.*, volunteer time, donated supplies).

REASONS FOR CHANGE

The LITC Program is an effective and low-cost means to assist low-income and ESL taxpayers. In 2022, the LITC Program Office awarded grants to 130 organizations in 46 states and the District of Columbia. In 2021, the most recent year for which complete data is available, clinics receiving grant funds represented over 20,000 taxpayers dealing with an IRS tax controversy, including in cases before the U.S. Tax Court. They provided consultations or advice to over 15,000 additional taxpayers. The clinics worked closely with the Tax Court and the IRS Office of Chief Counsel to resolve docketed cases on a pre-trial basis where possible. They helped taxpayers secure more than $6.7 million in tax refunds and reduced or corrected taxpayers' liabilities by more than $62 million. They also brought thousands of taxpayers back into filing and payment compliance, and helped ensure that individuals understood their rights and responsibilities as U.S. taxpayers by conducting nearly 1,000 educational activities that were attended by over 143,000 individuals.[1]

1 *See* IRS Pub. 5066, Low Income Taxpayer Clinics 2022 Program Report (revised Jan. 2023) (forthcoming).

The success of the LITC Program is tied largely to the extensive use of volunteers. Some 1,200 volunteers contributed to the success of LITCs by volunteering over 46,000 hours of their time. More than 67 percent of the volunteers were attorneys, certified public accountants, or enrolled agents.[2]

There are many underserved low-income taxpayers across the nation who could benefit from LITC assistance, but IRC § 7526 contains restrictions that limit expansion of the LITC Program to assist additional taxpayers. First, the annual limitation on grants to a single clinic of $100,000, which has remained unchanged since 1998, prevents the LITC Program Office from awarding additional funds to qualified clinics that have demonstrated excellence in assisting low-income and ESL taxpayers and the ability to efficiently handle more cases. Even if the restriction were to be retained, the $100,000 cap enacted in 1998 would have to be raised to about $182,000 simply to reflect the effects of inflation.[3] However, the LITC Program Office could ensure more taxpayers receive LITC services if it is given discretion to provide larger grants to clinics that demonstrate they can use funds productively, consistent with the objective of providing maximum geographic coverage to taxpayers across the United States. In 2019, Congress authorized an analogous program, the Volunteer Income Tax Assistance matching grant program, which provides free tax return preparation for individuals with low to moderate incomes (*i.e.*, below the maximum Earned Income Tax Credit threshold), individuals with disabilities, and individuals with limited English proficiency.[4] In doing so, it did not impose a per-program grant limitation. We recommend that the per-clinic limitation in the LITC statute be similarly removed.

Second, the 100 percent matching funds requirement may serve as a barrier to coverage. The purpose of the match requirement is to ensure that each clinic's management has a broad commitment to assisting taxpayers and solicits resources to further that objective. In general, strong clinics do not have difficulty meeting the requirement, and we believe the match requirement generally should be retained. In certain circumstances, however, resources to meet the match requirement may be limited, and taxpayers would be better served if the LITC Program Office is given the discretion to reduce it (but not below 25 percent). The LITC Program Office has encountered difficulty identifying and funding clinics in certain geographic areas, and a lower match requirement may make it economically feasible for other potential clinics to operate. If our recommendation to eliminate the $100,000 per-clinic funding cap is adopted, clinics that can meet the 100 percent matching funds requirement when receiving grants of $100,000 may have difficulty raising funds in excess of $100,000 on a 1:1 basis. Thus, clinics awarded grants in excess of $100,000 should not be held to the same 100 percent matching funds requirement. The same is true for new clinics that are trying to get off the ground in underserved areas. The LITC Program Office should be authorized to exercise limited discretion in setting an appropriate matching rate.

Third, the LITC statute, written in 1998, authorizes a funding level of up to $6 million "[u]nless otherwise provided by specific appropriation." In practice, the $6 million authorization has not had an impact because the LITC Program is routinely funded by specific appropriation. The appropriation for the fiscal year ending September 30, 2022, is for $13 million.[5] However, raising the authorized appropriation level would make an important statement of congressional support regarding the success of the LITC Program and the importance of providing representation, education, and advocacy for low-income and ESL taxpayers.

2 *See* IRS Pub. 5066, Low Income Taxpayer Clinics 2022 Program Report (revised Jan. 2023) (forthcoming).

3 *See* Bureau of Labor Statistics, CPI Inflation Calculator, https://www.bls.gov/data/inflation_calculator.htm (last visited Oct. 27, 2022).

4 *See* IRC § 7526A (generally modeled after the IRC § 7526 LITC statute).

5 Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, 136 Stat. 49, 244 (Mar. 15, 2022).

RECOMMENDATIONS

- Eliminate the $100,000 per-clinic funding cap imposed under current law by removing subsection (2) from IRC § 7526(c) and renumbering subsequent subsections accordingly.
- Amend IRC § 7526(c)(5) to provide that the 100 percent "matching funds" requirement is the general rule but that the Secretary has the discretion to set a lesser matching rate (but not below 25 percent) where doing so would expand coverage to additional taxpayers.
- Raise the overall authorized LITC Program funding limitation from $6 million to $25 million in IRC § 7526(c)(1) and provide that the amount is to be increased annually by the percentage increase during the preceding calendar year in the Chained Consumer Price Index for All Urban Consumers (as published by the Bureau of Labor Statistics of the Department of Labor).