



TIPS FOR ASSISTING HUMAN TRAFFICKING SURVIVORS WITH POTENTIAL TAX ISSUES



Overview of Tax Controversy:

Tax controversy is the area of tax law that deals with disputes between taxpayers and a taxing authority, such as the Internal Revenue Service (IRS) or a State Comptroller. This is a broad category which encompasses any “difference” between what the taxpayer believes they owe and what the taxing authority believes is correct. Tax controversy cases can be generally divided into two categories: tax liability (the taxpayer’s monetary responsibility) and tax collections (how the taxpayer is going to pay the tax that is owed). In collections cases, there are several paths to deal with the payment of the tax: (1) an “Installment Agreement” (when a taxpayer agrees to make payments over an extended period of time); (2) a determination of “Currently Not Collectible” status (when the taxpayer has no money for the taxing authority to collect); or (3) an “Offer-in-Compromise” (when there is negotiation for the taxpayer to pay a reduced amount). For human trafficking survivors, tax controversies may arise due to non-payment of taxes or the filing of fraudulent returns, leading to more complex tax issues that should be referred to a tax specialist.

Four Things Survivors Should Know About Dealing with Tax Issues:

1. **The IRS is not out to “get” the taxpayer.** Their mission is to enforce tax laws fully and fairly. As such, the IRS will work with a taxpayer to resolve outstanding tax issues, especially if the taxpayer is represented by a tax specialist.
2. **Tax cases move slowly, and there are many chances for relief from tax liability.** The IRS is overworked and understaffed, so many tax cases take a long time to resolve. There are multiple stages to most tax cases, and a taxpayer will usually have multiple opportunities to challenge their tax liability. While interest may continue to accrue on unresolved tax liabilities while a case is pending, other IRS actions – such as attempts to collect – are put on hold while a dispute is pending.
3. **Tax help is important and easy to get.** The IRS has established a Low-Income Taxpayer Clinic (LITC) program to connect qualified taxpayers with attorneys who are tax specialists. In the Baltimore metro area, referrals can be made to the LITC programs at University of Baltimore School of Law (<http://law.ubalt.edu/clinics/TaxClinicClientPage.cfm>) or Maryland Volunteer Lawyers Service (<https://mvlslaw.org/>). If a client needs tax assistance outside of Maryland, they can access the current list of LITC sites by visiting: <https://www.irs.gov/pub/irs-pdf/p4134.pdf>.
4. **Tax information is kept very , very confidential.** Except in very unusual situations, the IRS may not disclose the content of a tax return, even to other state and federal agencies, and it may not disclose to third parties without the taxpayer’s permission.

Questions to Determine Whether a Human Trafficking Survivor has a Tax Issue:

The questions below can help screen for tax issues in trafficking cases. If a client answers “yes” to any questions below, a referral to tax specialist is recommended.

- Is the IRS (or a state tax agency) trying to collect from you now?
- Do you owe any taxes to the IRS or to a state tax agency? If so, do you know how much you owe?
- Did you file tax returns for the years for which you owe?
- Were those tax returns accurate—did they reflect the amount of income you actually had?
- Did a trafficker or another person force or convince you to file returns? If so, did you see and/or sign the returns before they were filed?
- Has anyone used your identity to file taxes or claim a refund?
- Have you been convicted of any crimes on either the state or federal level? If so, are any of them related to taxes and/or were there any terms about taxes in any plea agreements?

Potential Tax Controversy Scenarios Facing Human Trafficking Survivors:

A human trafficking survivor may not have filed tax returns at all for some years. If a survivor has unfiled returns for a year in which they earned income above the filing threshold, they should be counseled to file accurate returns for those years. This is true even if the income came from an illegal source; so long as the income is accurately reported, no tax crime has normally been committed. In some cases, it may be advisable for a survivor to consult with a criminal tax controversy specialist about potentially claiming the Fifth Amendment privilege against self-incrimination to avoid stating the source of income on a return.

A human trafficking survivor may have filed incorrect returns in the past, perhaps to avoid reporting income related to the trafficking experience. If the facts of the case (or a prior determination in a criminal case) suggest that the returns were filed with the intent to deceive, the IRS may assert a fraud penalty against the survivor. Notably, the IRS has an unlimited statute of limitations to make assessments based on a fraudulent return, meaning there are no time limitations for them to act. Often, a tax practitioner will begin repairing such a situation by filing correct, amended returns for the years at issue. Filing an amended return does not “undo” fraud on an original return; however, disclosing that the original returns were wrong shows the survivor’s good faith and may prevent the IRS from asserting a fraud penalty.

A human trafficking survivor may have filed erroneous returns at the behest of their trafficker or a related third party. Even though the returns are wrong, challenging the substance of the tax liability can be difficult. A taxpayer is presumed to have reviewed any returns they sign, and they, not the preparer or a third party, are held responsible for any errors. While it is possible to argue that the survivor signed under duress, duress may be hard to prove. However, the IRS does provide opportunities for relief. First, if a third party prepared the return and had a refund claimed on the return diverted into their own bank account, the survivor can seek Return Preparer Fraud relief. This usually requires evidence that the refund was stolen and, in many cases, that the survivor has referred the fraud to police for investigation.

A survivor can also seek an “effective tax administration” offer in compromise if they were coerced into filing returns to benefit a trafficker, such as returns that claimed the trafficker’s income as theirs. The IRS has determined that a taxpayer should not have to pay a liability that arose due to the crime or fraud of a third party, and a trafficking survivor may be able to argue that the liability is the consequence of the trafficker’s criminal scheme, not the survivor’s own intention.

Human trafficking survivors are more likely than most taxpayers to have a combination of civil and criminal tax issues. While criminal tax prosecutions are very, very rare compared to civil tax examinations, they do happen in situations involving illegal income or potential conspiracy charges. These are situations trafficking survivors may face in disproportionate numbers, and they should consult with a criminal tax controversy attorney to address any such issues. However, when handling a civil tax matter, practitioners should be aware that a prior criminal finding of fraud will affect subsequent discussions of a parallel civil matter with the IRS.

The information on this tipsheet is based on “Tax Cases for HT Advocates ” by John B. Snyder, III, Director of the Low Income Taxpayer Clinic at University of Baltimore School of Law. It does not constitute legal advice.

This tipsheet was created as part of the Human Trafficking Prevention Project (HTPP), a collaboration between the University of Baltimore School of Law and Maryland Volunteer Lawyers Service.

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