Navigating Tax Controversies Affecting Human Trafficking Survivors: Tips for Tax Attorneys & Professionals

Human trafficking survivors often face unexpected tax liabilities because of fraudulent actions taken by their traffickers, unpaid taxes, and other complications arising from their trafficking experience. For example, survivors may not have filed taxes or filed incorrect taxes either on their own or under duress by a trafficker. Survivors may also be facing collection actions or have criminal tax cases. Traffickers may have fraudulently collected a survivor's tax refund or stimulus payment. With such issues usually taking time and expertise to identify and resolve, help from tax attorneys and certified public accountants is essential.

WORKING WITH SURVIVORS TO IDENTIFY POTENTIAL FEDERAL AND STATE TAX ISSUES

The first step when working with a human trafficking survivor is to ask: 1) if they have received any notices from a federal (Internal Revenue Service) or state agency (e.g. Maryland Comptroller) regarding money owed due to tax issues, and 2) if there are unfiled returns that need to be filed. Please note that tax issues are time-sensitive, so if the survivor does not have financial records and/or cannot recall when or if tax returns were filed, tax attorneys and professionals should:

1. Contact the Internal Revenue Service (IRS) and request ten years of TAX ACCOUNT transcripts and wage and income earning statements at https://www.irs.gov/individuals/get-transcript
2. In Maryland, contact the Comptroller (Taxhelp@marylandtaxes.gov) to determine state liabilities.
3. Determine if errors on filed returns need to be amended.
4. Help the survivor pull copies of their credit report to determine if there are unknown debts or if there is an identity theft issue.
5. Search public records for any recorded liens.

FEDERAL TAX CONTROVERSY OVERVIEW

The Taxpayer Advocate Service (TAS) provides a visual roadmap of the tax system. This interactive tool explains what, for many, is an opaque process and can provide a framework for discussion with a client. To access, please visit https://www.taxpayeradvocate.irs.gov/get-help/roadmap/

A Snapshot of the IRS Assessment, Examination, and Litigation Process: After a taxpayer completes and submits a return to the IRS, the return is sent to an Assessment Station that reviews, processes, and assesses the taxpayer's balance. If an issue arises, the return is sent to the Examination Screening Station, sometimes called Audit, for review. If, after examination, problems remain, the IRS will send an initial report and a 30-day letter to the taxpayer. The taxpayer's response to the 30-day notice sets them on the course of negotiating with the IRS Office of Appeals to plead their case. If the controversy is not settled in the appeal process or the taxpayer does not respond to letters, the return is sent back to the Assessment Station and then to Collection.

A 90-day Notice, also called the 90-day Notice of Deficiency, starts the Litigation path beginning with a petition to the U.S. Tax Court, which is part of the U.S. Judiciary, not the IRS. The Tax Court handles cases between the taxpayer and the IRS. It allows the taxpayer to contest financial liability before paying taxes.

Resolving Tax Controversies - Early Considerations: Once a tax attorney or tax advocate and the trafficking survivor have collected the required documents and identified the controversy, the next step is to plan the approach to resolve the controversy. Plan considerations include determining the following:

- *Should the plan contest the liability or seek collection relief?* Contesting the liability requires financial records of the year in question. Collection relief requires current financial records to determine "Reasonable Collection Potential (RCP)."
- *Alternatively, should the taxpayer go to the Tax Court?* The Tax Court can resolve multiple years of liability in one case, and the IRS is often willing to settle Tax Court cases- but based on the issues, not the amount in dispute. A downside is that the case may call attention to tax issues that have yet to be discovered by the IRS, which can be added to the case.

PLEASE NOTE: Tax controversies may be very overwhelming and re-traumatizing for human trafficking survivors, particularly if they potentially have to go to court. Tax attorneys and professionals are encouraged to explain all options for addressing liability and employ a trauma-informed, client-led approach in determining the course of action.

Resolving Tax Controversies – Important Dates:

- Assessment Statute - By law, the IRS assesses tax within three years after a return is due. If a taxpayer is required to file a tax return and does not, or files a return fraudulently, then the IRS has unlimited time to assess. The IRS must assess to collect.
- Appeal of a Determination - A taxpayer has 30 days to appeal a determination to the IRS Office of Appeals.
- Notice of Deficiency ("90-ay Letter") - A taxpayer has 90 days to petition the U.S. Tax Court.
- Collection Statute - The IRS has 10 years from the date of assessment to collect a tax liability. The Statute of Limitations is tolled for the period during which the taxpayer is seeking an installment agreement or offer in compromise.
- Refund Statute - A taxpayer must file a claim for a refund within three years from the date the original return was filed or two years from the date the tax was paid, whichever is later. If, however, the taxpayer files a claim after the three years but within two years from the time the tax was paid, the refund cannot exceed the tax paid the preceding two years.

Special Considerations Applicable to Trafficking Survivors: Income earned from illegal sources (such as sex work, whether due to trafficking or not) must be reported when filing taxes. The Fifth Amendment allows taxpayers to report income from illegal sources without disclosing the sources. Filing an amended return does not negate fraud on the original filing but can show good faith and prevent fraud penalties. If a taxpayer did not authorize a return, does not recognize a return, or does not recognize certain items on the return, it may be a situation of identity theft or fraud by the tax return preparer.

UNDERSTANDING AND RESPONDING TO COLLECTIONS

Collection Actions - If a taxpayer receives a collection notice, it is urgent that they respond before the IRS takes collection action, which can include:

- Federal tax lien - Arises when the IRS makes an assessment and issues a notice and demand for payment.
- Levy - A seizure of the taxpayer's property (garnish wages, take money from the taxpayer's bank, seize, and sell the taxpayer's vehicle (s), real estate, and other personal property). The IRS can also suspend or revoke a taxpayer's U.S. passport.

Collection Relief - The IRS provides several options for taxpayers for whom paying taxes presents a financial challenge.

- Currently Not Collectable (CNC) status - This status temporarily allows taxpayers to defer payment if they cannot afford to pay their debt. However, interest and penalties continue to accrue.
- Installment Agreement - If a taxpayer can pay, the IRS allows payment over a period of time. Once an agreement is negotiated, funds are automatically withdrawn from a bank account.
- Offer in Compromise - This approach works best for people with large tax bills. Doubt as to collectability: Missed time to appeal or petition for tax court.Doubt as to Liability – don't believe you owe and have evidence to document the error.
- Effective Tax Administration - This approach, which considers equity factors, such as wrongful acts by a third party and the taxpayer's inability to afford to pay, may be particularly effective for trafficking survivors.
- Penalty Abatement - An underutilized approach to reducing or eliminating penalties, which can substantially reduce the overall liability, and which can be requested due to a reasonable cause or because it is the first time in the last three years the taxpayer has requested penalty reduction or removal.

MARYLAND STATE TAX LIABILITIES

It is critical not to overlook state tax liability when discussing potential tax issues with trafficking survivors. Here in Maryland, notices regarding tax issues will come from the Comptroller's office (www.marylandtaxes.gov), and court decisions regarding tax liability will show up and be searchable by name on Maryland Judiciary Case Search.

Maryland will place a hold on a taxpayer's driver's license, professional license, and/or vehicle registration in response to an unaddressed tax liability. The state will release this hold when the taxpayer enters a payment plan (Installment Agreement) or is accepted into the Low-Income Hardship Program (Similar to Currently Not Collectible Status). Maryland also accepts Offers in Compromise, but only two years after the taxpayer became liable (not just when the return was due) and after all avenues of administrative appeal have been exhausted. Denials cannot be appealed. MVLS has a Low-Income Taxpayer Clinic to assist survivors with tax issues. To apply for services, please request help via the HTPP & MVLS Partnership at www.htprevention.org (for trafficking survivors) or by calling MVLS' intake line at (410) 547-6537 (for the general public).

This tip sheet was created as a part of the Human Trafficking Prevention Project (HTPP) and Maryland Volunteer Lawyers Service (MVLS) Partnership.

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