MARYLAND VOLUNTEER LAWYERS SERVICE

The Human Trafficking Prevention Project

Azarvand Tax Law

MSBA SECTION YOUNG LAWYERS

MSBA MARYLAND STATE BAR ASSOCIATION

Navigating Tax Controversies Affecting Human Trafficking Survivors

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Agenda

- Introductions
- Overview of human trafficking
- Overview of the tax controversy process for nontax practitioners
- Discussion of the most common tax issues that impact human trafficking victims and how to identify them
- Discussion of ways to relieve the burden of tax liabilities within the context of holistic human trafficking advocacy

MVLS Mission

MVLS removes barriers to justice through free civil legal help, community engagement, and advocacy for equitable laws.

Our vision is for a fair legal system that is free of injustice and equitably serves underrepresented Marylanders.

➢ What does this mean?

- MVLS volunteers provide full representation when brief advice is insufficient to resolve a dispute.
- MVLS relies on a diverse panel of volunteers, including law firms, solo practitioners, corporate counsel, government lawyers, and accounting firms.
- MVLS works in partnership with many community programs to support their efforts and help break down barriers to legal services.
- MVLS staff conduct outreach and advocacy to bring about broader changes to legal systems that destabilize low-income families.

The Justice Gap

- In the United States, our legal aid system currently meets just 20% of the need for civil legal assistance.
- The remaining 80% of people, who can't afford a lawyer, are at a severe disadvantage in court.
- MVLS leverages the power of pro bono to help close the justice gap in Maryland.
- **Our vision** is for a fair legal system that is free of injustice and equitably serves underrepresented Marylanders.

MVLS' Partnership with the Human Trafficking Prevention Project

Maryland Volunteer Lawyers Service has been partnering with the **Human Trafficking Prevention Project (HTPP)** since 2016.

The HTPP primarily serves anyone across the gender spectrum who has:

- Experienced sex and/or labor trafficking; and/or,
- Traded sex for any reason, including by choice, out of circumstance, or due to coercion

For clients who meet the above parameters, the HTPP and MVLS partnership offers comprehensive and hoslitic legal services, including representation with:

- Criminal record relief matters, including expungement, shielding and vacatur
- Consumer debt matters, with a focus on credit/debt consultations and credit repair
- Family law matters, such as divorce/custody
- Name and gender marker changes
- **Tax disputes**

MVLS' Partnership with the Human Trafficking Prevention Project

Preventing Exploitation Through Criminal Record Relief and Access to Civil Legal Services

As a program that also focuses on trafficking prevention, the HTPP and MVLS also provide criminal record relief and other services to individuals who have experienced a combination of violence, trauma, and/or other systemic inequities that put them at increased risk of exploitation, including:

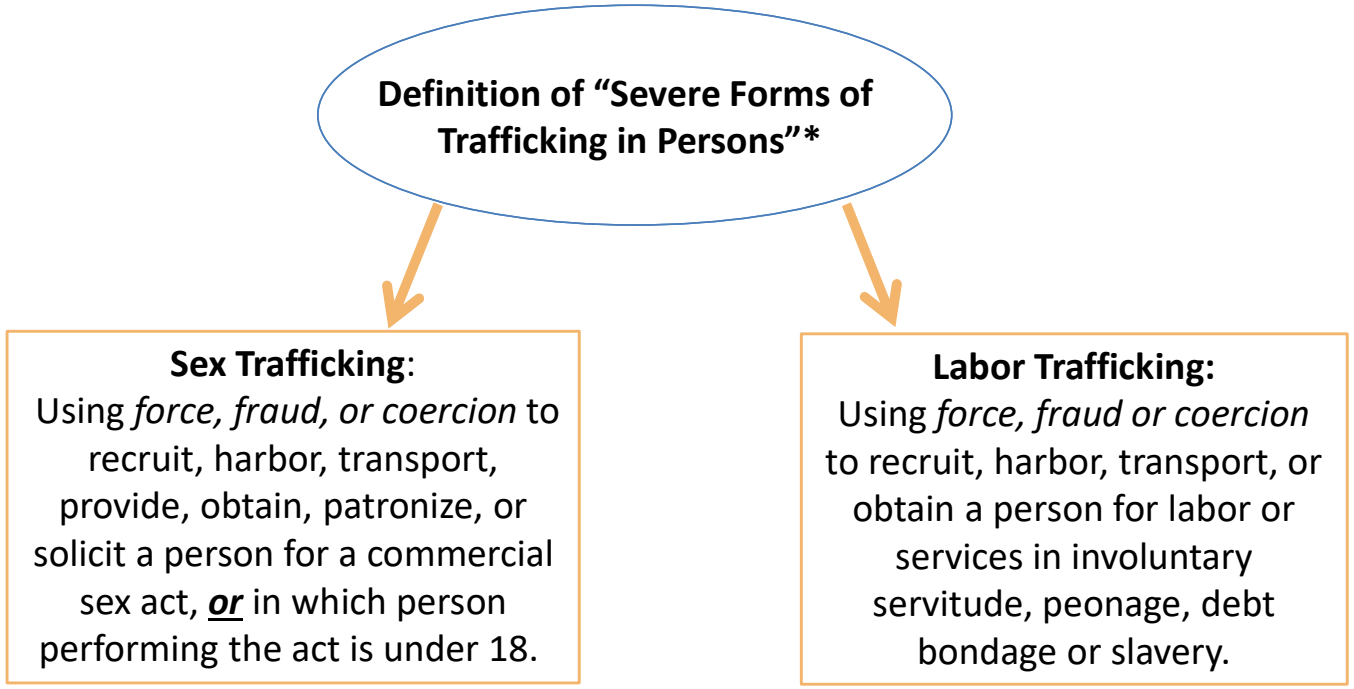
- Interpersonal violence and/or sexual assault
- Housing instability
- Substance use
- Involvement in the criminal legal system
- Immigration status
- Discrimination based on race, sexual orientation and/or gender identity

www.mvlslaw.org/ht

What is Human Trafficking?

- A crime that is defined internationally, federally, and at the state level
- Involves compelled service across a variety of labor sectors
- Includes both trafficking into the commercial sex trade as well as trafficking into other forms of labor

Federal Law: The Trafficking Victims Protection Act



22 U.S.C.A. §7102(11)

“Defining” Force, Fraud, or Coercion

Force:

- Physical abuse
- Sexual abuse
- Isolation/confinement

Fraud:

- False promises of employment/education/a better life
- False promises of romance or marriage

Coercion:

- Threats of harm to victim, victim’s family, or other loved ones
- Emotional abuse
- Withholding or supplying basic needs like housing/clothing/food
- Exploitation of drug addiction, homelessness, or personal insecurity

Who is Put Most at Risk?

Anyone Can be a Target! However, traffickers do target certain populations…

Groups Put at Highest Risk:

- Women
- Those with histories of sexual abuse/assault
- People experiencing homelessness or housing instability
- Immigrants (documented *or* undocumented)
- People who use drugs
- People with criminal records
- Members of the LGBTQIA+ community, particularly transgender women
- Youth
  - Runaway/homeless youth, LGBTQIA+ youth, those with involvement in the family policing system

Tax Issues Facing Human Trafficking Survivors

When might human trafficking survivors need specialized legal assistance with taxes?

- If they have not filed taxes
- If they filed incorrect taxes, either on their own or under duress by a trafficker
- If a trafficker has fraudulently collected their refund or stimulus payment
- If they are facing collection actions by the IRS
- If they have any criminal tax cases opened against them, or any terms involving taxes in plea agreements

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Tax Resources

-**Volunteer Income Tax Assistance (VITA) Sites**

--Free Income Tax **preparation and filing**

--Around $60,000 income limit

--Current year filing in the Spring

-Some help with previous years in other months

--**Cannot represent taxpayers in controversies.**

-Low-Income Taxpayer Clinics (LITCs)

-Free Representation in **Tax Controversies**, and filing when required to resolve the controversy

-$37,650 Income Limit for a household one, increases with each household member.

-Academic LITCs use Law Students working under a professor.

-Non-Academic LITCs such as the one at MVLS use professional volunteers.

-Taxpayer Advocate Service (TAS)

-Independently run office within the IRS

-Eligibility for help is not income dependent

-Advocates can assist the client with IRS processes, but **cannot represent the taxpayer against the IRS.**

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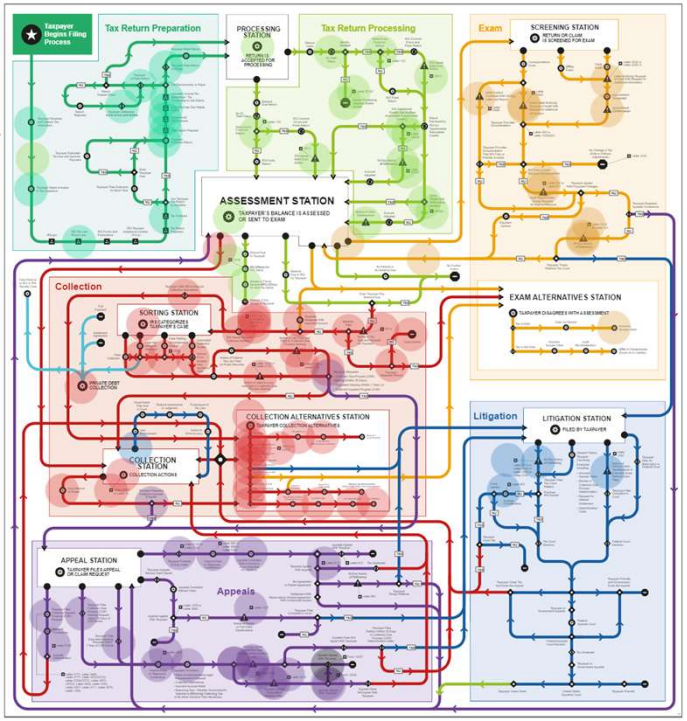
Tax Controversy Overview

1. Return is filed
2. Assessment, or
3. Examination (usually issues 30 day or 90 day letter)
   - If a taxpayer responds
     - 30 day letter- IRS Office of Appeals
     - 90 day letter- U.S. Tax Court
   - If a taxpayer does not respond
     - Assessment then
     - Collection



Access the Taxpayer Roadmap Tool: https://www.taxpayeradvocate.irs.gov/get-help/roadmap/

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Early Considerations

- **Is the plan to 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)"
- **Should the taxpayer go to Tax Court?**
  - Pro Se representation should be avoided.
  - The Tax Court can resolve multiple years of liability in one case.
  - IRS is very willing to settle Tax Court cases - but based on the issues, not the amount in dispute.
  - The case may call attention to tax issues not yet discovered by the IRS - which can be added to the case.
  - Many clients who are HT survivors may be very uncomfortable with going to court.

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Working with Survivors to Identify Potential Tax Issues

- Ask the survivor whether they have received any notices from a federal or state agency regarding money that is owed.
- Determine whether there are unfiled returns that need to be filed
- Contact the IRS and request ten years of TAX ACCOUNT transcripts
  - https://www.irs.gov/individuals/get-transcript
- Contact the state taxing authority to determine if there is a state liability.
  - Taxhelp@marylandtaxes.gov
- Determine if there are ERRORS on any filed returns that need to be amended.
- Assist the survivor in pulling a copy of his or her credit report to determine if there may be debts that are not known or if there may be an identity theft issue
- Search public records for any recorded liens
- Note that tax issues are time sensitive!

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Timing Considerations

- **Assessment Statute:** Exceptions that extend the period the IRS has to assess. 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.

- **Collection Statute:** The SOL is tolled the period during which the taxpayer is seeking an
  - Installment agreement, or
  - Offer in compromise.

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Special Considerations

- Income earned from illegal sources must be reported.
  - 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, discuss Identity Theft and Return Preparer Fraud relief options with them.
- If you are unsure what steps to take consult a criminal tax controversy attorney.

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Collection Overview

Collection Actions

- Federal tax lien- arises when the IRS makes an assessment and issues a notice and demand for payment.
- Levy- 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 suspend or revoke a taxpayer's U.S. passport.

Collection Relief

- Currently Not Collectable (CNC) status
- Installment Agreement
- Offer in Compromise

Collection Relief Options

Currently Not Collectable (CNC) status- This allows taxpayers who cannot afford to pay their tax debt to temporarily defer paying.

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Installment Agreements- This allows a taxpayer to pay an outstanding balance over a period.

- The taxpayer tells the IRS how much it can pay each month. Depending on the amount, the IRS may ask for a financial form to be completed.

Offer In Compromise- This allows a taxpayer to satisfy their tax liability for less than the total amount due.

- Types:
  - Doubt as to Collectability
  - Doubt as to Liability
  - Effective Tax Administration

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Penalty Abatement

- **Reasonable Cause Penalty Abatement-** The taxpayer must demonstrate they exercised ordinary care and prudence and were nevertheless unable to file their return or deposit or pay the tax due.
  - Examples specific to trafficking survivors:
    - Unavoidable absence of the taxpayer
    - The taxpayer was unable to determine the amount of tax due for reasons beyond their control.
    - Lack of funds
- **First Time Penalty Abatement-** The taxpayer must demonstrate a good history of tax compliance by not having any penalties assessed in the three years prior to the period FTA is being requested.
- If any penalties are reduced or removed, the IRS automatically reduces or removes related interest.

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Case Example

- Client came to us for help with a longstanding Maryland liability that arose as a result of her being trafficked. A return she did not authorize was filed on her behalf. The return reflected a refund, and she did not have a filing requirement for that period. She resolved the issue with the IRS several years before but could not resolve her liability with Maryland.

- Maryland put a hold on her license and kept her tax refund each year.

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Case Example

- Client came to us for help with a large federal tax liability. The liability did not arise due to being trafficked. The client struggled with getting back on her feet and as a result, did not file for several years.

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Maryland State Tax Liabilities

- 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 into a payment plan (Installment Agreement),or is accepted into the Low Income Hardship Program (Similar to Currently Not Collectible Status).
- Maryland also accepts OICs, 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.

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New Remedies to Address Negative Credit for Trafficking Survivors

Congress: Debt Bondage Repair Act of 2021

CFPB: New Regulation - Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking (enacted July 25, 2022)

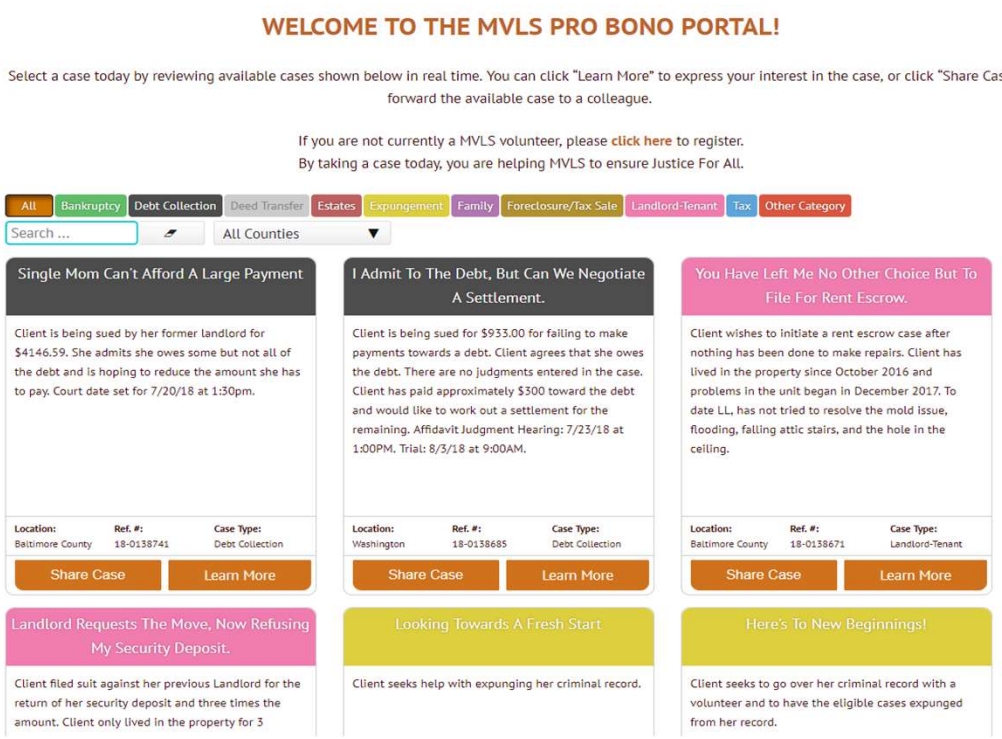
What does this mean??

- Created a process for survivors to request removal of adverse information from their credit and consumer reports if that information is related to their trafficking experience
- https://www.consumerfinance.gov/ask-cfpb/im-a-victim-of-trafficking-how-can-i-block-items-from-my-credit-report-that-are-the-result-of-trafficking-en-2127/

NOT A VOLUNTEER? SIGN UP TODAY!

https://mvlslaw.org/volunteer/volunteer-sign-up/

Take a Case Through our Pro Bono Portal



Visit Our Website

www.mvlslaw.org – Browse the site to learn more about MVLS!

FREE Upcoming Trainings

Go https://mvlslaw.org/mvls-events/ for more info on upcoming events!

Recorded Trainings on all MVLS' services areas are also available at:

https://mvlslaw.org/volunteer/volunteer-resources/

Information about MVLS' partnership with the Human Trafficking Prevention Project, along with recorded webinars, tip sheets, and other resources, can be found at:

https://mvlslaw.org/ht/

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Visit https://mvlslaw.org/mvls-events/ for more info on upcoming trainings and clinics!

THANK YOU!!

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