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October 30, 2015

Honorable Michael B. Thornton
Chief Judge
United States Tax Court
400 Second Street, N.W.
Washington, D.C. 20217

Re: Comments on Proposed Rule Changes from the Department of the Treasury on September 11, 2015

Dear Chief Judge Thornton,

The Federal Tax Clinic at the Legal Services Center of Harvard Law School is submitting this letter.

On September 11, 2015, the Department of the Treasury, responding to an invitation from Judge Lauber, submitted a list of proposed rule changes. This letter is written in response to an invitation from the Court for comments by November 1, 2015, on the changes proposed by the Department of Treasury. This letter addresses three of the proposed Tax Court Rule changes and comments with suggestions on two current Tax Court forms. The three Department of Treasury proposed changes on which we comment are (1) Answers in Small Tax Cases; (2) Imperfect Petitions: filing fee, signature, and attached notice; and (3) Deposition of Party Witnesses. The two suggestions concerning forms are (1) amending the Petition (simplified form) and (2) amending the petition package to better alert pro se taxpayers to the fee waiver opportunity.

Answers in Small Tax Cases

We have concerns about the Department's proposal to revise Rule 173 to change the content of Answers filed in small tax cases. The Department makes the proposal without studying which type of answer or response would most likely lead pro se taxpayers to meaningfully and successfully engage in a Tax Court proceeding. We request that the Court take time to study the best means of promoting successful engagement before changing this rule yet again.

This proposed rule change will have a significant impact particularly on the low-income pro se taxpayers. Despite budget cuts to the IRS, the risk of IRS audits for low-income taxpayers remains higher than average.[1] One explanation for increased audits of low-income taxpayers is that since 2000, Congress directed the IRS to crack down on the refundable Earned Income Tax Credit

[1] INTERNAL REVENUE SERVICE, 2012 DATA BOOK, Oct. 1, 2011 – Sep. 30, 2012, at 26, https://www.irs.gov/pub/irs-soi/12databk.pdf; Cameron Keng, *Budget Cut Decreases Tax Audits For the Wealthy and Increases Audits on Low-to-Mid Income Families*, FORBES, (April 2, 2015), http://www.forbes.com/sites/cameronkeng/2015/04/02/irs-budget-cuts-decreases-tax-audit-for-the-wealthy-increases-audits-on-low-to-mid-income-families/.

("EITC") because of widespread abuse.[2] Low-income taxpayers who claim the EITC are now twice as likely to be audited as other taxpayers.[3] This increased auditing of EITC recipients has real consequences for low-income taxpayers and drives them into the arms of the Tax Court.[4] Frequently, they file their Tax Court petition having never had a personal interaction with anyone at the IRS because the audit resulted from computer selection and correspondence.

Low-income taxpayers generally are diverse in terms of ethnicity, family status, living arrangement and age.[5] However, the defining trait of low-income taxpayers is scarcity of financial resources.[6] Thus, low-income taxpayers make up most pro se tax court petitioners since they cannot afford to hire representation. Consequently, it is important to think about how changes to tax procedures could benefit these low-income taxpayers and in turn help the Tax Court and the IRS resolve cases with this population more efficiently and effectively.

Currently, under Tax Court Rule 173(b), the IRS is required to file answers in all small tax cases.[7] However, these answers are often unhelpful to the petitioners in these cases — the majority of petitioners in small tax cases are *pro se* and many are confused by the IRS's answer (some even believe that the denial means that they have already lost the tax case). In addition, because these petitioners lack training in legal pleading, they often file unclear or poorly-written pleadings, causing the IRS to spend considerable time trying to prepare an accurate answer. Thus, the Department has proposed that the Court "allow respondent to file a more helpful answer in small tax cases." It suggests that an answer will be sufficient and helpful if it provides (1) a general denial; (2) contact of an IRS Chief Counsel attorney; and (3) the timeframe within which the petitioner may expect contact from an Appeals or Settlement Officer assigned to his or her case. The proposal indicates a more formal answer would be provided for cases requiring affirmative allegations.

The Department suggests that this proposal would provide more useful information to small-tax-case litigants and allow for more expeditious referrals between Appeals and Counsel in respondent's offices to help conserve limited resources. However, the IRS made these proposed changes without conducting any study to determine if these changes would or would not provide a more helpful answer to small tax case pro se petitioners. The proposal reflects only the Department's view of what constitutes helpful information for these individuals.

The Department's proposal continues a pattern of imposing, removing, and re-imposing the Answer without empirical data on what would best serve pro se petitioners in this process.[8] When the small-tax-case procedure came into existence in 1970, the Court's rule concerning answers applied to these cases just as it had to regular cases.[9] In the early 1980s, the Court removed the

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[2] Liz Pulliam Weston, *Low Income More Prone to Audits by IRS*, L.A. TIMES, (Apr. 16, 2000), http://articles.latimes.com/2000/apr/16/news/mn-20299.
[3] Richard Satran, *IRS Data Web Snares Mostly Low- and Middle-Income Taxpayers*, U.S.NEWS: MONEY, (May 1, 2013, 12:35 PM), http://money.usnews.com/money/personal-finance/mutual-funds/articles/2013/05/01/irs-data-web-snares-mostly-low--and-middle-income-taxpayers.
[4] *See id.*
[5] NATIONAL TAXPAYER ADVOCATE, 2014 ANNUAL REPORT TO CONGRESS – VOLUME TWO, 5 (2014). http://www.taxpayeradvocate.irs.gov/Media/Default/Documents/2014-Annual-Report/Volume-Two.pdf
[6] *Id.*
[7] TAX CT. RULES OF PRAC. & PROC. § 173(b) (2012).
[8] Keith Fogg, *Chief Counsel's Office Requests Tax Court Rule Changes*, PROCEDURALLY TAXING (Sep. 22, 2015), http://www.procedurallytaxing.com/chief-counsels-office-requests-tax-court-rule-changes/.
[9] *Id.*

Answer requirement at the request of Chief Counsel's Office with no study on how it might impact low income taxpayers.[10] The change seemed to respond to a desire from the Chief Counsel's Office rather than from something initiated by the pro se petitioners appearing before the Court. In 2007 when the Court reinstated the requirement for answers, no study on the impact of Answers on pro se petitioners was conducted either.[11] Throughout the process of requiring or not requiring the Answer, the one party perhaps most impacted by the Answer has not had a voice. Because pro se petitioners represent a diverse group that has no single representative to speak up for their interests, their lack of voice in the process of designing the most effective answer is not surprising and does not represent a calculated attempt by the Court or Chief Counsel's Office to exclude them from the discussion. The Department's current proposal for another change to this rule, however, offers the opportunity to hear from the pro se petitioners in a meaningful way before making the next decision concerning the pleading process.

As mentioned above, many pro se taxpayers arrive in the Tax Court without having spoken to anyone in the IRS during the course of the audit. Essentially they are herded to the Tax Court by computer driven decisions[12] without any chance to first work through the issues in their case with a "human." Therefore, these pro se taxpayers often become disaffected when they receive only an impersonal answer and have no one to talk to for several more months.[13] As such, we believe that it would be very helpful to provide the petitioner additional informational in the answer such as: (1) the appeals officer assigned to the case;[14] (2) the IRS attorney assigned to the case; (3) next steps for preparing for trial or settlement; (4) rough timeline of the case; and (5) statistics that would encourage the petitioner to engage with the IRS pre-trial — such as the high rate of success for taxpayers resolving cases in Appeals. However, we are reluctant to presume that we know what is best for pro se petitioners and would prefer to base the decision on empirical data.

In order to research which form of answer/response to the petition and which information would be most helpful for the petitioner, Crystal Yang, from Harvard Law School, and Will S. Dobbie, from Princeton University, have agreed to conduct an empirical study if the Tax Court and the Department would also agree to such a study. We suggest postponing implementation of any changes to small case answers until an empirical study is conducted, with the assistance of all parties concerned, in order to identify the type of answer or response that would be most helpful to small-tax-case litigants.

Crystal Yang is an Assistant Professor of Law at the Harvard Law School. Her teaching and research centers on empirical law and economics. Will S. Dobbie is an Assistant Professor of Economics and Public Affairs at Princeton University and also has extensive experience with

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[10] Fogg, *supra note 8.*

[11] *Id.*

[12] *See* Satran, *supra* note 3 (discussing the IRS's use of robo-audits and data mining).

[13] Although the Department's proposal does not address its internal procedures for handling these cases, these procedures deserve some scrutiny because they can have the effect of disadvantaging pro se taxpayers. These taxpayers demonstrate an interest in resolving their case by filing the petition. By postponing for months the first contact with these individuals, the Department may cause many to lose touch with the case. While the rhythm of a several month delay may seem natural to the Department, it may seem very unnatural to the individual trying to resolve the issues raised by the audit. Instead of shelving the cases for several months, it should consider early engagement to keep the pro se individuals interested in the case and promote participation.

[14] We recognize that the Appeals Officer contact information will not be included in an answer for Collection Due Process small cases nor for the small percentage of S cases where the taxpayer had tried to resolve their Notice of Deficiency through the Appeals Office before filing a tax court petition.

empirical studies. Members of the tax clinic have provided them with a basic outline of the process and some ideas on how the research might determine the most effective answer or response. Based on the information provided by the tax clinic, they have prepared a proposal for the empirical study that we would like to conduct. Their proposal is attached. Because any project to effectively gather information and make this determination requires participation by the Court and the Department, the proposal simply provides an outline of how they might conduct the study rather than a detailed plan that must be followed. The tax clinic believes that this study would provide vital information which could help the IRS file the most helpful answer or response to petitions by pro se taxpayers in small tax court cases.

Postponing the decision on whether and how to change the answer process in small tax cases will not significantly prejudice the Department. The previous changes to the answer process in small tax cases took many years. Waiting another year or two in order to find the best solution to this problem for the Court, the Department, and the taxpayers will allow time to gather the data necessary to make an informed judgment.

Imperfect Petitions: filing fee, signature, and attached notice

In addition to the answer in small tax cases proposal, we would also like to comment on the imperfect petitions proposal from the Department. According to Tax Court Special Trial Judge Peter Panuthos, more than 70 percent of tax controversies brought before the Court are filed pro se.[15] The Court takes special care to ensure that such pro se petitioners are put on equal footing with the Department of the Treasury. It has adopted many procedures to assist pro se petitioners because of the difficulties they face in representing themselves in federal tax litigation. Such a petitioner likely lacks the resources, sophistication, and knowledge to ensure that their arguments before the court are pristine. Rather, these taxpayers likely file pro se because they have no alternative. To add additional hurdles for these petitioners to jump over before being considered a legitimate use of the Court's time creates barriers inconsistent with the treatment the Tax Court has traditionally afforded pro se petitioners and with the purpose of a legal system that allows pro se petitions in the first place. Due to the many hurdles pro se petitioners face, it is concerning for the Department to ask to expand Rule 34 in a manner that would require pro se petitioners to do more to perfect their petitions. This proposal could effectively bar pro se petitioners from Tax Court when they elect the Regular Tax Court petition process.

The Department asks the Court to revise Rule 34(b)(8), mandating the petitioner attach the Notice of Determination[16] to the petition in Regular cases to help determine the Tax Court's jurisdiction. Tax Court Rules 321(d)(2)(in applicable innocent spouse cases) and 331(b)(8)(in Collection Due Process cases) already require the attachment of the notice of determination in Regular Tax Court cases filed pursuant to the relevant provisions governing those proceedings. The relevant portion of the proposed change reads:

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[15] *See The United States Tax Court and Calendar Call Programs*, 68 TAX LAW. 439, 440 (2015).

[16] The proposal focuses on the Notice of Determination; however, it would seem equally applicable to the failure to attach the Notice of Deficiency. The failure to attach the Notice of Determination may cause more difficulties for the IRS in ascertaining the document than are presented when the taxpayer fails to attach a Notice of Deficiency. This response does not seek to minimize the burden the failure to attach either type of notice can place on the IRS; instead, it responds to the harshness of the proposed remedy.

> Rule 34(b)(8) provides that a copy of the notice of deficiency or liability be attached to the petition as well as any accompanying statements as are material to the issues raised by the assignment of error. Particularly in cases lacking an attached notice of determination, respondent is often in the position of expending substantial resources to determine in the first instance what liabilities are before the Court. In this regard, Rule 34(b)(8) should be modified to add a specific reference to a notice of determination in addition to the notice of deficiency or liability already referenced in the rule. This will make clear the obligation of the petitioner to attach a copy of the jurisdictional document to the petition, which will enhance the ability of both the Court and respondent to identify jurisdictional issues at the earliest possible stage of litigation.
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> We recommend that when petitions are filed unsigned, lacking an attached notice of deficiency or other notice of determination, or otherwise not in compliance with the Court's rules concerning the content of a petition, the Court issue an order directing the petitioner to cure the defect(s) or face dismissal. Respondent should not be required to answer or otherwise respond to the petition until the order has been satisfied or discharged. In addition, if the order has been satisfied or discharged, the court should issue an order setting a new answer date. These procedures would avoid the expenditure of resources by both respondent and the Court on cases later dismissed for failure to comply with the Court's rules or orders.

It is unclear from the request for the proposed change why the Department seeks to amend Rule 34 to require attaching the Notice of Determination when it is required elsewhere in the rules. Rule 34 is designed to deal with petitions filed in Regular cases under the Tax Court's deficiency jurisdiction in § 6213(a). However, in these types of petitions, the Department would not have issued a Notice of Determination, so it would be impossible for the petitioner to attach it to their petition.

We assume that the Department of the Treasury has, instead of making a mistake, proposed to expand Rule 34 to apply to other controversies beyond deficiency jurisdiction but why is seeks to do so is unclear from its request. Currently, a Notice of Determination is issued for cases arising under innocent spouse and collection due process cases ("CDP") in Sections 6015(e)(1) and 6330(d)(1), respectively. However, rules already exist which require the Notice of Determination to be attached to these petitions.[17] While we are puzzled over the insertion of a requirement for attaching a Notice of Determination into Rule 34, our broader concern is the Department's desire to dismiss a case where the relevant Notice of Deficiency or Notice of Determination is not attached. Having petitioners attach the appropriate notice clearly aids the Department in preparing its response and aids the Court. We do not suggest in our response that the rules require amendment. Instead, our concern focuses on the remedy when a pro se petitioner fails to attach the appropriate notice.

The Department did not state whether it seeks to change Rule 173 to require petitioners to attach the Notice of Deficiency or Notice of Determination to Small Tax Court case petitions or otherwise face dismissal. To the extent that the request seeks to cover the petitions filed in small cases, our concerns, discussed below, about the proposal also applies in those cases. Because many pro se individuals do not understand the election they make in choosing between the regular and small tax case procedures, we recommend making no distinction between these two types of

[17] *See e.g.*, TAX CT. RULES OF PRAC. & PROC. §§ 321(b)(2), Rule 331(b)(8).

proceedings when evaluating the Department's recommendation to dismiss petitioners for failure to attach the appropriate notice.

The Department asks the Court to require the petitioner who failed to attach the Notice of Determination to his or her petition to "cure the defect or face dismissal." However, the Department fails to adequately explain the reasoning for such dismissal. If the petition is dismissed for lack of jurisdiction under Rule 40(a) or for failure to state a claim upon which relief may be granted, the petitioner is left without remedy when re-litigation is precluded. Such a rule would doom those low-income petitioners who, for one reason or another, cannot locate their Notice of Deficiency or Notice of Determination. Many of the pro se petitioners in regular cases choose regular status because they do not understand the distinction between regular and small case status. Compounding this confusion with a quick dismissal for failure to retain the Notice of Deficiency sent to them is a harsh solution to cure a missing notice.[18]

Additionally, the Supreme Court has held that only Congress may establish jurisdictional requirements. The Federal Rules of Civil Procedure cannot create or withdraw jurisdiction.[19] Even if a statute were passed, a statute designed to aid the court in processing claims would likely be considered a non-jurisdictional claims processing rule.[20] Additionally, in *Gonzalez v. Thaler*,[21] the court noted that two subsections and one paragraph of 28 U.S.C., Section 2253 were concerned the jurisdiction of district courts in habeas corpus review and an additional paragraph within Section (c)(3) provided that "[t]he certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2)."[22] However, the Court refused to consider the requirement provisions of paragraph (c)(3) as jurisdictional, even though it was adjacent to several jurisdiction- related provisions within the same section of the United States Code.[23] Therefore, none of the statutory jurisdictional grants to the Tax Court provide or require that a related IRS notice need be attached as a requirement, let alone as a jurisdictional requirement.

The Department may rightfully ask that the Notice of Determination play a bigger role in a tax case before the Court, as it is needed to determine jurisdiction under Sec. 6330(d). According to the statute, the Tax Court will find that it has jurisdiction over a dispute when there exists an issuance of a valid Notice of Determination and a timely petition for review.[24] It has traditionally been the case that the Department would attach the Notice of Determination as an exhibit to its answer and in that way submit the notice establishing the Tax Court's jurisdiction. While the Tax Court rules already provide that petitioners seeking relief in a CDP case should submit a complete copy of the Notice of Determination with the petition, the Department's suggestion that attaching this notice

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[18] The Tax Court might look to the practice of other Article I courts. Dismissing cases for failure to attach a notice to the petition would be seemingly unprecedented in other Article I courts. The Immigration Court, for instance, does not make any mention of including any documents when filing a petition. *See* Rule 3.3. Additionally, a petitioner who wishes to schedule a hearing with the Social Security Court need only fill out a form HA-501. The Social Security Administration then uses the information provided to find any documents that the Administration has on the petitioner in regards to the dispute. *See* HA-501—Privacy Act Statement. The rules in these courts seem to recognize the information available to the Government and do not place barriers on entry to the court upon applicants requiring them to produce a previously sent notice.

[19] *See Konrtick v. Ryan*, 540 U.S. 443, 453 – 454 (2004).

[20] *See United States v. Wong*, 135 S. Ct. 1625, 1632 (2015).

[21] 132 S. Ct. 641 (2012).

[22] *Id.* at 648.

[23] *Id.* at 648.

[24] *See Lunsford v. Commissioner*, 117 T.C. 159, 161 (2001).

serve a gatekeeper function for those seeking relief in a CDP case goes beyond the requirement of the statute and the long history of this Court to provide a fair opportunity for pro se petitioners to obtain relief.

Despite the burden created by petitioners who fail to attach the Notice of Determination, which falls primarily on the Department, this burden should continue.[25] Pro se petitioners face many challenges, including recordkeeping. As the Tax Court case moves forward, the absence of good recordkeeping may prove fatal to the success of a petitioner's case; however, the failure to retain and copy the Notice of Deficiency or Notice of Determination should not prove fatal to a petitioner who seeks their day in Court. We ask that when such a notice is not properly attached, that the Department continue to bear the burden to search for the applicable notice before moving to dismiss the case.

Deposition of Party Witness

Next, we would like to comment on the Department proposal to take "non-consensual depositions of party witnesses upon notice to the party without requiring leave of the Court by motion." While the paragraph describing this proposal cites the need in "large complex cases that are extremely factual" nothing in the proposal restricts it to those cases. Granting this proposed change would open up pro se petitioners to non-consensual depositions without Court approval. The Department provides no information to suggest that a change to the Tax Court rules to permit depositions in these cases would benefit the process. Such depositions could harm pro se petitioners. When they testify in Court, the judge is present to monitor the questioning. Having them go unassisted into such a deposition puts them at a significant disadvantage with no suggestion that it would aid the litigation. To the extent the Court grants the request to allow depositions of party witnesses without first obtaining leave of Court, we request that any change to the Rules require leave of Court in cases in which the petitioner is pro se.

Amending Form 2 Petition (Simplified Form)

Furthermore , we suggest an amendment to the Court's sample petition which is used by many pro se petitioners. Paragraph 5 of the form petition directs the taxpayer to "Explain why you disagree with the IRS determination in this case (Please list each point separately)." This paragraph does not alert pro se petitioners that the failure to list a point of disagreement, such as disagreement with a penalty in addition to disagreement with the tax, could cause the Court to determine that the petitioner has conceded that issue.[26] We suggest that the Court consider changing the form to alert the taxpayer to the importance of listing all issues hoping that the pro se petitioner will understand the additional direction and list all points of disagreement for all issues in the notice in order to comply with Rule 34(b)(4).

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[25] According to National Taxpayer Advocate Nina Olson, taxpayer pro se petitioner already has stiff odds against them in disputes before the Tax Court. Of the 89 opinions involving gross income issues before the Court, only "eight of the 34 represented taxpayers (about 24 percent) prevailed . . . whereas pro se taxpayers prevailed in full in just two cases and in part two others." *See* National Taxpayer Advocate Nina Olson Report to Congress, *Gross Income Under IRC 61 and Related Sections*, 473 (2014). Adding another burden on the petitioner only further increases the chances of the petitioner failing to obtain an opportunity to present their concerns.

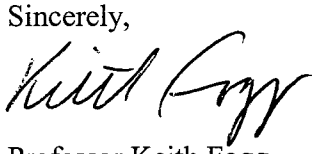
[26] *See Swain v. Commissioner*, 118 TC 358 (2002); *Funk v. Commissioner*, 123 TC 213 (2004). For a more detailed discussion of the issue and the cases surrounding the requirement to list all issues in dispute in the petitioner, see Carl Smith, *Tax Court Pleading Rules on Penalties Get Curiouser and Curiouser* PROCEDURALLY TAXING (Mar, 16, 2015), http://www.procedurallytaxing.com/tax-court-pleading-rules-on-penalties-get-curiouser-and-curiouser/

Fee Waiver

Lastly, we believe that the petition packet should reference the fee waiver form. Many pro se petitioners pay the filing fee without knowing that they have an opportunity to request a waiver of the filing fee. We understand concerns about making the request too automatic and there needs to be a balance between guiding the pro se petitioner to the fee waiver form without encouraging every petitioner to fill out the fee waiver form; however, the current petition package does not do an adequate job of alerting petitioners to the possibility of a fee waiver.

In addition, occasionally a petitioner who appears to qualify for the fee waiver has it denied. The denial provides little or no information about the basis for the denial. We recommend that that the Court provides the petitioner with a brief statement explaining the reason for the denial and that the petitioner be given the opportunity to seek review of that determination. Providing an explanation would not only assist the petitioner in understanding the basis for the denial but would also guide practitioners in advising clients to seek a either fee waiver or pay the fee.

Sincerely,



Professor Keith Fogg
Director, Federal Tax Clinic
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Information Provision and Pro Se Taxpayers: Evidence from a Field Experiment

An outline for a Tax Court study proposal

Will Dobbie, Assistant Professor of Economics and Public Affairs, Princeton University
Crystal Yang, Assistant Professor of Law, Harvard Law School

Information Provision and Pro Se Taxpayers: Evidence from a Field Experiment

Principal Investigators

Will Dobbie is an Assistant Professor of Economics and Public Affairs at Princeton University and a Faculty Research Fellow at the National Bureau of Economic Research and the Education Innovation Laboratory at Harvard University. Professor Dobbie's research interests are primarily in the areas of labor economics and household finance. His work has examined the importance of peer effects, the benefits of the consumer bankruptcy system, and the effects of debt relief. He received a B.A. degree in Economics *magna cum laude* from Kalamazoo College in 2004, a M.A. degree in Economics from the University of Washington in 2007, and a Ph.D. in Public Policy from Harvard University in 2013.

Crystal Yang is an Assistant Professor of Law at Harvard Law School. Professor Yang's research interests are primarily in the areas of empirical law and economics, particularly criminal law and procedure and consumer bankruptcy. She previously worked as a Special Assistant United States Attorney in the District of Massachusetts, where she investigated and prosecuted narcotics cases, and argued appeals before the First Circuit Court of Appeals. Professor Yang graduated *magna cum laude* from Harvard Law School in 2013. She also received her Ph.D. in Economics from Harvard University in 2013 and was a recipient of a National Science Foundation Graduate Research Fellowship. She earned an A.B. in Economics *summa cum laude* and an A.M. in Statistics from Harvard University in 2008.

The principal investigators have extensive experience conducting experiments, and working with administrative court data in both bankruptcy and criminal contexts. For example, the investigators have worked on several projects examining the effects of receiving bankruptcy collecting using administrative bankruptcy data from PACER, which have resulted in peer-reviewed publications. Professor Dobbie is currently working on a large randomized field experiment that offered distressed borrowers more than $50 million in debt relief and more than 27,500 additional months to repay their debts. Professors Dobbie and Yang are currently working on a large-scale study exploring the impacts of bail on defendant's short and long-term outcomes. These projects have entailed the collection and analysis of hundreds of thousands of individual court records.

Project Proposal

This project seeks to investigate how information provision can help pro se taxpayers in small tax cases after they have filed a petition in Tax Court. In particular, the project will examine how different information treatments will affect taxpayer engagement with the IRS Appeals and ultimately the resolution of cases. The results from this study will inform which type of information treatment leads to the best outcomes for pro se taxpayers, while balancing administrative and court costs. The findings are of policy importance given that 73% of the Court's docket consists of pro se filers.

Preliminary Proposed Information Treatments

Under the experiment, pro se taxpayers who file petitions in small tax cases will be randomly assigned to one of several treatments. Final treatments will be determined based on consultation with the Tax Court, the IRS, and relevant outside experts.

Treatment 1: Pro se taxpayers will be sent the traditional response from the IRS.

Treatment 2: Pro se taxpayers will be sent the traditional response from the IRS and the name and contact of an officer in the Appeals Office. The additional text will read as follows:

> "We have received your petition. However, before we start working on your case for trial, we've assigned it to an Appeals Officer to see if it can be settled. S/he will be contacting you in the next two to three months. Your case has been assigned to _____ in our office. You should begin gathering information about your case and send it to your Appeals Officer. If you have any questions about the process or about your case, please call _____. "

Treatment 3: Pro se taxpayers will be sent the traditional response from the IRS and the probability of success of all petitioners conditional on working with the Appeals Office. The additional text will read as follows:

> "We have received your petition. However, before we start working on your case for trial, we've assigned it to an Appeals Officer to see if it can be settled. S/he will be contacting you in the next two to three months. In 2013, of all pro se taxpayers who worked with the Appeals Office, X% ended up not owing anything to the IRS, and taxpayers ended up paying on average Y% of their initial deficiency."

Treatment 4: Pro se taxpayers will be sent the traditional response from the IRS and the probability of success of petitioners from the same neighborhood conditional on working with the Appeals Office. The additional text will read as follows:

> "We have received your petition. However, before we start working on your case for trial, we've assigned it to an Appeals Officer to see if it can be settled. S/he will be contacting you in the next two to three months. In 2013, of pro se taxpayers from your zip code who worked with the Appeals Office, X% ended up not owing anything to the IRS, and taxpayers ended up paying on average Y% of their initial deficiency."

Power Calculation

Power calculations investigate how many subjects we need to achieve the research objectives of the experimental study. The larger the number of pro se

taxpayers enrolled in the study, the more precisely we can identify the outcomes for each information treatment.

To successfully detect relatively large treatment effects of X percentage points or about X percent, at least X taxpayers need to be assigned to each treatment. To successfully detect more modest effects of X percentage points or about X percent, at least Y taxpayers need to be assigned to each treatment.

Ultimately, as many taxpayers as feasible should be assigned to each treatment to maximize the success of the proposed study. We recommend that at a minimum of X taxpayers be enrolled in the study, with X receiving each of the information treatments.

Outcomes

The experiment will be run until X taxpayers have been enrolled. Given approximately 15,000 small tax cases filed per year, the experiment will run for approximately X months. At the end of the experiment, taxpayers will be followed for at least one year. We plan to measure several outcomes:

(1) Whether the tax payer called or contacted the Appeals Office
(2) Whether the tax payer called or contacted the Tax Court
(3) Whether the tax payer resolved their case by settlement or trial
(4) Whether the tax payer showed up at court if trial was scheduled
(5) Outcome of case and amount assessed
(6) Time from petition to resolution (whether by settlement or trial)
(7) Future earnings, tax revenues, take-up of EITC (from IRS records)