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TRIBUTE TO NATIONAL TAXPAYER ADVOCATE NINA OLSON

INTRODUCTION

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INTRODUCTION

*Danshera Wetherington Cords**

“We’re your voice at the IRS”¹

The Universal Declaration on Human Rights recognizes economic rights as human rights.² Nothing affects as many people’s economic well-being, personhood, and society as much as a fair and just system of tax administration. From ancient Egypt and imperial China to the Greek and Roman Empires, the historical record is replete with examples of the harms that abusive tax collection practices can cause.³

The United States is no different. In 1776, the Declaration of Independence enumerated many complaints against the Crown’s rule over the thirteen colonies, including its failure to allow the colonists the right to

* Professor of Law, Albany Law School. I would like to thank the University of Pittsburgh and the *Pittsburgh Tax Review* for hosting this symposium, Phillip N. Hackney, Anthony C. Infanti, and the student editors for their patient and dedicated work on this issue. Thank you also to Leslie Book, Caroline Ciruolo, T. Keith Fogg, Francine Lipman, Special Trial Judge Diana Leyden, and Bridget Roberts for their participation in this project. Most of all, thank you, Nina Olson, for participating in this symposium and for all the work you have done for taxpayers, in the past, present, and future. Any omissions are solely my own.

¹ Tagline for the Taxpayer Advocate Service. TAXPAYER ADVOC. SERV., <https://www.taxpayeradvocate.irs.gov/> (last visited Jan. 21, 2021). This tagline was adopted by Nina E. Olson during her term in office as the National Taxpayer Advocate.

² G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

³ See, e.g., CHARLES ADAMS, FOR GOOD AND EVIL: THE IMPACT OF TAXES ON THE COURSE OF CIVILIZATION (1993) (detailing the influence tax collection practices have had on major sociopolitical change). Indeed, even the Bible speaks of this harm, in the parable Pharisees and the tax collector. See Maureen Cavanaugh, *Private Tax Collectors: A Roman, Christian, and Jewish Perspective*, 104 TAX NOTES 963 (2004).

impartial judges and courts, representative legislatures, and taxation with representation.⁴ Contemporaneously, in *The Wealth of Nations*, Adam Smith argued in favor of four principles of taxation: fairness, certainty, convenience of payment, and efficiency.⁵ The need for a fair, effective, and efficient system of tax administration remains generally agreed upon.⁶

Unless taxpayers have adequate protection, modern tax collectors have as much power to harm taxpayers as they did in ancient times, which is equally upsetting to taxpayers. In 1997 and 1998, a series of controversial congressional hearings on restructuring the Internal Revenue Service (IRS) detailed numerous taxpayer abuses.⁷ Among other testimony taken, these hearings reviewed the report of the National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS*, which made detailed recommendations for a complete makeover of the IRS to provide greater taxpayer rights and more taxpayer protections.⁸

These hearings culminated in the passage of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998).⁹ RRA 1998 overhauled the IRS and created numerous new taxpayer rights.¹⁰ RRA 1998 also advanced the protection of taxpayer rights by increasing the independence of the Office of the National Taxpayer Advocate (NTA), who

⁴ DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776). Taxes certainly were not the only grievance, nor were they necessarily the most important. However, taxes were and remain a significant economic issue that affects everyone.

⁵ ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS, bk. 5, ch. 2 (1776).

⁶ See, e.g., Heather C. Maloy, *Tax Administration: Where the Rubber Meets the Road: A View of the Tax System from a Tax Administrator's Perspective*, 39 OHIO N.U. L. REV. 1 (2012).

⁷ See *IRS Oversight: Hearings Before the S. Comm. on Fin.*, 105th Cong. (1998); *IRS Restructuring: Hearings Before the S. Comm. on Fin.*, 105th Cong. (1998); *Practices and Procedures of the Internal Revenue Service: Hearings Before the S. Comm. on Fin.*, 105th Cong. (1997).

⁸ REPORT OF THE NATIONAL COMMISSION ON RESTRUCTURING THE INTERNAL REVENUE SERVICE: A VISION FOR A NEW IRS (1997). The National Commission on Restructuring the Internal Revenue Service was established in 1997 and directed to review and make recommendations on restructuring the IRS within one year. Treasury, Postal Service, and General Government Appropriations Act of 1996, Pub. L. 104-52, § 637, 109 Stat. 468, 509 (1996).

⁹ Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685.

¹⁰ *Id.*

oversees the Taxpayer Advocate Service (TAS).¹¹ The NTA is charged with protecting taxpayer rights through individual and systemic advocacy.¹²

One of the witnesses appearing before both the House and the Senate at the hearings was Nina E. Olson. Throughout her career, she has been an advocate for taxpayers. She describes taxpayer advocacy as her life's work.¹³ Before becoming a lawyer, Nina had a tax preparation business, where she served lower- and middle-income taxpayers. Her past observation of the challenges these taxpayers faced navigating the byzantine tax system, causing them to settle tax debts not owed because they could not afford representation, motivated her to become an advocate.¹⁴ As a lawyer, she established the Community Tax Law Project, a low-income tax clinic in Richmond, Virginia. On September 26, 1997, during a hearing on taxpayer rights proposals before the House Ways and Means Committee, Nina prefaced her prepared remarks by stating, "My remarks today are tinted from my perspective as a Taxpayer Advocate, one who has daily contacts with all levels of the Internal Revenue Service on behalf of low income taxpayers."¹⁵ She used the term "taxpayer advocate" to describe her role as the Executive Director of the Community Tax Law Project in Richmond, Virginia. However, this particular choice of words was also perhaps unintentionally prescient. Nearly three and a half years later, in January 2001, Nina E. Olson was appointed as the second NTA.¹⁶

As she quickly became known to all, Nina held the office during the TAS standup.¹⁷ Because the infrastructure was in place, she was left with

¹¹ I.R.C. § 7803(c).

¹² *Id.* § 7803(c)(2)(A).

¹³ Nina E. Olson, *The Tax Section's Role as an Advocate for Equal Access to Justice: A Personal History*, 68 TAX LAW. 427 (2015).

¹⁴ *Id.*

¹⁵ *Taxpayer Rights Proposals and Recommendations of the National Commission on Restructuring the Internal Revenue Service on Taxpayer Protections and Rights: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways & Means*, 105th Cong. 148 (1997) (statement of Nina E. Olson, Executive Director, Community Tax Law Project) [hereinafter *Taxpayer Rights Hearing*].

¹⁶ I.R.S. News Release IR-2001-6 (Jan. 12, 2001).

¹⁷ They each credit the other with getting the office off to a successful start. After she retired, Wilford Val Oveson, Nina's predecessor, said "[s]he's been tenacious in representing the taxpayer and taking on the IRS, . . . I think I did a good job, but Nina has done better." Allyson Versprille & Kelly

“the fun stuff—fleshing out what it meant to be an independent advocate on behalf of taxpayers within the IRS, which defines itself primarily as an enforcement agency.”¹⁸ As she had in her previous work advocating on behalf of taxpayers, she dug in with great zeal and creativity in doing so. Working within the statutory framework and the freedom born of a newly created organization, she designed a robust organization that has assisted millions of taxpayers resolve disputes with the IRS and has engaged in systemic advocacy that has strengthened the tax system.

Nina is a confident, outspoken, driven woman of principle and conviction. She is often described as “a force of nature.”¹⁹ Although she unflinchingly speaks truth to power, she has also garnered her critics’ respect because of her commitment to her principles.²⁰ Nina often described the NTA’s job as being “a thorn in the government’s side.”²¹

Nina is a consummate advocate, taking great pains to carefully frame her critiques to address systemic problems and acknowledge human values. In her written testimony before Congress in 1997 and 1998,²² when she described the subpar treatment low-income taxpayers often received, she

Zegers, “*Advocate Zealously*” for Taxpayers, *IRS’s Olson Urges Successor*, DAILY TAX REP. (July 22, 2019, 4:45 AM), <https://news.bloombergtax.com/daily-tax-report/advocate-zealously-for-taxpayers-irss-olson-urges-successor>.

¹⁸ Nina E. Olson, *Institutionalizing Advocacy: Some Reflections on the Taxpayer Advocate Service’s Evolution as an Advocate for Taxpayers*, 18 PITT. TAX REV. 11, 15 (2020).

¹⁹ Bridget T. Roberts, *Women in Tax: Making It Better*, 39 ABA TAX TIMES 37, 40 (2020); Alice Abreu, *Reflections on the Impact of Nina Olson*, PROCEDURALLY TAXING (July 25, 2019), <https://procedurallytaxing.com/reflections-on-the-impact-of-nina-olson-by-alice-abreu/>.

²⁰ Between March 1, 2001 and July 31, 2019, there were five confirmed and four acting commissioners. See *Previous IRS Commissioners: 1955 to Present*, INTERNAL REVENUE SERV., <https://www.irs.gov/newsroom/previous-irs-commissioners-1955-to-present> (last visited Jan. 21, 2021). Each of the Commissioners had occasion to disagree with her, and her style and the nature of our tax system made many of these disagreements public. Nonetheless, at the end of the day, she managed to develop a productive, functional working relationship with these Commissioners, which says a great deal about her character. Indeed, Mark Everson, the Commissioner from May 1, 2003 to May 28, 2007, noting his respect for her commitment to her principles even when they disagreed, said “[s]he made sure that in those early years, when the IRS was in the midst of a significant reorganization, that that point of view of watching out for taxpayer interest was always front and center.” Versprille & Zegers, *supra* note 17.

²¹ *E.g.*, Versprille & Zegers, *supra* note 17.

²² *Taxpayer Rights Hearing*, *supra* note 15; *IRS Restructuring*, *supra* note 7, at 124 (statement of Nina E. Olson, Executive Director, Community Tax Law Project).

explained that “I have found IRS employees to be as a rule considerate, helpful and genuinely interested in resolving disputes. Even in the most adversarial of situations some measure of decorum and mutual respect is present.”²³ This approach continued in her annual reports to Congress. In doing so, Nina engaged the IRS, taxpayer representatives, tax writers, and taxpayers in the conversation.

Similarly, she has praised the work of those who have advocated alongside her.²⁴ Nina has inspired incredible loyalty and created a new generation of passionate advocates for taxpayers and social justice by seeking to improve tax administration without doing so at any individual’s or group’s expense.

As an advocate, she sought every opportunity to connect with all relevant constituencies. She used to the best advantage every opportunity to provide taxpayer education during regular media interviews, blog posts, town halls, and other opportunities to connect directly with taxpayers. These contacts supplemented taxpayer contacts with the local TAS offices and enhanced their engagement.

Despite the heavy prescribed workload of the annual reports and congressional hearings, she used professional meetings, conferences, and public speaking engagements to maintain the connection between her and lawmakers, tax practitioners, and academics who both needed and supported her work. Extensive outreach also provided more substantial opportunities to identify taxpayers’ issues, fully leverage the resources available to resolve the problems, and obtain buy-in for her proposals. In her reports, she carefully backed up her critiques with research studies on some of the issues

²³ *Taxpayer Rights Hearing*, *supra* note 15, at 148. In the 2017 NTA Annual Report to Congress, Nina identified reductions in employee training as among the most serious problems faced by taxpayers, which resulted in “common concern expressed by taxpayers and practitioners alike . . . that they are not receiving accurate advice or resolving their issues when they contact the IRS.” 1 NAT’L TAXPAYER ADVOC., 2017 ANNUAL REPORT TO CONGRESS, at 84, 87 (2017) [hereinafter 2017 ANNUAL REPORT]. What’s more, that the lack of training “erodes trust and confidence in the IRS and prevents employees from having the tools to effectively do their jobs.” *Id.* at 87.

²⁴ Olson, *supra* note 13.

that affected taxpayer populations most likely to be affected by tax enforcement actions, like audits of an EITC claim.²⁵

The reports were written to be as inclusive as possible, even in the letters submitting the annual reports to Congress. In the *2018 Annual Report to Congress*, Nina spoke of the effect of the 2018 government shutdown on taxpayers, including herself.²⁶ The letter to Congress contained fifty footnotes, documenting and detailing the impact that the government shutdown had on all taxpayers because it shuttered most, but not all, functions of the IRS, “the federal agency that touches everyone.”²⁷ The preface is combined with the executive summary of the report and, as such, included facts and statistics with details of the effect on taxpayers, as well as the effect of IRS underfunding.²⁸ In the preface, she combines her concise summary of the most serious problems facing taxpayers with real and meaningful expressions of how those problems manifest. In the *2018 Annual Report*, the preface also discusses the challenges that IRS employees personally faced and overcame for the benefit of taxpayers, acknowledging the challenges the employees face:

Before I discuss these issues, I want to express my deep appreciation to, and admiration for, the IRS workforce, including but not limited to employees in the Taxpayer Advocate Service. Most IRS employees experienced financial challenges as a result of missing two pay checks. Some employees could not pay their bills and others were deeply worried they would miss payments if the

²⁵ *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently in Error and Were Not Audited but Were Sent an Educational Letter from the Taxpayer Advocate Service, Part 2: Validation of Prior Findings and the Effect of an Extra Help Phone Number and a Reminder of Childless-Worker EITC*, 2 2017 ANNUAL REPORT, *supra* note 23, at 13; *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently in Error and Were Sent an Educational Letter from the National Taxpayer Advocate*, 2 NAT'L TAXPAYER ADVOC., 2016 ANNUAL REPORT TO CONGRESS, at 32 (2016); *Study of Tax Court Cases in Which the IRS Conceded the Taxpayer Was Entitled to Earned Income Tax Credit (EITC)*, 2 NAT'L TAXPAYER ADVOC., 2012 ANNUAL REPORT TO CONGRESS, at 72 (2012); *IRS Earned Income Credit Audits—A Challenge to Taxpayers*, 2 NAT'L TAXPAYER ADVOC., 2007 ANNUAL REPORT TO CONGRESS, at 94 (2007) [hereinafter 2007 ANNUAL REPORT]; Kathleen M. Carley & Daniel T. Maxwell, *Simulating EITC Filing Behaviors: Validating Agent Based Simulation for IRS Analyses: The 2004 Hartford Case Study*, 2007 ANNUAL REPORT, *supra*, at 118; *Earned Income Tax Credit (EITC) Audit Reconsideration Study*, 2 NAT'L TAXPAYER ADVOC., 2004 ANNUAL REPORT TO CONGRESS (2004).

²⁶ 1 NAT'L TAXPAYER ADVOC., 2018 ANNUAL REPORT TO CONGRESS, at vii–xxi (2019).

²⁷ *Id.* at xxi.

²⁸ *Id.* at vii–xxiii.

shutdown continued for much longer. Yet when the shutdown ended, IRS employees returned to work with energy and generally hit the ground running, eager to make sure the agency could deliver the filing season as well as achieve its broader mission. The IRS faces many challenges as an agency—and this report documents many of them—but the dedication of the IRS workforce is a notable bright spot.²⁹

As the NTA, her annual reports to Congress, regular congressional testimony, public outreach, and professional engagement have advanced low-income taxpayers' rights and helped improve systemic rights and access to justice for all federal taxpayers. They have also helped to establish and strengthen state and local taxpayer advocate and ombuds offices. Her outreach internationally has helped improve international cooperation and collaboration to increase taxpayer rights and create more taxpayer advocates worldwide. When Nina retired after more than eighteen years as the NTA and head of TAS on July 31, 2019, the *Pittsburgh Tax Review* eagerly and graciously agreed to host this symposium reflecting on Nina's work as the NTA and the accomplishments of that office since its establishment. Nina E. Olson has played a defining role in improving taxpayer rights in the first two decades of the twenty-first century. Having an independent National Taxpayer Advocate has substantially increased taxpayer rights. These themes run through all of the essays included in this symposium issue.

All of us who have contributed to this issue have had the great pleasure of working with Nina on multiple projects, getting to know her professionally and personally. We have been inspired by the enormous compassion she brings to her vocation. Serving as the NTA was never just a job for Nina. Serving taxpayers and improving tax administration is a calling. Her work has been widely recognized. Among other awards and honors, she received the Virginia Bar Association's Pro Bono Publico Award and the City of Richmond Bar Association's Pro Bono Award in 1999;³⁰ she was named by Tax Analysts as one of the ten outstanding women in tax in 2016;³¹ she received the American Bar Association Section of Taxation Distinguished

²⁹ *Id.* at ix. In all of her communications she acknowledges the positive aspects of the IRS, her critiques focus on the places where improvements to the system are required.

³⁰ C. Wells Hall, III, *Recipient of the 2019 Janet Spragens Pro Bono Award: Nina E. Olson*, 38 ABA TAX TIMES 35, 36 (2019).

³¹ *2016 Outstanding Women in Tax*, 151 TAX NOTES 459, 460 (2016).

Service Award and the Jules Ritholz Memorial Merit Award in recognition of outstanding dedication, achievement, and integrity in the field of civil and criminal tax controversies in 2017;³² and she received the American Bar Association Section of Taxation Janet Spragens Pro Bono Service Award in 2019.³³ In addition, in 2015, she hosted the inaugural International Conference on Taxpayer Rights, which representatives from 22 countries attended, including government officials, academics, and members of the legal community;³⁴ she is continuing to host this conference through the Center for Taxpayer Rights.³⁵

It is exciting to present this collection of reflections on Nina E. Olson's contribution to taxpayer rights as the NTA. We have tried to capture some larger themes that run through her work in this role: improving taxpayer rights and access to justice, advocating for positive changes in the law, empowering others through mentorship and leadership, and encouraging pro bono work among professionals.

We open with Nina E. Olson's own reflections on the experiences leading to her appointment as the NTA and the office's evolution under her leadership.³⁶ Although she has completed a long and storied career as the NTA, Nina continues to be a "force of nature" and is pursuing a new avenue of advocacy as the Executive Director of the Center for Taxpayer Rights.³⁷

Professor T. Keith Fogg, who has known Nina since before she became his student at Georgetown University Law Center, discusses the history of

³² Michael Hirschfeld, *2017 Distinguished Service Award Recipient: Nina E. Olson*, 36 ABA TAX TIMES 33, 33–34 (2017).

³³ Hall, *supra* note 30.

³⁴ *International Conference on Taxpayer Rights*, CTR. FOR TAXPAYER RTS., <https://taxpayer-rights.org/international-conference/> (last visited Jan. 28, 2021).

³⁵ CTR. FOR TAXPAYER RTS., <https://taxpayer-rights.org/about-us/> (last visited Jan. 28, 2021).

³⁶ Olson, *supra* note 18.

³⁷ *About Us*, CTR. FOR TAXPAYER RTS., <https://taxpayer-rights.org/about-us/> (last visited Jan. 28, 2021).

the office of the NTA.³⁸ Professor Fogg then explores the evolution of low-income tax clinics and how they expanded during her tenure.

Special Trial Judge Diana Leyden, who served as the first New York City Department of Finance Taxpayer Advocate, discusses Nina E. Olson as a servant leader.³⁹ This essay uses the idea of a servant leader as a lens through which to view Nina's role in increasing state and local taxpayer advocates' influence.

Professor Leslie Book's essay considers the influence that Nina E. Olson's thinking and writings about procedural due process have had on tax administration.⁴⁰ In this essay, he explores how she used her belief in procedural justice to create a more taxpayer-centered system that improved tax administration, benefiting countless taxpayers.

My own essay explores Nina E. Olson's strategic and successful use of the NTA's annual reports to Congress to make a case for systemic legislative change.⁴¹ This essay considers how Nina used her platform as NTA to advocate for all taxpayers, not just the most vulnerable, and for adequate IRS funding. Each of these were essential elements to improving tax administration.

Professor Francine Lipman discusses how Nina E. Olson used the platform of the office of the NTA to create access to justice for millions of taxpayers through leadership on an issue.⁴² Professor Lipman explores how Nina used the office to fight for low-income taxpayers' rights to obtain just treatment for EITC claimants. In the end, this encompasses all aspects of the role of the NTA, from direct advocacy for changes of law and policy to the

³⁸ T. Keith Fogg, *Every Taxpayer Counts: Nina Olson's Impact on Low-Income Taxpayer Clinics*, 18 PITT. TAX REV. 53 (2020).

³⁹ Diana L. Leyden, *Nina's Leadership as a Servant Leader and Her Impact on States' Taxpayer Rights*, 18 PITT. TAX REV. 109 (2020).

⁴⁰ Leslie Book, *Nina Olson: A Champion for Taxpayer-Centered Tax Administration*, 18 PITT. TAX REV. 121 (2020).

⁴¹ Danshera Wetherington Cords, *Nina E. Olson: A Legislative Legacy*, 18 PITT. TAX REV. 139 (2020).

⁴² Francine J. Lipman, *Humanizing the Tax System: What National Taxpayer Advocate Nina E. Olson Did for America's Kids and Their Families*, 18 PITT. TAX REV. 157 (2020).

inspiration and motivation of employees to the solicitation of volunteer pro bono lawyers to represent those who still need assistance navigating a complex and inhumane system.

The issue closes with a very heartfelt essay by Caroline Ciraolo, an attorney in private practice, discussing the influence Nina E. Olson has had as a mentor and role model in her career and how her shaping of the local TAS offices has aided tax practitioners.⁴³

⁴³ Caroline D. Ciraolo, *Showing Us How to Get It Done: Nina Olson*, 18 PITT. TAX REV. 183 (2020).