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TEACHING TAX

TAX ON THE GROUND: HOW A VITA COURSE ENHANCES THE LAW SCHOOL CURRICULUM

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TAX ON THE GROUND: HOW A VITA COURSE ENHANCES THE LAW SCHOOL CURRICULUM

*Alice G. Abreu**

I. INTRODUCTION: PUTTING A FACE ON TAX POLICY

Suggesting that all law schools should offer a course that allows law students to receive academic credit for preparing tax returns through the Internal Revenue Service's (IRS) Volunteer Income Tax Assistance (VITA) program might seem misguided. After all, tax return preparation is not legal work. It does not require admission to the bar and neither the federal government nor most states require any sort of certification or registration at all, even when return preparation is done for a fee.¹ The large national return

* Honorable Nelson A. Diaz Professor of Law, Temple University School of Law. I want to thank former ABA Tax Section Chairs Dick Lipton and Bill Wilkins for their dedication to VITA; their example inspired me to do VITA myself, and led to the creation of the course I describe here. Thanks also to former National Taxpayer Advocate Nina Olson, who supported my initial idea and encouraged me to develop this course. When my idea became a reality, Nina came to speak to my class and also addressed the student body, inaugurating what has become the annual Fogel Lecture, delivered by a current or former high-ranking government official. Thanks also to all of the students who have taken the course I describe here, particularly those who took the risk on a new course with unusual pedagogy in the early years; I learned much from their feedback. Finally, huge thanks to Tony Infanti for inviting me to be a part of this symposium issue, and to Cecilia Denhard and Braun Taylor, both Temple Law 2022, for reliable and dedicated research assistance—they made this Article possible. Of course, all errors remain mine alone.

¹ The IRS does require paid preparers to obtain a PTIN (preparer tax identification number), but that simply involves the payment of a fee—there are no educational or other requirements associated with obtaining a PTIN. See *Frequently Asked Questions: Do I Need a PTIN?*, IRS, <https://www.irs.gov/tax-professionals/frequently-asked-questions-do-i-need-a-ptin> (last updated Oct. 18, 2021). The IRS has tried to regulate paid preparers, but its efforts were successfully challenged and it does not now regulate them. See *Loving v. Comm'r*, 742 F.3d 1013, 1015 (D.C. Cir. 2014). Although legislation to permit IRS regulation of paid preparers has been introduced, none has become law. See, e.g., Protecting Taxpayers Act, S. 3278, 115th Cong. § 202 (2018) (proposing various taxpayer-friendly changes to IRS operations, including IRS regulation of tax preparers); Taxpayer Protection and Preparer Proficiency Act of 2021, H.R. 4184, 117th Cong. § 2(e)(1)(A) (2021) (proposing the establishment of minimum competency

preparation chains are not law firms, and it is a safe bet that most law students did not come to law school so that they could learn to complete Form 1040.² Nevertheless, participation in the IRS’s VITA program presents an educational opportunity that can be transformative. When such work is combined with a course on low-income taxpayer policy, the experience of preparing returns for clients at a VITA site can provide a context in which to understand and evaluate important issues of tax policy, tax administration, and even legal ethics. The work allows students to work collaboratively, work with clients, develop both analytical and descriptive writing skills, and make oral presentations while creating appropriate visual aids. Students see first-hand that tax implicates social values, that tax justice is social justice, and that tax law can be practiced in the public interest. For reasons my colleague Rick Greenstein and I have explored in other work and briefly recount in this Article, a VITA course could even lead to increasing the diversity of the tax bar.³

Working at a VITA site as part of a law school course also allows experiential learning in a field where such learning has generally been limited

regulations and sanctions for “incompetent or disreputable” behavior of tax preparers); *see also* Am. Inst. of Certified Pub. Accts. v. Comm’r, 804 F.3d 1193, 1195 (D.C. Cir. 2015) (finding that the IRS had sufficient authority to institute the Annual Filing Season Program, its voluntary return preparer program that emerged following the withdrawal of the much-criticized 2010 attempt to regulate return preparers). A slowly increasing number of states regulate tax return preparers in at least some capacity, including California, Oregon, New York, Maryland, Illinois, Connecticut, Nevada, and Michigan. Elaine S. Povich, *Most States Have No Rules for Independent Tax Preparers*, PEW (Feb. 25, 2014), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2014/02/25/most-states-have-no-rules-for-independent-tax-preparers>; 7 *States That Regulate Paid Tax Preparers*, DON’T MESS WITH TAXES (July 11, 2018), <https://www.dontmesswithtaxes.com/2018/07/7-states-that-regulate-paid-tax-preparers.html>; *Michigan Bill Regulates Conduct of Paid Tax Preparers*, TAX NOTES (Apr. 2, 2020), <https://www.taxnotes.com/tax-notes-today-state/legislation-and-lawmaking/michigan-bill-regulates-conduct-paid-tax-preparers/2020/04/06/2ccp6?highlight=%22regulate%22%20%22tax%20preparer%22>.

² Commercial preparers employed by national chains often have no formal education beyond high school. For example, H&R Block does not require a college degree for the individuals it trains, and its course involves seventy-three hours of instruction. That is less than two weeks of full-time work—hardly comparable to attending law school. *See Tax Pros Wanted*, H&R BLOCK, <https://www.hrblock.com/corporate/income-tax-course/> (last visited Feb. 5, 2022). Liberty Tax offers online and in-person programs with over fifty hours of coursework to be completed between September and April 15th. *Tax Courses Near You*, LIBERTY TAX, <https://www.libertytax.com/tax-education/> (last visited Feb. 5, 2022).

³ Alice G. Abreu & Richard K. Greenstein, *Rebranding Tax/Increasing Diversity*, 96 DENV. L. REV. 1, 1–2, 45 (2018); *see also* Alice G. Abreu, *Why Is Tax So White?*, 172 TAX NOTES 1457, 1458 (Aug. 30, 2021).

to very valuable, but very costly, low-income taxpayer clinics (LITCs).⁴ A course like the Low-Income Taxpayer Policy and Practice course that I developed and have now taught for over ten years at Temple can be a valuable addition to both JD and LLM tax curricula, while augmenting a school's experiential learning and public service missions. The course neither duplicates nor diminishes the contributions made by academic LITCs; instead, it complements them. VITA work provides experience with the front end of the process—the filing of the return—while an LTC provides experience with the back end—resolving a controversy that arises from IRS examination of the return.⁵ Like an LTC, VITA work can offer more than the satisfaction of performing valuable public service for taxpayers; it can also enhance legal education.

The course I will describe is not a tax clinic or even a clinical experience in the conventional sense. That is part of its attraction: it does not require deployment of additional law school space or financial resources. It fits easily within a conventional law school curriculum while being quite unconventional at the same time. It does not require that the law school set up or operate its own VITA site, or even that it train its students so that they can pass the required VITA certification tests, though some law schools may choose to do that.

Adding this course to a law school's curriculum only requires a faculty member with an interest in tax policy and a willingness to connect tax policy scholarship to the effects of tax policy on specific taxpayers. The faculty member does not have to be someone whose professional life has been dedicated to the tax issues that face low-income taxpayers; someone like me, whose practice experience was in corporate and international tax and who came to VITA work rather late in life, can do just fine.⁶ The course is a win-win-win-win-win: the students win because they get the opportunity to

⁴ W. Edward Afield, *Social Justice and the Low-Income Taxpayer*, 64 VILL. L. REV. 347, 383–84 (2019).

⁵ *Volunteer Income Tax Assistance (VITA)*, BENEFITS.GOV, <https://www.benefits.gov/benefit/1543/> (last visited Feb. 5, 2022); *Low Income Taxpayer Clinics (LITC)*, TAXPAYER ADVOC. SERV., <https://www.taxpayeradvocate.irs.gov/about-us/low-income-taxpayer-clinics-litc/> (last visited Feb. 5, 2022).

⁶ As I have described elsewhere, I was moved to become a VITA volunteer by the example set by two former Tax Section Chairs, Dick Lipton and Bill Wilkins. See Alice G. Abreu, *For Good (Foreword)*, 68 TAX LAW. 421, 421–26 (2015) (describing the Tax Section's work on behalf of low-income taxpayers and its role in causing me to decide to start doing VITA work myself).

interact with clients and experience the effects of tax law concretely; the law school wins because it heeds the increasingly loud call to provide experiential learning; the community wins because more residents are able to access free, reliable, tax preparation safe from commercial predators; the tax system wins because taxpayers who might not otherwise file, or file accurately, do both; and the tax bar wins because of the increased diversity such a course might produce.

I hope this Article will motivate others to implement similar courses, and that such courses might one day become part of the standard law school tax curriculum. The Article proceeds as follows. Part II briefly describes the VITA program, and Part III describes the ways in which students in educational institutions typically participate in VITA. Part IV explains the template for the course, which is based on my own experience doing VITA work, Part V describes the course design itself, and Part VI provides the logistical details. Part VII discusses an unanticipated but salutary collateral benefit of offering a VITA course: it has the potential to increase the diversity of the tax bar. After a brief exploration of the future of the course in a postpandemic but increasingly virtual world in Part VIII, Part IX concludes. Student reactions to the course, the quality of the written work that has resulted from it, and my own experiences doing VITA have convinced me that both legal education and the tax system would benefit if such a “VITA course” became a standard part of law school curricula. To facilitate that result I have included my prepandemic syllabus as Appendix A, and provided excerpts from student journals describing their experiences (with no identifying information that could compromise taxpayer or student privacy) as Appendix B.

II. VITA: WHAT IT IS AND HOW IT WORKS

VITA appears to have resulted from the Tax Reform Act of 1969’s emphasis on taxpayer education programs.⁷ Through VITA, the IRS provides

⁷ I.R.S., Pub. No. 4671, VITA Grant Program: Overview and Application Instructions 8 (2021). The text of the Tax Reform Act of 1969 does not contain a specific provision creating VITA, and no other contemporaneous legislation discusses the formation of VITA. Nevertheless, the creation of VITA appears to be generally associated with the 1969 act, and a 1976 GAO report corroborates VITA’s start date as 1969. *Id.*; U.S. GOV’T ACCOUNTABILITY OFF., GGD-76-49, INTERNAL REVENUE SERVICE ASSISTANCE TO TAXPAYERS IN FILING FEDERAL INCOME TAX RETURNS 15 (1976).

materials to train volunteers to prepare returns for low-income and elderly taxpayers, as well as for taxpayers for whom English is a second language. The IRS tests and then certifies these volunteers at a variety of levels—including Basic, Advanced, International and certain specialized areas—and all volunteers are also required to pass a “Standards of Conduct” test and an “Intake/Interview and Quality Review” test.⁸ The training materials as well as the tests, including a retest, are available online, so that individuals can work through the training materials on their own, take the required tests, and become certified.⁹ Nevertheless, many community organizations that run VITA sites also provide group instruction and test preparation to facilitate the recruitment of volunteers, as do professional organizations, such as bar associations.¹⁰

Volunteers generally offer their services in shifts and can serve various functions, but the discussion here will be limited to volunteers who become certified to prepare and, in some cases, review returns.¹¹ Because the accuracy of the returns filed is an important part of VITA, every return must be checked by a Quality Reviewer, who cannot be the same individual who prepared the return.¹² Taxpayers must arrive at the site with their Social

⁸ See *Link & Learn Taxes*, IRS, <https://www.irs.gov/individuals/link-learn-taxes> (last updated Feb. 1, 2022) (defining the available certification areas and providing links to online training material); *Volunteer Training Certification*, IRS, <https://www.irs.gov/individuals/volunteer-training-certification> (last updated Feb. 1, 2022); I.R.S. Pub. No. 5353, Fact Sheet: Intake/Interview & Quality Review Policy for SPEC Partners and Employees 1 (2021).

⁹ The IRS website provides a variety of training resources, including materials for both students and instructors. There are also specific materials designed for returns from Puerto Rico and for foreign student and scholar returns. See *Volunteer Training Resources*, IRS, <https://www.irs.gov/individuals/volunteer-training-resources> (last updated Feb. 1, 2022).

¹⁰ The ABA Tax Section’s website provides training materials specifically designed for the “Adopt-A-Base” program, which is comprised of VITA volunteers on military bases around the country. This training is a partnership between the Tax Section, the United States Armed Forces, and the IRS. *Assist Service Members*, ABA (Feb. 10, 2022), https://www.americanbar.org/groups/taxation/tax_pro_bono/assist_service_members/.

¹¹ Other volunteer roles include: greeters (welcoming VITA site visitors, confirming desired assistance, and confirming required documentation); interpreters (providing language interpretation services); site administrators/coordinators (organizing VITA site, scheduling volunteer coverage, serving as resource for knowledge about the program); and computer specialists (providing support with technology and communication systems). *Choose Your Tax Volunteer Role*, IRS, <https://www.irs.gov/individuals/choose-your-tax-volunteer-role> (last updated Dec. 14, 2021).

¹² *Id.*

Security or Individual Taxpayer Identification Number (ITIN)¹³ cards for themselves and all potential dependents, as well as Forms W-2, 1099, and similarly relevant documents, including information for direct deposit of refunds or withdrawal of payments due, when those options are desired.¹⁴ Some sites also assist taxpayers who need to apply for ITINs.¹⁵

Until spring 2020, most VITA work was conducted in person, with taxpayers typically sitting across a desk from the preparer. Taxpayers were often accompanied by members of their family, either because it is efficient for everyone to get their tax returns done at the same time, or because it eliminates the need to arrange for childcare. That can add an important component to the experience. It can make tax policy come alive because the preparer bears witness to its effect, which is no longer a statistic, but an actual human being whose child, who the tax system might not see as her dependent, is sitting right in front of the preparer, on the taxpayer's lap.

During the 2020 filing season, VITA sites were forced either to close or transition to “virtual VITA” as a result of the COVID-19 pandemic, and although some will return to in-person filing while also providing virtual or drop-off options, others will remain virtual for the 2021 filing season.¹⁶ Fortunately for the students in my 2020 class, by the time law school classes and VITA were forced to transition to virtual modes, the semester was half

¹³ ITINs are used to file returns by taxpayers who are unable to obtain valid Social Security numbers. I.R.C. § 6109(i). ITINs are issued regardless of immigration status and do not provide work authorization or qualification for Social Security benefits. *See Individual Taxpayer Identification Number*, IRS, <https://www.irs.gov/individuals/individual-taxpayer-identification-number> (last updated Jan. 20, 2022).

¹⁴ *See What to Bring to Your Local VITA or TCE Site*, IRS, <https://www.irs.gov/individuals/checklist-for-free-tax-return-preparation#:~:text=What%20to%20Bring%20to%20Your%20Local%20VITA%20or,income%20transcripts%20from%20IRS%20and%20state%2C%20if%20applicable> (last updated May 27, 2021).

¹⁵ *Free Tax Return Preparation for Qualifying Taxpayers*, IRS, <https://www.irs.gov/individuals/free-tax-return-preparation-for-qualifying-taxpayers> (last updated Jan. 25, 2022); *see also VITA Sites That Offer CAA Services*, IRS, <https://www.irs.gov/individuals/vita-sites-that-offer-cao-services> (last updated Feb. 3, 2022).

¹⁶ *See* Noah B. Metz, *Volunteer Income Tax Assistance During the Pandemic and Beyond*, 169 TAX NOTES FED. 1912, 1913 (2020) (describing the impact of the COVID-19 pandemic on VITA sites and stating that approximately ninety-five percent of in-person VITA sites were closed during the 2020 tax season); Roxanne Bland, *Low-Income Tax Clinics: Pushing Through the Pandemic*, 169 TAX NOTES FED. 1906, 1908–11 (2020) (detailing the effects of the COVID-19 pandemic on several low-income taxpayer clinics).

over and the students had already obtained significant VITA experience. There were so many new stressors to contend with that I did not require that they master virtual VITA in 2020. In 2021 and 2022, I made significant modifications to the course, designed to compensate for the absence of in-person VITA, as described in Part VIII.

III. VITA AND LAW SCHOOLS

Numerous undergraduate colleges and universities encourage their students, often business or accounting students, to participate in VITA work, either for credit or in fulfillment of a service-learning or internship obligation.¹⁷ A much smaller number run VITA sites on their campuses.¹⁸ The latter model requires the commitment of financial and other resources, including not only faculty supervision but also physical space, technology, and technical and administrative support.

For law schools in general and tax faculty in particular, encouraging student participation in VITA, without more, presents some challenges. Certainly, volunteering for VITA is work in the public interest and is valuable and important; the problem is that it is not, strictly speaking, legal work. For example, VITA work is not considered pro bono work for purposes of New

¹⁷ See, e.g., *Volunteer Income Tax Assistance Program (VITA)*, CHAMPLAIN COLL., [https://www.champlain.edu/academics/undergraduate-academics/majors-and-programs/accounting/internships-accounting/volunteer-income-tax-assistance-program-\(vita\)](https://www.champlain.edu/academics/undergraduate-academics/majors-and-programs/accounting/internships-accounting/volunteer-income-tax-assistance-program-(vita)) (last visited Feb. 5, 2022) (describing VITA participation at Champlain College in Burlington, Vermont); Gretchen Hutterli, *Accounting Students Provide Free Income Tax Assistance*, UNIV. WIS.-EAU CLAIRE (Dec. 22, 2017), <https://www.uwec.edu/news/college-of-business/2018-vita-2762/> (announcing that accounting students at the University of Wisconsin-Eau Claire would again participate in providing VITA services in spring 2018).

¹⁸ See, e.g., Daniel Caracheo, *Davenport University Offers Free Tax Filing Assistance to Students and Community*, DAVENPOST (Feb. 6, 2020), <https://post.davenport.edu/2020/02/06/davenport-university-offers-free-tax-filing-assistance-to-students-and-community/> (describing the on-site VITA program at Davenport University); *Welcome to the CSUN VITA Clinic*, CAL. STATE UNIV. NORTHRIDGE BOOKSTEIN INST., <https://www.csun.edu/bookstein-institute/csun-vita-clinic> (last visited Feb. 5, 2022) (noting that the CSUN VITA Clinic is “the largest serving free tax preparation clinic in California in 2021 and the largest academic institution nationally offering free tax preparation services”). Since 2008, Temple University’s Fox School of Business Department of Accounting has run a VITA program, led by Professor Steven Balsam, on the Ambler, Pennsylvania, campus. Students can receive course credit for completion of VITA volunteer work through the Department of Accounting’s Co-operative Experience in Accounting course. *Volunteer Income Tax Assistance (VITA) Program*, FOX SCH. BUS., <https://www.fox.temple.edu/departments/accounting/professional-development/vita/> (last visited Feb. 5, 2022).

York State's bar admission requirements.¹⁹ Return preparation is not typically covered in the basic tax course offered in most law schools, and many of the tax issues that arise in doing VITA work receive relatively little attention in most law school tax courses or casebooks.²⁰ In my experience, VITA site managers tend to be trained in accounting or have extensive tax preparation experience, but they are rarely lawyers. It is therefore not surprising that even the very few law schools that run VITA tax preparation sites do not do so as part of their tax curriculum and do not offer academic credit for the work.²¹

IV. TEMPLATE FOR THE COURSE: MY OWN EXPERIENCE

Despite the nonlegal nature of VITA work, my own experience as a VITA volunteer suggested that VITA work could serve as a valuable complement to a law school's tax curriculum, so I decided to see if I could use my experience to design a pedagogically sound law school course that

¹⁹ See *Mandatory 5-Hour Pro Bono Requirement*, N.Y. STATE BD. L. EXAM'RS, <https://www.nybarexam.org/MPB.html> (last visited Feb. 5, 2022) (stating mandatory fifty-hour pro bono requirement for New York lawyers); NEW YORK STATE BAR ADMISSION: PRO BONO REQUIREMENT FAQs 8–10 (2018), http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/FAQsBarAdmission_0.pdf.

²⁰ Issues involving filing status, dependency exemptions, or qualification for the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC) are central to many of the returns prepared at VITA sites but are peripheral to the introductory law school tax courses offered at most law schools; they are usually covered in detail only in the courses that accompany participation in academic LITCs. For a discussion of how the typical law school introductory tax course omits consideration of return filing and other compliance matters, by contrast to tax courses in business schools, which tend to be structured around compliance, see Mark J. Cowan & Joshua Cutler, *Cross-Fertilizing the Tax Classroom*, 19 PITT. TAX REV. 329 (2022). For an excellent discussion of how tax lawyers came to play an outside role in tax planning and developing tax policy in the early part of the twentieth century, overtaking the accountants who had dominated the field, see Mindy Herzfeld, *The Role of Professional Organizations in Practice and Policy: How Lawyers Overtook Accountants and Economists in the Early 20th Century Tax Field*, 75 TAX LAW. 79 (2021).

²¹ Seton Hall and the University of Oklahoma Law Schools are two of the few to offer on-site or law-school-run VITA tax preparation. See *Volunteer Income Tax Assistance*, U. OKLA. COLL. L., <https://law.ou.edu/ou-law-experience/student-associations/volunteer-income-tax-assistance> (last visited Feb. 5, 2022); *Seton Hall Law School Offers Free Tax Preparation for the Community Through Volunteer Income Tax Assistance (VITA) Program*, SETON HALL L., <https://law.shu.edu/about/releases.cfm?id=507666> (last visited Feb. 5, 2022). The late Professor Jon Forman was admired for running a VITA site with students from University of Oklahoma's College of Law at the Norman Public Library for many years. See *generally Volunteer Income Tax Assistance*, PIONEER LIBR. SYS., <http://pioneer.libnet.info/event/1345275> (last visited Feb. 5, 2022) (detailing a VITA event for 2019 filing season).

could make tax law and policy come alive for students, as it had for me, without requiring the deployment of any law school resources other than my time. In addition to the obvious rewards of doing good and helping others, doing VITA work had given me an appreciation for the impact of various tax policy decisions that I could not have acquired in any other way. VITA work put a face on tax policy because every VITA client personifies the success, failure, and distributional consequences of tax policy decisions.

The unfairness of a tax system that limits its subsidy for the cost of shelter to those who have enough income and capital to own a home for which mortgage interest and property taxes are high enough to make it sensible for them to itemize became personal when I started doing VITA work. It had been one thing to know that the system could result in some taxpayers not receiving any benefit from the home mortgage interest and property tax deductions, but it was quite another to have that taxpayer sitting in front of me.²² It was simply heartbreaking to have to tell a taxpayer who was proud of having recently become a homeowner and expected to be rewarded by the tax system, that their achievement was irrelevant to the determination of their tax liability—the tax system would reward a taxpayer who could buy a more expensive house with a higher mortgage and property taxes but she, who worked two jobs to be able to finally buy a house, was not worthy of federal tax help.

At first, the client refused to believe me. She said everybody knew that home mortgage interest was deductible because the government wanted to encourage homeownership; her real estate agent had explained that several times, and she had been looking forward to an increased tax refund. Indeed,

²² For decades I had known that homeowners who did not itemize received no benefit from the home mortgage interest deduction, but that did not trouble me because it seemed reasonable to assume that home mortgage interest, together with property taxes and state and local income taxes, would allow most homeowners to itemize. Until I started doing VITA more than a decade ago, I simply had no idea how wrong I was about that. Doing VITA showed me that low-income taxpayers do own homes, often with the help of programs that allow the payment of low interest and abate property tax obligations, but also because the relatively low value of homes in the neighborhoods where many reside puts homeownership within reach. *See, e.g., The State of Housing Affordability in Philadelphia*, PEW (Sept. 10, 2020), <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/09/the-state-of-housing-affordability-in-philadelphia>. Nevertheless, their mortgage interest and property taxes were not enough to make them itemizers, even when combined with the relatively high Pennsylvania and Philadelphia income taxes. And my experience occurred before the “SALT cap” was enacted in 2017. I.R.C. § 164(b)(6) (establishing a \$10,000 maximum deduction for state and local taxes, including real property and personal property taxes). The near doubling of the standard deduction in 2017 likely exacerbates this problem by making it even less likely that low-income homeowners will itemize.

that was one reason she had taken time off from work so that she could get her taxes done the very first week of tax season. Thanks to IRS Publication 4012 I was able to show her the amount of the standard deduction, and I let her confirm on her phone's calculator that her home mortgage interest, property taxes, and state and local income taxes did not exceed the standard deduction. Since she had no other itemized deductions, she was better off claiming the standard deduction, as she always had. The experience left an indelible mark.

Witnessing that taxpayer's disappointment and outrage allowed me to feel the injustice viscerally and internalize the human cost. I knew the policy critique of the home mortgage interest deduction—taxpayers with large homes receive a federal tax subsidy for the cost of providing for their own shelter, but low-income taxpayers, who need the subsidy more and for whom it would have been more meaningful given the diminishing marginal utility of money,²³ receive no tax subsidy at all²⁴—but I had not lived it.

Today, more than a decade later, that experience and the many others like it that followed would have another dimension: they would provide a graphic illustration of the ways in which the home mortgage interest deduction disproportionately disadvantages taxpayers of color, who not only have lower rates of homeownership than white taxpayers but whose houses typically cost less and whose deductions, even when available, are worth less

²³ See Sean Ross, *What Is the Marginal Utility of Income?*, INVESTOPEDIA (July 6, 2021), <https://www.investopedia.com/ask/answers/072815/what-marginal-utility-income.asp> (explaining the basics of the marginal utility of income); John Horowitz et al., *A Test of Diminishing Marginal Value*, 74 *ECONOMICA* 650, 651 (2007). See generally EMIL KAUDER, *HISTORY OF MARGINAL UTILITY THEORY* (1965). This effect is exacerbated because the value of the deduction is inversely proportional to the individual's income. An individual with a higher income and a higher marginal tax rate will receive a higher benefit from the deduction.

²⁴ See, e.g., Phyllis C. Taite, *Taxes, the Problem and Solution: A Model for Vanishing Deductions and Exclusions for Residence-Based Tax Preferences*, 59 *N.Y. L. SCH. L. REV.* 361, 378–80 (2015); Rebecca N. Morrow, *Billions of Tax Dollars Spent Inflating the Housing Bubble: How and Why the Mortgage Interest Deduction Failed*, 17 *FORDHAM J. CORP. & FIN. L.* 751, 760–61 (2012); DEAN STANSEL & ANTHONY RANDAZZO, *UNMASKING THE MORTGAGE INTEREST DEDUCTION: WHO BENEFITS AND BY HOW MUCH?* 4 (2011); GERALD PRANTE, *TAX FOUND., FISCAL FACT NO. 49, WHO BENEFITS FROM THE HOME MORTGAGE INTEREST DEDUCTION?* (2006), <http://taxfoundation.org/article/who-benefits-home-mortgage-interest-deduction>; Dennis J. Ventry, Jr., *The Accidental Deduction: A History and Critique of the Tax Subsidy for Mortgage Interest*, 73 *LAW & CONTEMP. PROBS.* 233, 281 (2010); Dorothy A. Brown, *Shades of the American Dream*, 87 *WASH. U. L. REV.* 329, 368–70 (2009); Roberta F. Mann, *The (Not So) Little House on the Prairie: The Hidden Costs of the Home Mortgage Interest Deduction*, 32 *ARIZ. ST. L.J.* 1347, 1367 (2000).

than those of white taxpayers because taxpayers of color are likely to be in lower tax brackets.²⁵ The communities in which I volunteered were located in areas of Philadelphia with large numbers of residents of color, precisely the taxpayers who scholars had identified as being disproportionately disadvantaged by the home mortgage interest deduction.

V. COURSE DESIGN: VITA WITH A PEDAGOGICAL ULTERIOR MOTIVE

Encounters like the one I have just described were transformative.²⁶ I internalized the VITA clients' experiences, and that gave me a depth of understanding I had not had before. Tax policy effects became concrete, human, and personal. In addition, because I was volunteering with two of my tax faculty colleagues, the experience was magnified by the discussions we would have while walking to the parking lot following each session. I wanted to replicate the totality of my experience for my students, but there were three pedagogical challenges. First, students who simply volunteered at a VITA site were unlikely to have the policy background required to determine whether a particular provision was having its intended effect. Second, nothing would prompt reflection on the policy consequences of what students saw in each return. Third, students were unlikely to engage in discussion with

²⁵ DOROTHY A. BROWN, THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT 64–95 (2021) (analyzing the racial effects of the structure of the home mortgage interest deduction). The critical tax critique of the home mortgage interest deduction is not new, but the publication of Professor Brown's book and the increased attention that implicit bias in the law has received from various constituencies following the murder of George Floyd have made it more salient. *See, e.g.*, Phyllis C. Tait, *Tax Code Bias and Its Starring Role in Perpetuating Inequalities*, 72 S.C. L. REV. 735, 737 (2021); Dorothy A. Brown, *Homeownership in Black and White: The Role of Tax Policy in Increasing Housing Inequity*, 49 U. MEM. L. REV. 205, 224 (2018); Beverly I. Moran & William Whitford, *A Black Critique of the Internal Revenue Code*, 1996 WIS. L. REV. 751, 753, 781 (using social science data to illustrate how the tax code disproportionately disfavors Black U.S. taxpayers in comparison to white taxpayers, including in the area of homeownership); Michelle D. Laysner, *How Federal Tax Law Rewards Housing Segregation*, 93 IND. L.J. 915, 941–42, 948 (2018) (examining how racial segregation in housing is deeply connected to economic inequality and how U.S. federal tax law contributes significantly to these divisions through tax policy, including the mortgage interest deduction and the Low-Income Housing Tax Credit); Brown, *supra* note 24, at 360.

²⁶ Professor Les Book has described how working with low-income taxpayers transformed his life. Leslie Book, *Academic Clinics: Benefitting Students, Taxpayers, and the Tax System*, 68 TAX LAW. 449, 449 (2015) (describing how working with low-income taxpayers in an LITC caused him to leave a private transactional practice in a large New York firm and begin to work in an LITC; doing VITA work can be similarly transformative if those doing the work have the policy foundation to put it in context).

classmates without a prompt, thereby missing the opportunity to leverage their own experience by hearing the experiences of others.

I therefore designed the course around three pillars, each of which responds to one of the pedagogical challenges described above. The first pillar is tax policy: students need to become familiar with low-income taxpayer policy scholarship before they can be in a position to understand whether the returns they prepare reveal concurrence between the policy objectives and the actual result, or not. The course therefore begins with an examination of the Earned Income Tax Credit (EITC) and the Child Tax Credit (CTC),²⁷ the two provisions that most dramatically affect low-income taxpayers. Once students become familiar with the substance of those provisions, we proceed to examine the policy literature. Students write papers reflecting on the policy scholarship assigned for the week, and the papers, submitted in advance of class, form the basis for the policy part of the class discussion.

The second pillar is tax preparation. This pillar produces two of the most important course requirements: Students are required to perform a minimum of thirty-five hours of VITA return preparation and to write papers reflecting on the congruence between policy objectives and their effect on the taxpayers whose returns they have prepared. The VITA work has the pedagogical ulterior motive of illustrating the effects of tax policy.

The third pillar is the group discussion, which is possible only because of the other two pillars. Because our classes start a few weeks before tax season, students can get a solid grounding on the policy behind the EITC and CTC before they start preparing VITA returns. Once tax season starts, every class begins by my asking how many people volunteered over the past week and inviting them to share the highlights and lowlights of their experiences, specifically connecting them to the policy literature. Students understand that they cannot share any identifying information, but that does not detract from the richness of the pictures they are able to paint.

An example best illustrates the synergies that result from combining VITA with a law school tax policy seminar. In addition to penalizing married individuals by not doubling various thresholds, the Code penalizes marriage

²⁷ See generally I.R.C. §§ 32, 24.

by requiring married individuals to file jointly in order to be eligible for the EITC.²⁸ Before I started teaching the course, the joint filing requirement had seemed like a blunt, but not illogical, way of preventing avoidance of the EITC's marriage penalty.²⁹ That changed when a student began the class by explaining that what they learned from the weekend's VITA experience was that "there should be a divorce lawyer present at every VITA site." The student explained that during just one VITA shift they had encountered three taxpayers who were legally married but physically separated and estranged from their spouses, and lacked a dependent that would allow them to claim head of household filing status.³⁰ Because each of the taxpayers was still legally married, the only filing status available was married filing separately, which precluded eligibility for the EITC. Single status was simply not available. Given the amount of earned income they had, each taxpayer would have been entitled to the EITC if single, so their married filing separately status cost each of them approximately \$500 in forgone EITC (today that cost would be higher).³¹

The student described having been so troubled by this outcome that they had even researched the definition of *marriage* when one of the clients suggested that since she hadn't heard from her husband for several years, her husband should be presumed dead and she should be presumed no longer married. For the next forty-five minutes the class engaged in a lively and thoughtful discussion of the reasons for the requirement of joint returns for married individuals claiming the EITC, the many marriage penalties in the Code, the possibility of common law divorce—and also debated possible fixes. They reflected on the ways in which the EITC did not reward work but

²⁸ *Id.* § 32(d)(1).

²⁹ The question of whether the congressional policy itself is sound given that it results in significant marriage penalties is a separate question, beyond the scope of this effort.

³⁰ *See* I.R.C. § 32(d)(2)(B). In order for the above exception to apply to a taxpayer, they must have at least one dependent. Otherwise, given their marital status, they must file as married filing separately and will not be eligible for the EITC.

³¹ The American Rescue Plan Act (ARPA) temporarily increased the maximum amount of the EITC available to taxpayers without qualifying children to just over \$1,500. MARGOT L. CRANDALL-HOLLICK, CONG. RSCH. SERV., IN11610, THE "CHILDLESS" EITC: TEMPORARY EXPANSION FOR 2021 UNDER THE AMERICAN RESCUE PLAN ACT OF 2021 (ARPA; P.L. 117-2), at 3 (2021). Prior law limited the EITC for such taxpayers to just over \$500, with the average EITC being approximately \$300. *Id.* Section 9623 of ARPA allows some married individuals who do not live with their spouses for the second half of the taxable year to be treated as single, if they live with a qualifying child for at least half of the year. American Rescue Plan Act, Pub. L. No. 117-2, § 9623, 135 Stat. 4, 153–54 (2021) (codified at I.R.C. § 32(d)).

actually served principally to support children because without them, not only was the amount of the EITC substantially less than it would be with children, but it could be unavailable altogether, as these cases showed.

Students were emotionally engaged in the discussion at least in part because the individuals affected by the policy decisions were real, and those real taxpayers had obviously made a strong impression on their classmate. The VITA experience alone would have been worthwhile, and the class discussion alone would also have been productive, but the combination was in another league in terms of student engagement and retention. The class discussion leveraged that one student's experience, making it everyone's experience and amplifying their insights.

The poignancy of the married filing separately EITC prohibition became so compelling that for their final project a group of students in that class chose to propose a legislative solution that they submitted to what is now the Pro Bono and Tax Clinics Committee of the ABA Tax Section for further development. Class discussion of VITA experiences served the same function as testimony from witnesses at congressional hearings—it made problems real, providing context and encouraging empathy.³² Examples put a face on tax policy decisions.

In sum, preparing VITA returns so enhanced my own understanding of the tax system that I wanted to find a way to bring that increased understanding to students. I thought that if I could develop a way to connect what a VITA volunteer could learn about the on-the-ground effect of the tax system with what scholars and policymakers were advocating, I might be able to advance students' understanding of tax policy and the challenges of tax administration. The VITA work could provide a lens through which to examine the effects of tax policies which affect low-income taxpayers. The course that I titled "Low Income Taxpayer Policy and Practice" proved to be the perfect vehicle for doing those things.

³² The IRS was completely restructured, and the position of National Taxpayer Advocate was created, after congressional hearings in 1998 revealed significant systemic problems in the way the IRS dealt with taxpayers. Although the stories recounted by witnesses at these hearings were later revealed to have been inaccurate, the impact of the apparently first-person accounts was seismic. See *Committee Examines I.R.S. Implementation of Reform*, U.S. S. COMM. ON FIN. (Apr. 14, 1999), <https://www.finance.senate.gov/chairmans-news/committee-examines-irs-implementation-of-reform-law>.

VI. LOGISTICAL DETAILS

A. Semester Work

I structured the course as a seminar to ensure the opportunity for discussion and faculty supervision that only limited enrollment can ensure; enrollment was capped at twenty-five. The course is offered only in the spring semester because that is when VITA sites operate at full capacity.³³ It is a three-credit seminar taught in a two-hour block once a week, which is the standard for Temple seminars. The third credit is awarded because of the substantial out-of-class work required.³⁴ The course is deliberately not billed as a clinical because, as discussed earlier, preparing tax returns—the experiential part of the course—is not legal work. By not labeling the course a clinical course, I am also underscoring that the return preparation is a means to an end (seeing the real-life effects of tax policy), not an end in itself. The only prerequisite is the Taxation course that most of our students take anyway.³⁵

The reading for the course varies from year to year but usually begins with some material on the problems posed by unregulated paid preparers,

³³ Some VITA sites remain open through the summer and into the fall, but they operate at much limited capacity, doing principally back-year returns. That changed during and after the pandemic, when more VITA sites remained operational beyond the end of the delayed filing season.

³⁴ In addition to the thirty-five hours of VITA volunteer work required, students write biweekly reflection papers on the week's policy scholarship (half of the class writes every week), plus two written reflections on the connection (or lack of connection) between the policy objectives and the effect of those policies on the taxpayers subject to them, as gleaned from the VITA work. They also work in groups to create a final project that proposes a change in the law or other new initiative. See *infra* Appendix A, a sample course syllabus, for more detailed information.

³⁵ As discussed *infra* Part VII, LITCs typically do not require that students have taken tax both because LITC students focus on individual cases, which means that the broad base of knowledge that the basic tax course produces is unnecessary, and because having no prerequisite draws a larger cohort of students to the LITC. Although it will be easier to absorb the policy scholarship covered in the VITA course if students have taken the basic tax course, I have considered removing the prerequisite to increase the range of students the course attracts. I have not done so largely because most Temple students take tax, which is incentivized because they can elect to take it during their 1L year, and because enrollment in the VITA course has been robust, but it is something I will continue to consider seriously. At institutions where tax is not so universally taken, as described by Stephanie McMahon in her contribution to this Symposium, perhaps it would be salutary to require no prerequisite to attract a broader cohort of students. See Stephanie McMahon, *Teaching Tax Through Film: It's Not as Crazy as it Sounds*, 19 PITT. TAX REV. 183 (2022).

which underscores the importance of VITA. It then proceeds to substantive discussion of operation of the EITC and CTC, including a few cases, and then moves to scholarship.³⁶ The scholarship includes work by economists, lawyers, and social scientists addressing issues raised by the operation and structure of the EITC and other refundable credits, problems that plague low-income taxpayers (e.g., worker misclassification), the administrative burdens of filing tax returns and proposals to alleviate them (e.g., California's Ready Return and IRS Free File).³⁷ It concludes with at least two assignments that focus on significant parts of the *Annual Report to Congress* submitted that year by the National Taxpayer Advocate. I typically have a few guest lecturers, usually consisting of the Local Taxpayer Advocate, and someone from an LITC, who can describe the back-end of the return filing process: the audit.³⁸ Once, when unscrupulous tax preparers were in the Philadelphia news, the prosecutor who sent them to jail and the IRS Special Agent who helped him do it came to my class to discuss the problem, the investigation, and the prosecution.

Students write biweekly reflections on the policy reading, with half of the class writing every week. The papers are due in advance of class so that I have the benefit of knowing what half of the class thinks in advance of class, and can use that knowledge to stimulate and lead class discussion. Students also write two reflections on their VITA experiences, specifically discussing how the returns they prepared either reflected or failed to reflect the aspirations and observations made in the policy scholarship.³⁹ One reflection is due at the course midpoint and the second is due after the conclusion of the course, to encourage synthesis. The syllabus explains that students should not include identifying taxpayer information and should limit themselves to

³⁶ See *infra* Appendix A for a sample course syllabus.

³⁷ See Joseph Bankman, Mr. Smith Gets an Education: Why It Is So Hard to Get Easy Tax Filing (2019) (unpublished manuscript), https://www.law.nyu.edu/sites/default/files/Mr.%20Smith%20Gets%20an%20Education_%20Why%20it%20is%20so%20Hard%20to%20get%20Easy%20Tax%20Filing%20-%20Bankman_0.pdf (explaining the saga of ready return and the difficulties in implementing prepopulated returns).

³⁸ Now that Temple has an LITC, I'll likely have the clinic's director and perhaps some students come to describe the work of the clinic.

³⁹ Excerpts from these reflections are provided in Appendix B.

describing the taxpayer and the relevant characteristics of their situation in only general terms.⁴⁰

I evaluate and comment on all of the written work for the course. The grade for the course is determined by the quality of the final project, which accounts for one-third of the grade, the quality of the written work submitted throughout the course (fifty percent), and class participation (seventeen percent). Because it is not anonymously graded, the course is not subject to the law school's suggested curve.

B. Final Project

For their final project students can choose one of three different types of projects and can work collaboratively or alone. I encourage collaboration. All members of a collaborating group receive the same grade for that portion of the course, but the final grade for the course can differ among the collaborators because of differences in other components, such as reflection papers and class participation. Perhaps because I've taught the class in person nine out of the ten years I've been teaching it (2020, the first pandemic year was the only exception) and the weekly discussions allowed students to get to know one another well, I have not encountered the resistance to collaboration that Professor McMahon describes in her contribution to this Symposium on *Teaching Tax Through Film*.⁴¹

The first final project option is a traditional law school paper on a subject related to the course. Relatively few students choose this option. The second option is a poster/paper combination or a PowerPoint/paper combination. This is typically the most popular option, and most students chose to work on it in groups of two to four. These projects have included posters that explain the tax return filing process, sometimes in multiple languages, to be displayed at VITA sites. One group redesigned the VITA intake form, providing detailed commentary on why each specific change was suggested, based on their experience; their work was so good that I sent it to the IRS (with the students' permission). One especially imaginative project was the creation of a version of "The Game of Life" using the aspects

⁴⁰ See *infra* Appendix A for a sample course syllabus.

⁴¹ McMahon, *supra* note 35, at 10–11.

of a taxpayer's circumstances that could affect entitlement to, and the amount of, the EITC. The students proposed using the game as a tool through which to introduce high school students to tax and the importance of refundable credits.⁴²

The third option is to write comments on proposed regulations or to propose legislation. This is perhaps the most difficult and unfamiliar of the three options and only one group has ever selected it: that group was in the class that had the extended discussion about the plight of the married spouses who cannot file jointly and are therefore ineligible for the EITC, discussed above.

C. VITA Training, Certification, and Volunteering

VITA volunteers need to pass a series of certification tests, including a test on the substantive law applicable to VITA returns—issues involving filing status, especially qualification for head of household status (which is very advantageous); dependency exemptions; and eligibility for the EITC—the ruling triumvirate of VITA (before the recent expansion of the CTC and the distribution of economic impact payments). They also need to learn to work with the IRS's tax preparation software⁴³ and use the resources provided by the IRS, most especially Publication 4012, the bible for VITA.⁴⁴

⁴² For their class presentation they had the class play the game they developed. It was brilliant—and very instructive—even for me. I put them in touch with Marjorie Kornhauser, who has long advocated the teaching of tax in high schools, and that resulted in one of my students later developing a tax curriculum, drawing on Marjorie's work, which she taught in collaboration with teachers in one Philly school. See Marjorie E. Kornhauser, *The Tax Literacy Project*, TAXJAZZ, <https://taxjazz.com/> (last visited Sept. 20, 2021) (showing the various materials and curricula offered for learning about taxes).

⁴³ Previously, VITA sites used a software called TaxWise to fill out returns; however, since 2017 most sites now use TaxSlayer to fill out returns. See I.R.S. Fact Sheet, VITA/TCE Transition to TaxSlayer Software (2016), <https://www.irs.gov/pub/irs-utl/factsheettransitiontotaxslayer05052016.pdf>.

⁴⁴ See I.R.S. Pub. No. 4012, VITA/TCE Volunteer Resource Guide 5–17 (2022) (showing the practical information needed to properly do VITA training). The exemplary design and usefulness of the latter is a testament to the IRS's competency at tax administration. It is a useful, and often usefully bound publication that answers most routine questions that come up in preparing returns for the typical VITA client. I have yet to find a single substantive error. It has very helpful and accurate flow charts that get right the many mechanical rules involved in determining things such as whether a disabled forty-year old nonrelative with some Social Security income can be a dependent of a taxpayer.

Although the IRS provides training materials on its website, which is where individuals take the test, some of the community organizations that run VITA sites provide live training sessions in person, and, during the pandemic, remotely as well. After doing VITA for a few years, I decided to provide training for the Temple community on the Martin Luther King, Jr. Day of Service (MLK Day), when there are no scheduled classes.⁴⁵ My pitch is that students can spend the day getting trained so that they can provide a valuable service to taxpayers during the rest of the semester. We spend four hours (with a pizza break) working through slides and doing problems, and then students can take the various tests, including the Basic exam. If they fail, we can review the necessary material, and use the questions in the test/retest booklet to resolve any confusion. Although students in the VITA class do not need to attend this session, most do, as do other students and some members of the law school community, including, occasionally, faculty or staff. Offering VITA training on MLK day also sends a concrete message that tax law can be deployed in the public interest, which can serve as a gateway for attracting students to tax.

In recent years I have required students in the class to also become certified at the Advanced level so that they can prepare Schedule C returns and see first-hand the tax issues faced by gig workers and other self-employed individuals. These include the problem of misclassification of employees as independent contractors; the importance of third-party information reporting; the burden of the self-employment tax, which cannot be withheld; and the complexity of applying § 199A.⁴⁶ All are important issues that affect low-income taxpayers and receive little attention in law school, except perhaps in an LITC. I devote one class to the test, asking

⁴⁵ I want to thank Ashley Rivera, Temple 2013, who reminds me every year that she was not only a dedicated and reliable research assistant but is also a natural teacher. Ashley helped me put together the materials and conduct the training when I started to do it in 2012. She did a fabulous job on the podium before over 100 people that year, and although she went on to receive an LLM from Temple and is now an associate at a large Philadelphia law firm, she has returned every year on MLK day to help me lead the VITA training. We've missed only January 2021, courtesy of the pandemic; at that point in time, I just couldn't fathom the prospect of developing yet another Zoom course.

⁴⁶ Having to explain to a gig worker that she has a significant balance due as a result of a tax she never heard of (the Self-Employment Tax) brings home the problems of tax system opacity and the arguable overtaxation of labor relative to capital. If the taxpayer is also undocumented and not entitled to the EITC and unlikely to ever receive a penny of Social Security benefits, the systemic injustice is magnified.

students to review the IRS material in advance so that after a brief refresher of the major issues in class, students can take and pass the test. Doing it in class allows my TAs and I to be available to work with any student who does not pass on the first attempt and makes the test taking a group bonding experience as well.⁴⁷

Students are permitted to volunteer at any VITA site that is convenient for them.⁴⁸ I encourage students to volunteer at a number of different sites because exposure to the issues faced by different taxpayer populations increases the breadth of their experience. Often, students who are native Spanish speakers or proficient in Spanish volunteer at a site that attracts many Latinx clients. The experiences they share with the class provide an important window into the tax problems faced by members of that community, who are not infrequently the victims of wage theft and other abuses. It also exposes the anti-immigrant bias in the Code: § 32(m) denies the EITC to taxpayers who lack a Social Security number even if they are U.S. residents for tax purposes and otherwise have tax obligations identical to those of citizens, and for the years 2018–2025, § 24(h) denies the CTC with respect to any child who does not have a Social Security number.⁴⁹ Preparing returns for populations of both immigrants and nonimmigrants quantifies and makes patent the effect of the bias.

VII. AN UNEXPECTED PAYOFF: REBRANDING TAX AND PERHAPS INCREASING THE DIVERSITY OF THE TAX BAR

Teaching this course is not a cakewalk, but it is exceedingly rewarding. My favorite parts are the class discussions based on the student experiences, and the written reflections they write about those experiences—once in the middle of the semester, and then again at the end, looking back on the entire

⁴⁷ Passing requires answering eighty percent of the questions correctly. I.R.S. Pub. No. 5378, *Link & Learn Taxes, Certification Tests: Getting Started 7* (2020). The IRS software clearly indicates what answers are incorrect, tells the test taker what they need to review before retaking the test, and invites consultation of the test/retest booklet before retaking the test. *Id.* at 10.

⁴⁸ In Philadelphia, that includes Ceiba—a community organization that provides services to the Latinx community in North Philadelphia, near the Temple campus, and is sometimes able to operate on our campus one day a week—as well as the many sites run by the Campaign for Working Families in Philadelphia and the surrounding area.

⁴⁹ I.R.C. §§ 32(m), 7701(b)(1), 24(h).

course. Every year, the results of these written reflections cause me to want to teach the course again.⁵⁰ Nothing provides a more compelling illustration of the power of VITA to make tax policy come alive. For skeptics, or for anyone who wants a concrete example of what students get out this course, I've included excerpts from a number of the reflections former students have written in Appendix B.

Developing and teaching a course like the one I have described here can also create opportunities to attract a more diverse group of students to tax practice. As my colleague Rick Greenstein and I have discussed in other work, the conventional view of tax is that it is a field of law concerned with only one value—raising revenue—and devoid of concern for other values, including the value of social justice.⁵¹ And although it is incorrect, that view of tax could be contributing to the relative lack of racial and ethnic diversity in the tax bar for two reasons.⁵² First, a field of law that purports to concern itself with only one value is likely to attract a less diverse cohort of individuals than a field that is concerned with multiple and diverse values. Second, by not being perceived as concerned with social values, tax may be failing to attract members of racial and ethnic minority groups. Data described in *Rebranding Tax/Increasing Diversity* “shows that law students who are members of racial and ethnic minorities are more likely than others to state that they want to ‘change or improve society’ and engage in ‘socially responsible work,’ . . . suggest[ing] a link between the lack of racial and ethnic diversity in the tax bar and the [conventional] view of tax law as a field concerned only with numbers—raising revenue.”⁵³ They confirm Professor Diane Kemker’s intuition that “it is safe to assume that students in tax courses do not overlap a great deal with [students] in Critical Race Theory seminars

⁵⁰ For a sample of these reflections, see *infra* Appendix B.

⁵¹ Abreu & Greenstein, *supra* note 3, at 1–2.

⁵² The data we discuss confirm that the tax bar is much less diverse than the bar as a whole, which is especially distressing because the bar is much less diverse than the population as a whole. *Id.* at 23–31. The more recent data cited by Professor Diane Kemker shows that the bar as a whole continues to be significantly less diverse than the general population. Diane Kemker, *Teaching Critical Tax: What, Why, & How*, 19 PITT. TAX REV. 143, 167–68 (2022).

⁵³ Abreu & Greenstein, *supra* note 3, at 1–2; *see id.* at 32–39 (presenting a more detailed discussion of the data).

or movement lawyering clinics” and support her call for teaching critical tax.⁵⁴

By making patent the significant role that tax plays in the alleviation of poverty and the provision of a social safety net for children and the working poor, a course like the one described here can contribute to the project of rebranding tax and increasing the diversity of its practitioners. My experience with the VITA course confirms this. The course typically attracts two distinct groups of students—those who got bitten by the tax bug when they took their first tax course and want to take every available tax course, and those who are interested in working in the public interest and see a course that focuses on low-income taxpayers as consistent with that objective. Exposure to the important role the tax system plays in the lives of low-income taxpayers can nudge students in that second group toward professional opportunities in tax they might not have otherwise considered.⁵⁵ Because the students in that second group are more likely to be racially and ethnically diverse, as the data we discuss in *Rebranding Tax* suggests and as my experience confirms, a VITA course can also help to increase the diversity of the tax bar.⁵⁶ I designed and started to teach the VITA course years before I had the insight that led to *Rebranding Tax*, so I cannot claim that I designed the course with the goal of increasing the diversity of the tax bar, but I am delighted that it has the potential to advance that important goal as well.⁵⁷

⁵⁴ Kemker, *supra* note 52, at 164.

⁵⁵ If I remove the tax prerequisite, see *supra* note 32, the ability of the course to attract a more diverse cohort would probably be even more dramatic.

⁵⁶ Abreu & Greenstein, *supra* note 3, at 23–35.

⁵⁷ As we noted in *Rebranding Tax*:

[A] more diverse tax bar would lead to a tax law that reflects the needs of a diverse population. Members of the tax bar not only provide scholarly commentary on tax policy but they serve in the professional organizations to which policy makers look to provide comments on legislative and regulatory proposals as well as on the staffs of the congressional committees that craft tax legislation. They also serve as lawyers for the IRS, the Tax Division of the Justice Department, and for the many state and local taxing authorities that interpret the tax law and determine enforcement and litigation priorities. Even if a more diverse tax bar would not have changed the recently enacted tax legislation because of the intensely partisan process that produced it, increased diversity in the tax bar could affect the interpretation and administration of the [2017 tax legislation].

Id. at 48. In other work, I have amplified that message. See, e.g., Abreu, *supra* note 3, at 1457–58; Amanda Athanasiou, *The Whiteness of Tax and How to Narrow the Race Gap*, 104 TAX NOTES INT’L

Although I can point to no data to support this claim, I believe LITCs have served precisely that goal. Most academic LITCs do not require that students take tax as a prerequisite to participation in the clinic, and that allows them to attract a broader cohort of students to low-income taxpayer work than would otherwise be the case. Colleagues at schools that have long had an LITC report that the LITC students see how tax justice is social justice and often go on to take additional tax courses as a result.⁵⁸ Although anecdote is not data, I know of at least one fellow Latina⁵⁹ who would not have taken tax but for the experience of working in her law school's LITC; she went on to become a law clerk for a judge in the U.S. Tax Court, obtained her LLM in tax, and is now practicing tax law at one of the largest private law firms in the country. I am certain that she is not the only diverse lawyer that an LITC has brought to tax, and I think the VITA course I have described can do likewise, at significantly less cost to a law school. Moreover, even if they don't cause students to enroll, by merely existing as an option in a law school's curriculum, LITCs and the VITA course send the message that tax is not just about raising revenue or helping the rich keep more of their wealth. This alone might attract a broader cohort of students to tax, or make them less hesitant to take it.⁶⁰

VIII. THE FUTURE

Much of the benefit provided by the VITA experience I have described here came from in person interactions between taxpayers and student preparers or reviewers. That obviously raises the question of the future of such a course in a postpandemic world. Will in-person VITA disappear,

1203, 1203–08 (2021). Professor Diane Kemker agrees that “a more diverse tax bar, whose members reflect a greater range of American experience, is among the most important ways to achieve greater equity in the administration and practice of tax law.” Kemker, *supra* note 52, at 169.

⁵⁸ For a thorough explanation of the development and operation of LITCs, see Keith Fogg, *Taxation with Representation: The Creation and Development of Low-Income Taxpayer Clinics*, 67 TAX LAW. 3 (2013).

⁵⁹ I am Cuban—I was born in Havana to Cuban parents, with whom I emigrated to the United States in 1960 following Fidel Castro's revolution.

⁶⁰ For a more extensive discussion of the ways in which LITCs can help to broaden the appeal of tax and bring a more diverse group of individuals to the field, see Abreu & Greenstein, *supra* note 3, at 44–45.

leaving us only with virtual VITA, and the concomitant reduction in the opportunity to experience the things I have described here?⁶¹ And if so, will this course still be worth teaching? In spring 2021 and 2022 I did workarounds, which I hope were transitory so I will not describe them here. Although I suspect that, like Zoom teaching, some form of virtual VITA is here to stay (there were drop-off returns even before the pandemic spawned virtual VITA),⁶² I'm hopeful that the same factors that will draw many of us and of our students back to the classroom will continue to allow VITA to have a significant in-person component postpandemic. Even before the pandemic, then–National Taxpayer Advocate Nina Olson, described the difficulty many low-income taxpayers have in accessing technology,⁶³ and the 2020–2021 virtual VITA experience of some of the sites I'm familiar with confirms that it was a far from smooth and satisfactory process, suggesting it will not become the norm overnight.⁶⁴ Lack of access to technology by low-income taxpayers will likely require in-person VITA for a significant constituency for quite some time even if the virtual VITA remains and grows.

IX. CONCLUSION

For decades I was a VITA skeptic, thinking that VITA work just involved the ministerial act of filing out tax returns, a task which was not appealing and for which I thought that, as a lawyer who was not also a CPA,

⁶¹ For an informed and thoughtful exploration of the answer to this question, see Metz, *supra* note 16, at 1918.

⁶² A “drop off return” is when a VITA site allows a taxpayer to drop off any tax documents, including prefiled forms they may have received from an employer or from their bank showing income. Then the VITA site fills out the tax return based on that information and the taxpayer reviews the return at the end before submission. I.R.S. Pub. No. 5450, VITA/TCE Site Operations 7–8 (2021) (explaining the process for drop off/pick up VITA sites). Whatever the efficiency benefits, the very inefficiency of the need for human interaction between preparer and client is what provides the experiences, which are at the core of the reason to have this course, especially when it comes to complicated determinations such as filing status that benefit from a face-to-face conversation with the taxpayer.

⁶³ See generally Leslie Book, *National Taxpayer Advocate Forum on Future State Highlights Challenges IRS Faces in Building A Modern Tax System*, PROCEDURALLY TAXING (Mar. 2, 2016), <https://procedurallytaxing.com/national-taxpayer-advocate-forum-on-future-state-highlights-challenges-irs-faces-in-building-a-modern-tax-system/> (discussing the forum on future state and the issues a shift to online presents for low-income taxpayers); NAT'L TAXPAYER ADVOC., ANNUAL REPORT TO CONGRESS 22–23 (2016) (explaining the issues that online administration will present to low-income taxpayers).

⁶⁴ One of the community organizations that my students and I volunteered at on a regular basis prepandemic found that training volunteers to do virtual VITA was so difficult and time-consuming that they would not accept volunteers who were not willing to commit to a minimum of fifty hours.

I was both overqualified and not qualified for. Experience has shown that I was mistaken, and I am now an evangelist for the incorporation of the lessons that can be learned from bringing low-income tax return preparation into the law school curriculum. Those lessons are both valuable and easily accomplished. As long as community organizations continue to operate VITA sites, ideally with continued IRS financial support in the form of grants, deploying students to become VITA volunteers requires no financial investment from a law school, and provides a valuable community service.

Doing VITA puts a face on tax policy and teaches much about the effect of policy decisions, the ways in which taxpayers interact with the tax system, the challenges of tax administration, and the issues that arise when discussing taxation and finances with clients. It allows students to experience the tax law in a personal way. A course like the one described here is not duplicative of an LITC because it does not involve the resolution of tax controversies. It can complement an LITC by steeping students in the policy issues an LITC rarely has time to engage with, and it implicates a different aspect of tax administration. Like an LITC, a VITA course provides the opportunity for experiential learning, without requiring the resource commitment required by an LITC. And like an LITC, a VITA course can attract a more diverse cohort of individuals to tax, thus eventually adding to the diversity of the tax bar. Ideally, every law school would offer both.

When I designed the course described here I thought I was designing a second-best experiential opportunity, with an LITC being first-best, but I no longer think that. Even though Temple now has an LITC, I think the VITA course is just as valuable as it was before. It is a first-best in its own right, and the combination of the two courses is tax curricular nirvana. I hope that every law school eventually offers a course like it: it's a win-win-win-win.

APPENDIX A
LOW INCOME TAXPAYER POLICY AND PRACTICE
SAMPLE SYLLABUS

Spring 20** (The course is always taught in the spring semester because that is when tax season occurs and VITA sites are fully operational.)

Required Reading: All required reading appears on the Canvas site for this course, in Modules corresponding to each class meeting.

Also required:

1. Access to a current version the Internal Revenue Code and Regulations.
2. VITA training manual and related material, which will be distributed during the first class or in the general Law School community training session I will hold from 10 am–4 pm on MLK day.

Structure of the course: This is an innovative course which has aspects of a substantive course, aspects of a writing seminar, and aspects of an experiential (often referred to as a clinical), experience. But the course is not actually a clinical because the experiential component, which will require students to become certified as tax return preparers for the IRS's **VITA (Volunteer Income Tax Assistance)** program and to perform a minimum of 35 hours of VITA tax return preparation work, is not legal work: tax return preparers do not need to be trained as lawyers, although legal training enhances both the experience and the level of service that can be provided. In this course, the experiential component functions as a lens through which we will examine the operation of the substantive law and the implications of the policy choices Congress has made in those areas of the tax law that directly affect low income taxpayers.

The course is also not a traditional writing seminar because although writing will be required and will serve as a significant component in the evaluation of student performance, the writing will not necessarily take the form of the production of a traditional research paper, memorandum, brief, or client communication. Rather, the writing will have three components, *which will serve as a principal mechanism for assessing your performance in the course.*

1. **Analytical Reflections:** Every other week, half of the students in the class will write brief reflection papers analyzing some aspect of the week's assigned reading. These analytical reflections should be no longer than 1,000 words (roughly 4-5 pages) and should identify and analyze something you found significant, or surprising, or troubling, about the reading. You should select the most significant, surprising, or troubling point made in the reading, identify it, and then briefly explain why you found it significant, surprising, or troubling. *All papers should have a title that conveys the theme of your reflection.*

The class will be divided into two groups, which will alternate weeks of writing. A list of the students in each group, and the dates of the classes for which that group will be responsible for producing reflection papers will be distributed after the first week of class. Reflection papers will be due by 3 p.m. on the Monday before that week's class.

2. **Experiential Reflections:** Students will be required to submit two papers reflecting on their VITA experiences and commenting on the ways in which their experience preparing returns for VITA clients reveals the connection, or absence of connection, between the policies the tax law seeks to further and the actual effect of those policies on the clients whose returns the student has prepared. One of the papers will be submitted shortly after Spring Break (the middle of the semester) and the second will be submitted on the first day of final exams. In addition to reflecting on the VITA experience during the second half of the semester, that second paper should reflect on the VITA experience as a whole.
3. **Final Project:** At the end of the course, students will prepare a final project; this project may take one of several forms, and could be a solo or joint project, with joint projects strongly encouraged. The final project will also be presented to the class during the last weeks of class so that the presenters can receive comments that may be incorporated or addressed before submission of the final product.

The reading for this course will consist of traditional legal scholarship published in law reviews, as well as scholarship from other fields. Some of the reading will consist of policy pieces written by public finance economists, who generate much fundamental policy and econometric data, as well as

government documents. These documents will include the National Taxpayer Advocate's Annual Report to Congress, which is typically released in mid-January. An important objective of these readings is to introduce you to the role of tax administration, which usually gets little attention in traditional law school tax courses but without which no actual revenue can be collected or benefits distributed. This course attempts to fill that void by causing you to think concertedly about the process by which policy is implemented to collect revenue, as well as to distribute benefits.

Class meetings will be structured around the assigned reading, and, once the VITA sites are open for service (generally at the end of January), the class will have two distinct components. First, we will discuss your experiences preparing VITA returns since our last class meeting, emphasizing the connections or dissonance between the scholarly literature we've read and what the returns you are preparing and your interactions with taxpayers reveal about the effect of tax policy on taxpayers' lives. Then we will proceed to a discussion of the week's reading.

Learning Outcomes: This course will familiarize you with the significant ways in which the tax system is used as a tool for accomplishing social and economic policy objectives distinct from the raising of revenue, and as the vehicle for delivering benefits that constitute a significant part of the social safety net. It will expose you to some of the issues that arise in administering the income and payroll tax systems, to the challenges of filing accurate tax returns given uncertainties in the interpretation of the law, and the role that various intermediaries (including tax return preparers) play in that process. You will also learn the ways in which tax law and policy intersects with immigration law and policy, the role that the National Taxpayer Advocate plays in the development of tax policy, and the function that the Taxpayer Advocate Service (TAS) plays in helping to resolve disputes between the taxpayers and the IRS. Finally, you will learn to file federal income tax returns and experience working with clients who are relying on your expertise to comply with the law.

Course Expectations:

This course will have several components, each of which will let you see the effect of tax policy on low income taxpayers and allow you to process that experience through the lens of existing tax policy scholarship and commentary. The course components are listed below.

1. VITA Certification:

During the first few weeks of class you will need to become certified as a volunteer preparer for VITA, the IRS's Volunteer Income Tax Assistance program, at the Basic level. You may do this in a variety of ways, *but it is your responsibility to do it*. Please note that **you must be certified every year**, so even if you've done VITA before, you need to be certified again this year.

You can get certified in three ways:

a. You can complete the certification test on line, on your own (the IRS website has all of the necessary training materials as well as the test itself—just go to the “Link and Learn” tab on the IRS website and that will take you to the training materials and the test itself). The password for the Practice Lab is “TRAINPROWEB.” This option is probably best for students who have been certified in the past. You can use the Practice Lab to do pro-forma returns that will give you the numerical answers sometimes needed. You may also find it helpful to work through the modules at <http://prosperitynow.isebox.net/vita-training-platform>.

b. Attend a training session I will hold at the Law School on MLK Day from 10 am to 4 pm (pizza provided for lunch). For this training you will need to bring a laptop with wireless enabled. That session is especially designed for folks with legal training, so it is significantly shorter than the VITA training offered by some community organizations. You'll be trained so that you can take (and ideally, pass) the three tests required to be certified at the Basic level, all in one day.

c. Attend one of the sessions run by any of the VITA providers in the community. [Provide information on VITA providers in the community.] The training is best completed early in January.

After you have had some experience preparing returns at the Basic level, the TAs and I will take the first hour of class to do a brief review of the issues covered in the Advanced exam so that you can take that exam during the second hour of class. Advanced certification will allow you to prepare returns that require a Schedule C/EZ, which many low income taxpayers who are self-employed (including GIG workers) need to complete. I think that the Advanced test is often easier than the Basic test for students who have taken the basic law school Tax course because it covers things like trade or business deductions, the section 199A deduction, and capital gains. Therefore, getting Advanced certification is not terribly onerous. It will round out your

knowledge of the impact of tax policy on low income taxpayers and will make you an especially valuable contributor to the VITA sites at which you volunteer.

2. VITA Return Preparation:

Students will need to perform a minimum of 35 hours of VITA tax preparation or quality review as a required part of the course.

3. Reflection Papers:

Students will be required to submit a series of Analytical Reflection papers as well as Experiential Reflection papers, as previously described.

To write the Experiential Reflection Papers, you may keep notes on the salient aspects of the returns you help to prepare, but you must omit ALL identifying information about the taxpayer in question; you can note interesting items, such as whether a taxpayer had itemized deductions that were useless because they were less than the standard deduction, and if so, what deductions they were; the relationship between gross income or AGI and the size of the refund as well as what the bulk of the refund was attributable to (e.g. EITC? CTC? AOTC?); eligibility for the EITC and the CTC; immigration and marital status and their effect on the taxpayer's tax liability; difficulty of ascertaining whether individuals residing with the taxpayer qualified as dependents; complexity of the taxpayer's family situation; the difficulty of determining which educational benefits the taxpayer was eligible for; and, anything else you find interesting. If you begin to see any trends or patterns, I urge you to identify and discuss them.

In the last experiential reflection paper you should assesses your VITA experience in its entirety, specifically commenting on and analyzing highlights and lowlights. The totality of my assessment of the quality of your reflection papers will determine the final grade for the course. There are no minimum or maximum number of words for these Experiential Reflection papers; I'm looking for deep and thoughtful analysis of the practical effect of the policies we've discussed in class, good organization, and clear and concise writing. Please don't write a stream of consciousness disquisition. I'm looking for a paper with a relevant and evocative title, organized using headings and subheadings to convey the structure of the paper, and including citation to authority when appropriate. Although you are free to find and cite authority other than the readings we've done in class, I do not require that you go outside of those readings.

4. Final written work: Paper, Poster/paper combination or Comments:

You will have a number of options with respect to the final, graded, work product for the course. Following are your options:

a) Paper: You may write a paper based on the reading assigned for this course and your experience preparing or reviewing tax returns through the VITA program, enhanced by some additional independent research. In writing this paper you may analyze your experience preparing or reviewing returns over throughout the semester, taking into account the policy literature we have examined in class, and make recommendations for change or enhancement. Your paper may address the tax preparation process itself, commenting on aspects that require professional (whether or not legal) expertise or training, ways in which your legal training informed, or was otherwise helpful to you in providing the preparation services, the types of training and certification necessary to ensure competence and ethical behavior on the part of tax return preparers (both volunteer and paid), aspects of tax administration, such as the effectiveness of the EITC and CTC as a mechanism for delivery of social welfare assistance or the use of the tax system to monitor compliance with the mandate to have health insurance.

Your paper could also address the role and effectiveness of the National Taxpayer Advocate, including a critical appraisal of her two annually prepared reports and the difficulties and opportunities posed by her status as an IRS employee (reference to literature on organizational structure or behavior might enhance this endeavor). Finally, you may choose to discuss aspects of the National Taxpayer Advocate's Annual Report, noting areas of congruence or incongruence with your own experience, or any other aspect of your experience you find worthy of further analysis and commentary.

The final paper should not exceed 4000 words. It should have a descriptive title, and be organized in outline form, which you will have seen in much of the scholarship that you will read throughout the course. The paper should use descriptive headings that will serve as guideposts for the reader and must contain an introduction and conclusion. Relevant authority, if relied upon, should be cited in footnotes using BlueBook form. *Failure to follow these instructions will negatively affect your grade.*

b) Poster/PowerPoint/Prezi and paper combination. Posters are increasingly being used in academia and in academic conferences. Although once principally used in scientific conferences and presentations, they are

making their way into the legal academy and have formed an increasingly visible part of conferences held by the Association of American Law Schools and even by the International Fiscal Association. PowerPoint or Prezi visual presentations are also common, and often accompany oral presentations. Therefore, you will have the option of presenting your final project or idea in any of those formats, in conjunction with your oral description *instead of* doing so in a traditional paper. If you choose this option, I would like you to prepare, in addition to the poster, PowerPoint, or other visual presentation, a short (no more than 1500 words) paper providing a synopsis of what you intended to convey in your poster or other visual presentation and providing a condensed narrative of your visual presentation.

c) Comments on Proposed Regulations. In lieu of a paper or poster/paper combination, you may prepare your own comments on any Advance Notice of Proposed Rulemaking (ANPR) involving the proposed regulations which would affect low income taxpayers. These can be either specific comments based on your experience and understanding as well as any research you may have done, or may take the form of a memorandum to the Associate Chief Counsel setting forth your views on the form and content of the regulations. For a model, you can look at comments that have been filed (all comments are publicly available), especially those filed by the Tax Section of the ABA, which are easily located on the Section's website.

d) Group or collaborative work. With my prior approval, two or more students may choose to collaborate on the final project. The grade awarded to the project will then become the project grade of each collaborator; please note that since the grade you receive on your final project will be only one component of the grade you will receive for the course, your grade for the course may differ from that of your collaborators. Any such group project may exceed 4000 words, consistent with the number of collaborators it is a paper, and in the case of posters, more than one poster may (but need not be) submitted. I encourage all students to consider collaborating, as it has the potential to generate deeper, more meaningful projects and to enrich the experience of all participants.

Course grade:

Your grade for the course will reflect a combination of the quality of your reflection papers, (both analytical and experiential), your attendance and participation in class meetings, and the final paper, poster/paper combination, or Comments. The final written work product will account for 30% of the final grade. The biweekly analytical reflection papers will be graded on a

scale designed to let you know whether the paper meets, exceeds, or falls short of my expectations for at that point in the course and will account for at least 30% of your final grade. The two VITA reflection papers will also count for 30% of your final grade. Class participation can account for as much as 10% of your grade, so lackluster class participation or non-participation will adversely affect your grade and exemplary class participation can augment your grade. Class attendance and completion of VITA certification, together with the performance of a minimum of 35 hours of return preparation work are also required for satisfactory completion of the course, but will not be separately graded. Because this course is a writing seminar, it is not subject to the Law School's curve.

Organization of reading assignments: Assignments are listed by class meetings and all of the reading is available on the Canvas. We may have one or more guest speakers or be able to attend a Tax Court trial, which will require some rearrangement of the assignments in the Syllabus, and the reading may be adjusted to reflect both current events and our collective experience in the field.

ASSIGNMENTS

1. Week 1: Background on the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC) and the problem of unscrupulous paid preparers. The EITC and CTC are crucial parts of VITA and I'd like you to have at least some idea of the importance and operation of those programs as we begin the course.

Please read: The "Policy Basics" summaries of the EITC and CTC prepared by the Center on Budget and Policy Priorities ("CBPP"), updated as of December, 2019, and the "Off the Charts" report describing the anti-poverty effects of the EITC and CTC.

In addition, I'd like you to read two U.S. Department of Justice (DOJ) press releases regarding prosecution of paid return preparers for tax fraud. The behavior described in those releases, regrettably, is not uncommon and highlights the importance of the public service provided by VITA volunteers.

2. Week 2: Background and policy on the standard deduction, personal/dependency exemptions, Earned Income Tax Credit (EITC), Child Tax Credit (CTC), and educational credits, principally the American Opportunity Tax Credit (AOTC).

Please read the excerpt from Graetz, Schenk, and Alstott, pages 432–447, and three cases: *Lopez v. Comm’r.*, *Myriam v. Comm’r.*, and *Doucoure v. Comm’r.* You should also study the statutory provisions that provide for the EITC, CTC, and AOTC (sections 24, 25A(i), and 32) as you would for a substantive tax class.

When examining the statutory provisions, you should consider issues such as whether the various relevant threshold numbers in the provisions are indexed for inflation, whether phase-outs and eligibility requirements create cliffs or slopes, or both, whether the provisions result in marriage penalties and marriage bonuses, and what effect they may have on nontraditional families.

Class will begin with an analysis of those statutory provisions and I expect you to have access to the provisions in class. Specifically, please be prepared to answer the following questions: What provision in section 32 contains what has come to be referred to as the EITC “ban”? What part of section 32 contains the provision that requires a social security number for EITC filers? Does any policy justify limiting the EITC to SSN holders? Should that policy be extended to the CTC and AOTC? Is the CTC available if either the child or the parent claiming the credit has an ITIN? Does a child claimed for purposes of the EITC or CTC have to have a SSN? Can married people who file separate returns claim the EITC? How about the CTC and the AOTC? What’s the title of the provision that contains the AOTC? What policy justifies the EITC phase-out? Do the CTC and AOTC have phaseouts? Do they include marriage penalties and bonuses?

With respect to the cases, consider the ways in which the cases are alike as well as the ways in which they are different. Are those differences reflected in the outcomes?

3. Week 3: Advanced Certification test.

The first hour of this class will consist of my review of areas of the tax law relevant for this test. During the second hour, students will take the test. Teaching Assistants will tutor students who do not pass the test the first time, so that they are ready to take the retest.

You should have taken, and passed, the Basic test before this class. Here is the link for the test, and the IRS’ training materials: <https://www.linklearncertification.com/d/>. You can prepare for and take the Basic test on your own, using the materials the IRS provides on line (link above) or you can attend the training session held at the Law School on MLK day, as described earlier in this Syllabus. In addition, before this class you should

review the Test/Retest booklet issued by the IRS, as it contains all of the questions that can appear on any of the tests. The test/retest booklet is at <https://www.irs.gov/pub/irs-pdf/f6744.pdf>.

4. Week 4: Worker classification and new section 199A.

Please read Phyllis Horn Epstein, *Misclassification of Employees and Section 530 Relief*, Diane Ring and Shu-yi Oei, *Tax Law's Workplace Shift* and Kathleen DeLaney Thomas, *The Modern Case for Withholding*. Those of you writing this week can select either the Ring and Oei or Thomas articles, and write your reflection on that, explaining why you selected that article for your reflection and offering your reflections on its content and normative proposals. We will likely have a guest join us for at least part of this class. For class, please also review new section 199A, which you almost certainly covered in your basic Tax course, and be prepared to explain what it does and why it will be necessary to consider its possible application in every case where the taxpayer has income from sources other than employment. Please consider the policy implications of the Congressional selection of who can, and who cannot, benefit from the section 199A deduction.

While most of the reading material for this course focuses on tax policy and the intended as well as collateral effects of particular policies, there is another aspect of the tax law that you should keep in mind: the ability of taxpayers to use knowledge of the tax law to plan their affairs so as to achieve the most economically advantageous results. While this aspect—tax planning—is usually associated with high income taxpayers who can afford the cost of obtaining tax advice, there is an important emerging scholarship on tax planning for low income taxpayers. The premier example of this is an article by Professor Manoj Viswanathan, *Tax Planning for Low Income Taxpayers*, which focuses specifically on tax planning for Uber and Lyft drivers, and shows how such individuals would be well advised to conduct their driving business activities through an S corporation. I have included Professor Viswanathan's article in the Canvas module for this class because his article shows how knowledge of all of the tax law, including business tax, is important to providing comprehensive advice to low income taxpayers.

5. Week 5: EITC—Administration, Operation and Policy.

Please read: The Congressional Research Service (CRS) 2018 Report on EITC Errors, the General Accounting Office (GAO) May, 2016 Report on Refundable Tax Credits and the National Taxpayer Advocate's blog post on the EITC error rate. All three pieces are available on Canvas, but if you want

to be able to click through the many useful hyperlinks in the blogpost, you should access it directly. It is at. https://taxpayeradvocate.irs.gov/news/EITC_Improper_Payment_Rate.

As optional reading you may also want to look at Steve Holt, *The Earned Income Credit at 30: What We Know*, Brookings Research Brief (2006), which although somewhat dated is very comprehensive. Those of you writing this week should reflect on your takeaways from all three pieces by responding to the following question: Do you think the EITC error rates are generally accurate, inflated, or might they be both? Please be sure to explain the reasons for your conclusions citing material from the pieces as appropriate.

6. Week 6: EITC: Administration, Operation and Policy.

Please read the introduction and conclusions (or executive summaries) of each of the following eight articles, skim the remainder of the article, and then select the one which you think is the most important. Read that article in its entirety and write your reflection on that article, making sure to also explain why you think that is the most important of the seven articles. We will discuss all seven articles in class, and all students should be prepared to discuss what they think about the thesis and findings of each piece. I do not expect you to be able to comment in depth on the research methodology unless you have a pre-law school background in econometrics or empirical work.

Eissa and Hoynes, *Behavioral Responses to Taxes: Lessons from the EITC and Labor Supply*.

Fitzpatrick and Thompson, *The Interaction of Metropolitan Cost-of-Living and the Federal Earned Income Tax Credit: One Size Fits All?*

Goldin et al. on the *Correlation Between Issuance of SNAP Benefits and Food Prices*.

Hoynes et al., *UC Davis Summary of Health Study*.

Marr and Huang, *Women of Color Especially Benefit from Working Family Tax Credits*.

McGranahan and Schanzenbach on *Food Consumption Patterns and the EITC*.

Mumford and Thomas, *Study of EITC and CTC Impact on Fertility Responses*.

Miller et al., *NYC Study on Paycheck Plus*.

7. Week 7: Scholars' Critical evaluation.

Please read the introduction and conclusion to both Anne Alstott's, *Why the EITC Doesn't Make Work Pay*, J.L. AND CONTEMP. PROBS. (2009) and Len Burman's *A Universal EITC: Sharing The Gains From Economic Growth, Encouraging Work, And Supporting Families*, both of which are available on Canvas. By now you should be able to breeze through the parts of the articles that describe the EITC and concentrate on the analysis and critique they present. Please evaluate each author's claims critically, focusing on the use of data, and consider how their assessments differs from that of the other scholars and researchers whose work on the EITC we have read. You should write your reflections on the Burman paper, discussing both your assessment of his proposal and whether you think it could help to solve some of the flaws Alstott identifies.

If you would like to do further reading on the EITC, I commend to you the scholarship listed in fn. 11 of Alstott's article, particularly her 1995 Harvard piece, *The Earned Income Tax Credit and the Limitations of Tax Based Welfare Reform* (available on Canvas in the module for this class), as well as the scholarship cited in fn. 7, particularly Dennis Ventry's *National Tax Journal* piece, *The Collision of Tax and Welfare Politics: The Political History of the Earned Income Tax Credit, 1969-99*, and Larry Zelenak's article, *Tax or Welfare? The Administration of the Earned Income Tax Credit*, in the *UCLA Law Review*. All of these pieces are available on Canvas.

8. Week 8: Taxpayer Advocate Service EITC Study

In the summer, 2019, the Taxpayer Advocate Service (TAS) released a comprehensive study of the EITC. This study will serve as the foundation for this class. Please read it in its entirety and be prepared to discuss what you consider its most significant or troubling points. Also be prepared to discuss what you think of its suggestions for change. The study is available on Canvas.

9. Week 9: The Taxpayer Advocate Service (TAS).

We will have a guest lecturer for this class: the Local Taxpayer Advocate. As background for the class you should peruse the material on TAS that appears on its website, <https://taxpayeradvocate.irs.gov/>, and that of the local Advocate, <https://www.irs.gov/advocate/local-taxpayer-advocate>. You should also look at IRC § 7703(c), which establishes the position of National

Taxpayer Advocate. That provision was enacted as part of the 1998 Restructuring and Reform Act (RRA '98).

10. Week 10: The importance and role of return preparers.

Please read Michelle Drumbl's *When Helpers Hurt*, and Weinstein and Patten's *The Price of Paying Taxes II: How Paid Tax Preparer Fees Are Diminishing the Earned Income Tax Credit (EITC)*. You should also read the introduction and conclusion to Sagit Leviner's article, *The Role Tax Preparers Play in Taxpayer Compliance: An Empirical Investigation with Policy Implications*, 60 BUFFALO L. REV. (2012) and consider the charts that appear in the Appendices. Finally, you should read the summaries (generally contained in the first two pages) of the two TIGTA (Treasury Inspector General for Tax Administration) Reports: TIGTA 2013 Report on VITA error rates; TIGTA September, 2017 Report on VITA Grantee oversight, as well as the Tax Notes summary of a TIGTA report on IRS follow-up of bad paid preparers. You should write your reflections on either the Drumbl or Weinstein and Patten pieces, explaining why you chose one over the other; you might want to use some of the material on the TIGTA reports, or in the Leviner article in your reflection on either the Drumbl or Weinstein/Patten articles.

This is not as much reading as it may appear; as before, the material on the background of the EITC, which all of the article authors describe, will be old news to you by now and you can just skip over that—focus on what is new information. You only need to read the summaries of the conclusions of the two TIGTA investigations to grasp their relevance to the future of the VITA program, and the Tax Notes summary is one page long.

11. Week 11: March 24: Are pre-populated returns the answer? The saga of the IRS's Free-File program and Professor Joe Bankman (Stanford): Is he a modern day Don Quijote?

Please read Professor Bankman's draft of *Mr. Smith Gets an Education: Why It Is So Hard to Get Easy Tax Filing*, which begins with an important report from ProPublica. Professor Bankman's account of his own experience in California may seem like a lot of reading but it is delightful and goes very quickly, very much like a novel. Your reflections should cover both portions of the paper—the ProPublica report as well as Professor Bankman's description and analysis of his own experience. Note the January 2, 2020 update regarding Senator Wyden's call for the IRS to develop its own filing software, available on Canvas.

12. Week 12: Excerpts from the NTA's Annual report. (The references below are illustrative only—when the Syllabus is first distributed to students these assignments simply provide “TBA.” The specific assignments must await the release of the Report and my reading of it.)

Please read Most Serious Problem (MSP) #1, #4, #6, #7, #20.

For your reflection paper, please select the MSP you believe is the most serious, and explain why you believe it is more serious than the other three, citing material you previously read in this course or experiences you had while preparing VITA returns. You can, but need not, agree with the NTA's ordering of the MSPs.

13. Week 13: Excerpts from NTA Annual Report (Again, this is illustrative only).

Please read Legislative Recommendation (LR) #1, #8, #10 and Research Study #1.

For your reflection paper, please assume that you are on the staff of a member of the House Ways and Means Committee and discuss (1) whether you would advise your Member to support the PAYE recommendation, and why, and (2) whether you would support either of the two other recommendations, and why. Please note that it is ok to conclude that you would not support any of the recommendations; regardless of your conclusions, please be sure to explain the reasons for them, citing material you previously read in this course or experiences you had while preparing VITA returns.

14. Week 14: Class Final Project Presentations

Appendix B:**Excerpts From Student Experiential Reflections (anonymized)**⁶⁵

Student 1: Making a Difference and Learning to Advocate Through VITA Work

“VITA reminded me why I came to law school because it put me in front of the people I had always wanted to help. I had mostly highlights during my experience. My favorite moments were those in which I helped single parents working two or three jobs get the little extra help they needed to provide for their children. In class, we frequently discussed the inability for low-income taxpayers to save, but I encountered taxpayers who were planning on saving their refunds. One man, a single father of three, said he planned to put a piece of the refund money away for his oldest daughter’s college education, and he hoped over time he would be able to save for his other children’s education as well. This was my favorite moment because I realized that through my own education, I was helping someone else provide education to a potential future college student. Without ever becoming a teacher or specifically working in education law, I had somehow come full circle back to my original passion and was helping provide an education to those who might not otherwise receive it, all by helping someone file a tax return! Once I had been to a couple classes and heard about other students’ experiences, I realized what was going on. I learned those taxpayers’ positive tax liability was typically the result of choosing to have little or no withholding or premature withdrawals from a retirement savings account. This was so disappointing because these taxpayers would not have owed money if they were properly educated on how these decisions affected their tax liability. Unfortunately, that kind of education is often only afforded to those who can purchase advice from an accountant or learned about taxes during school themselves. Class discussions helped me to realize how common a problem this could be and how to explain to taxpayers the value of withholding and understanding the ramifications of withdrawing from retirement savings accounts. I did get a chance to use what I learned in class once. I told a taxpayer how to avoid having positive tax liability in the future by choosing to have a portion of their income withheld. She seemed generally appeased and thankful I had taken the time to talk to her. Although preparing returns with positive tax liability never felt as fulfilling as preparing a return where

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the taxpayer was going to get a refund, these situations were still important in convincing me I could handle difficult situations in practice and could effectively advocate for low-income taxpayers.”

Student 2: The EITC Marriage Problem on Display

“I worked with one woman who must’ve learned about the EITC and she came eager to get the credit but she had an ITIN. It was difficult, as a volunteer tax preparer, to explain that her legal status also has negative implications for the tax benefits she can receive. It’s incredibly disheartening to realize that the tax system continues to promote inequalities in more ways than one. Many, if not most, of the couples come to us and say they are married and planning to file jointly but are not actually legally married. That is typically referred to [in the Latinx community] as ‘juntada/juntado.’ I found that during the intake process it was important to ask ‘are you legally married?’ instead of ‘are you married?’ because marital status determines a lot about which tax benefits individuals are eligible for. [The VITA site manager] jokes that every year he considers bringing in someone to legally marry these individuals so that they can benefit from the status of married filing jointly. This is actually a really good idea, or at least something similar to this idea. In most cases where the couple is not legally married, the man (who is usually the one making an income and working outside of the home) files as head of household or as single and lists the woman and their children, if any, as his dependents. If they were filing married filing jointly, instead of as single or head of household with the woman as dependent, they would benefit from a higher standard deduction.”

Student 3: Similarly Situated Taxpayers Treated Very Differently by the Tax System

“Many low-income taxpayers experience involuntary disruptions in their ability to work or have to work multiple jobs to support their families. The EITC is intended to reward work, but it does not address these issues. Taxpayers who want to work but cannot find employment receive no benefit or credit but are likely worse off than those who could find a job. Even the CTC is conditioned on a minimum income level. To truly address poverty in the United States, there likely needs to be more robust programming to assist those who want to work but cannot. While the federal income tax system may not be the best place to implement such programming, this issue is highlighted significantly in the number of taxpayers with multiple W-2s at VITA sites. However, many taxpayers with ITINs may not realize that they will never see all the money withheld. Most low-income taxpayers live

paycheck-to-paycheck and any money they receive as a tax refund is extremely helpful. Programs such as the EITC and CTC are designed to lift individuals out of poverty and stimulate their surrounding communities. It is extremely problematic that individuals with no right to the Social Security program are paying into it with their hard-earned dollars. Under current law, taxpayers with ITINs are ineligible for the EITC. This policy may be more palatable if they weren't also required to pay into programs to which they do not have access. If the goal of the EITC is to reward work, citizenship status shouldn't matter. At times it has been difficult to see the unequal treatment of similarly situated taxpayers due to slight differences in their lives such as having children or being a U.S. citizen. The EITC is intended to reward work. Yet, my experience volunteering with VITA has demonstrated that 'work' is conditioned on many factors outside of just holding a job."

Student 4: The Injustice of Age Requirements

"The first two taxpayers I assisted were a young couple who were not married but lived together two blocks from [the VITA site]. They asked to sit with each other while I prepared their taxes, which [the VITA site manager] said was fine. They told me they arrived at 6:30 AM to be the first two in line because Saturdays are his only day off. I started with his return. He provided all necessary documentation and copies of three W-2s, one from Pennsylvania and two from New Jersey. His AGI was around \$20,000 and he wound up getting around \$700 back from the federal government and owed \$51 to the Pennsylvania government. He told me he was hoping to get a new job closer to home so he wouldn't have to travel to New Jersey every day. His refund was mostly from the EITC and from the amounts withheld from his jobs. Her return was somehow even more straightforward. She only had \$2000 of income but she couldn't get the EITC because she was only 23 years old. I truthfully do not remember if she got a refund, because I got stuck in my head thinking about how it made no sense to me that you have to be 25 years old to get the EITC and that it seemed like maybe next year, he should claim her as a dependent. Of course, I did not say anything to them but as I pondered the policy reasoning behind denying her the EITC, he told me that his refund will cover their new bed. At the end of our time together, they were gracious and happy."