The Intersection Between Tax Law & Human Trafficking: Advice for Legal Practitioners

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Summary

- This webinar will help legal advocates working with survivors of human trafficking to seek more effective tax assistance on the survivors' behalf.
- The speakers will provide:
  - A brief overview of human trafficking law
  - A brief overview of the tax controversy process for non-tax practitioners
  - Describe the most common tax issues that impact human trafficking victims and how to identify them
  - Discuss ways to relieve the burden of tax liabilities within the context of holistic human trafficking advocacy.

Human Trafficking 101

Definition of Human Trafficking

The Trafficking Victims Protection Act (TVPA) of 2000 defines "severe forms of trafficking in persons" as:

- **Sex Trafficking**: Using force, fraud, or coercion to recruit, harbor, transport, provide, obtain, patronize, or solicit a person for a commercial sex act OR in which a person performing the sex act is under 18.
- **Labor Trafficking**: Using force, fraud, or coercion to recruit, harbor, transport, or obtain a person for labor or services in involuntary servitude, peonage, debt bondage, or slavery.

**22 U.S.C.A. § 7102 (11)*

Who is Most at Risk of Human Trafficking?

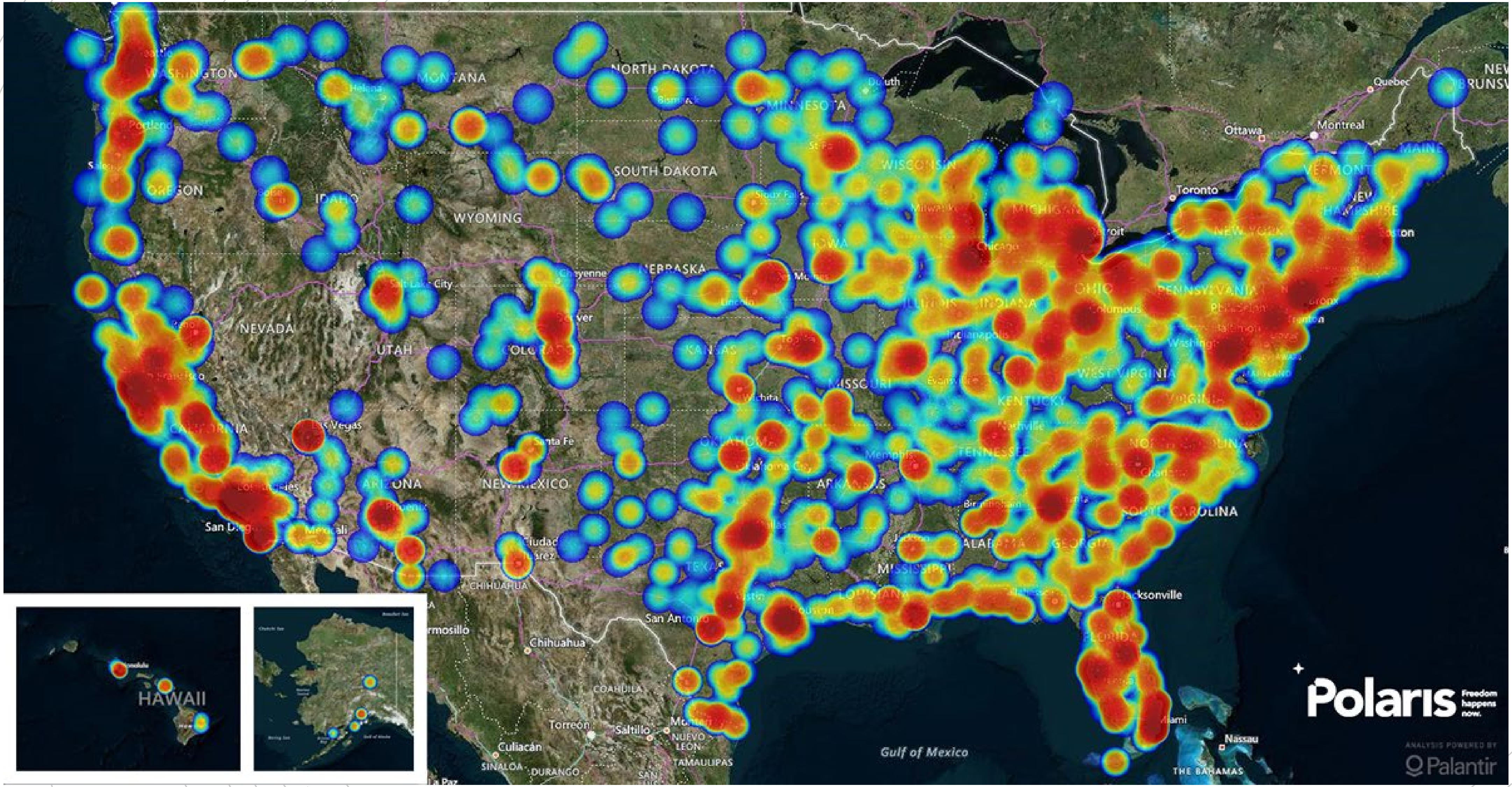
<u>Anyone can be a target!</u>

However traffickers often target certain vulnerable populations.

<u>High Risk Groups</u>:

- History of abuse/assault
- Unstable immigration status
- Drug use/abuse
- Youth (particularly runaway/homeless youth, LGBTQ+ youth, and/or child welfare systems-involved youth)

2017 Calls to the National Human Trafficking Hotline



Human Trafficking Survivors and Tax Issues

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

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

Tax Program Overview

Tax Law 101

- **Tax controversy** is the area of tax law that deals with disputes between taxpayers and the taxing authority
  - Administrative: Taxpayer dealing with Internal Revenue Service (IRS)
  - Litigation: Taxpayer vs. IRS (or Dept. of Justice on its behalf) in court
- Two Stages
  - **Disputes as to liability**: Taxpayers dispute whether they are substantively liable for a tax– does the taxpayer's tax return actually reflect reality?
  - **Disputes as collectability**: Assuming the taxpayer is liable, can or should the taxpayer have to pay the tax owed?

Liability Disputes

- The tax controversy process begins with the filing of a tax return. The IRS holds returns and information derived from returns strictly confidential.
- If the return shows a tax liability (already paid or unpaid), the IRS normally assesses the liability shown on the return upon filing.
- An **Assessment** is simply the recording of a liability on the books of the IRS.

Liability Disputes

- The IRS has **three years** from the date the return was filed to assess a liability for the tax period covered by that return.
  - Practically, this gives the IRS three years to audit most returns because it has only three years to assess additional tax based on those returns.
- There are several exceptions to the basic 3-year statute of limitations. Two come up often in HT cases:
  - 1) If a taxpayer was required to file a tax return for a period but did not file one at all, the IRS has an unlimited time to assess.
  - 2) The IRS has unlimited time to assess if a taxpayer filed a return fraudulently, with the intent to deceive.
- The IRS cannot collect a tax liability without an assessment.

Liability Disputes

- Tax Controversy Roadmap:
  - Taxpayer files a return
  - Examination ("Audit")
  - "30-Day Letter"
    - Appeals Review
  - Notice of Deficiency ("90-Day Letter")
    - "Ticket to Tax Court"
    - If the taxpayer does not respond to the 90-Day Letter, he or she cannot go to U.S. Tax Court. The taxpayer must pay the liability in full, ask the IRS for a refund, and then sue for a refund in U.S. District Court or the Court of Federal Claims.
- If the 90-day period has passed to petition Tax Court *and* the taxpayer still owes a balance, it is not possible to get court review of the liability.
- **Reviewing those documents will be a tax specialist's first step in determining what can be done to solve the client's tax problems.**

Issues Related to Fraud

- Taxpayers should file all required returns, *even if the income came from an illegal source*.
- An HT client may have filed incorrect returns to avoid reporting income related to the trafficking experience or at the behest of a trafficker.
  - Even though the returns are wrong, challenging the substance of the tax liability will be difficult. The signing taxpayer, not the preparer or a third party, is held responsible for any errors.
- If the returns appear to have been filed with the intent to deceive, the IRS may assert a fraud penalty.
- Filing an amended tax return does not "undo" fraud on an original return. However, disclosing that the original return was wrong shows good faith and may prevent the IRS from asserting a fraud penalty.

Collection Matters

- Once a liability is assessed, the IRS has ten years to collect it before it expires.
- There are three major options for collection relief:
  - "Currently Not Collectible" Status
  - Installment Agreement
  - Offer in Compromise
- Note that in some limited circumstances, the taxpayer may be able to claim Return Preparer Fraud relief.

Currently Not Collectible Status

- **Currently Not Collectible ("CNC")** status is an administrative remedy created by Treasury Regulations and IRS procedures.
- While in CNC status, the liability continues to exist and to accrue interest, but the IRS no longer attempts to collect it.
- The IRS reviews tax periods placed in CNC status every year, and if a taxpayer's income substantially increases the year will be taken out of CNC, and collection will resume.
- While in CNC status, the IRS will likely file a federal tax lien if a taxpayer owes a large balance.
- Any refunds will be offset towards the balance due.
- After the collection statute of limitations expires, the IRS will not be able to collect any further amounts.

Installment Agreement

- Taxpayer pays an outstanding balance over a period of time.
- Depending on the amount of the taxpayer's liability and how much the taxpayer is willing to pay per month, requests for installment agreements may be very involved or extremely simple to submit.
- Submitting an offer suspends any IRS collection action and the 10-year collection statute of limitations during the period the request for an agreement is pending.

Offer in Compromise

- The IRS may also accept an **offer in compromise ("OIC")** for a tax liability.
- In order to be eligible for an OIC, a taxpayer must:
  - Be in filing compliance– this includes estimated taxes
  - Not be in bankruptcy
- There are three grounds on which the IRS can compromise tax debt:
  - Doubt as to collectability
  - Doubt as to liability
  - Effective Tax Administration
- Note that filing an OIC is a document-heavy and time consuming process. Like an installment agreement, submitting an offer will toll the collection statute of limitations.

Survivor Case Study No. 1

- Client came to us for collection relief.
- Client did not have earnings at this point, and was concerned that the IRS would collect from her husband, who was not responsible for the debt.
- Upon pulling her transcripts, we discovered that she had only about two years left before the statute of limitations expired for collection.
    - What issues did we identify?
    - What were the options that we considered?
    - What did we ultimately do?

Survivor Case Study No. 2

- Client came to us with a large tax liability, primarily due to the fact that she had suffered financial hardship after being trafficked and did not withhold federal or state taxes from her paychecks for several years.
- The client earned wages; however, her income and assets did not come close to being sufficient to meet her daily needs, let alone pay her tax debt.
  - What issues did we identify?
  - What were the options that we considered?
  - What did we ultimately do?

Survivor Case Study No. 3

- Client came to us with a large liability, not knowing where it was from.
- Upon pulling her transcripts, we determined that she had filed large balance due returns for several years.
- The client did not remember filing returns for these years.

  - What issues did we identify?
  - What were the options that we considered?
  - What did we ultimately do?

Survivor Case Study No. 4

- Client came to us for collection relief for a liability that arose as a result of her being trafficked.
- Although client was in CNC status, she was graduating from school and anticipated finding work soon. There were still several years left before the statute of limitations expired for collection.
- Client was married, and together with her spouse, her household income was relatively high.

  - What issues did we identify?
  - What were the options that we considered?
  - What did we ultimately do?

Identifying a Survivor's Potential Tax Problems

- Ask the survivor whether they have received any notices from a federal or state agency regarding money that is owed.
- Determine whether there are unfiled returns that need to be filed.
- Contact the IRS and request ten years of TAX ACCOUNT transcripts. Note there are different types of transcripts.
- Contact the state taxing authority to determine if there is a state liability.
- Determine if there are ERRORS on any filed returns that need to be amended.

Identifying a Survivor's Potential Tax Problems

- Assist the survivor in pulling a copy of his or her credit report to determine if there may be debts that are not known or if there may be an identity theft issue.
- Search public records for any recorded liens.
- Note that tax issues are time sensitive.

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