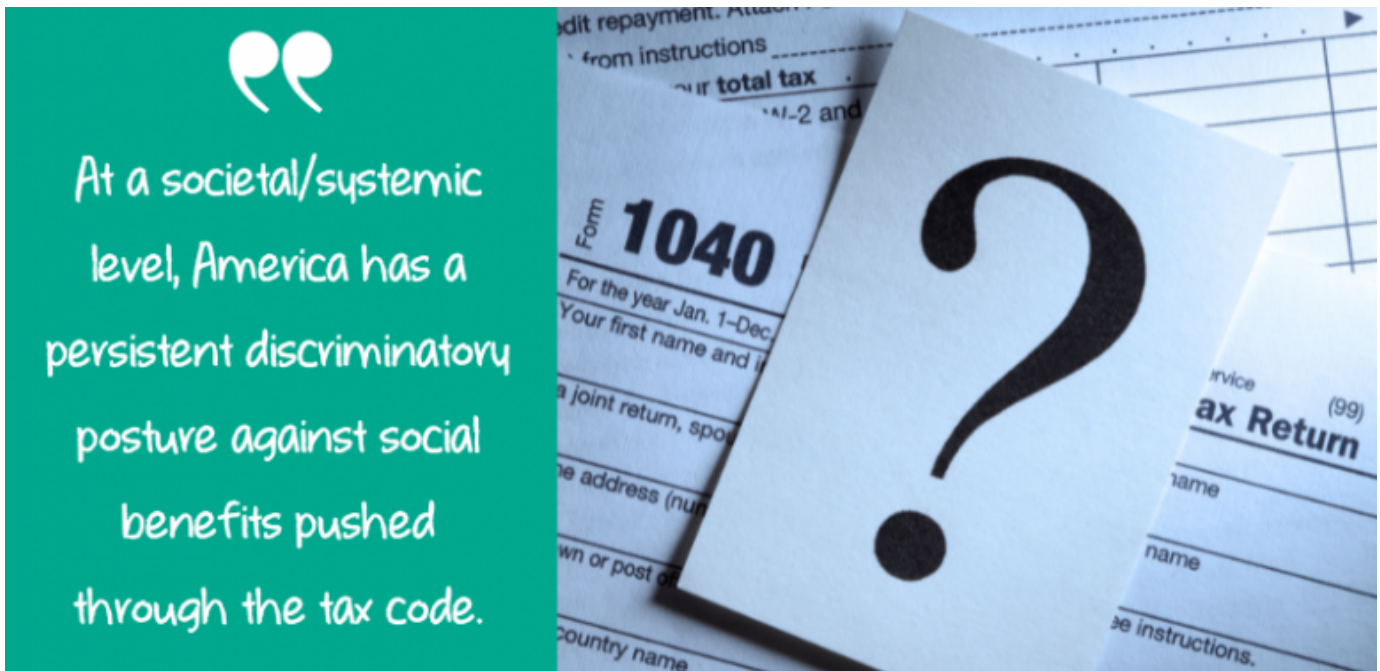


Tax audits: Equitable or not?



An Interview with Francine J. Lipman,
William S. Boyd Professor of Law at University of Nevada, Las Vegas' William S. Boyd
School of Law

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This past month we've considered a number of intersectionalities between the world of tax and the world of poverty in the Big Ideas column. For many low-income Americans, this system - meant to enhance the greater good - brings challenges, hardship, stress, and fear.

In this week's Big Ideas, we are honored to welcome guest contributor Francine J. Lipman to take us one step further by exploring the overt impacts of tax policy on equity. Professor Lipman's scholarship, outreach, and education focuses on

antiracist tax policy and vulnerable taxpayers including impoverished working families with children, seniors, unauthorized workers, enlisted members of the Armed Services, LGBTQ individuals, and people with disabilities.

In her scholarship, Professor Lipman turns a necessary lens on the devastating effect tax audits have on some of our most impoverished households - and particularly households of color. These households are audited at disproportionately higher rates, are more likely to be audited for mistakes rather than intentional fraud, and are losing essential public benefits as a result.

In her interview, Professor Lipman provides a high-level snapshot of this issue. Those interested in learning more can read her article titled "[Tax Audits, Economics, and Racism](#)" which provides an in-depth look at this stark example of systemic racism and its effects.

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**CLA: Thank you so much for sitting down with us, Francine! Can you explain what brought about this disparity of tax audit practices - in a nutshell?**

I think a few things are happening here.

First, the IRS is and has been increasingly under-funded for over a decade. And during that same time Congress has required the IRS to do more with less. You would think this might result in lower audit rates, but their underfunding does not mean their obligation to enforce tax laws and report achievement metrics (e.g., audits and other Congressionally mandated charges) to Congress goes away. Therefore, the IRS has sought the "cheapest" least labor intensive audits (to a great

extent because low-income taxpayers are often not represented). As a result of defunding, the IRS' service performance (e.g., answering telephones, mail, etc.) has been abysmal. The response of Congress has been to take away more budget dollars until they achieve better performance metrics, which has resulted in a race to the bottom. But Congress is a watchdog over the US Treasury and wants results. Audit numbers, collecting revenues from audits - these are markers of successful enforcement and evidence of performance. Refundable tax credits (like the Earned Income Tax Credit and the Child Tax Credit) filed on relatively simple lower-income returns have become the focus of hundreds of thousands of targeted audits. EITC audits are correspondence audits (a letter mailed to the most recent address on file). They are computer generated and cost efficient (the former IRS Commissioner called them "cheap" compared with complex audits of wealthy taxpayers that could take a full team years to complete especially because wealthy taxpayers are represented by counsel). Exacerbating this, many of the low-income households who receive these letters struggle to meet daily needs let alone successfully collect complicated documentation or locate and access assistance. For these reasons and others most EITC recipients often do not respond to the IRS at all or give up after some time. Because these taxpayers fail to carry their burden of proof they lose critical antipoverty tax benefits.

At a societal/systemic level, America has a persistent discriminatory posture against social benefits pushed through the tax code. The Earned Income Tax Credit (EITC), for example, has been framed in some racist contexts as a version of welfare. This framing stigmatizes it as compared with, say, a home mortgage interest deduction or an exclusion for gifts and inheritances. Congress, as a result, has decided we need to audit the heck out of refundable tax credits to ferret out any fraud. By default, this is going to disproportionately impact low-income families of color who disproportionately access these benefits because of long-term economic injustice and racism.

**CLA: What has happened, as a result?**

This is the tragic part of how tax audits work - many wealthy and affluent Americans want to defund the IRS because it is the tax enforcement and collection agency. They know: if the IRS doesn't have the resources to collect taxes, they won't and they don't against the wealthy. And this has increasingly been the case for more affluent taxpayers including nonfilers. But on the other side of the coin, if you run critical social benefits through this overburdened tax system (and we've done that more and more (e.g., COVID-19 relief)) and a household needs these tax benefits and resources - you can't get them. EITC recipients, for example, are audited at about the same rate as the top 1%. Many EITC recipients make under \$20,000. The audit process is causing them to lose their duly earned and payable benefits and, in many cases, discouraging them from future application. This is money that these impoverished households need to ensure food, housing, and education security.

**CLA: It's kind of like a perfect storm. Not only are the audits targeting people of color or those living in poverty, but to top it off these households often just don't have the tools to sufficiently respond - right?**

Absolutely. I always say, there's fraud and then there's inability to respond timely. Just because someone claimed a credit and didn't respond sufficiently to the IRS, that's not fraud especially when it can easily take hours on hold to connect with the IRS.

Take a big step back and consider that many of our impoverished communities of color, or refugee and immigrant groups do not enjoy access to justice or other basic resources and security. When you discriminate against whole groups of people over time, ingrained in the very fiber of our systems and institutions, these individuals end up segregated into economically challenged neighborhoods. Property taxes are low, schools are underfunded, there is frustration because of lack of resources, opportunities, and hope that can lead to increased crime and violence. Children don't have the basic resources they need and don't get a proper education. When they grow up, they are much less likely than their white affluent peers to respond to audits or have the networks or resources to call a lawyer or accountant. Immigrant communities may be scared or culturally less likely to question authority.

But taxpayers, regardless of their circumstances, have the burden of proof when audited. They need to read notices, send the right documents, and do so timely. Families who don't have helpers providing "tax justice" assistance lose by default.

And all this is especially true since we've defunded the IRS. Even for those who take the steps to ask questions or follow up, it's terribly hard to get in touch with the IRS. It's not unusual to have to wait on hold for hours. Even CPAs or other tax pros suffer frustration regarding the lack of ready access. Additionally, the IRS doesn't correspond by email or phone - all correspondence is via snail mail, U.S. Postal Service. During the pandemic, the IRS was so backed up they had over ten million unopened items.

**CLA: What is some of the clap-back you hear on your scholarship around this issue? I'm sure some disagree, right?**

Definitely. Some say that the tax system is race-neutral - that the IRS would need to know your race for the system to discriminate against you. Our systems have always been inherently racist because they are built on a racist foundation. For example, if the founding fathers wanted to discriminate against people of color - they could just implement stealth or even overt burdens, exclusions, deduction, or triggers to benefit them or not. And they did and these mechanisms continue today. Our tax systems have these triggers baked in due to institutional racism. The system doesn't need to know your race because it knows racist attributes - where you live, how much money you make - into which racial groups have largely been oppressed and segregated.

**CLA: Are there any practical steps we can take to help remedy this issue in the short term? As lawyers, service providers, community members?**

Organizations like Community Legal Aid are the helpers, along with low income taxpayer clinics throughout the country. As a public servant and pro bono advocate, like you all, I really do wish I was put out of business. The answer is not to create problems, but to create people to solve them.

And a larger question we can all consider here - do low-income individuals really even need to file income tax returns? The Child Tax Credit taught us a lesson by pushing out money to people who weren't filing and guess what - it worked. Other countries also are good examples. The Canadian child allowance is paid monthly, with no filing requirements. Our country could follow this lead. We have the resources but we just don't have the will. Which circles us back again to racism. These benefits have been framed with an "undeserving" lens - inferring we need to carefully regulate and account for everything. But other flagrant abuses have not been targeted in this way. And so we end up with a misaligned collection and enforcement system that isn't cost beneficial and isn't helping those who need it most.

### **CLA: Is there any hope for policy change on the horizon? What about the Inflation Reduction Act?**

The [Inflation Reduction Act](#) is very promising given the allocation for funding the IRS. It's not the silver bullet (nothing is), but it is a promising response by Congress. We will watch to see how that plays out in the push and pull between the House and Congress. There are also some promising trends within the IRS. They are focusing on modernization, which could dramatically increase efficiency and decrease backlogs.

We should reexamine our policies around audits. Why are police involved with traffic stops? Likewise, why does the IRS even audit the EITC? Yes, we don't want foreign hackers to steal tax refunds. But as a society, I don't think we should care that much if the credit benefits a low-income child who doesn't live in a home for the exact required number of days. Would we? Perfect is the enemy of the good here.

Vulnerable children need basic security.

**CLA: Do other fields talk about the issue of inequitable tax auditing? Or is this more a thing for lawyers and accountants?**

Yes, and we were terribly excited about [a recent article in the New York Times](#). As lawyers, we're not trained to do empirical studies. The individuals who did the study at the center of this article are economists. They are using formulas to eliminate any significant distortions and pull relevant impact data. They are able to do a deep data dive to show this isn't because of taxpayer wrongdoing, but due to institutional racism.

**CLA: After reading this interview, I think many members of our community will go on to read your [article](#) on this topic. Any other suggested reading for us?**

Everyone should read "How To Be An Antiracist" by Ibram X. Kendi. Dr. Kendi writes that you can't be neutral on race in America. Being "race neutral" is being racist. The system itself is broken - the design is broken and not working. Police violence is a heartbreaking example of this. And in a different way, so are the tax inequities we talked about today.

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[Francine J. Lipman](#) is a William S. Boyd Professor of Law at the Boyd School of Law at UNLV. She brings an exceptional record as an accountant, a lawyer, a teacher, and a scholar. After working as a CPA in an international accounting firm and as the Chief Financial Officer for a chain of retail jewelry stores, Professor Lipman turned to law where she served as the Editor in Chief of the UC Davis Law Review and was

recognized as an Outstanding Law Student and a member of the Order of the Coif. Following a similarly stellar record in NYU's Graduate Tax Law Program, where she was a Tax Law Review Scholar, she practiced law with O'Melveny & Myers LLP and Irell & Manella LLP. Professor Lipman joined the faculties of Chapman University's School of Business and Economics in 2001 and the School of Law in 2003. Professor Lipman is an elected member of the American Law Institute, the American College of Tax Counsel, and the American Bar Foundation, and an editor and former committee chair for the Tax Section of the American Bar Association. Professor Lipman is on the editorial board of the ABA Civil Rights and Social Justice Human Rights magazine. She has been a visiting professor at UC Hastings College of Law and the University of Nevada, Las Vegas. In 2016, Governor Brian Sandoval appointed, and in 2020 Governor Steve Sisolak reappointed Professor Lipman to serve as Nevada Tax Commissioner.

Follow Francine on Twitter at [@narfnampil](#)

Interested in learning more? Check out our 2021 Big Ideas Live event featuring Francine Lipman, "[Taxes, the great equalizer or not.](#)"

*This article is part of Legal Aid's ["Big Ideas" series.](#)*

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