

November 14, 2016

The Honorable Sam Johnson
United States House of Representatives
Washington, DC 20515

The Honorable John Larson
United States House of Representatives
Washington, DC 20515

Delivered via email

Dear Mr. Johnson and Mr. Larson:

Thank you so much for passage and enactment of “The Wrongful Conviction Tax Relief Act of 2015,” which excludes from federal taxation all money received in compensation for wrongful conviction. Exonerees, and the attorneys and advocates who work with them nationwide, greatly appreciate your leadership in supporting the successful reentry of these courageous men and women who were subjected to wrongful conviction and incarceration, many for decades. We are writing today to update you on the law’s implementation, and to respectfully request an extension of the time period during which an exoneree may file a refund claim.

As you know, the law is retroactive, so those who previously paid income taxes on compensation may file amended returns seeking refunds. To allow eligible taxpayers to file amended returns for payments made more than three years ago, the law waives the usual three-year deadline for amending a tax return, but only for one year following the enactment of the law, which expires December 19, 2016. Guidance from the Internal Revenue Service on the implementation of the law did not come out until June 16, 2016, with further guidance being released in August 2016. This period without IRS guidance represents a significant portion of the time allowed for claims to be filed. ***An extension of the claim time period is necessary to effectuate the law’s retroactivity provision in the manner intended by you as co-sponsors of this important provision.***

Additionally, identifying and contacting exonerees who should benefit from this law is a work intensive task beyond the degree of difficulty first envisioned.

Neither the IRS nor any other federal or state agency maintains (or has the means to generate) a comprehensive list of individuals who have received compensation for wrongful conviction. The best survey of America’s wrongfully convicted is the National Registry of Exonerations, an online database maintained by the University of Michigan and University of California at Irvine. It currently lists over 1900 exonerations since 1989. Of those, the Registry has information that approximately 750 of these exonerees have received compensation, and that about 150 have not. However, the Registry has no information regarding compensation for the remaining 1000 exonerees. ***Additionally, the Registry has no contact information for exonerees whom it lists.***

To help inform exonerees of the new law, the Innocence Network and Innocence Project advertised the law to exonerees whom member organizations had assisted, and highlighted the issue at the Spring 2016 national innocence conference in Texas, which some exonerees attended. Additionally, the non-profit After Innocence, which provides post-release assistance to exonerees, has mounted an intensive nationwide outreach effort to try to contact by phone as many exonerees as possible to inform them about the law, help them determine if they are eligible for a refund, and if so, assist them with filing. To do this, After Innocence is coordinating pro bono assistance from 35 law students across the country and help from an investigation firm to identify contact information for the potential claimants. Additionally, it is working with a law firm to offer pro bono assistance with preparing the filings for eligible exonerees. This effort already has reached 332 exonerees, but will not reach a substantial number of exonerees known to have received compensation, or the majority of the nearly 1000 exonerees who also may have received compensation, before next month's filing deadline.

This problem impacts Texas and Connecticut. For Texas, the National Registry of Exonerations lists 296 Texas exonerations since 1989, with another possible 10-20 Texans exonerated before 1989. 94 Texas exonerees have received compensation in or before 2013 under the Texas Wrongful Conviction Compensation Statute. Some of these individuals paid taxes on that compensation money in the year initially received or in subsequent years (the Texas statute provides for annual annuity payments). After Innocence and the Innocence Project have screened 48 of these 94 exonerees, but there are still another 48 exonerees who have not yet been contacted. There is a serious concern that at least 30 of these persons will not be contacted by the current deadline. Of the remaining approximately 200 Texas exonerees on the Registry, some received compensation through lawsuits relating to their wrongful conviction; however, After Innocence has been able to contact and screen only 16 of these exonerees so far.

Regarding Connecticut, the Registry lists 20 Connecticut exonerations since 1989, with probably another 4-6 exonerations from before 1989. After Innocence has been able to screen only 8 Connecticut exonerees so far.

To provide an opportunity to complete the process of trying to contact all exonerees in order to both notify them and assess their eligibility to file a claim, we respectfully request a two-year extension of the provision - through December 19, 2018. This would provide sufficient time to reach as many exonerees as can be contacted, and provide them with the help they need. Without this extension, there undoubtedly will be wrongfully convicted individuals who will be denied the benefit of this important law.

Thank you so much for your time and consideration of this urgent, time sensitive request. If you have questions, or need additional information, please do not hesitate to contact Jenny Collier, Federal Policy Advisor to the Innocence Project, at jcollier@colliercollective.org or 202-295-7188.

Sincerely,

After Innocence

Alaska Innocence Project

Arizona Justice Project

California Innocence Project

Connecticut Innocence Project

Duke Center for Criminal Justice and Professional Responsibility

Innocence Project

Innocence Project of Florida

Innocence Project Northwest

Innocence Project of Texas

Mid-Atlantic Innocence Project

Midwest Innocence Project

Minnesota Innocence Project

New England Innocence Project

Northern California Innocence Project

Ohio Innocence Project

Pennsylvania Innocence Project

Reinvestigation Project of the New York Office of the Appellate Defender

Rocky Mountain Innocence Center

Thurgood Marshall School of Law Innocence Project (Texas)

West Virginia Innocence Project

Wisconsin Innocence Project

Wrongful Conviction Project, Ohio Office of the Public Defender