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MINEFIELD OF RISKS: Taxpayers Face Perils from Unregulated Preparers, Lack of Fee Disclosure, and Tax-Time Financial Products

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The Consumer Federation of America is a non-profit association of approximately 280 pro-consumer groups that was founded in 1968 to advance the consumer interest through advocacy and education. www.consumerfed.org



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EXECUTIVE SUMMARY

Tax-time is a golden moment for millions of Americans, as they receive billions of dollars in tax refunds. This includes the Earned Income Tax Credit (EITC), which helps 27 million families and is the largest anti-poverty program in this country. Yet when taxpayers seek the assistance of paid tax preparers to access these refunds and benefits, they face a minefield of consumer protection risks.

- **Needless fees paid for financial products.**

Paid preparers offer and promote financial products that can be unnecessary and expensive, such as refund anticipation checks (RACs). Over 21 million consumers obtained a RAC in 2014, at a cost of at least \$648 million. RACs most likely represent a high-cost loan of the tax preparation fee. If a taxpayer pays \$35 to defer payment of a \$350 tax preparation fee for 3 weeks, the annual percentage rate (APR) is 174%. Furthermore, some preparers charge expensive “add-on” or junk fees for RACs, which can add significantly to their cost.

This year, the industry is offering a new generation of refund anticipation loans (RALs). These RALs are different from the ones that were driven from the market several years ago in that they claim not to charge a fee for the loan. However, some of these “no fee” RALs do appear to impose a cost in terms of a higher RAC fee. Also, there is concern that some preparers may pass the cost of the loans onto the taxpayer through increased tax preparation or junk fees.

- **Fraud and errors from unregulated preparers.**

The vast majority of paid tax preparers are not required to meet any minimum educational, competency, or training standards. Only four states (Maryland, Oregon, New York, and California) regulate paid tax preparers. A national poll commissioned by the Consumer Federation of America (CFA) found that more than 4 out of 5 respondents believe that paid tax preparers should be required to pass a competency test and be licensed by the state.

The lack of competency standards for paid preparers exposes consumers to potential error or even fraud. Multiple rounds of mystery shopper tests of tax preparers have found high levels of errors and instances of fraud by tax preparers. In 2015, mystery shopper testing by consumer advocacy groups in Florida and North Carolina found inaccuracies in 27 out of the 29 tax returns prepared by paid tax preparers. Mystery shopper tests in Ohio found inaccuracies in all 10 returns prepared by paid tax preparers.

- **Lack of price transparency and inability to comparison shop.**

Tax preparation is one of the few services that do not provide meaningful price information to consumers. Fees can be as high as \$400 to \$500, but preparers often refuse to provide firm price quotes ahead of time. The CFA poll found overwhelming public support for requiring paid preparers to disclose their fees: 89% of respondents support requiring paid preparers to supply an upfront list of fees.

INTRODUCTION

For most Americans, tax time is a “golden moment” in their financial lives. Nearly, 80% of Americans receive a refund when they file their tax returns, putting over \$288 billion in their pockets.¹ Some of these taxpayers, especially working families, will receive the Earned Income Tax Credit (EITC), a refundable credit intended to boost low-wage workers out of poverty. The EITC is the largest federal anti-poverty program, providing nearly \$65 billion to nearly 27 million families in 2014.²

Tax-time also presents a minefield of consumer protection risks for taxpayers. EITC recipients and consumers receiving substantial refunds in general, present a lucrative target for many businesses. This includes retailers, such as car dealers and furniture stores, as well as purveyors of financial products such as check cashers and prepaid card issuers. More significantly, an entire industry evolved to profit off taxpayers and EITC recipients - the tax-time financial products industry.

Taxpayers face risks as consumers of tax preparation services. These issues include the lack of minimum standards for paid tax preparers that would ensure competency and ethical conduct. They also include a lack of transparency as to what paid preparers will charge for services, making it impossible for taxpayers to comparison shop.

Since 2002, the National Consumer Law Center (NCLC) and the Consumer Federation of America (CFA) have jointly issued annual reports on the tax-time financial products industry and the drain caused by these products from tax refunds and EITC benefits.³ These reports have also included discussions of other consumer issues affecting taxpayers, such as high tax preparation fees and lack of regulation for tax preparers. In addition to our yearly reports, we have issued:

- Four reports on mystery shopper testing of paid preparers.⁴

¹ Data from IRS Stakeholder Partnerships, Education & Communication (SPEC) Returns Database for Tax Year 2013 - Returns Filed through June 30, 2014 (Jan. 2015).

² *Id.*

³ These reports are all available at www.nclc.org/issues/refund-anticipation-loans.html.

⁴ Chi Chi Wu, Alice Vickers, Amelia O'Rourke-Owens, Peter Skillern, and Cara Williams, National Consumer Law Center, Florida Alliance for Consumer Protection, Reinvestment Partners, Prepared in Error: Mystery Shoppers in Florida and North Carolina Uncover Serious Tax Preparer Problems (Apr. 2015)[hereinafter Prepared in Error]; Chi Chi Wu, Deyanira Del Rio, Alexis Iwanisziw, Peter Skillern, National Consumer Law Center, NEDAP, Community Reinvestment Association of North Carolina, Tax Time 2011: Mystery Shopper Testing In New York And North Carolina Finds Continuing Problems With Tax Preparers (Apr. 2011) [hereinafter 2011 RAL Mystery Shopper Report]; Chi Chi Wu, Michael Rowett, Peter Skillern, Deyanira Del Rio, Alexis Iwanisziw and Josh Zinner, National Consumer Law Center, Arkansans Against Abusive Payday Lending, NEDAP, Community Reinvestment Association of North Carolina, Tax Preparers Out of Compliance: Mystery Shopper Testing Exposes Violations of Refund

- A report on how the lack of preparer regulation has led to widespread incompetence and fraud.⁵
- A report on pre-season or “paystub” RALs.⁶

TAX-TIME FINANCIAL PRODUCTS UPDATE

A. Overview

For decades, the main financial product providing hefty profits to tax preparers and lenders was the refund anticipation loan (RAL). These were loans made by banks, secured by and repaid directly from the proceeds of a consumer’s tax refund from the Internal Revenue Service (IRS). Because RALs were usually made for a duration of about seven to fourteen days (the difference between when the RAL was made and when it was repaid by deposit of the taxpayer’s refund),⁷ fees for these loans could translate into triple digit annual percentage rates (APRs). Between 2009 and 2012, all of the banks left the RAL market either voluntarily or because they were forced out by federal regulators. Thus, the high-cost version of bank RALs from the 2000s is no longer on the market, saving consumers hundreds of millions in RAL fees

Very quickly, another product – the refund anticipation check (RAC) – replaced the RAL. With RACs, the bank opens a temporary bank account into which the IRS direct-deposits the refund check. After the refund is deposited, the bank issues the consumer a check or prepaid card, or makes a direct deposit into the consumer’s own bank account, and closes the temporary

Anticipation Loan Laws in Arkansas, New York and North Carolina (Apr. 2010) [hereinafter 2010 RAL Mystery Shopper Report]; Chi Chi Wu, Kerry Smith, Peter Skillern, Adam Rust, and Stella Adams, National Consumer Law Center, Community Reinvestment Association of North Carolina, Community Legal Services of Philadelphia, *Tax Preparers Take a Bite Out of Refunds: Mystery Shopper Test Exposes Refund Anticipation Loan Abuses in Durham and Philadelphia* (Apr. 2008) [hereinafter 2008 RAL Mystery Shopper Report].

⁵ Chi Chi Wu, National Consumer Law Center, *Riddled Returns: How Errors and Fraud by Paid Tax Preparers Put Consumers at Risk and What States Can Do* (November 2013), available at <http://www.nclc.org/issues/riddled-returns.html> [hereinafter Riddled Returns].

⁶ Chi Chi Wu and Jean Ann Fox, National Consumer Law Center and Consumer Federation of America, *Pay Stub and Holiday RALs: Faster, Costlier, Riskier in the Race to the Bottom* (Nov. 2008), available at http://www.nclc.org/images/pdf/high_cost_small_loans/ral/paystub_ral_report.pdf.

⁷ In the past, the IRS stated that the direct deposit of a refund, if the return is filed electronically, generally took 8 to 15 days. See Chi Chi Wu and Jean Ann Fox, National Consumer Law Center and Consumer Federation of America, *Major Changes in the Quick Tax Refund Loan Industry* 10, n. 41 (Feb. 2010) [hereinafter NCLC/CFA 2010 RAL Report]. This year, the IRS is advising that it “issues more than 9 out of 10 refunds in less than 21 days.” IRS, Publication 2043, *IRS Refund Information Guidelines for the Tax Preparation Community* (Jan. 2016). The IRS does warn that “it’s possible your tax return may require additional review and take longer.”

account. A RAC is no faster than the direct deposit of a refund to the taxpayer's own bank account, but it allows the consumer to have the tax preparation fees deducted out of the refund.

This year, some lenders are offering a new version of RALs that purportedly does not impose a charge directly on the consumer. However, some of these "no fee" RALs do appear to impose a cost in terms of a higher RAC fee. Also, there is concern that some preparers may pass the cost of the loans onto the taxpayer through increased tax preparation or junk fees.

Another form of tax-related lending is the pre-season loan. These are lines of credit offered prior to tax season, which are not secured by the tax refund. However, the loans are offered by tax preparers and are generally expected to be repaid in part out of the refund.

B. Refund Anticipation Checks or "Refund Transfers"

After the demise of RALs, refund anticipation checks (RACs), also called "refund transfers," have become the dominant tax-time financial product on the market. According to the latest IRS data, about 21.6 million taxpayers obtained a RAC in 2014.⁸ Since the fee for a RAC was at least \$30, these taxpayers paid a minimum of \$648 million for these financial products, and probably paid more. The vast majority of RAC consumers – about 83% in 2014 – are low-income.⁹ About half of RAC consumers are EITC recipients.¹⁰

RACs present a number of issues for consumers. This year, RACs generally cost \$25 to \$59.95 for the federal refund, plus another \$10 to \$13 for a RAC of the state tax refund. This is very pricey for what is essentially a one-time use bank account.

For 2016, sample RAC fees include:

- H&R Block charges \$34.95 for a RAC of the federal refund delivered on an Emerald Card or via direct deposit, or \$59.95 for a RAC delivered via paper check. It also charges \$13 for a RAC of the state refund¹¹
- Santa Barbara Tax Products Group charges \$34.95 for a RAC of the federal refund.¹²
- Jackson Hewitt charges \$32.95 for a federal refund RAC and \$12.95 for a state refund RAC.¹³

⁸ Data from IRS SPEC Returns Database for Tax Year 2013 - Returns Filed through June 30, 2014.

⁹ *Id.*

¹⁰ *Id.*

¹¹ H&R Block, Pay Nothing out-of-pocket with a Refund Anticipation Check, at <http://www.hrblock.com/financial-services/tax-refund-payment/> (visited Feb. 22, 2016).

¹² Email from SBTPG to author, Feb. 23, 2016, on file with author.

¹³ Jackson Hewitt, 2016 Chicago Tax Preparation Disclosure, 2016, on file with author.

- Republic Bank & Trust charges either \$25 or \$35 for a RAC of both the federal and state refund. The price depends on whether the preparer wants to charge the lower price and receive nothing, or charge a higher price and receive an \$8 kickback.¹⁴
- River City Bank charges \$39.95 for a RAC. The preparer has the option of two programs – the first program allows the preparer to offer a “no-fee” RAL of \$750 for no additional cost and the second program pays a \$10 “rebate” or kickback to the preparer. There are also options for the preparer to charge a lower RAC fee for a smaller kickback - \$34.95 for a \$5 kickback or \$29.95 with no kickback. River City also charges \$9.95 for a state refund RAC.¹⁵
- EPS Financial offers several RAC options. The “e-Bonus” program charges \$35 for a RAC and provides a kickback of \$12 or \$25 to the tax preparer. The “e-Collect” program does not pay the preparer a kickback. It offers a free RAC if the refund is deposited on the E1 Visa Prepaid Card; otherwise it charges \$15 for direct deposit or \$20 for a check. Finally the “e-Advance” option offers RALs of \$400 or \$750 with no additional fee, but the RAC fee is \$35.¹⁶
- Refundo charges \$34.95 for a RAC and promotes itself as a provider with “no hidden costs.”¹⁷

In addition to the RAC fee itself, many tax preparers charge add-on fees, such as “document processing” or e-filing fees, discussed further on page 8. This can significantly add to the expense of a RAC.

RACs do not have a speed advantage over a refund that is direct deposited by the IRS into the consumer’s own bank account or onto a prepaid card. Thus, RACs increasingly represent nothing more than a disguised loan of the tax preparation fee. This is because, when taxpayers obtain a RAC simply because they cannot afford the price of tax preparation upfront, they are essentially paying to defer payment of the tax preparation fee – which is a loan. If a taxpayer pays \$35 to defer payment of a \$350 tax preparation fee for three weeks, the APR would be equivalent to 174%. At least two court decisions have held that a RAC constitutes a loan of the tax preparation fee, and thus RAC fees are finance charges under the Truth in Lending Act.¹⁸ In

¹⁴ Republic Bank & Trust, Choose Your RT Pricing Plan, at <https://www.republicrefund.com/Products/Pricing-Plans.aspx> (visited Feb. 22, 2016).

¹⁵ River City Bank, Product > Pricing, at www.rcbtaxdivision.com/pricing.aspx?mnu=3 (visited Feb. 22, 2016).

¹⁶ EPS Financial, EPS Tax Solutions, at <http://epstax.net> (visited Feb. 22, 2016).

¹⁷ Refundo, Pricing, at <https://www.refundo.com/pricing> (visited Feb. 22, 2016).

¹⁸ United States v. ITS Fin., LLC, 2013 WL 5947222 (S.D. Ohio Nov. 6, 2013); People v. JTH Tax, Inc., 212 Cal. App. 4th 1219, 151 Cal. Rptr. 3d 728 (2013).

addition, the California Attorney General appears to be investigating H&R Block over its RACs.¹⁹

Furthermore, by permitting the taxpayer to have the price of tax preparation deducted from the refund, RACs make taxpayers less sensitive to the price of tax preparation. The problems with lack of transparency in tax preparation fees are discussed on page 14.

C. Refund Anticipation Loans

1. Non-Bank RALs

After banks exited the RAL market in 2012, non-bank lenders, such as payday lenders, started to make RALs. These RALs are not nearly as widespread as bank RALs once were. Only 100,000 consumers applied for a RAL in 2013²⁰ and a mere 34,000 applied for one in 2014.²¹ This is in contrast to the 12.7 million consumers who received RALs from banks at their height in 2002. While some non-bank RALs may have been made without reporting to the IRS,²² there are no signs of massive non-compliance with the requirement for tax preparers to report RALs to the IRS.

Non-bank RALs may be more costly or riskier than the ones made by banks. An example of the problems with non-bank RALs can be seen in the Consumer Financial Protection Bureau (CFPB)'s enforcement action against a non-bank RAL lender, Southwest (S/W) Tax Loans, discussed further on page 24. The CFPB alleged that these RALs had APRs of over 240%. However, S/W Tax Loans fraudulently disclosed lower APRs, and engaged in other abuses.

2. "No fee" RALs

This year, a number of lenders are offering a new form of RAL -- "advances" that do not impose a charge on the consumer for the loan. These "no fee" RALs include:

- 1st Money Center is offering "no-fee" RALs of up to \$750 through a number of entities, such as Jackson Hewitt.²³ 1st Money Center is one of the largest non-bank RAL lenders

¹⁹ H&R Block Inc., *2015 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, at 18 (noting that the company "received an inquiry from the California Attorney General requesting information regarding our [RACs]").

²⁰ IRS, *Daily E-File At A Glance, U.S. Totals For Individual Returns (Data Source: ELF1505)*, November 2013.

²¹ Data from IRS SPEC Returns Database for Tax Year 2013 - Returns Filed through June 30, 2014 (Jan. 2015).

²² In addition, certain non-bank loans not directly tied to tax refund delivery, such as loans by payday lenders which are their usual products pitched as a tax-time offering, would probably not be reported to IRS.

²³ Jackson Hewitt, *Walk Away Today with a Refund Advance*, at <http://www.jacksonhewitt.com/750/> (visited Feb. 25, 2016).

and had previously offered RALs through Liberty Tax Service and software providers such as Drake Software, for which it charged fees translating into APRs as high as 218%.²⁴ 1st Money Center was historically a payday lender, but states it has exited that business.²⁵

- The “Prefund” RAL of up to \$750 is offered by Santa Barbara Tax Products Group (SBTPG),²⁶ which was purchased in 2014 by prepaid card provider Green Dot. 1st Money Center is the official lender for this product.²⁷
- Republic Bank & Trust is also offering a “no-fee” RAL of up to \$750 called an “Easy Advance.”²⁸ Republic was the last bank to stop making high-cost RALs in 2012,²⁹ and it appears that the bank is back in the business of tax refund lending. Republic is one of the lenders for Liberty Tax’s “no-fee” RAL offering.³⁰
- River City Bank offers a “no-fee” RAL of \$750. However, it is unclear whether the consumer must obtain a RAC at a cost of \$39.95.³¹
- EPS Financial offers the “e-Advance” program, which makes RALs of \$400 or \$750 with no fee. However, while a RAC is not required, EPS will charge its highest RAC fee (\$35) if the consumer does get one.³²

River City and EPS Financial appear to actually impose a cost for the supposedly “no fee” RAL. A tax preparer that does not offer the “no-fee” RAL has the option of offering RACs for a lower fee. In the case of River City, a preparer who does not offer “no-fee” RALs could charge \$34.95 (and receive a \$5 kickback) or \$29.95 (no kickback) for a RAC – as opposed to \$39.95.³³ In the case of EPS Financial, a preparer must charge \$35 if it arranges a “no fee” RAL, but it can offer a RAC with a cost ranging from free to \$20 as long as it is willing to forego a kickback. These

²⁴ Chi Chi Wu and Michael Best, National Consumer Law Center and Consumer Federation of America, *Taxpayer Beware: Unregulated Tax Preparers and Tax-Time Financial Products Put Taxpayers at Risk*, March 6, 2015, at 6-7, available at <http://www.nclc.org/images/pdf/pr-reports/report-tax-time-products-2015.pdf>.

²⁵ Email from 1st Money Center to author, December 9, 2015, on file with authors.

²⁶ Santa Barbara Tax Products Group, PreFund Fact Sheet, undated, available at http://support.sbtpg.com/hc/en-us/article_attachments/204547117/PreFund_Fact_Sheet.pdf (visited Feb. 25, 2016).

²⁷ *Id.*

²⁸ Republic Bank & Trust, Easy Advance, at <https://www.republicrefund.com/Products/EasyAdvance.aspx> (visited Feb. 25, 2016).

²⁹ Chi Chi Wu, Tom Feltner, and Jean Ann Fox, National Consumer Law Center and Consumer Federation of America, *Something Old, Something New in Tax-Time Financial Products: Refund Anticipation Checks and Quickie Tax Loans 3* (Feb. 2013) [hereinafter NCLC/CFA 2013 Tax-Time Products Report].

³⁰ Liberty Tax Service, Refund and Advance Options, at <https://www.libertytax.com/services/refund-options> (visited Feb. 25, 2016).

³¹ River City Bank, Product > Pricing, at www.rcbtaxdivision.com/pricing.aspx?mnu=3 (visited Feb. 22, 2016).

³² EPS Financial, EPS Tax Solutions, at <http://epstax.net> (visited Feb. 22, 2016).

³³ River City Bank, Product > Pricing, at www.rcbtaxdivision.com/pricing.aspx?mnu=3 (visited Feb. 22, 2016).

price differences could constitute a hidden finance charge for the supposedly “no fee” RALs that are being offered. Given that the River City and EPS Financial “no fee” RAL programs do not charge the preparer a fee, unlike the SBTPG and Republic Bank programs, these price differentials could be how revenues are derived from these programs.

Even those “no-fee” RALs, such as SBTPG and Republic Bank, which do not impose a higher RAC fee on the consumer could present risks. The lenders for these programs charge tax preparers a fee for the RALs - \$35 in the case of SBTPG and Republic Bank. Preparers might pass along these fees, or charge even more, by padding their tax preparation fees or by charging separate “add-on” junk fees (discussed on page 8). Since few consumers get firm price estimates before having their returns prepared, these hidden fees can be hard to avoid.

SBTPG has stated that it prohibits preparers from charging higher tax preparation fees to Prefund customers and that it will audit preparers to enforce that rule. In addition, consumers apply for Prefund RALs directly with SBTPG, so the preparer does not know which customers are approved for the loan. However, tax preparers who use RALs offered through other lenders might pass along the RAL fee.

In addition, even if they do not know which consumers are approved for a “no fee” RAL, there is a risk that the preparers will simply charge a higher fee to all consumers who apply for one. For example, one of the software providers that offers the SBTPG “no fee” RAL is Gannon Service Bureau. Gannon charges a \$44 “service bureau” junk fee to the consumer, but entices preparers by providing software with lower upfront costs to the preparer. Gannon makes it clear that preparers can hide fees by stating “We charge a small \$44 service bureau fee that is deducted directly from the taxpayer's return for each bank product you file. With our free bank products, we're confident that even after this fee, your clients will save an average of \$20 to \$60 per return.... This is money you can stick directly into your own pocket by increasing your own prep fee \$20 to \$60 per return, while keeping the overall cost to the client the same as last year.”³⁴

Previously, one risk of RALs was that, if the refund was miscalculated or seized by the government to repay a student loan or another debt, the consumer could be liable for repaying the loan. However, SBTPG has stated that its no-fee RALs is a non-recourse loan, *i.e.*, the consumer is not required to repay the loan if the refund is not received. According to the blog BankTalk, Republic Bank’s loan is non-recourse as well.³⁵ However, it is unclear whether other “no-fee” RALs are non-recourse.

³⁴ Gannon Service Bureau, www.gannon-service-bureau.com (visited Mar. 11, 2016). Thanks to Adam Rust for providing this information.

³⁵ Adam Rust, Refund Advance Tax Loans Proliferate, Banktalk, Jan. 12, 2016, at <http://banktalk.org/content/refund-advance-tax-loans-proliferate>

3. Paystub RALs

Another form of tax-time lending is the pre-season or “pay stub” loan. These are loans made prior to the tax filing season, before taxpayers receive their IRS Form W-2s and can file their returns. In past years, both Jackson Hewitt and H&R Block offered paystub loans.³⁶ Recently, it appears only Block is offering the loans.

H&R Block’s version uses its Emerald Card, which offers the Emerald Advance Line of Credit, providing loans of up to \$1,000. The Emerald Advance carries an annual fee of \$45 for the first year plus an interest rate of 36%.³⁷ Thus, for a \$500 advance repaid in one month, the total fee is \$60, which amounts to an APR of 144% if the loan had been a closed-end instead of a line of credit. The customer must pay off the line of credit by February 15. Thereafter, the customer can again obtain advances but must either be approved for eligibility again or must secure the line of credit with a deposit in an Emerald savings account. If the customer does secure the line with a deposit, the interest rate is reduced to either 9% or 18%,³⁸ but since the annual fee is the largest part of the finance charge, the reduction of the interest rate even to 9% still leaves the transaction with an APR of 117%. H&R Block earned \$57 million in interest from Emerald Advances in 2015.³⁹

D. Add-on Fees

Add-on fees are fees separately charged by tax preparers. They are in addition to the RAC or RAL fee charged by the bank. Add-on fees for RACs and RALs appear to be a large source of profits for some preparers.

Of the three major tax preparation chains, only H&R Block does not charge add on fees.⁴⁰ This year, Jackson Hewitt is charging a \$20 “Data and Document Storage Fee.”⁴¹ Liberty charged a \$20 add-on fee in 2012, which it reduced to \$9 in 2013;⁴² the amount is unknown for 2016.

³⁶ Chi Chi Wu and Jean Ann Fox, National Consumer Law Center and Consumer Federation of America, *Pay Stub and Holiday RALs: Faster, Costlier, Riskier in the Race to the Bottom* (Nov. 2008), available at http://www.nclc.org/images/pdf/high_cost_small_loans/ral/paystub_ral_report.pdf.

³⁷ H&R Block, H&R Emerald Advance Terms and Conditions, at https://www.hrblock.com/bank/pdfs/emerald_advance_terms_and_conditions.pdf (visited Feb. 23, 2016).

³⁸ *Id.*

³⁹ H&R Block 2015 Form 10-K at 27.

⁴⁰ Chi Chi Wu and Jean Ann Fox, National Consumer Law Center and Consumer Federation of America *Coming Down: Fewer Refund Anticipation Loans, Lower Prices from Some Providers, But Quickie Tax Refund Loans Still Burden the Working Poor*, Mar. 2008, 7.

⁴¹ Jackson Hewitt, 2016 Chicago Tax Preparation Disclosure Form, 2016, on file with the author.

⁴² JTH Holdings, Inc., Investor Day 2012 Presentation, at 74-75.

In addition, tax preparers not affiliated with one of the three big commercial tax preparation chains will often charge add-on fees, using a variety of names such as:

- Application fees;
- Data and document storage fees;
- Document processing fees;
- E-filing fees;
- Service bureau fees;
- Transmission/software fees;
- Technology fees.

Some in the tax preparation industry have admitted that add-on fees represent nothing more than an opportunity for generating additional revenue. The decision in the U.S. v. Instant Tax Services case documented how the owner of ITS, Fesum Ogbazion, called them “junk fees” and “revenue generators.”⁴³ It also documented how some of these fees have served no purpose since the early 2000s, and represent pure profit to tax preparers.⁴⁴

Some preparers charge several add-on fees, the cumulative impact of which can be very expensive. Mystery shopper testing by consumer groups found add-on fee totals ranging from \$25 to \$324 in 2008;⁴⁵ \$19 to \$85 in 2010;⁴⁶ and \$35 in 2011.⁴⁷ Similar mystery shopper testing by First Nations Development Institute found significant add-on fees.⁴⁸

⁴³ United States v. ITS Fin., LLC, 2013 WL 5947222 (S.D. Ohio Nov. 6, 2013), ¶ 337.

⁴⁴ *Id.* at ¶¶ 358 - 367.

⁴⁵ 2008 RAL Mystery Shopper Report, Attachment 2.

⁴⁶ 2010 RAL Mystery Shopper Report, Appendix B.

⁴⁷ 2011 RAL Mystery Shopper Report, Appendix B.

⁴⁸ Sara Dewees, First Nations Development Institute, *Tax Time Troubles: Mystery Shopper Testing Exposes Poor Quality Tax Preparation and Refund Anticipation Check Abuses*, Apr. 15, 2011, at 14.

TAX PREPARER CONSUMER PROTECTION ISSUES

A. Preparer Regulation

The single most important consumer protection issue for taxpayers is the strong need for regulation of paid tax preparers. The lack of regulation for most preparers – *i.e.* the fact that in 46 states and the District of Columbia, paid preparers are not required to meet any minimum educational, training, competency, or other standards – is one of the most problematic aspects of paying taxes in the United States. While some tax preparers are licensed as attorneys, certified public accountants (CPAs) or credentialed by the IRS as enrolled agents, these certifications are not mandatory and most preparers do not have them. Indeed, in all but four states, the only tax preparers, apart from attorneys, CPAs and enrolled agents, required to pass a test are the unpaid volunteers at Volunteer Income Tax Assistance (VITA) and AARP Tax-Aide sites.

The IRS attempted to address the problem by developing a system to regulate tax return preparers, which required them to register with the IRS, pass a competency examination, and stay current with tax law developments through continuing education. However, the D.C. Court of Appeals issued a ruling invalidating these requirements as having exceeded the agency's statutory authority.⁴⁹

A national poll commissioned in 2015 by the Consumer Federation of America reveals broad public support for government oversight of tax preparers. The poll found that more than 4 out of 5 respondents believe that paid tax preparers should be required to pass a competency test, be licensed by the state, and provide a clear, upfront list of fees before completing a taxpayer's return. In particular, the poll found that:⁵⁰

- 80% of the public supports requiring paid tax preparers to pass a test administered by the government that would ensure that paid preparers have the knowledge and training to complete taxpayer returns correctly.
- 56% believe paid preparers should have special training but don't need a degree and 31% believe that paid tax preparers should have a college degree in accounting.
- 83% support licensing requirements for paid preparers by a state agency that would also accept and resolve complaints, and enforce consumer protections.

The lack of regulation for paid preparers has created a culture that allows incompetence and abuses to flourish. Consumer groups have conducted multiple rounds of mystery shopper

⁴⁹ *Loving v. I.R.S.*, 742 F.3d 1013 (D.C. Cir. Feb. 2014).

⁵⁰ Press Release, Consumer Federation of America, New National Poll Indicates Strong Support for Reform of Paid Tax Preparer Industry, Jan. 20, 2016, available at http://consumerfed.org/press_release/new-national-poll-indicates-strong-support-for-reform-of-paid-tax-preparer-industry/.

testing of paid tax preparers. During the 2015 tax season, mystery shopper testing conducted by consumer advocacy groups in Florida and North Carolina found inaccuracies in 27 out of the 29 tax returns prepared by paid tax preparers.⁵¹

One group of testers posed as a single parent who was not entitled to claim her minor child because the child lived with the other parent for more than 50% of the time. Yet 8 of the 15 preparers claimed the child, resulting in an improper Earned Income Tax Credit (EITC) of \$2,523. Another set of testers posed as graduate students with a paid internship for which they were given IRS Form 1099s. Ten of the 14 preparers did not properly use a Schedule C to report the internship income, resulting in the omission of nearly \$1,300 in self-employment tax. And 3 of the 4 preparers who did properly use a Schedule C took questionable deductions, including one preparer who made up \$9,562 in fictitious businesses expenses.⁵²

Similar mystery shopper tests conducted in 2015 by an Ohio advocacy group found inaccuracies in all 10 returns prepared by paid tax preparers.⁵³ In 2014, the U.S. Government Accountability Office (GAO) sent undercover investigators to 19 randomly selected tax preparer offices. Only two of the 19, or 11 percent, of the returns had the correct refund amount.⁵⁴ Other rounds of mystery shopper testing are summarized in a March 2014 report by NCLC, with the percentages of problematic tests in these other testing programs ranging from 25 percent to 90 percent.⁵⁵

NCLC has drafted a Model Individual Tax Preparer Regulation Act to assist states and encourage them to consider establishing competency standards for paid preparers. The Model Act is based on the existing laws in three of the four states that do regulate tax preparers (Maryland, Oregon and California), as well as the invalidated IRS regulations.⁵⁶ In summary, the Model Act requires tax preparers to:

- Obtain a registration unless they fit into one of the exceptions for the limited number of tax preparers already regulated, such as certified public accountants, enrolled agents, and lawyers.
- Pass a basic competency exam.
- Have 60 hours of initial education and 15 hours per year of continuing education.
- Provide a standardized disclosure of their fees.

⁵¹ Prepared in Error at iii.

⁵² *Id.* at 7.

⁵³ David Rothstein, *Prepared in Error: Ohio Mystery Shoppers Uncover Serious Problems with Paid Tax Preparers*, Oct. 15, 2015, available at <http://www.nhsleveland.org/CE/pagecontent/Documents/NHS%20secret%20shopping%20Final.pdf>.

⁵⁴ Government Accountability Office: *Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors*, GAO-14-467T, Apr. 8, 2014, available at <http://www.gao.gov/assets/670/662356.pdf>.

⁵⁵ Riddled Returns at 6-13.

⁵⁶ The fourth state to regulate tax preparers was New York. New York's regulations governing preparers were finalized in December 2013, after NCLC had developed its Model Act.

There has been activity by advocates in several states to push for preparer regulation. Bills to establish minimum competency standards, test and license preparers, were introduced in Connecticut and Iowa.⁵⁷ Two states (Illinois and Colorado) conducted reviews on the issue. Unfortunately, both reviews recommended against preparer regulation.

The Illinois Tax Return Preparation Task Force was created by state law, and was charged with preparing a report on “the appropriate scope of a program for regulating commercial tax return preparers.”⁵⁸ The Task Force recommended against regulation based on several reasons, which are discussed in the table below.⁵⁹ This table also presents the counter-arguments against those reasons. In Colorado, the Department of Regulatory Agencies conducted an evaluation of a proposal to regulate paid preparers. It recommended against regulation for reasons similar to the Illinois Tax Return Preparation Task Force.⁶⁰

ILLINOIS TASK FORCE ARGUMENTS AGAINST PREPARER REGULATION AND COUNTER-ARGUMENTS

Licensing will drive fraudulent and “closeted preparers” further underground.	Licensing will raise the competency and professionalism of the entire industry and make it simple for consumers to choose a competent preparer. There already is no good way to track fraudulent preparers, and licensure would provide an easy way to separate out closeted preparers.
Preparers will pass the cost of licensure onto consumers.	Tax preparation fees are already high and very non-transparent. Preparer regulation would allow for standardized disclosure of fees, which would promote competition and reduce fees. The costs of licensing would translate into only a few dollars per return, if even that.
Regulation would not adequately correct the frequency of errors, which are commonplace due to the complexity of the tax code.	A minimum level of training would provide preparers with the knowledge and skills to avoid errors. Testing would weed out preparers whose skills are insufficient to avoid errors. Even if the code was simplified, consumers with limited education and literacy skills will still need or want someone to help them.
There would be high costs for the development of a licensing system.	Costs would be offset by registration fees.

⁵⁷ Conn. H.B. No. 5610; Iowa S.S.B. 3135. A bill was introduced in New Jersey to set up a task force to study and make recommendations about the regulation of tax preparers. New Jersey S.J.R. 34.

⁵⁸ 225 ILCS 450/30.9.

⁵⁹ Illinois Tax Return Preparation Task Force Report, Dec. 1, 2015.

⁶⁰ Colorado Department of Regulatory Agencies, 2015 Sunrise Review: Paid Tax Preparers, Oct. 15, 2015.

<p>There will be redundancy upon the likely creation of a national IRS licensure/registration.</p>	<p>States should not be afraid to act just because Congress might also act sometime in the future. A national licensure scheme is far from likely given the current Congress's inability to pass much legislation and that many members are hostile to the IRS.</p>
<p>States would have no jurisdiction over federal returns. Our state returns are more user friendly and simpler than other states.</p>	<p>A state has inherent authority under its police powers to license professional services, even when those services relate to federal returns. Four states already exercise jurisdiction over preparers when they complete federal returns.</p>
<p>Only a few complaints are filed against paid preparers with state regulators</p>	<p>Many consumers who are the victims of errors do not know their returns are incorrect. The handful who do know because they are audited are unlikely to file complaints when subject to enforcement action. Even if they do, they would likely file the complaint with IRS, not state regulators absent state regulation.</p>
<p>Tax preparers who are already credentialed (CPAs, attorneys, enrolled agents) would be required to register in multiple states</p>	<p>Credentialed tax preparers are exempt from the regulations in the four states that currently regulate paid preparers.⁶¹</p>
<p>If credentialed preparers are excluded from state regulation they may not be in a state registry and will lose business.</p>	<p>All credentialed preparers could be included in a database searchable by consumers, and there is also no policy reason to exclude them from any state registry.</p>
<p>Use education to show the public how to select an appropriate paid preparer.</p>	<p>While consumer education is necessary it is never sufficient. It's extremely difficult for consumers to select a preparer if they don't have good criteria – such as licensing – to base their decision on.</p>
<p>A new credential for unenrolled preparers would add to marketplace confusion for CPAs, attorneys and enrolled agents.</p>	<p>There are already four types of tax preparers: CPAs, attorneys, enrolled agents and unregulated preparers. Now the fourth type will simply be 'Registered Preparers' or whatever designation the state prescribes. Nothing prevents CPAs or anyone else from advertising their credentials and the market is no more confusing than it was. There are simply more consumer protections.</p>

⁶¹ Oregon does not exempt enrolled agents but has less stringent requirements for them to become a tax consultant. http://www.oregon.gov/obtp/pages/becoming_licensed.aspx

B. Need for Disclosure of Tax Preparation Fees

Another problem faced by taxpayers is the lack of transparency around tax preparation fees. Tax preparation is one of the few consumer services in the United States for which consumers cannot obtain a price for the services before they incur them. Tax preparers assert that they charge by the form, and cannot predict which forms will be generated until they actually finish the tax preparation. Thus, consumers cannot comparison shop, or predict how much tax preparation will cost them. The ability to deduct tax preparation fees from a RAC compounds the lack of transparency of tax preparation fees, as it makes taxpayers less sensitive to the price. Mystery shopper testing has documented tax preparation fees up to \$400 or \$500 for EITC recipients and other low-and-moderate income taxpayers.⁶²

As a result, low-income consumers face tax preparation fees that are very high, and, in many instances, inflated. In last year's round of mystery shopper testing, consumer groups found wildly differing fees for each of the two testing scenarios. Fees ranged from \$37 to \$427 for the single parent scenario, and \$50 to \$341 for the graduate student scenario.⁶³ Furthermore, fees were generally higher for the single parent tester when the preparer improperly claimed the child.⁶⁴ The GAO's April 2014 study similarly found that the fees charged for tax preparation varied widely, even between offices affiliated with the same chain.⁶⁵

The CFA poll, previously discussed on page 10, found overwhelming public support for requiring paid preparers to disclose their fees: 89% of respondents support requiring paid preparers to supply an upfront list of fees.⁶⁶ The NCLC Model Individual Tax Preparer Regulation Act includes a provision that would require paid preparers to provide a standardized disclosure of their fees in the form of a table.

More information on excessive tax preparation fees and the need for better disclosure is available in prior NCLC/CFA reports,⁶⁷ and reports from other advocacy groups.⁶⁸

⁶² Prepared in Error at 10-11; Riddled Returns at 18 (providing Table of Tax Preparation Fees).

⁶³ Prepared in Error at 10.

⁶⁴ *Id.*

⁶⁵ Government Accountability Office: *Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors*, GAO-14-467T, Apr. 8, 2014, available at <http://www.gao.gov/assets/670/662356.pdf>.

⁶⁶ Press Release, Consumer Federation of America, New National Poll Indicates Strong Support for Reform of Paid Tax Preparer Industry, Jan. 20, 2016, available at http://consumerfed.org/press_release/new-national-poll-indicates-strong-support-for-reform-of-paid-tax-preparer-industry/.

⁶⁷ See, e.g., NCLC/CFA 2014 Tax-Time Products Report at 16-18; NCLC/CFA 2012 RAL Report at 14-17.

⁶⁸ David Rothstein and Rachel Black, New America, *Improving The Tax Preparation Experience*, Feb. 11, 2015, available at <http://www.newamerica.org/asset-building/improving-the-tax-preparation-experience>; David Rothstein, Policy Matters Ohio, "Improving Tax Preparation With a Model Fee Disclosure Box", June 2013, available at www.policymattersohio.org/wp-content/uploads/2013/06/FeeDisclosure_Jun2013.pdf.

INDUSTRY PLAYERS

This section provides basic information on the tax-time financial activity of key industry players, an overview that we provide annually. Historically, the tax-time financial products industry was made up of a handful of RAL lending banks, three commercial preparation chains, and thousands of independent preparers that offered and arranged for RALs. By 2012, some of the RAL lending banks, such as HSBC and JPMorgan Chase, exited the market completely. Others still make RACs and have started making “no fee” RALs, such as Republic Bank & Trust. The tax preparation chains all still offer RACs, and some chains offer “no fee” RALs or pre-season loans.

A. H&R Block

H&R Block is the nation’s largest tax preparation chain, accounting for 15% of all individual tax returns in 2015, or 20.6 million.⁶⁹ The company processed 5.1 million RACs during the 2015 tax season through its own bank, Block Bank,⁷⁰ earning it about \$171 million.⁷¹ H&R Block noted in its SEC filings that the company “received an inquiry from the California Attorney general requesting information regarding our [RACs].”⁷²

H&R Block offers the Emerald Card, a prepaid debit card, to its tax preparation customers. H&R Block had about 2 million Emerald Card users in 2015.⁷³ The Emerald Card also allows customers to access the Emerald Advance Line of Credit, which is a pre-season or “pay stub” product described on page 8. H&R Block earned about \$57 million in interest from Emerald Advance in 2015.⁷⁴

During the past few years, H&R Block experienced a number of delays in attempting to sell its bank subsidiary, Block Bank. A 2013 deal to sell Block Bank to Republic Bank & Trust fell apart after Republic failed to obtain the necessary regulatory approvals.⁷⁵ In April 2014, H&R Block reached an agreement to sell Block Bank to Bank of the Internet (BoFI), but the deal was delayed through the 2015 tax season, also due to the failure to obtain necessary regulatory approvals.⁷⁶

⁶⁹ H&R Block Inc., 2015 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 3. [hereinafter H&R Block 2015 Form 10-K].

⁷⁰ H&R Block, Inc., H&R Block (HRB) William C. Cobb on Q4 2015 Results - Earnings Call Transcript, June 09, 2015, available at <http://seekingalpha.com/>.

⁷¹ H&R Block 2015 Form 10-K at 18.

⁷² *Id.* at 18

⁷³ H&R Block, Inc., H&R Block (HRB) William C. Cobb on Q4 2015 Results - Earnings Call Transcript, June 09, 2015, available at <http://seekingalpha.com/>.

⁷⁴ H&R Block 2015 Form 10-K at 27.

⁷⁵ Zeke Faux and Fanni Koszeg, H&R Block Hunts for New Bank Buyer as Republic Deal Dies, Bloomberg News, October 9, 2013.

⁷⁶ H&R Block 2015 Form 10-K at 1-2.

On August 4, 2015, H&R Block and BofI received regulatory approval for the sale of Block Bank and the transaction was completed on August 31, 2015.⁷⁷

B. Jackson Hewitt

Jackson Hewitt is the second of the large tax preparation chains in the U.S. It has 6,300 company-owned and franchise offices, including 3,000 in Walmart stores.⁷⁸ Because it lost the ability to make RALs in 2010, as well as other factors, Jackson Hewitt has struggled over the past few years. In May 2011, it filed for bankruptcy protection from its creditors, from which it emerged a few months later.⁷⁹ Jackson Hewitt, however, appears to have regained some ground, describing its 2015 tax season as “transformative” with reported total revenue increasing 7.4% compared to the prior year.⁸⁰

This year, Jackson Hewitt has partnered with American Express in offering the American Express Serve account, a reloadable prepaid card, to its tax preparation customers.⁸¹ Hewitt is also offering its clients a “no fee” RAL up to \$750 through 1st Money Center.⁸²

C. Liberty Tax Service

Liberty Tax is the third significant commercial tax preparation chain in the country, with about 4,300 locations.⁸³ In 2015 Liberty launched SiempreTax+ through 57 franchised offices, which aims to provide tax and related services to the growing Hispanic population in the United States.⁸⁴ Liberty Tax prepared about 1.9 million returns in 2015 through its U.S. retail offices.⁸⁵

⁷⁷ H&R Block Inc., *Oct. 31, 2015 Form 10-Q: Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, at 4.

⁷⁸ Jackson Hewitt, *Our Story*, <https://www.jacksonhewitt.com/Offers/About-Jackson-Hewitt/> (viewed Mar. 15, 2016).

⁷⁹ Peg Brickley, “Jackson Hewitt Set to Leave Chapter 11,” *Wall St. J.*, Aug. 8, 2011.

⁸⁰ Jackson Hewitt, *Jackson Hewitt Reports Strong 2015 Tax Season*, at <http://www.jacksonhewitt.com/Our-Story/Tax-Talk/Corporate-News/Jackson-Hewitt%C2%AE-Reports-Strong-2015-Tax-Season/> (viewed March 16, 2016).

⁸¹ Kelly Phillips Erb, *Jackson Hewitt Teams Up With American Express To Target The Underbanked This Tax Season*, *Forbes*, Jan. 12, 2016, available at <http://www.forbes.com/sites/kellyphillipserb/2016/01/12/jackson-hewitt-teams-up-with-american-express-to-target-underbanked-this-tax-season/#6d82c8be6b23> (visited March 16, 2016).

⁸² *Jackson Hewitt*, *Jackson Hewitt Helps Clients Start the New Year Smart With an up to \$750 Refund Advance*, at [http://www.jacksonhewitt.com/Our-Story/Tax-Talk/Corporate-News/Jackson-Hewitt%C2%AE-Helps-Clients-Start-the-New-Year-Smart-With-an-up-to-\\$750-Refund-Advance/](http://www.jacksonhewitt.com/Our-Story/Tax-Talk/Corporate-News/Jackson-Hewitt%C2%AE-Helps-Clients-Start-the-New-Year-Smart-With-an-up-to-$750-Refund-Advance/) (viewed March 16, 2016).

⁸³ Liberty Tax Service, *About Us*, <https://www.libertytax.com/about-us/> (viewed Feb. 29, 2016).

⁸⁴ Liberty Tax, Inc. (formerly JTH Holding, Inc.), *2015 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, at 7 [hereinafter “Liberty Tax 2015 Form 10-K”]. Liberty expects SiempreTax+ to grow and develop additional nontax services, such as immigration assistance and money transfers. Liberty Tax, Inc., *Liberty Tax’s (TAX) CEO John Hewitt on Q4 2015 Results – Earnings Call Transcript*, June 18, 2015, available at <http://seekingalpha.com/>.

The chain is well-known for hiring people to stand outside stores, dressed up in Statue of Liberty costumes, as a form of advertisement during tax season.

Liberty earned about \$37 million in RAC and loan fees in 2015, constituting 23% of revenue.⁸⁶ It sold RACs to 949,000 of its customers,⁸⁷ or about half of its customer population.⁸⁸

For the past several years, Liberty has partnered with non-bank lenders to offer a non-bank RAL called an Instant Cash Advance (ICA).⁸⁹ Liberty does not state how many ICAs were made in 2015. Liberty reported that 2.3% of its customers, or about 48,000, obtained an ICA in 2013,⁹⁰ and it cut back the program in 2014.⁹¹ In 2015, Liberty reported in its SEC filings that “[f]or the last three years we have not earned any revenue on this product; however, we feel that the availability of this product is appreciated by a segment of our customer base.”⁹²

This year, Liberty offered “no fee” RALs through Republic Bank & Trust Company and MetaBank.⁹³ Liberty sold RALs through the end of February to less than 10% of its customers.⁹⁴ Several Liberty franchisees have been the subject of federal and state enforcement actions, discussed on pages 24-26.

D. Banks and Other Companies Offering Tax-Time Financial Products

A number of banks that formerly offered RALs (until regulators stopped them) are continuing to offer RACs and have started offering “no-fee” RALs, such as Republic Bank & Trust and River City Bank. Other non-bank companies that offer RACs and RALs are discussed on pages 3-8, such as EPS Financial, 1st Money Center, and Refundo.

A major provider of RACs and “no fee” RALs is Santa Barbara Tax Products Group (SBTPG). SBTPG is the former Pacific Capital Bancorp RAL unit that was spun off after that bank was ordered to cease making RALs by its federal regulator, the Office of the Comptroller of

⁸⁵ Liberty Tax 2015 Form 10-K at 6.

⁸⁶ *Id.* at 16, 35.

⁸⁷ *Id.* at 39.

⁸⁸ *Id.* at 11 (noting the number of customers receiving refund transfer products was 49.7% for the 2015 tax season compared to 51.5% for the 2014 tax season).

⁸⁹ *Id.*

⁹⁰ JTH Holding, Inc., 2013 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 48.

⁹¹ Bob Scott, Liberty Tax Loans Cut Back, Progressive Accountant, Dec. 10, 2013, available at <http://www.theprogressiveaccountant.com/index.php/tax-128/3485-liberty-tax-loans-cut-back> (visited Feb. 24, 2015).

⁹² Liberty Tax Service 2015 Form 10-K at 11.

⁹³ Liberty Tax Service, Refund and Advance Options, <https://www.libertytax.com/services/refund-options/> (viewed March 16, 2016).

⁹⁴ Liberty Tax Inc., Liberty Tax’s (TAX) CEO John Hewitt on Q3 2016 Results – Earnings Call Transcript, Mar. 4, 2016, available at <http://seekingalpha.com/>.

Currency.⁹⁵ SBTPG was purchased in October 2014 by GreenDot, one of the largest providers of prepaid cards.⁹⁶ Through SBTPG, GreenDot is now the largest processor of tax refund disbursements in the U.S. and processed about 10.7 million refund transactions in 2015.⁹⁷

For many years, Walmart had partnered with tax preparation chains such as Jackson Hewitt and Liberty Tax, by having these chains open kiosks in Walmart stores. In addition, Jackson Hewitt offers a \$50 Walmart card to its customers.⁹⁸ Last year, Walmart launched a tax-time product called Direct2Cash, which allows customers to obtain their tax refunds in cash from a Walmart store.⁹⁹ Walmart is once again offering Direct2Cash and does not charge a fee for this product; participating preparers are limited to charging only a \$7 fee. Walmart is working with SBTPG¹⁰⁰ and Republic Bank to offer Direct2Cash.¹⁰¹

E. Tax-Time Products at Fringe Financial Outlets

Storefront financial services outlets—including check cashers, payday lenders, rent-to-own stores, retailers, car dealers, and other fee-based providers—have long participated in the frenzy to make money during tax season, when low- to moderate- income consumers receive the largest single infusion of funds at any point in the year. Some of the fringe financial outlets, as discussed on page 5, offer non-bank RALs. Other fringe financial outlets offer tax preparation services without selling RALs or other specifically tax-related financial products.

Easy Money Minute Loan Centers, with locations in three states and concentrated in Louisiana, offers tax preparation services, but the information on its website is limited. The website simply says the centers can estimate a refund based on a paystub, there are no upfront fees, all fees are deducted from the refund, and that they can get the consumer money today.¹⁰² Thus, it appears

⁹⁵ See NCLC/CFA 2010 RAL Report at 14-15.

⁹⁶ Press Release, “Green Dot Completes Acquisition of Santa Barbara Tax Products Group,” Oct 23, 2014, available at <http://www.marketwatch.com/story/green-dot-completes-acquisition-of-santa-barbara-tax-products-group-2014-10-23> (viewed Feb. 24, 2015).

⁹⁷ Green Dot Corporation., *2015 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, at 1, 33.

⁹⁸ Jackson Hewitt, Instantly Get a \$50 Walmart eGift Card, at <http://www.jacksonhewitt.com/wm50/> (viewed Mar. 17, 2016)

⁹⁹ Press Release, “Walmart Launches First-of-its-Kind Cash Pickup Option for Tax Refunds,” Jan. 20, 2015, available at <http://news.walmart.com/news-archive/2015/01/20/walmart-launches-first-of-its-kind-cash-pickup-option-for-tax-refunds>.

¹⁰⁰ SBTPG, Client Can Get Refund in Cash at Walmart Stores, Sept. 2015, at <http://cdn.taxproductsgroupblog.com/wp-content/uploads/2015/09/Walmart-Direct2Cash.pdf?852513> (visited Mar. 21, 2016).

¹⁰¹ Republic Bank & Trust, Walmart Direct2Cash, undated, at <https://www.republicrefund.com/Products/Walmart-Cash-Pickup.aspx> (visited Mar. 21, 2016).

¹⁰² Easy Money Minute Loan Center, Tax Preparation Services. <https://www.easymoneynow.com/Products/taxPreparation.php> (visited March 7, 2016)

that Easy Money is offering a credit product of some type, but what type of product – a specific tax-time loan or its regular payday loan product – is not clear.

Some fringe financial outlets use online preparation products provided by a third party to support their tax preparation offerings. For example, eTax provides a web-based tax interview program that it pitches as “requiring no tax knowledge”, and “[c]ompleting a tax return takes only minutes,” “earning over \$100 per tax return, utilizing only a location's existing customer base.”¹⁰³ eTax offers the following products: an I-RAL, RAL, RAC, e-File, and paper return.¹⁰⁴

Another third-party tax preparation company, GC-1 etax Partners, is being used by regional fringe financial outlets, such as CheckSmart, as well as larger single state fringe financial outlets with multiple locations, such as Cash1 in California¹⁰⁵ and First Virginian in Virginia.¹⁰⁶ No website or explanation of services could be found for GC-1 etax partners.

Examples of fringe financial outlets that use these third party tax preparation services include:

- **Advance America and National Cash Advance:** National Cash Advance¹⁰⁷ and Advance America,¹⁰⁸ both wholly owned subsidiaries of Grupo Elektra,¹⁰⁹ offer a coupon for \$20 off the consumer’s tax preparation fee, with filing and refund estimation provided by eTax.
- **CheckSmart:** CheckSmart is a chain with locations in nine states that offers products such as auto title loans, check cashing, and tax services in eight of those states.¹¹⁰ CheckSmart offers tax preparation services provided by GC-1 etax Partners.¹¹¹

Other fringe outlets promote ancillary products such as prepaid debit cards onto which refunds can be loaded; allow nonaffiliated preparers into their stores; or use tax-time to promote check cashing services.

¹⁰³ eTax Partners, About eTax. <http://www.etaxpartners.com/about.html> (visited March 7, 2016).

¹⁰⁴ eTax Partners Features. <http://www.etaxpartners.com/features.html> (visited March 7, 2016).

¹⁰⁵ Cash1, Other Services. <http://www.cash1today.com/other-services/> (visited March 8, 2016).

¹⁰⁶ First Virginian, other services. <http://www.firstvirginialoans.com/other-services/> (visited March 7, 2016).

¹⁰⁷ National Cash Advance, Tax Services. www.nationalcashadvance.com/ourservices_tax.php (visited March 8, 2016).

¹⁰⁸ Advance America, Tax Services. <http://www.advanceamerica.net/services/details/tax-services> (visited March 8, 2016).

¹⁰⁹ National Cash Advance, About Us. <https://www.nationalcashadvance.com/about-us> (visited March 8, 2016); Advance America, About Us. <https://www.advanceamerica.net/about-us> (visited March 8, 2016).

¹¹⁰ CheckSmart Locations. <http://www.checksmartstores.com/> (visited March 8, 2016).

¹¹¹ CheckSmart, Other Services for each state. *See, e.g.,* Arizona, at <http://www.checksmartstores.com/arizona/other-services/> (visited March 8, 2016).

- **ACE Cash Express:** ACE is not promoting tax preparation but does offer check cashing for refund checks.¹¹² ACE also incentivizes preparers to refer their clients to use the ACE Elite Prepaid Debit Card to receive their tax refund by offering \$20 referral bonuses¹¹³ as well as a 6% kickback of ACE's fee for each check or card cashed that is associated with a preparer's Tax Program Member code.¹¹⁴ Ace Cash Express also opens its lobbies for the use of preparers that become Tax Program Members.¹¹⁵

In prior years, the NCLC/CFA annual reports have discussed the Tax Max program for auto dealers from TRS Refund Services, which promotes tax preparation and refunds as a way to bolster auto sales at over 3,000 dealerships.¹¹⁶ This year¹¹⁷ Tax Max is offering "Refund Advances" (i.e., RALs) of \$400 or \$600 within 24 hours.¹¹⁸

TRS Refund Services offers:

- **Fourth Quarter Sales Program:** The Fourth Quarter Sales Program allows car dealers to estimate a taxpayer's refund for the next tax year and lets the dealer treat future tax refund proceeds as a down payment for a car purchase in October, November or December. The online portal estimates the consumer's refund using the last paystub and then generates the appropriate supporting documents, including a promissory note for the customer to sign.¹¹⁹ Tax Max also encourages dealers to hand out \$25 coupons to encourage Fourth Quarter program participants to return to the dealership to have their taxes prepared.¹²⁰ Making sure clients return to have their taxes done is emphasized in a Tax Max video: "Remember the customer has to bring you those W-2s so that Tax Max can help get that tax refund money for you. If the customer files their taxes somewhere

¹¹² Tax Refunds at Ace, at <https://www.acecashexpress.com/store-services/tax-checks> (visited March 9, 2016).

¹¹³ ACE Cash Express, Refer a Friend, at <https://apply.acecashexpress.com/tax/Refer-A-Friend.aspx> (visited March 8, 2016). See also Online Referral Form, at <https://apply.acecashexpress.com/tax/Default.aspx> (visited March 8, 2016).

¹¹⁴ ACE Cash Express Frequently Asked Questions. At <https://apply.acecashexpress.com/tax/Faq.aspx> (visited March 8, 2016).

¹¹⁵ ACE In-Lobby Program, at <https://apply.acecashexpress.com/tax/In-Lobby.aspx> (visited March 8, 2016).

¹¹⁶ Tax Refund Services, About Us, at <https://www.taxmax.com/TRSTaxMax/AboutUs.aspx> (visited March 9, 2016).

¹¹⁷ See Tax Refund Advances are back in 2016, Chip Wiley (corporate trainer and marketing specialist for Tax Refund Services and Tax Max), BHPH Report, Nov. 24, 2015, at <http://www.autoremarketing.com/bhph/tax-refund-advances-are-back-2016> (visited March 9, 2016).

¹¹⁸ TRS Tax Refund Services Frequently Asked Questions, Answer Number 3, at <https://www.taxmax.com/TRSTaxMax/FAQ.aspx>

¹¹⁹ TRS TaxMax, How It Works, at <https://www.taxmax.com/TRSTaxMax/HowItWorks.aspx> (visited March 8, 2016).

¹²⁰ Tax Max 4th Quarter FAQ #4. Q: Should I offer the \$25 coupon to taxpayers who participate in the 4th Quarter Sales Program. A: YES! This gives the taxpayer another incentive to return to your dealership with their tax documents. <https://www.taxmax.com/TRSTaxMax/FAQ.aspx> (visited March 10, 2016).

else they have complete control of that money, if they bring you the W-2 you have complete control.”¹²¹

- **First Quarter Tax Max Marketing Program:** The First Quarter program is a tax preparation and loan program which allows car dealers to prepare tax returns onsite and use the proceeds to help fund the down payment for a car purchase at the point of sale.¹²² TRS Tax Max provides car dealers with an online portal to prepare a taxpayer’s return and determine the amount of the refund. Funds are dispersed directly to the dealer (though made payable to the taxpayer) in 7 to 20 days.¹²³ Tax Max warns dealers that 2% of refunds are intercepted because of debts and advises dealers to run credit checks as well as calling the Treasury Offset Program number “to determine any offsets to the refund.”¹²⁴
 - **Fees:** TRS Tax Max Refund Services charges start at \$154 (\$129 with coupon). The fees are deducted directly from the taxpayer’s refund, and there is a \$79 bank processing fee.¹²⁵ Dealers also have the opportunity to charge an incentive fee of up to \$99 “for organizing the tax documents.”
 - **Advances:** Tax Max also offers a \$400 or \$600 advance within twenty-four hours, conditioned upon lender approval (purportedly not based on a credit check). Once the IRS deposits the consumer’s refund, the remaining funds, minus the advance, are released to the consumer. There is no information on the Tax Max website as to any fee or the name of the lender partner, although a Tax Max training video indicates the lender is 1st Money Center.¹²⁶ One FAQ answer indicates that there are nonrefundable fees if a client is not approved after applying for the advance¹²⁷ while another FAQ answer indicates that “there is no additional cost for this product to the customer.”¹²⁸

¹²¹ TAXMAXTV YouTube Channel. 4th Quarter - Quick Tips & Basic Information - Tax Max 2015 – 2016. Published Oct. 26, 2015. Quoted text starts at 2:06/8:11. <https://www.youtube.com/watch?v=w3RqA7lqptU>

¹²² TRS Tax Max, How It Works. <https://www.taxmax.com/TRSTaxMax/HowItWorks.aspx> (visited March 8, 2016).

¹²³ *Id.*

¹²⁴ TRS Tax Max, How It Works. <https://www.taxmax.com/TRSTaxMax/HowItWorks.aspx> (visited March 8, 2016). It is unlikely that the Treasury would provide offset information to a car dealership due to privacy issues, which raises the question of how the dealers are obtaining the information.

¹²⁵ *Id.*

¹²⁶ How To Print The RED Tax Refund Advance Checks With Tax Max, 1:28/2:50. <https://www.youtube.com/watch?v=akIINXyaTUM> (viewed March 9, 2016).

¹²⁷ Taxmax 1st Quarter FAQ #4. Q: What if the customer is not approved for the Refund Advance? A: If not approved, the customer must wait for the normal time frame for the IRS to release the refund. Unfortunately, all fees still apply and cannot be reversed. <https://www.taxmax.com/TRSTaxMax/FAQ.aspx> (visited March 8, 2016).

¹²⁸ Taxmax 1st Quarter FAQ #14. Q: Is everyone approved for the refund advance? A: No. The refund advance is based upon bank approval. TRS Tax Max has no authority in the approval process and is not affiliated with the partnering bank. The refund advance program is subject to change at any time and is

- **Drive Now Network:** The program provides leads on customers “who are currently active in the market for a new car and have an anticipated Tax Refund Check of all amounts ready to be spent.”¹²⁹
- **Financial Service Centers:** Tax Max also offers itself as an online tax preparation portal for other “financial service center” businesses such as check cashers.
 - **No Liability for Financial Service Center:** Tax Max describes the program as quick, easy to use and “zero liability” for the financial service center business. Tax Max prepares the return with the information that the business collects from clients. According to Tax Max, the businesses using this product do not have to obtain an Electronic Filing Identification Number or register with the IRS.¹³⁰ However, these businesses would appear to be actively involved in tax preparation by collecting critical tax information from the customer, such as number of dependents or deduction information. This would also mean that the customer’s only point of contact at the business for tax preparation might claim to have no knowledge or responsibility if something goes wrong with the return.
 - **Fees:** All the fees are deducted directly from the taxpayer’s refund. Tax Max Refund Services charges start at \$154 (\$129 with coupon). There is also a \$79 bank processing fee.¹³¹ The financial service center business can also charge an “Incentive Fee” of up to \$99. Tax Max then suggests that the financial service center business can make an additional \$138 by charging a check cashing fee of 3% on a \$4,500 refund.¹³² All those fees (not taking into account any coupon) add up to \$470 or 10% of a \$4,500 refund—and that’s assuming that Tax Max only charges its minimum fee.

expected to be available until the end of February. Please note that there is no additional cost for this product to the customer. <https://www.taxmax.com/TRSTaxMax/FAQ.aspx> (visited March 9, 2016).

¹²⁹ Drive Now Network, at <https://www.taxmax.com/TRSTaxMax/DriveNowNetwork.aspx> (visited March, 9 2016).

¹³⁰ Taxmax Financial Service Centers, at <https://www.taxmax.com/TRSTaxMax/FinancialServiceCenters.aspx> (visited March 10, 2016).

¹³¹ TRS Taxmax, How It Works, at <https://www.taxmax.com/TRSTaxMax/HowItWorks.aspx> (visited March 8, 2016).

¹³² Taxmax Financial Service Centers, at <https://www.taxmax.com/TRSTaxMax/FinancialServiceCenters.aspx> (visited March 10, 2016).

REGULATION AND ENFORCEMENT

A. Revisions to Office of Comptroller of Currency (OCC) Bulletin on Tax Refund-Related Products

In 2015, the OCC revised its Bulletin setting forth its expectations for national banks and savings associations (collectively “banks”) that offer RALs, RACs and other “tax refund-related” products.¹³³ The guidance requires banks to monitor and oversee the activities of third-party tax preparers when these preparers sell these products by:

- making certain disclosures to taxpayers who purchase these products;
- reviewing and approving RAL advertising by third-party preparers;
- performing due diligence checks of third-party preparers (including conducting background checks and assessing general competence);
- maintaining an oversight program during tax season;
- monitoring practices of third-party preparers;
- providing a training and certification process for third-party preparers.¹³⁴

The 2015 OCC Bulletin replaced a 2010 Bulletin that was similar.¹³⁵ However, the 2010 Bulletin had several elements that were stronger, in that they were mandatory rather than suggestive.

First, the 2010 Bulletin *required* banks to conduct a mystery shopper program as part of their oversight of third party preparers,¹³⁶ while the 2015 Bulletin merely requires them to “consider incorporating” such a program.¹³⁷ Second, the 2010 Bulletin required that certification for third party preparers occur on an annual basis,¹³⁸ while the 2015 Bulletin does not so specify annual certifications. Finally, the 2015 Bulletin describes the due diligence checks as an “example” of controls for third party preparers,¹³⁹ as opposed to a mandatory element in the 2010 Bulletin.¹⁴⁰

¹³³ Office of the Comptroller of Currency, Tax Refund-related Products – Risk Management Guidance, OCC Bulletin 2015-36 (Aug. 4, 2015), available at <http://www.occ.gov/news-issuances/bulletins/2015/bulletin-2015-36.html> [hereinafter “2015 OCC Tax Products Guidance”].

¹³⁴ *Id.*

¹³⁵ Ann F. Jaedicke, Deputy Comptroller—Compliance Policy, Office of the Comptroller of Currency, Tax Refund Anticipation Loans—Guidance on Consumer Protection and Safety and Soundness, OCC Bulletin 2010-7 (Feb. 18, 2010), available at www.occ.gov. [hereinafter “2010 OCC Tax Products Guidance”].

¹³⁶ *Id.* at § IV.

¹³⁷ 2015 OCC Tax Products Guidance at § I.D.

¹³⁸ 2010 OCC Tax Products Guidance at § VI.

¹³⁹ 2015 OCC Tax Products Guidance at § C.

¹⁴⁰ 2010 OCC Tax Products Guidance at § III.

B. CFPB v. Southwest Tax Loans

In 2015, the Consumer Financial Protection Bureau (CFPB), in conjunction with the Navajo Nation, took an enforcement action involving RALs against Southwest (S/W) Tax Loans, a non-bank lender, and four H&R Block franchises that worked in partnership with this lender.¹⁴¹ The CFPB alleged that these defendants illegally schemed to steer low-income citizens of the Navajo Nation into taking out high-cost RALs. These RALs had APRs of over 240%, but the defendants stated lower APRs by using a 45-day repayment period even though the loans were generally paid back in 12 days.¹⁴² The CFPB and Navajo Nation also alleged that when customers asked about the status of their refunds from the IRS, the defendants deceptively persuaded customers to take out a second or third RAL even though the IRS had already sent the refund.¹⁴³

The CFPB obtained a consent order requiring the defendants to pay \$254,267 in consumer redress, as well as \$438,000 in civil penalties.¹⁴⁴ In addition, the order prohibits the two key individuals who operated S/W Tax Loans from offering RALs for five years.¹⁴⁵

C. U.S. Department of Justice's (USDOJ) v. Haynes

On February 8, 2016, the USDOJ filed a complaint against Christopher Paul Haynes seeking to permanently bar him from preparing federal tax returns for others.¹⁴⁶ Haynes is the owner/franchisee for three Liberty Tax Service offices in Columbia, South Carolina.

The USDOJ alleged that Haynes and his three Liberty Tax Service offices routinely prepared and filed fraudulent income tax returns for customers.¹⁴⁷ Haynes's purported tax-fraud scheme inflated customers' tax refunds, and collected higher preparation fees in doing so.¹⁴⁸ Haynes and his employees also routinely failed to provide customers with complete copies of their tax returns as required by the Internal Revenue Code.¹⁴⁹

¹⁴¹ Complaint, Consumer Financial Protection Bureau v. S/W Tax Loans, Inc., Case 1:15-cv-00299 (D.N.M. Apr. 14, 2015), available at http://files.consumerfinance.gov/f/201504_cfpb_complaint-sw-tax-loans.pdf.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Stipulated Final Judgment and Order, Consumer Financial Protection Bureau v. S/W Tax Loans, Inc., Case 1:15-cv-00299 (D.N.M. Apr. 14, 2015), available at http://files.consumerfinance.gov/f/201504_cfpb_stipulation-sw-tax-loans.pdf.

¹⁴⁵ *Id.*

¹⁴⁶ Press Release, Department of Justice, Office of Public Affairs, "Justice Department Sues to Permanently Shut Down Liberty Tax Service Franchise Owner," Feb. 8, 2016, available at <https://www.justice.gov/opa/pr/justice-department-sues-permanently-shut-down-liberty-tax-service-franchise-owner>.

¹⁴⁷ Complaint for Permanent Injunction and Other Relief, United States v. Haynes, No. 3:16-cv-00373-MGL (D.S.C. Feb. 8, 2016).

¹⁴⁸ *Id.* at ¶ 24.

¹⁴⁹ *Id.* at ¶ 18 (stating that "[t]he failure to furnish copies of completed tax returns prior to filing violates 26 U.S.C. § 6107(a)").

According to the USDOJ, during the 2015 tax-filing season, 99% of the 1,471 income tax returns prepared by Haynes's employees contained a claim for a refund.¹⁵⁰ Furthermore, the IRS examined 202 federal tax returns prepared by Haynes's employees for tax years 2010 through 2013, and found that 96% these returns contained deficiencies that required IRS adjustments.¹⁵¹ The IRS calculated the average tax deficiency to be approximately \$3,834 per tax return.¹⁵²

Many of Haynes's employees allegedly filed fraudulent claims for the EITC.¹⁵³ Haynes and his employees did so by manipulating their customers' information to maximize the EITC by hitting an income range known as the "sweet spot."¹⁵⁴ Haynes's employees reached the EITC "sweet spot" by claiming bogus dependents and reporting fabricated Schedule C information.¹⁵⁵ In addition to resulting in an inflated EITC refund, Haynes's preparers would benefit by charging a separate fee for preparing these bogus Schedules C forms.¹⁵⁶

Some of Haynes's preparers would list completely fabricated businesses.¹⁵⁷ In one case, a preparer falsely claimed that a customer, who did not earn any wages that year, owned and operated a babysitting business. The customer was unaware that Haynes's employee fabricated the babysitting business until she attempted to re-apply for disability benefits and was denied.¹⁵⁸

Haynes's preparers would sometimes fabricate businesses based on customers' responses to questions about hobbies and odd jobs.¹⁵⁹ For example, one customer stated she enjoyed arts and crafts as a hobby and would spend no more than "a few hours per month" on it.¹⁶⁰ A Haynes preparer used this information to claim that the taxpayer owned an arts and craft business, fabricating a Schedule C with false gross receipts and expenses so the taxpayer could qualify for a larger EITC.¹⁶¹

Many of Haynes's low-to-moderate income customers had no knowledge that these tax preparers were filing fraudulent tax returns on their behalf.¹⁶² Other taxpayers were encouraged to participate in the tax fraud with promises of thousands of dollars of illegally inflated tax

¹⁵⁰ *Id.* at ¶ 24.

¹⁵¹ *Id.* at ¶ 30.

¹⁵² *Id.*

¹⁵³ *Id.* at ¶ 32.

¹⁵⁴ *Id.* at ¶ 35.

¹⁵⁵ *Id.* at ¶ 38.

¹⁵⁶ *Id.* at ¶ 39.

¹⁵⁷ *Id.* at 48.

¹⁵⁸ *Id.* at ¶ 62. The preparer also falsely claimed the customer's granddaughter as a dependent for the EITC.

¹⁵⁹ *Id.* at ¶ 49.

¹⁶⁰ *Id.* at ¶ 65.

¹⁶¹ *Id.*

¹⁶² *Id.* at ¶ 87.

refunds.¹⁶³ Both types of customers now face IRS audits and could end up with large tax debts, including sizeable penalties and interest.¹⁶⁴

D. Maryland Comptroller Investigation of Liberty Tax Franchises

Liberty Tax Service franchises in Maryland are facing an investigation by that state's Comptroller regarding a high volume of questionable state tax returns.¹⁶⁵ The Maryland Comptroller's office has suspended processing electronic tax returns from 23 Liberty Tax franchises, which constitute about a quarter of all Liberty Tax stores in Maryland, while it investigates the stores for alleged tax fraud.¹⁶⁶

According to the Maryland Comptroller's office, the questionable returns included the following suspicious characteristics:

- business income reported when taxpayers did not own a business;
- claims for refund amounts that were much higher than previous year tax returns;
- inflated and/or undocumented business expenses;
- illegal claims for dependents; and
- inflated wages and withholding information.¹⁶⁷

Eight of the Liberty Tax franchises had been suspended last tax season, but there was no public announcement at the time.¹⁶⁸ The Comptroller's office stated that it has taken "a more proactive stance" this year, based on the agency's investment in advanced software that can detect unusual patterns in tax returns filed with the state.¹⁶⁹

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 81.

¹⁶⁵ Press Release, "Comptroller of Maryland, Comptroller Franchot Halts Returns from Baltimore Businesses amid Pattern of Questionable Filings," January 27, 2016, available at http://comptroller.marylandtaxes.com/Media_Services/2016/01/27/comptroller-franchot-halts-returns-from-baltimore-businesses-amid-pattern-of-questionable-filings/; Kimberly Pierceall, "Liberty Tax Franchises Face Federal Attempts to Shut Them Down," *The Virginian-Pilot*, Mar. 12, 2016, available at http://pilotonline.com/business/consumer/liberty-tax-franchises-face-federal-attempts-to-shut-them-down/article_abf88bd4-4f54-58fb-aaa9-e49822dd2e0d.html.

¹⁶⁶ Kimberly Pierceall, "Liberty Tax Franchises Face Federal Attempts to Shut Them Down," *The Virginian-Pilot*, Mar. 12, 2016, available at http://pilotonline.com/business/consumer/liberty-tax-franchises-face-federal-attempts-to-shut-them-down/article_abf88bd4-4f54-58fb-aaa9-e49822dd2e0d.html.

¹⁶⁷ Press Release, Comptroller of Maryland, "Comptroller Franchot Halts Returns from Baltimore Businesses amid Pattern of Questionable Filings," January 27, 2016, available at http://comptroller.marylandtaxes.com/Media_Services/2016/01/27/comptroller-franchot-halts-returns-from-baltimore-businesses-amid-pattern-of-questionable-filings/.

¹⁶⁸ Kimberly Pierceall, "Liberty Tax Franchises Face Federal Attempts to Shut Them Down," *The Virginian-Pilot*, Mar. 12, 2016, available at http://pilotonline.com/business/consumer/liberty-tax-franchises-face-federal-attempts-to-shut-them-down/article_abf88bd4-4f54-58fb-aaa9-e49822dd2e0d.html.

¹⁶⁹ *Id.*

CONCLUSION

During the past decade, the combined efforts of the IRS, bank regulators, and state Attorney Generals/consumer protection agencies drove bank RALs out of the market. These actions saved hundreds of millions in RAL fees for millions of consumers, who can still get their refunds in less than 21 days after filing.

However, there are still problems in the tax-time financial products market that require the attention of regulators. The tax-time financial products market continues to evolve. Both banks and non-banks are offering a new generation of RALs that purportedly do not directly charge consumers, but may carry risks and hidden fees. Tens of millions of taxpayers continue to be sold RACs, which can be subject to significant add-on fees and may represent a high-cost loan of the tax preparation fee.

Consumers face other problems in addition to tax-time financial products. The most significant problem is the lack of regulation for tax preparers, leading to incompetency and fraud. Common sense standards are needed to regulate the tax preparation industry, which is charged with preparing one of the most important financial documents during the year for consumers.

Another problem is that tax preparation fees are opaque and sometimes extremely high. There are many challenges remaining to protect low-income taxpayers from profiteering and abuse.

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