
TAX TIME 2011:

MYSTERY SHOPPER TESTING IN NEW YORK AND NORTH CAROLINA FINDS CONTINUING PROBLEMS WITH TAX PREPARERS

April 2011



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Problems With Tax Preparers

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The authors would like to thank Carolyn Carter for editorial review.

This research was funded by the Annie E. Casey Foundation. We thank them for their support but acknowledge that the findings and conclusions presented in this report are those of the authors alone, and do not necessarily reflect the opinions of the Foundation.

SUMMARY

As a follow-up to “mystery shopper” testing conducted in 2008 and 2010, advocacy groups in New York and North Carolina conducted a limited number of tests of paid tax preparers. The results from nine tests reveal continuing problems with some preparers providing poor quality services or encouraging tax fraud. In addition, tax preparers failed to comply with that state’s law governing refund anticipation loans (RALs) and refund anticipation checks (RACs). Testers also reported problems with preparers withholding copies of returns, failing to inform testers the nature of RACs and RAC fees, and charging high preparation fees that were not explained to testers.

Due to regulatory actions by the Internal Revenue Service and bank regulators, only three small state-chartered banks were making RALs during the 2011 tax season. As expected, testers found that fewer tax preparers were offering RALs and the loans were harder to obtain. Only two testers were able to obtain RALs. However, testers in New York reported that preparers gave them RACs, or attempted to, as an automatic default option.

As in 2008 and 2010, some testers were the victims of poor quality tax preparation, or encouraged to engage in outright tax fraud. The most disturbing example was a preparer in New York who “fixed” income from a 1099 form for discharged credit card debt, and also wrongfully claimed the Earned Income Tax Credit for one of the tester’s children. This tester will need to have her return amended. Another preparer advised a tester who owed money to the IRS that she should “get a kid” in order to get a bigger refund.

In New York, none of the paid preparers that offered RALs and RACs was in full compliance with the New York City RAL law, as they did not have the proper wall poster. The three preparers who sold or attempted to sell a RAC made misleading statements as they failed to orally disclose the nature of a RAC and two of them failed to disclose the fees. In fact, all three presented a RAC as an automatic default option. In North Carolina, the written disclosures for Jackson Hewitt fail to include two additional fees, as required by North Carolina regulations.

As in 2010, preparers often failed to provide adequate information about tax preparation fees. Testers were not provided with estimates of tax preparation fees, which sometimes were extremely high. Several preparers charged \$300 to \$500. The highest fees were charged to the testers with the biggest refunds, all of whom received the Earned Income Tax Credit. Other testers with smaller refunds were charged lower tax preparation fees, after being given “discounts.”

A. Background

Every year, hundreds of millions of Americans undertake one of the most important and complicated financial tasks imaginable – filing their tax returns. Some will fill out a form with pen & paper, others will use a software program or website, and some will be helped by nonprofit programs. About 58% of taxpayers will pay a commercial preparer to complete their tax return.¹ This rate is an even higher 66% among recipients of the Earned Income Tax Credit (EITC), a refundable credit intended to boost low-wage workers out of poverty.² Almost eighty million Americans put their trust, their legal liability for taxes, and their financial health in the hands of paid preparers.

Despite the importance and complexity of this task, until this year, the federal government had not comprehensively regulated tax preparers. The Internal Revenue Service (IRS) has just begun requiring preparers to register with that agency, and will soon be imposing testing standards.³

1. *The Problem of RALs*

One of the thorniest problems with paid preparers had been their role in promoting, selling and arranging refund anticipation loans (RALs). RALs are one to two week loans made by banks and facilitated by paid preparers, secured by the taxpayer's refund. RALs can be expensive, with some lenders charging fees that translate into triple digit Annual Percentage Rates (APRs). RALs cost 7.2 million taxpayers over \$600 million in 2009. They expose taxpayers to unmanageable debt if a problem with a refund results in the loan being unpaid. In addition, there has been a history of deception and misinformation about RALs.

A product related to RALs is the “refund anticipation check” (RAC). With a RAC, the bank opens a temporary bank account into which the IRS direct deposits the refund amount. After the refund is deposited, the bank issues the consumer a check and closes the temporary account. In some cases, RACs are used to pay for tax preparation if the consumer cannot pay out-of-pocket. In other cases, it is used as the default product into which consumers are “flipped” if they do not qualify for a RAL.

The RAL industry is on the decline due to regulatory actions by the IRS and banking regulators. There had only been six or seven banks making RALs to begin with. In the past year and a half, the three biggest banks left or were forced out of the market. The Office of the Comptroller of the Currency (OCC), which regulates national banks, forced Santa Barbara Bank & Trust and HSBC to stop making RALs. Another large RAL provider, JP Morgan Chase, voluntarily exited the RAL market. In August 2010, the IRS announced it

¹ Data from IRS Stakeholder Partnerships, Education & Communication (SPEC) Return Information Database for Tax Year 2008 (Returns Filed in 2009), February 2011.

² *Id.*

³ Internal Revenue Service, New Return Preparer Regulations – Overview, April 5, 2011, *at* <http://www.irs.gov/taxpros/article/0,,id=221009,00.html>

would stop providing the Debt Indicator, a service that helped tax preparers and banks make RALs by acting as a form of credit check.⁴

As a result, there were only three state-chartered banks making RALs during the 2011 tax season —Republic Bank & Trust, River City Bank, and Ohio Valley Bank/Fort Knox Financial Services. Republic is the RAL lending partner for both Jackson Hewitt and Liberty Tax Service in 2011. All three banks have been informed by their federal regulator, the FDIC, that they should exit the RAL business after the 2011 tax season. Republic has appealed the FDIC’s action.

2. Prior Mystery Shopper Testing Results

This is the third (albeit more limited) round of mystery shopper testing conducted by advocacy groups in conjunction with the National Consumer Law Center (NCLC). The first round occurred in 2008, and was conducted by Community Reinvestment Association of North Carolina (CRA-NC) and Community Legal Services in Philadelphia (CLS). The second round occurred in 2010, and was conducted by Arkansans Against Abusive Payday Lending, CRA-NC, and Neighborhood Economic Development Advocacy Project (NEDAP) in New York City.

The 2008 mystery shopper tests uncovered an industry that imposed high costs on vulnerable low-income filers but failed to provide high quality tax preparation. Preparers in Philadelphia and Durham, NC, failed to tell taxpayers about free filing options, and some failed to disclose that RALs are loans. Preparers made serious errors on some testers’ returns, which would have resulted in inflated refunds, and failed to correctly handle education credits or investment income. Many preparers did not give clear price information about RALs, other products, and tax preparation fees, leaving testers confused and unable to comparison shop.

The 2010 mystery shopper testing results were similar. Several preparers made extremely serious errors and a few even encouraged serious tax fraud. In addition, many tax preparers failed to comply with state and local laws regulating RALs. Testers also reported that preparers did not give clear price information about RALs, related products, and tax preparation fees, leaving testers confused and unable to comparison shop.

B. Testing Background

This tax season, advocacy groups in New York and North Carolina conducted a limited number of “mystery shopper” tests to follow up on the prior 2008 and 2010 testing. Testers were recruited and briefed about the nature of project. The two testing protocols were somewhat different, as described below:

⁴ For further discussion, see Chi Chi Wu and Jean Ann Fox, National Consumer Law Center and Consumer Federation of America, *End of the Rapid Rip-Off: An Epilogue for Quickie Tax Loans*, February 2011, available at www.nclc.org/images/pdf/high_cost_small_loans/ral/report-ral-2011.pdf.

Neighborhood Economic Development Advocacy Project in New York City (NEDAP)

NEDAP recruited four taxpayers to become testers. The testers were instructed to have their returns prepared but did not obtain RALs. Instead, they were instructed to pay attention to whether disclosures were made. NEDAP testers were sent to Jackson Hewitt and Liberty Tax stores.

Community Reinvestment Association of North Carolina (CRA-NC)

CRA-NC recruited five taxpayers to become testers. Testers were instructed to obtain RALs; however, only two testers were able to do so. One tester obtained a refund anticipation check. CRA-NC testers were sent to Jackson Hewitt stores, Liberty Tax stores and an independent preparer.

In each locale, testers were either interviewed by the advocacy group or the testers wrote up narratives themselves. Attached as Appendix A and B are two spreadsheets that summarize the fees charged to each tester and the problems observed by each tester.

C. Poor Quality Tax Preparation

As in the 2008 and 2010 rounds of testing, several testers were the victims of poor quality tax preparation or were encouraged to engage in tax fraud. The examples from this year were more limited given the smaller number of tests.

The most disturbing example came from a tester (GC) in New York who went to a Liberty Tax office. GC described how the preparer could not initially handle a 1099 form that she had received for a credit card debt that had been settled:

His boss came over to assist the tax preparer with the 1099. GC asked if the 1099 would change her tax refund, and the preparer answered that they would “fix it.” The tax preparer and his boss proceeded to ask her a number of questions including: did she have money in the bank, valuables like jewelry, a 401k or other investments, or other debts. GC answered that she had a 401k at work, some money in the bank as she recently deposited a substantial check for one of her daughters, and that she had about \$10,000 in combined credit card and student loan debt. She asked how they would “fix it.” The preparer responded that they needed to make it look like she had other debts that prevented her from affording the credit card debt that was forgiven (to make her look deserving of the forgiveness, was GC’s understanding), and that she had no assets to sell. The preparer and his boss filled out a worksheet with her answers to their questions, but they did not provide her with a copy.

In addition, an analysis by a VITA site showed that the Liberty Tax preparer improperly claimed the EITC for one of GC’s daughters. GC may need to file an amended return. Finally, GC noted that the preparer wrote that he asked GC if she knew the whereabouts of her children’s father, and wrote that her response was “I don’t know.” In truth, the preparer never asked her that question and GC does know where her children’s father is.

Another example of questionable activity came from a Jackson Hewitt preparer in New York who gave some questionable advice to a tester (NE) who owed money to the IRS. The preparer told NE that she “needed to get a kid” in order to get a bigger tax refund.

A third tester (JA) reported that she informed the preparer that she was no longer a student, but the preparer incorrectly claimed the New York State tuition credit. This may have been an error rather than fraud, since the preparer correctly removed the credit from the federal but not the state return. JA also reported that the preparer incorrectly inputted student loan interest, misspelled her address, and pressured her to sign the return without explaining the paperwork.

Another error in North Carolina involved a Jackson Hewitt preparer who erroneously failed to claim Head of Household status for KG. As a result, KG’s refund was smaller by \$269 for her federal refund and \$84 for her state refund. KG needed to have her returns amended by a VITA site.

A Liberty Tax preparer in North Carolina refused to give the tester (JB) a copy of her tax returns until the tester received her RAC checks. Presumably, the preparer did so in order to ensure that the RAC would arrive and he would get paid. A similar practice of withholding tax returns until the preparer was paid was observed in the 2010 North Carolina testing. JB also reported another issue, in that when she attempted to explain her head of household status, this same preparer advised JB that “when government agency or someone doing taxes asks certain questions, only answer yes or no.”

D. Failure to Comply with State RAL Laws

Another purpose for the testing was to determine whether tax preparers were complying with the New York State, New York City and North Carolina RAL laws. The tests reveal very spotty compliance with RAL laws at best.

1. New York

Mystery shopper testing was conducted in New York to test paid preparer compliance with the New York City RAL Ordinance⁵ as well as the New York State RAL law.⁶ These laws require RAL facilitators to make oral and written disclosures, and require facilitators to have wall postings.

Two Jackson Hewitt and two Liberty Tax Service offices were tested. The mystery shopper testing revealed that none of the four paid preparers was in full compliance with the New York State and City RAL laws.

⁵ New York City Administrative Code §§ 20-739 to 20-741.1.

⁶ N.Y. Tax Law § 32. New York State also has a Consumer Bill of Rights regarding tax preparers, N.Y. Gen. Bus. Law § 372; however, the latter does not apply to New York City since the City has its own analogous law. N.Y. Gen. Bus. Law § 373. However, all preparers are subject to N.Y. Tax Law § 32, which prohibits unfair or deceptive acts or practices and making any oral statements contradicting the Consumer Bill of Rights.

None of preparers had the wall poster required by the New York City RAL law showing the RAL fees and warning statements. The three preparers who sold or attempted to sell a RAC made misleading statements as they failed to orally disclose the nature of a RAC. Two testers (GC and JA) were not informed about the amount of the RAC fee. More troubling, all three preparers presented a RAC as an automatic default option and did not explain the free options for either electronic filing or paper filing. One tester (DL) noted:

When DL asked to do paper filing, preparer said they couldn't do that; preparer said he would be charged a \$30 transaction fee regardless. When DL insisted that he did not want preparer to e-file, preparer sought advice from others at the office and finally said this was possible.

Another tester (JA) reported a similar experience, i.e., her preparer presented the RAC as a default option and was annoyed when she wanted to mail in her tax return instead.

2. North Carolina

North Carolina has had a RAL law⁷ on the books since the early 1990s. This law requires RAL facilitators to be registered with the North Carolina Commissioner of Banks, to make written disclosures of the loan fee, and to have wall postings. The NCCOB regulations require that the disclosure of the loan fee include separate disclosure of:⁸

- (1) The creditor fee;
- (2) The facilitator loan fee;
- (3) Any loan-related fee;
- (4) The electronic filing fee.

The mystery shopper testing revealed that both of the Jackson Hewitt outlets from which testers received a RAL failed to provide this disclosure. While preparers provided a disclosure of the fee to the creditor, the disclosure failed to include two fees charged by the facilitator: a \$20 transmission fee and a \$10 office check fee.

E. Testers' Experiences with Tax Preparation Fee Disclosures

In the first round of testing in 2008, testers documented high tax preparation fees and a lack of clear disclosure and transparency about them. Similar problems and even higher fees were observed in the second round of testing in 2010. This year also included examples of high fees, including a \$540 fee, and lack of transparency.

The highest fee of \$540 was charged by Liberty Tax to the tester (GC) who will need to amend her return because her preparer erroneously claimed one of GC's daughters for the EITC. This preparer also informed GC that she had filed too late for a "50%" discount. Afterwards, NEDAP contacted Liberty Tax on GC's behalf to request a breakdown of the fees. Liberty Tax refused to provide a breakdown, stated that fees could be up to \$700, and stated that GC would need to go in person for an explanation. Liberty Tax claimed that the

⁷ North Carolina Gen. Stat. §§ 53-245 to 53-254.

⁸ N.C. Admin. Code tit. 4, r. 3J.0303.

fees were disclosed at the start of the session, but GC said this was not true. Interestingly, Liberty Tax stated that people complain about the store's fees sometimes, but that they are able to get people more money back than other tax preparers. When GC returned for a breakdown of fees, Liberty Tax merely gave her the same receipt showing the total charged, rather than a breakdown of how those fees were calculated.

Three other testers (MA, KG and JB) were charged fees of over \$300. These were the testers with the largest refunds, and were all EITC recipients with children.

In contrast, testers with smaller refunds (or who owed money) were charged lesser amounts. In fact, two of these testers were given significant discounts. EV was given a \$214 discount off a \$210 fee, and thus charged only \$64. DL was given a \$351 discount off a \$451 fee, and only paid \$100.⁹ While DL was an EITC recipient, he was a single male with a much smaller EITC amount than if he had claimed a qualifying child. In addition, DL was informed by Liberty Tax that their tax preparation fee “depends; and that if he didn't get a refund they would charge him less.” Under IRS regulations, it is illegal to base a tax preparation fee as a percentage of the refund amount or compute the fee using any figure from a tax return.¹⁰

F. Privacy Issues

The privacy of tax return information is always an enormous concern, because tax returns contain some of the most sensitive financial information that a taxpayer may have. Tax preparers are subject to confidentiality rules under Section 7216 of the Internal Revenue Code and IRS regulation. These rules require preparers, among other things, to obtain the taxpayer's separate consent for use of their tax information to make a RAL or RAC.¹¹ In addition, the rules require preparers to give taxpayers a copy of these consent forms.¹²

As in 2010, mystery shopper testing found violations of the requirement to provide consumers with a copy of their privacy consent forms. Liberty Tax preparers in both New York and North Carolina failed to provide a copy of the form to consumers.

In addition, two testers (GC and JA) reported privacy issues, noting that they saw the Social Security numbers of other customers lying in plain view. At the Liberty Tax location visited by GC, taxpayers were asked to sign in with their names and Social Security numbers, and those of their dependents. JA also saw the identification documents of other customers in plain view.

G. Conclusion

A third limited round of mystery shopper testing in New York and North Carolina suggests that some tax preparers continue to provide poor quality tax preparation, or engage

⁹ One of the testers (JB) with a large EITC refund also did get a \$135 discount off of a \$450 fee.

¹⁰ Internal Revenue Service, Publication 1345, April 7, 2009, at 47, *available at* <http://www.irs.gov/pub/irs-pdf/p1345.pdf>

¹¹ 26 C.F.R. § 301.7216-3.

¹² *Id.* at § 301.7216-3(c)(3).

in tax fraud. Some preparers are failing to comply with state laws governing RALs and RACs, or to adequately disclose RAL, RACs, and tax preparation fees. The IRS, in regulating tax preparers, should make compliance with state RAL and RAC laws a condition of registration with that agency. It should regulate disclosure of tax preparation fees and ensure that preparers are not basing these fees on the amount of the taxpayer's refund.

APPENDIX A

Tester	Preparer	RAL Bank	Federal Refund Amount	EITC	Tax Prep Fee	RAL or RAC Fee	APR	Data and Document Storage Fee	Transmission Fee	Other Fee	Total Fee
New York											
GC	Liberty Tax Service	Republic	\$2,096	Yes	\$540	\$29.95	na				\$569.95
DL	Liberty Tax Service	Republic	\$851	Yes (single)	\$100 (\$451 minus \$351 discount)	\$30 (not taken)	na				\$100.00
JA	Jackson Hewitt	Republic	\$986	No	\$158 (was quoted \$100)	\$30 (not taken)	na				\$158 (\$188 if RAC taken)
NE	Jackson Hewitt	Republic	na (owed \$102)	No	\$143		na	\$5			\$148
North Carolina											
MA	Jackson Hewitt	Republic	\$4,857	Yes	\$304	\$91.17	149%	\$5	\$20	\$10 Office Check Fee	\$430.17
KG	Jackson Hewitt	Republic	\$4,900	Yes	\$320	\$91.17	149%	\$5	\$20	\$10 Office Check Fee	\$466.17
EV	Jackson Hewitt	Republic	\$821	No	\$64 (\$210 minus \$146 discount)	na	na	\$5			\$69.00
GC	Independent	na	\$1,616	No	\$150	na	na				\$150
JB	Liberty Tax Service	Republic	\$2,390	Yes	\$315 (\$450 minus \$135 discount)	\$29.95	na		\$20		\$364.95

APPENDIX B

Tester	Preparer	RAL Ban#	Written Disclosure	Wall Postings	Oral Disclosures	Provided Copy of Tax Return	Provide d Copy of Privacy Consent	Other Issues		
New York										
GC	Liberty Tax Service	Republic	na	No	No Partial	No		Improperly claimed the EITC for one of her daughters; tester will need to amend the return. Falsely reported a question & answer in preparer notes. Did not know how to deal with Form 1099 (for forgiven debt), then promised "fix" 1099 issue to make it look good for her. Clipboard with SSNs was left on desk in view of other customers/preparers. Preparer did not disclose fees until the end; arranged a RAC without telling tester what it was or that fees were involved. Later refused to provide breakdown of fees.		
DL	Liberty Tax Service	Republic	na	No	No Yes	na		Told up that tax prep fee depends on refund amount; and that if he didn't get a refund they would charge him less. RAC was presented to him as automatic/default option (not called RAC). Initially refused to allow tester to make paper filing; preparer said tester would be charged a \$30 transaction fee regardless		
JA	Jackson Hewitt	Republic	na	No	No Yes	na		Tester saw copies of other customers' IDs and SSNs. Was pressured her to sign returns without explaining them. Preparer incorrectly claimed NYS tuition credit on the return. Student loan interest was also input incorrectly. RAC was presented as the automatic default option. Preparer was annoyed that tester wanted to mail in her tax return		
NE	Jackson Hewitt	Republic	na	No	Partial	No		Not eligible for a RAL or RAC because balance due. Preparer advised tester that she needed to "get a kid" in order to get a bigger tax refund.		
North Carolina										
MA	Jackson Hewitt	Republic	Partial	Yes	na Yes	Yes		Failure to include transmission fee & office check fee in RAL disclosure per NCCOB regulation		
KG	Jackson Hewitt	Republic	Partial	Yes	na Yes	Yes		Failure to include transmission fee & office check fee in RAL disclosure per NCCOB regulation. Failed to claim Head of Household status for tester		
EV	Jackson Hewitt	Republic	na	Yes	na Yes	na				
GC	Independent	na	na	na	na Yes	na		Said IRS would not allow RAL since last year		
JB	Liberty Tax Service	Republic	Yes	na	Not until check issued	No		Advised "when government agency or someone doing taxes asks certain questions, only answer yes or no"		