



Consumer Federation of America

# **THE PARTY'S OVER FOR QUICKIE TAX LOANS: BUT TRAPS REMAIN FOR UNWARY TAXPAYERS**

## **The NCLC/CFA 2012 Refund Anticipation Loan Report**

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### **EXECUTIVE SUMMARY**

Refund anticipation loans (RALs) are one to two week loans made by banks, facilitated by tax preparers, and secured by the taxpayer's expected tax refund. RALs can carry triple digit APRs, and expose taxpayers to the risks of unpaid debt if their refunds do not arrive as expected.

This is the twelfth annual report on the RAL industry from the National Consumer Law Center and Consumer Federation of America. This is also the last year that these high-cost, high-risk loans will be made, at least on a large scale by banks. In

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The Consumer Federation of America is an association of nearly 300 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy and education.

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December 2011, the last of the RAL-lending banks entered into a settlement with the FDIC and agreed to cease making RALs after April 2012. While an occasional fringe lender may make a tax-time loan, the sale of RALs as a widespread industry-wide practice is over. RALs will no longer drain the tax refunds of millions of mostly low-income taxpayers.

Even with the end of RALs, low-income taxpayers still remain vulnerable to profiteering. Tax preparers and banks continue to offer a related product - refund anticipation checks (RACs) - which can be subject to significant add-on fees and may represent a high-cost loan of the tax preparation fee. Tax preparation fees can often be opaque and expensive, with taxpayers unable to obtain estimates of fees to comparison shop. The next challenge is to ensure that RACs are made unnecessary and tax preparation fees subject to a standardized, easy-to-understand disclosure.

Other findings of this report include:

- This year, the price for a typical RAL (from Republic Bank & Trust) for a loan of \$1,500 is \$61.22, plus another \$29.95 for a refund anticipation check for the remainder of the consumer's refund. The \$61.22 fee translates into an APR of 149%.
- The latest IRS data shows that RAL volume again declined significantly from 2009 to 2010. Tax preparers and their bank partners made approximately 5 million RALs during the 2010 tax-filing season compared to 7.2 million in 2008, and a high of 12.4 million in 2004.
- Consumers paid an estimated \$338 million in RAL fees in 2010 to get quick cash for their refunds—essentially borrowing their own money, sometimes at extremely high interest rates.
- In addition to RAL fees, consumers in 2010 paid another estimated \$48 million in add-on fees, such “data and document storage,” “administrative,” “e-filing,” “service bureau,” “transmission,” or “processing” fees.
- H&R Block announced it would not make RALs for the 2012 tax season. Block had previously lost its RAL partner bank, HSBC, when that bank's regulator ordered it out of the market. Block's announcement meant that it would not seek another bank to replace HSBC. In addition, Block offered a free refund anticipation check (RAC) during the first two weeks of the 2012 tax season for holders of its Emerald Card.
- Liberty Tax has begun exploring the option of RALs made by non-bank lenders. It has partnered with SGS Credit Services, Inc. and several other companies with similar names, which appear to be linked with Texas payday lenders. TaxWorks, a division of RedGear, which is owned by H&R Block, is promoting a “Tax Season Cash Advance” provided by Schear Lending Group and Atlas Financial

Services. Schear Lending Group appears to be affiliated with Ohio-based payday lenders.

- Small chains, such as Mo' Money Taxes and Instant Taxes, appear to be embroiled in controversy over RAL/RAC checks that have allegedly bounced or not been honored, as well as other problems. In addition, the Arkansas Attorney General obtained a settlement in its case against Mo' Money Taxes over alleged violation of the Arkansas RAL Act and the Arkansas Deceptive Trade Practices Act.

## PART I. UPDATES AND STATISTICS

### A. Introduction

Refund anticipation loans (RALs) are loans secured by and repaid directly from the proceeds of a consumer's tax refund from the Internal Revenue Service (IRS). Because RALs are usually made for a duration of about seven to fourteen days (the difference between when the RAL is made and when it is repaid by deposit of the taxpayer's refund), fees for these loans can translate into triple digit annual percentage rates (APRs).

Historically, RALs drained hundreds of millions of dollars from the pockets of consumers and the U.S. Treasury. RAL lenders and preparers targeted the working poor, especially those who 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 \$57 billion to over twenty-five million families in 2010.<sup>1</sup>

This report updates the NCLC/CFA annual reports on the RAL industry and the drain caused by RALs from tax refunds and EITC benefits. Those interested in background information on the industry and regulation should refer to the first NCLC/CFA RAL Report published in January 2002.<sup>2</sup> In addition to our yearly reports, we have issued special reports on the IRS Debt Indicator,<sup>3</sup> "pay stub" RALs,<sup>4</sup> a rebuttal of industry-funded RAL studies,<sup>5</sup> RALs and fringe tax preparers,<sup>6</sup> and three reports regarding mystery shopper testing of RAL providers.<sup>7</sup>

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<sup>1</sup> Data from IRS Stakeholder Partnerships, Education & Communication (SPEC) Return Information Database for Tax Year 2009 (Returns Filed in 2010) (Jan. 2012).

<sup>2</sup> Chi Chi Wu, Jean Ann Fox, and Elizabeth Renuart, National Consumer Law Center and Consumer Federation of America, Tax Preparers Peddle High Priced Tax Refund Loans: Millions Skimmed from the Working Poor and the U. S. Treasury (Jan. 31, 2002), *available at* [http://www.nclc.org/images/pdf/high\\_cost\\_small\\_loans/ral/2002-ral-report.pdf](http://www.nclc.org/images/pdf/high_cost_small_loans/ral/2002-ral-report.pdf) [hereinafter NCLC/CFA 2002 RAL Report].

<sup>3</sup> Chi Chi Wu, National Consumer Law Center, Corporate Welfare for the RAL Industry: the Debt Indicator, IRS Subsidy, and Tax Fraud (July 2005), *available at* [http://www.nclc.org/images/pdf/high\\_cost\\_small\\_loans/ral/debt\\_indicator\\_white\\_paper.pdf](http://www.nclc.org/images/pdf/high_cost_small_loans/ral/debt_indicator_white_paper.pdf).

<sup>4</sup> 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](http://www.nclc.org/images/pdf/high_cost_small_loans/ral/paystub_ral_report.pdf).

<sup>5</sup> Appendix A to Chi Chi Wu, Jean Ann Fox, and Patrick Woodall, National Consumer Law Center and Consumer Federation of America, Another Year of Losses: High-Priced Refund Anticipation Loans Continue to Take a Chunk Out of Americans' Tax Refunds 4 (Jan. 2006).

<sup>6</sup> Chi Chi Wu, National Consumer Law Center, RALs, Tax Fraud, and Fringe Preparers (Feb. 2009). This report is Appendix A to Chi Chi Wu and Jean Ann Fox, National Consumer Law Center and Consumer Federation of America, Big Business, Big Bucks: Quickie Tax Loans Generate Profits for Banks and Tax Preparers While Putting Low-Income Taxpayers At Risk (Feb. 2009) [hereinafter NCLC/CFA 2009 RAL Report].

<sup>7</sup> 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

## B. End of Bank RALs

During the past few years, there have been a number of major developments in the RAL industry. The three biggest banks in RAL lending - JPMorgan Chase, HSBC and Santa Barbara Bank & Trust – had left or were forced out of the business by December 2010. As a result of these actions, there were only three small, state-chartered banks making RALs in 2011– Republic Bank & Trust, River City Bank and Ohio Valley Bank, all based in Louisville, Kentucky.

In February 2011, the FDIC notified these banks that the practice of originating RALs without the benefit of the IRS Debt Indicator was unsafe and unsound. River City Bank and Ohio Valley Bank accepted the FDIC’s decision, but Republic Bank & Trust decided to fight. Republic appealed the decision to an administrative law judge, and sued the FDIC in federal court. In May 2011, the FDIC issued an amended complaint that detailed widespread legal violations in Republic’s RAL program and proposed a \$2 million civil penalty.<sup>8</sup>

In December 2011, the FDIC reached a settlement with Republic in which the bank agreed to cease making RALs after April 2012, and to pay a \$900,000 civil penalty.<sup>9</sup> Thus, after this tax season, there will be no banks left that make RALs.

Even with the end of RALs, low-income taxpayers still remain vulnerable to profiteering. Tax preparers and banks continue to offer a related product - refund anticipation checks (RACs) - which can be subject to significant add-on fees and may represent a high-cost loan of the tax preparation fee, as discussed in Section I.G below. Some preparers are exploring partnering with non-bank fringe lenders to make RALs, discussed in Sections II.C and II.F below. Finally, the reforms that have signaled the end of RAL lending have been issued by the IRS and banking regulators. With different regulators, these decisions could be easily reversed.

## C. RAL Volume Drops Again

RAL volume had already been decreasing prior to the dramatic changes in the industry discussed above. The latest available IRS data indicates that RAL volume

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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 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].

<sup>8</sup> Amended Notice of Charges for an Order to Cease and Desist, In the Matter of Republic Bank & Trust Co., FDIC-10-079b and FDIC-10-216k, May 3, 2011. See Section III.B below for discussion of details of the Amended Notice.

<sup>9</sup> Consent Order, In the Matter of Republic Bank & Trust Co., FDIC-10-079b and FDIC-10-216k, Dec. 8, 2011. See Section III.B. below for discussion of details of the Consent Order.

dropped significantly from 2009 to 2010, by about 30%. This follows a 14% drop from 2008 to 2009. About one in twenty taxpayers applied for a RAL in 2010.<sup>10</sup>

Based on IRS data, we estimate there were approximately 5 million RALs made in 2010. IRS data shows that there were 6.85 million RAL applications in 2009.<sup>11</sup> However, not all RAL applications result in loans, as a certain percentage of applications are rejected.

Historically we have used approval rates of 90% and 85% to estimate the number of RALs made in relationship to the number of applications.<sup>12</sup> However, Liberty Tax Service stated that its approval rate was much lower in 2010, at 55%.<sup>13</sup> For 2010, we therefore assumed that H&R Block (with a market share of 68%) had an approval rate of 85%, and the rest of the industry had an approval rate of 55%, for an overall approval rate of about 75%.

The following table shows the trends in RALs since 2000, using a 25% rejection rate for 2010, a 15% rejection rate for 2007 to 2009 and 10% for years earlier.<sup>14</sup> To give a better indicator of RAL trends, it also includes RAL applications in addition to total RALs made. Note that even a rejected RAL costs the taxpayer a fee, because the taxpayer is automatically given a refund anticipation check (RAC) at a cost of about \$30 to \$35.

**TABLE 1**

<b>Filing Year</b>	<b>No. of RAL applications</b>	<b>Increase/decrease from prior year</b>	<b>No. of RALs made</b>	<b>RAL loan fees</b>
2010	6.85 million	(-18.5%)	5 million	\$338 million
2009	8.4 million	(-14%)	7.2 million	\$606 million
2008	9.9 million	(-3%)	8.4 million	\$738 million
2007	10.2 million	2%	8.67 million	\$833 million
2006	10 million	(-7%)	9 million	\$900 million
2005	10.7 million	(-22%)	9.6 million	\$960 million
2004	13.8 million	2%	12.38 million	\$1.24 billion
2003	13.5 million	(-4%)	12.15 million	\$1.1 billion
2002	14.1 million	5%	12.7 million	\$1.1 billion
2001	13.4 million	12%	12.1 million	\$907 million
2000	12 million	--	10.8 million	\$810 million

<sup>10</sup> There were 128 million returns filed in the 2010 filing season, which was for Tax Year 2009. Data from IRS SPEC, Return Information Database for Tax Year 2009 (Returns Filed in 2010) (Jan. 2012).

<sup>11</sup> *Id.*

<sup>12</sup> 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 7-8 (Feb. 2011) [hereinafter NCLC/CFA 2011 RAL Report].

<sup>13</sup> Liberty Tax Reports Filing Growth, Low RAL Approval, The Progressive Accountant, Feb. 9, 2010.

<sup>14</sup> This chart is based on data from IRS SPEC and the annual RAL reports issued by NCLC and CFA.

Part of the dramatic drop in RAL volume in 2010 was caused by the departure of Santa Barbara Bank & Trust (SBBT) from the RAL market.<sup>15</sup> SBBT was one of the three biggest RAL lending banks, and the RAL lender for Jackson Hewitt and Liberty Tax Service. After SBBT's departure, both Liberty Tax and Jackson Hewitt were able to reach an agreement with Republic Bank & Trust to offer Republic RALs. However, SBBT's departure left Jackson Hewitt without RALs in about half of its offices.

#### D. Taxpayers Paid About \$386 Million for RALs in 2010

A typical RAL in 2010 from one of the RAL lenders was around \$3,700.<sup>16</sup> RAL consumers in 2010 paid different prices, depending on the RAL lender and tax preparer. H&R Block charged \$69.54 for a RAL of \$3,700.<sup>17</sup> H&R Block had about 3.4 million RAL customers in 2010.<sup>18</sup>

In 2010, JPMorgan Chase charged \$69 for a RAL of \$3,700.<sup>19</sup> Republic Bank & Trust charged \$58.81.<sup>20</sup> Republic had about 837,000 RALs.<sup>21</sup>

Given these various prices, we assume the following amounts were paid for RALs in 2010:

H&R Block customers	\$ 236.4 million
Republic Bank & Trust customers	\$ 49.2 million
All others	<u>\$ 52.6 million</u>
Total	\$ 338.2 million

This compares to an estimated \$606 million in RAL fees in 2009<sup>22</sup> and the high of \$1.24 billion in RAL loan fees in 2004.<sup>23</sup> This estimate is much lower than the 2009 estimate because of reduced loan volume, as well as the fact that Republic and JPMorgan Chase both followed Block's lead in reducing RAL prices.

This \$338 million estimate for 2010 does not include the added fees paid for loan products that provide a RAL on the same day that the taxpayer's return is prepared. In 2010, lenders charged an additional \$25 to \$55 for same-day RALs, a fee that the

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<sup>15</sup> Chi Chi Wu and Jean Ann Fox, Major Changes in the Quick Tax Refund Loan Industry 14 (Feb. 2010) [hereinafter NCLC/CFA 2010 RAL Report].

<sup>16</sup> Robert Barba, A Challenging Question, American Banker, Feb. 1, 2012 (noting that Republic Bank & Trust's average RAL was around \$3,700 in 2010).

<sup>17</sup> See NCLC/CFA 2010 RAL Report at 8.

<sup>18</sup> See Section II.A below.

<sup>19</sup> See NCLC/CFA 2010 RAL Report at 9.

<sup>20</sup> *Id.*

<sup>21</sup> See Section II.C below.

<sup>22</sup> See NCLC/CFA 2011 RAL Report at 9.

<sup>23</sup> *Id.*

consumer paid on top of regular RAL fees.<sup>24</sup> However, we do not have data on the number of same-day RALs made by the industry.<sup>25</sup>

In addition to the fee charged by the RAL lenders, tax preparers and other third parties can charge their own fees for RALs. These fees, which we call “add-on” fees, are discussed in detail in Section I.I, below.

In 2010, Block did not charge add-on fees. Jackson Hewitt started charging them again in 2010, allowing its franchisees to set a “Data and Document Storage Fee” of up to \$40.<sup>26</sup> Liberty also appears to have charged an add-on fee.<sup>27</sup> Furthermore, many independents and smaller chains charged add-on fees in 2010. These smaller players had over 70% of the paid preparer market,<sup>28</sup> and 15% of the RAL market in 2010.<sup>29</sup> In contrast to Jackson Hewitt’s \$40 fee, we have seen add-on fees from independent preparers sometimes total up to several hundred dollars.<sup>30</sup>

If we assume that Jackson Hewitt, Liberty Tax, and about half of independent preparers charge add-on fees, it would equate to about 1.2 million consumers, or about 25% of RAL borrowers. Using Jackson Hewitt’s cap of \$40—a conservative assumption given the proliferation of multiple fees—these add-on fees increased by about \$48 million the amount paid for RALs in 2010. Thus, taxpayers lost somewhere in the neighborhood of \$386 million collectively to get loans a mere one to two weeks sooner than they could have gotten their refunds from the IRS.

#### E. Impact on Low-Income Taxpayers and EITC Recipients

RALs are mostly marketed to low-income taxpayers. According to IRS data, 92% of taxpayers who applied for a RAL in 2010 were low-income.<sup>31</sup> A study from the Urban Institute found that the median adjusted gross income of RAL borrowers is under \$20,000, and that one in four taxpayers earning \$10,000 to \$25,000 use a RAL.<sup>32</sup> In fact, this study found that “taxpayers living in extremely low-income communities are an

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<sup>24</sup> See NCLC/CFA 2010 RAL Report at 10.

<sup>25</sup> We know that Block made 1.5 million “Instant Money RALs” in 2004. Peter Tufano and Daniel Schneider, Harvard Business School, H&R Block and “Everyday Financial Services” 7 (Oct. 2004).

<sup>26</sup> 2010 RAL Mystery Shopper Report, Appendix B. See also Jackson Hewitt, Inc., Ask Jackson Hewitt, What is the Data and Document Storage Fee? (Dec. 10, 2009) (on file with authors).

<sup>27</sup> Ragan Robinson, *Tax Refund Loans in Installments This Year*, Gaston Gazette, Jan. 3, 2011 (reporting that a RAL at Liberty Tax Service costs \$110, which is \$20 more than Republic’s published price); Susan Tompor, *Tax-Refund Loans Harder to Come By*, Detroit Free Press, Feb. 7, 2011 (reporting that a RAL at Liberty Tax Service costs \$49.95, which is \$20 more than Republic’s published price).

<sup>28</sup> JTH Holding, Inc., Form S-1: Registration Statement under the Securities Act of 1933 (amended version Nov. 7, 2011), at 2.

<sup>29</sup> There were 5 million RALs, of which Block made 3.4 million and Jackson Hewitt and Liberty made 837,000, so 763,000 of the 5 million RALs (15%) were made by others..

<sup>30</sup> See Section I.I below.

<sup>31</sup> Data from IRS SPEC, Return Information Database for Tax Year 2009 (Returns Filed in 2010) (Jan. 2012).

<sup>32</sup> Brett Theodos, et al., Who Need Credit at Tax Time and Why: A Look at Refund Anticipation Loans and Refund Anticipation Checks 18 (Nov. 2010), available at <http://www.urban.org/publications/412304.html> [hereinafter Urban Institute RAL Report].



astonishing 560 percent more likely to use RALs and 215 percent more likely to use RACs—*controlling for their family characteristics and their income.*”<sup>33</sup> In other words, RAL users are typically not just poor; they live in poor communities. The authors of the study theorized that this phenomenon could be due to targeting by tax preparation chains, particularly in placement of store locations, or due to significant “peer effects.”<sup>34</sup>

The most likely RAL users are recipients of the Earned Income Tax Credit (EITC). RALs drain hundreds of millions of dollars from that program each year. IRS data shows that in 2010 nearly two-thirds (66%) of RAL consumers were EITC recipients, or 3.4 million families.<sup>35</sup> Yet EITC recipients made up only 20% of individual taxpayers in 2010.<sup>36</sup> Thus, EITC recipients are vastly over-represented among the ranks of RAL consumers.

In addition, IRS data shows that 18% of EITC recipients applied for a RAL in 2010.<sup>37</sup> Almost 41% of EITC recipients obtained either a RAL or a RAC; in other words, a sizable portion of EITC recipients paid part of their publicly funded benefits to a bank to obtain a tax-related financial product. In contrast, only about 7% of taxpayers who do not receive the EITC get a RAL or RAC.<sup>38</sup> The Urban Institute RAL report found that an EITC recipient with a qualifying child is over 125% more likely to get a RAL and over 75% more likely to get a RAC than a non-EITC recipient.<sup>39</sup>

Based on this IRS data, we estimate that about \$223 million was drained out of the EITC program in 2010 by RAL loan fees.<sup>40</sup> Add-on fees contributed another \$32 million to the drain.<sup>41</sup>

Non-loan fees also drain significantly from EITC benefits. The EITC is the nation’s largest anti-poverty program. One criticism has been that no other anti-poverty program requires its beneficiaries to pay for the cost of accessing the benefit, which includes the drain created both by RALs and by tax preparation fees. Including tax preparation fees provides a fuller picture of how EITC benefits are chipped away. An average tax preparation fee in 2010 would have been \$189 (this is the average fee at H&R Block)<sup>42</sup> and could be higher for other preparers.<sup>43</sup>

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<sup>33</sup> *Id.* at 28 (emphasis added).

<sup>34</sup> *Id.* at 19, 27.

<sup>35</sup> IRS data reports that 4.5 million EITC returns were associated with a RAL application in 2009. Data from IRS SPEC, Return Information Database for Tax Year 2009 (Returns Filed in 2010) (Jan. 2012). Using the 75% approval rate, see Section I.C above, the number of approved RALs is 3.4 million.

<sup>36</sup> There were 24.1 million EITC returns and 139 million individual tax returns in 2009. Data from IRS SPEC, Return Information Database for Tax Year 2009 (Returns Filed in 2010) (Jan. 2012).

<sup>37</sup> *Id.*

<sup>38</sup> Karen Masken, Mark Mazur, Joanne Meikle, and Roy Nord, Office of Research, Analysis and Statistics, Internal Revenue Service, Do Products Offering Expedited Refunds Increase Income Tax Non-Compliance 3 (2008) (on file with authors).

<sup>39</sup> Urban Institute RAL Report at 23.

<sup>40</sup> This is 66% of the \$338 million total paid for RALs in 2010. See Section I.D, above.

<sup>41</sup> Based on the estimate that 25% of RAL borrowers were also charged add-on fees. See *id.*

<sup>42</sup> H&R Block Inc., 2010 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 19 [hereinafter H&R Block 2010 Form 10-K].

Thus, EITC recipients who got RALs paid an estimated \$643 million in tax preparation fees. Including tax preparation fees, RALs drained \$898 million from EITC recipients who got RALs for tax year 2010.

**TABLE 2**

<b>Type of Fee</b>	<b>Cost to Taxpayer</b>	<b>Drain on EITC Program</b>
RAL loan fee (incl. dummy account fee)	\$59 or \$69	\$223 million
Add-on Fee (for 24%)	\$40	\$ 32 million
<b>Total</b>	<b>\$99 or \$109</b>	<b>\$255 million</b>
Tax preparation fee	\$189	\$643 million
<b>Total with tax preparation</b>	<b>\$288 or \$298</b>	<b>\$898 million</b>

F. RAL Pricing

This year, only Republic Bank & Trust is offering a bank RAL, limited to \$1,500. Republic charges a fee of \$61.22,<sup>44</sup> representing an APR of 149%. If the refund is greater than \$1,500 plus fees, Republic delivers the rest of it in the form of a RAC, at a cost of \$30. Since Republic requires a minimum refund of \$2,000 in order to be eligible for a RAL, it is quite likely the taxpayer will pay a total of \$91.22 to Republic.

Furthermore, it appears that both Jackson Hewitt and Liberty Tax, the two tax preparers that use Republic Bank & Trust for their RALs, also charge add-on fees.<sup>45</sup> Jackson Hewitt charges as much as \$40, so the total could rise to as much as \$131.

The fee for the RAL comes on top of the fee for tax preparation, with an average of about \$189. Altogether, the consumer might pay about \$320. A low-income taxpayer could save this entire amount and still receive a quick refund using direct deposit by choosing a free tax preparation program that offers e-filing.

G. Refund Anticipation Checks

Refund anticipation checks (RACs) are another tax-time financial product offered by RAL banks as well as several other financial institutions. 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 paper check or prepaid debit card with the RAC proceeds, or direct deposits the refund to the taxpayer's own account and closes the temporary account. For taxpayers who can receive direct deposit from the IRS into a bank account or onto a prepaid card, a RAC does not provide any advantage in

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<sup>43</sup> Tax preparation fees were as high as \$540 in mystery shopping conducted in Arkansas and New York. 2011 RAL Mystery Shopper Report, Appendix A.

<sup>44</sup> Republic Bank & Trust, What You Need to Know Before Selecting a Bank Product, obtained January 14, 2012 from a Jackson Hewitt store, on file with authors.

<sup>45</sup> See Section I.I below.

terms of a faster refund, and the only reason to incur this added expense is to delay payment of tax preparation fees.

In 2010, RACs generally cost \$30. This year H&R Block offered a free RAC for the first three weeks of the 2012 tax season, if the taxpayer used the Block Emerald Card. An H&R Block customer who obtained a free RAC could receive his or her refund in 8-15 days, pay for tax preparation out of his or her refund, and pay only those fees incurred by using the Emerald Card. After February 4, the price of an H&R Block RAC was increased to \$34.95.<sup>46</sup>

In the past three years, the IRS has separately reported RAC data. In 2010, about 14.6 million taxpayers received a RAC,<sup>47</sup> at a cost of about \$438 million. This was a 9% increase from 12.9 million taxpayers in 2009.<sup>48</sup>

Thus, the number of RACs has increased significantly from 2009 to 2010, and exceeds both the number of RALs and the amount paid in fees for RALs. RACs present different issues than RALs. They are less expensive than a RAL, although they are still very pricey for what is essentially a one-time use bank account. Consumers with a bank account can receive their refunds in the same amount of time as a RAC. A taxpayer who does not have a bank account should be encouraged to open one. In addition to speeding refunds, bank accounts help taxpayers avoid paying check cashing fees.

RACs present other problems. Like RALs, RACs permit the taxpayer to have the price of tax preparation deducted from the refund. This practice makes taxpayers less sensitive to the price of tax preparation, permitting tax preparers to hide the ball when consumers might attempt to comparison shop. Furthermore, when taxpayers obtain a RAC simply because they cannot afford the price of tax preparation upfront, the RAC is essentially a loan of the tax preparation fee—and an expensive one at that. Paying \$30 to borrow a tax preparation fee of \$189 for two weeks equates to an APR of 414%!

In addition to H&R Block's free RAC, there are a number of other, less expensive products available to enable taxpayers to pay for tax preparation services out of their refund. One such product is QuickCollect from Santa Barbara Tax Products Group, which costs \$15,<sup>49</sup> or about half as much as a RAC. Another is the e-Collect system, which is essentially a RAC from EPS Financial. The price for e-Collect varies according to whether the refund is deposited on the E1 Visa Prepaid Visa card (\$5 plus another \$5 for a state refund), direct deposited to the taxpayer's own account (\$10 plus another \$10

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<sup>46</sup> H&R Block, Refund Anticipation Check Instructions, 2011, on file with authors.

<sup>47</sup> According to the IRS data, 12.8 million taxpayers applied for a RAC in 2010. In addition, there were 1.8 million RAL applicants who were denied a loan, then converted to a RAC. Data from IRS SPEC, Return Information Database for Tax Year 2009 (Returns Filed in 2010) (Jan. 2012).

<sup>48</sup> See NCLC/CFA RAL 2011 Report, at 13.

<sup>49</sup> Intuit ProLine Quick Collect, at <http://proseries.intuit.com/products/offers/quick-collect.jsp> (viewed Feb. 21, 2012).

for a state refund), or delivered by a check printed at the tax office (\$20).<sup>50</sup> The E1 Prepaid Card is issued by Bancorp Bank.<sup>51</sup>

In addition to the RAC fee itself, many tax preparers charge add-on fees, such as “document processing” or e-filing fees, discussed further in Section I.I below. Tax preparers charge these fees for both RACs and RALs. This can significantly add to the expense of a RAC.

#### H. Prepaid Cards

In order to take advantage of the speed of IRS’s typical eight- to fifteen-day refund, taxpayers must have a bank account into which the refund can be direct deposited. Taxpayers without a bank account should be encouraged to open an account to receive their refund, but there are other options as well. Taxpayers without a bank account can have their refund deposited to a prepaid card, including any existing payroll or reloadable prepaid card that the taxpayer already has.

In 2011, the U. S. Department of Treasury conducted a pilot project offering 600,000 low-cost prepaid cards to families who may not have had a bank account to receive their tax refunds.<sup>52</sup> Consumer advocates supported the Treasury pilot, and had hoped it would be expanded nationwide in 2012. However, only 2,000 taxpayers signed up for the card, dashing hopes for its return.<sup>53</sup> The low signup rate may have been due to lack of promotion, as well as the fact that it was offered in mid-January, when tax season was already well underway. Taxpayers had to sign up for the card, wait until Treasury mailed the card to them, and then use the card’s account number for direct deposit— a much more cumbersome process than if the taxpayers were able to check off a box on their tax forms to receive a card.

Indeed, some states have begun issuing state tax refunds on prepaid cards to taxpayers who do not use direct deposit. These states include Connecticut,<sup>54</sup> New York,<sup>55</sup> and Oklahoma.<sup>56</sup> New York’s prepaid card appears to be optional, while Connecticut and Oklahoma appear to mandate issuance of a prepaid card (with some exceptions) if the taxpayer does not select direct deposit.

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<sup>50</sup> E-Collect, EPS Financial, at <http://www2.epsfincial.net/en/solutions/e-collect> (viewed Feb. 21, 2012).

<sup>51</sup> Press Release, The Bancorp Bank Teams Up with EPS Financial and Drake Software, Mar. 20, 2010.

<sup>52</sup> See NCLC/CFA 2011 RAL Report at 14.

<sup>53</sup> Michelle Crouch, *Pros and Cons of Tax Refund Prepaid Cards*, [www.creditcards.com](http://www.creditcards.com), Jan. 30, 2012, at [www.creditcards.com/credit-card-news/tax-refund-prepaid-cards-fees-1271.php](http://www.creditcards.com/credit-card-news/tax-refund-prepaid-cards-fees-1271.php).

<sup>54</sup> Mara Lee, *State Moving Toward Debit Cards for Income Tax Refunds*, Hartford Courant, Feb. 1, 2012, available at [www.courant.com/business/hc-state-tax-debit-card-20120131,0,6362810.story](http://www.courant.com/business/hc-state-tax-debit-card-20120131,0,6362810.story) (last viewed Feb. 21, 2012).

<sup>55</sup> Press Release, *New York State Tax Department Introduces Prepaid Card Option for Personal Income Tax Returns*, Dec. 2, 2011, available at [www.tax.ny.gov/press/rel/2011/prepaidcard120211.htm](http://www.tax.ny.gov/press/rel/2011/prepaidcard120211.htm) (last viewed Feb. 21, 2012).

<sup>56</sup> Ed Doney, *Why You May Not Get All of Your Tax Refund*, KFOR, Jan. 24, 2012, available at <http://www.kfor.com/news/local/kfor-why-you-may-not-get-all-of-your-tax-refund-20120124,0,5696917.story> (last viewed Feb. 21, 2012).

There are also a number of prepaid card options offered by private companies specifically targeted for delivery of tax refunds, some of which are discussed in Sections II.F and II.G, below. A few of these cards permit taxpayers to have the costs of tax preparation deducted from their refunds. There are similar prepaid debit cards available to taxpayers who use free VITA sites.

Regulations issued by Treasury's Financial Management Service govern the deposit of federal payments, including tax refunds, to prepaid cards.<sup>57</sup> These regulations require that the deposit be subject to FDIC insurance, require compliance with the Regulation E protections for payroll cards, and prohibit deposit to a card that has an attached line of credit or loan feature for which payment is automatically triggered when the federal payment is delivered.<sup>58</sup>

When optional, taxpayers should be cautious if considering prepaid cards. As with any financial product, taxpayers should compare costs and consumer protections when choosing among options. Some types of prepaid cards have lower fees and better protections than others.

#### I. Add-On Fees

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

All three of the major tax preparation chains—H&R Block, Jackson Hewitt, and Liberty Tax—had promised to stop charging add-on fees several years ago.<sup>59</sup> However, Jackson Hewitt started charging add-on fees again in 2010, specifically a “Data and Document Storage Fee” of up to \$40.<sup>60</sup> Subsequently, Jackson Hewitt's contract with Republic Bank & Trust permits Hewitt to charge an additional \$30 as a “transmitter's fee.”<sup>61</sup> Liberty may also be charging a \$20 add-on fee.<sup>62</sup>

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<sup>57</sup> 31 C.F.R. § 210.5(b)(5).

<sup>58</sup> *Id.*

<sup>59</sup> Chi Chi Wu and Jean Ann Fox, *Coming Down: Fewer Refund Anticipation Loans, Lower Prices from Some Providers, But Quickie Tax Refund Loans Still Burden the Working Poor*, National Consumer Law Center and Consumer Federation of America, Mar. 2008, at 7.

<sup>60</sup> 2010 RAL Mystery Shopper Report, Appendix B. *See also* Jackson Hewitt, Inc., Ask Jackson Hewitt, What is the Data and Document Storage Fee? (Dec. 10, 2009) (on file with authors).

<sup>61</sup> Fifth Amendment to Program Agreement Between Jackson Hewitt and Republic Bank & Trust (Sept. 30, 2010). *See also* Margaret Collins, *Taxpayers File for Refund Loans in Shadow of Stadium*, Bloomberg News, Feb. 7, 2011 (reporting that a RAL at Jackson Hewitt costs \$61.22 plus \$49.95 for the RAC and for “Jackson Hewitt's transmission”).

<sup>62</sup> Ragan Robinson, *Tax Refund Loans in Installments This Year*, Gaston Gazette, Jan. 3, 2011 (reporting that a RAL at Liberty Tax Service costs \$110, which is \$20 more than Republic's published price); Susan Tompor, *Tax-Refund Loans Harder to Come By*, Detroit Free Press, Feb. 7, 2011 (reporting that a RAC at Liberty Tax Service costs \$49.95, which is \$20 more than Republic's published price).

In addition, tax preparers not affiliated with one of the three big commercial tax preparation chains will often charge add-on fees. There are multiple types of add-on fees. Some of the names for add-on fees that we have observed include:

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

Some preparers will charge several add-on fees. The cumulative impact of add-on fees can be very expensive. Mystery shopper testing by consumer groups found add-on fee totals ranging from \$25 to \$324 in 2008;<sup>63</sup> \$19 to \$85 in 2010;<sup>64</sup> and \$35 in 2011.<sup>65</sup> Similar mystery shopper testing by First Nations Development Institute found significant add-on fees.<sup>66</sup> A New Jersey court decision documents how a local chain, Malqui Tax, charged a document preparation fee of \$134, plus a service fee of \$15, to RAL and RAC customers.<sup>67</sup>

In many cases, add-on fees are not actually determined by the tax preparer, but by the software or transmitter company that the preparer uses.<sup>68</sup> In other cases, the provider of the financial product builds in the capability to charge add-on fees, as well as capping them. For example, EPS e-Collect (discussed in Section I.G above) permits preparers to deduct a transmitter fee; a Service Bureau fee (capped at \$35); and up to \$999.99 in preparation fees (although EPS will “monitor” fees over \$400).<sup>69</sup>

#### J. Lack of Transparency in Tax Preparation Fee

Another consumer- related problem faced by taxpayers is the lack of transparency around tax preparation fees. Mystery shopper testing by consumer groups and others has found systemic problems in the ability of consumers to obtain information about how much tax preparation services will cost. There are numerous examples of preparers giving low-ball estimates on preparation fees or even refusing to provide testers with a quote. Some of these examples include:

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<sup>63</sup> 2008 RAL Mystery Shopper Report, Attachment 2.

<sup>64</sup> 2010 RAL Mystery Shopper Report, Appendix B.

<sup>65</sup> 2011 RAL Mystery Shopper Report, Appendix B.

<sup>66</sup> 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.

<sup>67</sup> Press Release, Office of the New Jersey Attorney General, Tax Preparation Firm Ordered to Pay \$3.5 Million for Deceptive Sales of “Refund Anticipation Loans” (Apr. 14, 2009), *available at* <http://www.nj.gov/oag/newsreleases09/pr20090414a.html>.

<sup>68</sup> See NCLC/CFA 2010 Report at 18.

<sup>69</sup> EPS Financial, ERO e-Collect Program Handbook 2012, on file with authors.

- Several testers in 2010 mystery shopper testing reported that preparers did not provide much information about the cost of tax preparation. Testers recounted how preparers “avoided the question,” “let her know up front that they fees were high, but couldn’t get me the exact amount,” or were told that a preparer couldn’t estimate fees because the “computer did it.” One tester was quoted a price of \$70 for tax preparation fees by a Jackson Hewitt outlet, but ended up paying over \$400. Another tester reported that she had to argue with a Liberty Tax Service outlet to obtain a 50% discount that the outlet had advertised outside its offices. The preparer also conflated the tax preparation and RAL/RAC fees. Several instances of extremely high tax preparation fees were observed, such as over \$400.<sup>70</sup>
- A limited set of mystery shopper tests in 2011 found worse issues and even higher fees. A tester was charged a \$540 fee by Liberty Tax. The Liberty Tax preparer informed the tester that she had filed too late for a 50% discount. Later, the preparer refused to provide a breakdown of the fee, even when a consumer advocacy group called on the tester’s behalf. The preparer stated that customers complained about this particular Liberty Tax store’s fees sometimes, but that the store was able to get customers more money back than other tax preparers. In the case of the tester, it appears that “more money back” was due to the preparer erroneously claiming one of the tester’s daughters for the EITC. Another notable fact was that four of the testers in the 2011 testing who were EITC recipients with larger refunds were charged fees of over \$300, while testers with smaller refunds (or who owed money) were charged lesser amounts, in some cases because of significant discounts. In fact, a Liberty Tax preparer informed one tester that the tax preparation fee “depends; and that if he didn’t get a refund they would charge him less.”<sup>71</sup>
- In the 2008 mystery shopper testing, most of the preparers did not give the testers price estimates for tax preparation. Three testers specifically asked about the price of tax preparation, but were refused information. The preparers claimed that they based their pricing by form, and thus could not provide an estimate before preparation.<sup>72</sup>
- In 2011, mystery shopper testing by First Nations Development Institute found that only 2 out of 12 received anything resembling an accurate, detailed estimate. Most of the testers, when they asked for an estimate, were told that the cost varied based on the number of forms filed, and were quoted a general amount for preparing a Federal Form 1040. Testers were given vague estimates that were confusing and made it difficult for the tester to determine total estimated costs. For most preparers, the fees were much more than the vague estimate. None of the testers were given a detailed, itemized receipt after they had paid for their services. Many receipts indicated lump sum amounts for the federal and state tax

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<sup>70</sup> 2010 RAL Mystery Shopper Report at 9.

<sup>71</sup> 2011 RAL Mystery Shopper Report at 5-6.

<sup>72</sup> 2008 RAL Mystery Shopper Report at 9.

returns and a RAC. Several companies indicated they were offering a discount on tax preparation fees, but could not clearly explain their discounts.<sup>73</sup>

- In 2011, H&R Block advertised free tax preparation, while Jackson Hewitt promoted a \$38 fee. However, these offers were only valid for preparation of a 1040EZ, which is a form that cannot be used if the taxpayer is claiming dependents or the EITC (unless it is for the smaller EITC without dependents). One consumer recounted how she was attracted by Jackson Hewitt's offer of \$38 filing, only to end up paying \$289 in fees (out of a \$413 refund), including a \$30 RAC fee and \$20 transmittal (add-on) fee.<sup>74</sup>
- In 2008, Impact Alabama noted that its mystery shopper testing found that “[m]ost of the preparers did not give the testers price estimates for preparation ahead of time. Most commercial tax preparers base their pricing by form, and thus claim they cannot provide an estimate before preparation begins. This failure to provide clear pricing makes comparison shopping difficult.”<sup>75</sup> In addition, the head of this group noted in press statements that “[a]t the end many [preparers] pull out a number and clearly charge more the bigger the refund is...”<sup>76</sup>
- Testing by the GAO in 2006 found that 8 out of 19 preparers either did not provide an estimate or gave an estimate with the qualifier that the fee would depend on the forms required. Furthermore, the GAO found: “The fees charged in our 19 visits varied widely, sometimes between offices affiliated with the same chain, and were sometimes significantly larger or smaller than the original estimate we were given.”<sup>77</sup>

The ability to deduct tax preparation fees from a RAC – or a RAL – compounds this problem. It enables commercial preparers to withhold information on the price of tax preparation. They also make taxpayers less sensitive to the price of preparation. Normally, a merchant's refusal to provide price information might discourage a consumer from buying a product. However, since the fee is deducted from the RAC, consumers may not be as sensitive to this lack of pricing information.

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<sup>73</sup> 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.

<sup>74</sup> Dave Lieber, *Beware of Jackson Hewitt's \$38 fee*, Connecticut Watchdog, May 5, 2011, at <http://ctwatchdog.com/misc/beware-of-jackson-hewitts-38-fee>.

<sup>75</sup> Impact Alabama, *Impact Alabama Undercover Investigation of Commercial Tax Preparers in Alabama Results and Analysis*, Jan. 2009, on file with authors.

<sup>76</sup> Nick Cenegy, *Group Finds Errors in Alabama Tax Returns Probe; Aniston Business Named in Study*, Anniston Star, Jan. 23, 2009.

<sup>77</sup> U.S. Government Accountability Office, *Paid Tax Preparers: In a Limited Study, Chain Preparers Made Serious Errors*, GAO-06-563T, April 4, 2006, at 24, available at <http://www.gao.gov/new.items/d06563t.pdf>.



The ability to deduct fees from a RAC also enables independent preparers to pad the price with add-on fees. In 2008, a trade newsletter published by a software provider bluntly advised:<sup>78</sup>

The most successful e-file shops in the U.S. do not use price lists and they "lowball" their tax preparation charges to get the customer in the door. (Note: In some markets it's customary to throw in free e-file and charge a higher price for the tax return preparation). ***They then charge more for e-filing and bank products to make up for the "lowball" price.*** For instance, if the going price for 1040EZ's in your area is \$49 you might want to charge \$29. Advertise the \$29 price with a note at the bottom (the fine print) that says "1040EZ's". Get the customer in the door. Then charge more for the e-file and bank products to make up for the discounted \$29 price. (emphasis added).

An example of this type of "successful" tax preparer was a Jackson Hewitt franchisee with more than a dozen offices in New York and New Jersey. This Hewitt franchisee allegedly advertised that its minimum fees were \$27 for a New York State long form and \$22 for a New York State short form. However, the franchisee would automatically add various extra fees, including a 15% multiplier to its tax preparation fee and a \$25 hidden RAL/RAC fee. One customer was charged \$50 in hidden RAL/RAC fees, a \$75 RAL application fee, \$57 for the Form 1040, \$27 for a NYS Long form, \$72 for a Child Care Credit form, and \$6 for unemployment compensation – on top of the RAL fee of \$150. However, the customer was never given this itemized breakdown of fees.<sup>79</sup>

#### K. Fallout from H&R Block's Loss of RALs in 2011

In 2011, H&R Block was left without RALs when the OCC issued a directive prohibiting HSBC (Block's RAL lending bank partner) from offering the loans.<sup>80</sup> HSBC had already shown indications that it wanted to leave the RAL market. In fact Block had sued HSBC in October 2010 to force the bank to make preparations for RAL lending in the 2011 tax season.<sup>81</sup> Thus, the OCC order was seen as a "friendly" directive.

Perhaps surprisingly to some, Block's business did not suffer from the loss of RALs. Its retail stores saw a gain of 3.6% in 2011 as compared to 2010.<sup>82</sup> These results

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<sup>78</sup> WorldWideWeb Tax, *Tax Return Pricing*, The Tax Time News, Oct. 2008, on file with authors.

<sup>79</sup> *Watts v. Jackson Hewitt Tax Service*, 579 F. Supp.2d 334 (E.D.N.Y. 2008).

<sup>80</sup> Press Release, H&R Block, *HSBC Terminates Agreement to Provide RALs at Direction of OCC* (Dec. 24, 2010).

<sup>81</sup> See Complaint, *HRB Tax Group, Inc. v. HSBC Bank USA, N.A.*, Case 4:10-cv-01946 (E.D. Mo. Oct. 15, 2010).

<sup>82</sup> H&R Block had 14,756,000 retail customers in 2011, versus 14,246,000 in 2010. H&R Block Inc., *2011 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, at 19. [hereinafter H&R Block 2011 Form 10-K]

may have contributed to Block's decision in September 2011 not to seek a new RAL lending bank for the 2012 tax season.<sup>83</sup>

In contrast, when Jackson Hewitt lost its RAL bank partner in 2010, it lost 15% of its retail customers, even though it found RAL coverage for about half of its offices.<sup>84</sup> Hewitt's business declined by 8% even in markets where it had RALs available, and a whopping 21% in markets where it did not have RALs.<sup>85</sup>

#### L. Fillable PDFs and Facilitated Self-Assistance

For years, consumer advocates have urged that the IRS provide the ability for taxpayers to electronically file their returns with that agency, without the need for a third party intermediary. A few years ago, the IRS took an initial step by offering a "Fillable Form" option in the Free File program. However, this program does not appear to be directly operated by the IRS, and therefore involves a third party intermediary. When a user clicks on the link to the Fillable Forms program, the IRS website directs the user to another page with the warning "***Please note*** that by clicking on this link, you will leave the IRS web site and enter a privately owned web site created, operated and maintained by a private business."<sup>86</sup>

This year, the IRS took another small step toward offering direct e-filing by offering Facilitated Self Assistance, an IRS program in which eligible low-income taxpayers can go to a Volunteer Income Tax Assistance (VITA) site to prepare their own taxes using software on the site's computers. Volunteers at the VITA site are available to help these taxpayers with the software.<sup>87</sup>

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<sup>83</sup> Press Release, H&R Block Decides Not to Offer Refund Anticipation Loan in 2012, Sept. 13, 2011, available at <http://www.hrblock.com/press/Article.jsp?articleid=52784>.

<sup>84</sup> NCLC/CFA 2011 RAL Report at 21-22.

<sup>85</sup> *Id.*

<sup>86</sup> See <http://www.irs.gov/app/scripts/exit.jsp?dest=https%3A%2F%2Fwww.freefilefillableforms.com> (visited Feb. 21, 2012).

<sup>87</sup> IRS Publication 4972, Jan. 2012, available at [http://www.mchc.net/pdfs/P%204972\\_final12%20self%20assist%20fill.pdf](http://www.mchc.net/pdfs/P%204972_final12%20self%20assist%20fill.pdf). See also IRS, Free Tax Return Preparation for You by Volunteers, Feb. 2012, at <http://www.irs.gov/individuals/article/0,,id=107626,00.html> (visited Feb. 22, 2012).

## PART II. INDUSTRY PLAYERS

This section provides basic information on the RAL activity of key industry players, an overview that we provide annually in our RAL reports. We discuss certain other topics affecting these players, such as regulatory measures, law enforcement actions, and other events, in other parts of this report.

Historically, the RAL 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. The loans were made by banks because of the banks' ability to avoid state interest rate caps and because IRS rules prohibit the tax preparer from being the RAL lender.<sup>88</sup>

### A. H&R Block

H&R Block is the nation's largest tax preparation chain, accounting for 15.6% of all individual tax returns in 2010.<sup>89</sup> H&R Block stated that for 2010 "[w]e prepared 20.1 million U.S. returns [including software/online returns] in fiscal year 2010, and of those clients 16.8% also purchased a RAL."<sup>90</sup> Thus, H&R Block appears to have made 3.4 million RALs in 2010, which is an increase of 15% from the 2.95 million RALs it made in 2009.

Previously, H&R Block also earned fees from RALs through its arrangement to have H&R Block Financial Corporation buy a 49.9% interest in RALs arranged by its tax preparation offices. In 2010, H&R Block earned \$146.2 million in this type of revenue, constituting about 4.9% of tax services revenue.<sup>91</sup>

In 2011, H&R Block did not have the ability to offer RALs because its bank partner, HSBC, was ordered by the OCC to stop making RALs.<sup>92</sup> The company did process 6 million RACs through its own bank, Block Bank.<sup>93</sup> Despite the lack of RALs, H&R Block did not experience a decrease in customers, and in fact gained 3.6% more customers in its retail stores. Block announced in September 2011 that it would not seek a new RAL lending bank for the 2012 tax season.<sup>94</sup>

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<sup>88</sup> See NCLC/CFA 2002 RAL Report, at 18–19.

<sup>89</sup> H&R Block Inc., *2010 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, at 2. [hereinafter H&R Block 2010 Form 10-K].

<sup>90</sup> *Id.* at 10.

<sup>91</sup> H&R Block 2010 Form 10-K, at 19.

<sup>92</sup> See Section I.K, above.

<sup>93</sup> H&R Block, Inc., H&R Block's CEO Discusses Q4 2011 Results—Earnings Call Transcript, June 23, 2011, available at <http://seekingalpha.com/>

<sup>94</sup> See Section I.K, above.

H&R Block offers the Emerald Card, a prepaid debit card, to its tax preparation customers. H&R Block had about 2.5 million Emerald Cards users in 2010,<sup>95</sup> and 2.3 million in 2011.<sup>96</sup>

The Emerald Card also allows customers to access the Emerald Advance Line of Credit, which is a pre-season or “pay stub” product that provides loans of up to \$1,000. The Emerald Advance carries an annual fee of \$45 for the first year with an interest rate of 36%.<sup>97</sup> Thus, for a \$500 advance repaid in one month, the total fee would \$60. A one month, closed-end loan with the same loan amount and fee would have an APR of 158%, if the annual fee were to be included in the finance charge (which Truth in Lending does not require). For returning customers, the annual fee is lowered to \$30 for the next year. If the customer secures the line of credit with a deposit in an Emerald savings account, the interest rate is reduced to 9%.<sup>98</sup> H&R Block earned about \$78 million in interest from its Emerald Advance line of credit in 2010.<sup>99</sup> It earned about \$94 million in interest from Emerald Advances in 2011.<sup>100</sup>

Even though Block itself did not offer RALs in 2011 or 2012, one of the companies that Block owns did offer a tax-time loan in 2012. TaxWorks, a division of RedGear, which is owned by Block, is promoting a “Tax Season Cash Advance” provided by Schear Lending Group and Atlas Financial Services. As discussed in Section II.F below, Schear Lending Group appears to be affiliated with Ohio-based payday lenders.

## B. Jackson Hewitt

Jackson Hewitt is the second largest tax preparation chain in the country, preparing 2.53 million returns in 2010, or about a 3% share of the paid preparer market.<sup>101</sup> This is a decline of about 15% from the 2.96 million returns that it prepared in 2009.<sup>102</sup>

In 2010, Jackson Hewitt lost half of its RAL capacity when its main RAL bank partner, Santa Barbara Bank & Trust, was forced out of the RAL market.<sup>103</sup> That year, Jackson Hewitt sold a financial product to about 2.2 million (or 87%) of its customers.<sup>104</sup>

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<sup>95</sup> H&R Block, Inc., H&R Block CEO Discusses F1Q2011 Results—Earnings Call Transcript, Sept 2, 2010, *available at* <http://seekingalpha.com/>.

<sup>96</sup> H&R Block, Inc., H&R Block’s CEO Discusses Q4 2011 Results—Earnings Call Transcript, June 23, 2011, *available at* <http://seekingalpha.com/>

<sup>97</sup> H&R Block, Emerald Advance Term Sheet, undated, on file with authors.

<sup>98</sup> H&R Block, Emerald Advance Term Sheet, undated, on file with authors.

<sup>99</sup> H&R Block 2010 Form 10-K, at 19.

<sup>100</sup> H&R Block Inc., *2011 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, at 19. [hereinafter H&R Block 2011 Form 10-K].

<sup>101</sup> Jackson Hewitt Tax Service Inc., 2010 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 2 [hereinafter Jackson Hewitt 2010 Form 10-K].

<sup>102</sup> Jackson Hewitt Tax Service Inc., 2009 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 2.

<sup>103</sup> NCLC/CFA 2010 RAL Report, at 23.

<sup>104</sup> Jackson Hewitt 2010 Form 10-K at 35.

The company stated that “our attachment rate of loan and non-loan refund-based products was 72.2% in 2010;”<sup>105</sup> thus, we can calculate that Jackson Hewitt made 1.8 million RALs and RACs in 2010. Hewitt did not report the breakdown of RALs versus RACs. However, based upon what we know about the RAL industry in 2010, we can estimate that Hewitt made about 500,000 to 600,000 RALs.<sup>106</sup>

Even with these declines, Jackson Hewitt continues to derive a large percentage of its profits from financial products. In 2010, it earned \$46.3 million in such fees, or 22% of revenues.<sup>107</sup> In 2010, Jackson Hewitt’s tax preparation volume declined 8% in markets where it had RALs available versus 21% in markets where it did not have RALs.<sup>108</sup>

Because of the loss of RALs in 2010, as well as other factors, Jackson Hewitt has struggled over the past few years. In May 2011, Hewitt filed for bankruptcy protection from its creditors, from which it emerged a few months later.<sup>109</sup>

### C. Liberty Tax Service

Liberty Tax is the third significant commercial tax preparation chain in the country, with 3,900 locations.<sup>110</sup> Liberty Tax prepared 1.9 million returns in 2010 and 2 million in 2011.<sup>111</sup> 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 \$14.2 million in RAL and RAC fees in 2010 or 17% of its revenue.<sup>112</sup> It earned \$16.5 million in RAL and RAC fees in 2011, again constituting 17% of net revenue.<sup>113</sup>

In 2010, Liberty sold about 783,000 financial products to its customers,<sup>114</sup> of which 300,000 were RALs.<sup>115</sup> Thus, Liberty sold a financial product to about 40% of its customers, and made a RAL to about 16%. In 2011, Liberty sold financial products to

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<sup>105</sup> Jackson Hewitt Tax Service Inc., *Q4 2010 Jackson Hewitt Tax Service Inc. Earnings Conference Call—Final*, Fair Disclosure Wire, July 14, 2010.

<sup>106</sup> Republic Bank & Trust, which was Hewitt’s 2010 lending bank, reported that it made 837,000 RALs. See Section II.D below. We know that Liberty Tax Service reported that it made 300,000 RALs. See Section II.C below. Thus, Hewitt made about 500,000 to 600,000 RALs.

<sup>107</sup> Jackson Hewitt 2010 Form 10-K, at 34.

<sup>108</sup> *Id.* at 36.

<sup>109</sup> Peg Brickley, *Jackson Hewitt Set to Leave Chapter 11*, Wall St. J., Aug. 8, 2011.

<sup>110</sup> JTH Holding, Inc., Form S-1: Registration Statement under the Securities Act of 1933 (amended version Nov. 7, 2011), at 1 [hereinafter “Liberty Tax Service Prospectus”].

<sup>111</sup> *Id.* at 41.

<sup>112</sup> *Id.* at 8.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 41.

<sup>115</sup> Eileen AJ Connelly, *H&R Block Suit May Signal Sunset of Refund Loans*, Associated Press, Oct. 20, 2010.

902,000 customers - nearly half of its customer base.<sup>116</sup> However, it only sold a RAL to 5.6% of its customers in 2011, or about 112,000.<sup>117</sup>

Liberty also appears to be making plans for the end of bank RALs. The company is planning to go public, and filed a prospectus with the Securities and Exchange Commission in September 2011 (amended November 2011) revealing that it plans to partner with a non-bank lender to make RALs.<sup>118</sup> Subsequently, Liberty's website showed that it has partnered with SGS Credit Services, Inc. as its lender in Arizona or Texas, and with a number of entities with similar names in Louisiana, Michigan, Missouri, and Washington State.<sup>119</sup> The president of SGS Credit Services is Eugene L. McKenzie, Jr., with a listed address of Arlington, TX.<sup>120</sup> Mr. McKenzie is connected to companies such as Infinity Specialty Finance, LLC, and MKS Financial Services, Inc.<sup>121</sup> He has served as the treasurer for the Texas Consumer Lenders PAC,<sup>122</sup> and both he and the PAC are top donors amongst payday lenders to Texas politicians.<sup>123</sup>

#### D. Republic Bank & Trust

The only bank left in the RAL market is Republic Bank & Trust, a state-chartered bank located in Louisville, Kentucky. Republic became the main lending partner for Jackson Hewitt and Liberty Tax Service after Santa Barbara Bank & Trust was forced to exit the RAL market. In 2010, Jackson Hewitt represented about 34% of Republic's RAL and RAC business; Liberty Tax represents another 29% of the business.<sup>124</sup> In 2011, Hewitt represented 40% of Republic's RAL and RAC business, while Liberty Tax represented 20%.<sup>125</sup>

Republic made 837,000 RALs in 2010, which is a slight increase from 2009.<sup>126</sup> Republic did not report how many RALs it made in 2011; however, its CEO stated that Republic made 3.5 million RALs and RACs in 2011.<sup>127</sup> Since Republic earned \$88 million in RAC fees in 2011,<sup>128</sup> at the cost of \$30 per RAC, it made about 2.9 million RACs and thus about 600,000 RALs.

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<sup>116</sup> Liberty Tax Service Prospectus at 41.

<sup>117</sup> *Id.* at 43.

<sup>118</sup> *Id.* at 21.

<sup>119</sup> See [www.libertytax.com/refund-and-loan-options.html](http://www.libertytax.com/refund-and-loan-options.html) (visited Feb. 23, 2012).

<sup>120</sup> Arizona Corporation Commission, Application For Authority to Transact Business in Arizona for SGS Credit Services, July 6, 2011.

<sup>121</sup> <http://www.corporationwiki.com/Texas/Arlington/eugene-l-mckenzie/36976178.aspx> (visited Feb. 23, 2012).

<sup>122</sup> Texas Consumer Lenders PAC, General-Purpose Committee Campaign Finance Report, Dec. 2011.

<sup>123</sup> Texans for Public Justice, Loan-Shark-Financed Campaigns Threaten Payday-Loan Reform, March 2011, available at <http://info.tpj.org/reports/pdf/PaydayReport.mar2011.pdf>.

<sup>124</sup> Republic Bancorp, Form 10-Q: Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Quarterly Period Ended September 30, 2010, at 55 [hereinafter Republic September 2011 Form 10-Q].

<sup>125</sup> *Id.*

<sup>126</sup> Steve Trager, Rodman Renshaw Annual Global Investment Conference, Republic Bancorp 29 (Sept. 13, 2010).

<sup>127</sup> Bloomberg News, Pre-Refund Loans Fading into Past, Portland Press Herald, Dec 20, 2011.

<sup>128</sup> Republic September 2011 Form 10-Q at 4.

Republic earned \$44.2 million in net income from RALs and RACs in 2010, or a whopping about 68% of the bank's income.<sup>129</sup> This compares with \$20 million in net income from RALs and RACs in 2009,<sup>130</sup> and thus represents a 121% increase.

#### E. Small Chains

The tax preparation industry contains a number of smaller chains. Two of the most notable are Mo' Money Taxes and Instant Tax Service. Both have been the subject of controversy, including incidents this year in which they were accused of failing to give customers their refunds.

MoneyCo USA, known as Mo' Money Taxes, is a smaller chain of over 100 stores in 18 states.<sup>131</sup> Mo' Money has been the subject of enforcement action by the North Carolina Commissioner of Banks<sup>132</sup> and the Arkansas Attorney General, whose settlement is discussed in Section III.B below. Several years ago, Mo' Money produced outlandish advertisements that could be considered to be racial stereotyping and offensive.<sup>133</sup>

This year, there have been numerous news reports and consumer complaints that Mo' Money Taxes has not been delivering refunds owed to customers.<sup>134</sup> Refunds that the IRS stated had already been issued were allegedly not received by Mo' Money customers.<sup>135</sup> Other customers claimed they received checks representing their refunds that bounced or were even drawn on nonexistent accounts.<sup>136</sup> In addition, some customers reported that they have gone to some Mo' Money offices only to find them closed, while others reported that Mo' Money did not answer its phones or return calls.<sup>137</sup>

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<sup>129</sup> Republic Bancorp, 2010 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 6.

<sup>130</sup> Republic Bancorp, 2009 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 4.

<sup>131</sup> See <http://www.moneycousa.com/locations.php> (visited Feb. 23, 2011).

<sup>132</sup> See NCLC/CFA 2011 RAL Report at 33.

<sup>133</sup> Adam Rust, *Mo' Money Taxes Gets a Slap Down*, Bank Talk Blog, Feb. 12, 2010 at <http://banktalk.org/2010/02/12/mo-money-taxes-gets-a-slap-down/> (visited Feb. 18, 2010).

<sup>134</sup> See, e.g., Robert Jordan, *Angry Taxpayers Demand Refunds from 'Mo Money'*, WTKR, Feb. 7, 2012 (Chicago); *Mo' Money Offices Closed, IRS and Norfolk PD Investigating Complaints*, WVEC.com, Feb. 7, 2012; *Mo Money Customers Complain Across US, IRS Responds to Delays*, WREG-TV, Feb. 6, 2012.

<sup>135</sup> Natasha Chen, *Previously Sued Mo' Money Taxes Keeps Customers Waiting*, WREG-TV, Feb. 1, 2012, available at [www.wreg.com/news/wreg-previously-sued-mo-money-taxes-keeps-customers-waiting-20120201.0.6735023.story](http://www.wreg.com/news/wreg-previously-sued-mo-money-taxes-keeps-customers-waiting-20120201.0.6735023.story) (visited Feb. 23, 2012).

<sup>136</sup> Nick Kenney, *Customer: Mo' Money Taxes Wrote Bad Refund Check*, WMC-TV, Feb. 7, 2012, available at [www.wmctv.com/story/16697978/customer-momoney-taxes-wrote-bad-refund-check](http://www.wmctv.com/story/16697978/customer-momoney-taxes-wrote-bad-refund-check) (visited Feb. 23, 2012).

<sup>137</sup> Maggie Shader, *Beware of Tax Preparation Company Mo Money Taxes, BBB Says*, ConsumerReports.org, Feb 8, 2012, available at <http://news.consumerreports.org/money/2012/02/beware-of-tax-preparation-company-mo-money-taxes-bbb-says.html> (visited Feb. 23, 2012).

Two Congressmen have asked the U.S. Department of Justice for an immediate investigation of potentially fraudulent and criminal activity.<sup>138</sup>

Instant Tax Service, founded by Fesum Ogbazion, is another small chain with a history. In 2010, when Instant Tax lost the ability to make RALs after Santa Barbara Bank & Trust was barred from making RALs by its regulators, some franchisees failed to inform their customers, leading to angry crowds for which one franchisee even called the police.<sup>139</sup>

This year, Instant Tax Service experienced problems similar to Mo' Money Taxes. Some consumers complained that Instant Tax had filed their returns without the consumers' permission.<sup>140</sup> Others report that they were issued refund checks that bounced or that check cashers refused to honor.<sup>141</sup> Instant Tax Service defended itself by claiming that the checks were issued by Tax Tree, LLC, and had bad check sequencing numbers that were to blame for the cashing problems.<sup>142</sup> However, Tax Tree, LLC appears to be a related entity to Instant Tax Service. Registrations with the Ohio Secretary of State's office for both companies show Fesum Ogbazion's signature as a representative or manager.<sup>143</sup>

#### F. Other Banks and Financial Products Providers

Santa Barbara Tax Products Group is the former Pacific Capital Bancorp RAL unit that was spun off after that bank was ordered to cease making RALs by the Office of Comptroller of Currency.<sup>144</sup> SBTPG's offerings for 2012 include a RAC product that it calls a "Refund Transfer," as well as a state Refund Transfer program.

River City Bank in Louisville, Kentucky, was formerly a RAL lending bank but decided to exit the business last year when the FDIC notified the bank that making RALs without the Debt Indicator was "unsafe and unsound."<sup>145</sup> River City still provides a RAC

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<sup>138</sup> Press Release, Cohen & Scott Call for Investigation of Tax Preparation Scams, Feb 8, 2012, *available at* <http://cohen.house.gov/press-release/cohen-scott-call-investigation-tax-preparation-scams> (visited Feb. 23, 2012).

<sup>139</sup> Linda Wagar, *Angry Customers Demand Money Back After Quick Tax Refund Offer Falls Through*, WDAF-Fox TV, Jan. 20, 2010. *See also* Katie Byard, *Tax Service Promoting Fast Loans Can't Keep Promise*, Akron Beacon Journal, Jan. 18, 2010.

<sup>140</sup> Chris Dyches, *Crowd Outside Charlotte Tax Agencies Want Reportedly Promised Money*, WBTV, Jan. 27, 2012.

<sup>141</sup> Melanie Alnwick, *Tax Refund Check Cashing Issues Arise For Some Instant Tax Service Customers in DC*, [www.myfoxdc.com](http://www.myfoxdc.com), Feb. 9, 2012, at [www.myfoxdc.com/dpp/news/local/tax-refund-check-cashing-issues-arise-for-some-instant-tax-service-customers-in-dc-020812](http://www.myfoxdc.com/dpp/news/local/tax-refund-check-cashing-issues-arise-for-some-instant-tax-service-customers-in-dc-020812) (visited Feb. 23, 2012); Ragan Robinson, *Angry Customers, Police Presence at Tax Prep Office*, Gaston Gazette, Jan. 27, 2012.

<sup>142</sup> Melanie Alnwick, *Tax Refund Check Cashing Issues Arise For Some Instant Tax Service Customers in DC*, [www.myfoxdc.com](http://www.myfoxdc.com), Feb. 9, 2012, at [www.myfoxdc.com/dpp/news/local/tax-refund-check-cashing-issues-arise-for-some-instant-tax-service-customers-in-dc-020812](http://www.myfoxdc.com/dpp/news/local/tax-refund-check-cashing-issues-arise-for-some-instant-tax-service-customers-in-dc-020812) (visited Feb. 23, 2012).

<sup>143</sup> Ohio Secretary of State, *Registration of Foreign Limited Liability Co. for Tax Tree LLC*, June 29, 2011; Ohio Secretary of State, *Registration of Trade Name/Original Filing for TCA Financial, LLC*, Mar. 16, 2004, both on file with the authors.

<sup>144</sup> *See* NCLC/CFA 2010 RAL Report at 14-15.

<sup>145</sup> *See* NCLC/CFA 2011 RAL Report at 6.



product. River City Bank partners with several software providers, including ACA, ATX, Drake, efile Interchange, OLTPRO, TaxACT, ProSystem fx Suite, TaxSlayer, Taxware Systems, TaxWise, Versicom Communications, and ProTaxPro.com.<sup>146</sup>

Taxpayers who use a River City RAC can get their money on a prepaid card issued at the preparer's office, by direct deposit to their personal bank account, or via a check printed in the tax preparer's office.<sup>147</sup> The prepaid card sold by River City Bank is from Futura Card Services, which pays a commission of up to \$12 per customer to tax preparers who sell the card.<sup>148</sup> The Futura Card is issued by First California Bank.<sup>149</sup> In addition to the commissions for selling prepaid cards, tax preparers can earn up to \$4 for every funded RAC.<sup>150</sup>

Refund Advantage is the tax products division of Ohio Valley Bank, another RAL lending bank that decided to exit the business last year when the FDIC notified the bank that making RALs without the Debt Indicator was "unsafe and unsound."<sup>151</sup> Refund Advantage still offers RACs, and is integrated into tax software programs including Intuit, OLTPRO, TaxSlayer, TaxWise, Taxware Systems, Thomson Reuters, www.pdptax.com, Profit Developers, Incl Service Bureau, ProTaxPro.com, QRTaxPro, SaxTax, and 1040Now.com. Refund Advantage claims that it can be used with any tax software and permits the refund to be delivered via a prepaid card product.<sup>152</sup> The program claims that there are "no hidden monthly or setup charges for the card."<sup>153</sup>

Advent sells the "Refund Deposit," a RAC for federal and state refunds, with tax preparation and other fees deducted from the refund proceeds. Net refunds are disbursed on a "Get It" prepaid debit card issued at the time of tax preparation, an ACH deposit to the taxpayer's existing bank account, or a check printed at the tax office. AdventFinancial's Settlement Products are integrated into many software providers, including CrossLink Software (Petz), DRAKE Software, OLT, Pro Tax Ware, TaxACT, TaxSlayer, Taxware Systems, and TaxWise.

Another prepaid card that pitches tax time offerings is the RushCard offered by Russell Simmons, founder of a prominent hip-hop music label.<sup>154</sup> The RushCard website urges consumers to take the card's routing number, account number, and account type for the card when having taxes prepared. It even notes which lines on the tax form to use in entering the information. While there is a maximum \$5,000 load amount for direct

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<sup>146</sup> <http://rcbral.com/tax-software-compatibility.html> (visited Feb. 20, 2012).

<sup>147</sup> <http://rcbral.com/electronic-refund-checks.html> (visited Feb. 20, 2012).

<sup>148</sup> The preparer receives \$4 for each customer that has one tax refund deposited to the Futura card, plus an additional \$8 for customers that enroll in payroll or government benefits direct deposit to the card. River City Bank, Earn Additional Revenue by Offering the FCS Refund Access Prepaid MasterCard, at [www.rcbral.com/river-city-bank-prepaid-card-solution.html](http://www.rcbral.com/river-city-bank-prepaid-card-solution.html) (visited Feb. 20, 2012).

<sup>149</sup> [www.rcbral.com/river-city-bank-prepaid-card-solution.html](http://www.rcbral.com/river-city-bank-prepaid-card-solution.html) (visited Feb. 20, 2012).

<sup>150</sup> <http://rcbral.com/tax-preparer-incentives.html> (visited Feb. 20, 2012).

<sup>151</sup> NCLC/CFA 2011 RAL Report at 6.

<sup>152</sup> [www.refund-advantage.com/howitworks.aspx](http://www.refund-advantage.com/howitworks.aspx) (visited Feb. 20, 2012).

<sup>153</sup> <https://www.refund-advantage.com/products.aspx?pid=3> (visited Feb. 20, 2012).

<sup>154</sup> [www.rushcard.com/taxtime/DDHowTo.aspx](http://www.rushcard.com/taxtime/DDHowTo.aspx) (visited Feb. 13, 2012). See NCLC/CFA 2004 RAL Report at 11 for a critique of the RushCard's high fees.

deposit to the card, that does not apply to tax refunds. The RushCard is issued by Bancorp Bank.<sup>155</sup>

Atlas Financial Services is partnering with Schear Lending Group in 2012 to make “Tax Season Cash Advances,” which appear to be essentially non-bank RALs. These RALs are offered to preparers using RedGear tax software, marketed as “TaxWorks” and “1040Works.”<sup>156</sup> Red Gear is owned by H&R Block, see Section II.A above. Tax refund amounts after the RAL and loan fees are repaid are distributed by Citizens Bank or New Capital Bank using their QIK Funds product, which is a RAC described below.

Schear Lending appears to be linked to a number of payday lending operations. Schear Lending claims to be the leading non-bank provider of small dollar consumer credit in the country, making over \$8.5 billion in consumer loans to more than 15.8 million customers.<sup>157</sup> The company seems to be related to Schear Financial Services,<sup>158</sup> which is headed by Lee Schear.<sup>159</sup> Lee Schear founded Cashland, the payday loan store,<sup>160</sup> and is the President of NCP Finance,<sup>161</sup> which promotes the “credit services organization” model of payday lending.<sup>162</sup> Among NCP Finance’s clients are payday lenders ACE Cash Express, CashAmerica, Check ‘N Go, and Advance America.<sup>163</sup>

While it appears that a few non-bank lenders, such as Schear Lending and SGS Credit Services, see Section II.C above, are making RALs, these loans will most likely not be as widespread as bank RALs. Nonbank lenders do not have the legal ability, unlike banks, to flout state laws that cap interest rates, *i.e.*, usury laws.<sup>164</sup> Tax-time loans from payday lenders and other storefront outlets that offer to prepare taxes and make loans may be subject to state loan laws, usury caps, or loan broker requirements in states that have them. Seventeen states (and District of Columbia) do not authorize extremely high-cost payday lending at all.<sup>165</sup>

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<sup>155</sup> [www.rushcard.com/DD/Default.aspx](http://www.rushcard.com/DD/Default.aspx) (visited January 11, 2012).

<sup>156</sup> [http://www.taxworks.com/cash\\_advance.aspx](http://www.taxworks.com/cash_advance.aspx). See also Press Release, Schear Lending Group Announces Tax Season Cash Advance in Partnership with RedGear Technologies and Atlas Financial Services for 2012 Tax Season, September 13, 2011.

<sup>157</sup> [www.taxworks.com/cash\\_advance.aspx](http://www.taxworks.com/cash_advance.aspx) (visited January 5, 2012).

<sup>158</sup> The corporate filings for both businesses list Philip Zukowsky as a signatory. Ohio Secretary of State, Articles of Organization for Schear Lending Activity, Dec. 28, 2010; Ohio Secretary of State, Articles of Organization for Schear Financial Services, LLC, Sep. 22, 2003, both on file with authors.

<sup>159</sup> Caleb Stephens, Schear Deal to Add Jobs, Dayton Business Journal, Apr. 14, 2003.

<sup>160</sup> *Id.*

<sup>161</sup> See <http://ncpfinance.com/company/> (visited Feb. 23, 2012).

<sup>162</sup> For a description of the CSO model of payday lending, see National Consumer Law Center, The Cost of Credit: Regulation, Preemption, and Industry Abuses § 7.5.5.8 (4th ed. 2009 and Supp.).

<sup>163</sup> See <http://ncpfinance.com/clients/> (visited Feb. 23, 2012).

<sup>164</sup> National Consumer Law Center, The Cost of Credit: Regulation, Preemption, and Industry Abuses §§ 7.5.5 and 7.5.5.8 (4th ed. 2009 and Supp.).

<sup>165</sup> See Consumer Federation of America, Legal Status of Payday Lending by State, at <http://www.paydayloaninfo.org/legal-status>; National Consumer Law Center, Consumer Federation of America, and Consumers Union, Small Dollar Loan Products Scorecard—Updated, available at [www.nclc.org/images/pdf/high\\_cost\\_small\\_loans/payday\\_loans/cu-small-dollar-scorecard-2010.pdf](http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/cu-small-dollar-scorecard-2010.pdf).

## G. Software Companies

As RALs disappeared from the market for the 2012 tax season, providers of professional tax preparation software are promoting non-loan methods of delivering tax refunds to consumers. A scan of websites in mid-February 2012 found heavy emphasis on refunds delivered via prepaid debit cards and direct deposit to taxpayers' accounts.

Drake Software's website still offers a RAL option, and lists Republic Bank Tax Refund Solutions as one of its "banking partners." Drake also offers a "Direct Deposit Check" (DDC), which appears to be a RAC.<sup>166</sup> Drake's other banking partners include AdventFinancial, EPS Financial, River City Bank, and Santa Barbara Tax Products Group. Taxpayers who select the SBTPG's Refund Transfer can receive their funds by direct deposit into their own accounts, in the form of a cashier's check printed by the tax preparer through Drake's software, or via a pre-paid card, the Diamond Plus Card.<sup>167</sup> The Diamond Plus Card is issued by First California Bank.<sup>168</sup>

TaxWise lists Santa Barbara Tax Products Group, Refund Advantage, Republic Bank, River City, Advent Financial, and 3Fund as its bank product options. Its website still offers RALs, as well as electronic refund checks (RACs) and a Direct Deposit Refund (RACs) with no checks to print.<sup>169</sup>

One of the products offered by TaxWise is the 3Fund payment solution. 3Fund permits the preparer to deduct tax preparation fees from the tax refund which can then be delivered either on a prepaid debit card, by a printed check, or via direct deposit for a cost of \$14.95 or more to the taxpayer.<sup>170</sup> CCH Small Firm Services (SFS) announced the 3Fund feature in October 2011 and provides this option for both ATX and TaxWise software products.<sup>171</sup> CCH SFS also permits preparers who use the TaxWise and ATX software programs to offer taxpayers the reloadable prepaid Western Union MoneyWise MasterCard. The Western Union prepaid card is issued by MetaBank.<sup>172</sup> For returns where no bank product is selected, TaxWise offers FeeCollect, which costs \$15.<sup>173</sup>

NTS Services Corp., makers of Tax Vision software, offers QIK Funds, a RAC that is offered by New Capital Bank (NCB) and Citizens Bank (which offers the Atlas system). NTS offers two models to tax preparers: the "low cost" model and the "incentive" model. The low-cost model offers a RAC, called a federal QIK Fund, at \$30, with the state refund an additional \$13. The preparer receives rebates based on volume, and refunds are disbursed minus fees using direct deposit or paper checks. The incentive

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<sup>166</sup> [www.drakesoftware.com/site/Products?BankProducts.aspx](http://www.drakesoftware.com/site/Products?BankProducts.aspx) (visited Feb. 20, 2012).

<sup>167</sup> [https://cisc.sbtpg.com/tax-professions/bank\\_products.aspx](https://cisc.sbtpg.com/tax-professions/bank_products.aspx) (visited Feb. 20, 2012).

<sup>168</sup> [https://cisc.sbtpg.com/taxpayers/dp\\_card.aspx](https://cisc.sbtpg.com/taxpayers/dp_card.aspx) (visited Feb. 20, 2012).

<sup>169</sup> [www.taxwise.com/products/o-bank.html](http://www.taxwise.com/products/o-bank.html) (visited Feb. 20, 2012).

<sup>170</sup> [www.taxwise.com/products/3fund.aspx](http://www.taxwise.com/products/3fund.aspx) (visited Feb. 20, 2012).

<sup>171</sup> Press Release, *Tax Professionals Gain More Flexibility with 3Fund*, CCH Small Firm Services, October 29, 2011, available at [www.cchsf.com/default.htm](http://www.cchsf.com/default.htm) (visited Feb. 20, 2012).

<sup>172</sup> [www.cchsf.com/press/press\\_18.html](http://www.cchsf.com/press/press_18.html) (visited Feb. 20, 2012).

<sup>173</sup> [www.taxwise.com/products/o-feecollect.html](http://www.taxwise.com/products/o-feecollect.html) (visited Feb. 20, 2012).

model appears to offer the same products, just a different pricing structure. Under the incentive model, the QIK Fund product costs \$44 and preparers can earn up to \$14 in rebates per funded bank product. The incentive model permits an “upcharge” of the Refund Account Fee up to \$75.<sup>174</sup> The additional charge appears to be added to the RAC fee paid by the consumer, and then kicked back to the preparer.

OLTPro is another major software provider. It partners with RefundAdvantage, Santa Barbara Tax Products Group, River City Bank, EPS Financial, LLC, and AdventFinancial as “bank partners” for the 2012 tax season.<sup>175</sup>

#### G. 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. With the near demise of RAL products, the ability to sell “fast” money is changing.

Some fringe outlets offer tax preparation services without selling RALs or other loans labeled as tax-time credit. For example, PLS Loan Stores, a chain that offers check cashing, payday lending, and auto title loans, also offers in-store tax return preparation for federal and state returns at its stores in Arizona, California, Indiana, Mississippi, and Texas. To get refunds faster, PLS urges filing as soon as possible and use of direct deposit to the taxpayer’s bank account or a RAC as speedier options.<sup>176</sup> The in-store tax preparer at an Arizona store we visited stated that she was not authorized to answer questions but did note that preparation of the 1040EZ form was free. PLS in-store brochures in Arizona disclose check cashing fees at one percent plus \$1 and offer a \$5 off coupon to cash income tax refund checks over \$1,000. PLS sells a prepaid debit card, issued by The Bancorp Bank, as a means of getting direct deposit of tax refunds, and consumers are told that they can load the tax refund onto their own cards or one sold by the store.<sup>177</sup>

Cash America, the large pawn/payday loan national chain, promotes its tax filing services but notes on its website that “Cash America does not provide nor offer Refund Anticipation Loans.” Cash America does offer an estimate on the size of tax refunds and acts as a sales representative for e-Tax, described below.<sup>178</sup> The options offered to handle refunds are RACs received in one to two weeks and IRS e-file with the refund sent by check in four to six weeks, as well as check cashing at Cash America for an additional fee.

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<sup>174</sup> [www.ntslink.com/banks.aspx](http://www.ntslink.com/banks.aspx) (visited Feb. 20, 2012).

<sup>175</sup> [www.oltpro.com/main/pro/bank.asp](http://www.oltpro.com/main/pro/bank.asp) (visited Feb. 20, 2012).

<sup>176</sup> [www.plshome.com/tax-preparation/](http://www.plshome.com/tax-preparation/) (visited Feb. 17, 2012).

<sup>177</sup> PLS sells an Xpectations! Visa Prepaid Card for payroll or government check direct deposit, the PL\$Xpress Benefit\$ prepaid card to receive SSI or VA or Social Security Benefits, and the PL\$ payroll Direct card. Brochures on file with CFA, collected in Phoenix, AZ, Feb. 18, 2012.

<sup>178</sup> [www.cashamerica.com/FinancialServices/TaxFilingServices.aspx](http://www.cashamerica.com/FinancialServices/TaxFilingServices.aspx) (visited Feb. 20, 2012).

eTax Partners, Inc., located in Alpharetta, Georgia, is a remote tax preparation program that promotes itself as a “direct to business” tax preparer. Clerks at retail outlets enter data into the online form, then the tax returns are prepared at eTax. An eTax Partners handout listed the cost of federal tax preparation starting at \$59, and claims that “eTax has developed the easiest system to earn huge revenue in a short period of time. Prepare returns in under 10 minutes, making over \$100 each, utilizing only a location’s existing customer base.”<sup>179</sup> Promotional material for eTax for a Rent To Own tradeshow claimed that most companies make over \$10,000 per location in their first year and double the business in their second year.<sup>180</sup>

National Cash Advance, a payday lender, offers to estimate taxes with actual tax preparation provided by eTax. National Cash Advance also offers a \$20 coupon for tax preparation fee.<sup>181</sup> This same offer is made by National Cash Advance’s parent, Advance America, the large national chain of payday lenders.

Advance America is offering tax preparation services from e-Tax and RACs from e-Collect/EPS Financial. Advance America does not appear to be offering RALs. This year, we conducted a mystery shopper test of an Advance America store in Columbia, Missouri (see Appendix A for details). The tester was charged a tax preparation fee of \$115 (originally \$135 but with a \$20 coupon) and a “bank/transmit” fee of \$92. Since EPS Financial charges at most \$20 for a RAC, see Section I.I above, it appears that Advance America or e-Tax is charging a \$72 transmitter fee.

Some fringe outlets are just promoting tax check cashing services. Money Mart promotes its tax refund check cashing for any amount, no ID required, no holds on refunds, and no bank account necessary. Money Mart partners with Liberty Tax Service to cash tax refund checks.<sup>182</sup> ACE Cash Express promotes check cashing for tax refund checks but is not promoting tax preparation. A clerk at an Arizona ACE store quoted three percent as the tax refund check cashing fee, but urged a caller to bring in the check to “run through” the system to see exactly what the fee would be.<sup>183</sup> A \$3,000 tax refund check would cost \$90 to cash at that rate, but ACE offers a 20% off coupon for check cashing fees on its website.<sup>184</sup> ACE also promotes loading federal tax refunds onto an ACE Elite Visa prepaid card, issued by NetSpend. Consumers who do so get a chance to win a \$10,000 prize. Check into Cash does not promote tax preparation for 2012, but does cash checks.

CheckSmart outlets in Arizona offered title loans as tax-time loans during the first few weeks of the tax filing season. These outlets had posters promoting the “Tax Xpress Loan,” which is actually the Buckeye Title loan, available to any consumer who has

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<sup>179</sup> “eTax Partners , Sign Up/ Log On /Make Money, on file with the authors.

<sup>180</sup> eTax Partners Pavilion D Booth @1099, RTO Tradeshow Exhibitor Detail, [www.rtoonline.com/epages/linkdetailpop.asp?link\\_id=1099](http://www.rtoonline.com/epages/linkdetailpop.asp?link_id=1099) (visited Feb. 15, 2012).

<sup>181</sup> [www.nationalcashadvance.com/ourservices\\_tax.php](http://www.nationalcashadvance.com/ourservices_tax.php) (visited Feb. 15, 2012).

<sup>182</sup> [www.moneymart.com/MM/tax.asp](http://www.moneymart.com/MM/tax.asp) (visited Feb. 17, 2012).

<sup>183</sup> CFA visited an ACE Cash Express store Prescott, AZ, and called the clerk to verify the fee, Feb. 17 and 20, 2012.

<sup>184</sup> <https://www.acecashexpress.com/store-services/tax-checks> (visited Feb. 20, 2012).

registration to a vehicle. The poster stated that returns were prepared using eTax Partners software. A clerk at a CheckSmart store explained that refunds are delivered in seven to fourteen days if loaded onto the Insight prepaid card, a requirement if the title loan was extended.

The Insight Card offered by CheckSmart is issued by Urban Trust Bank.<sup>185</sup> Insight Card Services promoted its Tax Solutions for retailers as “lucrative opportunities for you to increase revenues, while providing your customers the most options available at tax time.”<sup>186</sup> The Tax Solution website claimed that users would generate additional revenue, compete head-to-head with large national chains, deliver more value with flexible, innovative products, and need not charge “upfront fees” for tax preparation.<sup>187</sup> The Insight Card appears costly, with a \$9.95 issuance fee, a fee of \$1 or \$2 for PIN debit card purchases, and a “Convenience Transfer Fee” of \$3.50 per \$28.50 for account to account transfers.<sup>188</sup> This last fee could potentially apply to title loans from CheckSmart, and thus would mean \$140 in fees to transfer loan proceeds of \$1,000. Advocates have alleged that the “Convenience Transfer Fee” is actually a disguised loan fee.<sup>189</sup>

RepubliCash, a chain of check cashers/payday lenders in Maine, advertises a “same day cash” tax refund up to \$1,000. During a phone call to the RepubliCash Portland store, a clerk explained that the loan is made by the payday lender, not a separate RAL bank, and that the loan is repaid when the taxpayer’s refund check is printed at the store. A \$1,000 loan would cost \$70, according to the clerk.<sup>190</sup>

Subsequently, we sent a tester to the RepubliCash store in Windham, Maine. The RepubliCash employee stated that the fee was \$99 to prepare “basic taxes” and there was another \$19 fee for each additional form. RepubliCash apparently uses the Drake software program and they do the taxes in the store at a computer. The employee stated that it cost \$10 for customers to select direct deposit for their refund and \$30 for the refund to be deposited on a check (\$20 for the federal refund, \$10 for the state refund for a combined \$30). The employee referred to these fees as fees for the loan, but she wasn’t too clear on the details. RepubliCash also offers a prepaid card called an “ICE” card, costing \$4.95.<sup>191</sup>

According the employee, RepubliCash prints the refund check (probably a RAC check) at the store, and that is the store’s form of security. The employee stated that

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<sup>185</sup> Urban Trust Bank has had a history of offering high-cost credit products, such as a fee-harvester credit card called the “My Salute Card.” See Rick Jurgens & Chi Chi Wu, National Consumer Law Center, Fee-Harvesters: Low-Credit, High-Cost Cards Bleed Consumers 3 (Nov. 2007), at 19-20, available at [www.consumerlaw.org/issues/credit\\_cards/content/FEE-HarvesterFinal.pdf](http://www.consumerlaw.org/issues/credit_cards/content/FEE-HarvesterFinal.pdf).

<sup>186</sup> [www.insightcards.com/tax-solutions](http://www.insightcards.com/tax-solutions) (visited December 20, 2011).

<sup>187</sup> *Id.*

<sup>188</sup> Urban Trust Bank, Insight Prepaid MasterCard® Cardholder Agreement, on file with authors.

<sup>189</sup> Adam Rust, CheckSmart Puts Credit on Its Prepaid Card, BankTalk.org, Nov. 30, 2011, at <http://banktalk.org/2011/11/30/checksmart-puts-credit-on-its-prepaid-card/>.

<sup>190</sup> [www.republicash.com/services.html](http://www.republicash.com/services.html) (visited January 29, 2012). Phone call to Portland, Maine RepubliCash store on Feb. 21, 2012.

<sup>191</sup> <https://www.icenow.com>.

RepubliCash has different guidelines for whether borrowers can get a loan or not, and the amount of the loan is dependent on the store. Generally, the Windham store will lend up to half of the total refund amount (up to \$1,000). The employee also mentioned that the store would usually not give a loan if there was no earned income, because these taxpayers typically rely on claiming dependent children for the bulk of the refund; if a family is split, the employee stated it could be contentious over who actually is eligible to claim the dependent. The tester asked if RepubliCash's tax loan was similar to its payday loan, and the employee said yes.

TRS Refund Services is once again advertising its TaxMax program to auto dealers and retailers, promoting tax preparation and refunds as a way to bolster purchases for autos and big-ticket items. The auto dealer earns up to \$99 for preparing tax returns for customers, which is in addition to the tax preparation fee paid by the consumer.<sup>192</sup> TaxMax also offers a pre-tax season program, in which auto dealers can offer an estimate of the consumer's 2011 tax refund, negotiate the future down payment on a car when the consumer's W-2 and 1099 forms arrive, and require buyers to sign a promissory note.<sup>193</sup> The \$139 tax refund service fees are deducted directly from the client's refund check.<sup>194</sup> One selling point for auto dealers is that the refund can be used to pay past debts owed to the dealer. The TRS FAQs note that the tax refund check will be made payable to the taxpayer but the check will be sent to the dealership. The customer just needs to endorse the check over to the dealership for the refund to be used to buy a car or pay past due debt.<sup>195</sup> The FAQs also note that "when sent electronically, the funds are sent directly to the dealer's account."<sup>196</sup> While the TaxMax website still promotes RALs, a phone call to TRS Tax Refund Services revealed the loans are no longer available.<sup>197</sup>

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<sup>192</sup> <https://www.taxmax.com/TRSTaxMax/FinancialServiceCenters.aspx> (visited Feb. 17, 2012).

<sup>193</sup> <https://www.taxmax.com/TRSTaxMas/HowItWorks.aspx> (visited Feb. 17, 2012).

<sup>194</sup> *Id.*

<sup>195</sup> [www.taxmax.com/TRSTaxMax/FAQ.aspx](http://www.taxmax.com/TRSTaxMax/FAQ.aspx) (visited Feb. 17, 2012).

<sup>196</sup> *Id.*

<sup>197</sup> Telephone call to TRS on Feb. 21, 2012.

### **PART III. REGULATION, ENFORCEMENT, LITIGATION AND ADVOCACY**

#### **A. RAL Legislation**

There was no new RAL legislation in 2011. In 2009, Minnesota amended its tax RAL law to prohibit including in a RAL/RAC agreement any provision that directly or indirectly arranges for payment of a fee other than the RAL/RAC fee, repayment of a RAL, or the tax preparation fee.<sup>198</sup> This provision appears to prohibit add-on fees. Minnesota also added to its law RAC disclosures and a requirement that tax preparers act in the best interests of the client.<sup>199</sup>

There are currently a total of twenty states regulating RALs: Arkansas, California, Colorado, Connecticut, Illinois, Louisiana, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Oregon, Tennessee, Texas, Virginia, Washington State, and Wisconsin. The laws for thirteen of these states are summarized in Appendix A to NCLC's model state RAL law.<sup>200</sup>

Most of these laws rely on disclosures to protect consumers from RAL abuses, which are limited in their effectiveness. However, RAL laws in Arkansas, Maine, Maryland, Minnesota, and New York provide substantive protection by prohibiting add-on fees. The Connecticut law prohibits RAL facilitators from facilitating a RAL costing over 60% APR; however, the federal Court of Appeals for the Second Circuit struck down this provision, holding that it was preempted by federal banking law.<sup>201</sup>

#### **B. Regulation and Enforcement**

The most important regulatory action, of course, was the FDIC's settlement with Republic Bank & Trust, discussed in Section I.B above. In the settlement, Republic agreed to:<sup>202</sup>

- Cease offering RALs after April 30, 2012.
- Pay a \$900,000 civil money penalty.
- Implement a system of verifications in place to ensure that its partner tax preparers operate their future tax settlement activities with appropriate safeguards.
- Review all advertising for tax settlement products at preparer's offices.
- Conduct audits, including surprise on-site visits and mystery shopper surveys, at 10% of preparer locations.

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<sup>198</sup> Minn. Stat. § 270C.445, subd. 3a.

<sup>199</sup> *Id.* at subd. 3(14) and 4b.

<sup>200</sup> Available at [http://www.nclc.org/images/pdf/high\\_cost\\_small\\_loans/ral/model-refund-anticipation-loan-act.pdf](http://www.nclc.org/images/pdf/high_cost_small_loans/ral/model-refund-anticipation-loan-act.pdf).

<sup>201</sup> *Pacific Capital Bank, N.A., v. Conn.*, 542 F.3d 341 (2d Cir. 2008).

<sup>202</sup> Republic Bancorp, Form 8-K: Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, Dec. 8, 2011.



Prior to the settlement, the FDIC had issued an “Amended Notice of Charges for an Order to Cease and Desist,” which detailed widespread legal violations in Republic’s RAL program, including:<sup>203</sup>

- Truth-in-Lending Act (TILA) - The FDIC found that copies of the written disclosures required by TILA were regularly absent from loan files. Nearly 88% of the tax preparers that FDIC investigators called failed to make an oral disclosure of the APR when requested.
- Gramm-Leach-Bliley Act - Tax preparers did not have proper physical and electronic safeguards for the protection of confidential consumer information, such as shredders or locked dumpsters. Half of the tax preparer offices had no alarm system, even though the stores had bank checks inside.
- Federal Trade Commission Act - The FDIC alleged that Republic engaged in unfair and deceptive actions, such as implying that customers would receive the full amount of their refunds minus fees in one or two days by getting a RAL, despite the fact that the RAL amounts were limited by Republic to \$1,500.
- Equal Credit Opportunity Act (ECOA): The FDIC found tax preparers refused to process a RAL application when only one spouse applied for the loan, in violation of the ECOA.

According to the FDIC, 46.5% of tax preparers who made Republic RALs were in violation of at least three different laws. The FDIC found that Republic failed to properly train tax preparers to comply with consumer protection laws. In particular, Republic tested preparers’ knowledge of consumer laws by giving them an online quiz that permitted the preparers to keep guessing until they passed the test. In addition, the FDIC alleged that Republic attempted to interfere with its investigation by setting up an Internet webpage of Frequently Asked Questions to coach tax preparers during the day when the FDIC tested the preparers.

In addition to the FDIC’s action, the Arkansas Attorney General obtained a consent Judgment against Mo’ Money for violation of the Arkansas RAL Act and the Arkansas Deceptive Trade Practices Act. The Arkansas Attorney General had alleged that Mo’ Money failed to provide the disclosures required by that state’s RAL Act, and charged add-on fees prohibited by the Act. Mo’ Money agreed to comply with the Arkansas RAL Act and to pay a fine of \$25,000.<sup>204</sup>

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<sup>203</sup> Amended Notice of Charges for an Order to Cease and Desist, In the Matter of Republic Bank & Trust Co., FDIC-10-079b and FDIC-10-216k, May 3, 2011. See Section III.B below for discussion of details of the Amended Notice.

<sup>204</sup> Consent Judgment, State v. Mo’ Money Tax Serv., Case No. 10-6958 (Ark Cir. Ct. Pulaski Cty. Nov. 22, 2011).

## C. Litigation

### *Credit Services Organization Cases*

As discussed in prior reports, several cases had been filed against Jackson Hewitt and H&R Block for violation of state Credit Services Organization Act laws.<sup>205</sup> These laws regulate both credit repair organizations and “any person or organization who assists or offers to assist consumers in obtaining an extension of credit,”<sup>206</sup> which should include tax preparers who offer to arrange RALs. Three of these cases include:

- *Thomas v. Jackson Hewitt, Inc.*, 950 N.E.2d 578 (Ohio Ct. App. 2011) (affirming dismissal based on failure to sufficiently allege damages from Hewitt’s violation of state credit services organization act).
- *Fugate v. Jackson Hewitt, Inc.*, 347 S.W.3d 81 (Mo. Ct. App. 2011) (reversing dismissal, tax preparer could be credit services organization even though consumer did not make payment directly to preparer).
- *Gomez v. Jackson Hewitt, Inc.*, 16 A.3d 261 (Md. Ct. Spec. App. 2011) (tax preparer that facilitated RALs was not a credit service organization because customer paid preparer for RAL facilitation only indirectly; court relied, ironically, in part on the fact that Maryland specifically passed a law governing RAL facilitators).

The plaintiffs in *Gomez v. Jackson Hewitt* had been planning to appeal that decision to the highest court in Maryland.<sup>207</sup> However, as a result of Jackson Hewitt’s bankruptcy filing, all of the RAL lawsuits against the company were apparently snuffed out.<sup>208</sup>

### *RAC Lawsuits*

A number of class action lawsuits in different states have been brought against H&R Block and Liberty Tax Service over their RAL and RAC programs.<sup>209</sup> One of the primary allegations in these lawsuits is that the RACs offered by these companies are in fact disguised loans of the tax preparation fees. The lawsuits bring claims for violations of state RAL Act and/or consumer protection laws.

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<sup>205</sup> NCLC/CFA 2008 RAL Report at 38-39; NCLC/CFA 2006 RAL Report at 25-26; NCLC/CFA 2005 RAL Report at 26.

<sup>206</sup> A full explanation of these laws and their remedies is discussed in NCLC, Fair Credit Reporting, § 15.3 (7th ed. 2010 and Supp.).

<sup>207</sup> 30 A.3d 193 (Md. 2011)(table).

<sup>208</sup> Peg Brickley, *Jackson Hewitt Set to Leave Chapter 11*, Wall St. J., Aug. 8, 2011.

<sup>209</sup> See, e.g., Complaints in *Houston v. JTH Tax Inc.*, C.A. No. 4:11-00858 (E.D. Ark.); *Morton v. H&R Block Inc.*, C.A. No. 4:11-00859(E.D. Ark.); *Johnson v. H&R Block Inc.*, C.A. No. 2:11-09577 (C.D. Cal.); *Madubuike v. JTH Tax Inc.*, C.A. No. 2:11-09580 (C.D. Cal.); *Patterson v. JTH Tax*, C.A. No. 0:11-62472 (S.D. Fla); *Wimbley v. H&R Block, Inc.*, C.A. No. 1:11-24159 (S.D. Fla); *Rowden v. JTH Tax, Inc.*, C.A. No. 1:11-08233 (N.D. Ill.); *Molina-Servin v. H&R Block, Inc.*, C.A. No. 1:11-08244 (N.D. Ill.)

*Martin v. JTH Tax, Inc.*<sup>210</sup>

This class action was filed by Liberty Tax customers who alleged that Liberty preparers included false information in the customers' returns without the customers' knowledge. The lawsuit alleges violation of state consumer protection laws and the Racketeer Influenced and Corrupt Organizations Act.

## CONCLUSION

This year, we are pleased to report the end of RALs as big business. This is the last year in which tax preparers and their partner banks are able to offer high-cost, high-risk loans that skim hundreds of millions of dollars from tax refunds.

Unfortunately, the end of RALs does not mean the end of the exploitation of low-income taxpayers. Banks and tax preparers will continue to offer RACs, which can be subject to significant add-on fees and may represent a high-cost loan of the tax preparation fee. The tax preparation fee itself is also a source of potential consumer confusion, with high fees and the inability for consumers to obtain estimates to comparison shop. The use of prepaid debit cards to deliver RACs and collect payment for loans made by fringe providers adds to the importance of comprehensive federal protections for prepaid cards. There are many challenges remaining to protect low-income taxpayers from profiteering and abuse.

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<sup>210</sup> Complaint, *Martin v. JTH Tax, Inc.*, C.A. No. 9:10-3016 (Nov 22, 2010).

**APPENDIX A: SUMMARY OF MYSTERY SHOPPER TEST**  
**Taxes prepared at Advance America**  
**Columbia, MO 65201**

On February 10, 2012 I accompanied [the tester] to an Advance America store to have his taxes filed.

**Documentation and Forms Given**

I've attached all the documentation I was able to get. I think it's important to note that it's my perception that this documentation is not always given to customers- for example, the first page is absolutely not given out. This is a screen print from their own internal e-tax screen that shows the fees [the tester] was charged. I actually came back to the store after our initial visit and asked for documentation of the fees charged, explaining that I thought it may be needed for doing taxes next year. The staff told me they don't have anything for customers with this information (fees charged), but I was persistent (and nice) and one of the employees told the other "just print that out for him."

I was able to get a copy the consent forms of what [the tester] signed by asking for one, although it was not offered. My perception is that the only paperwork one would get back without asking for it would be the IRS form 8879 (pages 2-3). I told the staff that I wanted to get a copy of the actual 1040 that was filed, and they told me they don't have it. So, the AA staff just enter information into an e-file interface, and the e-file staff actually transmit the 1040, but this isn't something that taxpayers have access to. I told the staff we wanted the 1040 for use with filling out [the tester]'s FAFSA, and they told me to just use the information on the front page of the 8879.

**Fees Charged**

You will see that the total fees charged were \$207. \$115 of this is the fee for filing his federal return. The option to file his Missouri return was not presented. You'll also notice that the \$115 includes a \$20 discount (from a coupon they had), so the fee was really \$135. There doesn't seem to be a flat fee, because the staff was unable to tell us ahead of time what the fee would be or quote me a fee for my taxes. They explained the fee was based on what your tax return involved and they would not know the fee until they put in all the information. [The tester] only had one job last year and his only other forms/credits was an American Opportunity Credit that was derived from two 1098-Ts he had. So I'd imagine the \$135 filing fee is probably one of their cheaper fees. Also, this fee was only to file his federal taxes. There was no mention of filing his state return. I've called the store several times to figure out what is going on with the state return (i.e., if the fee paid should have included the filing of a state return) but have not heard back yet. Last I heard, the manager was out but would call me back. However, the person I

talked with did say the manager had talked with the “tax experts” about it.

### **Bank Transmittal Fee and Process**

The rest of the fee came from the \$92 "bank transmittal fee" (which, I was told, is something anyone doing taxes is going to charge you). This is the fee for The Bancorp Group (a third party) to create a bank account for the IRS refund to be directly deposited in. After the funds hit this account, the e-file group/Advance America take out their fees (in this case, \$207) and then deposit the rest of the return into [the tester]'s regular checking account. More information about this process can be found on pages 7-9 of the attachment. I don't understand exactly how the \$92 figure was derived, given that "e-direct" box on page 9 seems to imply these fees are lower. One interesting thing about the whole process is that none of the fees seem to be flat fees and the staff was unable to tell us what any fees would be until the end. They kept saying it was all based on your tax return, and they seemed surprised themselves at the fees charged (they thought they were pretty low).

When [the tester] was given this form to sign the box was already checked on page 9 for him to have the e-direct option. It's interesting to see that the form outlines he could get direct deposit for free from the IRS. This was not explained explicitly. In fact, when given the forms to sign the only explanation was "I just need you to read and sign this." I was scanning these forms with [the tester] and really wish I'd done a better job, as the first page he signed allowed his personal information to be shared. Also, I am unsure how well, if at all, the no charge direct deposit option from the IRS is explained to customers. I called ahead to see what we needed to bring into the store, and at this time asked about the fees and if I needed to bring money in to pay the filing fee. The AA staff member told me I could do it either way (i.e., pay the fee in cash or have it taken out of the refund) and that we could talk about this when I came in. The person I talked with on the phone was the same person preparing our taxes later that same day, so she remembered this conversation. She said "it'd cost a little bit more" if we had the fee taken out of the refund, but also said this (direct deposit) method was the fastest way to get the refund back. From this point on, using the e-direct method was just referred to as "direct deposit." I am unsure how this more costly method would have been marketed had I not inquired about paying the filing fee upfront, but it is my perception that the more costly options are marketed to customers as the easier options, and there is likely no mention of being able to get free direct deposits from the IRS.

### **Overall Conclusions**

Fees are not discussed up front, and are fairly costly. An additional fee that we declined was for "audit protection," which the staff explained would protect us if the IRS decided to audit [the tester]'s return.

Taxpayers are not given copies of their 1040 or any related schedules. They are also not told what credits were taken or how their refund was computed.

Very little documentation is given to taxpayers, including no documentation listing the fees charged (my perception is that the printout I got with the fees is not something regularly shared with customers).

Advance America is not making RALs, but is still making loans. For example, if customers pay their filing fee upfront, they are able to get refunds direct deposited into their accounts for no cost (through the IRS' direct deposit/e-file program). However, if customers aren't able to pay their filing fee upfront, they can elect to have it taken out of their refund through the e-direct method. This requires a "bank transmittal fee," which is really a fee/interest charged to the customer to loan him or her their filing fee. In [the tester]'s case, his APR would have been 2092%, if you consider he was charged \$92 to borrow \$115 (the filing fee) for roughly 10 days (the staff explained he could have gotten his refund in about 5 days...but did say it could be up to 2 weeks).

Issues as to who is the actual tax preparer and who is IRS certified-You'll notice that the 8879 lists Advance America as the tax preparer/ERO firm, yet the consent forms [the tester] signed lists "e-Tax, Inc" as the ERO/preparers. If AA staff are doing returns (which is absolutely how the process was presented to [the tester] and me), then are they IRS certified?

AA staff are not that knowledgeable about the process. For instance, it remain unclear the protocol for filing state returns and whether or not [the tester] should have has his filed. Also, they seem unclear on the timeline for receiving a refund- they initially said it'd be about 5 days, and then when I called them at the 14 day mark they said the IRS had been "really phony" lately and refunds were taking longer.