

Big Changes Burden Taxpayers

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New Report Analyzes Delays and Challenges Faced by Taxpayers This Tax Season

(WASHINGTON) As the tax season enters its final push, advocates from the National Consumer Law Center (NCLC) and Consumer Federation of America (CFA) issued their annual report on tax-time consumer issues *Big Changes Burden Taxpayers: New Law Delays Refunds and Drives Demand for Loans; Immigrant Taxpayers Face Challenges*. The report discusses problems faced by taxpayers, including:

- **Refund delays for millions of vulnerable taxpayers.** Refunds for recipients of the Earned Income Tax Credit (EITC) and Additional Child Tax Credit (ACTC) were delayed until late February, resulting in dramatic growth for a new generation of refund anticipation loans (RALs). Based on estimates from H&R Block, Jackson Hewitt, and Liberty Tax, at least 1.5 million of these loans were made this tax season. Currently, taxpayers are not charged interest or a fee for these loans, but they are not entirely risk-free and in future years, lenders could impose a charge.
- **Millions in fees for other financial products.** Paid preparers also offer refund anticipation checks (RACs), which represent a high-cost loan of the tax preparation fee. About 19 million taxpayers paid in the neighborhood of \$475 million for RACs in 2015.
- **Immigrant taxpayers face challenges.** Millions of taxpayers with Individual Taxpayer Identification Numbers (ITINs) were required to get the numbers renewed, also potentially delaying processing of tax refunds. Applications for renewals may have been hampered by the general atmosphere of fear resulting from aggressive targeting of undocumented immigrants by federal immigration authorities. Undocumented immigrants may generally be afraid to file tax returns this year, according to the Washington Post.
- **Fraud and errors from unregulated preparers.** The majority of paid tax preparers are not required to meet any minimum educational, competency, or training standards. Consumers are at risk from preparers who make errors or commit fraud. A national poll commissioned by the Consumer Federation of America found that more than two-thirds of consumers believe that tax preparers are already licensed, while only 20 percent realize they are not.
- **Private debt collectors will begin collecting federal tax debts.** The IRS will begin placing older tax debts with private debt collection agencies this Spring. This program will expose taxpayers to potential abuse and add to the problem of scam artists who pose as IRS collectors.

“Tax time is often a tough time for consumers,” noted Chi Chi Wu, staff attorney at the National Consumer Law Center. “Delays, obstacles, and hurdles created by Congress; incompetent and abusive preparers; and financial products of varying cost made this tax season even more confusing and tricky for taxpayers.”

New Legislation Resulted in Tax Refund Delays

Many low-income taxpayers faced an unpleasant surprise this tax season — their refunds were delayed due to a new law passed by Congress. The Protecting Americans from Tax Hikes (PATH) Act

requires the IRS to delay refunds to taxpayers claiming the EITC or ACTC until at least February 15, 2017. The IRS was required to delay the entire refund - even the portion not associated with the EITC and ACTC - until that date. The IRS cautioned that, while it would begin to release EITC/ACTC refunds starting February 15, these refunds likely would not arrive in bank accounts or prepaid cards until the end of February

Immigrant Taxpayers Face Challenges

An Individual Taxpayer Identification Number (ITIN) is used by anyone who is required to file a tax return or pay taxes under U.S. law but is not eligible for a Social Security number, including but not limited to undocumented immigrants, who are still required to file tax returns. A second change mandated by Congress in the PATH Act is a requirement to for all ITINs issued before 2013 to be renewed on a rolling basis.

The following ITINs expired on January 1, 2017:

- Any ITIN with middle digits of either 78 or 79 (9NN-78-NNNN or 9NN-79-NNNN)
- Any ITIN not used on a tax return at least once in the past three years

Additional ITINs will expire over the next three years and will need to be renewed.

If taxpayers file a tax return without renewing their ITIN, they would be ineligible for certain tax credits and exemptions and no refund would be paid until the ITIN is renewed. The IRS has estimated that it can take 11 weeks to process an ITIN renewal during tax season.

The IRS sent renewal letters to 440,000 taxpayers whose ITINs had expired; however, only 16% of the recipients of these letters responded. Part of the reason for the low response rate to the letter could be due to the aggressive targeting of undocumented immigrants by Immigration and Customs Enforcement (ICE). Immigrants may be generally afraid to file tax returns this year, because they are concerned that information from their tax returns could be shared with ICE. Yet tax information is protected and considered confidential under federal tax law, and the IRS itself has reaffirmed that confidentiality.

“No Fee” Refund Anticipation Loans (RALs) and Refund Anticipation Checks (RACs)

With the PATH Act tax refund delay, “no fee” RALs proved attractive to many consumers. These are loans that are secured by the taxpayer’s refund, but the lender does not charge the taxpayer a fee or finance charge. Instead, some lenders charge the preparer a fee. Many lenders and preparers call these products an “advance,” but they are actually loans. At least 1.5 million of these new generation RALs have been made so far, with the growth likely driven by the refund delay.

In addition to not charging a fee, these “no-fee” loans are “non-recourse,” i.e., the consumer is not required to repay the loan if the refund is not received. However, they are not entirely risk free. One risk is that some unscrupulous tax preparers might charge more in their tax preparation fees to “no fee” RAL borrowers. Also, one lender, River City Bank, appeared to actually impose a price for “no fee” RALs by charging a higher price for a refund anticipation check (RAC) if the preparer was offering these loans.

Also, in order to access a no-fee RAL, the taxpayer is required to use the services of a paid preparer, which means he or she cannot use a free Volunteer Income Tax Assistance site or prepare the return him/herself. And while lenders did not impose direct charges on taxpayers this year for a RAL, that

could change in future years.

With RACs, the bank opens a temporary bank account into which the IRS direct deposits the refund. After the refund is deposited, the bank issues the consumer a check or prepaid card, minus tax preparation fees paid to the preparer, and closes the temporary account. RACs do not deliver refunds any faster than the IRS can, yet cost \$25 to \$60. Some preparers charge additional “add-on” junk fees for RACs, fees that can range from \$25 to several hundred dollars.

Since the main purpose of a RAC is to defer payment of the tax preparation fee until the refund arrives, it can be viewed as a high-cost loan of that fee. If a taxpayer pays \$35 to defer payment of a \$350 tax preparation fee for three weeks, the annual percentage rate (APR) is 174%.

RACs are the most common tax-time financial product on the market. There were nearly 19 million taxpayers who received a RAC in 2015. Assuming each RAC cost at least \$25, this means taxpayers paid in the neighborhood of \$475 million to borrow against their refunds to pay tax preparation fees.

If taxpayers experience problems with RALs or RACs, they can complain to the Consumer Financial Protection Bureau (CFPB), which tries to resolve consumer complaints and often is able to help. It also uses information from consumers to identify and improve bad practices. Complaints about improper tax preparation practices by a paid tax preparer can be sent to the IRS or the taxpayer’s State Attorney General’s Office.

Lack of Minimum Competency Standards for Preparers

Lack of minimum standards for paid tax preparers continues to be a serious problem plaguing taxpayers. In all but four states (CA, MD, NY and OR), paid tax preparers are not required to meet any minimum educational, competency, or training standards. While some tax preparers are licensed as certified public accountants (CPAs) or credentialed by the IRS as enrolled agents, these certifications are not mandatory and most preparers do not have them. Indeed, the only tax preparers — apart from CPAs, attorneys and enrolled agents — required to pass a test are the unpaid volunteers at Volunteer Income Tax Assistance (VITA) and AARP Tax-Aide sites.

The lack of competency standards for paid tax preparers exposes consumers to potential errors or even fraud, as well as potentially costing federal and state governments tens of millions of dollars in lost tax revenue. Multiple rounds of mystery shopper tests of tax preparers have found high levels of errors and instances of fraud. In 2016, mystery shopper testing by Georgia Watch found inaccuracies in 18 out of the 20 tax returns prepared by paid tax preparers.

A national poll released in March 2017 and commissioned by the Consumer Federation of America found that more than two-thirds of consumers believe that tax preparers are already licensed, while only 20 percent believe they are not. Thus, most Americans believe that they are being protected against incompetent tax preparation, when the reality is that no such protections exist in 46 states.

The CFA poll also reveals broad public support for government oversight of tax preparers, with more than 4 out of 5 respondents believing that paid tax preparers should be required to pass a competency test, be licensed by the state, and provide a clear, upfront list of fees before completing a taxpayer’s return. In particular, the poll found that:

68 percent of respondents believe that either state and/or federal government requires licensing for paid preparers while only 20 percent believe that neither require licensing.
86 percent of the public supports requiring paid tax preparers to pass a test administered by government that would ensure that paid preparers have the knowledge and

training to complete taxpayer returns correctly.

88 percent of the public supports licensing requirements for paid tax preparers by a state agency that would also accept and resolve complaints, and enforce consumer protections.

59 percent believe paid preparers should have special training but don't need a degree and 31 percent of the public believe that paid tax preparers should have a college degree in accounting.

The complete results of the poll are available at: <http://bit.ly/2nJirgJ>

“Minimum competency and training standards need to be adopted in the 46 states that don't have them,” recommended Michael Best, senior policy advocate at the Consumer Federation of America. “Taxpayers deserve no less.”

Private Debt Collectors Will Begin Collecting Federal Tax Debts

The IRS is required to outsource collection of certain overdue tax debts by a law passed by Congress in December 2015. The law requires the IRS to outsource tax debts to private collectors if:

- more than one year has passed without any interaction between the taxpayer and IRS;
- one-third of the statute of limitations has lapsed and there is no IRS collector assigned; or
- the IRS is otherwise not working the debt due to lack of resources.

The IRS has announced that it will begin placing tax debts with private debt collectors in the Spring of this year. The IRS has selected four companies to collect federal tax debts, one of which (Pioneer Credit Recovery) had its contract to collect student loans terminated in 2015 by the U.S. Department of Education because it provided inaccurate information to student loan borrowers.

Private collection of tax debts is problematic for many reasons. It exposes taxpayers to the potential abuses that are unfortunately common with the debt collection industry. It is a waste of taxpayer dollars, given that a pilot program using private collectors in 1996-1997 resulted in a \$17 million net loss to the government, and a program in the mid-2000s created a net loss of almost \$4.5 million.

“Forcing the IRS to use private debt collectors is a recipe for taxpayer abuse,” said Wu, “It will harm taxpayers, predominately low-income, in order to enrich the coffers of debt collectors.”

Hiring private debt collectors will also add to the problem of scam artists who pose as IRS collectors. When private collectors begin calling taxpayers regarding back taxes, it will add to the confusion and make consumers more vulnerable to these scams.

Private debt collectors collecting IRS debts will be subject to the federal Fair Debt Collection Practices Act (FDCPA), including the consumer's right to send the collector a written request to stop contacting the consumer. The FDCPA protects consumers against harassment and deception and provides consumers with the right to take legal action. To find a lawyer specializing in FDCPA lawsuits, the National Association of Consumer Advocates has a directory.

Related Resources

Press Release: Advocates Disappointed Private Debt Collectors Will Begin Collecting Federal Tax Debts

Report: Big Changes Burden Taxpayers: New Law Delays Refunds, Drives Demand for Loans; Immigrant Taxpayers Face Challenges

Press Release: Second National Poll Indicates Strong Support for Reform of Paid Tax Preparer Industry, Mar. 22, 2017

Report: Prepared in Error: Mystery Shoppers in Florida and North Carolina Uncover Serious Tax Preparer Problems, April 2015

Report: Riddled Returns: How Errors and Fraud by Paid Tax Preparers Put Consumers at Risk and What States Can Do, March 2014

State Model Law to Ensure Competent Paid Tax Preparers

Submit a complaint about refund anticipation loans or refund anticipation checks to the CFPB: <http://www.consumerfinance.gov/complaint> or call toll-free (855) 411-2372

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