Tax Time Kick-Off: Delays and Risks Await Many Taxpayers This Year

FOR IMMEDIATE RELEASE: Jan. 23, 2017 || CONTACTS: NCLC: Chi Chi Wu (cwu@nclc.org) or Jan Kruse (jkruse@nclc.org); 617.542.8010, CFA: Michael Best (mbest@consumerfed.org); 202. 939.1009

(WASHINGTON) As the tax season kicks off, advocates from the National Consumer Law Center and Consumer Federation of America issue its eleventh annual press advisory to warn of the problems that taxpayers face, ranging from recent law changes to lack of standards for tax preparers. Problems include:

- **Refund delays for millions of vulnerable taxpayers.** Refunds for recipients of the Earned Income Tax Credit (EITC) and Additional Child Tax Credit (ACTC) will be delayed until late February, which may cause problems for millions of financially-strapped taxpayers who expect to receive their refunds several weeks earlier.
- **Taxpayer ID number renewals required.** Hundreds of thousands of taxpayers with Individual Taxpayer Identification Numbers (ITINs) will need to get the numbers renewed, also potentially delaying processing of tax refunds.
- **A confusing landscape of financial products.** Paid preparers offer and promote financial products that vary in their cost and usefulness. "No fee" refund anticipation loans (RALs) do not charge taxpayers a direct fee but may present some risks. Refund anticipation checks (RACs) 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.
- **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.
- **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.PATH Act Will Result in Tax Refund Delays

"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 will make this tax season even more confusing and tricky for taxpayers."

New Legislation Will Result in Tax Refund Delays

Many low-income taxpayers will face an unpleasant surprise — their refunds will be 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 must delay the entire refund – even the portion not associated with the EITC and ACTC – until that date. The IRS has cautioned that, while it will begin to release EITC/ACTC refunds starting February 15, these refunds likely won't arrive in bank accounts or prepaid cards until the week of February 27 due to "several factors, including banking and financial systems needing time to process deposits."

Information on the PATH Act tax delay is available from the IRS. The Consumer Financial Protection Bureau (CFPB) has advice on dealing with financial issues arising from the delay.

Individual Taxpayer ID Number Renewals Mandated by Congress

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 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.

The IRS has estimated that up to 400,000 taxpayers might need to renew their ITINs this year. These taxpayers should renew their ITINs by submitting a completed Form W-7 to the IRS. If they file a tax return without renewing their ITIN, they will be ineligible for certain tax credits and exemptions and no refund will be paid until the ITIN is renewed. Once the ITIN is renewed, any exemptions and credits will be processed and any allowed refund will be paid. The IRS has estimated that it can take 11 weeks to process at ITIN renewal now that tax season has started. The IRS website has more information on ITIN renewals.

"No Fee" Refund Anticipation Loans (RALs)

With the PATH Act tax refund delay, "no fee" RALs may prove 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.

Advocates recommend that taxpayers avoid no fee RALs if possible. One risk is that some unscrupulous tax preparers might charge more in their tax preparation fees to "no fee" RAL borrowers. Also, in the last tax season some lenders, such as EPS and 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.

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 $25 to defer payment of a $350 tax preparation fee for one month, the annual percentage rate (APR) is 86%.

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, ranging from 25% to over 90%.

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

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

The complete results of the poll are available at: http://bit.ly/1PpGALd. CFA will have new poll results on this issue available in March.

"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."

If a taxpayer is determined to get a "no fee" RAL, advocates advise that it is even more critical to choose a preparer very carefully. "Taxpayers seeking a no fee RAL have twice the reason to be cautious in selecting a preparer, both to avoid incompetent and fraudulent preparers and to prevent being charged hidden fees," stated Wu.

Some of the questions a taxpayer should ask are:

- What kind of training do you have in tax preparation? Have you taken formal classes or a course in tax preparation?
- How long have you been preparing taxes?
- Do you have any credentials (attorney, CPA, enrolled agent or completing voluntary IRS certification)?
- How much will I be charged for tax preparation? Will I be charged more if I get a loan or an "advance"?
- Are there any other fees that I will be charged?

Taxpayers may wish to consider a credentialed preparer, such as a Certified Public Accountant, an enrolled agent, an attorney, or a preparer who has voluntarily completed the IRS Annual Filing Season Program. A directory of credentialed preparers is available on the IRS website. An infographic on Choosing Your Preparer Wisely is at the end of this release and available from CFA.

A free or inexpensive alternative for low-income taxpayers is a free tax preparation site. These include VITA sites (1-800-906-9887 or www.irs.gov) and AARP Tax-Aide sites (http://www.aarp.org/findtaxhelp). Choosing a VITA or AARP Tax-Aide site saves eligible taxpayers the cost of a tax preparation fee. Many VITA sites can also help taxpayers open a bank account or get a low-cost prepaid card, which enables taxpayers to get refunds faster via direct deposit without paying a fee. Free tax preparation may be available on military bases as well.

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, March 2016
- Report: Minefield of Risks: Taxpayers Face Perils from Unregulated Preparers, Lack of Fee Disclosure, and Tax-Time Financial Products
- Report: Public Views on Paid Tax Preparation: Strong Public Support for New Consumer Protections to Prevent Errors and Fraud, January 2016
- 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 to the CFPB: http://www.consumerfinance.gov/complaint or call toll-free (855) 411-2372