2019 Tax Filing Season: More Questions than Answers

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BOSTON — As the potentially chaotic tax filing season officially begins today after a protracted government shutdown, advocates from the National Consumer Law Center issued their annual consumer advisory on taxpayer consumer protection issues. These include:

• **Refund delays likely to be exacerbated by the shutdown.** Low-income taxpayers were already facing delays on refunds if they claim certain refundable credits. But the possible aftereffects of the 35-day government shutdown inject more uncertainty into the timetable.

• **Tax time financial products.** Lenders and tax return preparers again team up to sell refund-related products and services to taxpayers. This year brings a new twist on “no fee” refund anticipation loans (RALs), as preparers and lenders entice consumers with much larger loans, but for a price.

• **Inability to comparison shop.** With one notable exception, tax preparers continue to ignore consumers’ preference for up-front pricing for tax preparation services. This secrecy stifles competition and results in higher fees all around.

• **Private debt collection: Dirty deeds, but not dirt cheap**. The IRS private debt collection program delivers vulnerable, elderly, and low-income taxpayers into the hands of private debt collectors. A large percentage of collections in 2018 came from taxpayers whose incomes were below the poverty level or who did not earn enough to pay their basic living expenses—taxpayers who could not have been collected against if IRS were doing the collecting itself.

• **Taxpayer ID number renewals halted.** Although another wave of two million Individual Taxpayer Identification Numbers (ITINs) expired at the end of 2018, renewal requests were not being processed during the shutdown. Those taxpayers can expect even longer delays after the protracted shutdown.

Advocates warn that consumers need to be on guard as they navigate this filing season. “Tax time is such a challenge for low-income and other vulnerable taxpayers,” **said Mandi Matlock, of counsel to the National Consumer Law Center.** “Taxpayers just trying to get refunds they are owed face an obstacle course starting with incomprehensible new forms and tax laws and ending with profit-seeking preparers and lenders looking to intercept a piece of their refunds.”

Refund Delays Expected to Be Even Worse This Year Due to the Government Shutdown

Low- and moderate-income households rely heavily on their tax refunds each year for a much-needed cash infusion into otherwise strapped household budgets. But once again, the IRS is required to delay until February 15 the *entire* refund requested by taxpayers claiming the Earned Income Tax Credit (EITC) or Additional Child Tax Credit (ACTC). This delay, first implemented in 2017 under the Protecting Americans from Tax Hikes (PATH) Act, is intended to give IRS more time to stop fraudulent refund requests. In practice, though, it has resulted in unfair prolonged delays of legitimate refunds owed to struggling taxpayers.

Under the PATH Act, taxpayers claiming the EITC or ACTC would normally not expect refunds before February 27. During the 2018 filing season, a large number of EITC/ACTC returns were held up for several more months because the IRS was unable to complete its review of those returns. "The EITC is the largest anti-poverty program for working families, lifting millions out of poverty each year," **noted Matlock.** "Those who qualify for it are the least able to withstand a delayed refund."

To make the outlook even worse this year, the federal government had been shut down for more than a month. The shutdown had stoked fears that the IRS would not be able to timely process refunds. Even with the shutdown temporarily over, the aftereffects will impact the tax season given that IRS employees did not have sufficient time to prepare, nor were they able to hire and train the full complement of seasonal employees usually retained during the busy tax season. Taxpayers may need to brace for refund delays surpassing those experienced last year.

Even though refund delays are expected, advocates advise taxpayers to file returns as usual. Taxpayers can check the real-time status of their refunds using the IRS website's automated Where's My Refund function.

Tax-Time Financial Products: Lenders Continue to Evolve In Efforts to Capture More Taxpayer Refunds

In the past, RALs featured fees that translated into triple digit Annual Percentage Rates (APR) and diverted significant portions of taxpayers' refunds into the pockets of banks and preparers. Although these traditional RALs are largely a thing of the past, consumers still need to be careful at tax time.

After a couple of years focusing largely on second-generation "no-fee" RALS, tax-time lenders are increasingly moving back to offering loans accompanied by a charge. Products this year will include:

• Refund Anticipation Checks (RACs) – RACs provide a way for unbanked taxpayers to receive refunds by direct deposit. The product essentially serves as a short-term loan of the fees a consumer would otherwise pay out of pocket to have the return prepared.
• Refund Anticipation Loans (RALs) in two flavors this year:
– "No-fee" RALs – Consumers supposedly pay nothing for these RALs, but some preparers may recoup costs by imposing additional fees or other indirect charges.
– Interest-Bearing RALs – These loans have disclosed interest rates from 24 to 36%, but disclosures may not accurately reflect costs.

If the PATH Act delay was a major driver for RALs in recent years, then the possibility of additional delays due to the protracted government shutdown could be a bonanza for lenders.

Refund Anticipation Checks

Refund Anticipation Checks (RACs), also commonly called "Refund Transfers", remain the most common tax-time financial product. With a RAC, the preparer receives the refund in a temporary bank account, deducts the tax preparation fee and any other authorized fees, and then disburses what's left to the consumer on a prepaid card or by check.

Average RAC fees hover around \$30 to \$40. Consumers may not understand that choosing a RAC does not deliver the refund more quickly. Instead, it basically works as a short-term loan of the tax return preparation fee, by deferring payment of that fee until the refund arrives. Even so, at a time when 4 in 10 Americans would not be able to afford an irregular \$400 expense, it's not hard to understand why 20.5 million taxpayers used RACs in 2017, spending over \$500 million on them.

Advocates warn consumers to carefully compare the benefits of a RAC to its cost when deciding whether to take one. A consumer who pays $40 to defer a tax preparation fee of $300 for three weeks could be seen as paying an annual percentage rate (APR) of 232% for a short-term loan to pay tax prep fees.

"Consumers can definitely avoid this relatively high cost product by using available free tax preparation resources," **said Chi Chi Wu, an attorney with the National Consumer Law Center.**

Refund Anticipations Loans

Tax preparers and lenders have again re-vamped RAL offerings in the ongoing quest to skim as much of taxpayers' refunds as possible. Taxpayers seeking last year's no risk, "no-fee" RALs could be offered interest-bearing loans instead, or nothing at all.

Taxpayers must file their return with a preparer before they can receive a decision on their RAL request. Because these RAL applications appear to be subject to underwriting and a credit report check, many lower income taxpayers who qualified for RALs in the past may no longer qualify. But they won't know until after the return is filed – tethering them to the return preparer even if the RAL is rejected. Some early filers have reported deceptive "pre-qualification" notices and in-office assurances that induced them to commit to a preparer only to be later notified they were rejected for a RAL.

Lenders are combining the two following RAL options into one consumer application process that could result in the offer of one or the other, or neither.

• "No Fee" RALs

After a period of relative obsolescence, RALs made a comeback a few years ago in a different form: the "no fee" RAL. These second generation RALs dominated the market in 2017, when demand for them tripled over the prior year. They are marketed as not imposing costs or risks to borrowers.

With a no-fee RAL, the taxpayer borrows a limited amount when filing the return. Lenders call these "advances," but they are actually loans secured by the anticipated tax refund. Lenders promise to not pursue collection if the IRS doesn't approve the refund. While these loans purport not to impose a fee or interest charge on the consumer, there are still risks and costs. In 2017, about 1.7 million taxpayers applied for RALs, most of which we assume were no-fee RALs.

Lenders charge preparers a fee on each approved RAL, which provides an incentive to recoup it from the consumer. For example, EPS Tax Solutions and River City Bank offer preparers the option to enroll in kickback programs that charge consumers a higher price for a RAC. The higher RAC fee charged by these programs has the effect of shifting the preparer's loan fee to the consumer. Assuming most consumers who take no-fee RALs also take RACs, this provides a secret way for preparers to defray their own costs on the backs of the taxpayer. There were also reports last season of preparers recouping fees by inflating tax preparation costs in the form of add-on junk fees. With the lack of fee transparency still so prominent in the tax preparer industry, there are endless opportunities for preparers to recoup these fees from consumers even where a lender contract prohibits expressly passing on the fees to consumers.

Even if the "no-fee" RAL is truly cost free, it could serve as a Trojan horse for interest-bearing RALs, as discussed in the next section. And since consumers are required to choose between no-fee and interest-charging RALs, we may see fewer of the less costly version.

• Interest-bearing RALs put consumers back on the hook

Lenders have raised the stakes this year, offering much larger RALs on the condition that consumers forgo the alternatively available "no-fee" RAL. These RALs impose interest on the full amount of the loan and in some cases charge origination fees. Last year's "non-recourse" or "no-risk" statements are conspicuously absent.

Some lenders, such as River City Bank, have gone so far as to lower the amount consumers can borrow under their "no-fee" RAL program, which may push consumers into an interest-bearing RAL. H&R Block appears to be the only major tax preparation chain this year that isn't offering these interest-bearing RALs, sticking instead with its maximum $3,000 "no-fee" RAL.

Although disclosed interest rates for these RALs slide in at or under the traditional usury cap of 36%, a closer look reveals that a true "all-in" APR could be higher. For example, in the case of River City Bank's interest-bearing RAL, the advertised interest rate of 27.04% leaves a loan origination fee out of the APR computation (the amount of this fee is unknown).

Tax Preparation Fees Remain a Black Box at the Major Tax Preparation Chains, with One Notable Exception

More than half of taxpayers use a paid preparer to do their taxes. EITC taxpayers are more likely to use a paid preparer for a number of reasons, including that their returns are more complex. This large captive market coupled with a near uniform refusal to provide up-front price information has long allowed tax preparers to ignore consumers' demands for pricing clarity. "When consumers don't have adequate information to shop around, abusive pricing schemes proliferate," **said Wu.**

But in what may prove to be a transformative development for the commercial tax preparation industry, H&R Block this year broke away from the industry norm and launched a transparent pricing program. Under the new program, taxpayers can determine the base price for their returns at the outset. From there, an in-store price list by form will permit most people to compute the cost of the return before work ever begins. For now, the other major tax preparation chains continue to keep consumers in the dark until after the return is prepared.

Consumer advocates urge lower and middle-income taxpayers to avoid fees altogether by accessing one of several free alternatives for tax return preparation and filing. The AARP Tax Aide programs provides free return preparation and e-filing for taxpayers over 50. The Volunteer Income Tax Assistance (VITA) and the Tax Counseling for the Elderly (TCE) programs offer free tax preparation and electronic filing to eligible taxpayers. Many VITA sites also assist with opening bank accounts or applying for low-cost prepaid cards to reduce wait time for refunds, as well as renewing or applying for ITINs.

Taxpayers making up to $66,000 may also choose to prepare and electronically file their own tax returns online using software made available for free to eligible taxpayers through the IRS Free-File Program.

Private Debt Collectors Run Roughshod Over Taxpayer Rights

A 2015 law requires the IRS to use private debt collectors to collect certain unpaid federal tax debts. Despite the well-documented abuses in the debt collection industry, the IRS, in designing the private debt collection (PDC) program, put cost-effectiveness ahead of thoughtful oversight of collectors, to the detriment of vulnerable and lower-income taxpayers.

The PDC program is in full swing now, with more than 600,000 taxpayers' accounts having been referred out for private collection by the end of September last year. The PDC program had eked out a relatively small profit for the government by the end of September 2018, but it appears to have only managed this result by sending out to private collectors the accounts of taxpayers who could not have been collected against if the IRS were doing the collecting itself. Among these were disaster survivors in the aftermath of natural disasters, recipients of Social Security Disability Income (SSDI) and Supplemental Security Income (SSI) payments, and other taxpayers IRS procedures would have specially protected due to their limited income.

In addition, the National Taxpayer Advocate (NTA) observed the following about the PDC program as of the end of September 2018:

• **40% of taxpayers** who entered into installment agreements with private collectors to pay tax debts did not earn enough to pay their basic living expenses.

• **20% of taxpayers** who entered into installment agreements with private collectors to pay tax debts had incomes below the federal poverty level.

With the IRS delivering vulnerable, elderly, and low-income taxpayers into the hands of the debt collection industry, consumers need to understand their rights. Taxpayers are not obligated to talk to a private debt collection agency, and they have the right to demand in writing (recommended) or orally that their tax debt be returned to the IRS immediately.

The Fair Debt Collection Practices Act (FDCPA) also applies to private debt collectors collecting federal tax debts, including the right to send a written request to a debt collector to stop contacting the consumer. The FDCPA protects consumers against debt collection harassment and deception. Most notably, it provides a legal remedy for violations. Consumers who believe they may have been the victim of a debt collection violation can find a lawyer who specializes in the FDCPA through the directory provided by the National Association of Consumer Advocates.

Individual Taxpayer Identification Number (ITIN) Renewals Are at a Full Stop

ITINs are used by anyone required to file a tax return or pay taxes under U.S. law who is not eligible for a Social Security number, including undocumented immigrants. The PATH Act mandated the expiration of all ITINs issued before 2013, permitting their renewal on a rolling basis.

Under the new law, millions of ITINs have already expired, with 2.7 million expiring on December 31, 2018. These include:

• Any ITIN with middle digits of 73, 74, 75, 76, 77, 81 or 82 (e.g, XXX-71-XXXX).

• Any ITIN not used on a tax return at least once in the past three years.

Taxpayers who did not take advantage of early renewal procedures this summer could be among the casualties of the protracted government shutdown. The IRS employees who process these applications were furloughed until recently. Taxpayers who file returns with expired ITINs will have their refunds held until their numbers are renewed.

The IRS website has more information on ITIN renewals.

Related Resources

Report: *Tax-Time Products 2018: A New Generation of Tax-Time Loans Surges in Popularity*, March 2018

Press Release: "Private IRS Collectors Waste Taxpayer Money While Squeezing Low-Income Families", Jan. 11, 2018

Report: *Public Views on Paid Tax Preparation 2017: Strong Public Support Continues for New Consumer Protections to Prevent Errors and Fraud,* March 2017

Infographic: Choosing Your Preparer Wisely!, April 2016

State Model Law to Ensure Competent Paid Tax Preparers