2019 TAX SEASON

The Return of the Interest-Bearing Refund Anticipation Loan and other Perils Faced by Consumers

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By

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Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

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EXECUTIVE SUMMARY

Tax time is typically a time for an influx of funds for American consumers in the form of their tax refunds. This year, it was transformed into a time of uncertainty and drastic change, preceded by the longest government shutdown in history and marked by the inaugural implementation of many provisions of the Tax Cuts and Jobs Act. The shutdown cost the IRS critical weeks of preparation for the 2019 filing season, including answering taxpayer questions about the new law and updating its computers to process tax returns.

The tax filing season opened on schedule January 28, but amid troubling questions and worries about many aspects of tax administration, including whether the IRS would be able to issue timely refunds. The turmoil may be a boon for lenders and preparers offering tax time financial products this year.

Refund delays are likely exacerbated by the shutdown. Low-income taxpayers who claim some refundable credits, such as the Earned Income Tax Credit, were already facing delays of their refunds due to prior law mandating those refunds be held until after February 15. But the after-effects of the government shutdown inject uncertainty into the timetable.

Red flag regarding interest-bearing Refund Anticipation Loans (RALs). Lenders and tax return preparers again team up to sell refund-related products and services to taxpayers. The **"no-fee" RAL** is still offered, but may be edged out by the return of interest-bearing RALs. With no-fee RALs, consumers supposedly pay nothing. But some preparers may recoup costs by imposing additional fees or other indirect charges. All but one of the major preparers (H&R Block) is offering **interest-bearing RALs**. Disclosed interest rates range from 24% to 36%, but disclosures may not accurately reflect costs. **Refund Anticipation Checks (RACs)** remain ubiquitous. RACs essentially serve as a short-term loan of tax return preparation fees that a consumer would otherwise pay out of pocket.

Taxpayers continue to confront a mix of old and new challenges this year. These include:

Inability to comparison shop. With one notable exception (H&R Block), tax preparers continue to ignore consumers' preference for up-front pricing for tax preparation services. This secrecy stifles competition and results in higher fees for taxpayers.

Private debt collection. The IRS continues to contract with private debt collection agencies to collect delinquent tax debts. But the private debt collection program IRS has implemented does not go far enough to protect vulnerable, elderly, and low-income taxpayers from the bad practices 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.

Taxpayer ID number renewals were temporarily halted. Although another wave of two million Individual Taxpayer Identification Numbers (ITINs) expired at the end of 2018, renewal requests were not processed during the shutdown. Those taxpayers can expect even longer delays after the protracted shutdown, with harsh impacts on processing their returns and disbursing (or not) their refunds.

As always, consumers need to be on guard as they navigate tax season. From the confusion and uncertainty unleashed by changes to the tax law to the ever-present efforts of tax preparers and lenders looking to intercept a piece of their refunds, taxpayers again face an obstacle course just attempting to get their refunds.

INTRODUCTION

Tax time has traditionally been a time of excitement and anticipation for most Americans. About three out of four taxpayers received a tax refund last year, putting over $324 billion in their pockets.[1] About 25 million of these refund recipients are hard-working families that qualify for the Earned Income Tax Credit (EITC), a refundable tax credit intended to boost low-wage workers and their children out of poverty.

> Receipt of the Earned Income Tax Credit raised 5.8 million Americans, including 3 million children, out of poverty in 2016.

Receipt of the EITC is truly a "golden moment" in the financial lives of eligible taxpayers. Receipt of the credit raised 5.8 million Americans, including 3 million children, out of poverty in 2016.[2] A recent study by JPMorgan Chase of its customers who receive refunds found the average refund for that segment to be equal to about six weeks of their regular take-home pay.[3] For taxpayers with children, the EITC can easily be worth more than two months of paychecks.[4]

Yet since 2017, taxpayers claiming the EITC have faced a statutorily mandated delay in the issuance of their refunds. This new burden coincided with a sharp increase in working families accessing tax-time lending products over the last couple of filing seasons.[5]

Historically, EITC recipients presented lucrative targets for a variety of businesses. Refund anticipation loans (RALs) and related financial products evolved to profit off taxpayers expecting large refunds, including EITC recipients. In the last few years, a new generation of RALs emerged. They were marketed as not imposing interest or fees on taxpayers. These second generation RALs were quite popular with taxpayers during the last two filing seasons, no doubt due in part to the refund delays faced by EITC recipients. These second-generation RALs do, however, present risks to consumers in the form of unrelated fees that could be charged by unscrupulous tax preparers in an effort to make up for the cost of the loan.

This year, the risks have grown as lenders and preparers are pushing consumers back toward loans that *do* impose costs. Consumers need to be wary as lenders and preparers move away from no-fee RALs in favor of offering interest-bearing loans.

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1. IRS, Filing Season Statistics for Week Ending Nov. 23, 2018, *available at* https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-november-23-2018 (viewed Feb. 10, 2019).
2. Center on Budget and Policy Priorities, Policy Basics: The Earned Income Tax Credit, *available at* https://www.cbpp.org/research/federal-tax/policy-basics-the-earned-income-tax-credit (viewed on Feb. 10, 2019).
3. Diana Farrell, Fiona Greig, and Amar Hamoudi, JPMorgan Chase Institute, Tax Time: How Families Manage Tax Refunds and Payments (Mar. 2019) [hereinafter "Tax Time: How Families Manage"], *available at* https://www.jpmorganchase.com/corporate/institute/report-tax-refunds.htm.
4. IRS, 2019 EITC Income Limits, Maximum Credit Amounts and Tax Law Updates, *available at* https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/eitc-income-limits-maximum-credit-amounts-next-year (viewed Feb. 11, 2019).
5. See, e.g., Chi Chi Wu and Michael Best, National Consumer Law Center and Consumer Federation of America, *Big Changes Burden Taxpayer: New Law Delays Refunds, Drives Demand for Loans; Immigrant Taxpayers Face Challenges*, at 3 (Mar. 2017) [hereinafter "2017 Tax-Time Products Report"].

Since 2002, the National Consumer Law Center (NCLC) has issued annual reports on tax-time consumer issues, particularly focused on financial products and how they drain tax refunds and EITC benefits.[6] In addition to our annual reports, NCLC has issued a number of special reports, including studies using mystery shopper testing of paid preparers.[7]

I. FILING SEASON ISSUES

A. Longest Government Shutdown in History

From December 22, 2018, to January 25, 2019, the government was shuttered due to a funding lapse. It was the longest government shutdown in history.[8] Its full impact on IRS operations may not yet be evident and is more likely to be revealed over time.

At the beginning of the filing season, the lengthy shutdown appeared to have impacted the IRS's ability to timely process taxpayers' refunds. One week into the filing season, the IRS reported processing 25% fewer tax returns than during the same period last tax season.[9] The number of returns filed was slightly down from last year, but not by enough to account for the reported 25% lag.

Data from early March indicates the IRS is handily making up lost time, though, at least with regards to processing returns and issuing refunds.[10] While the number of returns processed and refunds issued is still lower than for last year by this time, the IRS may yet close the gap.

The same cannot be said for other IRS functions, though. Nina Olson, the National Taxpayer Advocate, provides an excellent overview of the shutdown's effect on tax administration in the Preface to her 2018 Annual Report to Congress.[11] She points out that the IRS entered this filing season inundated with a backlog of work, straining under a gutted budget, and relying on an archaic IT system in danger of failing at any time.

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6. These reports are all *available at* https://www.nclc.org/issues/refund-anticipation-loans.html.
7. See, e.g., Chi Chi Wu, Alice Vickers, Amelia O'Rourke-Owens, Peter Skillern, and Cara Williams, National Consumer Law Center, Florida Alliance for Consumer Protection, Reinvestment Partners, *Prepared in Error: Mystery Shoppers in Florida and North Carolina Uncover Serious Tax Preparer Problems* (Apr. 2015) [hereinafter "Prepared in Error"], *available at* https://www.nclc.org/issues/prepared-in-error.html. Additional reports can be found at http://www.nclc.org/issues/refund-anticipation-loans.html.
8. National Taxpayer Advocate, *2018 Annual Report to Congress – Volume One*, Feb. 12, 2019, vii, *available at* https://taxpayeradvocate.irs.gov/Media/Default/Documents/2018-ARC/ARC18_Volume1_Preface.pdf [hereinafter "Preface to National Taxpayer Advocate 2018 Annual Report to Congress"].
9. IRS, Filing Season Statistics for Week Ending February 1, 2019, https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-february-1-2019.
10. IRS, Filing Season Statistics for Week Ending March 8, 2019, https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-march-8-2019.
11. Preface to National Taxpayer Advocate 2018 Annual Report to Congress at *vii-xxiii*.

Among the alarming statistics Olson shared about the level of IRS operations during the last week of the 2019 shutdown:

- **5 million** pieces of mail had not been batched for processing;
- **80,000** responses to 2018 Earned Income Tax Credit audits had not been addressed;
- **87,000** amended returns were waiting to be processed.
- **87%** of taxpayers calling to make payment arrangements were unable to get through to the IRS.[12]

The government shutdown likely contributed to the refund delays discussed in the next section, which in turn increases the incentive for low- and moderate-income taxpayers to seek out tax-time loans.

B. Refund Delays

Despite overall economic growth and high employment rates, the average American worker has been left behind as wages stagnate.[13] Today's average paycheck, controlled for inflation, provides average Americans with no more spending power than they had 40 years ago.[14] Thus, many American households rely heavily on their tax refunds for a much-needed cash infusion into otherwise strapped household budgets.

For low- and moderate-income workers especially, the annual tax refund is a lifeline. Refunds for this segment of the population are likely to include the Earned Income Tax Credit (EITC) and the refundable portion of the Child Tax Credit (CTC), referred to as the Additional Child Tax Credit (ACTC). Studies show families use these tax credits to access deferred healthcare,[15] pay down debt incurred throughout the year,[16] and accumulate otherwise unattainable savings for emergencies.[17] It is against this backdrop that low- and moderate-income Americans have come to rely so heavily on their annual tax refund.

But again this year, the IRS delayed until February 15 the *entire* refund requested by taxpayers who claim the EITC or ACTC. This delay, first implemented in 2017, is required by the Protecting Americans from Tax Hikes (PATH) Act.[18] The delay is intended to give the 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.

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12. *Id.*
13. Patricia Cohen, *New York Times*, "Paychecks Lag as Profits Soar, and Prices Erode Wage Gains" (Jul. 13, 2018) *available at* https://www.nytimes.com/2018/07/13/business/economy/wages-workers-profits.html (visited Feb. 15, 2019).
14. Drew Desilver, Pew Research Center, *For Most U.S. Workers, Real Wages Have Barely Budged in Decades*, *available at* http://www.pewresearch.org/fact-tank/2018/08/07/for-most-us-workers-real-wages-have-barely-budged-for-decades/ (visited Feb. 15, 2019).
15. *See* Diana Farrell, Fiona Greig, and Amar Hamoudi, Deferred Care: How Tax Refunds Enable Healthcare Spending, JPMorgan Chase Institute (Mar. 2018), *available at* https://www.jpmorganchase.com/corporate/institute/document/institute-tax-refunds-healthcare-report.pdf.
16. Tax Time: How Families Manage at 13-18.
17. *Id.*
18. Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV (2015) § 201(b) (codified at IRC § 6402(m)) [hereinafter "PATH Act"].

As a result of the PATH Act, taxpayers claiming the EITC or ACTC would normally not expect refunds before February 27.[19] Compounding the delay last year, defective programming of IRS fraud filters resulted in hundreds of thousands of refunds being frozen for another month or more.[20] **Eighty-one percent of these frozen refunds turned out to be legitimate**.[21]

Adding insult to injury, EITC claimants caught up in the faulty fraud filters saw their returns automatically assigned for a type of audit called a "correspondence examination."[22] Correspondence examinations are a type of examination the IRS conducts exclusively by mail.[23] The IRS unit that handles these examinations was inundated and has not caught up. When the 2019 filing season opened, the examination unit had a backlog of 80,000 cases for audits of 2017 returns that it had yet to review.[24] As of today, many of these unlucky taxpayers *still* have not had their 2017 refunds disbursed due to this fiasco. It remains to be seen whether IRS's adjustments this year to its fraud filters will stave off similar problems for the 2019 filing season.

C. Immigrant Taxpayers Face Major Setbacks

IRS Continues Deactivating ITINs; Renewals Stagnate

Individual Taxpayer Identification Numbers (ITINs) are used by anyone required to file a federal tax return or pay taxes who is not eligible for a Social Security number, including undocumented immigrants.[25] Taxpayers who use ITINs, or who include on their federal tax returns others who use ITINs, have more to worry about than just the refund delay issues discussed above. Another provision of the PATH Act mandated the expiration on a rolling basis of all ITINs issued before 2013.[26]

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19. IRS, Refund Timing for Earned Income Tax Credit and Additional Child Tax Credit Filers, www.irs.gov/individuals/refund-timing, Jan. 17, 2019.
20. National Taxpayer Advocate, *2018 Annual Report to Congress – Volume One,* Feb. 12, 2019, 79-84, *available at* https://taxpayeradvocate.irs.gov/2018AnnualReport [hereinafter "National Taxpayer Advocate 2018 Annual Report to Congress"]; Nina Olson, *IRS Fraud Detection - A Process That is Challenging for Taxpayers to Navigate with an Outdated Case Management System Resulting in Significant Delays of Legitimate Refunds*, Nat'l Taxpayer Advocate Blog (Dec. 6, 2018), https://taxpayeradvocate.irs.gov/news/nta-blog-irs-fraud-detection-process-is-challenging-for-taxpayers-to-navigate-part-1?category=Tax%20News.
21. Preface to National Taxpayer Advocate 2018 Annual Report to Congress at *x*.
22. *Id*.
23. The correspondence examination procedures are frustrating for taxpayers for a number of reasons, including that no one auditor is assigned to handle the audit from start to finish. The National Taxpayer Advocate made correspondence examinations a "Most Serious Problem" in her latest Annual Report to Congress. National Taxpayer Advocate 2018 Annual Report to Congress at 126-141.
24. Preface to National Taxpayer Advocate 2018 Annual Report to Congress at *x*. *See also* Paul Kiel and Jessie Eisenger, *ProPublica*, "Who's More Likely to Be Audited: A Person Making $20,000—or $400,000?" (providing an in-depth examination of the challenges and delays EITC claimants face). (Dec. 12, 2018), *available at* https://www.propublica.org/article/earned-income-tax-credit-irs-audit-working-poor.
25. National Taxpayer Advocate, *2017 Annual Report to Congress—Volume One*, Jan. 10, 2018, at 181, *available at* https://taxpayeradvocate.irs.gov/reports/2017-annual-report-to-congress/full-report [hereinafter "National Taxpayer Advocate 2017 Report to Congress"].
26. PATH Act, § 203(a) (codified at 26 U.S.C. § 6109(i)(3)).

Millions of ITINs have already expired, with 2.7 million people projected to be affected by the 2018 expirations alone.[27] The ITINs that expired in 2018 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.

Although the PATH Act permits the renewal of expired ITINs, expirations have far outpaced renewals.[28] The lag in ITIN renewals is due in part to IRS policies and procedures that make it difficult for taxpayers to navigate the process. These difficulties include the lack of targeted, comprehensive outreach, language access barriers, onerous documentation requirements, and limited opportunities for applying in person.[29]

Processing of ITIN applications ground to a halt for nearly all of December 2018 because the entire unit was furloughed.[30] Taxpayers who did not take advantage of the IRS's early renewal procedures[31] over the summer may not see their refunds for some time.

Ongoing Struggle to Access Tax Credits

Immigrants have seen their access to refundable tax credits chipped away at over time. The PATH Act denies otherwise eligible taxpayers the CTC and American Opportunity Credits claimed on a tax return if an ITIN is not issued by the return's due date.[32] This means that eligible taxpayers who were unaware of their ITIN deactivation could be permanently barred from accessing credits to which they are otherwise entitled.

The Tax Cuts and Jobs Act made another important change for immigrants in this area. Starting this filing season and running through 2025, the CTC and ACTC are no longer allowed for immigrant children with ITINs.[33]

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27. IRS, IR-2018-137, More Than 2 Million ITINs to Expire This Year; Renew Soon to Avoid Refund Delays, June 14, 2018, *available at* https://www.irs.gov/newsroom/more-than-2-million-itins-to-expire-this-year-renew-soon-to-avoid-refund-delays.
28. *See* National Taxpayer Advocate, *Fiscal Year 2019 Objectives Report to Congress – Volume Two*, June 27, 2018, at 140, *available at* https://taxpayeradvocate.irs.gov/2019objectivesreport (IRS received only 176,000 of 440,000 projected renewal applications for ITINs that expired in 2016).
29. The National Taxpayer Advocate has written extensively about these issues. *Id.* at 140; National Taxpayer Advocate, *Fiscal Year 2018 Objectives Report to Congress – Volume Two*, June 28, 2017, at 73; National Taxpayer Advocate 2017 Report to Congress at 181-194.
30. *See* IRS, Fiscal Year 2019 Lapsed Appropriations Contingency Plan (Non-Filing Season – December 8-31, 2018).
31. Starting in 2017, the IRS allowed taxpayers to submit renewal applications in June, which was three months earlier than in the prior year. IRS opened the program even earlier in the summer for 2018. IRS, *supra* note 27.
32. PATH Act, §§ 205, 206 (codified at 26 U.S.C. §§ 24(e), 25A(i)(6)).
33. 26 U.S.C. § 24(h).

II. TAX-TIME CONSUMER PROTECTION ISSUES

A. Private Debt Collectors Pursuing the Poorest of the Poor

Congress revised the Internal Revenue Code in 2015 to require the IRS to use private debt collectors to collect certain unpaid federal tax debts.[34] The IRS started referring tax debts to four outside contractors in 2017.[35] Private collection of tax debts is problematic for many reasons, discussed in our earlier reports.[36]

> During the first quarter of FY 2019, the IRS referred 456,332 taxpayers to private debt collectors.

Despite continuing criticism of how it is operating the private debt collection (PDC) program,[37] the IRS doubled down in the first quarter of fiscal year 2019, more than tripling the number of tax debt accounts it refers out each month.[38] During that period alone, the IRS referred 456,332 taxpayers to private debt collectors.[39]

Despite well-documented abuses in the debt collection industry,[40] the IRS designed a PDC program that puts cost-effectiveness ahead of thoughtful oversight, to the detriment of vulnerable and lower-income taxpayers. Although the PDC program had eked out a relatively small profit by the end of September 2018, it appears to have done so 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,[41] recipients of Social Security

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34. 26 U.S.C. § 6306(c)(A) 26 U.S.C. § 6306(c)(A) (requiring the IRS to outsource tax debts if: (a) more than one year has passed without any interaction between the taxpayer and IRS; (b) 1/3 of the statute of limitations has lapsed and there is no IRS collector assigned; or (c) the IRS is otherwise not working the debt due to lack of resources).

35. IRS, Private Debt Collection, Aug. 7, 2017, www.irs.gov/businesses/small-businesses-self-employed/private-debt-collection.

36. *See, e.g.*, Chi Chi Wu and Michael Best, National Consumer Law Center and Consumer Federation of America, *Tax Time Products 2018: New Generation of Tax-Time Loans Surges in Popularity*, at 9-11 (Mar. 2018) *available at* http://www.nclc.org/images/pdf/pr-reports/2018-tax-time-financial-products.pdf [hereinafter "NCLC 2018 Tax-Time Products Report"]; NCLC 2017 Tax-Time Products Report at 13-14.

37. National Taxpayer Advocate 2018 Annual Report to Congress at 227-29; Treasury Inspector General for Tax Administration, Fiscal Year 2019 Biannual Independent Assessment of Private Collection Agency Performance (Dec. 31, 2018) *available at* https://www.treasury.gov/tigta/auditreports/2019reports/201930018fr.pdf.

38. Toby Eckert, *Politico Morning Tax* "Pedal to Metal on Debt Collection," (Nov. 9, 2018) *available at* https://www.politico.com/newsletters/morning-tax/2018/11/09/pedal-to-metal-on-debt-collection-406662.

39. IRS Private Debt Collection Program, Quarterly Update to Congress (Fiscal Year 2019, through Dec. 13, 2018), *available at* https://www.finance.senate.gov/imo/media/doc/PDC%20ARC%20quarterly%20update%20through%20December%2013%202018.pdf.

40. *See, e.g.*, Lesley Fair, Federal Trade Commission, Top 10 Consumer Complaint Categories: Is Your Industry on the List? (Mar. 1, 2016), https://www.ftc.gov/news-events/blogs/business-blog/2016/03/top-10-consumer-complaint-categories-your-industry-list.

41. Letter from Senators Elizabeth Warren, Richard Blumenthal, Bernard Sanders, and Bill Nelson to Internal Revenue Service Acting Commissioner David Kautter, Mar. 22, 2018, *available at* https://www.warren.senate.gov/oversight/letters/warren-requests-irs-information-on-use-of-private-debt-collectors-for-taxpayers-affected-by-federally-declared-disasters.

Disability Income (SSDI) and Supplemental Security Income (SSI) payments,[42] and other taxpayers who IRS procedures would have specially protected due to their limited income.[43]

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.[44]
- 20% of taxpayers who entered into installment agreements with private collectors to pay tax debts had incomes below the federal poverty level.[45]

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) applies to private debt collectors collecting federal tax debts.[46] The FDCPA protects consumers against debt collection harassment and deception, gives them the right to send a written request to a debt collector to stop contacting the consumer, and provides a legal remedy for violations.[47]

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

While tax preparation firms derive significant revenue from refund-related financial products, their biggest profit center is still in the fees consumers pay to have the tax returns prepared. H&R Block, for example, earned four and a half times more revenue from tax preparation fees in 2018 than it did from all of its tax-time financial products combined.[48]

Tax preparation firms have long benefitted from a large captive market in this area, due in part to the IRS's own agreement not to develop and offer the public free tax preparation software.[49] More than half of American taxpayers overall use a paid preparer to prepare their tax returns.[50] Taxpayers who claim the EITC are even more likely to use a paid preparer, even though this segment of the population is less likely to be able to afford an expensive professional service.[51]

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42. National Taxpayer Advocate 2018 Annual Report to Congress at 282-284.
43. *Id.*
44. *Id.* at 278.
45. *Id.*
46. 26 U.S.C. 6306(g).
47. *See generally* National Consumer Law Center, *Fair Debt Collection* (8th ed. 2014), *updated at* https://library.nclc.org/
48. H&R Block Inc., 2018 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 23 [hereinafter "H&R Block 2018 Form 10-K"].
49. *See* IRS, Free Online Electronic Tax Filing Agreement, page 1, *available* at https://www.irs.gov/pub/irs-utl/2002-free-online-electronic-tax-filing-agreement.pdf (initial agreement with consortium of private tax preparation software companies, then known as the Free File Alliance).
50. IRS Statistics of Income Data (Tax year 2016), *available at* https://www.irs.gov/statistics.
51. *Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors: Hearing before*

But in a particularly unfair twist, consumers who may feel pressure to turn to a paid preparer have encountered a near total lack of price transparency in the unenrolled tax preparation industry. Unenrolled preparers are tax return preparers who are not licensed attorneys, certified public accountants, or registered enrolled agents. For context, about 85% of H&R Block's tax return preparers are unenrolled.

The distinction is important because unenrolled preparers are not required by any licensing authority to demonstrate basic competency, have no continuing education requirements, and are not subject to the authority of any licensing or regulatory board that ensures ethics in practice and fair advertising. In other words, unenrolled preparers can set any standards, low standards, or no standards at all for themselves. The National Consumer Law Center and others have written extensively about how harmful this lack of oversight is to low- and moderate-income taxpayers.[52]

Unenrolled preparers in the tax preparation industry have traditionally had a common practice of refusing to provide up-front price information. Tax preparation offered by unenrolled preparers is one of the few consumer services in the United States for which consumers typically cannot obtain a price before incurring the expense. Tax preparers assert that they charge by the form, and cannot predict which forms will be generated until they actually finish the tax preparation. In this way, they've been able to ignore clear consumer preferences for pricing clarity.[53] Consumers cannot comparison shop or predict how much tax preparation will cost. The availability of RACs further compounds the problem. Consumers who can deduct the tax preparation fees from a RAC are less sensitive to the high cost.

This lack of disclosure and inability to comparison shop can lead to low-income taxpayers being victimized by unreasonably inflated fees for tax preparation services. Mystery shopper testing has documented tax preparation fees of up to $400 or $500 for EITC recipients and other low- and moderate-income taxpayers.[54] Meanwhile, for similar returns during the same period, certified public accountants charged on average $273.[55]

Committee of Finance, Senate, 113th Congress 6, 2014 (Testimony of James R., McTigue Jr.). *See also* Progressive Policy Institute, *The Price of Paying Taxes II: How paid tax preparer fees are diminishing the Earned Income Tax Credit (EITC)*, 1, April 2016, *available at* https://www.progressivepolicy.org/wp-content/uploads/2016/04/2016.04-Weinstein_Patten_The-Price-of-Paying-Takes-II.pdf (finding EITC recipients spent 13 to 22 percent of their refunds on tax preparation fees).

52. *See, e.g.*, Chi Chi Wu, National Consumer Law Center, *Riddled Returns: How Errors and Fraud by Paid Tax Preparers Put Consumers at Risk and What States Can Do*, 19-41 (Nov. 2013) [hereinafter "Riddled Returns"], *available at* http://www.nclc.org/issues/riddled-returns.html; NCLC 2018 Tax-Time Products Report at 8-9; NCLC 2017 Tax-Time Products Report at 10-11.

53. *See* Michael Best, Consumer Federation of America, *Public Views on Paid Tax Preparation 2017 Strong Public Support Continues for New Consumer Protections to Prevent Errors and Fraud* (Mar. 2017).

54. Chi Chi Wu, Alice Vickers, Amelia O'Rourke-Owens, Peter Skillern, and Cara Williams, National Consumer Law Center, Florida Alliance for Consumer Protection, Reinvestment Partners, *Prepared in Error: Mystery Shoppers in Florida and North Carolina Uncover Serious Tax Preparer Problems* (Apr. 2015).

55. National Society of Accountants, Tax Return Preparation Fee Averages $273 For Typical Individual Tax Returns (Jan 14, 2015), *available at* https://www.nsacct.org/blogs/nsa-admin/2015/01/29/tax-return-preparation-fee-averages-273-for-typical-individual-tax-returns.

NCLC, in its Model Individual Tax Preparer Regulation Act, includes a provision that would require paid preparers to provide a standard disclosure of their fees in the form of a table.[56] More information on excessive tax preparation fees and the need for better pricing disclosure is available in prior NCLC reports,[57] and by other advocacy groups.[58]

Blazing a New Path

In what may prove to be a transformative development in the commercial tax preparation industry, H&R Block this year broke away from the industry norm to launch a transparent pricing program.[59] 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 taxpayers to compute the cost of the return preparation before work ever begins.

H&R Block this year broke away from the industry norm to launch a transparent pricing program.

H&R Block's move could be the important first step towards open competition in this industry. Pricing clarity would permit consumers to comparison shop and make better-informed decisions before purchasing the service. This could also move pricing more into alignment with the consistently lower rates offered by regulated, credentialed preparers. Indeed, when H&R Block announced its pricing transparency initiative, it also announced that it was lowering tax preparation fees for many taxpayers.[60]

The other major tax preparation chains continued to operate under the old, opaque scheme, keeping consumers in the dark until after the return was prepared. It remains to be seen whether they can carry on with this practice in light of H&R Block's bold move.

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56. Riddled Returns at 19-41.
57. See, e.g., Chi Chi Wu and Tom Feltner, National Consumer Law Center and Consumer Federation of America, *It's a Wild World: Consumers at Risk from Tax-Time Financial Products and Unregulated Preparers*, at 16-18 (Feb. 2014); Chi Chi Wu and Jean Ann Fox, National Consumer Law Center and Consumer Federation of America, *The Party's Over for Quickie Tax Loans: But Traps Remain for Unwary* Taxpayers 14-17 (Feb. 2012).
58. David Rothstein and Rachel Black, New America, Improving The Tax Preparation Experience, Feb. 11, 2015, *available at* http://www.newamerica.org/asset-building/improving-the-tax-preparation-experience; David Rothstein, Policy Matters Ohio, Improving Tax Preparation With a Model Fee Disclosure Box, June 2013, *available at* www.policymattersohio.org/wp-content/uploads/2013/06/FeeDisclosure_Jun2013.pdf.
59. Press Release, "H&R Block announces upfront, transparent prices for all tax prep," Oct. 29, 2018, *available at* https://investors.hrblock.com/node/26236/pdf.
60. James Dornbrook, *Kansas City Business Journal*, "H&R Block CEO: New transparent pricing 'all about removing the mystery'" (Oct. 29, 2018) *available at* https://www.bizjournals.com/kansascity/news/2018/10/29/hr-block-ceo-jeff-jones-transparency-pricing.html (visited Mar. 15, 2019)

III. TAX-TIME FINANCIAL PRODUCTS EVOLVE AND PROLIFERATE

If the PATH Act delay was a major driver for RALs and RACs in recent years, then the parade of media articles in the early part of tax filing season excitedly predicting additional delays as a result of the protracted government shutdown may be a bonanza for lenders.[61] One survey found that 66% of Americans believe the shutdown will cause refund delays.[62] This provides a strong incentive to turn to RALs and RACs.

Unfortunately, RAL and RAC data about the 2019 filing season may be a long time in coming. This report is unable to provide even 2018 data due to a recent change in IRS policy on data-sharing. In a surprise departure from past practice, the IRS has decided that it will only share data to watchdog groups through its Statistics on Income unit, which releases data at a more delayed pace.

The limited available data for the 2018 and 2019 filing season comes from H&R Block and MetaBank. Block reported 1.2 million RAL applications in 2018,[63] which was a 14% increase from 2017.[64] Based on the 14% increase in H&R Block RAL applications, we estimate that about 1.9 million taxpayers overall in the U.S. applied for RALs in 2018. In 2019, slightly under 1 million H&R Block customers applied for RALs, which was a more than 16% dip.[65] This may not reflect an overall decrease in RAL applications, though. It could mean that some H&R Block customers may be seeking out the more costly interest-bearing RALs for higher amounts offered by other lenders and preparers. MetaBank reported an 18% increase in its 2019 RAL sales.[66]

A. RALs Continue to Evolve

In the past, RALs were the prominent tax-time financial product. RALs were loans made by banks, with tax preparers acting as facilitators, that were secured by and repaid directly from the proceeds of a consumer's tax refund. RALs featured fees that translated into triple-digit

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61. *See, e.g.*, Damian Palleta and Erica Werner, *Washington Post*, "Millions Face Delayed Tax Refunds, Cuts To Food Stamps as White House Scrambles to Deal With Shutdown's Consequences" (Jan. 4, 2019) *available at* https://www.washingtonpost.com/business/economy/millions-face-delayed-tax-refunds-cuts-to-food-aid-as-white-house-scrambles-to-deal-with-shutdown/2019/01/04/b5b58616-0fa3-11e9-8938-5898adc28fa2_story.html?utm_term=.7694a4b56780. Some similar predictions continued into the filing season, even after published IRS data began to show processing and refund rates approaching those of prior years. *See, e.g.*, Rachel DePompa, *KAIT8 News*, "Tax Refunds May be Delayed Due to IRS Backlog" (Feb. 21, 2019) *available at* http://www.kait8.com/2019/02/22/tax-refunds-may-be-delayed-due-irs-backlog/.
62. Maurie Backman, Motley Fool, "Will the Government Shutdown Delay Your Tax Refund This Year? 66% of Americans Think Yes" (Feb. 8, 2019) *available at* https://www.fool.com/retirement/2019/02/08/will-the-government-shutdown-delay-your-tax-refund.aspx.
63. H&R Block, Inc., H&R Block CEO Jeffrey Jones on Q3 2018 Results—Earnings Call Transcript, Mar. 6, 2018, *available at* http://www.seekingalpha.com/.
64. NCLC 2018 Tax-Time Products Report at 13 (1.1 million applications in 2017).
65. H&R Block, Inc., H&R Block CEO Jeffrey Jones on Q3 2018 Results – Earnings Call Transcript, Mar. 6, 2018, *available at* http://www.seekingalpha.com (just under 1 million RAL applications in 2019).
66. Press Release, "MetaBank Provides 2019 Tax Season Update," Mar. 5, 2019, *available at* http://www.metafinancialgroup.com/news-releases/news-release-details/metabankr-provides-2019-tax-season-update.

Annual Percentage Rates (APRs) and diverted significant portions of taxpayers' refunds into the pockets of banks and preparers. Between 2009 and 2012, all of the banks that made these high cost loans either stopped voluntarily or were forced out by federal regulators.[67] Although these traditional RALs are largely a thing of the past, consumers still need to be careful at tax time.

Tax preparers and lenders have again re-vamped RAL offerings in the ongoing quest to capture as much of taxpayers' refunds as possible. Taxpayers seeking one of last year's "no-fee" RALs may be offered an interest-bearing loan instead this year. One way that some lenders may promote their interest-bearing loans is by having a single process to apply for both kinds of loans, guaranteeing that consumers who qualify will also be offered interest-bearing RALs even if they only came in seeking no-fee RALs. As discussed next, applications may result in the offer of a "no-fee" RAL, an interest-bearing RAL, or in many cases, no loan at all.

■ *"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.[68] They were marketed as not imposing costs or risks to borrowers.

With a no-fee RAL, the taxpayer borrows a limited amount when filing a tax return. Lenders call these "advances," but they are actually loans secured by the anticipated tax refund. Lenders promised not to pursue collection if the IRS doesn't disburse the refund. In 2017, about 1.7 million taxpayers applied for RALs, most of which we assume were "no-fee" RALs.

While these loans purported not to impose a fee or interest charge on the consumer, they still had risks and costs. For example, lenders charged preparers a fee on each approved "no-fee" RAL, which gave tax preparers an incentive to recoup it from the consumer. EPS Tax Solutions and River City Bank offer preparers the option to enroll in kickback programs that charge consumers a higher price for a related product, the Refund Anticipation Check (RAC).[69] The higher RAC fee charged by these programs coupled with the kickback paid to the preparer can shift some or all of the preparer's RAL fee to the consumer. Assuming most consumers who take no-fee RALs also take RACs, this provides a sneaky way for preparers to defray their own costs on the backs of the taxpayer.

There were reports last season of preparers recouping fees by inflating tax preparation costs in the form of add-on junk fees.[70] With the lack of fee transparency still so prominent in the

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67. For a history of these high-cost RALs *see* Chi Chi Wu, Tom Feltner, and Jean Ann Fox, National Consumer Law Center and Consumer Federation of America, *Something Old, Something New in Tax-Time Financial Products: Refund Anticipation Checks and Quickie Tax Loans* 2-3 (Feb. 2013) [hereinafter "NCLC 2013 Tax-Time Products Report"].
68. National Taxpayer Advocate 2017 Report to Congress at 27.
69. EPS, e-Bonus, https://www.epstax.net/e-bonus.html (visited Mar. 21, 2019); River City Bank, New and Improved 2019 Freedom Advance, https://www.rcbtaxdivision.com/pricing.aspx (visited Mar. 21, 2019). A RAC is neither a refund, nor a check. See below at III(B) for a discussion of RACs.
70. Kimberly Pierceall, *The Virginian-Pilot*, "No fees for that $3,250 refund advance loan from Liberty Tax? Think again" (Mar. 2, 2018), *available at* https://pilotonline.com/business/consumer/article_

tax preparer industry, there are endless opportunities for preparers to recoup these fees from consumers even if a lender may expressly forbid it.[71]

Finally, even if this year's "no-fee" RAL is truly cost free, its true purpose may be more in the nature of a Trojan horse into the wallets of consumers. This is because lenders ply applicants with other fee-generating products, such as prepaid cards and interest-bearing RALs, as discussed next. And since consumers might need to choose between a no-fee RAL for a smaller loan amount or the interest-charging RAL in a much higher loan amount, we may see more of the costly RALs this year.

▪ *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 "no-fee" RAL in favor of one that does charge interest. These RALs impose interest on the full amount of the loan and in some cases charge origination fees. 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 interest-bearing RALs. H&R Block is the only major tax preparation chain that has refrained from moving into the interest-bearing RAL market, sticking instead with its maximum $3,000 "no-fee" RAL.

H&R Block is the only major tax preparation chain that has refrained from moving into the interest-bearing RAL market, sticking instead with its maximum $3,000 "no-fee" RAL.

Although the interest rates for these RALs slide in at or just under the traditional usury cap of 36%, a closer look reveals that a true "all-in" APR could be higher in some cases. 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).

Another problem with RALs generally is that consumers must electronically file their returns with the preparer *before* they can receive a decision on the RAL request. Based on past dealings, consumers may have an expectation of approval. But since these RAL applications appear to be subject to some amount of underwriting, including a credit report and credit score check, taxpayers who qualified in the past may no longer qualify. By the time the RAL is later rejected, the consumer is tethered to the preparer.

These timing issues provide a strong incentive for preparers to give oral assurances that taxpayers will qualify for loans when they may have little or no basis to know whether they actually will be approved. The banks are responsible for all underwriting of these loans. Many early filers are reporting deceptive "pre-qualification" notices, in-office assurances of approval, and misrepresentations about the credit requirements that induced them to commit to a preparer - only to later be notified their RAL application was rejected or approved for a minimal amount.[72] As one disappointed consumer who was turned down for a RAL said on a

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4accf2f9-b76a-5ce0-9404-2138eca89d5d.html.

71. See above at II(B) for a discussion of fee transparency.

72. *See, e.g.*, Susan Tompor, *Detroit Free Press*, "Tax Refund Advance Often Too Good To Be True: What to Know" Jan. 25, 2019, *available at* https://www.freep.com/story/money/personal-finance/susan-tompor/2019/01/25/tax-refund-advance-loan/2643982002/. Online complaint boards are replete with

complaint forum, "Obviously if my credit was good I wouldn't need to ask for the RAL in the first place."[73]

Last years' no-fee RALs were "non-recourse," according to lenders.[74] With a non-recourse refund anticipation loan, a consumer does not have to repay if the tax refund is not disbursed as expected or is not adequate to fully repay the loan. This year, a spokesperson for H&R Block told a reporter that the loans are "generally non-recourse" but that H&R Block may collect under some limited circumstances.[75] Certainly the lenders consider the loans to be non-recourse,[76] but it's not clear whether preparers have any incentive to encourage their clients to repay when an anticipated refund falls short.

Lenders offering RALs this year include:

- **MetaBank**, which makes RALs available through its EPS, Refund Advantage, and Specialty Consumer Services divisions.[77] MetaBank offers RALs through its network of over 10,000 tax return preparers.[78] MetaBank provides RALs for Jackson Hewitt, offering a no-fee RAL of up to $3,500 and a "Go Big Refund Advance" of between $1,000 and $7,000 at 35.9% APR.[79] The interest on the Go Big loan product is capped at 45 days.[80]
- **Axos Bank**[81] is the RAL lender for H&R Block. H&R Block offers no-fee RALs through Axos in increments of $500, $750, $1,250 or $3,000.[82]
- **River City Bank** offers a "no-fee" RAL of up to $1,000, down from $1,750 last year.[83] Taxpayers may be offered an alternative interest-bearing loan of $2,000, $3,000, or $5,000, with an APR of 26.07% *plus* an undisclosed loan origination fee.[84]

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similar stories. *See, e.g.*, https://www.consumeraffairs.com/finance/jackson_hewitt.html?page=4.

73. https://metabank.pissedconsumer.com/metabank-is-a-joke-201801241175686.html (visited Feb. 14, 2019).

74. NCLC 2018 Tax-Time Products Report at 2-5.

75. Tobie Stanger, *Consumer Reports*, "Should You Apply for a Tax Refund Advance?" Jan. 17, 2019, *available at* https://www.consumerreports.org/taxes/tax-refund-advance-should-you-apply/.

76. *See, e.g.,* MetaBank 2018 10-K at 12.

77. MetaBank 2018 10-K at 4.

78. *Id*.

79. Press Release, "Jackson Hewitt® Leads Refund Advance Category by Giving Qualified Clients More Refund Advance Choices," Dec. 3, 2018, *available at* http://www.jacksonhewitt.com/newsroom/media-releases/jackson-hewitt-leads-the-refund-advance-category-by-giving-qualified-clients-more-refund-advance-choices/.

80. *Id*.

81. Axos was formerly known known as BofI Bank. BofI Holdings, Inc., *2018 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, at 26. [hereinafter "BofI 2018 Form 10-K"].

82. H&R Block, Refund Advance, https://www.hrblock.com/offers/refund-advance/ (visited Mar. 16, 2019).

83. River City Bank, New and Improved 2019 Freedom Advance, https://www.rcbtaxdivision.com/pricing.*aspx* (visited Feb. 11, 2019).

84. *Id*.

- **Santa Barbara Tax Products Group** (SBTPG) offers interest-free RALs of $500 or 25% of the expected tax refund, up to $2,000.[85] MetaBank is the official lender for this product.[86] In addition SBTPG and MetaBank offer an interest-bearing loan option for 50% or 75% of the expected tax refund, up to $6,000. They've raised the interest rate this year to 36%.[87]
- **Republic Bank & Trust** is offering RALs of $500, $1,500, $2,000, $3,000, and $6,000, which it calls the 'Easy Advance.'[88] These RALs are offered through independent preparers, who pay a fee for each approved loan. The loans additionally impose an interest charge on consumers of "less than 36%."[89] Republic is the RAL lender for Liberty Tax.[90] It also makes pre-season or "paystub" RALs for Jackson Hewitt.[91]

B. Refund Anticipation Checks

Refund Anticipation Checks (RACs), commonly called "Refund Transfers" in the industry, 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, often on a prepaid card.

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, allowing the consumer to "borrow" the amount of the fee until the refund arrives. At least two courts have held that a RAC constitutes a loan of the tax preparation fee, and thus RAC fees are finance charges under the Truth in Lending Act.[92]

Given that 4 in 10 Americans would not be able to come up with $400 to pay an unexpected expense, one can understand why some consumers might end up borrowing money to pay tax preparation fees.[93] But a RAC is an expensive loan. Average RAC fees hover around $30 to $40. 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 this fee.

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85. Santa Barbara Tax Products Group, FastCash ADVANCE, www.sbtpg.com/fastcash-advance (visited Mar. 17, 2019).
86. *Id.*
87. *Id.*
88. Republic Bank & Trust, Will You Be Printing $6,000 Advance Checks on January 2nd? Republic EROs will!, https://www.republicrefund.com/Products/EASYAdvance.aspx (visited Mar. 16, 2019).
89. Republic Bancorp, *2018 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934* at 48.
90. Liberty Tax Service, Refund and Product Options, https://www.libertytax.com/services/refund-options/ (visited Mar. 16, 2019).
91. For an explanation of paystub RALs, see 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) [NCLC 2008 Tax-Time Report"], *available at* www.nclc.org/images/pdf/high_cost_small_loans/ral/paystub_ral_report.pdf.
92. United States v. ITS Fin., LLC, 2013 WL 5947222 (S.D. Ohio Nov. 6, 2013); People v. JTH Tax, Inc., 212 Cal. App. 4th 1219, 151 Cal. Rptr. 3d 728 (2013).
93. FTC, *Report on the Economic Well-Being of U.S. Households in 2017*, 2 (May 2018) *available at* https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf.

As shown below in the list of sample RAC fees, a RAC can be very expensive. Consumers presented with a high-cost RAC should carefully weigh the cost against the benefit of deferring the tax preparation fee for a few weeks and using a temporary bank account that is open for only a few days.

About 20.5 million low- to moderate-income taxpayers turned to RACs in 2017, spending over $500 million on them.[94] In addition to the RAC fee itself, many tax preparers charge add-on fees, such as "document processing" or e-filing fees, discussed in earlier reports on tax-time products.[95] This can significantly add to the expense of a RAC.

About 20.5 million low- to moderate-income taxpayers turned to RACs in 2017, spending over $500 million on them.

Finally, by permitting payment of the tax preparation fee out of the refund when it arrives, RACs make taxpayers less sensitive to the high costs of tax preparation. The problems with lack of transparency in tax preparation fees are discussed earlier at Section II(B) and in earlier reports on tax-time products.[96]

2019 sample RAC fees include:

- **H&R Block** charges $39.95 for a RAC of the federal refund delivered on an Emerald Card (H&R Block's prepaid card product) or via direct deposit, or $64.95 for a RAC delivered via paper check. H&R Block does not impose a charge for a RAC of the state refund.[97]
- **Santa Barbara Tax Products Group** charges $29.95 for a RAC of the federal refund if delivered on a Wal-Mart Money prepaid card or $39.95 if not. It also charges $10 for a RAC of the state refund.[98]
- **Jackson Hewitt** stopped publicizing the cost of its RACs this year. Last year it charged $38.95 for a federal refund RAC and $49.95 for a state refund RAC, plus a $20 "data and document storage fee."[99]
- **Republic Bank & Trust** charges either $29 or $39 for a RAC of the federal refund. The price depends on the preparer's software and on whether the preparer wants to charge the lower price and receive nothing, or charge a higher price and receive an $8-$10 kickback. There is an additional fee of either $3 or $10 for a subsequent deposit, i.e., a state refund RAC. Additional kickbacks are available to preparers who convince taxpayers to receive funds on Republic's Netspend® Visa® Prepaid Card.[100]

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94. 2018 Tax-Time Products Report at 5
95. *See, e.g.*, Chi Chi Wu and Tom Feltner, National Consumer Law Center and Consumer Federation of America, *It's a Wild World: Consumers at Risk from Tax-Time Financial Products and Unregulated Preparers*, at 11-12 (Feb. 2014) [hereinafter "NCLC 2014 Tax-Time Products Report"].
96. *See, e.g.*, NCLC 2014 Tax-Time Products Report at 16-19; Chi Chi Wu and Jean Ann Fox, National Consumer Law Center and Consumer Federation of America, *The Party's Over for Quickie Tax Loans: But Traps Remain for Unwary Taxpayers*, at 14-17 (Feb. 2012).
97. H&R Block, Refund Transfer: Pay Nothing Out-of-Pocket, https://www.hrblock.com/financial-services/tax-refund-payment/ (visited Feb. 10, 2019).
98. Santa Barbara Bank & Trust, Refund Transfer, https://www.sbtpg.com/refund-transfer/ (visited Feb. 10, 2019).
99. Jackson Hewitt, Chicago Tax Preparation Disclosure, 2018.
100. Republic Bank & Trust, Pricing Plans, https://www.republicrefund.com/products/pricing-plans.

- **EPS Financial**, owned by MetaBank, offers two RAC options. The "E-Collect" program offers a free RAC if the refund is deposited on the E1 Visa Prepaid Card; otherwise it charges $20 for direct deposit or check.[101] The program does not pay the preparer a kickback. The "e-Bonus" program charges $39.95 for a RAC and provides a kickback of $12 or $25 to the tax preparer.[102] Both programs permit the preparer to offer a RAL.[103]
- **River City Bank** offers two programs. The first charges $44.95 for both a federal and state refund RAC and pays a $12 kickback to the preparer. The second charges $29.95 for a RAC of the federal refund and $9.95 for a RAC of the state refund, but provides no kickback to the preparer. Preparers can earn additional kickbacks for selling a prepaid card.[104]

Consumers may be enticed to accept RAC funds on prepaid credit cards by lender promises to load the funds within hours of electronically filing the tax return. Consumers should be aware that these cards may have hidden fees that further decrease their refund. NCLC has issued a report about the consumer protection issues with Netspend® and other prepaid cards.[105]

IV. INDUSTRY PLAYERS

The following summarizes some of the key information about the major players in the 2019 tax-time financial products market.

A. H&R Block

H&R Block remains the nation's largest tax preparation chain, having filed 23.3 million, or 14%, of all U.S. individual income tax returns filed last year.[106] Last year it earned $172 million in RAC fees, a 16% increase over 2017.[107]

H&R Block teams up with Axos Bank[108] to offer its refund-related loans and financial products. In 2018, H&R Block processed 1.2 million applications for no-fee RALs, a 14% increase over the prior year.[109] Based on historical approval rates, this translates into roughly

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aspx (visited Mar. 25, 2019).

101. EPS, e-Collect, www.epstax.net/e-collect.html (visited Feb. 10, 2019).

102. EPS, e-Bonus, https://www.epstax.net/e-bonus.html (visited Feb. 10, 2019).

103. EPS, Your Tax Office, Your Choice, https://www.epstax.net/advances.html (visited Feb 10, 2019).

104. River City Bank, EROs Can Choose The Pricing Plan That Meets Their Needs, https://www.rcbtaxdivision.com/pricing.aspx (visited Mar. 18, 2019).

105. Lauren Saunders, National Consumer Law Center, *Payday Lender Prepaid Cards: Overdraft and Junk Fees Hit Cash-Strapped Families Coming and Going* (2015), *available at* http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/Report_PaydayLendersPrepaid71515.pdf.

106. H&R Block 2018 Form 10-K at 5.

107. *Id.* at 26.

108. Axos was formerly known as BofI Bank. BofI Holdings, Inc., *2018 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934* at 26 [hereinafter "BofI 2018 Form 10-K"].

109. H&R Block, Inc., H&R Block CEO Jeffrey Jones on Q3 2018 Results – Earnings Call Transcript, Mar. 6, 2018, *available at* http://www.seekingalpha.com/.

936,000 approved second generation RALs last year.[110] H&R Block reported just under a million applications for the same period during 2019.[111]

H&R Block continues to offer a co-branded prepaid debit card product, the Emerald Card. The Emerald Card generated $102.6 million in revenue during 2018.[112] Consumers with Emerald Cards may access the Emerald Line of Credit, a pre-season or paystub product. H&R Block's interest and fee income from the Emerald Advance held steady from 2017 to 2018, hovering at around $57 million.[113]

The major development was H&R Block's implementation of a pricing transparency program, previously discussed. H&R Block also breaks away from the pack this year by declining to move back into the interest-bearing RAL arena.

B. Jackson Hewitt

Jackson Hewitt is the second largest tax preparation chain in the U.S. It has about 6,000 company-owned and franchise offices, including 3,000 in Wal-Mart stores.[114]

Like last year, Hewitt is offering no-fee RALs with MetaBank as its lender.[115] This year's version features a maximum loan amount of $3,500, slightly up from last year. Hewitt again offered paystub RALs of up to $400 before the filing season started. These so-called "paystub RALs" are risky in that they are based on an estimated tax return before the taxpayer has complete tax return information.[116]

In a significant departure from recent past practice, though, Jackson Hewitt is offering its clients interest-bearing RALs in much larger amounts of up to $7,000. Jackson Hewitt's so-called "Go Big Refund Advance" is subject to a 35.9% APR capped at 45 days.[117]

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110. 2018 Tax-Time Products Report at 13.

111. H&R Block, Inc., H&R Block CEO Jeffrey Jones on Q3 2019 Results – Earnings Call Transcript, Mar. 7, 2019, *available at* https://www.seekingalpha.com/.

112. H&R Block 2018 Form 10-K at 60.

113. *Id*.

114. Jackson Hewitt, https://www.jacksonhewitt.com (visited Feb. 14, 2019).

115. Press Release, "Jackson Hewitt® Leads the Refund Advance Category by Giving Qualified Clients More Refund Advance Options," Dec. 3, 2018, *available at* https://www.jacksonhewitt.com/newsroom/media-releases/jackson-hewitt-leads-the-refund-advance-category-by-giving-qualified-clients-more-refund-advance-choices/.

116. NCLC 2008 Tax-Time Report at 4.

117. Press Release, "Jackson Hewitt® Leads Refund Advance Category by Giving Qualified Clients More Refund Advance Choices," Dec. 3, 2018, *available at* http://www.jacksonhewitt.com/newsroom/media-releases/jackson-hewitt-leads-the-refund-advance-category-by-giving-qualified-clients-more-refund-advance-choices/.

C. Liberty Tax Service

Liberty Tax Service remains a major player in the industry despite having suffered considerable turmoil after its founder John Hewitt was ousted amid allegations of sexual misconduct earlier this year.[118] It prepared 1.5 million individual income tax returns last year in its 3,600 offices, most of which are franchised under either the Liberty Tax Service or SiempreTax+ brands.[119]

Liberty earned about $42 million in RAC and RAL fees in 2018, constituting about 27% of its total revenue.[120] It sold RACs to about 47% of its customers.[121]

Although these figures represent a slight decrease from the prior year, Liberty supplemented revenues by offering its franchisees the option to charge its customers a new "electronic filing fee" for federal tax returns. The fee, which appears to impose a new charge for services already being offered, generated about $10.8 million in additional revenue.[122] Liberty paid $8.6 million in kickbacks to its franchisees who opted to impose the new fee.[123]

Liberty continues to offer its "Easy Advance" RAL through Republic Bank & Trust Company, although it added an interest charge this year.[124]

D. MetaBank

MetaBank has contracted to be the RAL lender for Jackson Hewitt through 2020. MetaBank also offers RALs through its network of more than 10,000 independent preparers through its EPS, Refund Advantage, and Specialty Consumer Services divisions.[125] It made $1.49 billion in RALs this season, an increase of over 18% from last year, and anticipates processing about $2.4 million in RACs.[126]

MetaBank had previously purchased Refund Advantage, the tax-time products unit of Fort Knox Financial Services/Ohio Valley Bank, in September 2015. MetaBank made about $2 million RACs last year through Refund Advantage and EPS Financial.[127]

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118. Accounting Today, "Liberty Tax Soars After Founder Involved in Sex Scandal Agrees to Leave Firm," Jul. 24, 2018, *available at* https://www.accountingtoday.com/articles/liberty-tax-soars-after-founder-john-hewitt-involved-in-sex-scandal-agrees-to-leave-firm (visited Feb. 14, 2019)
119. Liberty Tax Service, 2018 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 6 [hereinafter "Liberty Tax Service 2018 10-K"].
120. Liberty Tax Service 2018 10-K at 38 (total revenues $175 million).
121. *Id*.
122. *Id*.
123. *Id*. at 39; Press Release, "Liberty Tax Service Announces Fiscal Year 2018 Results," Sept. 7, 2018, *available at* https://globenewswire.com/news-release/2018/09/07/1567878/0/en/Liberty-Tax-Service-Announces-Fiscal-Year-2018-Results.html (visited Feb. 14, 2019).
124. Liberty Tax Service, Apply For an Easy Advance, https://www.libertytax.com/easy-advance/ (visited Feb. 14, 2019)
125. MetaBank 2018 10-K at 4.
126. Press Release, "MetaBank Provides 2019 Tax Season Update, Mar. 20, 2019", *available at* http://www.metafinancialgroup.com/news-releases/news-release-details/metabankr-provides-2019-tax-season-update.
127. *Id*.

E. Republic Bank & Trust

Republic Bank & Trust was the last bank to stop making high-cost RALs in 2012.[128] It continued to make RACs though, and began making second generation RALs in 2016.[129] Republic Bank originated $430 million in RALs in 2018, compared with $329 million in 2017, increasing its RAL revenues by 25% from one year to the next.[130]

Republic Bank earned $18.8 million in RAC fees in 2017.[131] Last year it saw an 8% increase over this figure, earning an additional $1.5 million on this product.[132]

F. Santa Barbara Tax Products Group

Another provider of tax-time financial products is Santa Barbara Tax Products Group (SBTPG). SBTPG is the former Pacific Capital Bancorp RAL unit that was spun off after that bank was ordered to cease making RALs by its federal regulator, the Office of the Comptroller of the Currency.[133] SBTPG was purchased in 2014 by GreenDot, one of the largest providers of prepaid cards.[134]

SBTPG is the largest processor of tax refund disbursements in the U.S. and processed about 11.71 million refund transactions in 2018, about a 5% increase from the previous year.[135] Under SBTPG's "CashAdvance" program, taxpayers may be offered a "no-fee" RAL for 25% of the refund amount up to $2,000, or an interest-bearing RAL of 50% or 75% of the expected refund, up to $6,000.[136] The interest rate is 36%, up from 29.9% last year. MetaBank is the lender.

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128. NCLC 2013 Tax-Time Products Report at 3.
129. Chi Chi Wu, Chantal Hernandez, and Michael Best, National Consumer Law Center and Consumer Federation of America, *Minefield of Risks: Taxpayers Face Perils from Unregulated Preparers, Lack of Fee Disclosure, and Tax Time Financial Products* 6 (Mar. 2016).
130. Republic Bancorp, *2018 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934* at 57 [hereinafter "Republic Bancorp 2018 Form 10-K"].
131. Republic Bancorp, *2017 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934* at 59.
132. Republic Bancorp 2018 Form 10-K at 53.
133. *See* Chi Chi Wu and Jean Ann Fox, National Consumer Law Center and Consumer Federation of America, *Major Changes in the Quick Tax Refund Loan Industry* 14-15 (Feb. 2010).
134. Press Release, "Green Dot Completes Acquisition of Santa Barbara Tax Products Group," Oct 23, 2014, *available at* www.businesswire.com/news/home/20141023006379/en/Green-Dot-Completes-Acquisition-Santa-Barbara-Tax.
135. Green Dot Corporation, *2018 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, 38.
136. Santa Barbara Tax Products Group, FastCash ADVANCE—The Refund Advance Loan that Helps You Attract More Clients, www.sbtpg.com/fastcash-advance (visited Mar. 19, 2019).

CONCLUSION

The tax-time financial products market is ever-evolving. Lenders and tax preparers are adding interest-bearing RALs back into their repertoire of tax time products, which may end up edging out last season's "no fee" RALs. RACs remain ubiquitous. They can be subject to significant add-on fees, and may represent a high-cost loan of the tax preparation fee. There may be a significant increase in the sales of both RALs and RACs this year as a result of early-season fears about the IRS's inability to issue refunds after the protracted government shutdown.

Consumers face myriad problems beyond tax-time financial products. Statutory changes cause increasing confusion in tax administration, both inside and outside the IRS. Immigrant taxpayers are facing ever-increasing hurdles as Congress continues to pass legislation restricting their tax-related rights and increasing their burdens for filing and paying their taxes.

Perhaps the most abusive problem facing taxpayers is the IRS's operation of a woefully flawed private debt collection program that appears to be reducing rights and remedies that taxpayers would have if their debts remained with the IRS for collection. Additionally, the program disproportionately affects economically vulnerable families, potentially leaving them with insufficient funds to pay for basic life necessities.

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