



## Woodstock Institute

August 31, 2009

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CCPA:LPD:PR (Notice 2009-60)  
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Internal Revenue Service  
P.O. Box 7604, Ben Franklin Station  
Washington, D.C. 20044

### **Re: Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance**

To Whom It May Concern:

I am writing from Woodstock Institute to comment on the Internal Revenue Service (IRS) Notice 2009-60 regarding standards of conduct for the tax Return preparer community and increased taxpayer compliance.

Woodstock Institute is a fair lending, wealth creation, and regulatory reform organization working to advance economic security and community prosperity through applied research, policy development, and coalition building. Since 1973, Woodstock Institute has researched how financial institutions deliver products and services to low-wealth communities and has repeatedly called for stricter oversight of tax preparation services in Illinois and throughout the country and the prohibition of the sale of financial products connected with the tax preparation process.

This comment letter answers two of the nine questions posed by the agency. These two questions address the need for additional legislative, regulatory, or administrative rules to prohibit the sale of financial products connected with the tax preparation process, and the need for the IRS to register or license preparers, and establish testing and educational requirements. This comment letter will also illustrate the impact of refund anticipation loans on the asset-building potential of low-wealth people receiving the Earned Income Tax Credit (EITC) in the Chicago region.

#### **1. What, if any, additional legislative, regulatory, or administrative rules should the Service consider recommending as part of its proposals with respect to the tax return preparer community?**

**The IRS should ban refund anticipation loans to prevent abuses by paid tax preparers.** The marketing and sale of tax refund loans and other financial products as part of the tax preparation process contributes to an unacceptable level of fraud. In 2004, then Director of the IRS Criminal Investigation Division's Refund Crimes Unit reported that 80 percent of fraudulent e-filed returns were tied to a refund anticipation loan or other refund financial product.<sup>1</sup> In 2005, the Chief of the Criminal

<sup>1</sup>Allen Kenney, *IRS Official Shines Spotlight on E-Filing Fraud*, 2004 Tax Notes Today 130-4, July 6, 2004.

Investigations Division told Congress that 75 percent of tax returns identified as questionable and/or fraudulent were associated with a refund anticipation loan.<sup>2</sup>

The IRS recognized this potential for fraud in opening a rule-making proceeding in 2008, asking whether the agency should write rules to restrict the sharing of tax return information to market refund anticipation loans, refund anticipation checks, audit insurance, and other financial products.<sup>3</sup> A key question was whether RALs and other tax financial products provide preparers with a financial incentive to inflate refund claims inappropriately.

Woodstock Institute submitted comments as part of this rule-making process, noting that the sale of refund anticipation loans and other credit and consumer products in conjunction with the preparation of taxes serves as an incentive to inflate tax refunds. In that letter, dated April 7, 2008, Woodstock strongly encouraged the IRS to enact rules that would prohibit refund anticipation loans.

**2. Is there a minimum level of education and training necessary to provide tax return preparation services? If so, who should be responsible for ensuring that a tax return preparer meets this minimum level and how should that be done?**

**The IRS should register or license preparers, and require annual testing and at least 10 hours of continuing education annually.** A wrongly or fraudulently prepared return can lead to a substantial tax liability, additional fees or penalties, or even criminal sanctions for taxpayers. Yet there is no licensing requirement or supervision for tax professionals who actually prepare tax returns for tens of millions of consumers.

Anyone can charge the public to prepare tax returns for whose accuracy the taxpayer is responsible. Large national chain tax preparers – H&R Block, Jackson Hewitt, and Liberty Tax -- prepared about 20 million returns in 2007, while independent preparers prepared nearly 59 million tax returns. The independent preparers range from licensed professionals, such as attorneys and certified public accountants, to any person who wishes to make money preparing taxes and selling third-party financial products, such as refund anticipation loans and refund anticipation checks. Too often consumers get poor value for their tax preparation dollars.

In 2008, several significant studies on tax preparation and the sale of refund anticipation loans were released by consumer groups and government investigators which illustrate a general lack of quality control or accuracy in tax preparation.

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<sup>2</sup>Statement of Nancy J. Jardini, Chief, Criminal Investigation, Internal Revenue Service, *Testimony before the Subcommittee on Oversight of the House Committee on Ways and Means*, June 29, 2005, available at <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=2875>.

<sup>3</sup>73 Fed. Reg. 1131 (Jan. 7, 2008)

- a. The Community Reinvestment Association of North Carolina (CRA-NC) in Durham, Community Legal Services of Philadelphia (CLS) and the Philadelphia Campaign for Working Families conducted 17 “mystery shopper” tests of paid tax preparers, with results analyzed by the National Consumer Law Center.

Several preparers made serious errors that significantly affected tax liability. Two testers were required to file amended returns to fix errors. One tester withdrew after the preparer advised him not to include investment income on a return, essentially recommending tax fraud. This tester told coordinators, “My experience with [the independent preparer] has been a scary one. I say that mainly because of the lack of confidence in the preparer’s ability to competently complete our return ....”<sup>4</sup>

- b. Impact Alabama conducted “mystery shopper” tests of 13 tax preparers. Testers described themselves to preparers as parents with one or two children who lived with them less than six months of the year, which would not make them eligible for the EITC. Impact Alabama found that 11 of the 13 preparers incorrectly claimed the EITC. In addition, 10 preparers did not report income from other jobs such as babysitting, nine preparers did not report interest income, and 11 allowed testers to claim “head of household” status without being qualified for it.

None of the testers qualified for refunds, but each preparer figured a refund ranging from \$65 to \$6,247. Five preparers figured a refund of \$6,247 for a taxpayer who actually owed \$112 to the IRS.<sup>5</sup>

- c. A Treasury Inspector General for Tax Administration (TIGTA) Preparer Testing Report in 2008 focused on the accuracy of returns prepared by paid preparers.<sup>6</sup> TIGTA auditors tested 28 preparers (12 commercial chains and 16 independent preparers) and found that only 11 (39 percent) of the 28 storefronts prepared an accurate tax return. Of the other 17 preparers (61 percent) who prepared the returns incorrectly, six contained misstatements and omissions that TIGTA considered to have been willful or reckless.

### **3. Refund anticipation loans should be prohibited because they decrease wealth and the asset-building potential of low-wealth people and communities of color.**

In addition to contributing to unacceptable levels of fraud during the tax preparation process, refund anticipation loans have a substantial, negative effect on wealth and asset-building potential of low-

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<sup>4</sup>Tax Preparers Take a Bite out of Refunds: Mystery Shopper Test Exposes Refund Anticipation Loan Abuses in Durham and Philadelphia, available at [http://www.nclc.org/issues/refund\\_anticipation/content/shopper\\_report.pdf](http://www.nclc.org/issues/refund_anticipation/content/shopper_report.pdf)

<sup>5</sup>Steve Doyle, Group Uncovers Tax Cheaters, Huntsville Times, Jan. 23, 2009.

<sup>6</sup>Treasury Inspector General for Tax Administration, Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors, Reference Number: 2008-40-171, Sept. 3, 2008, available at <http://www.ustreas.gov/tigta/auditreports/2008reports/200840171fr.pdf>

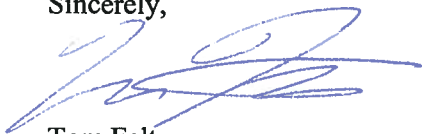
wealth taxpayers receiving the Earned Income Tax Credit, as well as other taxpayers and communities of color.

To illustrate the lost asset-building potential, Woodstock Institute analyzed the usage rates and geographic distribution of refund anticipation loans.<sup>7</sup> That analysis showed that:

- a. The Earned Income Tax Credit returned \$903 million to working families in the Chicago region in 2002, with an average value of \$1,764 per recipient.
- b. In the Chicago region in 2002, on average, 38 percent of all Earned Income Tax Credit recipients use refund anticipation loans to receive their refunds faster, paying \$48,282,872 million in tax preparation and loan fees. That represents millions of dollars that could have been used more productively to attend college, start and business, buy a home, or save for retirement.
- c. Refund anticipation loan usage is geographically concentrated, and in the Chicago region it is particularly high in south suburban Cook County. Of the top 15 Chicago region communities ranked by refund anticipation loan usage, nine of these communities were located in the south suburbs, which are predominately African American.
- d. Across the State of Illinois, 53 percent of recipients who live in predominantly minority tracts use RALs compared with only 27 percent of recipients in predominantly white tracts. Similarly, 57 percent of recipients in low-income zip codes use RALS compared with 19 percent of recipients in upper-income tracts.

Due to the high incidence of fraud and the lack of oversight of the tax industry, I strongly encourage the IRS to prohibit the sale of financial products connected with the tax preparation process, and to register or license paid tax preparers, and establish annual testing and continuing educational requirements.

Sincerely,



Tom Feltner  
Policy and Communications Director

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<sup>7</sup>Feltner, Thomas, Reinvestment Alert 29: Refund Anticipation Loan Usage Rates Negatively Impact the Asset Building Potential of the Earned Income Tax Credit. Chicago, IL: Woodstock Institute, February 9, 2006.