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IRS May Take One Step Forward For Taxpayers On Predatory Loans, But Takes One Big Step Back On Privacy

Consumer group representatives condemned new taxpayer "un-privacy" rules recently issued by the IRS for expanding rather than closing "gaping loopholes" that already allow sharing and marketing based on tax records, but issued cautious support for a separate IRS request for comments on developing new regulations that could rein in the marketing of predatory refund anticipation loans by tax preparers.

On the same day that it issued its weak final privacy rule, the IRS asked for comments on developing rules restricting the sharing of tax return information to market refund anticipation loans, refund checks, audit insurance and other high cost products typically sold to low income taxpayers.

"High cost, risky refund anticipation loans depend on the sharing of tax returns between tax preparers and the banks that provide loans secured by the expected tax refund," said Jean Ann Fox of the Consumer Federation of America (CFA). "Almost 10 million consumers lose almost a billion dollars a year from their tax refunds in interest and fees for refund anticipation loans."

"The IRS has taken a positive step in announcing that it is considering writing rules to curb the marketing of these costly and risky loans," said Chi Chi Wu of National Consumer Law Center (NCLC), "The billion dollar question is whether the agency will actually write tough rules." The IRS is accepting comments on the issue until April 7, so interested parties have a significant opportunity to tell the IRS their thoughts on the issue.

As for the new privacy rule issued this month, it places the burden of protecting sensitive tax return information on taxpayers instead of prohibiting preparers from sharing tax return information for marketing purposes. The IRS rejected recommendations by consumer groups to prohibit tax preparers from trafficking in tax return information for cross-marketing purposes. (A copy of the consumer groups' recommendations is available at
http://www.nclc.org/issues/refund_anticipation/content/CommentonIRS7216regs.pdf.)

The newly issued rule, which takes effect January 1, 2009, now permits tax returns to be sold, shared or used by both tax preparers' affiliates and third party companies.

"Congress needs to take action to guarantee confidentiality of taxpayer records because the IRS not only refused to do so, but it widened existing loopholes," said Ed Mierzwinski of U.S. PIRG. "Make no mistake, while this un-privacy rule appears to be full of high-sounding consumer consent protections, it gives tax preparers the right to collect and share detailed taxpayer dossiers with third-party marketers as well as affiliated companies." Mierzwinski noted that any information shared with third-parties would no longer be subject even to modest existing IRS protections but would fall under weaker privacy laws.

The consumer groups had called for a ban on the use and sharing of tax return information for purposes other than preparing and filing tax returns with the IRS, citing the risk of security breaches, ID theft, and aggressive marketing of products and services based on taxpayer returns. The groups argued that the threats posed by tax preparation companies using or sharing detailed tax-related financial information, such as income, investments, and dependents, for any purposes other than tax return filings far outweighed the protection of the rule's consumer consent requirement.

The IRS privacy rule expands permission for sharing and use of tax return information to third-party companies as well as affiliate entities as long as preparers get signed consent, either on paper or through electronic signatures. The new rules make some improvements in consent procedures and require affirmative consent for preparers to ship returns outside the United States.

"Any consent form will end up as another document in the stack of papers thrust upon taxpayers during the tax preparation session," warned Chi Chi Wu of National Consumer Law Center "Taxpayers told to 'just sign here and here' by their tax preparers may unknowingly consent to giving up their most sensitive financial information to marketers."

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NCLC is a non-profit organization specializing in consumer issues on behalf of low-income people. NCLC works with thousands of legal services, government and private attorneys, as well as organizations, who represent low-income and elderly individuals on consumer issues. Website: www.consumerlaw.org