NATIONAL ASSOCIATION OF TAX PROFESSIONALS

Comments Regarding Advance Notice of Proposed Rulemaking: GUIDANCE REGARDING MARKETING OF REFUND ANTICIPATION LOANS (RALs) AND CERTAIN OTHER PRODUCTS IN CONNECTION WITH THE PREPARATION OF A TAX RETURN

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The National Association of Tax Professionals (NATP) is a nonprofit professional association that is committed to the accurate administration and application of tax laws and regulations by providing education, research, and information to all tax professionals. For 29 years, NATP has existed to serve professionals who work in all areas of tax practice.

NATP's 18,500 members and 35 Chapters include individual practitioners, enrolled agents, certified public accountants, accountants, attorneys, and certified financial planners. These members own or work in firms that prepare more than 11 million tax returns annually on behalf of individuals and other entities. NATP serves these members by providing over 200 education offerings in more than 95 cities throughout the United States, a service unmatched by any other national tax association. The Association employs 15 federal tax research specialists (lawyers, CPAs, EAs) who assist members with more than 40,000 questions and concerns throughout the year.

NATP also serves the public through regular news releases, brochures, newsletters, and a designated taxpayer website as well as significant member involvement in local and state communities.

NATP is and always has been dedicated to high professional and ethical standards in support of the foundation of trust upon which our economy and system of taxation are built. Our membership supports the efforts of Congress and IRS personnel to address the sizable tax gap and its causes in practical and efficient ways.

The proposal in this Advance Notice of Proposed Rulemaking (ANPRM) to start making exceptions to a taxpayer's right to direct the use of his personal information, whether tax related or not, has the inherent potential to restrict personal freedoms long guaranteed by the Constitution of the United States. We hope and are confident that there are other alternatives to protect taxpayers from the concerns expressed by the Treasury Department (Treasury) and the IRS surrounding Refund Anticipation Loans (RALs), Refund Anticipation Checks (RACs), audit insurance, and similar products. We hereby submit our brief comments in argument against this proposal.

Where Will It All Stop?

NATP appreciates the concerns expressed by the Treasury Department and the IRS in this ANPRM. NATP is not, nor has it ever been, an advocate of RALs or RACs. Our members provide us with numerous anecdotes every

year regarding the abuses that attend these financial products. We have given testimony before Congress as to the shortcomings of proposed legislation as it would affect the sale and perusal of these products.

Currently, if a taxpayer's tax return is e-filed, a refund may be obtained within eight or nine days. That's not an unreasonable amount of time to wait for a refund, but it will be improved upon over time as technology is better implemented at the Treasury Department and the IRS. People within the Electronic Tax Administration (ETA) of the IRS tell us that a three-day turnaround for a refund is an attainable goal in the next five years. NATP has testified before Congress that funding technology in this manner will achieve better results than proposed efforts to regulate RALs and RACs.

Treasury and the IRS argue that the reason RALs and other such products are abused is because they provide tax preparers with a financial incentive to take improper tax return positions in order to inappropriately inflate refund claims. They state that even when flat fees are involved, merchants who offer tax preparation services may encourage customers to obtain RALs and spend the funds on their products and services. The greater the refund, the more products and services a taxpayer can purchase. This seems like cogent reasoning. But why stop there?

Many preparers are also insurance brokers, investment advisors, and financial planners. All have similar incentives to receive a financial benefit from the sale of an ancillary product or service, do they not? Should Treasury and the IRS create an exception from the general consent framework for these services as well?

Every year our members bring us numerous and varied stories of how taxpayers "shop" tax return preparers to determine which of them would provide the highest refund or lowest tax liability. Under the circumstances, would tax return preparers have a financial incentive to provide the largest refund possible? Take the logic to its conclusion. Should Treasury and the IRS create an exception from the general consent framework prescribed by section 301.7216-3 for tax return preparation services? Where does "picking and choosing" stop with respect to taxpayers' ability to control their tax return information?

The ANPRM states that some commentators expressed concern over tax preparers inappropriately profiting from marketing RALs and other such products to relatively unsophisticated taxpayers who do not comprehend the full costs of those products and have relatively low levels of financial expertise. They suggest that such taxpayers need to be protected from

exploitation. Therefore it is "necessary" to propose exceptions to the general rule that taxpayers should have the ability to control the use or disclosure of their tax return information. Treasury wonders, here, whether the approach to make an exception for RALs, RACs, audit insurance, and other such products is better viewed as protecting taxpayers or restricting their individual freedoms with respect to their private information. NATP would add the additional specter of perceived (or actual) discrimination. Should taxpayers be discriminated against in this respect by virtue of their race? Economic standing? Education? "Level of financial expertise?"

Do Treasury and the IRS know the extent of the problem they hope to "fix" with this ANPRM? We know that there are many RALs and RACs offered to and utilized by taxpayers. We also know that audit insurance has been a reasonably popular product. Despite what views may be held about the desirability or veracity of these products, they are not illegal in and of themselves. It is the abuse of these products and services that cause concern. However, the extent of that abuse is not known. Anecdotes abound, but they hardly warrant such a potentially expansionary and impulsive response.

There Is a Solution

A rational and long-standing solution to these concerns on the part of the Treasury and the IRS already exists and has existed for decades. The problem faced here is not one requiring the proposal of yet more rules - rules that will continue to be ignored by unscrupulous rule-breakers. The solution is one of enforcement of rules and laws that already exist. What sense is there in proposing more rules if Tax Administration cannot enforce the rules that already exist?

According to the Internal Revenue Manual, penalties are the IRS' key tools against noncompliant preparers. All paid preparers are subject to IRS penalties and the regulations intended to implement them. All paid tax return preparers are subject to these, not just Circular 230 preparers. What penalties would those be? They vary in Code Sections 6694, 6695, 6701, 6713, 7206, 7207, 7216 and 7407 from penalties as light as $50 per failure to provide a copy of a return to a taxpayer, to $100,000, 3 years imprisonment, or both for willful preparation of a false or fraudulent return or other document. The IRS already has the ammunition to put a stop to those who inappropriately falsify returns for the sake of pecuniary gain.

Another alternative is to be patient. Technological advances will render RALs, RACs and similar products effectively obsolete when refunds can be turned around more timely.

In the interim, we would recommend that the IRS conduct necessary research to determine the extent to which paid preparers defraud the government by filing false and fraudulent tax returns for financial gain utilizing these products. They can prosecute perpetrators to the full extent of the laws and rules that already exist.

We trust that these comments have been helpful. We hope that our expressed concerns will be given deliberation and reflection as the Treasury Department and the IRS deliberate over whether to create an exception from the general consent framework prescribed by 301.7216-3 for RALs, RACs, audit insurance and similar products.