standingupfortaxpayers

why minimum standards for paid preparers matter

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INTRODUCTION

Filing a tax return is among the most significant financial events of the year for most Americans. Each year, over 150 million federal returns are filed, and over 110 million taxpayers claim refunds. The Internal Revenue Service (IRS) distributes over $300 billion annually in refunds, which average $3,000 each.[1] Tax time is especially important for households with low incomes, who often rely on these refunds to meet their basic needs.

Due to the complexity of the federal tax code, more than half of all taxpayers utilize paid tax preparers to file their returns. Paid preparers, though, disproportionately target communities with lower incomes.[2] Research suggests that they focus on taxpayers receiving refundable credits such as the Earned Income Tax Credit (EITC), which averages $2,000 and appears to provide preparers with the opportunity to charge high fees for tax preparation assistance.

Over 700,000 individuals currently hold valid Paid Tax Preparer Identification Numbers (PTINs) with the IRS for the 2018 tax season. More than 400,000 of those registered are federally unregulated preparers.[3] A valid PTIN is the only requirement for people who prepare tax returns for compensation. While some preparers are regulated as certified public accountants (CPAs), enrolled agents, or tax attorneys, these credentialed preparers account for only 40 percent of PTIN holders. Despite the importance of tax time to the financial lives of all Americans, especially those with lower incomes, and the central role that paid preparers have in facilitating the receipt of billions of dollars in refunds, there are currently no federal minimum standards for paid preparers.

Five states—California, Connecticut, Maryland, New York, and Oregon—have established their own minimum standards legislation to fill this gap. However, there are still more regulatory standards for hairdressers than for paid tax preparers in 45 of 50 states.[4] Nonetheless, taxpayers across the country extensively rely on this largely unregulated sector, handing over sensitive personal and financial information to get their returns prepared.

In Illinois, there is clear evidence of the impact of this lack of oversight. The Illinois Attorney General's Office has recently prosecuted several high-profile cases against predatory preparers that defrauded the state and its taxpayers of millions of dollars. There are countless more cases each year in which taxpayers pay excessive fees only to have their returns prepared incorrectly by paid preparers. As a result, taxpayers are often caught in tax disputes with the IRS or Illinois Department of Revenue, and the agencies are charged with resolving issues created by paid preparers that could have been

[1] "Filing Season Statistics for Week Ending December 29, 2017," Internal Revenue Service, accessed February 22, 2018, https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-december-29-2017.
[2] Paul Weinstein, Jr. and Bethany Patten, "The Price of Paying Taxes II: How paid tax preparer fees are diminishing the Earned Income Tax Credit (EITC)," Progressive Policy Institute (April 2016): pg 2.
[3] "Return Preparer Office Federal Tax Return Preparer Statistics," Internal Revenue Service, 1 March 2018, https://www.irs.gov/tax-professionals/return-preparer-office-federal-tax-return-preparer-statistics.
[4] Chi Chi Wu, "Riddled Returns: How Errors and Fraud by Paid Tax Preparers Put Consumers at Risk and What States Can Do," National Consumer Law Center (March 2014): pg 3.

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avoided altogether. In the absence of federal regulation of paid preparers, Illinois has an opportunity to pick up the slack at the state level by establishing minimum standards for paid preparers to tackle these issues.

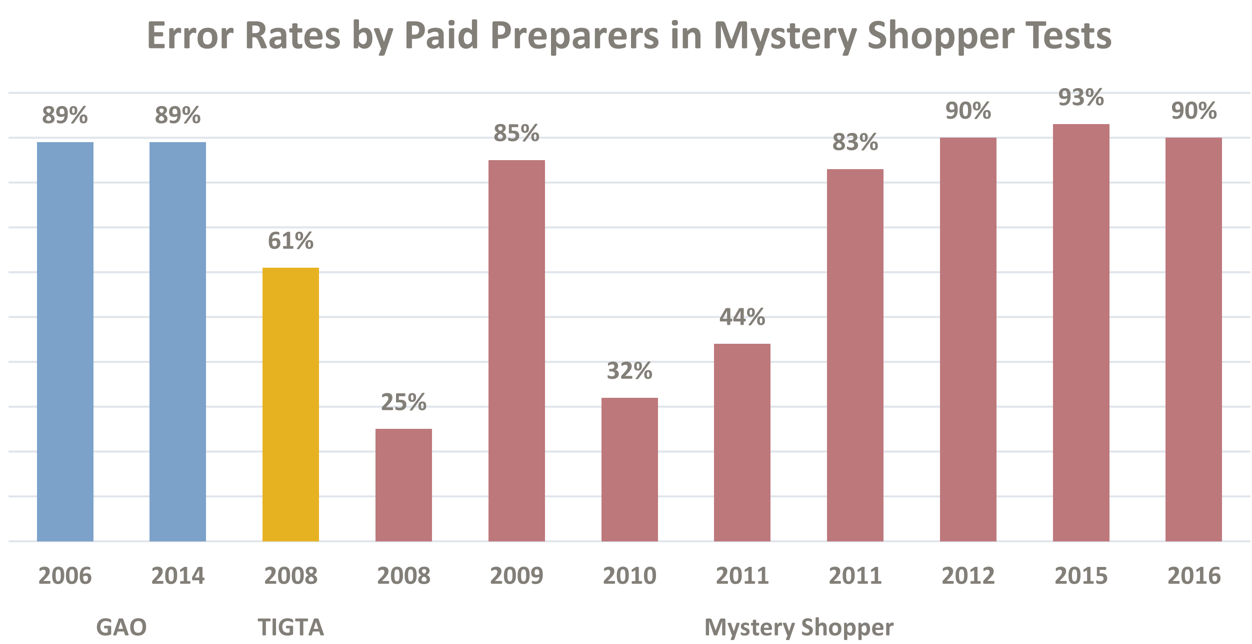
THE NEED FOR REGULATION

An estimated 28,000 individuals in Illinois currently hold valid PTINs. Over 16,000 are unregulated preparers. This lack of regulation is a critical consumer protection issue that deserves to be addressed. Though consumers report a high rate of trust in paid preparers, this trust is misplaced given the overwhelming evidence of high error among paid preparers. With the added concerns of EITC overpayment rates and mounting confusion among taxpayers around the recent federal tax bill, establishing minimum standards is more important now than ever before.

High Error Rates

Based on results from IRS audits, the Government Accountability Office (GAO) estimates that 60 percent of returns completed by paid tax preparers have errors.[5] In contrast, the IRS estimates that Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE)—two federally-funded volunteer tax preparation programs—have a combined accuracy rating of over 90 percent.[6] This means that the for-profit tax preparation industry has the unique distinction of being less competent than the volunteers who service customers for free.

Several mystery shopper tests[7] conducted over the last decade corroborate these estimates, consistently reporting high error rates—from 25 to 93 percent—on returns completed by paid preparers.[8] A 2014 study by the GAO tested nineteen paid preparers using two unique test scenarios. Of the nineteen returns prepared,



[5] James R. McTigue, Jr., "Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors," 8 April 2014 (testimony before the Committee on Finance, U.S. Senate), https://www.gao.gov/assets/670/662356.pdf.
[6] "FY 2017 Stakeholder Partnerships, Education and Communication (SPEC) Quality Statistical Sample (QSS) Review Results," Internal Revenue Service, last modified July 5, 2017, accessed February 22, 2018, https://www.irs.gov/pub/irs-utl/qssreviewresults.pdf.pdf.

[7] In the chart above, GAO refers to the Government Accountability Office, and TIGTA refers to the Treasury Inspector General for Tax Administration.
[8] Michael Best, "Public Views on Paid Tax Preparation 2017: Strong Public Support Continues for New Consumer Protections to Prevent Errors and Fraud," Consumer Federation of America (March 2017): pg 2.

seventeen had incorrect refund amounts—only one of these was *lower* than the correct amount. Seven returns claimed refunds that were more than $2,500 higher than the correct refund amount.[9] On five of the returns, tax preparers claimed an ineligible child for the Earned Income Tax Credit.[10]

While each of the studies has a small sample size—from 10 to 29 returns prepared—the consistency of high error rates prove that none of the findings are anomalies. Preparer error, resulting from both fraud and incompetence, is clearly rampant in the paid preparation industry.[11]

Consumer Expectations

Meanwhile, consumers overwhelmingly expect that their paid tax preparers are qualified to file their returns, though no such qualifications exist for the majority of paid preparers. In a 2016 survey of primarily low-income residents in Southwest Atlanta, Georgia Watch found that, of those respondents who had not used CPAs, almost 80 percent believed that their last paid preparer was licensed.[12] A 2017 Consumer Federation of America (CFA) survey validated this: 70 percent of respondents believed that either their state government or the federal government required tax preparers to be licensed.[13] These studies show that taxpayers are placing their trust in a system that does nothing to protect them as consumers.

The upside of this widespread assumption is that regulation is largely uncontroversial. While a majority of consumers assume that minimum standards already exist, an even greater majority support such standards. The same CFA survey found that over 85 percent of the public supports regulating paid tax preparers, including requirements that preparers pass a competency test, maintain a license that would allow for greater oversight over their businesses, and disclose fees.[14] Thus, the establishment of minimum standards is both supported by most consumers and necessary to meet consumers' current expectations.

Implications for the EITC

The EITC is a refundable tax credit that makes establishing basic standards for paid tax preparers especially important for low-income communities. The family-centered credit, reserved for taxpayers who meet income-eligibility guidelines, incentivizes work and supplements the pay of low-wage workers as America's most powerful anti-poverty tool. However, taxpayers claiming the EITC spend an average of approximately $400 each to have their returns filed at national tax preparation chains. This can represent up to 20 percent of the EITC for which they qualify, greatly reducing the value and impact of the credit.[15]

The EITC is also a complicated tax credit to claim, requiring a five-part eligibility test. Largely due to this complexity, the IRS estimates that the error rate of EITC payments is over 20 percent, exceeding $16 billion.[16] This figure, extrapolated from audits that the IRS undertakes on returns that claim the credit, is likely overestimated. The IRS considers issuing of the credit an overpayment if the taxpayer does not satisfactorily prove during the course of the audit that the claim is valid. When these decisions are appealed, though, IRS National Taxpayer Advocate Nina Olson reports that the IRS's decision is overturned in 40 percent of cases.[17]

Nonetheless, this estimate has helped to drive misguided attempts to decrease overpayment. Rather than making the EITC easier to claim—making the credit more straightforward so there is less confusion about who qualifies and how much recipients can get—Congress passed the Protecting

[9] McTigue, Jr.
[10] Wu, pg 13.
[11] Best, pg 2.
[12] Elise Blasingame, "Errors, Fraud & Arbitrary Fees: A Secret Shopper Study of Paid Tax Preparation Services In Southwest Atlanta," Georgia Watch (2016): Executive Summary.
[13] Best, pg 3.
[14] Best, pg 3.
[15] Weinstein and Patten, pg 1.
[16] "Improvements Are Needed to Better Document the Return Preparer Refundable Credit Compliance Treatment Identification and Selection Process," Treasury Inspector General for Tax Administration, 19 October 2017 (Reference Number: 2018-40-001), pg. 1.
[17] Robert Greenstein, John Wancheck, and Chuck Marr, "Reducing Overpayments in the Earned Income Tax Credit," Center on Budget and Policy Priorities, 20 February 2018, https://www.cbpp.org/research/federal-tax/reducing-overpayments-in-the-earned-income-tax-credit.

Americans from Tax Hikes (PATH) Act in December 2015. The Act delays all refunds for which the EITC, the Child Tax Credit, or the Additional Child Tax Credit is claimed. Taxpayers who claim one or more of these are issued refunds no sooner than February 15, affording the IRS more time to review their returns.[18] Given the income limits on these credits, these delays disproportionately affect taxpayers with lower incomes—who are also the taxpayers that most rely on their refunds to help cover basic necessities.

There are better ways to reduce the EITC error rate. Rather than requiring the IRS to more thoroughly examine returns that claim this and other credits, which burdens the agency and preemptively punishes tens of millions of taxpayers by delaying refunds, we can establish legislation that addresses the real problem by requiring that paid preparers are educated—decreasing the likelihood that they will file erroneous returns in the first place. While the PATH Act is a federal law, establishing minimum standards in Illinois may provide further evidence of the need for nationwide standards that can more effectively curb EITC error.

An Increasingly Complicated Tax Code

The recent passage of the complex Tax Cuts and Jobs Act (TCJA) underscores the critical need for preparers to be sufficiently trained on tax law. Several provisions of the TCJA, such as the new $500 dependent credit for families, are only temporary. Other provisions, such as the effective repeal of the Affordable Care Act's individual mandate, are not immediately effective. Changes like these will roll out at intervals over the next decade under the law, requiring that tax preparers keep regularly updated on tax law in order to manage new complexities.

Given the high error rate recorded by both the IRS and in mystery shopper tests on prior tax law, establishing basic competency standards will be key to avoiding costly and consequential tax issues. With anticipated changes to federal immigration policy, and their potential intersections with tax law, there may also be more questions than answers for non-citizen immigrants who file taxes. Of particular note are evolving rules and interpretations regarding Individual Taxpayer Identification Numbers (ITINs) and Child Tax Credit (CTC) eligibility.[19]

LESSONS FROM CEP

The Center for Economic Progress (CEP) provides free tax preparation services for income-eligible taxpayers through the Volunteer Income Tax Assistance (VITA) program. We operate fifteen community-based sites across the state and train more than 800 volunteers to prepare returns for nearly 20,000 Illinoisans each year.

As a federally funded program, VITA requires that volunteers undergo training and pass a certification test before they can serve. CEP offers online training to our volunteers with an accompanying three-hour in-person course for new volunteers. Volunteers must recertify online each year they serve. This ensures that they keep abreast of relevant tax information and reestablish their competency as preparers. After passing the certification test, our volunteers also receive regular support from CEP staff and their peers at tax sites. With these requirements and our commitment to continuing education, it is not surprising that volunteer-prepared returns—including both the VITA and Tax Counseling for the Elderly (TCE) programs—have a higher accuracy rating than those completed by paid preparers.

In addition to preparing taxes and offering other services—like financial coaching and credit help—CEP runs a tax clinic through which staff attorneys assist clients with disputes with the IRS and Illinois Department of Revenue. Our clinic is regulated by the IRS as a Low Income Taxpayer Clinic (LITC).[20] Through this program, we receive federal funds to

[18] "PATH Act Tax Related Provisions," Internal Revenue Service, accessed, 28 February 2018, https://www.irs.gov/newsroom/path-act-tax-related-provisions.

[19] *See:* Wilson Andrews and Alicia Parlapiano, "What's in the Final Republican Tax Bill," *New York Times*, 18 December 2017.

[20] "Low Income Taxpayer Clinics," Internal Revenue Service, accessed 10 March 2018, https://www.irs.gov/advocate/low-income-taxpayer-clinics.

provide help to low-income taxpayers—and there is no shortage of taxpayers seeking help.

At any given time, CEP's tax clinic has over 150 cases open, assisting those we serve in dealing with complicated tax disputes. We have encountered case after case in which clients experience tax issues at the hands of paid preparers. The following are real and representative cases from our tax clinic, with some identifying information (including names) modified:

Rodrigo (56) and Maria (51) — Joliet

Rodrigo and Maria are a married couple originally from Mexico. They came to CEP with a tax bill of over $7,500 resulting from errors on their 2015 tax return, which was prepared by a local tax preparer in Joliet who spoke Spanish. The preparer convinced the couple to file separately; Rodrigo filed as Head of Household while Maria filed as single. The preparer also listed "Cristian Martinez" as a dependent on Rodrigo's return. Neither Rodrigo nor Maria know a Cristian Martinez, exposing this as a fraudulent claim by the tax preparer. Due to language barriers and unfamiliarity with the tax system, the couple did not detect the errors on their 2015 returns. They now have a hefty tax bill with the IRS because of an excessive refund they received years ago, but are currently unable to pay it back. CEP is working to settle their debt through an offer in compromise with the IRS in order to resolve their case.

Patty (52) — Evanston

Patty reached out to CEP after the IRS offset her 2016 refund of over $5,000 to cover an outstanding balance from her 2012 return. Patty had hired a church acquaintance, who charged just $20, to prepare the 2012 return. Without Patty's knowledge, the return claimed tens of thousands in self-employment income that Patty says she never made. After filing, she discovered the incorrect information and went back to the preparer to have an amended return prepared. However, even the amended return had errors, most notably listing Patty's occupation as a caregiver on one line of the return and as a beautician on another. Other churchgoers who had hired the same preparer noted similar issues with their returns. CEP successfully filed an amended return for Patty, helping her recuperate over $6,100 in refunds that were withheld by the IRS in the years after 2012, as well as the interest accumulated on those amounts.

Sharon (46) — Riverdale

In 2012, Sharon's bank teller referred Sharon to her boyfriend for tax help. After Sharon gave the preparer her information, he gave her an immediate "refund" of $3,000. He then used her information to file a fraudulent tax return, manipulating details to wrongfully claim a refund of almost $8,000. Of particular note, the preparer inflated her wage income from under $1,000 to over $16,000 in order to claim an EITC of almost $6,000. Sharon was unfortunately not the only taxpayer that the couple victimized. She was even visited by an IRS agent that inquired about the preparer, who was later imprisoned for financial exploitation of the elderly and felony possession of a firearm. CEP has attempted to file an accurate 2012 return for Sharon, claiming identity theft. Since Sharon does not have a pending balance, the IRS has closed the case. However, since her federal return for 2012 still claims $16,000 in income, which Sharon never earned, she now has a balance of almost $500 with the Illinois Department of Revenue. CEP is working on an offer in compromise with the Department to have Sharon's pending balance forgiven.

Anthony (29) — Chicago

Anthony received a notice from the IRS that proposed a 2015 return deficiency of almost $4,000 because he had failed to claim thousands in self-employment income. He had paid over $500 for his return to be prepared by a well-known national chain preparer, though he would have qualified for free tax preparation if he had come to CEP. In addition to the error in self-employment income, there were several significant mistakes on the return. The return claimed almost $11,000 in wage income, though Anthony's W-2 only listed around $8,250. It also listed federal tax withholdings of $700, though the actual amount was approximately $450. While these mistakes indicate incompetence, the return more nefariously listed the birth year of one of Anthony's dependents as 2001 instead of 1998, incorrectly qualifying him for the Child Tax Credit. CEP is working with the IRS to correct Anthony's 2015 return.

By definition, CEP's tax clinic sees some of the most egregious and complicated tax issues faced by those we serve. While these cases are not necessarily representative of the average taxpayer's experience with paid preparers, it is notable that CEP consistently gets them.

The establishment of minimum standards for paid preparers would help to protect taxpayers from these types of tax issues. They would establish greater accountability for paid preparers, ensuring competency through training to help avoid errors like those in Anthony's return, and helping to curb fraud like that committed on Rodrigo and Maria's returns. By requiring a certification or license, they would also empower consumers by helping them to select qualified and competent preparers—ultimately decreasing the occurrence of issues like those that Patty and Sharon faced.

EFFORTS TO ENACT REFORM

Given the scope and scale of the poor quality and fraudulent returns completed by paid tax preparers, there have been several attempts—including at the federal, state, and municipal levels—to establish basic rules and standards for paid preparers. However, the current attempts that are relevant to the State of Illinois have either been unsuccessful or are promising but don't gone far enough.

The IRS and Federal Regulation

In 2012, the IRS attempted to establish minimum standards for all paid tax preparers, authorizing itself to regulate the sector. The IRS issued a rule requiring paid preparers—defined broadly as anyone who "prepares for compensation, or who employs one or more persons to prepare for compensation, all or a substantial portion of any return of tax or any claim for refund of tax under the Internal Revenue Code"—to register with the agency, pass a competency test, pursue continuing education, and pay an annual fee.[21]

However, the U.S. District Court for the District of Columbia enjoined the enforcement of the rule, declaring that the IRS has insufficient statutory authority to regulate paid preparers. Though the decision, upheld by a federal appellate court in *Loving v. IRS*, precluded the IRS from imposing a competency exam, continuing education, and an associated fee, the IRS still has the authority to regulate credentialed preparers, and can require formal registration from all paid preparers.[22]

All paid tax preparers are currently required to have valid PTINs. This registration is required only for the preparation of federal taxes unless otherwise noted in state-level legislation. Most first-time registrants can obtain a PTIN online in approximately 15 minutes, needing only to provide their contact information, their Social Security Number, details from their own prior year tax return, and other basic information. PTINs expire annually, but the renewal process can also be completed online in minutes.[23]

PTIN registrations allow only minimal oversight by the IRS, limited to identifying incompetent or unscrupulous preparers after return errors are detected. The *Loving v. IRS* decision thus prompted the agency to establish an optional version of the standards that it had attempted to impose. In addition to the PTIN requirement, the IRS seeks to empower consumers by offering a public directory of registered return preparers. It facilitates the Annual Filing Season Program for non-credentialed tax preparers. The program requires that participants undergo eighteen hours of continuing

[21] Kimberly Stanley, "Loving v. IRS and Tax Return Preparer Regulations," LexisNexis, 7 October 2014, https://www.lexisnexis.com/legalnewsroom/tax-law/b/federaltaxation/archive/2014/10/07/loving-v-irs-and-tax-return-preparer-regulations.aspx?Redirected=true.

[22] "IRS Statement on Court Ruling Related to Return Preparers," Internal Revenue Service, 21 February 2014, https://www.irs.gov/newsroom/irs-statement-on-court-ruling-related-to-return-preparers.

[23] "PTIN Requirements for Tax Return Preparers," Internal Revenue Service, accessed 28 February 2018, https://www.irs.gov/tax-professionals/ptin-requirements-for-tax-return-preparers.

education—including a six-hour refresher on federal tax law—pass a competency test, and have a valid PTIN. Participants are issued Records of Completion each year after satisfactorily passing the program, and are then included in the public directory.

However, while "encouraged" by the IRS and perhaps valuable for preparers' marketing efforts, participation in the Annual Filing Season Program is entirely voluntary.[24] Less than 10 percent of current PTIN holders have received a Record of Completion for the 2018 filing season.[25] This lack of participation devalues the certification as an accurate comparative measure of competency, doing relatively little to empower consumers.

The Illinois PTIN Requirement

In 2016, the Illinois General Assembly passed the State Tax Preparer Oversight Act, requiring all paid preparers to include their PTINs on any state tax returns that they prepare. The Act charges the Illinois Department of Revenue with developing the PTIN rule as "an oversight mechanism to assess returns, to identify high error rates, patterns of suspected fraud, and unsubstantiated basis for tax positions by income tax return preparers." It grants the Department with the authority to investigate return preparers who are suspected of fraud or negligence, and to impose civil fines of $50-$25,000 and suspend or bar return preparers from preparing state returns upon establishment of wrongdoing. The Act also notes that the Department may share pertinent information about fraudulent return preparers with the IRS and with the revenue departments of other states.[26]

The Act specifically notes, however, that no penalties will be imposed "if it is shown that the failure is due to reasonable cause and not due to willful neglect, as determined by the Department," requiring that the Department of Revenue conduct a thorough investigation of preparers before issuing fines or other penalties.[27] Unlike legislation in the five states that have established meaningful paid preparer minimum standards, this law does not require preparers to pay a fee to the state. Therefore, the state has no additional resources to cover the cost of this enforcement, minimizing its potential effectiveness.

The legislation was only recently enacted, so there is little evidence of enforcement or its impact. Due to its limited scope, though, it is clear that the legislation is an inadequate solution as it does not go far enough to help Illinois effectively combat error and fraud by paid preparers. While it is a step in the right direction, this legislation does not meaningfully reform the paid preparer industry and provides minimal benefit to consumers. It is subject to similar shortfalls as those of the IRS's PTIN requirement—that it does not establish basic competency requirements and is employed as an oversight mechanism only after errors have been detected on taxpayers' returns.

Impactful Regulation in Chicago

The City of Chicago has limited but well-exercised authority over paid preparers. The Department of Business Affairs and Consumer Protection (BACP) requires business licenses for commercial preparers in the city. It requires that these preparers: provide consumer disclosures on costs and fees; approximate the time in which the customer can expect their refund; offer a comprehensive estimate of charges; not require the use of an "alternative settlement product," including refund anticipation loans (RALs), refund anticipation checks (RACs), or rapid refunds; give the appropriate disclosures in accordance with the Tax Refund Anticipation Loan Disclosure Act if offering a RAL; and, provide customers with their taxpayers' Bill of Rights, which outlines these requirements and prompts

[24] "Annual Filing Season Program," Internal Revenue Service, accessed 26 February 2018, https://www.irs.gov/tax-professionals/annual-filing-season-program.

[25] "Return Preparer Office Federal Tax Return Preparer Statistics," Internal Revenue Service, 1 March 2018, https://www.irs.gov/tax-professionals/return-preparer-office-federal-tax-return-preparer-statistics.

[26] Public Act 99-0641, State Tax Preparer Oversight Act, eff. 1 January 2017, http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=099-0641.

[27] Public Act 99-0641.

consumers to contact the BACP upon any suspected violation.[28]

The BACP has used its licensing authority to crack down on predatory tax preparers, conducting several undercover operations to investigate the business practices of hundreds of paid preparers. Its investigations have regularly uncovered violations by more than 50 percent of businesses.[29] In 2015, of 409 paid tax preparers investigated, 65 percent violated City regulations. Of those, four were given cease and desist orders, thirteen were told to correct licensing issues, and 147 were issued over 300 Administrative Notices of Violations. Fines for the violations, ranging from $50 to $10,000, totaled hundreds of thousands of dollars for that year alone.[30] However due to preemption, the city has no authority to establish competency standards for paid tax preparers.

FINDING A STATE-LEVEL SOLUTION

Over the last five years, there has been widespread evidence of fraud and error by paid preparers in Illinois. In 2012, Attorney General Lisa Madigan sued national tax preparer Mo' Money Tax Service for overcharging at least 76 consumers and using promises of instant cash as a front to deprive taxpayers of their returns, illegally profiting $800,000.[31] In 2016, Madigan sued Chicago preparer Individual Income Tax Service for defrauding consumers out of $200,000 through illegal fees.[32] She also brought suit[33] against Tax Advocators Inc., the owner of which pleaded guilty to defrauding the state of over $400,000 by using false information on over 750 tax returns to fraudulently claim deductions.[34]

The State of Illinois has a responsibility to ensure that taxes are prepared accurately. Especially given the state's precarious fiscal situation, missed revenue collection is devastating for the state's coffers. State taxes are also directly linked to federal taxes. When a taxpayer declares income on a federal return, that information is shared with the Illinois Department of Revenue. This means that taxpayers' state liability is affected by information on their federal returns. The state Earned Income Tax Credit (EITC) also directly correlates with the federal EITC as a percentage of the credit, meaning that any inaccurate claims directly affect state finances. Especially with recent budget and debt issues in Illinois, minimum standards can help the state to ensure that no money is unnecessarily lost due to return errors.

A Failed State Task Force

The discussion on paid tax preparer regulation in Illinois isn't a new one. In 2015, the Illinois Tax Return Preparation Task Force investigated the prospect of establishing minimum standards for paid preparers through state-level legislation. In its December 2015 report, the Task Force recommended that the state require PTINs on Illinois returns, afford the Department of Revenue "enhanced enforcement authority" against incompetent and predatory preparers, and "educate the public regarding the importance of utilizing a

[28] "I am using a Paid Tax Preparer . . . What are my Rights?," Business and Consumer Protection, City of Chicago, accessed 28 February 2018, https://www.cityofchicago.org/content/dam/city/depts/bacp/Consumer%20Information/20161102consumerbillofrightstaxpreparer.pdf.
[29] "Mayor Emanuel Announces Results of Sting Operation Targeting Predatory Tax Preparers," Office of the Mayor, City of Chicago, 11 February 2014, https://www.cityofchicago.org/city/en/depts/mayor/press_room/press_releases/2014/feb/mayor-emanuel-announces-results-of-sting-operation-targeting-pre.html.
[30] "City of Chicago Cracks Down On Tax Preparers During Undercover Operation," Office of the Mayor, City of Chicago, 17 February 2015, https://www.cityofchicago.org/city/en/depts/bacp/provdrs/consumer/news/2015/february/city-of-chicago-cracks-down-on-tax-preparers-during-undercover-o.html
[31] "Madigan Sues National Tax Preparer Mo' Money: Lawsuit Highlights Need to Crack Down on High Costs, Fees of Refund Anticipation Loans," Illinois Attorney General Lisa Madigan, 14 March 2012, http://illinoisattorneygeneral.gov/pressroom/2012_03/20120314.html
[32] "Madigan Sues Chicago Tax Preparer for Fraud: Attorney General Alerts Illinois Consumers to Illegal Tax Preparation Fees Tied to Costly Refund Anticipation Products," Illinois Attorney General Lisa Madigan, 1 February 2016, http://www.illinoisattorneygeneral.gov/pressroom/2016_02/20160201.html.
[33] "Madigan: Joliet Tax Preparer Pleads Guilty to Tax Fraud," Illinois Attorney General Lisa Madigan, 8 September 2016, http://www.illinoisattorneygeneral.gov/pressroom/2016_09/20160908.html.
[34] "Joliet Tax Preparer Gets 42 Months In Prison For Fraud," CBS Chicago, 8 September 2016, http://chicago.cbslocal.com/2016/09/08/joliet-tax-preparer-gets-42-months-in-prison-for-fraud/.

competent tax professional."[35] It did not, however, recommend the establishment of minimum standards for paid preparers akin to those enacted in five other states.

The Task Force claimed that further regulation would: increase deceptive practices by driving fraudulent preparers "further underground," increase costs for consumers, increase costs for the state, and be ultimately unhelpful, as errors are simply "common place [sic] due to the complexity of the tax industry."[36] Given the cases above, it is clear that the Task Force overlooked evidence of ongoing problems due to a high rate of error and fraud among paid tax preparers.[37]

The concern about costs for both consumers and the state are largely unfounded. Among states with regulation, registration costs no more than $100 per tax preparer.[38] Even if a preparer shifts the full cost of registration to their clients, the additional burden wouldn't amount to more than a few dollars per taxpayer. The policy issue that the task force missed is that establishing nominal fees for paid preparers, a common practice among professions that are licensed or otherwise regulated, could improve the bottom line for both consumers and the state of Illinois. By requiring registration and fees, the state could establish a basic level of competency that may end up saving taxpayers a lot more by reducing error and effecting stronger consumer protections. Minimum standards will not necessarily be a costly proposition for the state, either. Preparer registration fees generally cover the cost of oversight.[39]

A Model for Illinois—and Others

The many cases we have highlighted above along with the examples cited from our own tax clinic show that incompetent and fraudulent paid tax preparers cost both taxpayers and the State of Illinois hundreds of thousands of dollars each year—a conservative estimate. The good news is that a solution for our state, and others, already exists. While legislation varies widely from state to state, the existing models in California, Connecticut, Maryland, New York, and Oregon can help to inform future legislation in Illinois.

In fact, the National Consumer Law Center has released a Model Tax Preparer Regulation Act that states can use as a template for their respective legislation. The "core components" of the Act—which is modeled after laws in Maryland, Oregon, and California and reflects their most important provisions—require that paid preparers:

- Register with a designated state agency, and pay associated fees;
- Pass a basic competency test to prove sufficient knowledge of tax law and practice;
- And have 60 hours of initial education, then 15 hours per year of continuing education, on tax law and a lesser amount each year in continuing education.[40]

The Model Act also includes the establishment of a state Board of Individual Tax Preparers, which can be independent or placed under an existing department, to manage the regulation.

In a study of return accuracy, the GAO found that returns filed by paid preparers in Oregon were 72 percent more likely to be accurate than a similar return filed in another state.[41] Upon audit, the average return in Oregon also required $250 less in

[35] "Illinois Tax Return Preparation Task Force: Report and Recommendation," 1 December 2015, pg. 75, https://www.idfpr.com/forms/pdfs/illinoistaxreturnpreparationtaskforcereport2015.pdf.
[36] "Illinois Tax Return Preparation Task Force: Report and Recommendation," pg. 77.
[37] "Illinois Tax Return Preparation Task Force: Report and Recommendation," pg. 76.
[38] "Illinois Tax Return Preparation Task Force: Report and Recommendation," pg. 13.
[39] *See:* "Tax Preparers: Oregon's Regulatory Regime May Lead to Improved Federal Tax Return Accuracy and Provides a Possible Model for National Regulation," United States Government Accountability Office, August 2008 (report to the Committee on Finance, U.S. Senate), pg. 18, https://www.gao.gov/assets/280/279662.pdf. Senator Conway, *et al*., "Fiscal and Policy Note (Revised): Senate Bill 817," Department of Legislative Services, Maryland General Assembly (2008 Session), pg. 5, http://mgaleg.maryland.gov/2008rs/fnotes/bil_0007/sb0817.pdf.
[40] Wu, pg. 20.
[41] "Tax Preparers: Oregon's Regulatory Regime May Lead to Improved Federal Tax Return Accuracy and Provides a Possible Model for National Regulation," pg. 15.

tax liability change than a return prepared elsewhere.[42] Further evidence is limited, but this information coupled with high accuracy ratings for volunteer-prepared returns, which are subject to certification requirements, suggests that there is value for states and consumers to establishing minimum standards for paid preparers.

Also key to the Model Act is the requirement that preparers provide disclosures—including fee schedules for the services they provide and information about their qualifications.[43] Such state legislation would allow for the expansion of provisions similar to those of Chicago's paid preparer regulation to all of Illinois, expanding consumer knowledge and empowerment.

CONCLUSION

Illinois taxpayers file 6 million federal tax returns each year, of which over 4.5 million claim almost $15 billion in federal refunds.[44] A majority of these taxpayers use paid tax preparation services each year for help with filing.[45] However, a high error rate among paid tax preparers and misplaced consumer trust in the industry combine to create a precarious situation for taxpayers.

Each year, paid preparers take advantage of and provide poor service to millions of taxpayers. After potentially paying several hundred dollars in preparation fees, taxpayers are often left with inaccurate returns, and the issues with the IRS and their state revenue departments that result.

Particularly with the increasing complexity of the tax code, it is more important now than ever before to ensure that paid preparers meet basic competency standards. In the absence of federal standards, this can be accomplished through state-level legislation establishing minimum standards, which requires passage of a competency exam as well as continuing education.

In addition to improving the competence of unregulated paid tax preparers, minimum standards would also help to empower consumers with licensing and registration information that they can use to more effectively shop for trustworthy help.

Minimum standards legislation benefits all taxpayers and tax preparers. By improving the pool of paid tax preparers, the legislation would provide more validity to the paid preparation industry, which is currently plagued by high rates of error and fraud. The legislation would also help to curb both error and fraud by educating preparers and empowering consumers. It would help to cut down on costs that the State incurs while adjudicating poorly prepared returns and going after incompetent and unscrupulous preparers. In addition, fees that accompany the legislation would help to offset the remainder of these costs.

By establishing minimum standards for paid tax preparers, the State of Illinois would provide consumers with the protection they expect and deserve.

[42] "Tax Preparers: Oregon's Regulatory Regime May Lead to Improved Federal Tax Return Accuracy and Provides a Possible Model for National Regulation," pg. 16-17.

[43] Wu, pg 33.

[44] "SOI Tax Stats - Individual Income Tax Statistics - 2015 ZIP Code Data (SOI)," Internal Revenue Service, accessed 22 February 2018, https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-statistics-2015-zip-code-data-soi.

[45] "Key Elements of the U.S. Tax System: Why do low-income families use tax preparers?," *Briefing Book*, Tax Policy Center, accessed 25 February 2018, http://www.taxpolicycenter.org/briefing-book/why-do-low-income-families-use-tax-preparers.