NEDAP

Neighborhood Economic Development Advocacy Project

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April 4, 2008

CC:PA:LPD:PR (REG-136596-07)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Guidance Regarding Marketing of RALs and Certain Other Products in Connection with the Preparation of a Tax Return

Dear IRS Commissioner:

Thank you for the opportunity to comment on the IRS's advance notice of proposed rulemaking, REG-136596-07, regarding the disclosure and use of tax return information for the purpose of soliciting taxpayers to purchase refund anticipation loans (RALs) and certain other products in connection with the preparation of a tax return. We write to urge the IRS to adopt a rule that prohibits tax preparers from sharing tax return information to make RALs. Indeed, the IRS should take every action possible to ban or restrict tax preparers from making RALs.

The Neighborhood Economic Development Advocacy Project (NEDAP) is a resource and advocacy center that provides legal, technical, and information support to community groups and individuals in low and moderate income neighborhoods and communities of color in New York City. Founded in 1995, NEDAP's mission is to promote community economic justice, and to eliminate discriminatory economic practices that harm communities and perpetuate inequality and poverty. Through community education, legal and public policy advocacy, corporate accountability, and research and documentation, NEDAP works with grassroots organizations to ensure that communities have access to fair and affordable credit and financial services, necessary for equitable community development and financial security.

For the past three years, NEDAP has issued an annual report documenting the exploitative and discriminatory nature of RALs. Using IRS data, we have created maps showing the percentage of tax returns that have a RAL, by zip code, as well as the millions of dollars that RALs siphon out of neighborhoods of color, particularly neighborhoods in which there are large numbers of Earned Income Tax Credit (EITC) recipients. (See attached report and maps.) NEDAP has found that RALs providers discriminatorily target people and neighborhoods of color in New York City, including through their marketing practices. We have issued community alerts to inform taxpayers about the true cost of RALs and the availability of free and non-exploitative tax preparation.

Like groups around the country, NEDAP has found through its research and documentation – as well as through our extensive work with New York City low-income taxpayers – that RALs exploit low-income taxpayers, especially those who receive the EITC. Taxpayers end up paying hefty fees that translate into triple-digit APRs for a junk loan, when they could get fast and free refunds from VITA sites, like those operated by many of our ally organizations throughout New York City. It is harmful public policy to allow private financial services corporations, including multi-billion dollar banks and tax preparation corporations, to gouge EITC dollars from lower income working families.

Taxpayers trust and rely on their tax preparers to look out for their interests and to prepare honest returns. RALs, however, reward tax preparers for selling a product not in the taxpayer's best interest, in violation of that trust. The product creates an incentive for tax preparers to put their own interests ahead of their clients and inflate refund claims. Some tax preparers charge their own fees for RAL paperwork and get a kickback from the RALs-issuing bank.

We urge the IRS to propose new regulations that prohibit disclosure of taxpayers' tax return information for the purpose of selling RALs and certain other products in connection with the preparation of a tax return. The regulation would go a long way to addressing the exploitation of taxpayers through RALs, which not only harms lower income people and communities, but also inhibits the Treasury Department and IRS's ability effectively to administer the internal revenue laws. For these reasons, we urge the IRS to proceed with its proposed rulemaking.

Sincerely,

Sarah Ludwig
Co-Director

Josh Zinner
Co-Director

PREDATORY TAX-TIME LOANS STRIP $324 MILLION FROM NEW YORK CITY'S POOREST COMMUNITIES

An Analysis of Tax Refund Anticipation Lending in NYC 2002 – 2005

The Neighborhood Economic Development Advocacy Project
January 2007

This report was prepared by the Neighborhood Economic Development Advocacy Project (NEDAP), a resource center that provides legal, technical, and policy support to community groups in New York City's low income communities and neighborhoods of color. NEDAP's mission is to promote community economic justice and eliminate discriminatory financial practices that harm communities and perpetuate inequality and poverty.

This study was prepared by Chris Keeley, Sarah Ludwig and Mark Winston Griffith. Maps were prepared by Saara Nafici. Photos by Amanda Jeannopoulos and Saara Nafici.

For more information, please contact NEDAP at (212) 680-5100, or visit our website at www.nedap.org.

PREDATORY TAX-TIME LOANS STRIP $324 MILLION FROM NEW YORK CITY'S POOREST COMMUNITIES

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Tax preparation sites used to be places where people went to get their taxes prepared. Now, using clever and "zany" marketing campaigns that inundate low-income communities and neighborhoods of color, tax preparers are now perhaps better known for making tax refund anticipation loans, or "RALs," a usurious loan product that strips millions of dollars from the poorest New York families and neighborhoods each year.

Analyzing IRS data on RALs for the four-year period, from 2002 through 2005, NEDAP found that RALs siphoned more than $324 million out of New York City's poorest communities.[1] The loans were overwhelmingly concentrated in the city's lowest income neighborhoods of color, in Central and East Harlem, the South Bronx, Central and Northeast Brooklyn, and Southeast Queens.

Some of the world's largest financial institutions, including HSBC and JPMorgan Chase, make these loans through the hundreds of tax prep sites that serve as their brokers, reaping lucrative profits by taking a bite out of people's tax refunds and credits. By taking advantage of a regulatory loophole, RALs lenders are able to circumvent New York State's usury laws.

"Pay stub" and "holiday" loans, new and arguably more abusive loans made by tax preparers, are on the rise in New York. These loans are made before tax season begins, and are based on a projection of the borrower's tax refund and tax credits using the person's pay stub. (See attached alert.)

Poster advertising pay stub loans, in NYC subway station (12/06).

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[1] New York City RAL, EITC, and low-income taxpayer data are derived from IRS Stakeholder Partnerships, Education & Communication (SPEC) Return Information Database, W&I Research Group 2, October 2006 ("IRS"). The report analyzes data over the four years for which IRS data on RALs are available. Data researched was for Tax Years 2001–2004.

In just one year, the number of outlets that offer pay stub and holiday loans increased from approximately 6,000 at the end of 2005, to approximately 20,500 at the end of 2006, nationally. These figures include the three largest tax preparation chains, and do not include independent tax preparers.[2]

FINDINGS

NEDAP analyzed four years of IRS data showing tax returns filed with RALs in New York City.[3] Below is a summary of findings.

From 2002 through 2005:

- **New Yorkers lost more than $324 million of their tax refunds and credits through RALs.**

- **In many of the poorest New York City neighborhoods, an estimated 1 out of every 5 taxpayers received a RAL.**

- **Taxpayers in the South Bronx, Central and Northeast Brooklyn, Central and East Harlem, and Southeast Queens were the hardest hit by RALs, both in terms of the percentage of RALs made, and the total amount of money drained.**

  The below chart shows the ten New York City zip codes from which RALs extracted the largest dollar amounts, city-wide.

NEIGHBORHOOD	BOROUGH	ZIP CODE	TOTAL FEES
Brownsville	Brooklyn	11212	$8,563,268
Morrisania/Melrose	Bronx	10456	$8,161,740
East New York/Cypress Hills	Brooklyn	11207	$7,895,896
Tremont	Bronx	10453	$7,881,750
Flatbush	Brooklyn	11226	$7,515,922
Highbridge/Morrisania	Bronx	10452	$7,050,864
East New York/Cypress Hills	Brooklyn	11208	$6,639,152
Tremont/East Tremont	Bronx	10457	$6,622,938
Canarsie	Brooklyn	11236	$6,553,422
Bushwick/Bedford-Stuyvesant	Brooklyn	11221	$6,359,296
TOTAL FOR 10 ZIP CODES			$73,244,248

The below chart shows the ten New York City zip codes with the highest percentages of tax returns filed with a RAL.

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2 Research findings, Harvard Business School (2007); personal correspondence on file with NEDAP. Lending data are not publicly available for pay stub and holiday loans.

3 NEDAP issued a report on RALs in March 2006 that documented the RAL providers' targeting of low-income taxpayers and communities for these under-regulated loans. The report highlighted the impact of RALs on low-income New Yorkers and the neighborhoods in which they live. This year, in addition to updating the 2006 report with a snapshot of the most recently reported RAL data, NEDAP has measured the cumulative impact of RALs in New York over the last four years.

NEIGHBORHOOD	BOROUGH	ZIP CODE	PCT RALS
Hunts Point	Bronx	10474	29.0%
Morrisania/Melrose	Bronx	10456	28.7%
Central Harlem	Manhattan	10030	28.4%
Mott Haven	Bronx	10454	26.8%
Brownsville	Brooklyn	11212	26.4%
Bedford-Stuyvesant	Brooklyn	11233	26.2%
Tremont/East Tremont	Bronx	10457	25.7%
Central Harlem	Manhattan	10039	25.4%
Highbridge/Morrisania	Bronx	10452	24.5%
Mott Haven	Bronx	10455	24.5%

- Approximately 77% of all New Yorkers who received a RAL were low income.

- RALs are overwhelmingly concentrated in predominantly African-American and Latino neighborhoods.

In 2005 alone:

- New Yorkers paid more than $75 million in RAL-related tax preparation and fees.

- Low-income taxpayers paid approximately $59 million in tax preparation and RALs fees.

- Nearly 1 in 5 New Yorkers claiming the Earned Income Tax Credit (EITC) borrowed a RAL.

- Of all New York City taxpayers taking out a RAL, approximately 61% claimed the EITC.

See attached maps.

<u>POLICY RECOMMENDATIONS</u>

At the federal level:

- Legislation is needed to put an end to usurious RALs.

- Until such legislation is passed, regulators that oversee banks making RALs, including the Office of the Comptroller of the Currency, the national bank regulator, should order their regulatees to cease making predatory RALs, and paystub and holiday loans.

At the state level:

NEDAP supports recommendations issued by New Yorkers for Responsible Lending (NYRL), a state-wide coalition that has identified RALs as a serious credit abuse.[4] NYRL has called on the NYS legislature to pass a state law that would:

- Require tax preparers in New York State to register with the NYS Department of Banking;

[4] NYRL is a state-wide coalition of more than 125 seniors, consumer, civil rights, affordable housing, and community development organizations and community development financial institutions dedicated to promoting fair credit access. NEDAP is a founding member of NYRL and serves on its Steering Committee.

- Require that RALs providers and facilitators comply with New York State's 25% usury cap, to the extent permitted by law;
- Require meaningful disclosure of RAL fees and terms to borrowers;
- Create a fiduciary duty on the part of tax preparers to taxpayer clients; and
- Prohibit abusive cross-collection practices by RAL lenders.

At the local level:
RALs directly undercut the City's initiative to encourage low- and moderate-income New Yorkers to file for the EITC. The City should:
- Lead an aggressive consumer education campaign to warn New Yorkers about RALs;
- Cease partnering with tax preparation companies that offer RALs, such as H&R Block and Jackson Hewitt, which are partners in the City's EITC education effort;[5] and
- Support state and federal legislative and regulatory actions to eliminate RALs.

At all levels, government should aggressively support development of sound and affordable small, short-term loans as well as free tax preparation services.

CONCLUSION

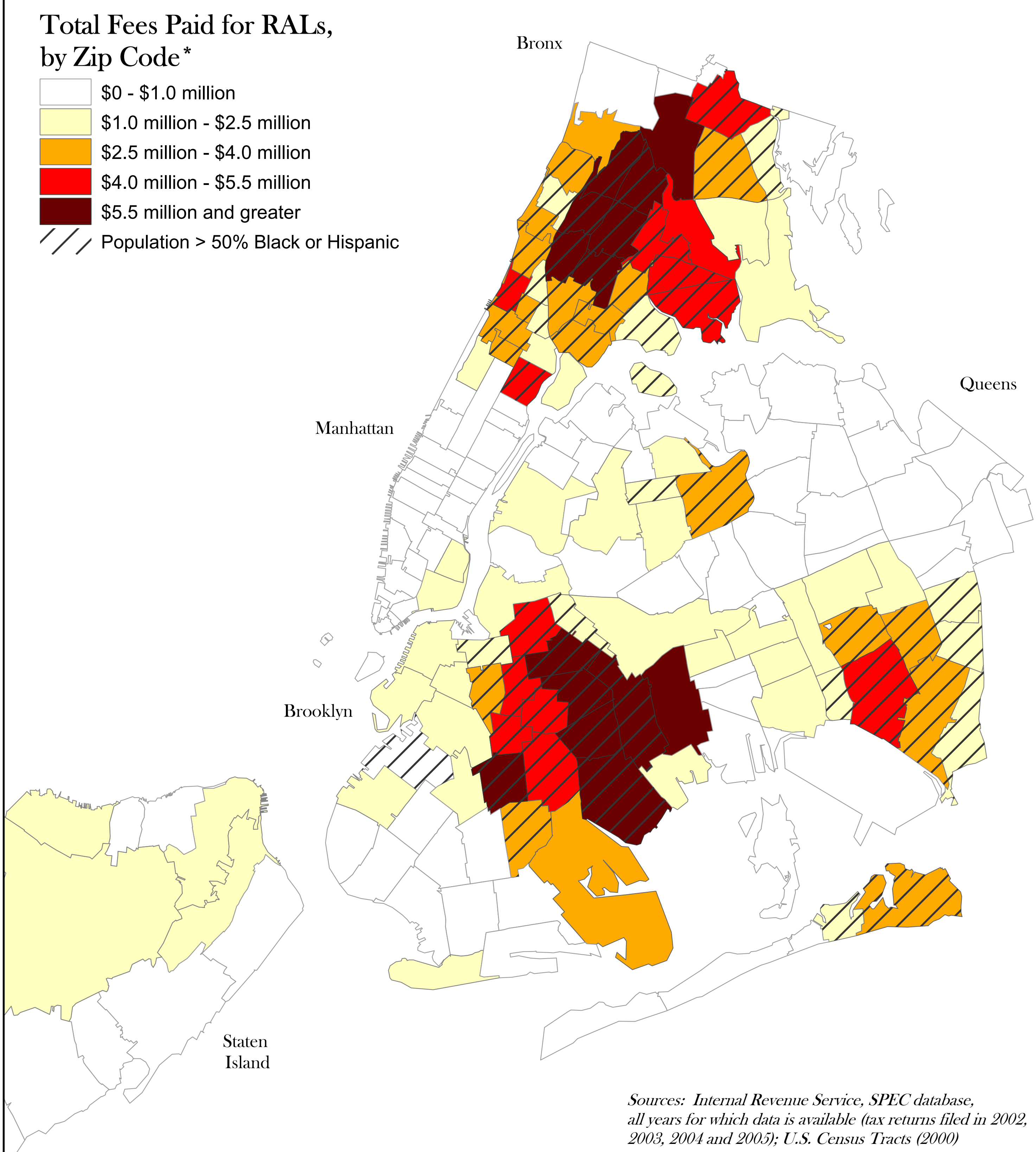
RALs cost low- and moderate-income working New Yorkers more than $324 million in the four year period, from 2002 through 2005. RALs not only take a huge bite out of working families' income, but they also directly undermine community development and the city's economy, overall. Millions of dollars in tax refunds and Earned Income Tax Credits that New Yorkers would return to the local economy instead go to pay for these extremely high-cost, short-term loans.

RALs, and their pay stub variation, have joined a new generation of inferior and abusive financial products that are specifically targeted at low- and moderate-income communities and neighborhoods of color using predatory, and often discriminatory, practices. In addition to alerting the public about RALs and challenging RALs issuers to end their abusive lending business, legislative and regulatory intervention is needed to eliminate RALs from the tax system at state and federal levels.

[5] "Mayor Bloomberg Announces Expanded Effort to Boost Filings for the Earned Income Tax Credit," Mayor's Office PR-021-06, Jan. 19, 2006.

Fees Paid for Refund Anticipation Loans

New York City (2002 - 2005)



Sources: Internal Revenue Service, SPEC database, all years for which data is available (tax returns filed in 2002, 2003, 2004 and 2005); U.S. Census Tracts (2000)

* Dollar amount is an estimate, determined by multiplying the number of tax preparer debt inquiries (an indicator of a RAL application) by the national average fee amount for receiving a RAL. An estimated 90% of RALs applications are approved.

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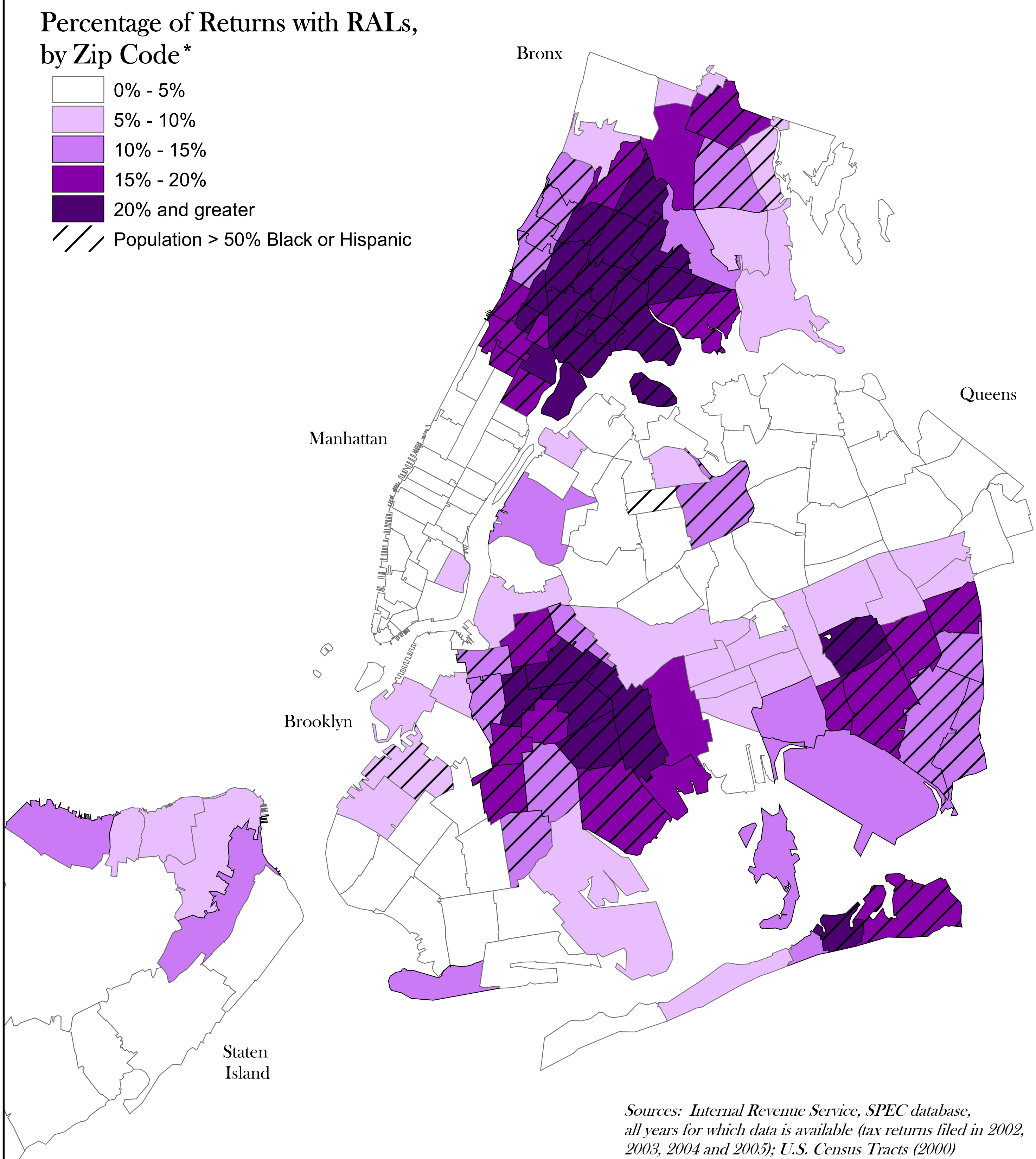
Percentage of Income Tax Returns with Refund Anticipation Loans

New York City (2002 - 2005)



Sources: Internal Revenue Service, SPEC database, all years for which data is available (tax returns filed in 2002, 2003, 2004 and 2005); U.S. Census Tracts (2000)

* Percentage is an estimate, determined by dividing the number of tax preparer debt inquiries (an indicator of a RAL application) by the total number of tax returns filed, by zip code. An estimated 90% of RALs applications are approved.

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