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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

Federal Trade Commission,

Plaintiff,

v.

Intuit Inc.,

Defendant.

No. 5:22-cv-1973

**Complaint for a Temporary Restraining
 Order and Preliminary Injunctive Relief
 Pursuant to Section 13(b) of the Federal
 Trade Commission Act, 15 U.S.C. § 53(b)**

Plaintiff, the Federal Trade Commission (“FTC”), petitions this Court to enter a temporary restraining order and grant a preliminary injunction enjoining Intuit Inc. (“Defendant” or “Intuit”) from engaging in deceptive acts or practices in connection with the advertising, marketing, promotion, distribution, and sale of online tax preparation products and services, including TurboTax. The FTC seeks this provisional relief pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) & 53(b). Absent such provisional relief, Defendant would be free to continue disseminating the deceptive claim that consumers can file their taxes for free using TurboTax when in truth, in numerous instances Defendant does not permit consumers to file their taxes for free using TurboTax.

The Commission requires the aid of this Court to prevent interim harm to consumers during the pendency of an administrative trial on the merits. The Commission has already initiated an administrative proceeding, pursuant to Section 5 of the FTC Act, 15 U.S.C. § 45, by

1 filing an administrative complaint on March 28, 2022. The administrative hearing will determine
 2 whether Defendant's representations violate Section 5 of the FTC Act, 15 U.S.C. § 45, and will
 3 provide all parties a full opportunity to conduct discovery and present testimony and other
 4 evidence regarding Plaintiff's allegations.

5 SUMMARY OF THE CASE

6 1. Defendant Intuit advertises, markets, promotes, distributes, and sells TurboTax, a
 7 commonly-used online tax preparation service that enables users to prepare and file their income
 8 tax returns. (As used in this Complaint, "TurboTax" only refers to online products and services.)

9 2. Much of Intuit's advertising for TurboTax conveys the message that consumers
 10 can file their taxes for free using TurboTax, even going so far as to air commercials in which
 11 almost every word spoken is the word "free." For example, an ad called "Auctioneer," which
 12 depicts a cattle auction with a fast-talking auctioneer and a crowd of grizzled cowboys:



25 AUCTIONEER: And free, and free, and free, and free, and free.
 26 Now a bidder and free! Now give me another bidder and free, and
 27 a free here and a free free free a free free free. Now a bidder and
 28 free! Now give me another bidder and free, and a free free free.
 And free, and free, and free, and free free free and free. Here we go
 at free, free, free and free. Free! Now give me another bidder and
 free. Hit free and here, free, free, free, freeeeeeeeeeee. Free!

1 VOICEOVER: That's right, TurboTax Free Edition is free. See
2 details at TurboTax.com.

3 3. In truth, TurboTax is only free for some users, based on the tax forms they need.
4 For many others, Intuit tells them, after they have invested time and effort gathering and
5 inputting into TurboTax their sensitive personal and financial information to prepare their tax
6 returns, that they cannot continue for free; they will need to upgrade to a paid TurboTax service
7 to complete and file their taxes.

8 4. Until 2021, Intuit offered a free online version of TurboTax through the IRS Free
9 File Program, a public-private partnership with the IRS, that was available to low-income
10 consumers regardless of which tax forms they need.

11 5. As detailed herein, Intuit has engaged in, and is engaging in, deceptive business
12 practices in the advertising, marketing, distribution, and sale of TurboTax.

13 JURISDICTION AND VENUE

14 6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a),
15 and 1345.

16 7. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), (b)(2), (c)(2), and
17 (d), and 15 U.S.C. § 53(b).

18 8. *Divisional assignment*: Divisional assignment is proper in the San Jose Division
19 because a substantial part of the events or omissions giving rise to the claim occurred in Santa
20 Clara County. L.R. 3-2(c), (e).

21 9. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides in pertinent part:

22 Whenever the Commission has reason to believe—

23 (1) that any person, partnership, or corporation is violating, or is
24 about to violate, any provision of law enforced by the Federal
25 Trade Commission, and

26 (2) that the enjoining thereof pending the issuance of a complaint
27 by the Commission and until such complaint is dismissed by the
28 Commission or set aside by the court on review, or until the order

1 of the Commission made thereon has become final, would be in the
2 interest of the public—

3 the Commission by any of its attorneys designated by it for such
4 purpose may bring suit in a district court of the United States to
5 enjoin any such act or practice. Upon a proper showing that,
6 weighing the equities and considering the Commission's likelihood
7 of ultimate success, such action would be in the public interest, and
8 after notice to the defendant, a temporary restraining order or a
9 preliminary injunction may be granted without bond

10 10. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorize nationwide service of
11 process, and personal jurisdiction exists where service is effected pursuant to federal statute. Fed.
12 R. Civ. P. 4(k)(1)(C). Additionally, Defendant conducts business in this District. Defendant is
13 subject to personal jurisdiction in this District, and venue is proper in this District under 28
14 U.S.C. § 1391(b)(1), (b)(2), (c)(2), and (d), and 15 U.S.C. § 53(b).

15 PLAINTIFF

16 11. The FTC is an independent agency of the United States Government created by
17 the FTC Act, which authorizes the FTC to commence this district court civil action by its own
18 attorneys. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),
19 which prohibits unfair or deceptive acts or practices in or affecting commerce.

20 12. The FTC is authorized to initiate federal district court proceedings to seek
21 preliminary injunctive relief pending the Commission's adjudication of the challenged conduct in
22 an administrative proceeding. 15 U.S.C. § 53(b).

23 DEFENDANT

24 13. Defendant Intuit Inc. is a Delaware corporation with its principal place of
25 business in Mountain View, California.

26 14. Intuit transacts or has transacted business in this District and throughout the
27 United States. At all times relevant to this Complaint, acting alone or in concert with others,
28 Intuit has advertised, marketed, promoted, distributed, or sold TurboTax, an online tax
preparation service that enables users to prepare and file their income tax returns, to consumers
throughout the United States.

COMMERCE

15. At all times relevant to this Complaint, Intuit has maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANT’S BUSINESS ACTIVITIES

I. TurboTax’s “Freemium” Version: TurboTax Free Edition

16. [REDACTED]
[REDACTED]
17. [REDACTED] involves, in part, growing Intuit’s customer base by offering free services to consumers [REDACTED]
[REDACTED]

18. [REDACTED] also involves persuading consumers to upgrade from free to paid versions of TurboTax.

19. [REDACTED] further involves “brand loyalty,” or retention of consumers who previously filed their taxes for free in the “freemium” version of TurboTax returning to TurboTax in subsequent years when they are no longer eligible for the “freemium” version, and paying Intuit for a paid version of TurboTax.

20. Since at least 2017, Intuit has called the “freemium” version of TurboTax the “TurboTax Free Edition.” In 2016, Intuit called the “freemium” version of TurboTax the “Federal Free Edition.”

21. The “freemium” version of TurboTax is available only to consumers with “simple” tax returns, as defined by Intuit; other consumers are required to upgrade to paid versions of TurboTax.

22. In 2017 and 2018, when consumers filed tax returns for Tax Year (“TY”) 2016 and 2017 (e.g. taxes filed in 2017 for income earned in 2016), Intuit defined a “simple” tax return as a return that could be filed using a 1040A or 1040EZ tax form.

23. In 2019 and 2020, when consumers filed tax returns for TY 2018 and 2019, Intuit defined a “simple” tax return as a return that could be filed on a Form 1040, with no attached schedules.

24. In 2021, when consumers filed tax returns for TY 2020, Intuit defined a “simple” tax return as a return that could be filed on a Form 1040, with no attached schedules, except to claim unemployment income.

25. Intuit currently (for TY 2021) defines “simple” tax return as a return that can be filed on a Form 1040 with limited attached schedules to cover a few distinct tax situations, including student loan interest paid.

26. Consumers who receive income reported through certain types of IRS Form 1099 are not eligible for the “freemium” version of TurboTax, regardless of their income. This includes consumers who receive independent contractor or small business income, such as consumers working in the gig economy by, for example, providing rideshare services or delivering groceries.

27. From TY 2018 to at least TY 2019, consumers who claimed student loan interest deductions were not eligible for the “freemium” version of TurboTax, regardless of their income.

II. Advertising Practices: Intuit’s Ads Misrepresent that Consumers Can File Their Taxes for Free Using TurboTax

28. Since at least 2016, Intuit has promoted TurboTax through advertising that represents that consumers can file their taxes for free using TurboTax.

29. [REDACTED]

30. Intuit has employed ads, including via television, YouTube, and other social media, marketing the “freemium” version of TurboTax, including but not limited to those in its “Absolute Zero” and “Free, Free, Free, Free” campaigns.

31. Intuit’s “Absolute Zero” campaign informed consumers “at least your taxes are free.”

32. For the Absolute Zero campaign, Intuit's goal was for consumers to believe the offering was truly free, and Intuit included the words "Free Guaranteed" in its Absolute Zero marketing to bolster and emphasize the claim that the offer was truly free.

33. Intuit also continues to run an ad campaign it calls "Free, Free, Free, Free" in which "free" is essentially the only word spoken by the actors in the commercials, until the voice over at the end of the advertisement. Intuit used at least six different advertisements in this campaign, including an advertisement in which "free" was a word in a spelling bee, another in which a court stenographer recorded a legal proceeding in which "free" was the only word used, and another in which an exercise class instructor chants "free" while leading a group workout. A freeze frame with closed captioning from the exercise class commercial, which Intuit is currently airing, appears below. In several ads, the word "free" is repeated over 40 times in a 30-second ad.



34. Commercials in the "Free, Free, Free, Free" campaign have informed consumers that "TurboTax Free is free, free free free free."

35. Many of Intuit's ads contain a fine print disclaimer at the end of the commercial informing consumers that the offer is limited to consumers with "simple tax returns" or "simple U.S. returns only."

1 36. The disclaimers are inadequate to cure the misrepresentation that consumers can
2 file their taxes for free using TurboTax, when in truth, in numerous instances Intuit does not
3 permit consumers to file their taxes for free using TurboTax. The disclaimers:

- 4 a) Are disproportionately small compared to the prominent text emphasizing
5 that the service is free.
- 6 b) Appear for just a few seconds, when the commercials aired in 15-, 30-,
7 and 60-second versions.
- 8 c) Are in writing only, often in font color similar to the background color,
9 and are not read by a voiceover.

10 37. Depicted below is a copy of a screen displayed to consumers during commercials
11 aired as part of the “Free, Free, Free, Free” campaign, which includes a fine print disclaimer that
12 the free offer was available only to consumers with “simple U.S. returns.”



22 38. What “simple” means can be a matter of interpretation, and Intuit’s definition of
23 “simple” has changed over time.

24 39. While the above screen was shown to consumers during commercials, in at least
25 some of Intuit’s commercials, an announcer said: “That’s right, TurboTax Free is free. Free, free
26 free free.” The announcer did not read the fine print disclaimer that it is for the “Free Edition
27 product only. For simple U.S. returns.” Intuit has never offered a product or service named only
28

1 “TurboTax Free”—those words have always been a component of longer names such as
 2 “TurboTax Free Edition” (for the “freemium” version of TurboTax).

3 40. Depicted below is a copy of a screen displayed to consumers during commercials
 4 currently airing as part of the “Free, Free, Free, Free” campaign, which includes a similar fine
 5 print disclaimer:



17 41. While the above screen is shown to consumers briefly at the end of the “Free,
 18 Free, Free, Free” commercials, an announcer says: “That’s right, TurboTax Free Edition is free.
 19 See details at turbotax.com.” The announcer does not read the fine print disclaimer stating:
 20 “TurboTax Free Edition is for simple U.S. returns only.”

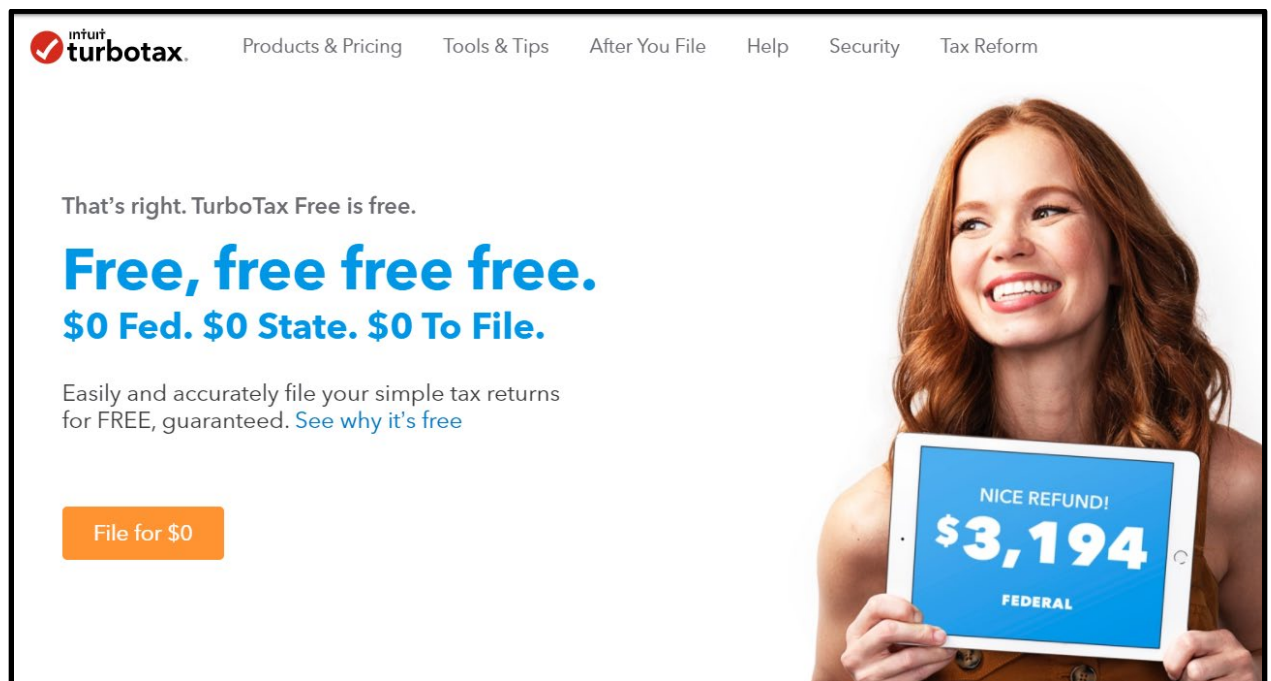
21 42. Given this advertising, reasonable consumers may believe that the TurboTax
 22 products and services Intuit advertises as free are free for them—that they can file their taxes for
 23 free using TurboTax. In addition, at least one of TurboTax’s competitors, Cash App Taxes
 24 (formerly Credit Karma Tax), has offered a truly free online tax preparation and filing service to
 25 all consumers for five years. Further, online products and services in many industries are
 26 routinely offered to consumers completely free of charge, leading consumers to understand that
 27 online tax preparation products and services are often truly free.
 28

III. Website Practices

A. Intuit's TurboTax Home Page Misleads Consumers into Believing They Can File Their Taxes for Free Using TurboTax

43. The TurboTax website does not disclose adequately to consumers, including those who see Intuit's advertisements, the limitations on eligibility for the "freemium" version of TurboTax.

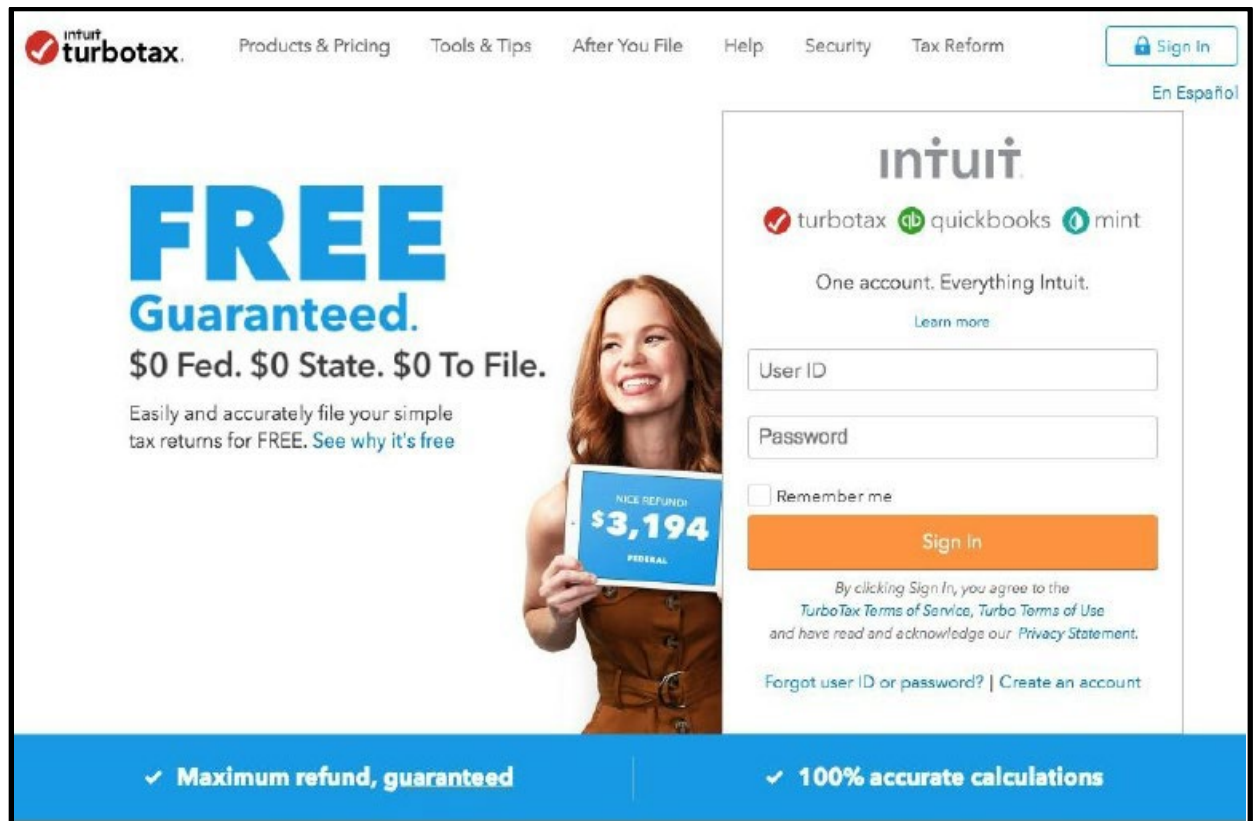
44. For example, for TY 2018, the TurboTax home page contained the following screen, which mimicked the "Free, Free, Free, Free" ad campaign:



45. The screen above, shown to consumers filing tax returns for TY 2018, failed to disclose adequately the limitations on eligibility for at least three reasons:

- a) First, the limitations on eligibility were preceded by the words "FREE, guaranteed." Intuit employees responsible for overseeing the marketing and marketing strategy for the "freemium" version of TurboTax included "guaranteed" to [REDACTED]

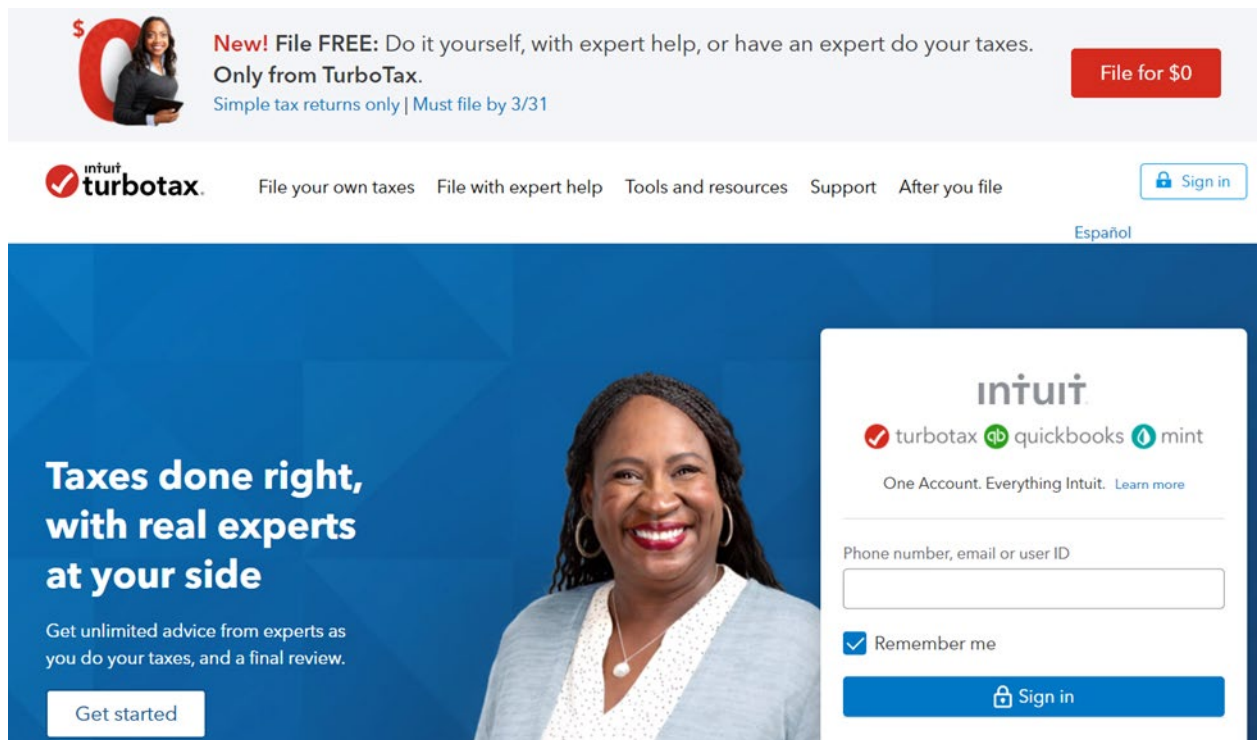
47. For TY 2019, Intuit used a similar screen, pictured below, with an even greater emphasis that consumers were “guaranteed” to file their taxes for free. Again, consumers who were not eligible for the “freemium” version of TurboTax would not learn they were ineligible until they had already invested significant time and effort creating an account and inputting their sensitive personal and financial information into TurboTax.



48. Since TY 2020, Intuit has continued to employ a customer interview model in which consumers who are not eligible for the “freemium” version of TurboTax do not learn they are ineligible until they have already invested significant time and effort creating an account and inputting their sensitive personal and financial information into TurboTax.

(continues on next page)

49. The screen Intuit currently uses on its website, for TY 2021, is pictured below.



50. Once again, Intuit’s current website page emphasizes “FREE,” “\$0,” and “File for \$0” at the top of the page, when in numerous instances Intuit does not permit consumers to file their taxes for free using TurboTax. While “Simple tax returns only” is hyperlinked to more detailed terms and conditions, the term “simple tax returns” is not understood by many consumers, and consumers who assume they have a “simple tax return” are not likely to click to read more.

51. Thus, Intuit continues to bombard consumers with the message that they can file their taxes for “free.” Intuit baits consumers with deceptive ads and then compound the deception with more false claims and buried disclosures.

B. The TurboTax Interview Process Uses Required Upgrades Called “Hard Stops” to Induce Consumers to Upgrade from Free to Paid Versions of TurboTax

52. Intuit has represented, and currently represents, to consumers who are not eligible for the “freemium” version of TurboTax that they must pay Intuit to file their tax returns online with TurboTax. Intuit informed consumers of these required upgrades using screens its

1 employees call “Hard Stops.” Consumers are later required to pay for the upgraded version of
2 TurboTax, either by providing payment information or agreeing to an additional charge to pay
3 using their tax refund after their returns have been prepared and are ready to file.

4 53. When consumers use the “freemium” version of TurboTax, it asks them a series of
5 questions on successive webpages about their financial situation. These questions enable Intuit to
6 determine whether consumers are eligible for the “freemium” version of TurboTax and include,
7 among other things, whether the consumer paid student loan interest or was self-employed.

8 54. Next, consumers are prompted to input their income by category. When
9 consumers indicate that they need to report income on certain types of IRS Form 1099 (which
10 could be because entities that paid them classified them as independent contractors, such as
11 consumers working in the gig economy by, for example, providing rideshare services or
12 delivering groceries), the “freemium” version of TurboTax displays a Hard Stop informing them
13 that they cannot proceed for free. For example, Intuit’s TY 2019 “Business Income Upgrade”
14 Hard Stop, depicted below, told consumers: “To accurately report this income, you’ll need to
15 upgrade.” Hard Stop screens then offer consumers the option to upgrade and pay for a paid
16 version of TurboTax, such as TurboTax Deluxe or TurboTax Self-Employed. At various times
17 during TY 2018 and 2017, Intuit charged \$59.99 for TurboTax Deluxe and \$119.99 for TurboTax
18 Self-Employed.

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21 (continues on next page)
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FEDERAL REFUND (in progress) \$0 NJ REFUND (in progress) \$0 Hide Search Help Live Tax Advice

Wages & Income Deductions & Credits Health Insurance Other Tax Situations Federal Review

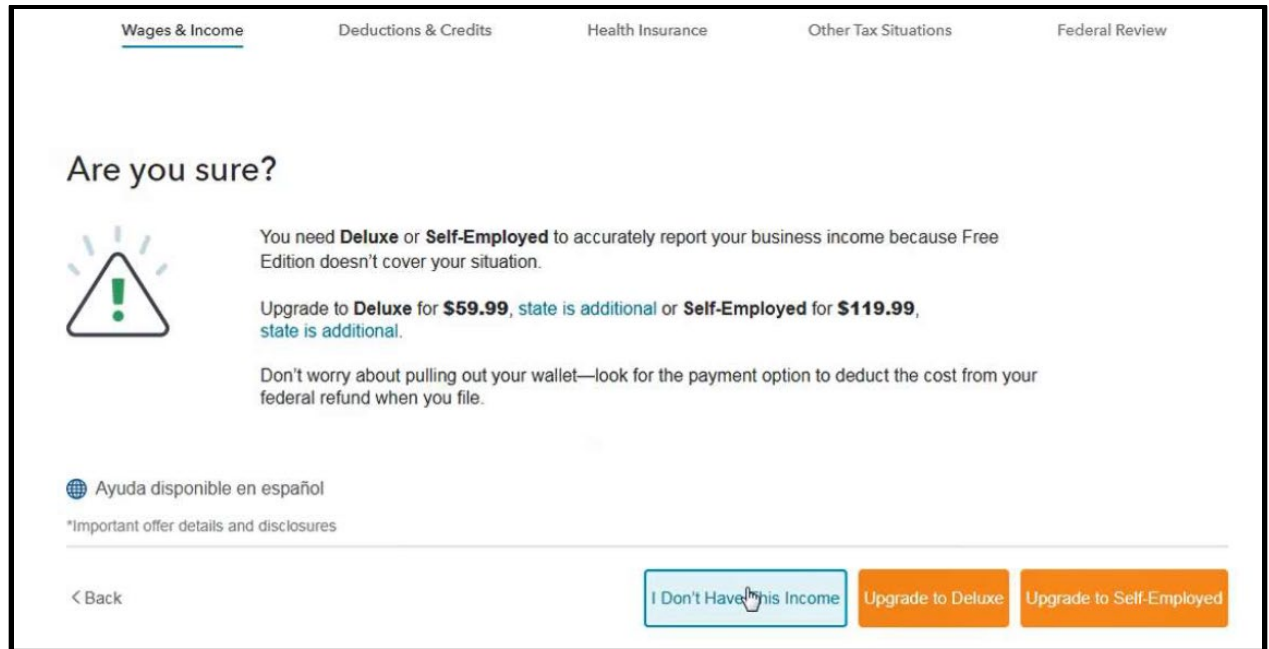
To accurately report this income, you'll need to upgrade

| | Free Edition | Deluxe | Self-Employed |
|---|------------------|--|--|
| BENEFITS | | | |
| Report W-2 income | ● | ● | ● |
| Report multiple sources of income— includes 1099-MISC, 1099-K, and more. | | ● | ● |
| One-on-one help— get customized answers to your product and support questions from a TurboTax specialist. | | ● | ● |
| Maximize deductions— claim self-employed expenses such as vehicle, phone, supplies, and more (Schedule C). | | | ● |
| | Keep Free \$0 | Upgrade \$59.99 State additional | Upgrade \$119.99 State additional Pays for itself |

20 55. The headline in the Business Income Hard Stop states that consumers must
21 upgrade to a paid version of TurboTax to “accurately report this income.”

22 56. [REDACTED]
23 [REDACTED]

24 57. The chart in the Business Income Hard Stop depicted above included a button that
25 said “keep free” below the column for TurboTax Free Edition, even though the consumer could
26 not actually continue using TurboTax Free Edition and report all of their income to the IRS.
27 Indeed, consumers who clicked on the keep free button were shown what Intuit calls its “Are you
28 sure,” or “AYS” screen, depicted below.



58. The Are You Sure screen again used the headline: “You need Deluxe or Self-Employed to accurately report your business income because Free Edition doesn’t cover your situation.”

59. Consumers who clicked the “I don’t have this income” button on the Are You Sure screen were prompted to re-enter their income. Consumers who again entered the same Form 1099 income were again shown the Business Income Hard Stop; in TY 2018 and prior, when those same consumers again clicked “Keep Free” the second time they encountered it, they would have again been shown the Are You Sure screen, placing those consumers into a feedback loop that ended only if they upgraded to a paid version of TurboTax or chose not to report that Form 1099 income.

60. A current Hard Stop, depicted below, tells consumers: “To accurately report this income, you’ll need to upgrade.” The Hard Stop screen offer consumers the option to upgrade and pay up to \$59.99 for TurboTax Deluxe and up to \$119 for TurboTax Self-Employed at full price (though discounts may be available, as in the case below).



To accurately report this income, you'll need to upgrade

| | Free Edition | Deluxe | Self-Employed |
|--|-------------------------------|--|--|
| Report W-2 income | ✓ | ✓ | ✓ |
| Report multiple sources of income —1099-NEC, 1099-MISC, 1099-K, & more | | ✓ | ✓ |
| One-on-one help —get personalized answers from a TurboTax specialist | | 👤 | 👤 |
| Maximize deductions —claim business expenses related to auto, utilities, supplies, & more | | | ✓ |
| | \$0* | \$59 \$39* State additional | \$119 \$89* State additional Pays for itself |
| | Don't upgrade | Upgrade | Upgrade |

Don't worry about pulling out your wallet—look for the payment option to deduct the cost from your federal refund when you file.

[*Important offer details and disclosures](#)

61. Intuit has used and is using many other Hard Stops to induce consumers who start in the “freemium” version of TurboTax to upgrade to a paid version based on certain types of income, such as income from a farm, farm rental or farm equipment; selling a home; a prior year state tax refund; or investments.

62. Intuit also has used and is using Hard Stops to induce consumers who start in the “freemium” version of TurboTax to upgrade to a paid version when seeking certain tax credits or deductions. An example that was in place during at least TY 2018 and TY 2019 was a deduction for paying student loan interest.

63. [REDACTED]

64. Thus, Intuit's deceptive door-opener ads described above bring consumers to the TurboTax website representing that consumers can file their taxes for free using TurboTax, but once there, many consumers encounter screens that inform them that they cannot complete and file their taxes for free.

65. In the case of the Hard Stop screens, this confrontation comes after consumers have already created a TurboTax account and expended substantial time inputting sensitive personal and financial information into Intuit's user interface.

IV. Intuit's Truly Free Version of TurboTax: The Free File Version

66. Intuit's advertisements funneled consumers to the purportedly-free version of TurboTax, only to require [REDACTED] upgrade and pay Intuit to file their taxes after consumers had invested time and shared sensitive information with Intuit.

67. All the while, many low- and middle-income consumers that paid Intuit to upgrade to a paid version of TurboTax would have been eligible to prepare and file their taxes electronically at no cost through the IRS Free File Program, a public-private partnership formed in 2002 between the IRS and a consortium of online tax preparation and filing companies, formerly including Intuit, pursuant to a Memorandum of Understanding ("MOU").

68. [REDACTED]

69. Until 2021, when Intuit left the IRS Free File Program, the Free File version of TurboTax provided an online solution for all IRS tax forms, regardless of consumers' sources or types of income or the variety of their deductions or tax credits, so long as consumers fell within the prescribed adjusted gross income threshold that Intuit set each year. The only other version of TurboTax that would have provided equal coverage for all tax situations and tax forms is its most expensive paid version of TurboTax, TurboTax Self Employed.

A. The IRS Free File Program

70. Under the IRS Free File Program MOU, participating companies offer free online tax preparation services to low- and middle-income Americans. Participating companies are prohibited from marketing to consumers while those consumers use their Free File offerings. In exchange, the IRS agreed not to compete with the participating companies in providing free, online tax return preparation and filing services to consumers. In a December 2019 addendum to the most recent MOU concerning the program, the IRS dropped its agreement to refrain from competing with the private providers; however, there is no current indication that the IRS intends to enter the market.

71. Historically, consumer participation in the IRS Free File Program has been low. In 2018, approximately three million of the nearly 104 million consumers who were eligible to do so used the IRS Free File Program to file their federal taxes. At its peak usage in 2005, 5,142,125 consumers used the IRS Free File Program to file their federal taxes.

72. The IRS has set eligibility thresholds for participation in the Free File Program based on consumers' adjusted gross income ("AGI"). Consumers with an AGI equal to or less than 70% of the U.S. consumer population are meant to be eligible for the program. The MOU, however, requires that no company make its Free File offering available to more than 50%, or less than 10%, of eligible consumers. Each company is free to set its own eligibility requirements to stay within that range.

B. The Free File Version of TurboTax

73. From 2003 to October 2021, Intuit offered the Free File version of TurboTax as part of the IRS Free File Program.

74. Intuit employees involved in marketing and strategy related to offering the "freemium" and Free File versions of TurboTax acknowledged that these two versions of TurboTax competed with each other.

75. From 2017 (for TY 2016) to 2021 (for TY 2020), Intuit made the Free File version of TurboTax available to all consumers who were eligible for the earned income tax credit.

76. From 2017 to 2021, Intuit also made the Free File version of TurboTax available to all consumers with an AGI that did not exceed specified AGI thresholds:

| Tax Year | Maximum AGI |
|------------------------------|--------------------|
| 2016 (returns filed in 2017) | \$33,000 |
| 2017 (returns filed in 2018) | \$33,000 |
| 2018 (returns filed in 2019) | \$34,000 |
| 2019 (returns filed in 2020) | \$36,000 |
| 2020 (returns filed in 2021) | \$39,000 |

77. From 2017 to 2021, Intuit also made the Free File version of TurboTax available to all active duty military service members with an AGI that did not exceed specified AGI thresholds:

| Tax Year | Maximum AGI |
|------------------------------|--------------------|
| 2016 (returns filed in 2017) | \$64,000 |
| 2017 (returns filed in 2018) | \$66,000 |
| 2018 (returns filed in 2019) | \$66,000 |
| 2019 (returns filed in 2020) | \$69,000 |
| 2020 (returns filed in 2021) | \$72,000 |

(These limits were the maximum AGIs allowable in the IRS Free File Program for any consumer using any participating company for those years.)

78. Although consumers primarily accessed the Free File version of TurboTax via IRS.gov, they have also accessed it directly via Intuit's internet landing page for the Free File version of TurboTax, which is different from the landing page for its "freemium" and paid versions of TurboTax.

79. Intuit changed the name of the Free File version of TurboTax several times. Intuit also used different names for the Free File version of TurboTax at the same time, depending on where the Free File version of TurboTax was being marketed.

80. Prior to TY 2018, Intuit called the Free File version of TurboTax "TurboTax Freedom Edition." Upon information and belief, the internet landing page for TurboTax Freedom Edition prior to TY 2018 was turbotax.intuit.com/taxfreedom.

1 81. For TY 2018, Intuit changed the name of the Free File version of TurboTax to
2 “TurboTax Free File Program.” Intuit used the same internet landing page for TurboTax Free File
3 Program as it did for TurboTax Freedom Edition: turbotax.intuit.com/taxfreedom.

4 82. From at least TY 2016 through and including TY 2018, Intuit used a different
5 name to market the Free File version of TurboTax on the IRS.gov website. On the IRS.gov
6 website, Intuit marketed the Free File version of TurboTax as “TurboTax All Free SM.”

7 83. Intuit sought and obtained registered trademark protection for the name TurboTax
8 All Free.

9 84. For TY 2019 and 2020, Intuit changed the name of the Free File version of
10 TurboTax to “IRS Free File Program Delivered by TurboTax.” This change was required by an
11 amendment to the MOU between the IRS and the participating tax preparation companies that
12 required uniform naming of all IRS Free File Program offerings. The internet landing page for
13 the IRS Free File Program Delivered by TurboTax for TY 2019 was <https://freefile.intuit.com/>.

14 **C. The Tension Between the Free File and “Freemium” Versions of TurboTax**

15 85. Intuit has long feared that the government would “encroach” on its tax preparation
16 business. To address this risk, the company had a comprehensive anti-encroachment strategy,
17 including the Free File version of TurboTax, which yielded benefits to the company. Intuit called
18 the company’s participation in the IRS Free File Program the “lynchpin” of its efforts to avoid
19 government “encroachment” into the tax preparation industry.

20 86. As the Treasury Inspector General for Tax Administration testified before the
21 House Ways and Means Committee on April 6, 2006, the “primary goal” of the Free File
22 Program “is to keep the Federal Government from entering the tax preparation business.”

23 87. Indeed, Intuit has acknowledged the competitive threat of a government-run free
24 e-filing system. In Securities and Exchange Commission (“SEC”) filings, Intuit stated that
25 “We ... face potential competitive challenges from publicly funded government entities that offer
26 electronic tax preparation and filing services at no cost to individual taxpayers.” Intuit further
27 acknowledged that participation in the IRS Free File Program “has kept the federal government
28 from being a direct competitor to Intuit’s tax offerings.”

1 88. In a Form 10-Q for the quarterly period ending January 31, 2019, Intuit stated
 2 that: “Our consumer tax business also faces significant competition from the public sector If
 3 the Free File Program were to be terminated and the IRS were to enter the software development
 4 and return preparation space, the federal government would become a publicly funded direct
 5 competitor of the U.S. tax services industry and of Intuit. Government funded services that
 6 curtail or eliminate the role of taxpayers in preparing their own taxes could potentially have
 7 material and adverse revenue implications.”

8 89. Intuit employees have recognized a need to keep participation in the IRS Free File
 9 Program at numbers sufficiently high to ensure the continued viability of the program.

10 90. Intuit has recognized that high participation in the IRS Free File Program would
 11 dent its bottom line, but that, at the time, it had to keep Free File enrollments at a certain level to
 12 prevent government “encroachment.”

13 91. At the same time, as one Intuit employee wrote, “we need to make sure that FFA
 14 [the Free File Alliance] is not cannibalizing the our [sic] commercial products.”

15 **D. Consumer Confusion About the Names of the Free File and “Freemium”**
 16 **Versions of TurboTax and Intuit’s Decision to Change the Name of the Free**
 17 **File Version of TurboTax**

18 92. For several years prior to TY 2018, Intuit employees tasked with overseeing the
 19 marketing strategy for both the Free File and “freemium” versions of TurboTax considered
 20 changing the name of the Free File version of TurboTax.

21 93. Since at least 2013, Intuit knew that consumers were confused by the similarity of
 22 the names of these versions of TurboTax.

23 94. [REDACTED]

24 [REDACTED]

25 95. Intuit included the word “free” in the name of its commercial “freemium” version
 26 of TurboTax, TurboTax “Free Edition,” even though, in TY 2020, for example, it was not free for
 27 two-thirds of U.S. taxpayers.

1 96. From at least TY 2015 through TY 2017, Intuit named the Free File version of
2 TurboTax “Freedom Edition,” which does not indicate that it is free despite being part of a
3 program that provides free tax preparation and filing services for 70% of taxpayers.

4 97. In 2013, one employee tasked with branding and marketing strategy for both the
5 Free File and “freemium” versions of TurboTax wrote: “As you know, our customers get
6 confused between the ‘Freedom Edition’ and the ‘Federal Free Edition.’ We’d like to try to drive
7 more clarity between the two products and I think a name change would help.”

8 98. In 2014, Intuit employees again considered whether to change the name the Free
9 File version of TurboTax.

10 99. On June 18, 2018, *Pro Publica*, an independent online investigative journalism
11 organization, reported that the IRS Free File Program was underused by eligible consumers,
12 stating that only about 3% of eligible consumers used it. The article theorized that part of the
13 reason for low usage was that companies such as Intuit had confusing names for their free
14 offerings, noting the similarity between TurboTax Free Edition and TurboTax Freedom Edition.
15 Intuit employees also noted around the same time that *The Hill* and *CBS Sunday Morning* issued
16 similar reports.

17 100. The next month, in July 2018, Intuit’s head of government affairs unsuccessfully
18 urged that the company change the name of the Free File version of TurboTax from TurboTax
19 Freedom Edition to TurboTax Free File Edition.

20 101. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 102. Although Intuit changed the name of the Free File version of TurboTax to
27 TurboTax Free File Program for TY 2018, it continued to market the Free File version of
28 TurboTax on the IRS.gov website using the trademarked name TurboTax All Free. Moreover,

Intuit was aware that changing the name to TurboTax Free File Program would not create any additional clarity for its customers and that consumers would be confused between TurboTax Free File Program and TurboTax Free Edition, especially due to the company's focus on the use of "free" in marketing TurboTax.

103. In 2019, this time pursuant to an amendment to the IRS Free File MOU, Intuit again changed the name of the Free File version of TurboTax, renaming it to IRS Free File Program Delivered by TurboTax.

E. For TY 2018, Intuit Hid Its Free File Landing Page from Search Engines for Approximately Five Months During the Peak of Tax Season

104. While Intuit funneled consumers to the "freemium" version of TurboTax and ultimately directed many to upgrade and pay, it made it difficult for consumers to find the Free File version of TurboTax.

105. [REDACTED]

106. In July 2018, one Intuit employee involved with the marketing strategy related to both the Free File and "freemium" versions of TurboTax explained that: "From a [search engine optimization] perspective, changing to 'Free File' in the name [REDACTED] think that any TTFE [TurboTax Freedom Edition] product name [REDACTED] with our 'Free Edition'."

107. [REDACTED]

[REDACTED] Revenue growth is the most important financial indicator Intuit uses to assess its business, including revenue growth for each reportable segment of the company.

1 108. In September 2018, one Intuit employee explained: “it sounds like we have the
2 ability to block our FFA offering/landing page from organic search if we rename to TurboTax
3 Free Edition. This sounds like a great solution if we learn that TurboTax Free File does start to
4 outrank our commercial Free.”

5 109. Facing this risk of lost revenue and [REDACTED]
6 [REDACTED], for TY 2018, Intuit blocked the landing page for its newly
7 named Free File version of TurboTax so that it would not be indexed (listed) by online search
8 engines. That block was in place from November 13, 2018, to April 26, 2019. This timeframe
9 covered the vast majority of Intuit’s 2019 tax filing season, which is the time it received revenue
10 from consumers using TurboTax to file tax returns for TY 2018.

11 110. For TY 2017, almost 1,225,000 consumers filed their federal tax returns using the
12 Free File version of TurboTax, representing 3.8% of all of Intuit’s online tax filings. For TY
13 2018, while Intuit had blocked its Free File landing page so it would not appear in organic search
14 engine search results, that number fell to less than 1.2 million consumers, representing 3.5% of
15 all of Intuit’s online tax filings.

16 **F. Intuit Used Paid Search Terms to Direct Consumers Searching for the IRS**
17 **Free File Program to the “Freemium” and Paid Versions of TurboTax**

18 111. As part of its advertising and marketing practices, Intuit bid on paid search terms
19 with search engines such as Google and Bing. When a consumer queried a search engine for a
20 search term and Intuit won the search engine’s instant auction for that paid search term, the
21 consumer would be served an ad selected by Intuit that included a hyperlink directing the
22 consumer to a specific website. Intuit selected both the content of the ad and the link directing
23 consumers to a specific website.

24 112. For many years, including TY 2018 while Intuit had blocked the landing page for
25 the Free File version of TurboTax from appearing in online search results, Intuit bid on search
26 terms relevant to the IRS Free File Program.

1 113. In many instances, these search terms relevant to the IRS Free File Program
 2 indicated consumers were likely searching for information about, or links to reach the website
 3 for, the IRS Free File Program. [REDACTED]

4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 114. [REDACTED] search terms referenced in paragraph 113, during TY 2018—
 10 while Intuit had blocked the landing page for the Free File version of TurboTax from appearing
 11 in search results—Intuit inserted hyperlinks into ads served to consumers for those keywords that
 12 directed consumers to Intuit’s commercial website with the “freemium” and paid versions of
 13 TurboTax, rather than the IRS.gov website for the IRS Free File Program or the landing page for
 14 the Free File version of TurboTax.

15 115. During TY 2018, Intuit directed consumers towards the website for the
 16 “freemium” and paid versions of TurboTax when consumers searched for the Free File version of
 17 TurboTax by its exact name: Turbo Tax Free File Program.













18 116. Intuit knew that some of its customers were misled by these practices, and Intuit
 19 developed an answer for customer service staff to respond to the following question: “How come
 20 when I searched for Free TurboTax, it didn’t list the FREE IRS version but it took me to your
 21 PAID free version, where I ended up having to pay?”

22 **G. Intuit’s TurboTax Website Does Not Mention the Free File Version of**
 23 **TurboTax and Funnels Consumers to the Paid and “Freemium” Versions of**
 24 **TurboTax**

25 117. Intuit’s TurboTax website has featured a screen Intuit calls its “Products and
 26 Pricing” screen. The current headline on this screen tells consumers: “Let’s find the right tax
 27 solution for you.” A copy of that screen is below.
 28

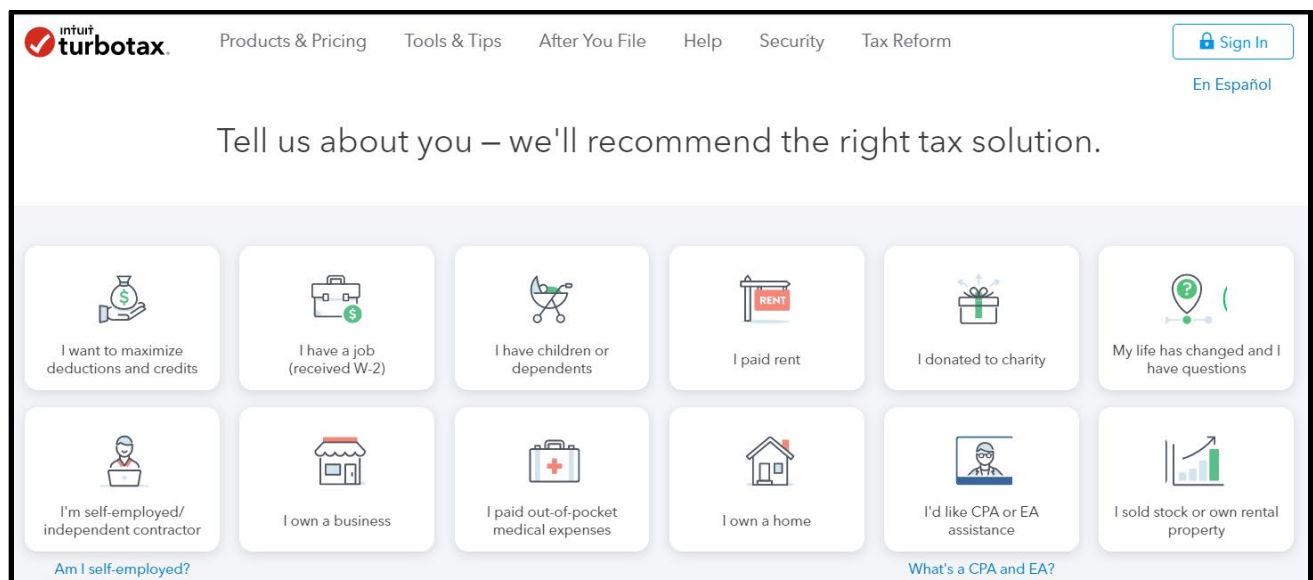
Let's find the right tax solution for you

Select all that apply:

| | | | | | |
|--|--|---|--|--|--|
|  I want to maximize deductions and credits |  I want a tax expert to do my taxes for me |  I have a job (received W-2) |  I paid rent |  I own a home |  I have children or dependents |
|  I want a tax expert to review my return |  I donated over \$300 to charity |  I'm paying off student loans |  I sold stock, crypto, or own rental property |  I'm self-employed/an independent contractor |  I own a small business |













[Am I self-employed?](#)

118. For TY 2018, the headline on this screen informed consumers: “Tell us about you – we’ll recommend the right tax solution.” A copy of that screen is below.



turbotax Products & Pricing Tools & Tips After You File Help Security Tax Reform [Sign In](#) [En Español](#)

Tell us about you – we'll recommend the right tax solution.

| | | | | | |
|--|--|--|---|--|---|
|  I want to maximize deductions and credits |  I have a job (received W-2) |  I have children or dependents |  I paid rent |  I donated to charity |  My life has changed and I have questions |
|  I'm self-employed/independent contractor |  I own a business |  I paid out-of-pocket medical expenses |  I own a home |  I'd like CPA or EA assistance |  I sold stock or own rental property |

[Am I self-employed?](#) [What's a CPA and EA?](#)

119. When consumers click, or clicked, on one of the tiles pictured in the screens above, the TurboTax website then recommends, or recommended, one of four versions of TurboTax: (1) the “freemium” version of TurboTax, marketed as Free Edition; (2) Deluxe; (3) Premier; or (4) Self-Employed—the latter three being the paid do-it-yourself versions of

1 TurboTax. The bottom of these screens list all four versions of TurboTax with the recommended
2 version highlighted.

3 120. These screens did not display the Free File version of TurboTax to consumers.

4 121. In TY 2019, the TurboTax website had a site index at the bottom of the home page
5 with a link to “All online tax preparation software.” That link brought consumers to the Products
6 and Pricing screen, which did not include the Free File version of TurboTax. Likewise, during
7 TY 2020, the TurboTax app contained a similar list of “all products” that did not include the Free
8 File version of TurboTax.

9 **H. Summary**

10 122. For eligible consumers based on their AGI, Intuit’s former Free File version of
11 TurboTax covered all tax situations, forms, and deductions, thus providing coverage equal to
12 Intuit’s most expensive version of TurboTax, Self-Employed.

13 123. [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 124. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 125. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 * * *
28

CONSUMER INJURY

132. Consumers are suffering, have suffered, and will continue to suffer substantial injury as a result of Defendant's violations of the FTC Act. Absent injunctive relief by this Court, Intuit is likely to continue to injure consumers and harm the public interest.

**LIKELIHOOD OF SUCCESS ON THE MERITS,
BALANCE OF THE EQUITIES, AND NEED FOR RELIEF**

133. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b) authorizes the Commission, whenever it has reason to believe that a person, partnership, or corporation has violated the FTC Act, to seek preliminary relief to prevent the dissemination of deceptive advertising claims until the Commission can adjudicate the lawfulness of the conduct in an administrative proceeding. In deciding whether to grant relief authorized by Section 13(b), this Court must balance the likelihood of the Commission's ultimate success on the merits against the public equities, using a sliding scale. The principal public equity weighing in favor of issuance of preliminary injunctive relief is the public interest in effective enforcement of the FTC Act.

134. The Commission is likely to succeed in proving that advertisements disseminated by Defendant violated Sections 5 of the FTC Act. In particular, the Commission is likely to succeed in demonstrating, among other things, that Defendant represents, directly or indirectly, expressly or by implication, that consumers can file their taxes for free using TurboTax, when in truth and in fact, in numerous instances Defendant does not permit consumers to file their taxes for free using TurboTax.

135. Preliminary relief is warranted and necessary. Consumers are suffering and will continue to suffer substantial injury as a result of Defendant's violations of the FTC Act. Absent preliminary relief, should the Commission rule, after the full administrative proceeding, that Defendant's conduct is unlawful, remediating the harm caused to consumers and honest competitors by Defendant's deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), as alleged in this Complaint, would be difficult, if not impossible.

PRAYER FOR RELIEF

Accordingly, the equitable relief requested here is in the public interest. Wherefore, Plaintiff respectfully requests that the Court:

- A. Enter the proposed Temporary Restraining Order;
- B. Preliminarily enjoin Defendant from further violations of the FTC Act;
- C. Retain jurisdiction and status quo until any administrative proceeding initiated by the Commission is concluded; and
- D. Award such other and further relief as the Court may determine as appropriate, just, and proper.

Respectfully submitted,

Dated: March 28, 2022

/s/ Roberto Anguizola

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