

Congress of the United States

Washington, DC 20510

May 2, 2019

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Rettig:

We write to express our alarm at recent reports that tax preparation companies that are members of the Free File Alliance have taken actions to hide from the public their free tax preparation services offered in conjunction with the Internal Revenue Service (IRS). Public reports last week indicated that Turbo Tax was “deliberately hiding” the free version of its tax preparation software from Google search, instead directing potentially eligible taxpayers to products that generate profits. A new review by congressional staff has found that this practice is more widespread than previously reported: five of the 12 tax preparation companies that participate in the Free File program hide their products from online searches. We are concerned that these deliberate attempts to make the Free File program less accessible to taxpayers flies in the face of these companies’ agreement with the government to provide free online tax filing, and we urge you to dismiss the companies that have deliberately tried to cheat taxpayers from the program.

The Free File program was created to provide free, online tax filing services to low-income and underserved taxpayers, which, since 2003, IRS has delegated to a group of private tax preparation companies called the Free File Alliance.¹ But there is an extensive public record demonstrating that Free File is a failure. In 2018, for example, less than 2.5% of eligible taxpayers used Free File. In her latest report to Congress, National Taxpayer Advocate Nina Olson noted that “the Free File Program is failing to serve its intended purpose,” and that, if it is not “substantially improved,” the IRS should terminate it.² Numerous consumer advocates and tax law experts agree.³

Last week, ProPublica reported that two of the largest Free File providers—TurboTax and H&R Block—had inserted code into the websites for their respective editions of Free File that would

¹ FreeFile, “About,” accessed May 1, 2019, <https://freefilealliance.org/about/>.

² Internal Revenue Service, “National Taxpayer Advocate delivers annual report to Congress: Addresses impact of shutdown; urges more funding for IT modernization,” press release, February 12, 2019, <https://www.irs.gov/newsroom/national-taxpayer-advocate-delivers-annual-report-to-congress-addresses-impact-of-shutdown-urges-more-funding-for-it-modernization>.

³ National Consumer Law Center, “Re: S.3246, the Taxpayer First Act,” August 15, 2018, <https://www.nclc.org/images/pdf/taxes/letter-s-3246-taxpayer-first.pdf>.

prevent those websites from appearing in online search results.⁴ In other words, if a taxpayer looking to use TurboTax's Free File program tried to use a search engine to find it, they would likely encounter TurboTax's other, paid products, but not the Free File service that they sought. An additional review conducted by Congressional staff this past week revealed that, in addition to TurboTax and H&R Block, three other Free File members—TaxSlayer,⁵ FreeTaxUSA,⁶ and 1040.com⁷—appear to be using similar code to hide their Free File websites. Hiding Free File from the public clearly aligns with the financial interests of these companies, because taxpayers are more likely to encounter and use their fee-based services, which are easily found through search engines. For the same reason, it has likely added countless costs in additional fees for low-income preparers who should have had access to Free File but were understandably unaware of the specific IRS website that may have led them there. The fact that nearly half of Free File members are employing this deceptive practice is presumably a partial explanation for why so few eligible taxpayers use Free File at all.

In establishing the Free File program, the IRS agreed not to provide its own free tax preparation service that would compete with private preparers. In exchange, the Free File Alliance promised to pursue several objectives: to “make tax return preparation and filing easier and reduce the burden on individual taxpayers,” to increase electronic filing, to “provide greater service and access” to the Free File program for taxpayers, and to “encourage further growth in electronic filing” by allowing taxpayers to file online, free of cost.⁸ Removing a Free File program from search results directly undermines each one of these goals. The fact that code for this specific purpose appears in Free File webpages is clear evidence that these companies intended to reduce access to the program.

In light of this abusive conduct on the part of companies that have broken their pledge to increase access to free, online tax filing, we urge you to take any available actions to remove them from the Free File program. We also urge you to ensure that tax preparation companies that charged Free File-eligible taxpayers to file their taxes refund fees to those who should have had access to Free File but were unable to find it.

In order to understand your plans for improving oversight of the Free File program and protecting the interests of low-income taxpayers, we request that you provide answers to the following questions no later than May 17, 2019:

1. What actions will you take in response to revelations that several Free File Alliance members deliberately hid their Free File editions from the public?

⁴ ProPublica, “TurboTax Deliberately Hid Its Free File Page From Search Engines,” Justin Elliott, April 26, 2019, <https://www.propublica.org/article/turbotax-deliberately-hides-its-free-file-page-from-search-engines>.

⁵ TaxSlayer, “American Pledge Free File Federal Tax Return,” source code, line 11, accessed April 29, 2019, <https://www.taxslayer.com/americanpledge/?source=TSUSATY2018>.

⁶ FreeTaxUSA, “Free Federal and State Tax Filing,” source code, line 36, accessed April 29, 2019, <https://www.freetaxusa.com/freetaxusa/>.

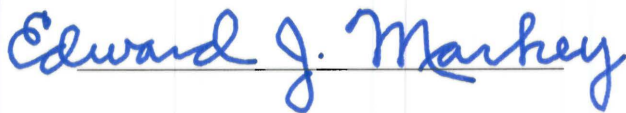
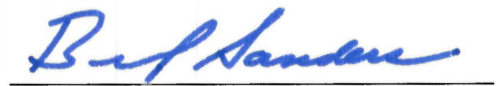
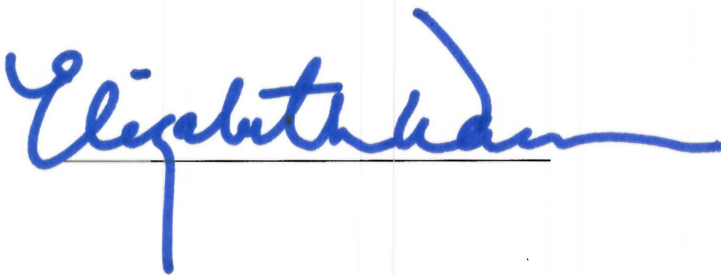
⁷ 1040.com, “E-file your taxes for free,” source code, line 12, accessed April 29, 2019, <https://www.1040.com/irsfreefile/home>.

⁸ Internal Revenue Service, “Eighth Memorandum of Understanding on Service Standards and Disputes, Between the Internal Revenue Service and Free File, Incorporated,” October 2018, <https://www.irs.gov/pub/irs-utl/Eight%20Free%20File%20MOU.pdf>.

- a. Will you request their removal from the Free File Alliance?
 - b. Will you delist those companies from the IRS Free File website?
2. What will you do to ensure that taxpayers that should have had access to Free File, but were unable to find it due to this conduct, are refunded the fees and others costs that they spent on online filing?
3. What steps is IRS taking to ensure that Free File members are adhering to the terms of their agreement with the IRS?
 - a. Please provide the findings of any such efforts.
4. An IRS website describing the Free File Alliance claims that IRS is not providing its own free tax preparation software because “private industry, with established expertise and experience in electronic tax preparation, has a proven track record in providing the best technology and services available.”⁹ In light of the news that providers were hiding their Free File services, amid other reports that they are deceiving taxpayers who are eligible to use Free File,¹⁰ do you stand by that characterization? Why or why not?
5. What will you do to improve IRS’s oversight of Free File to ensure that providers are not working to *reduce* access to the program?
6. What steps will you take to ensure that eligible taxpayers can easily find Free File software, through online search engines or other means, without being steered toward paid products?

Thank you for your attention to this important matter.

Sincerely,



⁹ Internal Revenue Service, “Free File: About the Free File Alliance,” accessed April 29, 2019, <https://www.irs.gov/e-file-providers/about-the-free-file-alliance>.

¹⁰ ProPublica, “Here’s How TurboTax Just Tricked You Into Paying to File Your Taxes,” Justin Elliott and Lucas Waldron, April 22, 2019, <https://www.propublica.org/article/turbotax-just-tricked-you-into-paying-to-file-your-taxes>.

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