

August 15, 2018

Re: S.3246, the Taxpayer First Act

Dear Senator:

The undersigned organizations, and academics write to thank you for your leadership on taxpayer issues. We urge you to make sure that [S. 3246](#) does not put the interests of tax preparation companies before the interests of taxpayers by permanently entrenching the flawed commercial tax preparation program known as the Free File Alliance, and to restore a provision that would establish an income threshold before a taxpayer's case is referred to a private debt collector.

S. 3246 Should Not Entrench the Deeply-Flawed Free File Program, Which Should Be Replaced by Programs Directly from the IRS

We are pleased that [S. 3246](#) excludes Section [202 of H.R. 5444](#), which if enacted would have the effect of permanently entrenching a flawed commercial tax preparation program known as the Free File Alliance. We urge you to keep that or any similar provision out of any final legislation, as it would have the effect of preventing the IRS from offering its own free tax preparation and filing system that could save billions of dollars for American taxpayers.

Free File is in need of replacement, not codification. Only about 3% of eligible taxpayers use Free File each year and of those that do, less than half use Free File again the next year.¹

A recent Tax Notes Special Report detailed a variety of problems with the Free File program that indicate the need for replacement or at least major reform rather than codification. These problems include:

- **Forced Arbitration:** At least one of the companies participating in the Free File program requires taxpayers to agree to a forced arbitration provision. It is unacceptable that a government-sponsored program, where taxpayers are directed to a private company to receive services, requires those taxpayers to agree to forced arbitration as a condition of receiving services.²
- **Banning Public Education Efforts:** The current Free File program appears to bar the IRS from notifying taxpayers of free tax preparation software and free e-filing in the 28 states that offer such free services for state returns by stipulating that the IRS “will not provide links to any Non-Free File State Department of Revenue websites from the IRS.gov Free File Website.”³
- **Free-to-fee:** The ban on the IRS linking to non-Free File state Departments of Revenue also allows the private Free File program partners to leverage the program to increase their revenues

¹ Dennis J. Ventry Jr., *The Failed Free File Program Should Be Reformed, Not Codified*, Tax Notes, July 16, 2018, at 317-318.

² *Id.* at 327.

³ *Id.* at 321; “Seventh Memorandum of Understanding on Service and Disputes Between the Internal Revenue Service and Free File Inc.” (Mar. 6, 2015) (2015 MOU) at art. 1.22, 4.22, 4.23, at <http://bit.ly/2vFHFhM>. See, e.g., State of California Franchise Tax Board, CalFile program, which offers taxpayers in California free and secure e-filing, at <http://bit.ly/2LZk065>

by upselling paid services and products, such as state tax preparation software, even when the taxpayer could obtain the same services for free. The program currently allows participating companies to charge participants for state returns in the 28 states where taxpayers could obtain such services for free from the state instead.⁴

Furthermore, Section 202 of H.R. 5444 would have actually prevented the IRS from developing its own free options for tax preparation and filing by mandating that the IRS work with the private sector in such efforts. While the Free File program may benefit the 3% of eligible taxpayers that use it, Section 202 would preserve this relatively small benefit in exchange for permanently entrenching commercial tax preparation and software within the Free File program—hardly a fair bargain for American taxpayers. Currently, millions of taxpayers pay billions in tax preparation fees, either because they are eligible for Free File but do not use it or because they are ineligible for Free File and cannot self-prepare. Mystery shopper testing has revealed that commercial tax preparation can be very expensive, often with fees up to \$500 for taxpayers, including the hard-working families that receive the Earned Income Tax Credit.⁵ As a group of prominent law professors and economists once noted “The United States has one of the most confusing and expensive tax filing systems of any nation. Americans spend billions of dollars a year in preparation fees.”⁶ Section 202 of H.R. 5444 would have prevented the IRS from developing its own programs to help reduce some of those fees.

Taxpayers Who Struggle to Pay for Basic Living Necessities Should Not Be Subject to the Private Debt Collection Program

Several important consumer protections from H.R. 5444 were not included in S. 3246 and we urge you to push for their inclusion in any final legislation. Of these provisions, [Section 305](#) is the most critical and beneficial to low-income taxpayers.

Section 305 establishes an income threshold for referral of a taxpayer’s case to private debt collectors, which would be set at 250 percent of a poverty level selected by the Treasury Department. According to the National Taxpayer Advocate, 45% of taxpayers who agreed to make payments after being contacted by private debt collectors have incomes less than “allowable living expenses,”⁷ a measure used by the IRS to estimate the amount needed for housing, utilities, transportation, food, and other necessities. In other words, private collectors have pressured low-income taxpayers to agree to payment plans that will leave them without sufficient funds to pay for rent, heat, and food. Section 305 of H.R.5444 would prevent more financially strapped taxpayers from being bullied into such agreements. This bipartisan provision is included in [S.3278](#), recently introduced by Senators Portman and Cardin, and should be included in S.3246 to ensure swift passage.

⁴ Dennis J. Ventry Jr., The Failed Free File Program Should Be Reformed, Not Codified, Tax Notes, July 16, 2018, at 320.

⁵ See Chi Chi Wu, Alice Vickers, Amelia O’Rourke-Owens, Peter Skillern, and Cara Williams, National Consumer Law Center, Florida Alliance for Consumer Protection, Reinvestment Partners, Prepared in Error: Mystery Shoppers in Florida and North Carolina Uncover Serious Tax Preparer Problems (Apr. 2015), available at <https://www.nclc.org/issues/prepared-in-error.html>; Chi Chi Wu, National Consumer Law Center, Riddled Returns: How Errors and Fraud by Paid Tax Preparers Put Consumers at Risk and What States Can Do (November 2013), available at <http://www.nclc.org/issues/riddled-returns.html>.

⁶ Letter from 54 Law Professors and Economists in Support of the Tax Filing Simplification Act of 2016, April 18, 2016.

⁷ Taxpayer Advocate Service — Fiscal Year 2019 Objectives Report to Congress — Volume One, pg. 58, available at <http://bit.ly/2Kt4n1W>

Thank you for your attention and your efforts. If you have any questions about this letter, please contact Michael Best (mbest@nclc.org) or Chi Chi Wu (cwu@nclc.org) or at 617-542-8010.

Sincerely,

Organizations:

National Consumer Law Center (on behalf of its low-income clients)
Allied Progress
Alternatives Impact
Americans for Financial Reform
Coalition on Human Needs
Consumer Action
Consumer Federation of America
Florida Alliance for Consumer Protection
Fremont Family Resource Center
Gary Community Investment Company
Georgia Watch
Institute on Taxation and Economic Policy
Just Harvest: A Center For Action Against Hunger
Montgomery County Community Action Board
NAACP
National Association of Consumer Advocates
National Fair Housing Alliance
NETWORK Lobby for Catholic Social Justice
People Incorporated
Public Citizen
STCASH
U.S. PIRG
United Way of the Wine Country
Woodstock Institute

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