

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of:

Intuit Inc., a corporation.

Docket No. 9408

**INTUIT INC.'S MOTION *IN LIMINE* TO EXCLUDE NON-FINAL OR INCOMPLETE
ADVERTISEMENTS**

Intuit moves to preclude Complaint Counsel from introducing into evidence exhibits (or portions of exhibits) that contain non-final or incomplete advertisements, which if allowed into evidence would create a misleading impression of the challenged ads. The exhibits (or portions) sought to be excluded comprise draft scripts for television ads (portions of GX293, 651); cropped screenshots of Intuit's website and web ads (GX163, 164, 166, 183, 201, 459); cropped screenshots of marketing emails (GX171, 172, 181, 182, 375, 377-382, 386-390, 480); screenshots of still-frames from video ads (GX185, 186, 203, 205, 209, 308, 310, and portions of GX662); screenshots of third-party websites that host video ads not included in the exhibits (GX162, 320, 322, 384, 385, 478, 479, 499); screenshots of social-media ads that incorporate videos not included in the exhibits (GX174-176, 187-188); and excerpts from search-engine results (GX167-170, 177-180, 190-195, 496, 497).¹ When confronted with these incomplete ads during a deposition, the designee for the Bureau of Consumer Protection, William Maxson,

¹ The complete list of the exhibits (or portions) sought to be excluded by this motion is: GX162-164, 166-172, 174-183, 185-188, 190-195, 201, 203, 205, 209, 293 (pages CC-00006250, CC-00006251, CC-00006253, CC-00006254, CC-00006256, CC-00006257, CC-00006259, CC-00006260, and CC-00006263 to CC-00006271 only), 308, 310, 320, 322, 375, 377-382, 384-390, 459, 478-480, 496, 497, 499, 651 (page CC-00013983 only), and 662 (pages CC-00014475 to CC-00014478 only).

invited Intuit “to bring [the issue of incomplete ads] to the trier of fact and to the judge in this case” if Intuit “believes that [Complaint Counsel were] not presenting all of the information.” GX161 at 149:13-14, 150:11-12; *see also id.* at 151:3-15. In filing this motion, Intuit is doing just that.

This motion should be granted because courts have consistently “emphasized that in reviewing FTC actions prohibiting unfair advertising practices under the Federal Trade Commission Act a court must consider the advertisement *in its entirety* and not ... engage in disputatious dissection.” *S.C. Johnson & Son, Inc. v. Clorox Co.*, 241 F.3d 232, 238 (2d Cir. 2001) (quotation marks omitted; emphasis added); *see also id.* (“The entire mosaic should be viewed rather than each tile separately.”). Put simply, “[t]he tendency of the advertising to deceive must be judged by viewing it as a whole,” *FTC v. Cyberspace.Com LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006), and “in full context,” *Time Warner Cable, Inc. v. DIRECTV, Inc.*, 497 F.3d 144, 158 (2d Cir. 2007). Courts have specifically applied this tenet in the context of the Commission, with one court of appeals invoking “the principle that the Commission looks to the impression made by the advertisements as a whole.” *Am. Home Prod. Corp. v. FTC*, 695 F.2d 681, 688 (3d Cir. 1982).

That principle is simply an application of the more general—and fundamental—rule of evidence that factfinders ought not be presented with incomplete evidence. Specifically, under the rule of completeness, the “omitted portion of a statement must be placed in evidence if necessary to ... place the admitted portion in context, ... or to ensure fair and impartial understanding of the admitted portion.” *United States v. Thiam*, 934 F.3d 89, 96 (2d Cir. 2019); *see also* Fed. R. Evid. 106. In cases about advertising, this rule is interpreted to mean that an incomplete portion of marketing material should not be admitted unless it “conveys the

substance and context of the [advertisement] as a whole.” *Laurel Rd. Bank v. CommonBond, Inc.*, 2019 WL 1034188, at *1 n.3 (S.D.N.Y. Mar. 5, 2019).

Applying these principles in a misleading-advertising case, one district court excluded testimony about a survey “ostensibly relating to” two advertisements because the survey used “cropped and out of context snippets taken from” the advertisements, rather than the full advertisements that were disseminated to an audience. *Bracco Diagnostics, Inc. v. Amersham Health, Inc.*, 627 F.Supp.2d 384, 452 (D.N.J. 2009). Because “the survey withheld ... essential visual, contextual and informational portions,” the court held that the survey had “no probative value as to whether there was false or misleading advertising or the effect of any advertising on a customer.” *Id.* at 452-453.

In contravention of these principles, Complaint Counsel seek to introduce numerous exhibits that contain ads in draft, excerpted, cropped, or otherwise incomplete form, usually leaving out important contextual information that consumers saw, but Complaint Counsel would like the Court *not* to see. Consumers never saw these ads in those forms, and thus could not possibly have been deceived by them. As in *Bracco*, then, the exhibits have “*no probative value* as to whether there was false or misleading advertising,” or as to “the effect of *any* advertising on a customer.” 627 F.Supp.2d at 453 (emphasis added). The exhibits are therefore “[i]rrelevant” and “immaterial” and so “shall be excluded.” 16 C.F.R. §3.43(b).

Even if they were not completely irrelevant, the exhibits at issue “would be misleading,” 16 C.F.R. §3.43(b). They thus would still warrant exclusion to the extent they omit relevant information and might be mistaken for or confused with complete ads that consumers actually might have seen.

Consider a few examples pertaining to Intuit’s social media and web advertising: GX187 depicts a screenshot of a social media video ad without providing the accompanying video.

Moreover, the screenshot omits the text from that video ad stating, “Simple tax returns only.”

See GX342 ¶159. GX459—a screenshot of a web ad—is cropped to exclude the bottom half of the ad’s disclosure. Compare GX334 (showing same ad with full disclosure). GX163—a screenshot from the website—is similarly cropped to exclude a dropdown field lower down on the webpage that provided “Important offer details and disclosures,” including a disclosure of the qualifications for Intuit’s Free Edition product. See, e.g., RX6, 7. The same exhibit also depicts text inviting consumers to “See why it’s free,” but the exhibit does not show that clicking on that text would have directed consumers to a pop-up with detailed information about the tax situations covered by Free Edition. See, e.g., RX23. Likewise, GX166 depicts a web ad including the words “simple tax returns,” but the exhibit does not show that clicking on those words would have caused a pop-up to appear stating “You can file with TurboTax Free Edition if you have a simple tax return” and detailing what is (and is not) a “simple tax return.” See, e.g., RX3, 25. Similarly, GX201—another screenshot from Intuit’s website—is cropped to omit “Important offer details and disclosures.” And as with GX163 and 166, GX201 depicts text without revealing that that text included multiple hyperlinks leading to detailed descriptions of Free Edition’s eligibility limitations. See, e.g., RX9.

Complaint Counsel’s proffered exhibits would be misleading as to Intuit’s video ads as well. For instance, pages CC-00014475 to CC-00014477 of GX662 depict still-frames from draft video ads *before text disclosures were added*. None of these ads was ever disseminated to consumers without those disclosures.

Equally misleading are Complaint Counsel’s proffered exhibits (GX167-170, 177-180, 190-195, 496, 497) that depict excerpts from search-engine results containing the word “free.” As the Federal Circuit has explained, “[s]earch-engine results ... provide little context to discern how a term is actually used on the webpage that can be accessed through the search result link”

and thus are “insufficient to determine the nature of the use of a term.” *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 967 (Fed. Cir. 2007).

Finally, the incomplete ads this motion seeks to exclude would be cumulative and thus a waste of time to consider, as Complaint Counsel can and will rely on numerous exhibits comprising advertisements that consumers actually saw, in their full and complete form. Indeed, the evidence in this case will include the *complete* versions of several of the ads Complaint Counsel seek to introduce in *incomplete* form. For example, the ad excerpted in GX459 is offered in its complete form in GX334; the ad excerpted in GX203 is offered in its complete form as GX202; and the ad excerpted in GX209 is offered in its complete form as GX208. The exhibits sought to be excluded would add nothing to the complete advertisements. Their introduction at trial would thus be “cumulative” and therefore “needless,” providing an independent reason to exclude them. 16 C.F.R. §3.43(b).

CONCLUSION

The exhibits (or portions thereof) listed in footnote 1 of this motion should be excluded from evidence at trial.

Dated: February 10, 2023

Respectfully submitted,

By: /s/ David Z. Gringer

DAVID Z. GRINGER
Wilmer Cutler Pickering
Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Telephone: (212) 230-8800
David.Gringer@wilmerhale.com

JONATHAN E. PAIKIN
JENNIFER MILICI
DEREK A. WOODMAN
JOSEPH MEYER

Wilmer Cutler Pickering
Hale and Dorr LLP
2100 Pennsylvania Avenue NW
Washington, DC 20037
Telephone: (202) 663-6000
Jonathan.Paikin@wilmerhale.com
Jennifer.Milici@wilmerhale.com
Derek.Woodman@wilmerhale.com

Attorneys for Intuit Inc.

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of:

Intuit Inc., a corporation.

Docket No. 9408

**STATEMENT PURSUANT TO
ADDITIONAL PROVISION 4 OF THE SCHEDULING ORDER**

Pursuant to Additional Provision No. 4 of the April 27, 2022 Scheduling Order, as adopted in the September 12, 2022 First Revised Scheduling Order, Respondent Intuit Inc. respectfully submits this Statement representing that Counsel for Respondent has conferred with Complaint Counsel in a good faith effort to resolve the issues raised by this motion. The parties corresponded by email on February 8 and 9, 2023, concerning this motion but were unable to reach an agreement.

Dated: February 10, 2023

Respectfully submitted,

WILMER CUTLER PICKERING HALE
AND DORR LLP

/s/ Derek A. Woodman

David Z. Gringer
7 World Trade Center
250 Greenwich St.
New York, NY 10007
Telephone: (212) 230-8800
Facsimile: (212) 230-8888
David.Gringer@wilmerhale.com

Jonathan E. Paikin
Jennifer Milici
Derek A. Woodman
2100 Pennsylvania Ave NW
Washington, DC 20037
Telephone: (202) 663-6000
Facsimile: (202) 663-6363
Jonathan.Paikin@wilmerhale.com
Jennifer.Milici@wilmerhale.com
Derek.Woodman@wilmerhale.com

Attorneys for Respondent Intuit Inc.

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of:

Intuit Inc., a corporation.

Docket No. 9408

**[PROPOSED] ORDER GRANTING INTUIT INC.'S MOTION *IN LIMINE* TO
EXCLUDE NON-FINAL OR INCOMPLETE ADVERTISEMENTS**

Upon consideration of Respondent Intuit Inc.'s February 10, 2023 Motion *in Limine* to Exclude Non-Final or Incomplete Advertisements,

IT IS ORDERED that the motion is GRANTED.

IT IS FURTHER ORDERED that the following exhibits or portions of exhibits are excluded from evidence in this proceeding : GX 162-164, 166-172, 174-183, 185-188, 190-195, 201, 203, 205, 209, 293 (pages CC-00006250, CC-00006251, CC-00006253, CC-00006254, CC-00006256, CC-00006257, CC-00006259, CC-00006260, and CC-00006263 to CC-00006271 only), 308, 310, 320, 322, 375, 377-382, 384-390, 459, 478-480, 496, 497, 499, 651 (page CC-00013983 only), and 662 (pages CC-00014475 to CC-00014478 only).

Date: _____

D. Michael Chappell
Chief Administrative Law Judge

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of:

Intuit Inc., a corporation.

Docket No. 9408

**DECLARATION OF DEREK A. WOODMAN IN SUPPORT OF INTUIT INC.'S
MOTION *IN LIMINE* TO EXCLUDE NON-FINAL OR INCOMPLETE
ADVERTISEMENTS**

I, Derek A. Woodman, declare as follows:

1. I am an attorney at Wilmer Cutler Pickering Hale and Dorr LLP. I represent Respondent Intuit Inc. in the above-captioned proceeding.

2. I submit this declaration in support of Intuit's Motion *in Limine* to Exclude Non-Final or Incomplete Advertisements.

I. EVIDENCE CITED IN SUPPORT OF THE MOTION

3. True and correct copies of pages CC-00005358 and CC-00005505 to CC-00005508 of Complaint Counsel's GX161 are attached.

4. Provided with the motion are true and correct copies of Complaint Counsel's GX202 and 208.

5. A true and correct copy of Complaint Counsel's GX334 is attached.

6. True and correct copies of pages CC-00006905, CC-00006979, and CC-00006980 of Complaint Counsel's GX342 are attached.

7. True and correct copies of Intuit's RX3, 6, 7, 9, 23, and 25 are attached.

II. EVIDENCE SOUGHT TO BE EXCLUDED

A. Draft Scripts for Television Ads

8. Provided with the motion are true and correct courtesy copies of pages CC-00006250, CC-00006251, CC-00006253, CC-00006254, CC-00006256, CC-00006257, CC-00006259, CC-00006260, and CC-00006263 to CC-00006271 of Complaint Counsel's GX293, and page CC-00013983 of Complaint Counsel's GX651.

B. Cropped Screenshots of Intuit's Website and Web Ads

9. Provided with the motion are true and correct courtesy copies of Complaint Counsel's GX163, 164, 166, 183, 201, and 459.

C. Cropped Screenshots of Marketing Emails

10. Provided with the motion are true and correct courtesy copies of Complaint Counsel's GX171, 172, 181, 182, 375, 377-382, 386-390, and 480.

D. Screenshots of Still-Frames from Video Ads

11. Provided with the motion are true and correct courtesy copies of Complaint Counsel's GX185, 186, 203, 205, 209, 308, 310, and pages CC-00014475 to CC-00014478 of Complaint Counsel's GX662.

E. Screenshots of Third-Party Websites That Host Video Ads Not Included in the Exhibits

12. Provided with the motion are true and correct courtesy copies of Complaint Counsel's GX162, 320, 322, 384, 385, 478, 479, and 499.

F. Screenshots of Social-Media Ads That Incorporate Videos Not Included in the Exhibits

13. Provided with the motion are true and correct courtesy copies of Complaint Counsel's GX174-176, 187-188.

G. Excerpts from Search-Engine Results

14. Provided with the motion are true and correct courtesy copies of Complaint Counsel's GX167-170, 177-180, 190-195, 496, and 497.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 10th day of February, 2023, in Washington, D.C.

By: /s/ Derek A. Woodman
Derek A. Woodman

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In The Matter of:)

) Docket No. 9408

Intuit Inc.,)
a corporation,)
Respondent.)



- C O N F I D E N T I A L -

Videotaped Deposition of William T. Maxson
December 8, 2022
9:23 a.m.

Reported by: Bonnie L. Russo
Job No. 5570324

1 misstates prior testimony and argumentative. 12:29:30

2 THE WITNESS: I think the -- the 12:29:39

3 complaint, the motion for summary decision, 12:29:39

4 related briefing, the -- the oral arguments on 12:29:41

5 the motion for summary decision, and the other 12:29:44

6 evidence produced in discovery include the 12:29:48

7 ads -- the advertising campaigns that are at 12:29:52

8 issue in this case, and I think those ads speak 12:29:56

9 for themselves. 12:29:58

10 If Intuit believes that there is 12:30:00

11 further context to provide with respect to 12:30:03

12 advertisements, I mean, obviously, they have 12:30:06

13 the ability to -- to bring that to the trier of 12:30:08

14 fact and to the judge in this case. 12:30:12

15 BY MR. GRINGER: 12:30:13

16 Q. You don't think it's misleading to 12:30:13

17 present only snippets of advertisements to the 12:30:15

18 court and the commissioners? 12:30:18

19 MR. ANGUIZOLA: Objection. 12:30:19

20 Argumentative and misstates the record. 12:30:21

21 THE WITNESS: I don't believe 12:30:27

22 anything in the complaint or the motion for 12:30:29

1 summary decision or the related oral arguments 12:30:31

2 misstated or were misleading in any way. 12:30:35

3 Obviously, Intuit has the ability to 12:30:40

4 counter any claims that we make as part of the 12:30:43

5 proceeding. No. I think going out of our way 12:30:46

6 in this complaint and the motion for summary 12:30:51

7 decision and the related briefing in this case 12:30:54

8 to prevent -- to present to the trier of fact 12:30:57

9 what our claims are about these ads -- Intuit 12:31:01

10 has its own ads obviously, and if Intuit has a 12:31:05

11 different interpretation or believes that we're 12:31:09

12 not presenting all of the information or the 12:31:11

13 advertising that the administrative law judge 12:31:15

14 should see, then obviously Intuit has the 12:31:19

15 ability to do that. 12:31:21

16 BY MR. GRINGER: 12:31:22

17 Q. Right. But my question is: Don't 12:31:22

18 you think it's misleading, regardless of 12:31:24

19 whether we have the ads or not, to present only 12:31:26

20 portions of certain advertisements? 12:31:30

21 MR. ANGUIZOLA: Objection. Asked 12:31:32

22 and answered. Misleads -- misstates the prior 12:31:33

1 testimony and is a misleading question and 12:31:38
2 assumes facts not in evidence. 12:31:44
3 THE WITNESS: As I said, I think the 12:31:46
4 complaint, motion for summary decision, related 12:31:49
5 briefing, the oral argument in this case, and 12:31:53
6 the related presentation to the commission on 12:31:58
7 the motion for summary decision accurately, 12:31:59
8 fairly, and clearly set forth the terms of 12:32:02
9 Intuit's claim to consumers. 12:32:06
10 And if Intuit disagrees with any of 12:32:09
11 the facts therein or believes that there is 12:32:13
12 further evidence that might help provide more 12:32:15
13 context, then, obviously, Intuit has the 12:32:18
14 ability to bring that information forward to 12:32:20
15 the trier of fact. 12:32:22
16 BY MR. GRINGER: 12:32:23
17 Q. We'll go back to that in one moment. 12:32:23
18 But I just -- you're allowed to have 12:32:27
19 the views you have. I just want to be clear. 12:32:28
20 Your view is no problem presenting only 12:32:31
21 snippets of advertisements, correct? 12:32:34
22 MR. ANGUIZOLA: Objection. 12:32:37



Government Exhibit

202

Auctioneer Commercial (Kantar) Video

**(Electronic filename: 25438069_TVAd_FreeEdition
166)**



Government Exhibit

208

Workout Commercial (Kantar) Video

(Electronic filename: 25364805_TVAd_No Title
Assigned - #25364805)

Be Our Guest Contributor  Submit Your Pitch  GOVERNMENT EXHIBIT 334

(https://www.adweek.com/agencyspy/initiative-eliminates-some-roles-in-los-angeles-office/152771/), (https://www.adweek.com/agencyspy/brazils-leo-burnett-tailor-made-introduces-awards-for-fake-news/152773/)

CAMPAIGNS (/AGENCYSPY/CATEGORY/CAMPAIGNS)

Wieden + Kennedy Keeps the 'Free' Going

One-Word TurboTax Ads

Share Tweet

(https://www.adweek.com/agencyspy/)

Share Tweet More

By Doug Zanger (https://www.adweek.com/agencyspy/author/dougzanger/) on Jan. 22, 2019 - 2:29 PM

Some things in life are acquired tastes: Perrier. Haggis. Nicolas Cage.

The same could be said for TurboTax's latest campaign from Weiden + Kennedy. The ads are certainly very good, but we were just waiting for a little extra "oomph." And here it is in two new ads that drive home the idea of "free," in an incredibly overt way: by using only that word throughout the ads.

Campaigns like this can be like an onion (see: Geico, and look what happened there), peeling away layer after layer to reveal—well, it's still an onion, but you get the point.

The two latest chapters of the series feature an older couple working on a crossword puzzle (hint: all of the words are "free") and a 70s-style gameshow in the same vein as the \$25,000 Pyramid (again, nothing but "free" as the clues and answers). You've gotta give the brand and agency credit for somehow making a single word work, and it will be interesting to see where it all goes from here.



AgencySpy
(https://www.adweek.com/agencyspy/)



AgencySpy
(https://www.adweek.com/agencyspy/)



Adding to the fun, the brand published the "free" crossword puzzle across the New York Times in print (cleverly, adjacent to the real crossword puzzle), on the web and in the app.

ADVERTISEMENT

FREE
By Free F. Free

DOWN:

- TurboTax Free is ____
- EEFF backward
- Rhymes with tree
- Opposite of not-free
- ____ retails
- With TurboTax, simple returns are ____
- To set loose
- Buy one, get one ____
- \$0.00
- No charge
- Off the hook
- Samples at the grocery store
- Four letters
- Same as 19-Down
- Same as 20-Across
- Rhymes with tree
- The truth will set you ____
- Phonetic: Fuh-REE
- Sterile or germ-____
- You know the answer
- The answer is FREE
- (loser I due here)
- A four-letter word that means basically the exact same thing as "Free" and, in fact, is free
- Uncaged
- Unleashed
- ____-range chicken
- It's so cold I'm ____ zing
- Chargeless
- Complimentary
- First Amendment, shortened: ____ speech
- If you pay nothing for something, then it's ____
- Seriously, you can't get this wrong
- If it's TurboTax Free, it's ____
- FREE
- ____ in-flight Wi-Fi
- free
- Two F's, two R's, four E's
- Combine 45-Across and 4-Down, then just pick one
- F. ____
- R. ____
- E. ____
- E. ____
- Freebie—it's free
- \$\$\$
- Sugar ____
- Also rhymes with Brie
- TurboTax tagline: "Free ____"
- TLD: free
- The word FREE
- Literally, just the word FREE
- Writing all of these clues was way harder than it seems—oh, and the answer is FREE

ACROSS:

- At no cost
- Gluten-____
- REFE unscrambled
- Groits
- TurboTax ____ is free
- Put this in your car when it gets cold: Ank ____ ze
- F to the REE
- Free
- Not a highway but a ____ way
- Exact same word as free
- FREE
- FREE
- FREE
- FREE
- FREE
- Outy ____ store
- Just write "free"
- Same answer as everything else
- "Phree," spelled correctly
- It's "Free" twice
- $(50 \times 2) - 50 =$ ____
- Did you mean bon TurboTax Free is ____?
- No dollars and zero cents
- ____ throws, worth one point each
- "kostenlos" is German
- "Libe" in France
- Opposite of confined
- Sugar ____ gum
- Spoker alert: It's free
- Open
- Four-letter word for free
- Contract position: ____ Janer
- Freeeeeeeeeeee (misspell E)
- are! (use a mirror)
- Land of the ____
- "Please enjoy a ____ sample"

Free Edition product only. For simple U.S. returns. Offer subject to change. See offer details at turbotax.com

(https://s3.amazonaws.com/abn-prod/wp-content/uploads/sites/7/2019/01/NYT_Magazine_Free_Crossword.png)

≡ **AgencySpy**

(<https://www.adweek.com/agencyspy/>)

Intuit Consumer group chief marketing officer.

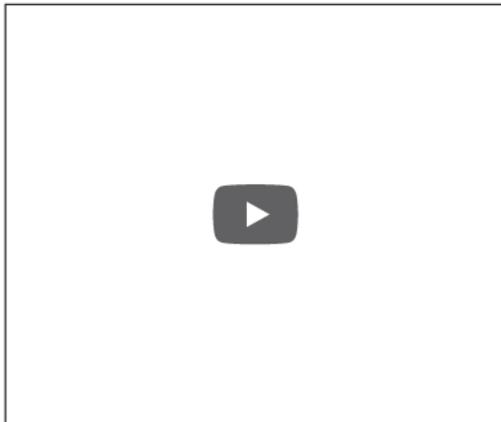
Yeah, we get it. It's free. And this campaign is starting to grow on us.



≡ **AgencySpy**

(<https://www.adweek.com/agencyspy/>)

f Share  Tweet



 AgencySpy[\(https://www.adweek.com/agencyspy/\)](https://www.adweek.com/agencyspy/)

CREDITS

Client: TurboTax

Agency: Wieden + Kennedy Portland

Creative Directors: Kevin Jones, Jason Campbell

Copywriter: Jonathan Marshall

Art Director: Derrick Ho, Helen Rhodes

Executive Producer: Molly Tanen

Producer: Jennifer Fiske

Strategic Planning: Amber Higgins, Bruno Frankel

Media/Comms Planning: Kim Sizemore, Destinee Scott, Annie Yuen, Paige Weber,
Kennedy La Nier

Account Team: Brooke Stites, Corey Woodson, Madeline Parker, Estevan Palomino

Business Affairs: Laura Caldwell, Brian Cook

Project Management: Laurie Holtz, Amy Streger

Executive Creative Directors: Eric Baldwin, Jason Bagley

Production Company: Biscuit

Director: Steve Rogers

Executive Producer: Jeff McDougall

 AgencySpy[\(https://www.adweek.com/agencyspy/\)](https://www.adweek.com/agencyspy/)

Editorial Company: Arcade Edit
Editor: Geoff Hounsell
Asst. Editor: Laura Sanford
Post Producer: Cristina Matracia
Post Executive Producer: Crissy DeSimone

VFX

VFX Company: Kevin VFX
Senior Executive: Sue Troyan
ECD/Partner: Tim Davies
VFX Producer: Jami Schakel
VFX Coordinator: Andrew Cowderoy
Flame: Tony Petitti
Head of CG: Mike Dalzell

Color Correction

Telecine Company: Company 3
Colorist: Sean Coleman
Senior Producer: Matt Moran

Mix

Mix + Sound Company: Stimmüing
Sound Designer: Gus Koven
Mix Company: Lime
Mixer: Loren Silber

Titles/Graphics

Created by W+K

Music

Big Kick and Lawyer: Original music from Butter
Credits: APM
Game Show: Killer Tracks and Noah Woodburn/Joint

VO Talent: Jonathan Marshall

[< Previous Article](#)

[\(https://www.adweek.com/agencyspy/brazils-leo-burnett-tailor-made-introduces-awards-for-fake-news/152773/\)](https://www.adweek.com/agencyspy/brazils-leo-burnett-tailor-made-introduces-awards-for-fake-news/152773/)

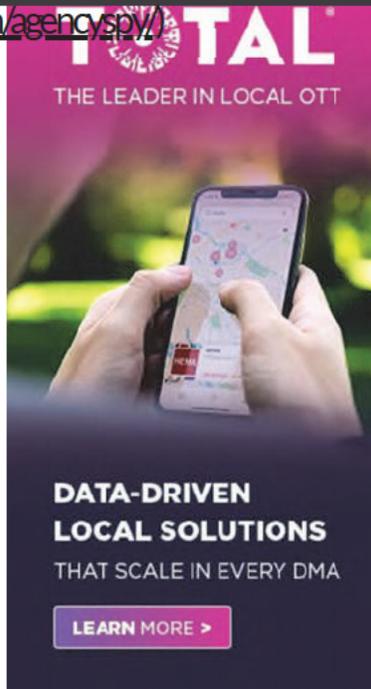
Advertisement

[Next Article >](#)

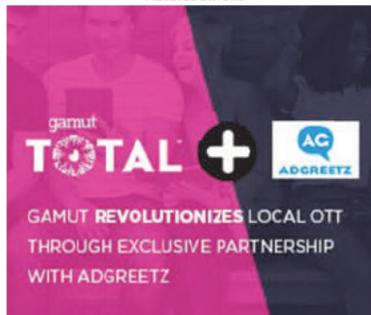
[\(https://www.adweek.com/agencyeliminate-some-roles-in-los-angeles-office/152771/\)](https://www.adweek.com/agencyeliminate-some-roles-in-los-angeles-office/152771/)

AgencySpy

(https://www.adweek.com/agencyspy/)



Advertisement



Get AgencySpy delivered straight to your inbox

Email address

Submit

Send an anonymous tip

Describe your tip

Send

Subscribe to Adweek



(https://www.adweek.com/subscribe-widget)



(http://shop.adweek.com/)

Magazine + iPad App



DECLARATION OF DIANA F. SHILLER
Pursuant to 28 U.S.C. § 1746

I, Diana F. Shiller, have personal knowledge of the facts and matters set forth below. If called as a witness, I could and would testify as follows:

1. I am an Investigator with the Federal Trade Commission ("FTC").
2. At the FTC, I investigate unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, and other laws or rules enforced by the FTC. As part of my work, I gather information and review documents, financial records, and other evidence in connection with FTC investigations.
3. In the course of my employment, I participated in the FTC's consumer protection investigation of Intuit Inc. ("Intuit") and its advertising, marketing, distribution, and selling of TurboTax, a commonly used tax preparation software that enables users to prepare and file their income tax returns online.
4. In connection with the FTC's investigation, I reviewed public records and other publicly available information regarding Intuit. I also used an advertising monitoring service to review and monitor Intuit's advertising of TurboTax. Additionally, I reviewed documents received in response to Civil Investigative Demands ("CIDs") issued by the FTC to Intuit and third parties.
5. During the course of the investigation, I visited Intuit's TurboTax website, social media profiles, and YouTube channel on multiple occasions.
6. Copies of all the exhibits referenced in this declaration are contained in the volumes comprising the FTC's Exhibits. Those exhibits and the images in this Declaration have been redacted to protect personally identifiable information, including the undercover identities I used to log in to the TurboTax product.

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

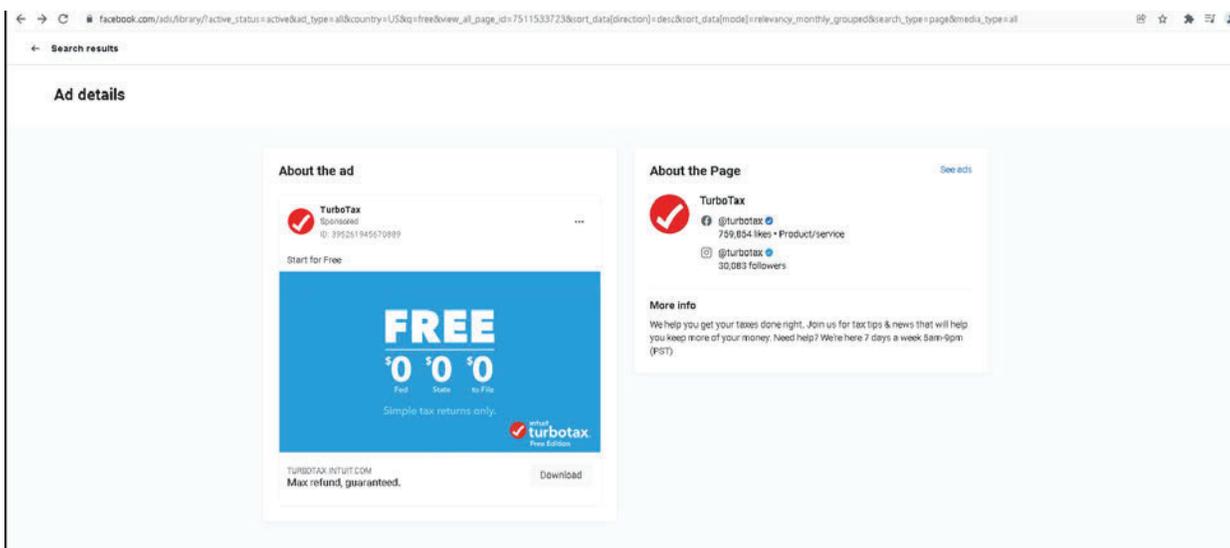
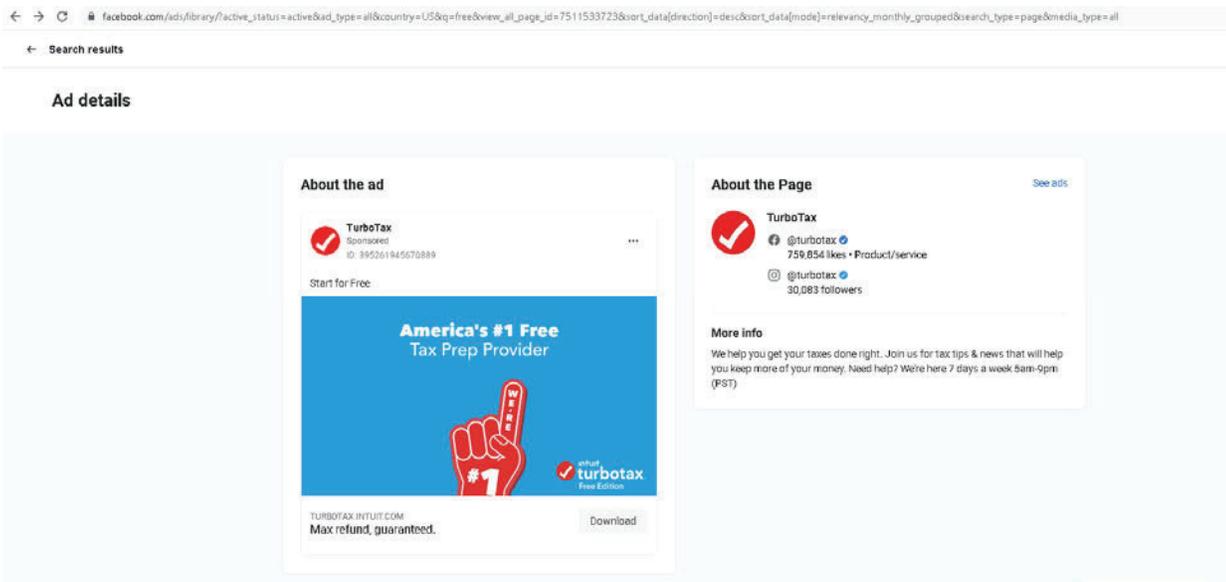


158. While the above screen is shown to consumers during commercials, an announcer says in the commercial: “That’s right, TurboTax Free Edition is free. See details at turbotax.com.” The announcer does not read the fine print disclaimer stating: “TurboTax Free Edition is for simple U.S. returns only. See if you qualify at turbotax.com.”

F. Social Media TY 2021 Ads

1. Facebook TY 2021 Ads

159. On March 27, 2022, I visited Facebook’s Ad Library, (<https://www.facebook.com/ads/library>), searched for TurboTax ads, and saw a TurboTax ad active on that date that said, “America’s #1 Free Tax Prep Provider,” with a 10-second video. The ad prominently displays the phrase “FREE \$0 \$0 \$0.” Below are two partial captures of the ad.



160. On April 18, 2022, I visited Facebook’s Ad Library, searched for TurboTax ads, and saw that the TurboTax ad mentioned in paragraph 159, “America’s #1 Free Tax Prep Provider,” with a 10-second video was still active.

The image is a screenshot of the TurboTax website. A central white pop-up window is the primary focus, containing the following text:

You can file with TurboTax Free Edition, TurboTax Live Basic, or TurboTax Live Full Service Basic if you have a simple tax return.*

***A simple tax return is Form 1040 only.**

Situations covered by TurboTax Free Edition, TurboTax Live Basic, and TurboTax Live Full Service Basic

- W-2 income
- Limited interest and dividend income reported on a 1099-INT or 1099-DIV
- Claiming the standard deduction
- Earned income Tax Credit (EIC)
- Child tax credits
- Student Loan Interest deduction

Situations not covered by TurboTax Free Edition, TurboTax Live Basic, and TurboTax Live Full Service Basic

- Itemized deductions
- Unemployment income reported on a 1099-G
- Business or 1099-NEC income
- Stock sales
- Rental property income
- Credits, deductions and income reported on schedules 1-3

How does TurboTax make any money?

Customers with more complex tax situations will file with our paid TurboTax products that provide all the additional forms and guidance they need. We also offer additional benefits that go beyond filing your taxes, but they are optional and are not required to file simple taxes for free. We hope that over time, as our customers with simple returns need more capabilities as their financial situations change (for example owning a home, having a child, managing investments), they have loved our products and services so much that they will choose our paid TurboTax offerings to prepare and file their returns.

At the bottom of the pop-up, it says "View all product features".

Other elements on the page include:

- Top navigation: "New! File FREE: Do it yourself, with expert help, or have an expert do your taxes. Only from TurboTax. Simple tax returns only."
- Logo: "turbotax"
- Navigation: "File your own taxes", "File with expert help", "Tools and more"
- Right side: "File for \$0", "Sign in"
- Yellow label: "Exhibit RX 3" with a vertical URL "enbtpicker.com" on the right edge.
- Bottom left: "File your 2021 federal & state taxes for free"
- Bottom right: "Get your maximum tax refund, guaranteed"



Sign in



Simple tax return? You could file for free

A simple return is one that's filed using IRS Form 1040 only, without attaching any schedules.

[See if you qualify](#)

If you have a simple tax return, you could be eligible to file for \$0

Simple tax returns are those filed using IRS Form 1040 only, with no added complexity. Only certain tax situations qualify.



Situations covered

- W-2 income
- Limited interest and dividend income reported on a 1099-INT or 1099-DIV
- IRS standard deduction
- Earned Income Tax Credit (EIC)
- Child tax credits
- Student loan interest deduction

Get started



Situations not covered

- Itemized deductions
- Unemployment income reported on a 1099-G
- Business or 1099-NEC income
- Stock sales
- Rental property income
- Credits, deductions and income reported on other forms or schedules (for example, income related to crypto transactions)

See all products

How does TurboTax make money?

We want our customers to love our products and services. Because we have customers who pay for our premium products and services, we can offer simple tax filing. We offer additional paid benefits that go beyond filing your simple taxes for free, but they're optional.

When financial situations aren't simple anymore (like owning a home, having a child, or managing investments), we hope our customers will choose to pay to prepare and file their returns with TurboTax.

Your security. Built into everything we do.

[Here's how](#)

File faster and easier with the free TurboTax app



Important Details about Free Filing for Simple Tax Returns

If you have a simple tax return, you can file with TurboTax Free Edition, TurboTax Live Basic, or TurboTax Live Full Service Basic.

A simple tax return is one that's filed using IRS Form 1040 only, without having to attach any forms or schedules. Only certain taxpayers are eligible.

Situations covered (assuming no added tax complexity):

- W-2 income
- Limited interest and dividend income reported on a 1099-INT or 1099-DIV
- IRS standard deduction
- Earned Income Tax Credit (EIC)
- Child tax credits
- Student loan interest deduction

*** More Important Details and Disclosures**



About



Online software products



CD/download products



Mobile tax apps



Help and support



Tax tools and tips



Social



More products from Intuit



Sitemap

Contrast



About Intuit | Join Our Team | Press | Privacy | Security | Software and Licenses | Trademark Notices |
Affiliates and Partners | Accessibility

©1997-2022 Intuit, Inc. All rights reserved.

Intuit, QuickBooks, QB, TurboTax, ProConnect, and Mint are registered trademarks of Intuit Inc. Terms and conditions, features, support, pricing, and service options subject to change without notice.

Security Certification of the TurboTax Online application has been performed by C-Level Security.

By accessing and using this page you agree to the [Terms of Use](#).



• [Privacy Settings](#)



Sign in



Missed the tax deadline?

Don't worry, you can still file on your own or with expert help.



Neil
Neil, CPA 17yrs

File with an expert

File on your own

intuit.

turbotax quickbooks mint

One Account. Everything Intuit. [Learn more](#)

Phone number, email or user ID

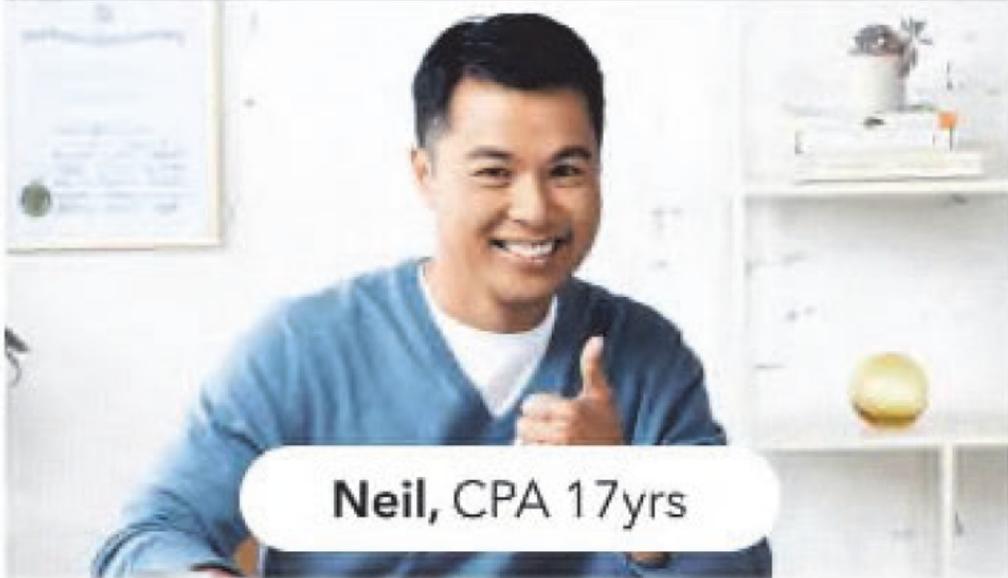
Remember me

Sign in

By selecting Sign in, you agree to our [Terms](#) and have read and acknowledge our [Global Privacy Statement](#).

New to Intuit? [Create an account](#)

LIVE



Neil, CPA 17yrs

Let's go over your tax return together

 **YOUR APPOINTMENT** 

April 2 at 10:30 AM ET

Start by meeting with a tax expert

Connect right on your screen with a live expert to discuss your taxes this year. They can even customize your experience so you only answer questions that apply to you and your situation.

Start for free



Are you filing as head of household?

Yes

No



Live help

Get expert advice as often as you need

It's like having a tax expert by your side as you do your taxes. Just use the "Live help" button to chat with an expert or set up a video call at a time that's convenient for you. You can even connect after you file.

Start for free

Have a tax expert review your return before you file

Be confident nothing is missed and you're getting every dollar you deserve. An expert can go over your return with you and make sure you have no unanswered questions.

Start for free

 Expert approved guarantee

Backed by our 100% Accurate, Expert Approved Guarantee

Every return filed with TurboTax Live is done right, guaranteed. If you pay an IRS penalty because of an error made by a TurboTax Live expert, we'll pay you the penalty plus interest.

Start for free



Prefer to hand your taxes off to an expert? Full Service offers just that.

Simply share your tax documents and we'll match you with a dedicated expert who will take it from there.

[Start Full Service](#)

No matter your situation, we have a tax solution that's right for you

[Start for free](#)

Here's what customers are saying

Rated **4.6 out of 5** stars by our customers



(290,579 reviews)



review 5 out of 5

Love TurboTax!

"My expert was amazing! She eased my fears about filing and was very professional. She was very efficient and left no tax stone unturned."



amberlicious36

Oklahoma



review 5 out of 5

Great Service

"I talked with a live CPA and was very glad that I did. She answered **all** of my questions and saved me a lot of money."



Ryan7810

Florida



review

I LOV

"If I h
Make comp



*Actual customer testimonials. Photos are illustrative only.



Your satisfaction, guaranteed



We search over 350 tax deductions

We'll find every tax deduction and credit you qualify for to boost your tax refund.



Every detail reviewed

Get a comprehensive review of your online tax return before you file so you can be confident nothing gets missed.



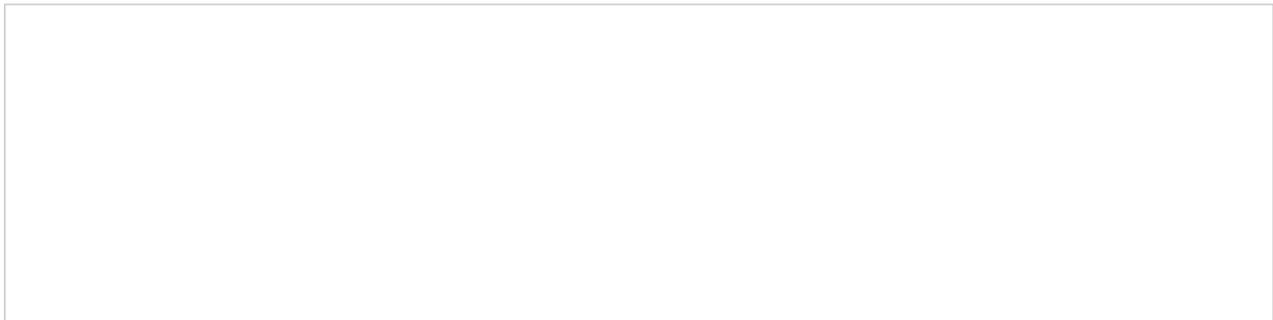
100% accurate calculations

Our calculations are 100% accurate on your tax return, or we'll pay any IRS penalties.



Big life changes? We can help

Got married? Had a baby? Bought a home? TurboTax can help find you any new tax deductions and credits.



Guided in case of an audit

Every personal TurboTax return is backed by our Audit Support Guarantee for free guidance from a trained tax professional.



Get your fastest tax refund possible

File taxes electronically (e-file) and get email confirmation when your tax return is accepted.

Your security. Built into everything we do.

[Here's how](#)

File faster and easier with the free TurboTax app



Important Details about Free Filing for Simple Tax Returns

If you have a simple tax return, you can file with TurboTax Free Edition, TurboTax Live Basic, or TurboTax Live Full Service Basic.

A simple tax return is one that's filed using IRS Form 1040 only, without having to attach any forms or schedules. Only certain taxpayers are eligible.

Situations covered (assuming no added tax complexity):

- W-2 income
- Limited interest and dividend income reported on a 1099-INT or 1099-DIV
- IRS standard deduction
- Earned Income Tax Credit (EIC)
- Child tax credits
- Student loan interest deduction

* More Important Details and Disclosures



About



Online software products



CD/download products



Mobile tax apps



Help and support



Tax tools and tips



Social



More products from Intuit



Sitemap

Contrast



About Intuit | Join Our Team | Press | Privacy | Security | Software and Licenses | Trademark Notices |
Affiliates and Partners | Accessibility

©1997-2022 Intuit, Inc. All rights reserved.

Intuit, QuickBooks, QB, TurboTax, ProConnect, and Mint are registered trademarks of Intuit Inc. Terms and conditions,
features, support, pricing, and service options subject to change without notice.

Security Certification of the TurboTax Online application has been performed by C-Level Security.

By accessing and using this page you agree to the [Terms of Use](#).



• [Privacy Settings](#)

Let's find the right tax solution for you

Select all that apply for a recommendation:



You can do it! Your experts help us do it for you!

America's #1 brand of tax software

Table with 4 columns: Free Edition, Deluxe, Premier, Self-Employed. Each column lists features, price, and a 'Start for free' button.

File for \$0 with Free Edition. Includes a 'FREE' badge, a list of features, and a 'Learn more' button.

All TurboTax products include

- 100% accuracy guaranteed
Maximum refund guaranteed
Get the green light to file
ComplexCare™ will run a comprehensive review of your return to ensure you file as accurately as possible.

Pay nothing out of pocket for your federal tax return for TurboTax.com users

See Products

Your security. Built into everything we do.

File faster and easier with the free TurboTax app

Important details about free filing for Simple Tax Returns. Includes a list of supported states and a 'More important details and restrictions' link.

Large table with 4 columns: About, Online software products, CD/download products, Mobile tax apps. Lists various TurboTax products and their features.

AbsoluteZero.

— GUARANTEED —
\$0 Fed. \$0 State. \$0 To File.

Forms 1040EZ/1040A, limited time only.
Returns must be filed before offer ends.

File for \$0

See why it's free



"Awesome! So easy to use,
and it's absolutely free."
- Jaina C. PA

★★★★★
(4.8/5 | 89,600 reviews)

Capture your W-2 in a snap

Get a big jumpstart on your taxes by snapping a photo of your W-2.

included with AbsoluteZero

Taxes done right anytime, anywhere

Start and finish your taxes at your own pace, on any device.

JOIN THE MILLIONS WHO FILE SMARTER™



Toby H.

Thanks @turbotax, made filing super easy and free.



Tim S.

Gotta love @turbotax finally got my w2 and 10 minutes later my taxes are filed



Beverleigh

...@turbotax love TurboTax-refund in 14 days! Did my States and Federal taxes free. EASY, EFFICIENT Simply the best!



Your security. Built into everything we do.

Here's how



TurboTax has tax reform covered, file now!

Learn more

* Important Offer Details and Disclosures

intuit simplify the business of life

Site Map | Affiliates and Partners | Software and License Agreements | Privacy Statements | Security
Security Certification of the TurboTax Online application has been performed by C-Level Security.

©1997-2018 Intuit, Inc. | Trademark Notices | About Intuit | Search Intuit Jobs | Press

By accessing and using this page you agree to the Terms and Conditions.





Is Absolute Zero really free?

Yes. We guarantee you'll pay absolutely nothing to file your federal (1040EZ/1040A) and state taxes. This is a limited time offer and returns must be filed before the offer ends. Customers will receive an email notice prior to offer end date.

Join the millions who file for \$0

60 million hard-working Americans can file their federal (1040EZ/1040A) and state taxes for free and so can you, if you:

- Made less than \$100,000
- Don't own a home or rental property
- Didn't sell investments
- Don't own a business or have 1099-MISC income
- Don't have any major medical expenses

How does TurboTax make any money?

We offer additional benefits that go beyond filing your taxes. You'll have an opportunity to add these benefits as you're doing your taxes, but they're **completely optional** and are not required to file your taxes for free. But many of our customers value features like:

- One-on-one help for answers, on demand with a TurboTax specialist
- 24/7 Tax Return Access to view and print copies of all your completed TurboTax returns

With Absolute Zero, the power to file for free is all yours!

What now?

To get started with Absolute Zero simply click File for \$0, and you're on your way!

File for \$0

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2023, I caused the foregoing document to be filed electronically using the FTC's E-Filing system, which will send notification of such filing to:

April Tabor
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Suite CC-5610
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that on February 10, 2023, I caused the foregoing document to be served via email to:

Roberto Anguizola
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Email: ranguizola@ftc.gov
Tel: (202) 326-3284

Rebecca Plett
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Email: rplett@ftc.gov
Tel: (202) 326-3664

James Evans
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Email: jevans1@ftc.gov
Tel: (202) 326-2026

Sara Tonnesen
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Email: stonnesen@ftc.gov
Tel: (202) 326-2879

Counsel Supporting the Complaint

April Tabor
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Suite CC-5610
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

Dated: February 10, 2023

Respectfully submitted,

/s/ Derek Woodman
DEREK WOODMAN
Counsel for Intuit Inc