

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Alvaro M. Bedoya

In the matter of:

Intuit Inc.,
a corporation,

Respondent.

Docket No. 9408

**COMPLAINT COUNSEL'S
ORAL ARGUMENT MATERIALS**

Please take notice that Complaint Counsel filed the accompanying multi-media electronic compilation of material (filename: CC's Oral Argument Materials FINAL.pptx) to facilitate its presentation during oral argument. A pdf version of the oral argument materials is also attached to this notice as **Attachment A**.

Respectfully submitted,

Dated: November 13, 2023

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**Counsel Supporting the Complaint
Federal Trade Commission**

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2023, I electronically filed the foregoing Complaint Counsel's Oral Argument Materials using the FTC's E-Filing system and filed the accompanying electronic compilation of oral argument material (filename: CC's Oral Argument Materials FINAL.pptx) via Encrypted FTP Transmission to ElectronicFilings@ftc.gov. I also sent the foregoing filings via email to:

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Federal Trade Commission
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ElectronicFilings@ftc.gov

*Secretary of the Commission
Clerk of the Court*

Hon. D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Suite H-110
Washington, DC 20580

Administrative Law Judge

I further certify that on November 13, 2023, I caused the foregoing document and electronic materials to be served via email on:

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Complaint Counsel's Oral Argument Materials

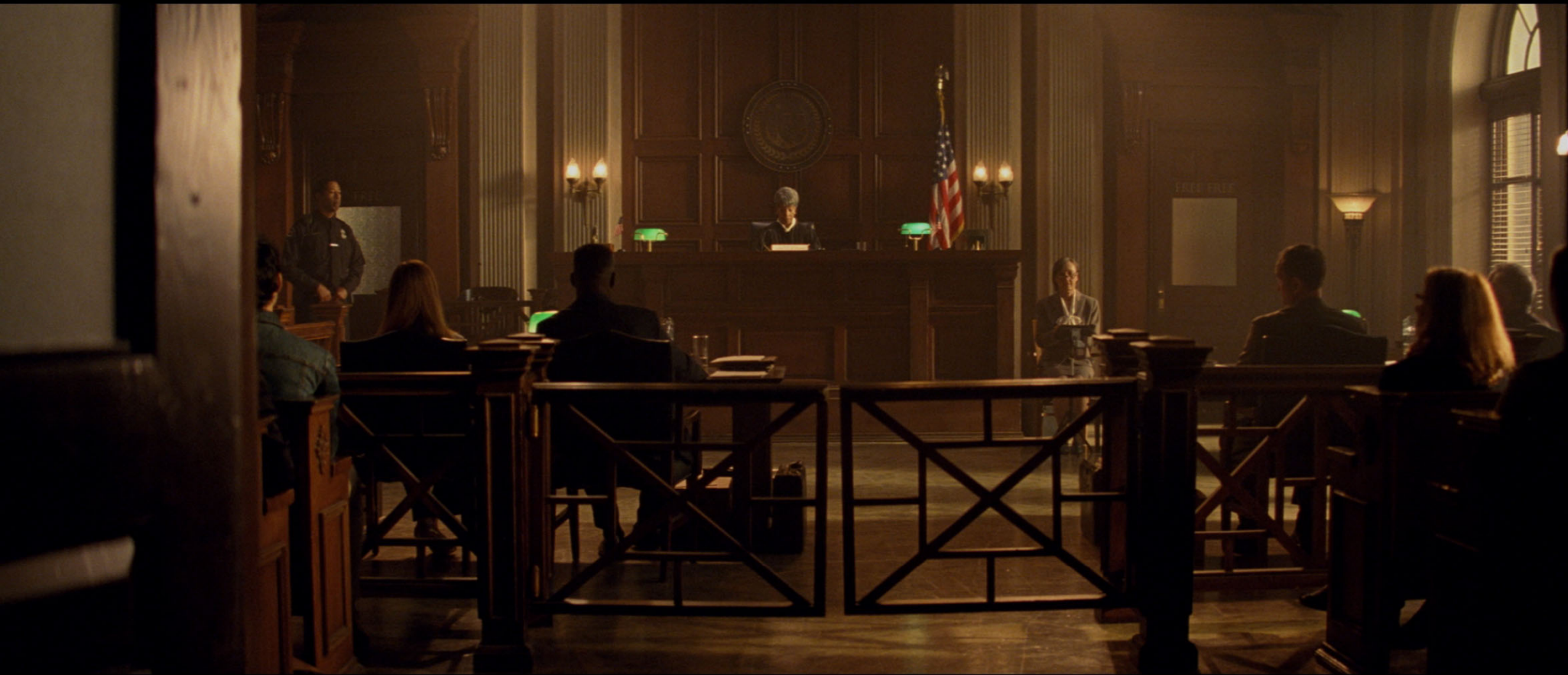
In re Intuit Inc. – D9408

Before the Commission on Automatic Review of Initial Decision
pursuant to 16 C.F.R. § 3.52(a) (Mar. 23, 2015)

2015 Super Bowl Ad “Boston Tea Party” — RX 200 (also admitted as GX 321)

2016 Super Bowl Ad “Never a Sellout” — GX 323

TY18 "Lawyer" Ad — RX 1106 (also admitted as GX 329)

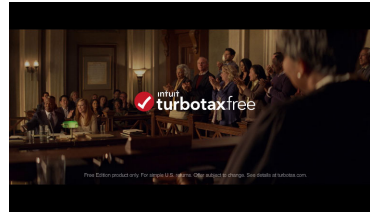




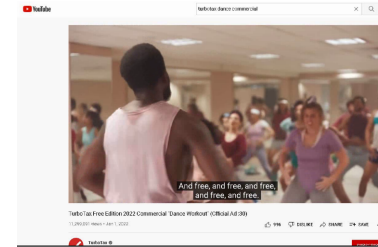
"[Y]ou can file on TurboTax for absolutely nothing."



"At least your taxes are free."



"That's right. TurboTax Free is free. Free, free free free free."



"And free, and free, and free, and free, and free."

Class Action Prelim. Approval Denied Mar. 5, 2021

BCP Consent Auth. June 29, 2021

Tolling Date Jan. 6, 2022

Chair Meeting March 24, 2022

FTC Complaint March 28, 2022

State AVC April 28, 2022

Ads Continue

2015

2016

2017

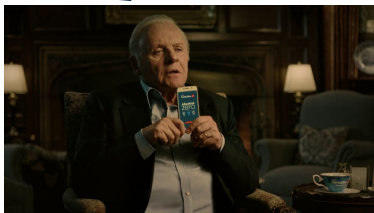
2018

2019

2020

2021

2022



"TurboTax Absolute Zero lets you file your taxes for free."

People v. Intuit (LA City) filed May 6, 2019

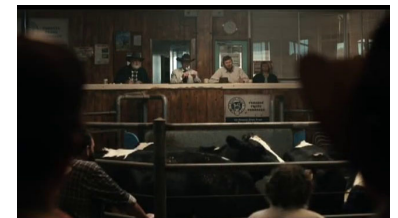
First FTC CID June 28, 2019

People v. Intuit (Santa Clara) filed, Sept. 6, 2019



"Free. Free free. Free!"

Second FTC CID May 18, 2020



"And free and a free here and a free free free a free free free."

What representation do these ads make?

Is that representation likely to mislead a reasonable consumer?

Is the representation material?

Television & Radio Ads

TY 2021

TY21 30-Second Radio Advertisement GX 617



TY21 "Auctioneer" Ad — RX 1119



TY21 "Steven/Spit Take" Ad — GX 309



iSpot.tv

Online Ads

TY 2020

GX 508

Tax Year: TY 2020

Impressions: **See GXD 002**

Clicks: **See GXD 002**

(source: GX 434 - INTUIT-FTC-PART3-000490338)

Online Ad Original File Name:

TY20-
283_FREE_MariahTablet_LatinX_12
00x627.jpg

Catalog: TY20-283

Bates Number:

INTUIT-FTC-PART3-000000031



GX 509

Tax Year: TY 2020

Impressions: **See GXD 002**

Clicks: **See GXD 002**

(source: GX 434 - INTUIT-FTC-PART3-000490338)

Online Ad Original File Name:
TT_TY20-
170_Free_NeonArt_SnapAd_9_16.m
p4

Catalog: TY20-170

Bates Number:
INTUIT-FTC-PART3-000000034



GX 520

Tax Year: TY 2020

Impressions: **See GXD 002**

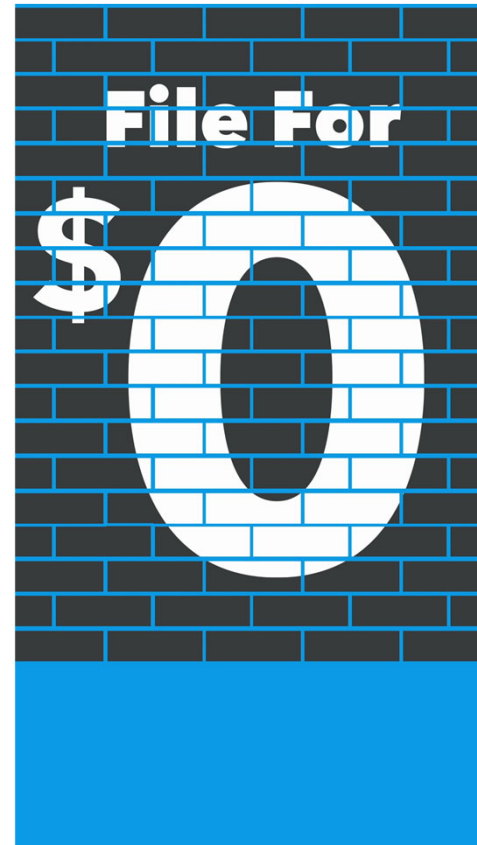
Clicks: **See GXD 002**

(source: GX 434 - INTUIT-FTC-PART3-000490338)

Online Ad Original File Name:
TT_TY20-
172_Free_Breakthrough_SnapAd_9_
16.mp4

Catalog: TY20-172

Bates Number:
INTUIT-FTC-PART3-000000055



GX 527

Tax Year: TY 2020

Impressions: **See GXD 002**

Clicks: **See GXD 002**

(source: GX 434 - INTUIT-FTC-PART3-000490338)

Online Ad Original File Name:
TY20-
162_FREE_FreeRearrange_Pandora_
Interstitial_750x1400.jpg

Catalog: TY20-162

Bates Number:
INTUIT-FTC-PART3-000000073

The advertisement for Intuit TurboTax Free Edition features the following elements:

- Logo:** Intuit TurboTax Free Edition logo with a red checkmark icon.
- Offer:** "FREE — guaranteed —" in large blue letters, followed by "\$0 Fed", "\$0 State", and "\$0 To File" in smaller blue letters.
- Text:** "Simple tax returns only" in a smaller font.
- Call to Action:** An orange button labeled "Get App".
- Guarantee:** "Maximum refund, guaranteed." in a smaller font.
- Image:** A woman with dark hair, wearing a light-colored blazer, smiling and holding a white sign that reads "NICE REFUND! \$3,267 FEDERAL".

Online Ads

TY 2021

GX 556

Tax Year: TY 2021

Impressions: **See GXD 002**

Clicks: **See GXD 002**

(source: GX 434 - INTUIT-FTC-PART3-000490338)

Online Ad Original File Name:
ty21-434-zrof_gm-
FreeRearrange_1000x1000.jpg

Catalog: TY21-434-ZROF

Bates Number:
INTUIT-FTC-PART3-000000205



intuit
turbotax.
Free Edition

FREE

\$0 **\$0** **\$0**
Fed State to File

Simple tax returns only.

File for \$0

Maximum refund,
guaranteed.

GX 597

Tax Year: TY 2021

Impressions: **See GXD 002**

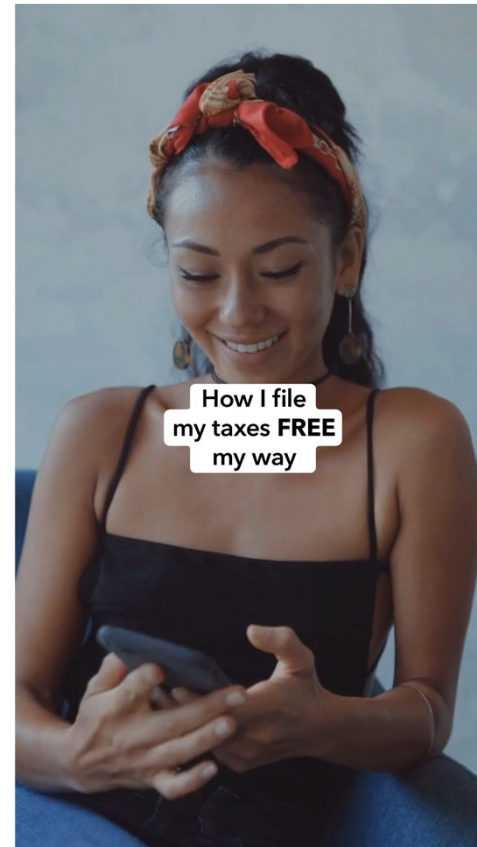
Clicks: **See GXD 002**

(source: GX 434 - INTUIT-FTC-PART3-000490338)

Online Ad Original File Name:
ty21-976-soc_tlfsbo-
FauxUGC_9x16.mp4

Catalog: TY21-976-SOC

Bates Number:
INTUIT-FTC-PART3-000000487



GX 595

Tax Year: TY 2021

Impressions: **See GXD 002**

Clicks: **See GXD 002**

(source: GX 434 - INTUIT-FTC-PART3-000490338)

Online Ad Original File Name:
ty21-598-3zer_ttlfsbo-
ThreeZeroes_1200x628.jpg

Catalog: ty21-598-3zer

Bates Number:
INTUIT-FTC-PART3-000000461

The advertisement features the Intuit TurboTax logo at the top center. Below it, the text reads "NEW! Three ways to file FREE" in bold, with "NEW!" in red and the rest in black. Underneath, it says "Simple tax returns only. Must file by 3/31." in a smaller black font. The ad is divided into three vertical columns by thin lines. The first column is titled "Do it yourself" in blue, with a large teal "\$0" below. The second column is titled "An expert files for you" in red, with a large red "\$0" below. The third column is titled "File with expert help" in blue, with a large blue "\$0" below.

GX 593

Tax Year: TY 2021

Impressions: **See GXD 002**

Clicks: **See GXD 002**

(source: GX 434 - INTUIT-FTC-PART3-000490338)

Online Ad Original File Name:
ty21-672-3zer_ttlfsbo-
ThreeZeros_16x9.mp4

Catalog: ty21-672-3zer

Bates Number:
INTUIT-FTC-PART3-000000423



RX 1417

(GX 625)

Tax Year: TY 2021

Impressions: **See GXD 002**

Clicks: **See GXD 002**

(source: GX 434 - INTUIT-FTC-PART3-000490338)

Online Ad Original File Name:
QTTX0025000H_Dance_Workout_R
EV1_WEB_HD_15_LCD20_TurboTa
x_15.mp4

Catalog: QTTX0025000H

Bates Number:
INTUIT-FTC-PART3-000000540



TurboTax Website

turbotax. Products & Pricing Tools & Tips After You File Help Security Tax Reform

That's right. TurboTax Free is free.

Free, free free free.
\$0 Fed. \$0 State. \$0 To File.

Easily and accurately file your simple tax returns for FREE, guaranteed. [See why it's free](#)

File for \$0

NICE REFUND!
\$3,194
FEDERAL

2019 TurboTax website capture, Shiller Dec., GX 342, ¶ 79

intuit
turbotax

[Sign in](#)

FREE

Guaranteed.

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

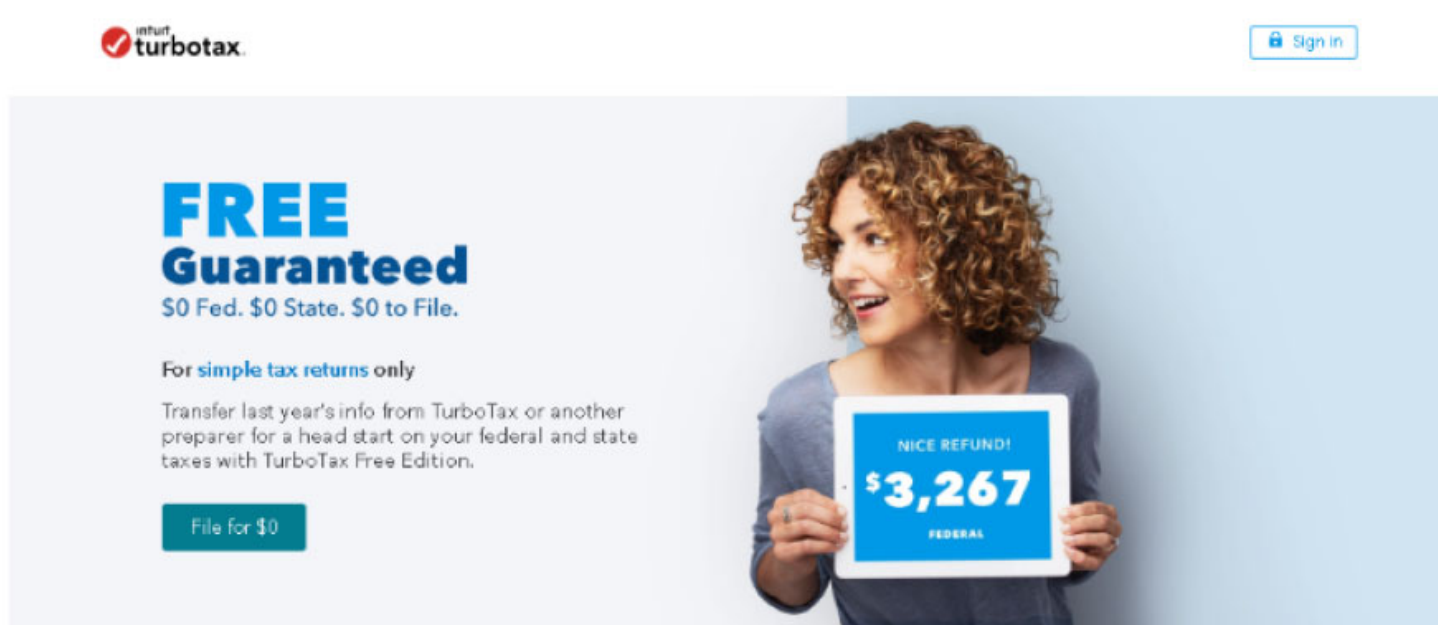
Get up to a 50% head start to save time

Transfer last year's info from TurboTax or another preparer for free, and your simple tax returns can be well on their way to complete.

[File for \\$0](#)

NICE REFUND!
\$3,284
FEDERAL

2020 TurboTax website capture, Shiller Dec., GX 342, ¶ 95



intuit
turbotax

[Sign in](#)

FREE
Guaranteed
\$0 Fed. \$0 State. \$0 to File.

For **simple tax returns** only

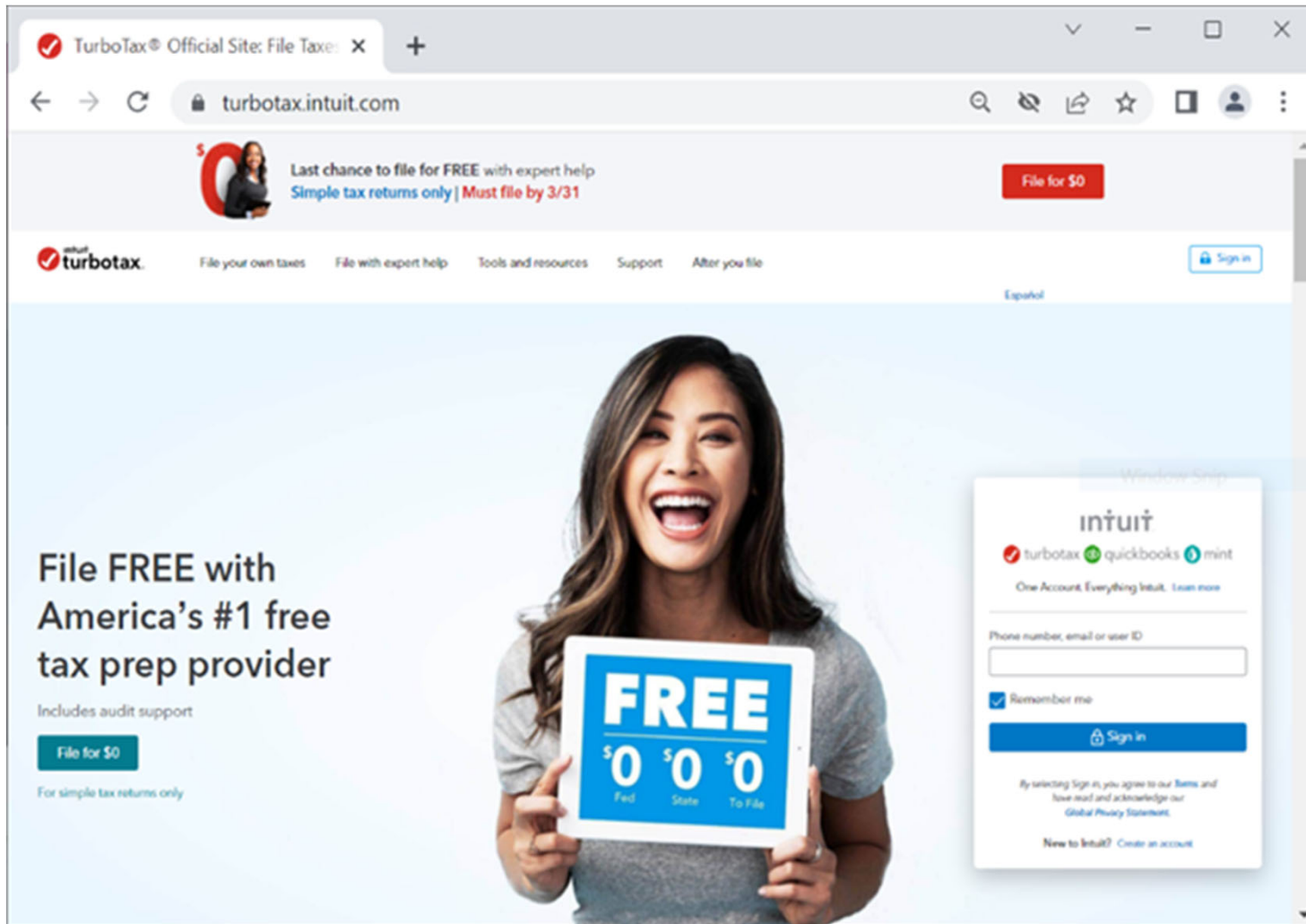
Transfer last year's info from TurboTax or another preparer for a head start on your federal and state taxes with TurboTax Free Edition.

[File for \\$0](#)

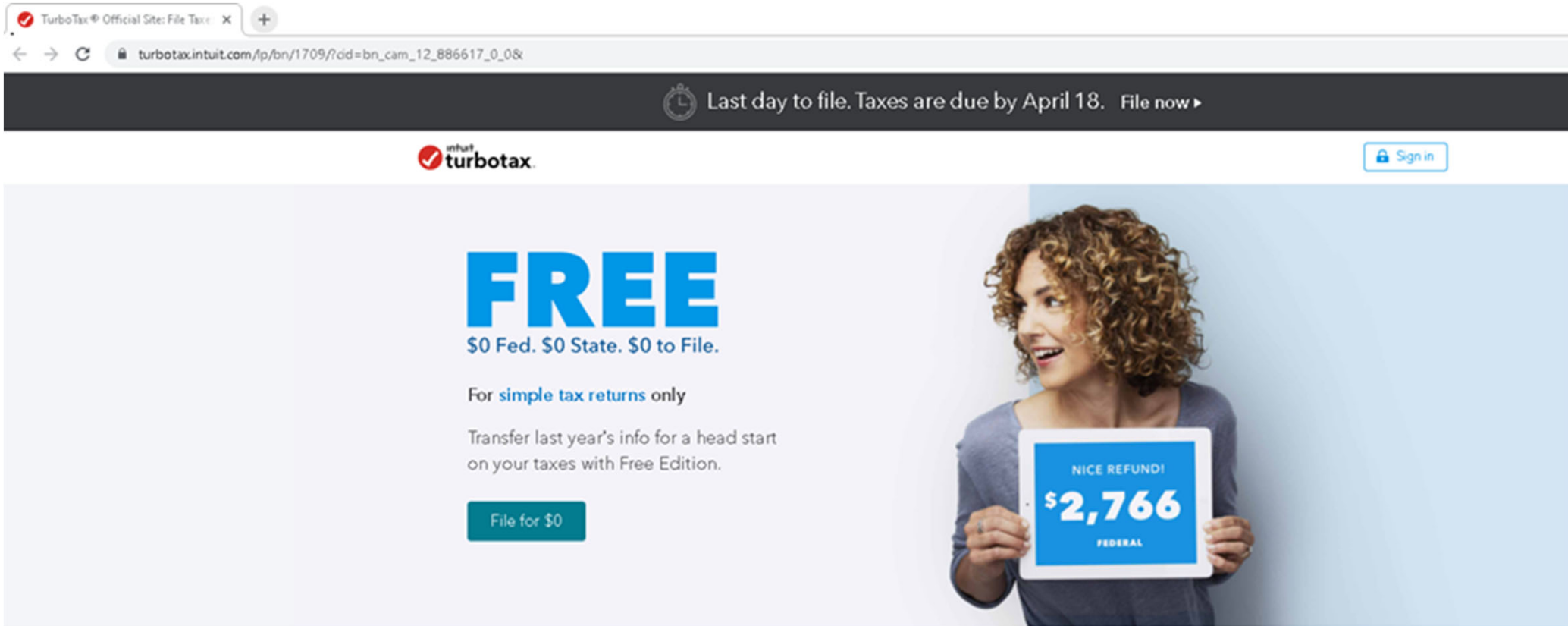
NICE REFUND!
\$3,267
FEDERAL

2021 TurboTax website capture, Shiller Dec., GX 342, ¶ 125

TurboTax Website TY 2021 (Mar. 26, 2022) – GX 342 ¶ 190; GX 486



TurboTax Website TY 2021 (Apr. 18, 2022) – GX 342 ¶ 189; GX 485



The screenshot shows the TurboTax website homepage. At the top left, there is a small profile picture of a woman with the text "¡Última oportunidad! Tres maneras de presentar tus impuestos GRATIS. Hazlos tú mismo, con ayuda de un experto bilingüe o solicita que un experto los haga por ti. Solo de TurboTax. Solo declaraciones simples". To the right of this is a red button that says "Presenta tu declaración por \$0". Further right is a red arrow pointing left with the text "Debes realizar la presentación a más tardar el 31/3".

The main navigation bar includes the TurboTax logo, "File your own taxes", "File with expert help", "Tools and resources", "Support", and "After you file". There is also a "Sign in" button with a lock icon and the word "English" below it.

The central promotional area features a large red "0" with a dollar sign above it. Below the "0" are three people: a man on the left with the text "HAZLOS CON UN EXPERTO", a woman in the middle with a red "¡NUEVO!" tag and "UN EXPERTO LOS HARÁ POR TI", and a woman on the right with the text "HAZLOS TÚ MISMO". The woman on the right is holding a tablet that displays "Última oportunidad" and "\$2,766".

On the left side of the main area, the text reads: "Última oportunidad de presentar tus impuestos GRATIS con ayuda. Solo declaraciones simples. Debes realizar la presentación a más tardar el 31/3." Below this is a red button that says "Presenta tu declaración por \$0".

On the right side, there is a sign-in form for Intuit. It includes the Intuit logo, "turbotax quickbooks mint", and the tagline "One Account. Everything Intuit. Learn more". The form has a field for "Phone number, email or user ID", a "Remember me" checkbox, and a "Sign in" button. Below the form, it says "By entering Sign in, you agree to our Terms and have read and acknowledge our Global Privacy Statement." and "New to Intuit? Create an account".

2022 TurboTax website capture, Shiller Dec., GX 342, ¶ 194

March 31, 2022 Internet Search Leading to TurboTax Website — GX 483-A

The screenshot shows a Microsoft Bing search results page for the query "file my taxes for free". The search results include:

- TurboTax® Free Edition | \$0 Fed. \$0 State. \$0 To F...**
<https://turbotax.intuit.com/free/taxes> - 236K+ Facebook followers
Ad Free For Simple Tax Returns Only With TurboTax® Free Edition. Get Your Max Refund Today. Free Online Tax Filing w/ America's Leader In Taxes. Get Your Max Refund With TurboTax
You have visited intuit.com 3 times in last 7 days.
- File Online For Free**
TurboTax Makes It Easy To Get Your Taxes Done Right. Get Started...
- Free Tax Refund Estimate**
Use Our Tax Calculator To Find Out How Much You'll Get Back This Year.
- Snap A Photo Of Your W-2**
Securely Import and Autofill Data. Do Your Taxes Anytime, Anywhere.
- TurboTax® Self-Employed**
Review Industry-Specific Deductions Get Every Dollar You Deserve.
See results only from intuit.com
- TaxAct® Official Site | Start Filing for Free Today**
<https://www.taxact.com> - 247K+ Facebook followers
- Turbotax® Login**
Login to your TurboTax account to start, continue, or amend a tax ...
- File Your Taxes From Home**
Capture Your W-2 In A Snap And File Your Tax Returns With Ease....
- Fast And Easy Tax Filing**
You Can Do It! Be 100% Confident Filing Your Taxes This Year When...
- Maximize Your EITC**
See What Credits, Rebates, And Deductions You Qualify For When...

Advertisements on the right side of the page include:

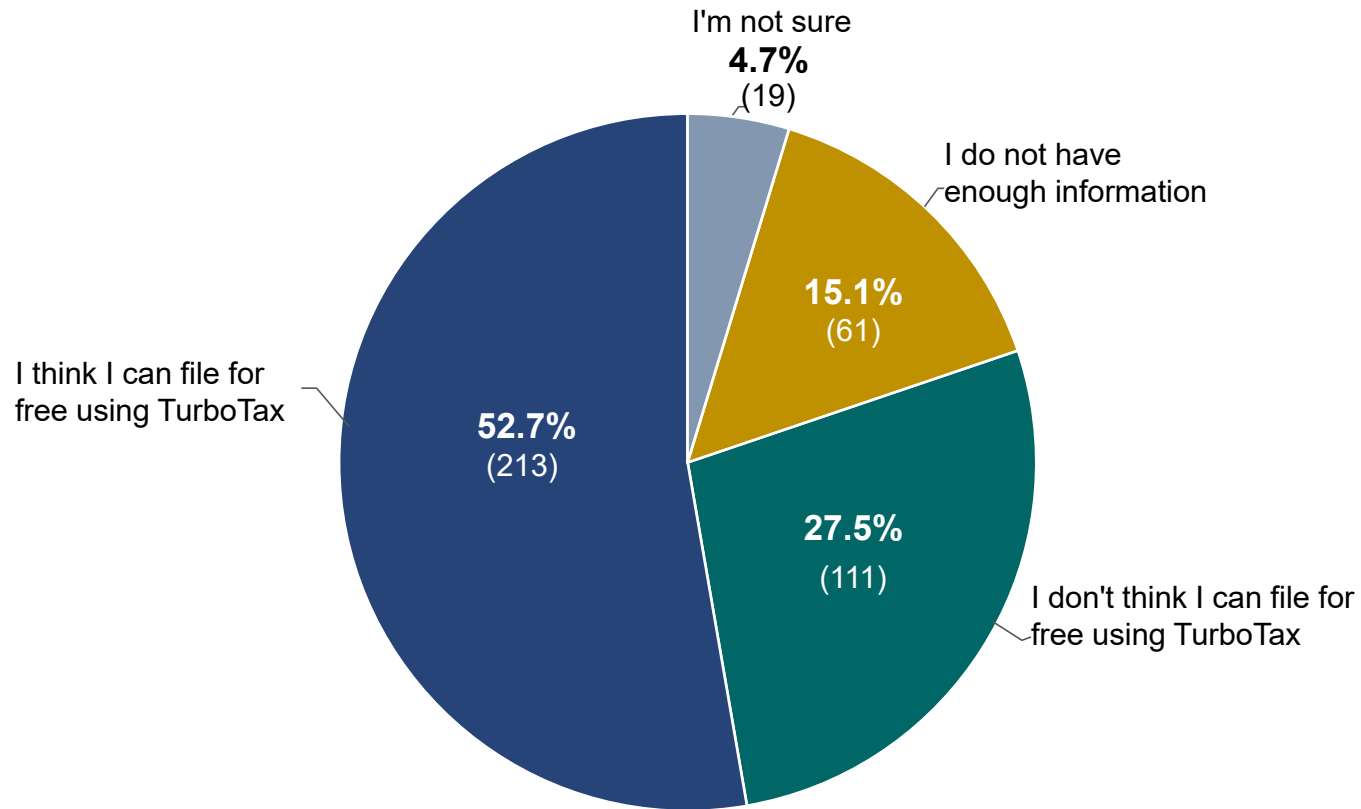
- TurboTax - Unlimited, Real Experts Help**
turbotax.intuit.com - from **\$249.00**
Let experts maximize deductions & credits for you
- TaxSlayer - Save time and money**
taxslayer.com - from **\$0.00**
Guaranteed Maximum Refund
State additional
- E-file - Online Income Tax Preparation & Electronic Filing**
e-file.com - from **\$27.99**
IRS Refunds as Fast as Possible E-filed Returns and Direct Deposit
We offer consumer tax preparation software for federal and state i...

A yellow circle highlights a cursor over a search icon in the top right of the search bar. A "FlashBack Express 5 Recorder" window is overlaid on the page, partially obscuring the search results.

Novemsky Survey

TAT240: Which of the following best describes your understanding of filing your 2021 income taxes for free using TurboTax online software?

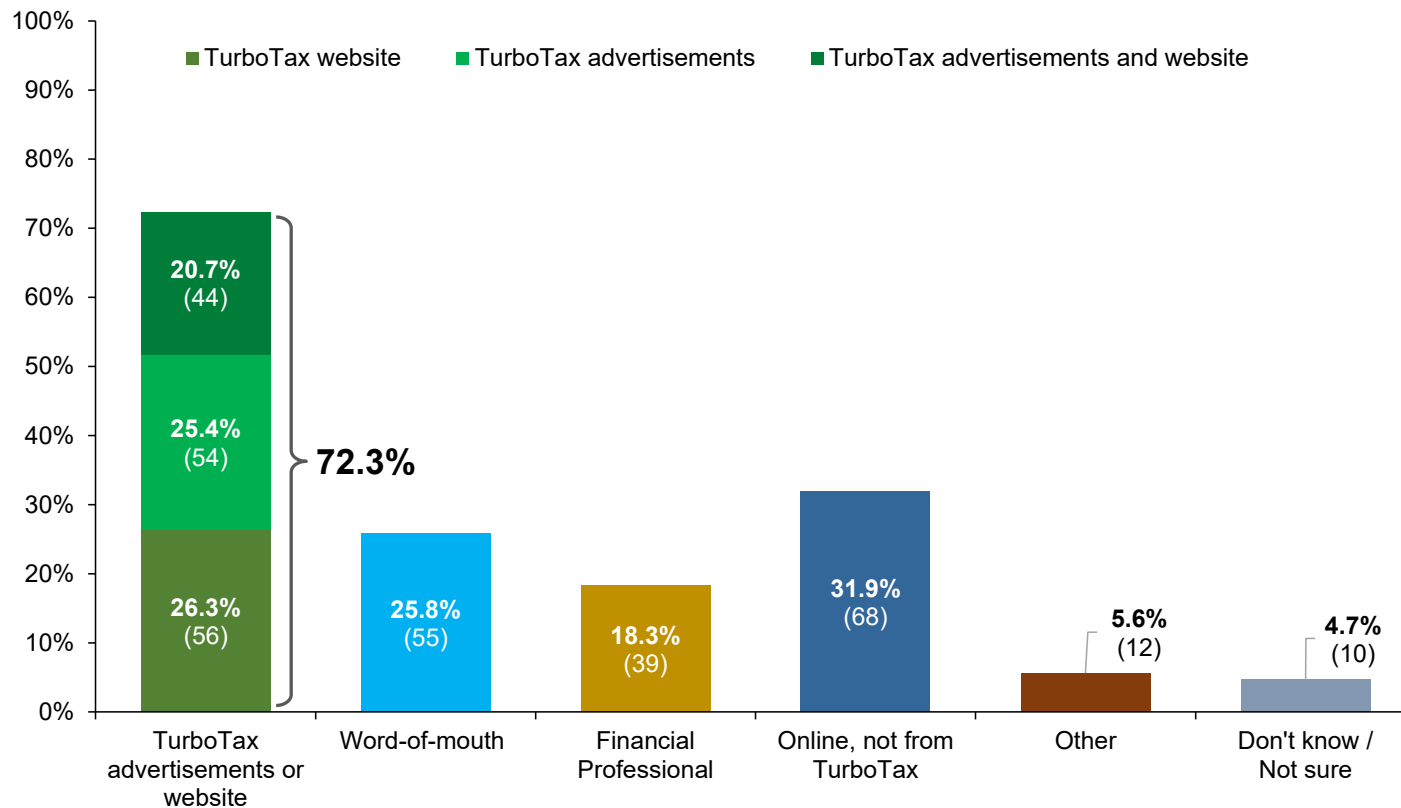
[Population: Respondents Who Have (1) Not Yet Filed Their 2021 Taxes and (2) Not Filed Taxes Using TurboTax in the Last Three Years]



Source: GX 303, Figure 1

TAT255: You have stated that you think you can file your 2021 income taxes for free using TurboTax online software. Which of the following sources played a role in you forming that impression? Select all that apply.

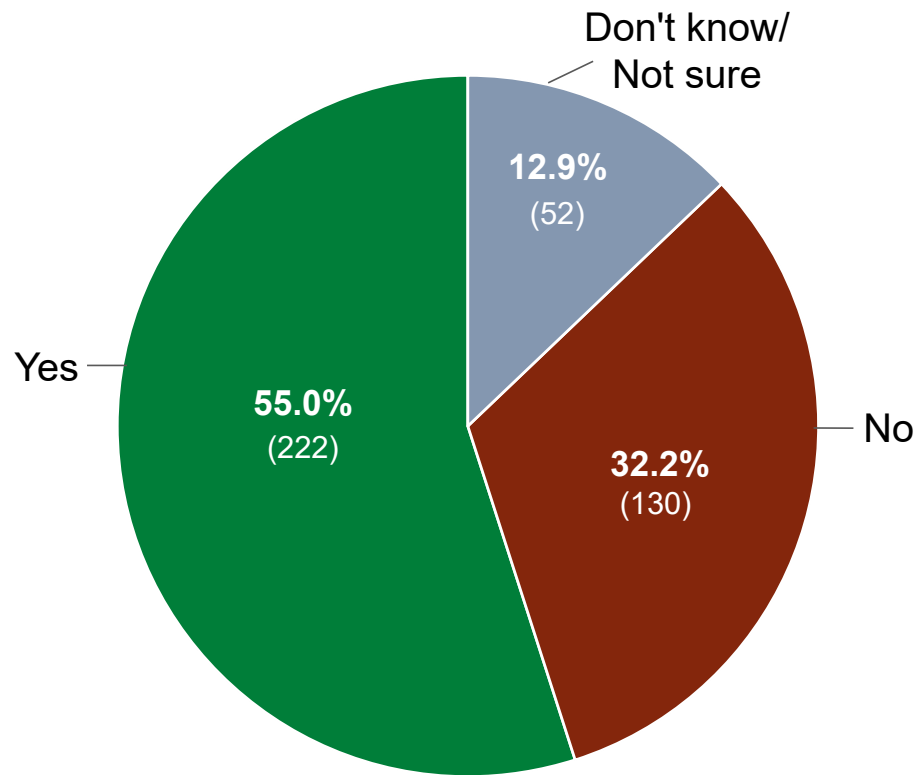
[Population: Respondents Who Have (1) Not Yet Filed Their 2021 Taxes and (2) Not Filed Taxes Using TurboTax in the Last Three Years]



Source: GX 303, Figure 2

TAT290: Do you think that your 2021 income tax return meets TurboTax’s definition of a “simple U.S. return”?

[Population: Respondents Who Have (1) Not Yet Filed Their 2021 Taxes and (2) Not Filed Taxes Using TurboTax in the Last Three Years]



Source: GX 303, Figure 3

Former Intuit Executive Mary Ann Somers

In a 2019 episode of the “Renegade Thinkers Unite” podcast, Mary Ann Somers, while Senior Vice President and Chief Growth Officer of Intuit’s consumer group, admitted the following regarding the TurboTax “free free free” campaign:

I’ll start with the part that really was the aha moment, and that was the insight. And we know. We know a lot about our free customer. We know, you know, what their journey is, a lot of things. But the key insight for us was, when you start talking about free, that’s what people hear. They hear free. You can say a lot of other things, but what they hear is free. And we said, “Huh, well, if that’s the truth, then how do we create a campaign that builds upon that truth?” And that’s the campaign that you saw.

(GX357 (Complaint Counsel); GX358 (Complaint Counsel) at 26:06-26:36 (audio)).



Other Extrinsic Evidence

- Intuit Copy Testing & Market Research
- Intuit Customer Service & Customer Review Data
- Consumer Sentinel Complaints
- Consumer Deposition Testimony

Intuit's Regular Course of Business Copy Testing

- After exposure to the copy test advertisements, between 45% and 57% of the test group in the TY20 Campaign Copy Testing were reported as agreeing with the statement that TurboTax “Allows me to file my taxes for free,” an increase from the 33% reported for the control group. (GX460 (Intuit) at CC-00009563; Ryan (Intuit) Tr. 740).
- The results of the TY18 Copy Testing showed that 73% of the 250 survey respondents took away from the Spelling Bee copy test advertisement the message: “That i [sic] can file my taxes for free.” (GX340 (Intuit) at CC-00006857; Ryan (Intuit) Tr. 725).
- The TY18 Copy Testing showed that the advertisements tested, including the Spelling Bee copy test advertisement, “communicate **the parent brand**, TurboTax well, however, only about ~5% take away the sub brand (TurboTax Free, TurboTax Live).” (GX340 (Intuit) at CC-00006849 (emphasis in original); see also Ryan (Intuit) Tr. 817-818).

Intuit TY 2021 Customer Reviews

- “Your TV commercials are a big lie, this company should be put out of business for deceptive practices. Free, free, free, yes right \$154.00 to file this return, Free, Free, free.” (RX816 (Intuit) at row 272983, columns A, E, P).
- “TURBO TAX ISNT FREE, EVER!” and “ADVERTISES FREE, FREE, FREE, BUT ITS ACTUALLY FEE, FEE, FEE!” (RX816 (Intuit) at row 15850, columns A, E, P).
- “It advertises as FREE. Why am I paying for it???” (RX816 (Intuit) at row 40791, columns A, E, P).
- “Lies” and “It[']s an easy site to use but they have unexpected fees when the commercial clearly say free, IT[']S NOT FREE!!” (RX816 (Intuit) at row 35974, columns A, E, P).
- “Overall, TurboTax is great and easy to use. However, my only complaint was that you originally advertise the tax program to be free. Once you reach the end of the tax form however, you come to find out that it is indeed not free, but is going to cost at least a minimum of \$39 or more. So that’s not cool. False advertising if you ask me.” (RX816 (Intuit) at row 116550, columns A, E, P).

What representation do these ads make?

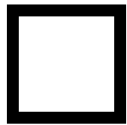
Is that representation likely to mislead a reasonable consumer?

Is the representation material?

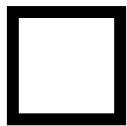


What representation do these ads make?

TurboTax will be free for me



Is that representation likely to mislead a reasonable consumer?



Is the representation material?



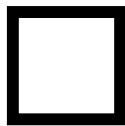
What representation do these ads make?

TurboTax will be free for me



Is that representation likely to mislead a reasonable consumer?

Yes, because TurboTax is not free for $\frac{2}{3}$ of taxpayers



Is the representation material?



What representation do these ads make?

TurboTax will be free for me



Is that representation likely to mislead a reasonable consumer?

Yes, because TurboTax is not free for $\frac{2}{3}$ of taxpayers



Is the representation material?

Yes, price – especially a price of \$0 – is likely to affect consumer choice

Complaint Counsel's Oral Argument Materials

In re Intuit Inc. – D9408

Before the Commission on Automatic Review of Initial Decision
pursuant to 16 C.F.R. § 3.52(a) (Mar. 23, 2015)