

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

In the matter of

H&R BLOCK INC.,
a corporation,

HRB DIGITAL LLC,
a limited liability company, and

HRB TAX GROUP, INC.,
a corporation.

DOCKET NO. 9427

**RESPONDENTS' MOTION *IN LIMINE* TO EXCLUDE SURVEY AND EXPERT
TESTIMONY OF SARAH BUTLER**

In an effort to establish that H&R Block's advertising of its Free Online product is deceptive, Complaint Counsel engaged Sarah Butler ("Butler"), who designed and conducted two consumer surveys that sought to test survey respondents' perceptions after either (1) watching an H&R Block commercial or (2) reviewing two pages from the H&R Block website. After watching the commercial or viewing the webpages, respondents were asked questions that were designed to test whether the commercial or webpages led them to believe that they could file their 2023 tax return for free online with H&R Block, when according to Butler's classification, they could not.

Critical here, all respondents were asked the same flawed question, Question 4, which Butler admits formed the basis of her opinions regarding alleged deception in this case. Butler Tr. 101:13-102:16. Question 4 asked:

Based on what you heard and saw in the commercial, do you think you can file your 2023 taxes for free online with H&R Block?

1. Yes
2. No
3. I would need more information
4. Don't know / unsure

Based on what you reviewed on these webpages, do you think you can file your 2023 taxes for free online with H&R Block?

1. Yes
2. No
3. I would need more information
4. Don't know / unsure

Question 4 is ambiguous on its face as it is capable of two very different meanings. One interpretation is that Question 4 is asking respondents whether they *personally* thought they can file *their own* taxes for free online with H&R Block. However, another equally reasonable interpretation is that Question 4 is asking if *anyone* can file their taxes for free online with H&R Block—which is true for nearly 50% of the population. Butler's own data confirmed this glaring facial ambiguity. Right after Question 4, each survey respondent was asked Question 5, that asked "What makes you say that?". Those responses confirm that respondents were identifying the ambiguity in Question 4 and answering it in a manner **not intended** by Butler. For example, after responding "Yes" to Question 4, in response to Question 5, Respondent 2017 stated:

I took this to mean the royal "you" - not me in particular. I can't, but it is possible if you're only filing earned income.

(emphasis added). See Exhibit A for additional responses to Question 5 indicating ambiguity in Question 4.

The specific and thoughtful responses to Question 5, identifying the troubling ambiguity in Question 4, are more than sufficient to declare the survey results unreliable. Additionally, the fundamental problem with ambiguous questions is that there is no mechanism by which one can

go back and determine how any one respondent interpreted Question 4. Indeed, to the extent any survey respondent reasonably interpreted Question 4 as asking “can *anyone* file their 2023 taxes for free online with H&R Block,” which we **know** they did (*see* Exhibit A), their responses could never support Butler’s conclusions about deception from H&R Block’s advertising, the very point she set out to prove through her surveys.

Despite Butler’s concession that ambiguity of a key question warrants exclusion of a survey in its entirety, she ignored this critical flaw in her surveys and based her opinions regarding deception on what she knew was a fatally flawed and ambiguous question. Butler Tr. 76:22-77:14; *see* Exhibit B (Butler testimony regarding significant impact ambiguity can have on reliability of survey results). As a result, as many courts have held, any conclusions Butler reached about deception from H&R Block’s advertising based on either of her surveys is unreliable and must be excluded. *See, e.g., Native Am. Arts, Inc. v. Bud K World Wide, Inc.*, 2012 WL 1833877, at *8 (M.D. Ga. May 18, 2012) (finding the term “illustration” could be interpreted by a layperson multiple ways and was therefore ambiguous and warranted exclusion of the entire survey); *1-800 Contacts, Inc. v. Lens.com, Inc.*, 2010 WL 5186393, at *8-9 (D. Utah Dec. 15, 2010) (excluding survey and all expert opinions derived from survey holding that because the meaning of the term “originates from” was ambiguous and capable of multiple meanings to a layperson, “no meaningful analysis can be made because results derived from the ambiguous phrase cannot be factored out”); *see also Jackson v. Nat’l Action Fin. Servs.*, 441 F.Supp.2d 877, 877 (N.D. Ill. 2006).

For the reasons set forth above, Respondents respectfully request that the Court exclude Butler’s opinions, reports, deposition testimony, and live testimony at trial.

PUBLIC

Date: October 3, 2024

Respectfully submitted,

By: /s/ Erika Whyte

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

In the matter of

H&R BLOCK INC.,
a corporation,

HRB DIGITAL LLC,
a limited liability company, and

HRB TAX GROUP, INC.,
a corporation.

DOCKET NO. 9427

**[PROPOSED] ORDER GRANTING RESPONDENTS' MOTION *IN LIMINE* TO
EXCLUDE SURVEY AND EXPERT TESTIMONY OF SARAH BUTLER**

Upon consideration of Respondents' October 3, 2024 Motion *In Limine* to Exclude Survey and Expert Testimony of Sarah Butler,

IT IS ORDERED that the motion is GRANTED.

IT IS FURTHER ORDERED that the survey submitted by Sarah Butler and her reports, opinions, and testimony related thereto are excluded from evidence in this proceeding, and Complaint Counsel are precluded from offering such opinions or testimony.

ORDERED:

Jay L. Himes
Administrative Law Judge

Date: _____

**UNITED STATES OF AMERICA
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In the matter of

H&R BLOCK INC.,
a corporation,

HRB DIGITAL LLC,
a limited liability company, and

HRB TAX GROUP, INC.,
a corporation.

DOCKET NO. 9427

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

Pursuant to Additional Provision No. 4 of the March 22, 2024 Scheduling Order, Respondents H&R Block Inc., HRB Digital LLC, and HRB Tax Group, Inc. (“Respondents”) hereby submit 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 telephone on October 1, 2024 concerning this motion but were unable to reach an agreement.

Dated: October 3, 2024

By: /s/ Erika Whyte

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

In the matter of

H&R BLOCK INC.,
a corporation,

HRB DIGITAL LLC,
a limited liability company, and

HRB TAX GROUP, INC.,
a corporation.

DOCKET NO. 9427

DECLARATION OF CAROL A. HOGAN IN SUPPORT OF RESPONDENTS'
MOTION *IN LIMINE* TO EXCLUDE SURVEY AND EXPERT TESTIMONY
OF SARAH BUTLER

I, Carol A. Hogan, declare as follows:

1. I am a Partner at Jones Day, counsel for Respondents in the above-captioned proceeding.
2. I submit this declaration in support of Respondents' Motion *in Limine* to Exclude Survey and Expert Testimony of Sarah Butler, filed on October 3, 2024.
3. Attached as **Exhibit A** are true and correct excerpts from Sarah Butler's final datafile attached as Exhibit K to her expert report submitted in this matter on August 15, 2024.
4. Attached as **Exhibit B** are true and correct excerpts from the deposition of Sarah Butler conducted in this matter on September 17, 2024.
5. Attached as **Exhibit C** are true and correct copies of the expert report and rebuttal report submitted by Sarah Butler in this matter dated August 15, 2024 and September 9, 2024,

respectively.

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

Executed on this 3rd day of October, 2024, in Chicago, Illinois.

By: */s/ Carol A. Hogan*

Carol A. Hogan

CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2024, I caused the foregoing document to be served 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 Jay L. Himes
Administrative Law Judge
600 Pennsylvania Ave., NW
Suite H-110
Washington, DC 20580

I further certify that on October 3, 2024, I caused the foregoing document to be served via email to:

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Counsel Supporting the Complaint

Dated: October 3, 2024

Respectfully submitted,

By: /s/ Erika Whyte
Erika Whyte

Exhibit A

Responses to the open-ended question that followed Question 4 which asked, “What makes you say that?”

Respondent 1535:

- Question 4: Based on what you heard and reviewed on these webpages, do you think you can file your 2023 taxes for free online with H&R Block?
- Response: “Yes”
- Question 5: What makes you say that?
- Response: “They offer free simple tax return filing. **I have a more complicated return so I, myself, would not be able to use the free version.**”

• **Respondent 2017:**

- Question 4: Based on what you heard and reviewed on these webpages, do you think you can file your 2023 taxes for free online with H&R Block?
- Response: “Yes”
- Question 5: What makes you say that?
- Response: “**I took this to mean the royal “you” - not me in particular. I can't, but it is possible if you're only filing earned income.**”

• **Respondent 7236:**

- Question 4: Based on what you heard and reviewed on these webpages, do you think you can file your 2023 taxes for free online with H&R Block?
- Response: “Yes”
- Question 5: What makes you say that?
- Response: “**I am speaking generally for most people that you can file free as long as you don't need to file deductions or have investments to report. As for myself, I would go with a higher option that does have charges if I chose to file with H & R Block.**”

- **Respondent 8625:**
 - Question 4: Based on what you heard and reviewed on these webpages, do you think you can file your 2023 taxes for free online with H&R Block?
 - Response: “Yes”
 - Question 5: What makes you say that?
 - Response: “**Some people can file for free. Personally I can't** because my taxes will be a little more complicated this yr but many people can choose that option.”

- **Respondent 10449:**
 - Question 4: Based on what you heard and reviewed on these webpages, do you think you can file your 2023 taxes for free online with H&R Block?
 - Response: “No”
 - Question 5: What makes you say that?
 - Response: “**I have investments and I would not qualify for that level of filing.** I'd have to go to Premium, a higher level, in order to do my taxes. **Now if you were asking if anyone can get their taxes done for free that is a yes if it's a simple return.**”

Exhibit B

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THE UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the matter of

H&R BLOCK INC.,

DOCKET NO. 9427

a corporation,

HRB DIGITAL LLC,

a limited liability company, and

HRB TAX GROUP, INC.,

a corporation.

CONFIDENTIAL

September 17, 2024

9:05 a.m. EDT

Videotaped deposition of SARAH BUTLER,
held at the offices of Jones Day, 51 Louisiana
Avenue, N.W., Washington, D.C., before Misty
Klapper, Registered Merit Reporter, Certified
Realtime Reporter, Certified Shorthand Reporter
and Notary Public.

1 disregarded after it had been conducted?

2 A. Sorry, I -- I think I'm maybe not
3 understanding your question. So when you say be
4 disregarded, be disregarded by whom?

5 Q. Okay. Let me try it a different way.
6 Have you ever testified under oath,
7 Dr. Butler, that a survey that was submitted by
8 an opponent was so flawed in one way or another
9 that it was unreliable and should be disregarded?

10 A. Yes.

11 Q. Okay. How many times have you made
12 those -- how many times have you given those
13 kinds of opinions, would you say?

14 A. I don't have an exact estimate.

15 Q. Okay. And what kinds of things, in
16 your opinion, would cause you to reach such an
17 opinion about a survey? What flaws could that
18 survey have that would lead you to claim that it
19 was unreliable and should be disregarded?

20 A. I think that largely depends on what
21 the survey was and what it was purported to test.

22 Q. Okay. Have you ever criticized a

1 survey's reliability because the questions that
2 were asked or the main questions that were asked
3 were ambiguous under oath?

4 A. I am sure I have offered testimony
5 that indicates that a question as designed is
6 ambiguous and, so, is unreliable.

7 Q. Okay. And if that question was one
8 of the main questions of the survey, you've
9 testified that it affects the reliability of the
10 survey in its entirety, correct?

11 A. If the conclusions that the expert is
12 drawing are based on an ambiguous question, then
13 there's reason to -- to evaluate or opine that
14 that question is inappropriate or ambiguous, yes.

15 Q. Okay. Have you -- in criticizing
16 other surveys, you've also testified with respect
17 to what is improper control stimuli, have you
18 not?

19 A. I have, yes.

20 Q. Okay. And you would agree with me
21 and have testified that if stimuli that is used
22 in a control is so far removed from the test

1 commercial and one refers to the web pages.

2 Would you just double-check and make
3 sure I'm right about that.

4 A. That's correct.

5 Q. Okay. So --

6 A. The -- the commercial also says heard
7 and saw.

8 Q. True.

9 A. And the web page says reviewed.

10 Q. Yeah. And so maybe I'll just -- to
11 be fair, let me just read question 4 from the
12 commercial survey.

13 Question 4 asked, quote, Based on
14 what you heard and saw in the commercial, do you
15 think you can file your 2023 taxes for free
16 online with H&R Block, correct?

17 A. Yes.

18 Q. Okay. And then question 4 in the
19 website survey says, quote, Based on what you
20 reviewed on these web pages, do you think you can
21 file your 2023 taxes for free online with H&R
22 Block, correct?

1 A. Yes.

2 Q. Okay. And then question 5 that
3 followed in both surveys was the same. And
4 question 5 says, What makes you say that, right?

5 A. That's correct.

6 Q. Okay. And so when we looked back at
7 the purpose for your surveys, which was to
8 measure the level of deception, that is, how many
9 people would be led to believe that they could
10 file for free when -- when they couldn't, based
11 on H&R Block's advertising, these two questions
12 sort of really get to the heart of what you were
13 trying to determine, correct?

14 A. These two questions in conjunction
15 with a question that helps me evaluate whether or
16 not the respondent, in fact, could file for free.

17 Q. Fair enough. They're list -- that's
18 fair. There's a poster of a question where you
19 made a determination about whether someone
20 actually was eligible to use the free product,
21 correct?

22 A. I would say respondents classified

1 So question -- would you agree that
2 questions 4 and 5, as I've read them into the
3 record, are really the questions in your two
4 surveys that get to whether H&R Block's
5 commercial or web pages led consumers to believe
6 that they could file for free?

7 MR. BROWN: Objection, asked and
8 answered.

9 THE WITNESS: So questions 4 and 5,
10 in conjunction with -- I forget the exact
11 number, but I think it's like screening
12 question 8, allows -- allow me to assess
13 the extent to which respondents were
14 misled and believed they could file online
15 for free --

16 BY MS. HOGAN:

17 Q. Okay.

18 A. -- when, in fact, they could not.

19 Q. Okay. Perfect. Okay. Now, let's go
20 back and talk a little bit more about good survey
21 design generally. We're going to not talk about
22 this case. We're going to talk about good survey

1 your question again?

2 Q. Sure. You agree that the design and
3 reliability of a survey requires careful
4 attention to the definition of the relevant
5 population, among other things?

6 A. That's correct.

7 Q. Okay. And once you identify the
8 appropriate population, you then need to ensure
9 that respondents to your survey actually fall
10 within that population, correct?

11 A. That's correct.

12 Q. Okay. The next thing that you
13 indicate is critical for good survey design is to
14 draft or pay careful attention to the questions
15 that are used in the survey, correct?

16 A. Yes.

17 Q. Okay. And you agree that the
18 questions that you use must be clear and concise,
19 correct?

20 A. I don't know about concise in all
21 circumstances, but certainly I think it's good
22 practice to have clear survey questions, yes.

1 Q. Okay. And maybe put another way,
2 it's good to have questions that respondents
3 understand, correct?

4 A. Generally speaking, yes, we want our
5 respondents to understand the questions being
6 asked.

7 Q. Okay. And you agree that phrasing
8 questions to reach that goal can often be
9 difficult, right?

10 A. I'm so sorry, I missed --

11 Q. Sure. Sure. You agree that phrasing
12 questions to reach that goal, which just means
13 drafting clear questions, can sometimes be very
14 difficult, correct?

15 A. Sometimes it can be. Sometimes it's
16 not.

17 Q. Okay. And you also agree that
18 sometimes a question that initially appears to be
19 clear can end up conveying unexpected meaning to
20 survey respondents, correct?

21 A. Is it possible a question drafted
22 with a particular intention isn't communicating

1 or -- or conveying that to a respondent? That's
2 possible, yes.

3 Q. You've seen that in your survey work,
4 haven't you, over the years?

5 A. Sure.

6 Q. Okay. Do you agree with this
7 statement:

8 When there are unclear questions
9 included in a survey, they may threaten the
10 validity of the survey by systemically distorting
11 responses if the respondents are misled in a
12 particular direction or by inflating random
13 error, if respondents guess because they do not
14 understand the question? Do you agree with that
15 statement?

16 A. Sorry, so, generally speaking, is it
17 possible that unclear questions create error,
18 yes.

19 Q. Do you agree with -- do you agree
20 with the statement I read though? That's my
21 question. Let me read it again.

22 A. Sure.

1 Q. Because I think I might have bobbled
2 it there.

3 Do you agree -- this is a quote
4 now -- When there are unclear questions included
5 in a survey, they may threaten the validity of
6 the survey by systemically distorting responses,
7 if the respondents are misled in a particular
8 direction or by inflating random error, if
9 respondents guess because they do not understand
10 the question?

11 A. So, generally speaking, I think that
12 statement that, again, unclear questions may
13 cause error, yes, that's possible.

14 Q. Do you agree or disagree with that
15 statement, Dr. Butler? Can you answer that
16 question?

17 MR. BROWN: Objection, asked and
18 answered.

19 THE WITNESS: Sure. I think as a
20 general principle, is that a possibility,
21 yes, I agree with that statement.

22 BY MS. HOGAN:

Exhibit C

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the matter of

H&R BLOCK INC.,

a corporation,

HRB DIGITAL LLC,

a limited liability company, and

HRB TAX GROUP, INC.,

a corporation

DOCKET NO. 9427

EXPERT REPORT OF SARAH BUTLER

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I. QUALIFICATIONS

1. I am a Senior Managing Director at NERA, where I am the Chair of the Survey Research and Consumer Behavior Practice and a member of the Intellectual Property and Antitrust Practices. My business address is 4 Embarcadero Center, San Francisco, CA 94111. NERA is a firm providing expert statistical, survey, economic, and financial research analysis.

2. Among my responsibilities, I conduct survey research, market research, and sampling analysis on a wide range of topics regarding business and consumer decision making, consumer perceptions, and consumer behavior. In the course of my career, I have conducted research for leading corporations and government agencies on consumers, employees, and businesses. My work has been included in numerous lawsuits involving issues of false and misleading advertising, trademark and trade dress confusion, secondary meaning, as well as in antitrust and employment-related litigation. I am a member of the American Association of Public Opinion Research, the American Statistical Society, the Intellectual Property Section of the American Bar Association, and the International Trademark Association (INTA).

3. I have also worked as a market researcher conducting surveys and other forms of research, including personally conducting focus groups and in-depth interviews with consumers and professionals. I have worked as an independent consultant conducting research for the Department of Environment and Rural Affairs in the United Kingdom. I have taught courses focused on or involving research methodologies in both the United States and Europe. I hold a Master's Degree from Trinity College, Dublin and another Master's Degree from Temple University.

4. I have substantial experience conducting and using surveys to measure consumer opinions and behaviors regarding products and services including consumer perception and

understandings of advertising messaging, brand awareness, purchase processes, and evaluating the importance of product attributes. During my career in academic and commercial research, I have personally facilitated a wide range of research including surveys, focus groups, and in-depth interviews.

5. I have submitted expert reports, been deposed, and have testified at trial within the last five years. A list of my testimony is included on the copy of my current resume, which is attached as **Exhibit A**.

6. NERA is being compensated for my services in this matter at my standard rate of \$825 per hour. Members of the staff at NERA have worked at my direction to assist me in this engagement. No part of my compensation or NERA's compensation depends on the outcome of this litigation. Throughout this report, I have used the terms "I" and "my" to refer to work performed by me and/or others under my direction.

II. DOCUMENTS CONSIDERED

7. As part of my work in this matter, I reviewed the *Complaint*, amongst other materials.¹ A list of the specific materials I reviewed can be found in **Exhibit B**.

III. ASSIGNMENT AND SUMMARY OF OPINIONS

8. I was retained by counsel for the Federal Trade Commission (FTC) to design and conduct research to evaluate whether, "H&R Block deceptively markets its Online Products by representing to consumers that they can file for free using H&R Block, when in fact, many consumers have tax situations that are not covered by H&R Block's free Online Product."²

¹ Complaint (Nonpublic), *In the matter of H&R BLOCK INC., HRB DIGITAL LLC, and HRB TAX GROUP, INC.*, United States of America Before the Federal Trade Commission, Docket No. 9427, dated February 23, 2024 (hereinafter, "*Complaint*").

² *Complaint*, ¶ 9.

9. To determine whether consumers would be deceived by H&R Block's advertising for its Free Online product, I surveyed 1,725 U.S. consumers. Qualified respondents were individuals who would be responsible for the preparation of their 2023 tax return (or who would participate in the preparations) and who would consider filing their 2023 tax return online.³ The survey also included a question to identify the respondents with tax situations that would not allow them to use H&R Block's Free Online product.⁴

10. I understand that the FTC asserts that H&R Block's commercial advertisements boasting "Simple returns file free" only later indicate in small, inconspicuous white text "Not all taxpayers qualify. See hrblock.com for details."⁵ Additionally, the FTC has alleged that, "H&R Block's advertisements about its Free Online product bring consumers to its website to begin filing their tax returns using Free Online" only to later reveal that many of these consumers do not qualify for H&R Block's Free Online product.⁶ Because I understand that the FTC alleges H&R Block's commercial advertising, as well as its advertising on the H&R Block website, deceives consumers into believing they can file their taxes for free online using H&R Block,⁷ my research included both forms of advertising.

11. Once qualified for the survey, respondents were randomly assigned to the Commercial Group or the Website Group. Respondents in the Commercial Group were shown H&R Block's "It's Better with Block: Breakroom" 30 second commercial.⁸ I understand this

³ Potential respondents who had already filed their 2023 return were not qualified for the survey.

⁴ As explained in greater detail in Section IV.G., this question was included at the end of the survey to ensure respondent reactions to the stimuli were not biased in any way.

⁵ *Complaint*, ¶ 38.

⁶ *Complaint*, ¶ 55.

⁷ *Complaint*, ¶¶ 38-55.

⁸ <https://www.youtube.com/watch?v=y30KJ0VUFY8>, last accessed July 29, 2024.

commercial aired during the 2024 tax season and promoted H&R Block's Free Online product.⁹ After viewing the commercial, respondents were asked to describe in their own words the main message(s) of the commercial. Respondents were then asked whether, based on the commercial, they believed they could file their taxes online for free with H&R Block. Because I understand that references to "simple return" occur in the advertising and the FTC has alleged that this phrase is undefined and unclear, I also included a series of questions about "simple returns."¹⁰

12. Respondents in the Website Group were shown H&R Block's homepage and then a second webpage (linked to the homepage by a "Learn More" button). As with respondents in the Commercial Group, respondents were asked to describe in their own words the main message(s) from the webpages viewed. They were also asked whether, based on the webpages viewed, they believed they could file their taxes online for free with H&R Block and were asked a series of questions about "simple returns." In the Website Group, respondents who indicated that they would need more information to determine whether they could file for free and/or whether they have a simple return were asked to indicate what on the webpage they would click, if anything, to access more information.

13. A survey designed to evaluate a causal proposition (i.e., does the advertising cause consumers to believe they can file their taxes for free using H&R Block's Free Online product) must isolate the impact of what is being tested from other possible explanations (including guessing, pre-existing beliefs, demand effects, and other possible sources of survey "noise"). In this matter, it is likely that some share of respondents participating in the survey have previously

⁹ This commercial contains the key phrases and messaging alleged to be deceptive in this matter (i.e., "Simple returns file free" and the inconspicuous messaging appearing at the end of the commercial in small, white text). See Section IV.H. for a discussion of commercial used.

¹⁰ *Complaint*, ¶¶ 36-39.

been exposed to H&R Block's advertising for its "free" DIY online products. I understand that H&R Block has been running their "free" advertising campaigns for several years (discussed in more detail in Section IV.H.). As such, respondents may be entering the survey with a perception that they can file for free based on previous exposure to H&R Block's advertising similar to the advertising being tested in the survey. These prior perceptions of beliefs related to the ability to file for free, as well as other sources of survey "noise," are accounted for by the Control Group.

14. To account for reasons other than the at-issue advertising that may cause consumers to believe they can file for free using H&R Block's Free Online product, my survey included a Control. In this case, respondents were randomly assigned to see the Test version of the stimuli (i.e., the actual H&R Block commercial or webpages) or the Control version. Respondents assigned to view the Control version of the commercial/webpages were asked the same questions as respondents assigned to the Test versions. Generally, the Control versions shown removed the allegedly misrepresentative statements and, in the case of the webpages, added clarifying information.¹¹ The results of the Control Group allow me to determine the extent to which statements made by H&R Block about its Free Online product cause consumers to believe that they can file for free, even when they have income, an HSA, or intend to claim/itemize deductions which would not allow them to use this service.

15. Because I am evaluating whether consumers *incorrectly* believe they could file for free with H&R Block's Free Online product, it was important to identify respondents with situations that would likely render them ineligible for this product. In fact, the majority of 1,725

¹¹ See Sections IV.H and IV.I. for a discussion of the modifications to Control versions of the stimuli.

qualified respondents,¹² 1,338 or 77.6 percent, indicated that they had a form of income, an HSA, or planned to take deductions or itemizations that would potentially make them ineligible for H&R Block's Free Online product.¹³ Of the 1,338 respondents potentially ineligible for H&R Block's Free Online product, a total of 1,178 respondents (or 68.3 percent of all qualified respondents) indicated that they have an HSA or a form of income that would not allow them to use the free product, including 45.0 percent of respondents who indicated they have income from stocks, bonds, or other investments, 23.8 percent of respondents who have an HSA, 23.2 percent of respondents who have income from contract or freelancing work, 17.6 percent of respondents who have income from their own business, 16.3 percent of respondents who have income from gig work, and 7.9 percent who have income from a rental property or rental deductions.¹⁴ The remaining 160 of 1,388 respondents ineligible for free filing were those who selected only "I will itemize my deductions" and/or "I will deduct real estate taxes and/or home mortgage interest" and did not indicate an ineligible income situation (or having an HSA account). This demonstrates that the majority of respondents have another, non-optional source of income (or an HSA) that would preclude them from using H&R Block's Free Online product.

16. Based on the results of my survey, I offer the following conclusions:

Commercial Results

- A total of 813 respondents were shown either the Test or the Control version of the H&R Block commercial.

¹² Qualified respondents were individuals who would be responsible for the preparation of their 2023 tax return (or who would participate in the preparations), who would consider filing their 2023 tax return online, and who had not yet filed their 2023 taxes.

¹³ These respondents will be referred to as those ineligible for H&R Block's Free Online product or ineligible respondents.

¹⁴ These percentages do not sum to 68.3 percent, as some respondents indicated more than one of these tax situations applied to them.

- Of these 813 respondents, 628 (77.2 percent) indicated that they planned to itemize, take deductions, or have income (or an HSA) that may make them ineligible for H&R Block's Free Online product. 308 were in the Test Group and 320 were in the Control Group.
- In the Test Group, 69.8 percent of the ineligible respondents believed, based on the commercial, that they could file their 2023 taxes for free online with H&R Block.
- In the Control Group, 52.2 percent of the ineligible respondents believed that they could file their 2023 taxes for free online with H&R Block. As noted above, the Control Group provides a measure of survey "noise" (e.g., yea-saying, guessing, pre-existing beliefs, perceptions based on past, not immediate exposure to the stimulus, demand effects, etc.) that is removed from the final calculation when calculating the rate of deception caused by the specific statements being tested from the advertising. The rate in the Control Group may reflect that H&R Block has been running their "free" advertising campaigns for several years.
- Using the Control Group responses to net out alternative explanations for believing one could use H&R Block's Free Online product (including perceptions that may be the result of prior exposures to H&R Block's advertising for its "free" product) yields an incremental increase (or net rate) of 17.6 percentage points. In other words, based on the single exposure to statements and representations made in the commercial, a total of 17.6 percent of consumers incorrectly believed that they could use H&R Block's Free Online product even though they have income/an HSA or planned to take deductions/itemizations that would make them ineligible for free filing.

Website Results

- A total of 912 respondents were shown either the Test or the Control version of the H&R Block website.
- Of these 912 respondents, 710 (77.9 percent) indicated that they planned to itemize, take deductions, or have income (or an HSA) that would make them ineligible for H&R Block's Free Online product. Of the ineligible respondents, 339 were in the Test Group and 371 were in the Control Group.
- In the Test Group, 69.0 percent of the ineligible respondents believed, based on the information in the webpages shown, that they could file their 2023 taxes for free with H&R Block.
- In the Control Group, 53.1 percent of ineligible respondents believed that they could file their 2023 taxes for free with H&R Block. As noted above, the Control Group provides a measure of survey "noise" (e.g., again including pre-existing beliefs that may be the result of past exposure to H&R Block's advertising) that can then be removed from the final estimation of deception caused by the single exposure to the specific statements tested from the advertising.
- Using the Control Group responses to net out alternative explanations yields an incremental increase (or net rate) of 15.9 percentage points of consumers who believed, based on the single exposure to information in the webpages, that they could use H&R Block's Free Online product even though they have income/an HSA or plan to take deductions/itemizations that would not allow them to use this service.

17. Overall, the results of my survey demonstrate that, despite having tax situations that would render them ineligible, consumers generally believe that they could file their taxes for free

using H&R Block's Free Online product. Furthermore, these results demonstrate that a single exposure to the at-issue advertising incrementally increases this misperception. In other words, even when I control for pre-existing beliefs that may have developed due to prior exposures to H&R Block's "free" advertising campaign (as well as other possible sources of survey "noise"), between a net rate of 15.9 and 17.6 percentage points of consumers incorrectly believed, based on a single exposure to the allegedly misrepresentative statements in H&R Block's advertising, that they could use the Free Online product. The differences in perceptions between the Test and the Control Groups are statistically significant.¹⁵

18. The remainder of this report discusses the details of the research I conducted, and the results of my survey.

IV. SURVEY METHODOLOGY

19. The design of my research follows the generally accepted principles for the design of surveys to be used as evidence in litigation.¹⁶ In general, the design of a reliable survey requires careful attention to the following key areas:

- The definition of the relevant population;
- The procedures for sampling from the relevant population;
- The survey questions used;
- The stimuli shown to respondents; and

¹⁵ When a result is statistically significant it means that the observed result is likely to reflect a real difference and is unlikely to be due to chance.

¹⁶ Diamond, S. S. (2011). "Reference Guide on Survey Research," *Reference Manual on Scientific Evidence*, Committee on the Development of the Third Edition of the Reference Manual on Scientific Evidence; Federal Judicial Center; National Research Council (hereinafter, "*Diamond*"), pp. 359-423.

- The protocol for calculating the results from the survey.¹⁷

20. The discussion of the survey I conducted is organized around each of the above-listed key areas.

A. Survey Population

21. The relevant population for this matter is comprised of U.S. residents who had not yet filed their 2023 taxes, but who indicated they would participate in, or be responsible for the preparation of their 2023 tax return, and who indicated that they would consider filing their 2023 tax return online. To evaluate the potential for deception, I identified respondents with tax situations that would prevent them from being eligible for H&R Block's Free Online product, namely those who indicated that they had certain types of income (e.g., investment, gig or contract work), those who would itemize their deductions, those with an HSA, or those who planned to deduct real estate taxes or their home mortgage interest. I understand that these individuals cannot use H&R Block's Free Online product.¹⁸

B. Sampling of the Relevant Population

22. Potential survey respondents were contacted by Veridata Insights ("Veridata"), an online panel and data collection services company.¹⁹ Veridata is an independent data collection

¹⁷ The Federal Judicial Center's (2004) *Manual for Complex Litigation, Fourth Edition*, §11.493, p. 103 phrases these key areas as such:

- the population was properly chosen and defined;
- the sample chosen was representative of that population;
- the data gathered were accurately reported; and
- the data were analyzed in accordance with accepted statistical principles.

¹⁸ It is my understanding that consumers of H&R Block cannot file for free if any of the following circumstances apply: they 1) will deduct real estate taxes and/or home mortgage interest, or 2) will itemize deductions, or 3) have income from gig work (e.g., Lyft/Uber, Door Dash), or 4) have income from contract or freelancing work, or 5) have income from their own business, or 6) have income from a rental property or rental deductions, or 7) have income from stocks, bonds, or other investment income, or 8) have a health savings account. <https://www.hrblock.com/online-tax-filing/>, last accessed July 29, 2024.

¹⁹ Additional information about Veridata Insights is available on their website at <https://www.veridatainsights.com>, last accessed July 29, 2024.

company with which I have prior experience. Veridata is not associated with NERA in any way. Veridata uses a variety of quality control measures to ensure the reliability and integrity of the respondents and the responses they provide. Veridata complies with the standards and ethics for online survey data panels set forth by the Insights Association.²⁰ Veridata's standard quality control measures were applied in this study.

23. Data were collected between March 5, 2024 and March 27, 2024. A total of 12,477 potential respondents opened the invitation and began the survey and of these, 1,725 respondents qualified for and completed the survey.²¹

C. Quality Control Measures for the Survey

24. To ensure that my data are of the highest quality, I implemented quality control measures in addition to those undertaken by Veridata:

- a. As is standard survey practice for litigation, the survey was conducted in a “double-blind” fashion; that is, neither the staff at Veridata nor any of the respondents were aware of the survey sponsor or the ultimate intention of the survey.²²
- b. Respondents who indicated that they did not understand or were unwilling to adhere to the survey instructions were also screened out of the survey.²³
- c. Respondents also had to correctly pass a “reCAPTCHA” question to confirm that a human, and not a “bot” was completing the survey.²⁴

²⁰ The Insights Association is an organization representing the industry and profession of market research and analytics (<https://www.insightsassociation.org/About-Us>, last accessed July 29, 2024).

²¹ See **Exhibit C** for the survey invitation.

²² *Diamond*, pp. 410–411.

²³ A total of 102 respondents were screened out for failing to agree to the survey instructions.

²⁴ “reCAPTCHA uses an advanced risk analysis engine and adaptive challenges to keep malicious software from engaging in abusive activities on your website.” <https://www.google.com/recaptcha/about/>, last accessed July 29, 2024. A total of 272 respondents were screened out for failing to pass the reCAPTCHA question.

- d. Respondents were able to take the survey either on a desktop, laptop, or tablet computer, or on their mobile phone or cell phone. I placed a cap on those who completed my survey such that no more than 40 percent of the sample could take the survey on a mobile device. The survey program was tested separately on both a computer and mobile phone to ensure that the survey questions and stimuli appeared correctly on the different device types.
- e. Respondents were required to enter their state of residence and zip code, and if these data conflicted with one another, the respondent was excluded.²⁵
- f. Respondents were flagged for a sensitivity analysis if they indicated that they or someone in their household works for a market research or advertising company, or for a company that offers online tax preparation and filing services, or if they answered that they did not know or were unsure whether they, or someone in their household, worked for one of these types of companies.²⁶
- g. Respondents were also flagged for a sensitivity analysis if they indicated they had completed a survey about online tax preparation and filing services in the past month or indicated that they did not know or were unsure about their participation in various survey topics in the past month.²⁷

²⁵ A total of 55 respondents were screened out for entering a zip code that did not match their reported state of residence.

²⁶ A total of 40 respondents in the final sample were flagged at this question. I reviewed the results from my survey without these respondents and the results did not differ from results for the full sample. I, therefore, included these respondents in my final dataset and analyses. See **Exhibit D**.

²⁷ A total of 141 respondents in the final sample were flagged at this question. I reviewed the results from my survey without these respondents and the results did not differ from results for the full sample. I, therefore, included these respondents in my final dataset and analyses. See **Exhibit D**.

- h. Respondents were screened out if they failed a screening question (S14), which was included as a quality control measure to ensure that respondents were reading and responding carefully to the survey.²⁸
- i. The survey was tested, and the initial results were reviewed to ensure that there were no errors in the programming, that respondents were able to view the images, and that respondents were able to understand and answer the questions as asked.
- j. Per regulatory requirements of the Federal Trade Commission (FTC), respondents could opt out of having their responses included in the survey. A total of 54 respondents opted to have their survey responses excluded.²⁹
- k. Quality control measures were also conducted to review data quality. Respondents who provided poor quality open-ended responses were removed.³⁰

D. Screening Questionnaire: All Respondents

25. To ensure that panel respondents were part of the relevant population, a series of screening questions were asked. Only respondents who met these qualifying conditions continued to the main questionnaire:

- a. Be 18 years of age or older;
- b. Reside in the United States;
- c. Indicate that they are likely to file their 2023 taxes (due in April 2024) within the next year;

²⁸ A total of 82 respondents were screened out for failing to pass screening question S14.

²⁹ These responses were removed from the data before it was provided to me, and I understand the records were permanently deleted by staff at Veridata.

³⁰ In total, 24 respondents were removed from the final data for poor quality open-ended responses (e.g., respondents providing “nonsensical” responses such as Respondent 5339 who said “They euro for Mrs” at Q3, or respondents who provided “gibberish” responses such as Respondent 11383 whose response read “cvb vcvghrtersdfghjyhrteesfegrhtujhytgreF” at Q2).

- d. Indicate that they had not yet filed their 2023 taxes;³¹
 - e. Indicate that they will participate in, or be responsible for, preparing their 2023 tax return; and
 - f. Indicate that they would consider filing their 2023 tax return online.
 - g. Respondents were also asked to review a list of situations and indicate which, if any, apply to their personal tax circumstances. This list included types of income and deductions which would preclude a filer from using H&R Block's Free Online product. This question was asked at the end of the survey to ensure that the presentation of the list did not impact perceptions of the advertising shown.
26. Once qualified for the survey, respondents were randomly assigned to the Commercial or Website Group.

E. Main Questionnaire: Commercial Group³²

27. Respondents in the Commercial Group were first presented with the following set of instructions:

Thank you for participating in today's survey. If you do not know or do not have an opinion about any of the questions, please select the "Don't know / unsure" response option. Please do not guess.

For this section of the survey, we would like you to watch a brief commercial. First, we would like to make sure that your audio and video capabilities are working properly. Please turn up your speakers or put on your headphones now.

Please ensure your volume is on and click the "play" button to start the video.

³¹ Respondents could qualify if they indicated they had "Started, but not yet filed your 2023 taxes" or "Not yet started or filed your 2023 taxes."

³² See **Exhibit E** for the complete questionnaire and **Exhibit F** for screenshots of the survey.

28. Respondents were then shown a test video to ensure that they would be able to see and hear the commercial.³³ Respondents who accurately identified the sounds and images of this initial video were then randomly assigned to the Test or Control Group and were provided with the following instructions:

Now we would like you to watch a commercial. Please be sure that if you wear glasses or contact lenses when looking at a screen, you have the glasses on or contacts in, and make sure that your viewing window is maximized or is sized large enough for easy viewing. Also, please be sure that the volume on your device is turned on.

The video will play twice to ensure you have an opportunity to hear and see the commercial. Once you have finished watching, you will have the opportunity to watch the commercial one additional time.

29. Respondents were then presented with either the 30 second “It’s Better with Block: Breakroom” commercial (Test Group) or a modified version of the commercial (Control Group), described in more detail in Section IV.H. below. Respondents were provided an opportunity to rewatch the commercial if they wished to do so.³⁴ After ensuring that respondents could see and hear the commercial clearly, they were asked two open-ended main message questions. These questions are shown below:

Q. What was/were the main message(s) of this commercial?³⁵

Q. Any other messages?³⁶

30. Next, respondents were asked whether, based on what they heard and saw in the commercial, they believed they could use H&R Block to file their 2023 taxes online for free:

³³ Two respondents were screened out of the survey for failing to pass the test video.

³⁴ In total, 122 respondents rewatched the commercial.

³⁵ Respondents could type an answer or select “Don’t know / unsure.” Those who selected “Don’t know / unsure” skipped the follow-up question.

³⁶ Respondents could type an answer or select “No other messages.”

- Q. Based on what you heard and saw in the commercial, do you think you can file your 2023 taxes for free online with H&R Block?
1. Yes
 2. No
 3. I would need more information
 4. Don't know / unsure

31. The Yes/No answer choices were randomized to guard against potential order effects. Respondents who selected “Yes” or “No” were then asked an open-ended follow-up question about their reasoning: “What makes you say that?”³⁷

32. All respondents were then asked: “Do you recall seeing anything about a ‘simple return’ in the commercial?” Respondents could select “Yes,” “No,” or “Don't know / unsure.”³⁸ If a respondent recalled seeing something about a “simple return,” they were asked whether they believe they have a “simple return.” Again, respondents could select “Yes,” “No,” “I would need more information,” or “Don't know / unsure.”³⁹

33. After this question, respondents were directed to additional questions at the end of the survey.

F. Main Questionnaire: Website Group⁴⁰

34. I understand that the FTC has also alleged that H&R Block's website falsely represents to consumers that they can file their taxes for free with its DIY online product. Therefore, I also tested consumer perceptions of statements made on H&R Block's webpages.

³⁷ Respondents could type an answer or select “Don't know / unsure.”

³⁸ Response options 1 and 2 were rotated to guard against order effects.

³⁹ Response options 1 and 2 were rotated to guard against order effects.

⁴⁰ See **Exhibit E** for the complete questionnaire and **Exhibit F** for screenshots of the survey.

35. The main questionnaire for the Website Group began with the following instruction:

Thank you for participating in today's survey. If you do not know or do not have an opinion about any of the questions, please select the "Don't know / unsure" response option. Please do not guess.

36. Respondents were then told they would see webpages from a tax preparation website and given the following viewing instructions:

On the next few pages we are going to show you some webpages for a tax preparation website. Please review these webpages as you would if you were making a decision about whether or not to use their tax preparation and filing services.

On each page, there will be a brief delay to ensure you are able to view the information. Please review the information on each page as long as you would like before proceeding with the survey. Please note that website functionality has been disabled so you will not be able to click on any links to see additional information. When you are finished reviewing the information, click the "Continue" button to continue with the survey.

37. On the next screen, respondents were provided the following instruction accompanying the homepage for H&R Block⁴¹ (Test Group) or a modified version of the webpage (Control Group), described in more detail in Section IV.I. below.

Below is the homepage for a tax preparation website. When you have finished reviewing the information, please scroll to the bottom of the screen and click "Continue."

38. To ensure respondents were not rushing through the survey, I included a "speed bump" and required respondents to spend at least ten seconds reviewing this page before they

⁴¹ <https://www.hrblock.com>, last accessed July 29, 2024.

could proceed to the next screen.⁴² Once a respondent clicked “Continue,” they were presented with another webpage⁴³ and the following instructions:

Now, please imagine that you wanted to learn more about filing taxes on your own. Clicking on “Learn More” under the section “File taxes on your own” from the homepage takes you to the webpage presented below. When you have finished reviewing this webpage, please scroll to the bottom of the screen and click “Continue.”

39. Respondents were required to spend at least ten seconds reviewing this page before they could proceed to the next screen.⁴⁴ After ensuring that respondents could see the webpages clearly, they were asked two open-ended questions. For these and the remaining questions, thumbnail images of the webpages were provided to respondents which allowed them to click to review the stimuli again.⁴⁵ These questions are shown below:

Q. What was/were the main message(s) communicated to you by these webpages?⁴⁶

Q. Any other messages?⁴⁷

40. Next, respondents were asked whether they believed based on the information they reviewed, they could file their taxes for free:

Q. Based on what you reviewed on these webpages, do you think you can file your 2023 taxes for free online with H&R Block?

1. Yes
2. No
3. I would need more information
4. Don't know / unsure

⁴² Respondents spent an average of 97 seconds reviewing this page.

⁴³ <https://www.hrblock.com/online-tax-filing/>, last accessed July 29, 2024.

⁴⁴ Respondents spent an average of 82 seconds reviewing this page.

⁴⁵ A total of 238 respondents (115 Test and 123 Control) clicked back to review at least one of the pages.

⁴⁶ Respondents could type an answer or select “Don't know / unsure.” Those who selected “Don't know / unsure” skipped the follow-up question.

⁴⁷ Respondents could type an answer or select “No other messages.”

41. The Yes/No answer choices were randomized to guard against potential order effects. Respondents who selected “Yes” or “No” were then asked an open-ended follow-up question about their reasoning: “What makes you say that?”⁴⁸

42. All respondents were then asked whether they recalled anything about a “simple return” on either of the webpages. Respondents could select “Yes,” “No,” or “Don’t know / unsure.”⁴⁹ Respondents who said “Yes,” were asked whether they thought they have a “simple return.” Again, respondents could select “Yes,” “No,” “I would need more information,” or “Don’t know / unsure.”⁵⁰

43. Respondents who indicated they “would need more information” to determine whether they could file for free online or whether they have a “simple return” were asked where on the webpage they would “click” to find more information. Respondents were presented with a clickable version of the second webpage and were instructed to select the sections they would click to get more information. Respondents were able to click on as many portions of the webpage as they wanted.⁵¹ When selecting a portion of the webpage, the result was highlighted with a red box for emphasis. They could also “de-select” any portion by clicking it again.

44. After this question, respondents were directed to additional questions at the end of the survey.

⁴⁸ Respondents could type an answer or select “Don’t know / unsure.”

⁴⁹ Response options 1 and 2 were rotated to guard against order effects.

⁵⁰ Response options 1 and 2 were rotated to guard against order effects.

⁵¹ Respondents were also provided with checkboxes which indicated “Don’t know / unsure” or “Would not click on anything.” These response options were exclusive (i.e., respondents selecting one of these were not able to select any of the “clickable” areas on the webpage).

G. End of Survey Questions: All Respondents

45. After the main questionnaire, I presented a series of tax situations and instructed respondents to think about filing their 2023 taxes and asked which of the situations, if any, applied to them.⁵² Respondents who indicated that any of the following eight tax situations applied to them were classified as ineligible for H&R Block's Free Online product: 1) I will deduct real estate taxes and/or home mortgage interest, or 2) I will itemize deductions, or 3) I have income from gig work (e.g., Lyft/Uber, Door Dash), or 4) I have income from contract or freelancing work, or 5) I have income from my own business, or 6) I have income from a rental property or rental deductions, or 7) I have income from stocks, bonds, or other investment income, or 8) I have a Health Savings Account (HSA).⁵³

46. Respondents were also asked additional questions about whether they had filed their 2021 or 2022 taxes and whether these were filed online and which service/software (if any) they used to file their 2021 and/or 2022 taxes online. Respondents were also asked to report their annual household income. Additionally, respondents were asked whether they had taken a survey on any of the topics listed and whether they or anyone in their household worked in any of the industries listed. Respondents who indicated employment in a relevant industry and those who indicated they had taken a survey about online tax preparation and filing services in the past month were flagged for review.⁵⁴ At the end of the survey, respondents were told that the survey was

⁵² For each tax situation listed, respondents could indicate "This DOES apply to me," "This DOES NOT apply to me" or "I am not sure whether this does or does not apply to me." The order in which "This DOES apply to me" and "This DOES NOT apply to me" columns appeared was randomized to guard against order effects. This question was included at the end of my survey so as to not bias responses to questions in the main questionnaire.

⁵³ <https://www.hrblock.com/online-tax-filing/>, last accessed July 29, 2024.

⁵⁴ Respondents were also flagged if they selected "Don't know / unsure" on either of these questions. The survey was analyzed with and without these respondents and because no meaningful differences were observed and the removal would not impact my conclusions, therefore, these respondents are included in the analyses described herein.

being conducted on behalf of the FTC and were provided an opportunity to exclude their responses to the survey if they wished to do so. This question is presented below:

Q. This survey is being conducted on behalf of the Federal Trade Commission (FTC), an agency of the United States Government, about the reactions and experiences of potential customers to advertising for H&R Block's online tax filing services. The FTC investigates unfair and deceptive conduct by companies. The anonymous information you provide could help us further our mission under the FTC Act to protect consumers. The anonymous responses provided to this survey may be made available to our enforcement partners or in the course of litigation, as required by a court. The answers to this survey will not contain your personally identifiable information and will not be associated with your name in any way. The FTC will treat all survey responses as confidential and will handle the data as described in the privacy impact assessment for FTC Surveys and in the FTC's privacy policy, which you can read at <http://www.ftc.gov/ftc/privacy.shtm>. If you wish to opt out, please indicate this and we will honor this request and destroy your submission.

47. If a respondent indicated they wanted to exclude their responses, I asked an additional confirmation question to ensure their response was not in error:

- Q. You indicated you wish to exclude your responses to this survey. Are you sure?
1. Yes, exclude my responses to this survey⁵⁵
 2. No, you can include my responses to this survey

48. Following these final questions, respondents were thanked for their time and the survey ended.

H. Survey Stimuli: Commercial

49. To determine whether H&R Block's commercial advertising communicates a message that consumers can file their taxes for free using H&R Block's Free Online product, I tested the thirty second "It's Better with Block: Breakroom" commercial.⁵⁶ I understand that this

⁵⁵ Data were destroyed/removed by the panel provider for all respondents who selected this response option. In total, data from 54 respondents were removed.

⁵⁶ See, <https://www.youtube.com/watch?v=y30KJ0VUFY8>, last accessed July 29, 2024.

was an H&R Block commercial which aired during the 2024 tax season, when respondents would be completing their 2023 tax returns, promoting their Free Online product.

50. Documents produced by H&R Block suggest that they have been concerned with the impact of their advertising over the past decade, including the impact of the advertising for the Free Online product⁵⁷ (tracking, for example, consumer awareness of their ads and whether their ads motivate consumers to use H&R Block’s tax filing services).⁵⁸ An April 2024 report on the “performance” of the various H&R Block commercials indicated that the thirty second “Breakroom Free” commercial drove “the highest consideration” of all H&R Block ads amongst all tax filers and specifically amongst DIY filers.⁵⁹ In other words, amongst all H&R Block commercials, the “Breakroom Free” commercial generated the most consumer consideration for choosing H&R Block.⁶⁰ H&R Block’s in-market ad-tracking for the 2024 tax season further suggests that the thirty second “Breakroom Free File” commercial is amongst the two “most recognizable” H&R Block commercial ads amongst all filers.⁶¹

51. A screenshot from this commercial is shown in **Figure 1** below.

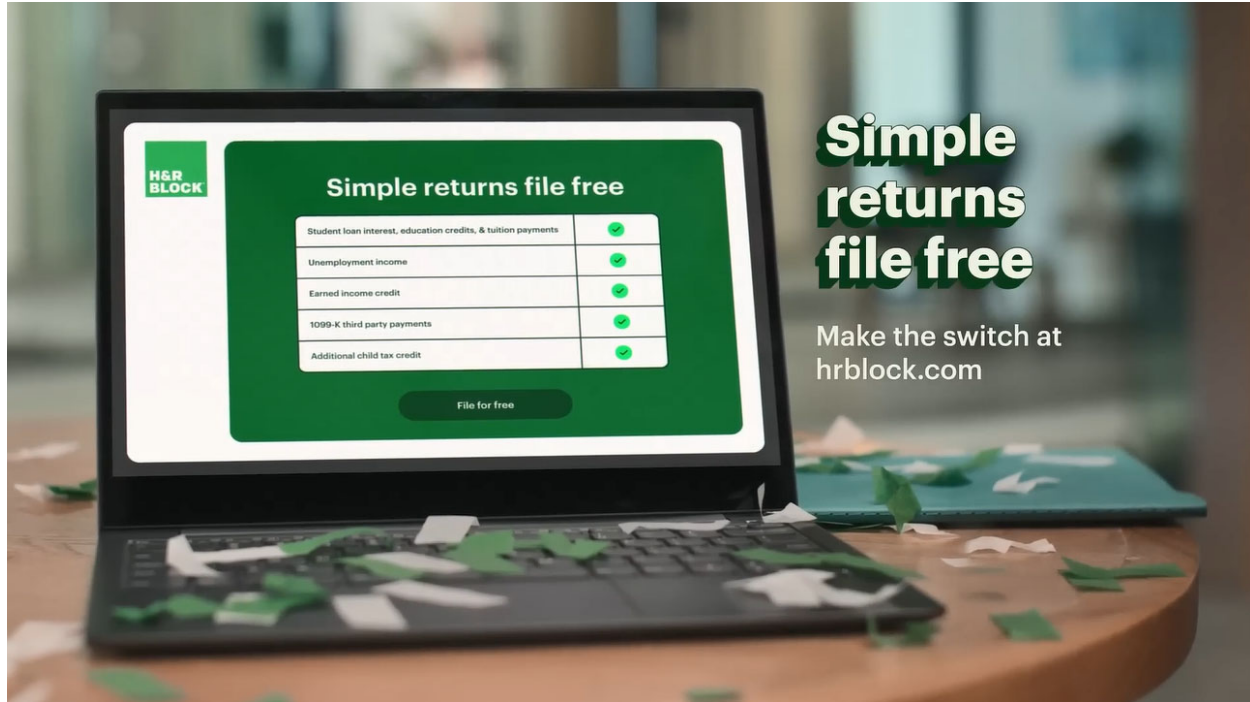
⁵⁷ See, e.g., HRBD_FTC_00149334 – HRBD_FTC_00149360 at 336, 347, HRBD_FTC_00149396 – HRBD_FTC_00149425 at 409.

⁵⁸ See, e.g., HRBD_FTC_00149967 – HRBD_FTC_00150018; HRBD_FTC_00157331; HRBD_FTC_00150058 – HRBD_FTC_00150145.

⁵⁹ HRBD_FTC_00149396 – HRBD_FTC_00149425 at 409, 415.

⁶⁰ HRBD_FTC_00149396 – HRBD_FTC_00149425 at 415, 419.

⁶¹ HRBD_FTC_00149517 – HRBD_FTC_00149524 at 519.

Figure 1: Screenshot of the Test Commercial

52. As indicated above, a survey designed to test consumer perceptions may also inadvertently include survey “noise,” and may elicit guessing or may generate responses unrelated to the specific element being tested. To measure the extent to which such responses are affecting the estimate, it is standard practice to measure the perceptions of a separate group of respondents using a control stimulus that does not include references to simple returns, free filing, or TurboTax.⁶²

53. Of course, survey respondents do not come to the research “tabula rasa,” but instead bring with them past experiences and beliefs. A control group allows the researcher to identify the impact of a single exposure to the test stimulus setting aside all other possible explanations. In this

⁶² *Diamond*, pp. 397-401. Diamond writes that “[c]ontrol groups and, as a second choice, control questions are the most reliable means for assessing response levels against the baseline level of error associated with a particular question,” p. 401.

case, some share of responses in the Control Group is likely to be the result of past exposure to H&R Block's advertising for its "free" DIY online products. I understand that H&R Block has been advertising its free online filing option since as early as the 2018 tax filing season and that this advertising has appeared in various forms. Examples of the types of statements made over time are shown below in **Figure 2**.⁶³

54. Advertisements featuring statements like those below regarding H&R Block's free DIY online products have appeared as television commercials airing during major sporting events and popular television shows.⁶⁴ Given the longevity of these campaigns, it is probable that at least some respondents had been exposed to this advertising prior to the current survey. In fact, H&R Block's own research suggests that consumers have been exposed to their "free" advertising. In a 2024 H&R Block study of 12,026 tax filers, approximately 31% indicated they had seen the thirty second "Breakroom Free File" ad prior to the survey.⁶⁵ Other H&R Block research indicates that their advertising conveyed the message that consumers can prepare and file their taxes for free. For example, in a 2017 document titled "TV Ad Results Week Ending 1/14/17," H&R Block reported that 54 percent of consumers shown the 30 second "Forest" advertisement (for the "More Zero" product) took away the message that they could prepare and file their taxes for free.⁶⁶ Similarly, a 2022 document titled "TV Ad Results Week Ending 1/29/22" notes that 49 percent of

⁶³ Also see HRBD_FTC_00149967 – HRBD_FTC_00150018 at 979 - 983; HRBD_FTC_00150058 – HRBD_FTC_00150145 at 082.

⁶⁴ HRBD_FTC_00003697 – HRBD_FTC_00003698 at 697; HRBD_FTC_00150058 – HRBD_FTC_00150145 at 145; HRBD_FTC_00002739, slide 46.

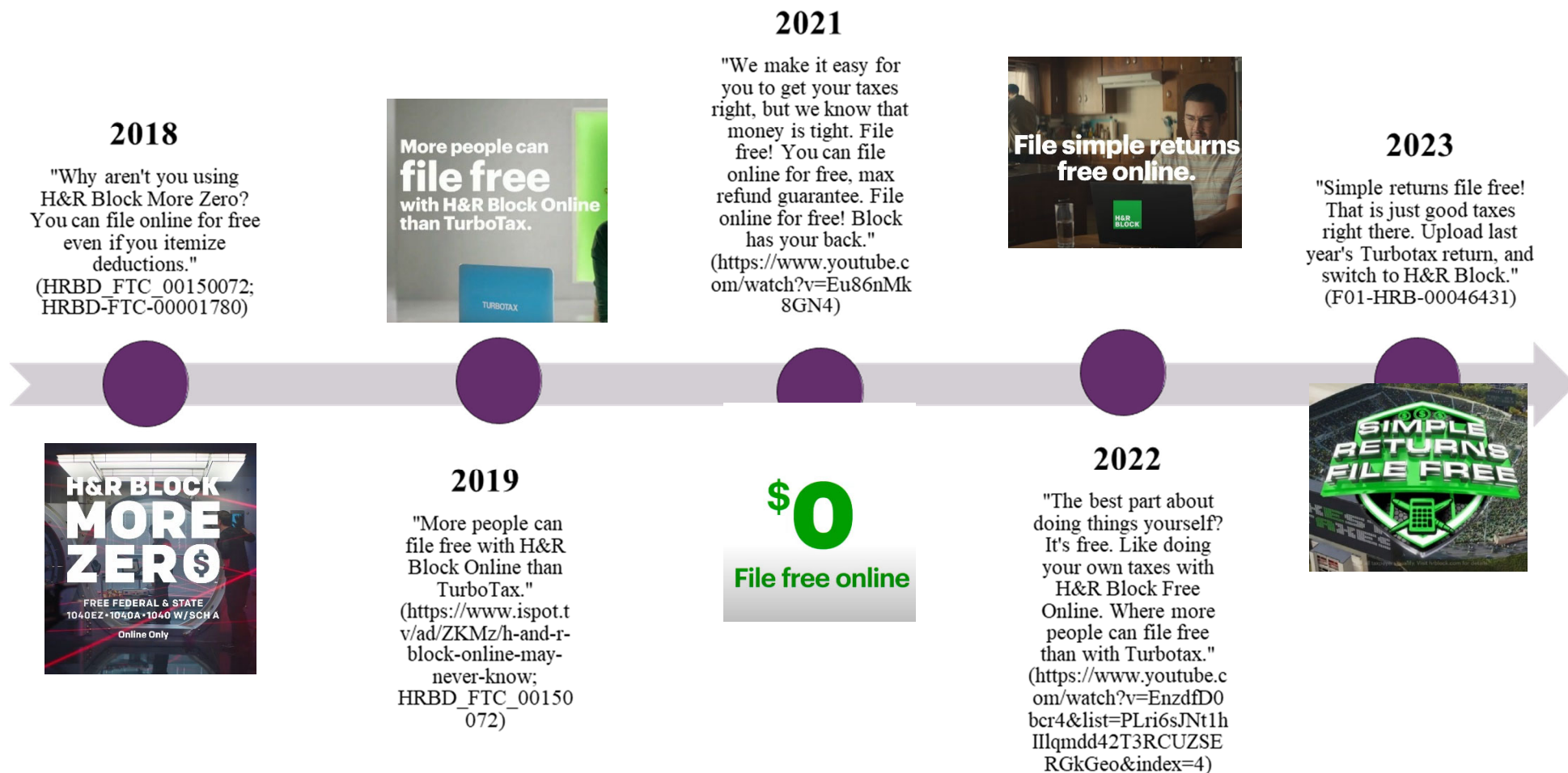
⁶⁵ HRBD_FTC_00149517 – HRBD_FTC_00149524 at 518 – 519.

⁶⁶ HRBD_FTC_00003536, slide 15.

consumers shown the “Simple Things” advertisement (advertising the H&R Block Free Online product) took away the message that they can file taxes for free.⁶⁷

⁶⁷ HRBD_FTC_00157331, slide 12.

Figure 2: H&R Block's Advertising of Free DIY Online Filing Options

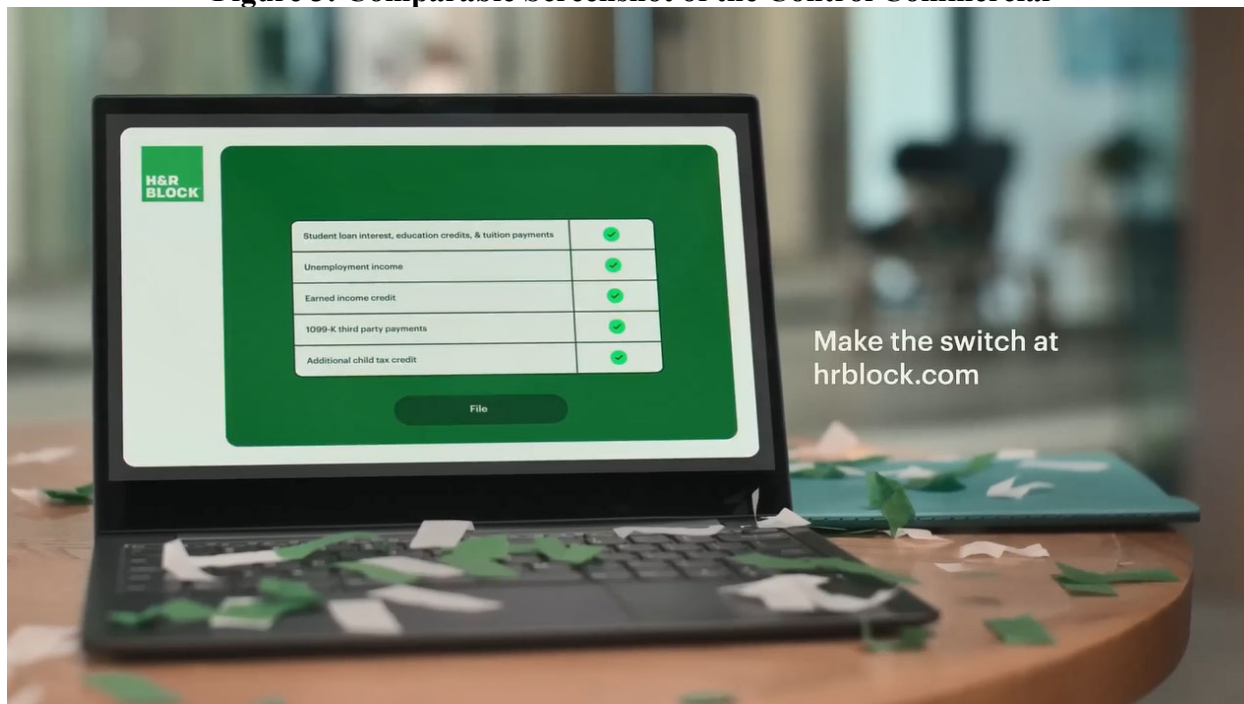


55. For the Control Group stimulus, I used the same commercial, but removed all references to simple returns, filing for free, and TurboTax.⁶⁸ Specifically, I removed the following elements:

- Removed actor saying “I was able to file free” at the ten second mark and the text on the screen that read “Simple returns file free” and text within the green button on the screen that read “File for free” was modified to read “File.”
- Removed actor saying “So long, TurboTax” at the twelve second mark along with the fine print that read “TurboTax is a registered trademark of Intuit, Inc.”
- Removed narrator saying “Tired of TurboTax?” and “file free and” at the 24-25 second mark. Also removed the text on the screen that read “Simple returns file free” and text within the green button on the screen that read “File for free.”
- Removed fine print on screen that read “H&R Block Free Online is for simple returns only. Not everyone qualifies. All tax situations are different. Additional fees may apply.” that appeared at the 28-29 second mark.

56. A screenshot of the Control commercial with references to simple returns and file for free removed is shown in **Figure 3** below.

⁶⁸ Removing this information reduced the length of the commercial from 30 seconds to 24 seconds.

Figure 3: Comparable Screenshot of the Control Commercial

I. Survey Stimuli: Website⁶⁹

57. In the Website Group, I showed respondents two pages from H&R Block’s website to evaluate whether H&R Block’s website communicates a message that consumers can file their taxes for free using H&R Block’s Free Online product.

⁶⁹ Prior to fielding the Tax Filing Survey, I conducted a pilot survey from March 5, 2024, to March 6, 2024, which utilized different Control Group stimuli for the Website Group. The control stimuli used in the pilot survey are attached as **Exhibit G**. After conducting the pilot, I tabulated the data and observed that the modifications made to the webpage were not effective at reducing the rate at which consumers who could not file for free believed they could file for free (i.e., deception rates remained high in both the Test Group and the Control Group). As such, I created a revised control stimuli where I added additional information to the webpages to clarify who *cannot* use H&R Block’s Free Online product rather than simply highlighting information about who can use H&R Block’s Free Online product. The only other modification made to the survey following the pilot was removing the word “free” from S18 which read “Have you used the free service/software offered by any of the following tax preparation companies to file your 2021 and/or 2022 taxes?”

58. Respondents in the Website Group were first shown H&R Block's homepage. Based on data produced by H&R Block, the homepage is the most visited webpage on the H&R Block website.⁷⁰

59. A truncated version of the homepage shown to Test Group respondents is shown in **Figure 4** and the homepage shown to Control Group respondents is shown in **Figure 5**.⁷¹ The full-sized images (and mobile stimuli) can be seen in **Exhibit H**.

⁷⁰ See, HRBD_FTC_00141753. These data suggest that, amongst various webpages included in the summary, www.hrblock.com/ has been the most visited webpage since 2021.

⁷¹ <https://www.hrblock.com/>, last accessed July 29, 2024. At the time this page was captured, there was a green banner on the top of the page that read "File today and secure your full Child Tax Credit when legislation passes. Get started >". This was removed from the Test and Control Group stimuli.

Figure 4: H&R Block Homepage: Test Group

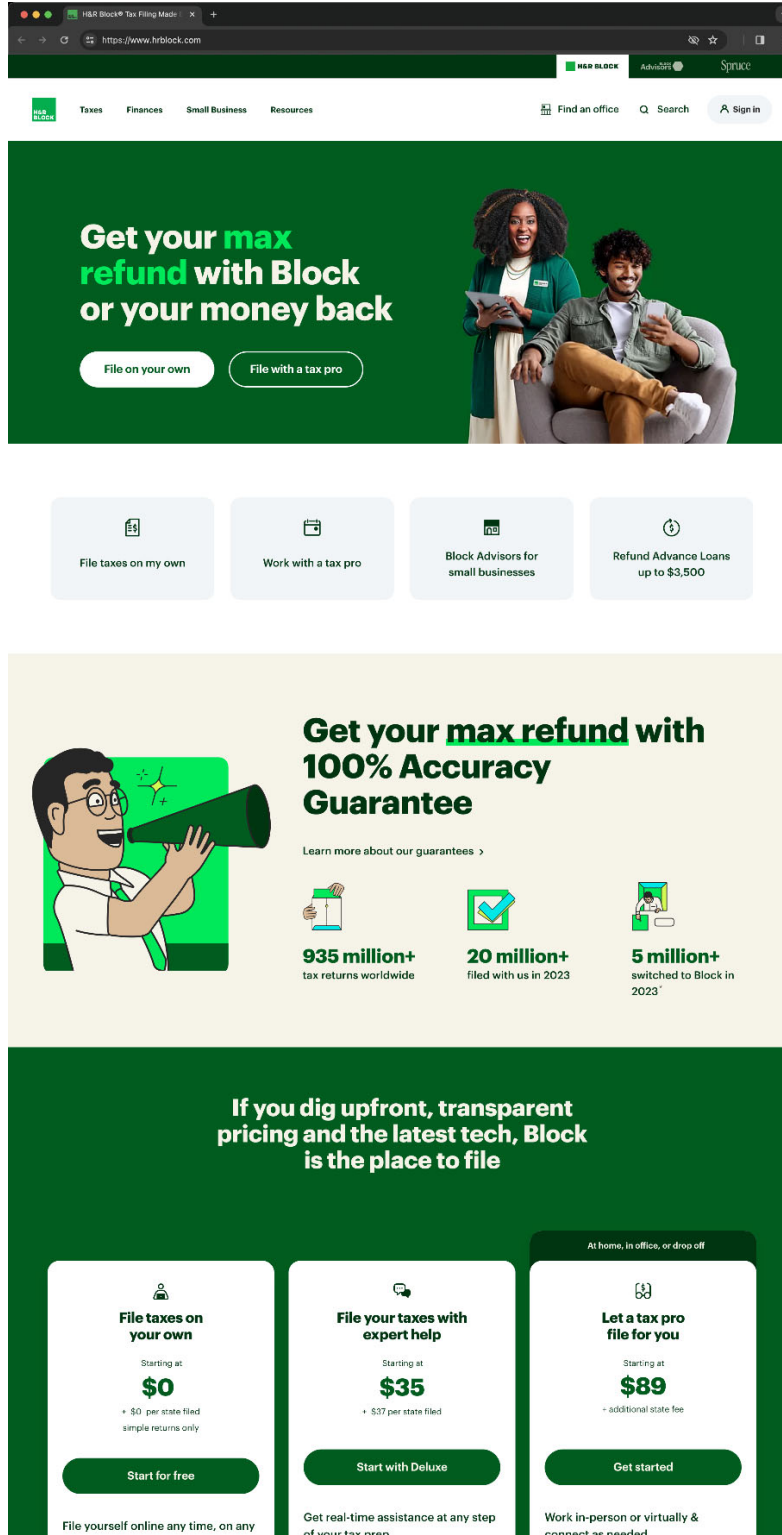


Figure 5: H&R Block Homepage: Control Group

The screenshot shows the H&R Block homepage with a dark green header and a main green hero section. The hero section features a couple sitting together and the text: "Get your max refund with Block or your money back". Below this are two buttons: "File on your own" and "File with a tax pro".

Below the hero section are four service cards:

- File taxes on my own
- Work with a tax pro
- Block Advisors for small businesses
- Refund Advance Loans up to \$3,500

The middle section has a light green background and features a cartoon character with a megaphone. The text reads: "Get your max refund with 100% Accuracy Guarantee". Below this is a link: "Learn more about our guarantees >".

Three statistics are displayed:

- 935 million+ tax returns worldwide
- 20 million+ filed with us in 2023
- 5 million+ switched to Block in 2023*

The bottom section has a dark green background and features the text: "If you dig upfront, transparent pricing and the latest tech, Block is the place to file". Below this are three service cards:

- File taxes on your own**: Starting at \$0 + \$0 per state filed. Button: "Get started".
- File your taxes with expert help**: Starting at \$35 + \$37 per state filed. Button: "Get started".
- Let a tax pro file for you**: Starting at \$89 + additional state fee. Button: "Get started".

Additional text at the bottom includes: "Most US Taxpayers DO NOT QUALIFY Form 1040 & limited additional forms ONLY", "Get real-time assistance at any step of your tax prep.", and "Work in-person or virtually & connect as needed.".

Figure 5: H&R Block Homepage: Control Group (Continued)

NOT FREE for common tax situations like:

- ✗ Rideshare/food delivery drivers, marketplace sellers
- ✗ Childcare expenses and HSAs
- ✗ Mortgage interest deduction
- ✗ Itemize deductions
- ✗ Report stocks, bonds, and other investment income

[Learn more >](#)

- Get help from a live expert & our AI Tax Assist NEW
- Designed for more complicated tax situations
- Options for deductions, investors, & self-employed

[Learn more >](#)

- Expert support for unique tax situations
- Request to work with the same pro or get a new one
- Save time and securely drop off or upload tax docs

[Learn more >](#)

Help me choose

	Free starting at \$0	Deluxe starting at \$35 <small>\$\$\$</small>	Premium starting at \$65 <small>\$\$\$\$</small>	Self-employed starting at \$85 <small>\$\$\$\$</small>
Earned Income Credit (EIC), Child Tax Credit (CTC), Deduct student tuition, payments, and loan interest, and/or Report your retirement income	Get started	Get started	Get started	Get started
Have a Health Savings Account (HSA)	✗	✓	✓	✓
Deduct real estate taxes and home mortgage interest	✗	✓	✓	✓
Organize contract, freelancing, gig work, and other self-employed income	✗	✓	✓	✓
Report stocks, bonds, and other investment income (Schedule D)	✗	✗	✓	✓
Report cryptocurrency sales (cryptocurrency taxes)	✗	✗	✓	✓
Claim rental income & deductions (Schedule E)	✗	✗	✓	✓
Claim your small business expenses	✗	✗	✗	✓
Report all business deductions and asset depreciation	✗	✗	✗	✓

60. Respondents were then shown the page that would appear if they clicked the “Learn more” button under “File taxes on your own.”⁷² Based on data produced by H&R Block, the second page shown to respondents is the second most visited webpage on the H&R Block website.⁷³ A truncated version of the Test Group stimulus (computer stimuli) can be seen below in **Figure 6** and the Control Group version can be seen below in **Figure 7**. The full-sized image (and mobile stimuli) can be seen in **Exhibit H**.

⁷² The versions of the homepage and the subsequent page that appears after clicking “Learn More” presented to respondents represent the versions of the webpages displayed on February 23, 2024. I note that H&R Block routinely makes modifications to their webpages. The versions of the pages I elected to use are representative of the pages that existed during the 2023 and 2024 tax seasons. See, **Exhibit I**.

⁷³ See, HRBD_FTC_00141753. These data suggest that, amongst various webpages included in the summary, www.hrblock.com/online-tax-filing/ has been the second most visited webpage since 2021.

Figure 6: “Learn More” Stimulus: Test Group

The screenshot shows the H&R Block website interface. At the top, there's a navigation bar with 'Taxes', 'Finances', 'Small Business', and 'Resources'. Below this is a search bar and a 'Sign in' button. The main content area features a 'Do-it-yourself taxes without the extra TurboCharges' headline. A filter section allows users to select various tax situations like 'Have kids', 'Own a home', etc. Below the filters are four pricing tiers: 'Free Online' (\$0), 'Deluxe' (\$35), 'Premium' (\$65), and 'Self-Employed' (\$85). Each tier lists specific services included. At the bottom, a 'Get your max refund with 100% Accuracy Guarantee' section features an illustration of a man with a megaphone and statistics: 935 million+ tax returns worldwide, 20 million+ filed with them in 2023, and 5 million+ switched to Block in 2023. A final banner promotes switching from TurboTax to H&R Block.

UNLIMITED TAX HELP

Figure 7: “Learn More” Stimulus: Control Group

★★★★★ 4.4 (398126)

Do-it-yourself taxes without the extra charges

Select all filters that apply to find your personal filing experience.

- Have kids
- Mortgage interest deduction
- Have an HSA
- Side gig or freelance
- Have investments
- Own rentals
- Self-employed
- Own a business

Free Online

Most US Taxpayers **DO NOT QUALIFY**
Form 1040 & limited additional forms **ONLY**

NOT FREE for common tax situations like:

- Rideshare/food delivery drivers, marketplace sellers
- Childcare expenses and HSAs
- Mortgage interest deduction
- Itemize deductions
- Report stocks, bonds, and other investment income

\$0
+ \$0 per state filed

Get started

Deluxe

Everything in Free Online, plus:

- Get help from a live expert & our AI Tax Assist
- Childcare expenses and HSAs
- Itemize deductions

\$35
~~\$55~~
+ \$37 per state filed

Get started

Premium

Everything in Deluxe Online, plus:

- Rental income
- Investments
- Sold cryptocurrency

\$65
~~\$85~~
+ \$37 per state filed

Get started

Self-Employed

Everything in Premium Online, plus:

- Rideshare/food delivery drivers, marketplace sellers
- Claiming business expenses

\$85
~~\$115~~
+ \$37 per state filed

Get started

Help me choose

	Free starting at \$0	Deluxe starting at \$35	Premium starting at \$65	Self-employed starting at \$85
Earned Income Credit (EITC), Child Tax Credit (CTC), Deduct student tuition, payments, and loan interest, and/or Report your retirement income	✓	✓	✓	✓
Have a Health Savings Account (HSA)	✗	✓	✓	✓
Deduct real estate taxes and home mortgage interest	✗	✓	✓	✓
Organize contract, freelancing, gig work, and other self-employed income	✗	✓	✓	✓
Report stocks, bonds, and other investment income (Schedule D)	✗	✗	✓	✓

61. As noted in Section IV.H. above, the inclusion of a Control Group allows me to “net out” pre-existing beliefs, including those that may be the result of prior exposure to H&R Block’s advertising for its free DIY online filing option, as well as other forms of survey “noise.” I made a series of changes to the two Control Group versions of the H&R Block webpages. These changes included:

- Modifying the presentation of the “Free Online” product such that Control Group respondents were provided with the clarification that most taxpayers do not qualify, as well as being provided with common tax situations that would exclude respondents from qualifying for the free version.
- Adding a “Comparison Chart” to both the homepage and subsequent “Learn More” page;
- Removing any mention of a “Simple return”; and,⁷⁴
- Removing references to TurboTax.⁷⁵

62. The changes outlined above (amongst other changes) are displayed in **Figure 8** and **Figure 9** below.


⁷⁴ This was removed due to the FTC’s allegation that this phrase is undefined and unclear.

⁷⁵ This was done because I understand that TurboTax has also heavily advertised free filing options.

Figure 8: Test/Control Group Differences to Homepage

Test Group:

If you dig upfront, transparent pricing and the latest tech, Block is the place to file


File taxes on your own


Starting at
\$0
+ \$0 per state filed
simple returns only

Start for free

File yourself online any time, on any device.

- Self-paced tax prep for [simple returns](#)
- Easy doc upload from phone, computer, or tablet
- [More forms for free](#) than TurboTax®

Learn more >


File your taxes with expert help

Starting at
\$35
+ \$37 per state filed


Start with Deluxe

Get real-time assistance at any step of your tax prep.

- Get help from a live expert & our AI Tax Assist NEW
- Designed for more complicated tax situations
- Options for deductions, investors, & self-employed

Learn more >

At home, in office, or drop off


Let a tax pro file for you

Starting at
\$89
+ additional state fee

Get started


Work in-person or virtually & connect as needed.

- Expert support for unique tax situations
- Request to work with the same pro or get a new one
- Save time and securely drop off or upload tax docs

Learn more >

*Control Group:*⁷⁶

If you dig upfront, transparent pricing and the latest tech, Block is the place to file


File taxes on your own

Starting at
\$0
+ \$0 per state filed


Get started

Most US Taxpayers DO NOT QUALIFY
Form 1040 & limited additional forms **ONLY**

NOT FREE for common tax situations like:

- ✗ Rideshare/food delivery drivers, marketplace sellers
- ✗ Childcare expenses and HSAs
- ✗ Mortgage interest deduction
- ✗ Itemize deductions
- ✗ Report stocks, bonds, and other investment income

[Learn more >](#)


File your taxes with expert help

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Get real-time assistance at any step of your tax prep.

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- Request to work with the same pro or get a new one
- Save time and securely drop off or upload tax docs

[Learn more >](#)

⁷⁶ Modifications include changing the text on the green buttons (i.e., “Start for free” and “Start with Deluxe”) to “Get started.” Modifications to the “File taxes on your own” box included removing references to “simple returns,” adding an explicit statement that “Most US Taxpayers DO NOT QUALIFY” along with tax situations that would make a consumer ineligible for Free Online product.

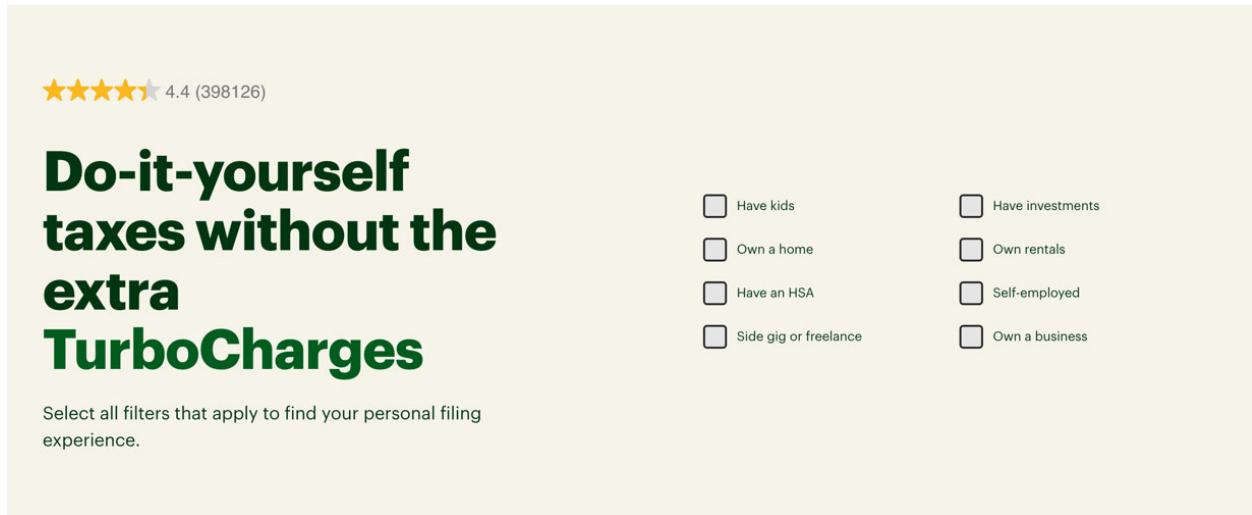
Control Group Addition: ⁷⁷

Help me choose				
	Free starting at \$0	Deluxe starting at \$35 <small>\$55</small>	Premium starting at \$65 <small>\$85</small>	Self-employed starting at \$85 <small>\$115</small>
Earned Income Credit (EITC), Child Tax Credit (CTC), Deduct student tuition, payments, and loan interest, and/or Report your retirement income	Get started ✓	Get started ✓	Get started ✓	Get started ✓
Have a Health Savings Account (HSA)	✗	✓	✓	✓
Deduct real estate taxes and home mortgage interest	✗	✓	✓	✓
Organize contract, freelancing, gig work, and other self-employed income	✗	✓	✓	✓
Report stocks, bonds, and other investment income (Schedule D)	✗	✗	✓	✓
Report cryptocurrency sales (cryptocurrency taxes)	✗	✗	✓	✓
Claim rental income & deductions (Schedule E)	✗	✗	✓	✓
Claim your small business expenses	✗	✗	✗	✓
Report all business deductions and asset depreciation	✗	✗	✗	✓

⁷⁷ This “Comparison Chart” was created using the chart that appears on the “Learn More” page after clicking “Compare filing options.” Notably, the “x” marks were enlarged and made red, and the lines outlining what qualifies respondents for “Free” were condensed into one line. This was done to clarify which tax situations make filers ineligible for H&R Block’s Free Online product.

Figure 9: Test/Control Group Differences to “Learn More” Webpage

Test Group:



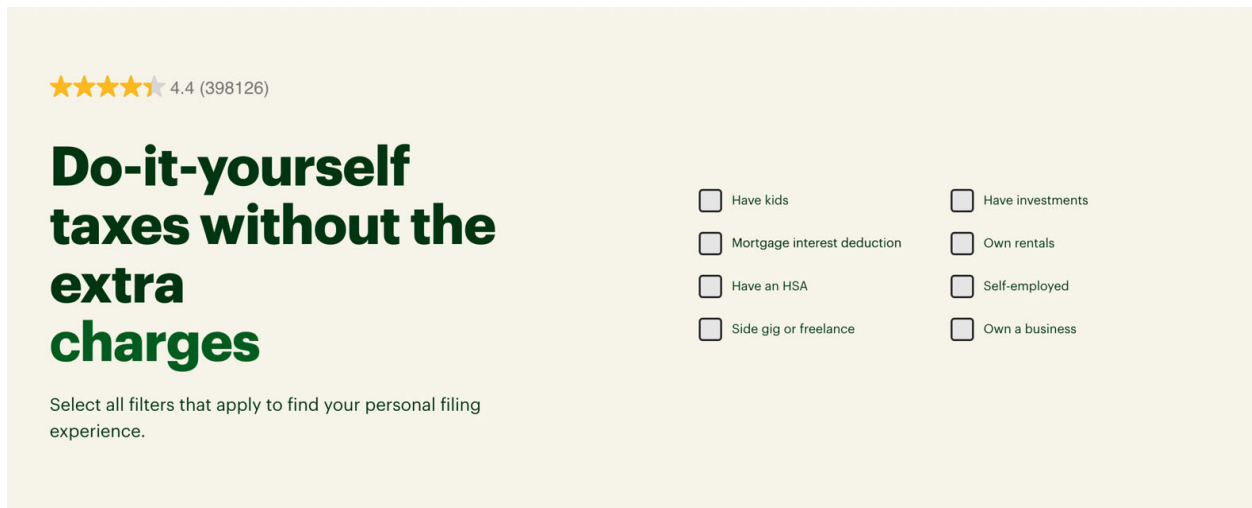
★★★★☆ 4.4 (398126)

Do-it-yourself taxes without the extra TurboCharges

Select all filters that apply to find your personal filing experience.

- Have kids
- Own a home
- Have an HSA
- Side gig or freelance
- Have investments
- Own rentals
- Self-employed
- Own a business

Control Group:⁷⁸



★★★★☆ 4.4 (398126)

Do-it-yourself taxes without the extra charges

Select all filters that apply to find your personal filing experience.

- Have kids
- Mortgage interest deduction
- Have an HSA
- Side gig or freelance
- Have investments
- Own rentals
- Self-employed
- Own a business

⁷⁸ The Control Group version modified “TurboCharges” to read “charges” and the “Own a home” checkbox was modified to read “Mortgage interest deduction.”

Test Group:

Recommended

Free Online >

More free forms than TurboTax®

- Simple returns
- Students
- Unemployment income
- W-2 employees
- Child Tax Credit (CTC)

\$0

+ \$0 per state filed

File for free

Deluxe >

Everything in Free Online, plus:

- Get help from a live expert & our AI Tax Assist **NEW**
- Childcare expenses and HSAs
- Itemize deductions

\$35

\$55

+ \$37 per state filed

Get started

Premium >

Everything in Deluxe Online, plus:

- Rental income
- Investments
- Sold cryptocurrency

\$65

\$85

+ \$37 per state filed

Get started

Self-Employed >

Everything in Premium Online, plus:

- Rideshare/food delivery drivers, marketplace sellers
- Claiming business expenses

\$85

\$115

+ \$37 per state filed

Get started

Control Group:⁷⁹

Recommended

Free Online >

Most US Taxpayers DO NOT QUALIFY

Form 1040 & limited additional forms ONLY

NOT FREE for common tax situations like:

- Rideshare/food delivery drivers, marketplace sellers
- Childcare expenses and HSAs
- Mortgage interest deduction
- Itemize deductions
- Report stocks, bonds, and other investment income

\$0

+ \$0 per state filed

Get started

Deluxe >

Everything in Free Online, plus:

- Get help from a live expert & our AI Tax Assist **NEW**
- Childcare expenses and HSAs
- Itemize deductions

\$35

\$55

+ \$37 per state filed

Get started

Premium >

Everything in Deluxe Online, plus:

- Rental income
- Investments
- Sold cryptocurrency

\$65

\$85

+ \$37 per state filed

Get started

Self-Employed >

Everything in Premium Online, plus:

- Rideshare/food delivery drivers, marketplace sellers
- Claiming business expenses

\$85

\$115

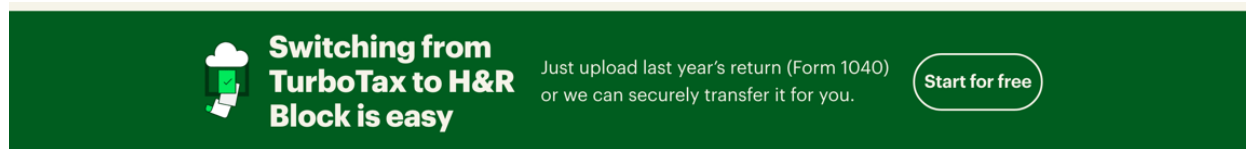
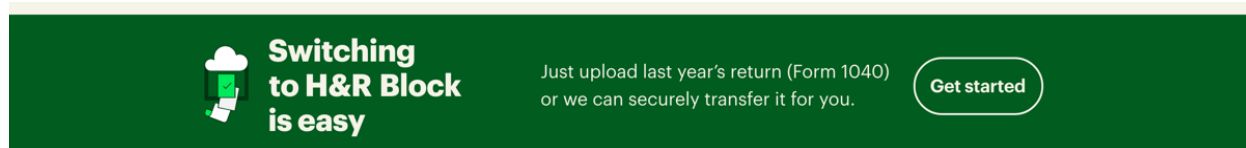
+ \$37 per state filed

Get started

⁷⁹ In the Control Group, the “File for free” button was modified to read “Get started.” Additionally, the “More free forms than TurboTax” language was removed, along with the tax situations listed below. Modifications also included adding an explicit statement that “Most US Taxpayers DO NOT QUALIFY” along with tax situations that would make a consumer ineligible for the Free Online product.

Control Group Addition: ⁸⁰

Help me choose				
	Free starting at \$0	Deluxe starting at \$35	Premium starting at \$65	Self-employed starting at \$85
	Get started	Get started	Get started	Get started
Earned Income Credit (EITC), Child Tax Credit (CTC), Deduct student tuition, payments, and loan interest, and/or Report your retirement income	✓	✓	✓	✓
Have a Health Savings Account (HSA)	✗	✓	✓	✓
Deduct real estate taxes and home mortgage interest	✗	✓	✓	✓
Organize contract, freelancing, gig work, and other self-employed income	✗	✓	✓	✓
Report stocks, bonds, and other investment income (Schedule D)	✗	✗	✓	✓
Report cryptocurrency sales (cryptocurrency taxes)	✗	✗	✓	✓
Claim rental income & deductions (Schedule E)	✗	✗	✓	✓
Claim your small business expenses	✗	✗	✗	✓
Report all business deductions and asset depreciation	✗	✗	✗	✓

Test Group:

Control Group:⁸¹

J. Pre-testing

63. As an additional quality control measure and to ensure that respondents would understand the survey and be able to provide reliable data, I conducted a pre-test of my survey instrument whereby respondents completed both the screener and the full questionnaire on a device of their choice while on a zoom call with a live interviewer from Veridata Insights. The pre-test included a total of four respondents.

64. Respondents were encouraged to “think aloud” while taking the survey or to point out anything that was confusing or unclear. The interviewer also asked respondents specific questions about the clarity and ease of answering the survey questions. If respondents indicated anything was unclear, they were asked what specifically was unclear and/or what could make the question clearer. Additionally, the interviewer probed respondents to evaluate what it means to

⁸⁰ This chart (described in footnote 77 above) appeared in place of the “Compare filing options” button that appeared in the Test Group version.

⁸¹ “Switching from TurboTax to H&R Block is easy” was modified to read “Switching to H&R Block is easy.” The “Start for free” button was also modified to read “Get started.”

have started, but not yet filed 2023 taxes, whether response options on certain questions were comprehensive, whether the response options that asked about various tax situations were unclear in any way, and whether the question to assess comfort level with their responses being included in the survey was clear and easy to understand.

65. The pre-test interviews revealed that respondents had no difficulty understanding the questions, could easily respond, and reported no technical issues with the survey. I concluded that in general, respondents found the survey clear and easy to understand.

66. As a result of the pre-test, I made changes to the survey prior to fielding, including:

- In screening question 10, for the response option “File your 2023 taxes,” I added “(due in April 2024)” to ensure clarity about which tax season the survey was referencing.
- For the Webpage Group, I added the following instructions to the thumbnail images: “Above are the webpages previously presented to you. You may click on a webpage to rereview.”
- On the second webpage (computer version) presented in the Webpage Group, I modified the clickable filters at the top of the webpage so that each “filter” was individually clickable. In the pre-test, if a respondent clicked any one of the filters at the top of the page, the entire section where the filters appeared would be highlighted. I modified the clickable area so that each filter could be highlighted individually.
- In question 8 in the Webpage Group, I modified the question stem from “What, if anything, on this webpage would you click on to get more information” to read “What, if anything, on this webpage would you click on if you were looking for more information.” I also added an additional statement about the website functionality that read: “Please note that website functionality has been disabled so you will not be shown additional information.”
- I removed the word “grid” from screening question 15 because the response options were not presented in a grid on a mobile device.

67. The pre-test interviewer script, as well as the pre-test data are attached as **Exhibit**

J.⁸²

⁸² The Control stimuli for the Website Group were the same stimuli utilized in the pilot (attached as **Exhibit G**) and the Test stimuli for those in the Website Group, as well as the Test and Control stimuli for the Commercial Group were the same stimuli used for the final survey sample (presented in **Exhibit H**).

V. SURVEY RESULTS

A. Screener Results⁸³

68. I surveyed a total of 1,725 respondents. As shown in **Table 1**, survey respondents were a mix of ages and included both men and women.

Table 1: Age by Gender

Age Group	Male		Female		Overall	
	Count	Percent	Count	Percent	Count	Percent
18-34	262	15.2%	149	8.6%	416	24.1%
35-54	489	28.3%	235	13.6%	724	42.0%
55+	260	15.1%	325	18.8%	585	33.9%
Total Respondents	1011	58.6%	709	41.1%	1725	100.0%

Note: Five respondents in age group 18-34 identified as "non-binary."

Source: NERA Tax Filing Survey – March 2024

69. Respondents were also from across the United States and **Table 2** below shows the geographic distribution of respondents.

Table 2: Respondents' Census Region

Region	Count	Percent
Northeast	323	18.7%
Midwest	358	20.8%
South	677	39.2%
West	367	21.3%
Total Respondents	1725	100.0%

Source: NERA Tax Filing Survey – March 2024

⁸³ The final datafile as well as the "all starts" datafile (i.e., the datafile including all respondents who attempted the survey) are included as **Exhibit K**.

70. **Table 3** shows the racial breakdown of respondents, and **Table 4** shows the proportion of Hispanic / Latino respondents. **Table 5** shows respondents' annual household income.

Table 3: Respondents' Race

Response	Count	Percent¹
White / Caucasian	1382	80.1%
Black or African American	206	11.9%
Asian	122	7.1%
American Indian or Alaskan Native	41	2.4%
Native Hawaiian or Pacific Islander	7	0.4%
Other	31	1.8%
Prefer not to answer	2	0.1%
Total Respondents	1725	

S8. Are you...?

Note: ¹ Percent does not sum to 100 because respondents could select multiple options.

Source: NERA Tax Filing Survey – March 2024

Table 4: Respondents' Ethnicity

Response	Count	Percent
Not Hispanic or Latino	1492	86.5%
Hispanic or Latino	228	13.2%
Other	3	0.2%
Prefer not to answer	2	0.1%
Total Respondents	1725	100.0%

S9. Are you...?

Source: NERA Tax Filing Survey – March 2024

Table 5: Respondents' Gross Annual Household Income

Response	Count	Percent
Less than \$25,000	158	9.2%
\$25,000 – \$49,999	371	21.5%
\$50,000 – \$69,999	348	20.2%
\$70,000 – \$99,999	371	21.5%
\$100,000 – \$149,999	276	16.0%
More than \$150,000	181	10.5%
Don't know / unsure	3	0.2%
Prefer not to answer	17	1.0%
Total Respondents	1725	100.0%

S19. Which of the following best describes your gross annual household income (i.e., income pre-tax)?

Source: NERA Tax Filing Survey – March 2024

71. A total of 1,103 respondents (63.9 percent) indicated they had “started, but not yet filed” their 2023 taxes, and 622 respondents (36.1 percent) had not yet started or filed their 2023 taxes. Only respondents who indicated that they would consider filing their 2023 taxes online could qualify for participation in the survey. A total of 228 respondents (13.2 percent) also indicated they would consider filing their 2023 taxes on paper.

72. As noted in Section IV.G. above, my survey concluded with a number of additional screening questions.⁸⁴ One of these questions asked respondents to indicate whether various tax situations apply to their 2023 taxes. **Table 6** below shows the results of this question. **Table 7** below shows these results by cell assignment. In total, 1,338 respondents (77.6 percent) indicated that one of the following apply: 1) I will deduct real estate taxes and/or home mortgage interest, or 2) I will itemize deductions, or 3) I have income from gig work (e.g., Lyft/Uber, Door Dash),

⁸⁴ Below I present the data to question S15. The data from screening questions S16, S17, and S18 are presented in **Exhibit L**.

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or 4) I have income from contract or freelancing work, or 5) I have income from my own business, or 6) I have income from a rental property or rental deductions, or 7) I have income from stocks, bonds, or other investment income, or 8) I have a Health Savings Account (HSA). I understand that these tax situations would make a consumer ineligible for H&R Block's Free Online product.

Table 6: Tax Situations That Apply to Respondents

Response	This DOES apply to me		This DOES NOT apply to me		I am not sure whether this does or does not apply to me	
	Count	Percent	Count	Percent	Count	Percent
I have W-2 income.	1167	67.7%	511	29.6%	47	2.7%
I have income from stocks, bonds, or other investment income.	777	45.0%	914	53.0%	34	2.0%
I will itemize my deductions.	593	34.4%	948	55.0%	184	10.7%
I will deduct real estate taxes and/or home mortgage interest.	552	32.0%	1103	63.9%	70	4.1%
I want live assistance to help me as I file my taxes if needed.	538	31.2%	977	56.6%	210	12.2%
I have a Health Savings Account (HSA).	411	23.8%	1266	73.4%	48	2.8%
I have Earned Income Tax Credits (EITC).	402	23.3%	1144	66.3%	179	10.4%
I have income from contract or freelancing work.	401	23.2%	1285	74.5%	39	2.3%
I will claim the Child Tax Credit (CTC).	385	22.3%	1283	74.4%	57	3.3%
I have income from my own business.	304	17.6%	1381	80.1%	40	2.3%
I have student tuition or student loan deductions.	298	17.3%	1388	80.5%	39	2.3%
I have income from gig work (e.g., Lyft/Uber, Door Dash)	282	16.3%	1406	81.5%	37	2.1%
I have income from a rental property or rental deductions.	136	7.9%	1564	90.7%	25	1.4%
I have unemployment income.	103	6.0%	1587	92.0%	35	2.0%
Total Respondents	1725		1725		1725	

S15. Thinking about filing your 2023 taxes, please look at the following and provide your responses.

Source: NERA Tax Filing Survey – March 2024

Table 7: Respondents Who Cannot File for Free by Condition

Response	Commercial				Webpage				Overall	
	Test		Control		Test		Control		Count	Percent
	Count	Percent	Count	Percent	Count	Percent	Count	Percent		
<i>Total who cannot file for free</i>	308	75.5%	320	79.0%	339	74.7%	371	81.0%	1338	77.6%
I have income from stocks, bonds, or other investment income.	189	46.3%	186	45.9%	192	42.3%	210	45.9%	777	45.0%
I will deduct real estate taxes and/or home mortgage interest.	125	30.6%	125	30.9%	146	32.2%	156	34.1%	552	32.0%
I will itemize my deductions.	128	31.4%	150	37.0%	139	30.6%	176	38.4%	593	34.4%
I have a Health Savings Account (HSA).	98	24.0%	85	21.0%	104	22.9%	124	27.1%	411	23.8%
I have income from contract or freelancing work.	88	21.6%	92	22.7%	102	22.5%	119	26.0%	401	23.2%
I have income from gig work (e.g., Lyft/Uber, Door Dash)	53	13.0%	64	15.8%	80	17.6%	85	18.6%	282	16.3%
I have income from my own business.	69	16.9%	72	17.8%	71	15.6%	92	20.1%	304	17.6%
I have income from a rental property or rental deductions.	32	7.8%	32	7.9%	26	5.7%	46	10.0%	136	7.9%
Total Respondents	408		405		454		458		1725	

S15. Thinking about filing your 2023 taxes, please look at the following and provide your responses.

Source: NERA Tax Filing Survey – March 2024

73. In the sections that follow below, I present the main questionnaire results for the ineligible respondents (e.g., those who indicated that they have income, deductions/itemizations, or an HSA that would prevent them from using H&R Block's Free Online product). Of the different tax situations, two are optional such that a respondent could decide not to claim the deductions/itemize and could then potentially qualify for free filing. Only 160 respondents (70 in the Test Groups and 90 in the Control Groups) selected only "I will itemize my deductions" and/or "I will deduct real estate taxes and/or home mortgage interest" and did not indicate an ineligible income situation (or having an HSA account) which demonstrates that most respondents have another, non-optional source of income (or an HSA) that would preclude them from using H&R Block's Free Online product. Because respondents affirmatively stated they intend to claim these "optional" deductions/itemize their deductions, I have included them as ineligible for H&R Block's Free Online product.

B. Commercial Results

74. Respondents were first asked to report the main message(s) communicated by the commercial. Many of the Test Group respondents not eligible for the free product indicated the commercial suggested consumers should switch to H&R Block.⁸⁵ A number of these respondents also referenced "free," stating that the commercial indicated that consumers can file for free using H&R Block's online product⁸⁶ and consumers can file for free if they have a simple/basic return.⁸⁷

⁸⁵ See e.g., Respondents 110, 188, 262, 314, 373, 478, 640, 872, 946, 978, 1069, 1095, 1160, 1246, 1283, 1354, 1359, 1387, 1597, 1696, 2004, 2030, 2131, 2381, 4352, 8619, 9101, 9480, 9489, 9684, 9704, 9735, 2385, 2447, 10001, 10602, 10727, 10929, 10972, 10987, 11190, 11226, 11247, 11327, 11739, and 11792.

⁸⁶ See e.g., Respondents 125, 165, 228, 260, 321, 423, 1112, 1114, 1306, 1350, 1524, 1624, 2160, 2901, 2902, 8787, 8840, 8917, 9145, 9261, 9381, 9500, 9853, 9904, 10013, 10085, 10178, 10231, 10297, 10409, 10508, 10591, 11005, 11021, 11335, 11336, 11378, and 11563.

⁸⁷ See e.g., Respondents 159, 659, 689, 696, 1238, 1654, 10925, 2917, 4382, 8775, 10094, 10425, and 10896.

75. In contrast, many of the Control Group respondents not qualified for the free product indicated that the main messaging was simply that consumers can file online with H&R Block,⁸⁸ that H&R Block makes taxes easy,⁸⁹ and noted messaging related to switching to H&R Block for taxes.⁹⁰ Unsurprisingly, few Control Group respondents mentioned messaging about filing for free.⁹¹

76. The majority of respondents in the Test Group believed, based on the commercial, that they would be able to file for free using H&R Block's Free Online product. As shown in **Table 8**, 69.8 percent of Test Group respondents who have a tax situation that may make them ineligible for H&R Block's Free Online product were deceived by the commercial and believed that they could file their taxes for free online with H&R Block. In the Control Group, 52.2 percent of those not qualified believed based on the commercial that they could file their taxes for free using H&R Block's Free Online product.⁹² These results demonstrate that the at-issue statements and representations from a single commercial cause a net rate of 17.6 percentage points of respondents to be deceived and believe that they can use H&R Block's Free Online product. The difference in

⁸⁸ See e.g., Respondents 145, 235, 379, 1086, 1128, 1218, 1553, 1573, 2219, 2354, 2503, 4483, 4588, 4589, 4604, 4633, 4646, 4712, 4829, 5128, 5396, 5747, 5806, 6180, 6596, 6801, 6922, 6992, 7102, 7356, 7410, 7483, 8317, 8439, 8510, 8692, 9360, 9436, 9466, 9594, 9741, 10021, 10022, 10027, 10417, 10515, 10526, 10633, 10764, 10911, 10994, 11144, 11189, 11613, and 11760.

⁸⁹ See e.g., Respondents 167, 339, 647, 685, 835, 843, 984, 1084, 1196, 1254, 1304, 1314, 1430, 1462, 1491, 1516, 1557, 2027, 2110, 2141, 2190, 2312, 2340, 2497, 2818, 2860, 2887, 2915, 4377, 4393, 4445, 4448, 4557, 4580, 4615, 4691, 4764, 4807, 4860, 5054, 5537, 5597, 5672, 5828, 6056, 6097, 6113, 6301, 6359, 6465, 6495, 6501, 6502, 6658, 6735, 6859, 7229, 7313, 7375, 7539, 7591, 7606, 7652, 7691, 7703, 7759, 8323, 8354, 8603, 8703, 8857, 8862, 8884, 8920, 9173, 9192, 9226, 9241, 9366, 9463, 9577, 9590, 9673, 9754, 9824, 9835, 9956, 10050, 10090, 10341, 10783, 10814, 10819, 10914, 10981, 11103, 11153, 11204, 11254, 11286, 11339, 11380, 11440, 11700, and 11727.

⁹⁰ See e.g., Respondents 174, 698, 1053, 4571, 4665, 4697, 4773, 4775, 5183, 5732, 6568, 6674, 7151, 7371, 7568, 8246, 8307, 8582, 8616, 8649, 9492, 9875, 10073, 10494, 10506, 10548, 10620, 10650, 10861, 10918, 11215, 11307, 11325, 11373, 11416, and 11526.

⁹¹ See e.g., Respondents 517, 596, 4471, 7371, and 10169.

⁹² As noted in Section IV.H., it is likely that some portion of Control Group respondents entered the survey with pre-existing beliefs regarding H&R Block's Free Online product. For example, Respondent 4773 indicated they could file for free because "[t]hey have always had a free option." Respondent 5537 indicated they believed they could file for free because "I know you can file for free with TurboTax. In order to compete with them I would assume H&R Block allows you to file for free as well." and Respondent 5645 stated "H&R Block has been known to have promotions."

rates of deception between the Test and Control Groups is statistically significant.⁹³ Stated another way, even controlling for potential exposures to a longstanding “free” advertising campaign, the survey demonstrates that a single exposure to the at-issue statements causes a 33.7 percent increase in ineligible respondents believing that they can use H&R Block’s Free Online product.⁹⁴

Table 8: Ineligible Respondents: Can File for Free Online With H&R Block

Response	Test		Control		Net
	Count	Percent	Count	Percent	
Yes	215	69.8%	167	52.2%	17.6%
No	28	9.1%	28	8.8%	--
I would need more information	59	19.2%	105	32.8%	--
Don’t know / unsure	6	1.9%	20	6.3%	--
Total Ineligible Respondents	308	100.0%	320	100.0%	

Q4. Based on what you heard and saw in the commercial, do you think you can file your 2023 taxes for free online with H&R Block?

Source: NERA Tax Filing Survey – March 2024

77. In response to a follow-up question about why respondents thought they could/could not file for free, ineligible Test Group respondents (i.e., Test Group respondents who thought they could file for free when they have a tax situation that may preclude them from filing

⁹³ A z-test of significance between Test and Control Group respondents who were ineligible for H&R Block’s Free Online product, but who believed they could file for free online with H&R Block yields a p-value of <.00001. This p-value is less than .05, indicating there is a statistically significant difference between the two groups at the 95% confidence interval.

⁹⁴ This is calculated simply using the following formula: $\left(\frac{69.8-52.2}{52.2}\right) \times 100$.

for free) stated that they thought they could file for free because the commercial said so,⁹⁵ because they have a simple return,⁹⁶ or based on their prior experience.⁹⁷

78. Respondents were then asked whether they recall seeing anything about a “simple return” in the commercial. As shown below in **Table 9**, 59.4 percent of Test Group respondents and 46.3 percent of Control Group respondents recalled messaging related to a “simple return.”

Table 9: Ineligible Respondents: See Anything About "Simple Return"

Response	Test		Control	
	Count	Percent	Count	Percent
Yes	183	59.4%	148	46.3%
No	70	22.7%	116	36.3%
Don't know / unsure	55	17.9%	56	17.5%
Total Ineligible Respondents	308	100.0%	320	100.0%

Q6. Do you recall seeing or hearing the phrase “simple return” in the commercial?

Source: NERA Tax Filing Survey – March 2024

79. These results likely demonstrate that “simple return” (particularly as it was language removed from the Control Group) does not have a clear or consistent meaning. Therefore, it is unlikely that H&R Block’s use of this term provides any clarity for consumers as to who can or cannot use their Free Online product.

⁹⁵ See e.g., Respondents 110, 125, 165, 240, 260, 358, 423, 478, 872, 946, 1069, 1112, 1114, 1283, 1306, 1350, 1464, 1497, 1524, 1597, 1624, 1696, 1958, 1980, 2329, 2427, 2447, 2901, 4355, 4381, 4392, 4438, 4478, 4481, 4496, 4732, 4793, 4984, 5432, 5438, 5495, 5571, 5726, 5727, 5927, 5955, 6006, 6131, 6215, 6371, 6522, 6617, 6635, 6662, 6708, 6850, 6963, 6999, 7032, 7099, 7457, 7475, 7554, 7611, 7694, 8538, 8540, 8592, 8619, 8652, 8676, 8787, 8830, 8876, 9065, 9079, 9101, 9381, 9446, 9489, 9500, 9525, 9612, 9616, 9684, 9803, 9853, 9904, 9940, 10013, 10060, 10094, 10178, 10231, 10287, 10469, 10527, 10530, 10591, 10602, 10727, 10850, 10875, 10906, 11027, 11058, 11111, 11125, 11202, 11255, 11285, 11294, 11305, 11321, 11327, 11335, 11378, and 11792.

⁹⁶ See e.g., Respondents 689, 696, 2131, 2222, 2917, 4404, 4710, 4825, 5165, 6403, 8302, 9873, 10001, 10392, 10896, 11336, and 11563.

⁹⁷ See e.g., Respondents 1095, 1160, 1387, 2176, 5190, 7545, and 8287.

80. Next, respondents were asked a closed-ended question to assess whether they think they have a “simple return.” As shown in **Table 10** below, many respondents who have a tax situation that may make them ineligible for H&R Block’s Free Online product believed they have a “simple return.” In the Test Group, 34.7 percent of those unable to file for free thought they had a “simple return,” compared to 27.8 percent in the Control Group. This yields a net 6.9 percent. There is not a statistically significant difference between the beliefs between the Test Group and the Control Group indicating that perceptions related to whether a respondent has a “simple return” are not caused by the commercial.⁹⁸ In other words, the differences in beliefs about “simple return” between the Test and Control here are likely due to random variation between the two groups.

Table 10: Ineligible Respondents Belief Regarding "Simple Return"

Response	Test		Control		Net
	Count	Percent	Count	Percent	
Yes	107	34.7%	89	27.8%	6.9%
No	45	14.6%	36	11.3%	--
I would need more information	24	7.8%	18	5.6%	--
Don't know / unsure	7	2.3%	5	1.6%	--
Did not see / hear anything about "simple return"	125	40.6%	172	53.8%	
Total Ineligible Respondents	308	100.0%	320	100.0%	

Q7. Based on this commercial, do you think you have a “simple return”?

Source: NERA Tax Filing Survey – March 2024

C. Website Results

81. Respondents were asked about the main message(s) communicated by the webpages. Test Group respondents noted a variety of main message(s) including: use H&R Block

⁹⁸ A z-test of significance between Test and Control Group respondents who were ineligible for H&R Block’s Free Online product, but who believed they have a “simple return” yields a p-value of .061. This p-value is greater than .05, indicating there is not a statistically significant difference between the two groups at the 95% confidence interval.

to file taxes,⁹⁹ filing taxes with H&R Block is easy,¹⁰⁰ maximum refund,¹⁰¹ or noted comparative messages to TurboTax/other competitors.¹⁰² Many Control Group respondents took away similar main message(s) including: use H&R Block to file taxes,¹⁰³ filing taxes with H&R Block is easy,¹⁰⁴ maximum refund,¹⁰⁵ or noted comparisons to competitors.¹⁰⁶

82. Ineligible Test Group respondents (i.e., respondents who believed they would be able to file for free, but who have situations that would make them ineligible for H&R Block's Free Online product) noticed the variable filing options available with H&R Block despite believing they could use the Free Online product. Below I provide a few examples illustrating this type of response:

- There are lots of options of how to do the taxes (Respondent 743)
- The main messages being communicated to me were there are many ways to file taxes with H&R Block. You can file yourself, get help, or have a professional do it for you. (Respondent 1378)
- You have options to either file online on your own or file online with the help of a block advisor. (Respondent 1436)
- That you have several different options for filing your taxes. (Respondent 3260)
- They have different options to prepare taxes depending on what you need (Respondent 5135)
- it is easy and has multiple choices for filing (Respondent 13108)
- H&rR [sic] block has multiple programs for people who want to file their taxes. Including a free option all the way up to expert help. They also can help ypu determine which program is best for you. They also have a new AI enhanced option. They offer a loan on you refund. They promise you will get ypur max refund available. (Respondent 8381)

⁹⁹ See e.g., Respondents 407, 1307, 2515, 3096, 3135, 5494, 5625, 10932, 11029, and 12952.

¹⁰⁰ See e.g., Respondents 347, 1088, 1504, 1609, 2804, 2851, 4995, 5809, 6921, and 11544.

¹⁰¹ See e.g., Respondents 132, 246, 333, 434, 836, 1010, 1126, 1394, 1415, 1535, 5022, 5297, 5349, 7954, 7966, 8356, 8395, 8583, 8742, 8786, 9168, 9765, 10504, 10740, 10806, 10856, 10919, 11017, 11217, 11424, 12123, 12863, and 12908.

¹⁰² See e.g., Respondents 434, 2852, 2921, 5210, 5587, 5677, 7141, 7470, 7774, 8025, 8430, 8558, 10010, 10038, and 11201.

¹⁰³ See e.g., Respondents 7452, 8892, 9482, 9630, 9971, 10728, 11381, 12385, and 12460.

¹⁰⁴ See e.g., Respondents 1934, 2021, 2845, 3102, 3446, 3790, 3987, 4072, 5391, 5911, 5931, 6520, 7190, 7598, 8797, 9363, and 9643.

¹⁰⁵ See e.g., Respondents 2138, 2232, 8897, 9570, 9879, 9918, 10426, 11328, 11425, 11500, 12354, 12878, 12901, and 13084.

¹⁰⁶ See e.g., Respondent 12543.

- That you have various options when filing your taxes (Respondent 5825)
- You can file your taxes on your own or with the help of an H&R Block tax expert. (Respondent 7987)
- That H&R Block can get you the maximum refund you are allowed and they have a variety of options from free filing to a tiered paid offerings. (Respondent 8117)
- you can file your taxes by yourself, with an agents help, or fully let them file your taxes (Respondent 9997)
- Free! Do it yourself for free, an option to have your return reviewed or done by a tax expert. I can also get my refund deposited up to 6 days early. Tax returns done by their tax experts are guaranteed. (Respondent 12646)

83. Ineligible Test Group respondents deceived by the webpages indicated that they could file using the free product and would only pay if you needed “expert” help or assistance:

- That you can file your taxes for free or put the tax pro to help you (Respondent 525)
- There are many options to choose from with H&R Block from filing on my own for free or a small su [sic] to using professional help for a fee (Respondent 1355)
- I can start filing my taxes free, and if I need help I can pay a fee and get 100% accuracy. (Respondent 3203)
- Get your taxes filed and the maximum refund without extra charges on your own, or have help from an advisor or AI (Respondent 3204)
- That you can file completely for free or choose to use a tax pro, that you can use Spruce and get your return early, that they maximize your refund, and that millions have switched to them from turbo tax (Respondent 5210)
- Options to do it all yourself or use help for a fee (Respondent 6433)
- Do it yourself taxes for free. OR you can pay a small fee to have an expert help you. (Respondent 6565)
- That you can max your refund By doing your taxes yourself or with AI or a expert and If you do it yourself it's free (Respondent 7736)
- you can do it free or pay for help or just have them do it (Respondent 8566)
- you can do your own taxes for free or for a fee with block helping (Respondent 8914)
- Can e-file through H&R Block on your own for free, with help at \$35 (add for state) and by pro at \$89 (add for state). (Respondent 10475)
- There are options to how much you need to pay to have your taxes done based on your level of comfort with completing the taxes yourself. (Respondent 10780)

84. These responses suggest that some amount of misperception may be driven by the general belief that fees are only incurred when assistance is required. For example, Control Group respondents also indicated that filing is free unless help is required:

- That you could file for free or use one of their tax pros for assistance for a price (Respondent 12162)
- There are multiple options available at hrblock.com to file taxes for free, with assistance at 35 usd and let someone file the taxes for 89 usd (Respondent 12159)
- you can file you tax return for free or get professional help. (Respondent 10956)
- It's free to file if you do it yourself, its \$0 if you get help, It's \$80 if they file for you (Respondent 9245)
- Get your maximum refund and don't have to pay extra charges when you do it yourself (Respondent 3460)

85. While respondents in both the Test and Control share some of the same misperceptions that charges are incurred only when assistance is required, Control Group respondents, who were not deceived, were apt to cite to the clarifying information:

- Block offers several tax prep options at various price points, guarantees accuracy and max refund. Most people won't qualify to file for free. (Respondent 1864)
- that most people dont qualify to file for free (Respondent 2151)
- they have several packages to do your taxes yourself. most come with a price. nothing in this world is really free (Respondent 2392)
- The main message is that HR Block has several options for people who want to file their taxes, depending on what their tax situation is (self-employed, premium, etc.) There is also an option to get various levels of support from tax professionals, at an added cost. Most people will not be able to file taxes for free and therefore are going to have to pay money to do so. HR Block also claims you can get your maximum refund or you will get your money back. (Respondent 3990)
- Hr block has tax prep options for everyone, including a free file for those that qualify (Respondent 5450)
- you can do it yourself but not for free unless your filing is extremely basic. (Respondent 5565)
- I see the the term "most people do not qualify" for the free returns is finally being pointed out right at the start. (Respondent 6620)
- It is not free for most and lists options with price. (Respondent 7612)
- Maximum refund guaranteed Free online does not apply for most people (Respondent 9497)
- that you can do your basic taxes for free but if you have more complicated taxes, like claiming mortgage interest or a small business owner or have investment income you will need to pay a fee. also there is a variety of help available from AI to having a tax pro fill out your forms. (Respondent 9920)
- That it is not hard to do your taxes yourself with the HRBlock program. If you have an average situation it will cost about \$35 but could be more. Hardly anyone

qualifies for free. You can get your refund quickly, especially if you use the other product (Spruce). (Respondent 10261)

- Get your taxes done for free, oops you don't qualify so here is your best option (Respondent 13047)

86. Respondents were then asked whether they believed, based on the information shown, they could file their taxes for free online with H&R Block. As shown in **Table 11** below, 69.0 percent of Test Group respondents ineligible for H&R Block's Free Online product were deceived and believed they could file their taxes for free online with H&R Block compared to 53.1 percent of Control Group respondents.¹⁰⁷ The difference between these rates of deception is statistically significant.¹⁰⁸ This yields a net rate of 15.9 percent or a 29.9 percent increase¹⁰⁹ in the rate of ineligible consumers believing that they could use H&R Block's Free Online product.

Table 11: Ineligible Respondents: Can File for Free Online With H&R Block

Response	Test		Control		Net
	Count	Percent	Count	Percent	
Yes	234	69.0%	197	53.1%	15.9%
No	55	16.2%	132	35.6%	--
I would need more information	38	11.2%	32	8.6%	--
Don't know / unsure	12	3.5%	10	2.7%	--
Total Ineligible Respondents	339	100.0%	371	100.0%	

Q4. Based on what you reviewed on these webpages, do you think you can file your 2023 taxes for free online with H&R Block?

Source: NERA Tax Filing Survey – March 2024

¹⁰⁷ As noted in Section IV.H., it is likely that some portion of Control Group respondents entered the survey with pre-existing beliefs regarding H&R Block's Free Online product. For example, some Control Group respondents noted that they believed they could file for free because they had filed with H&R Block in the past. Respondent 3695 stated "i have filed with them in the past," Respondent 12830 said "i have used h and r in the past," and Respondent 12840 stated "I've actually filed with them before."

¹⁰⁸ A z-test of significance between Test and Control Group respondents who were ineligible for H&R Block's Free Online product, but who believed they could file for free online with H&R Block yields a p-value of <.00001. This p-value is less than .05, indicating there is a statistically significant difference between the two groups at the 95% confidence interval.

¹⁰⁹ This is calculated simply using the following formula: $\left(\frac{69.0-53.1}{53.1}\right) \times 100$.

87. In response to a follow-up question about why respondents thought they could file for free, deceived Test Group respondents indicated they believed they could file for free because it was an advertised option:

- It says file for free (Respondent 333)
- Because they have a bundle where you can do it for free (respondent 347)
- There is a "Free Online" filing options with H&R block on the webpages. (Respondent 407)
- It says "Free" (Respondent 434)
- It says on the website \$0 to file (respondent 525)
- the page clearly states that a free filing is an option (Respondent 1504)
- Looking on their website I can see where it says its free. (Respondent 1514)
- Because it says can file for free (respondent 2804)
- Because it shows free online options (Respondent 2961)
- \$0 fee for easy filing it what it says (Respondent 2996)
- There was a box marked free (Respondent 3096)
- Because the very first option was for free (Respondent 3135)
- They offer a free version (Respondent 3142)
- It was one of their package options (Respondent 5209)
- Because it says so. There's a free option and there are paid options if you want to use them (respondent 5210)
- Because it says can file for free (Respondent 2804)
- It says it. First option (Respondent 6433)
- I see the words Free Online which I interpret that to mean I can file my taxes on line for free using Block software. (Respondent 9666)
- There is a "free online" option (Respondent 11495)

88. Control Group respondents who were deceived cited the existence of a free option,¹¹⁰ a belief that they have a basic tax return,¹¹¹ indicated that they would not need assistance so would qualify for free filing,¹¹² or mentioned the advertising for “no extra charges.”¹¹³

¹¹⁰ See e.g., Respondents 1934, 2016, 2052, 2061, 2186, 2249, 2982, 3446, 3481, 3521, 3735, 3777, 3778, 3781, 3812, 3837, 5857, 6574, 9643, 10443, 10547, 10733, 10799, 10860, 11182, 11199, 11222, 11328, 11398, 12135, 12200, 12295, 12385, 12394, and 13089.

¹¹¹ See e.g., Respondents 3988, 4072, 5969, 7546, 9630, 9788, 10054, 12136, 12382, and 12901.

¹¹² See e.g., Respondents 3459, 3460, 12162, 12460, and 12486.

¹¹³ See e.g., Respondents 3460, 3521, 3566, 3777, 5391, 5471, 5849, 6106, 6427, 6570, 10747, 11264, 11310, 12242, and 12394.

89. Respondents were then asked whether they recall seeing anything about a “simple return” on either of the webpages. As shown below in **Table 12**, 69.0 percent of Test Group respondents and 58.8 percent of Control Group respondents recalled messaging related to a “simple return” on one of the webpages.

Table 12: Ineligible Respondents: See Anything About "Simple Return"

Response	Test		Control	
	Count	Percent	Count	Percent
Yes	234	69.0%	218	58.8%
No	60	17.7%	91	24.5%
Don't know / unsure	45	13.3%	62	16.7%
Total Ineligible Respondents	339	100.0%	371	100.0%

Q6. Do you recall seeing anything about a “simple return” on either of the webpages?

Source: NERA Tax Filing Survey – March 2024

90. Next, respondents were asked a closed-ended question to assess whether they think they have a “simple return.” As shown in **Table 13** below, many respondents who have a tax situation that may make them ineligible for H&R Block’s Free Online product believed they have a “simple return.” In the Test Group, 34.8 percent of those unable to file for free thought they had a “simple return,” compared to 23.5 percent in the Control Group. The difference in these results (a net rate of 11.4 percentage points) is statistically significant, indicating that the webpages (certainly compared to the commercial) are likely to incrementally increase the rate at which consumers believe they have a “simple” return.¹¹⁴

¹¹⁴ A z-test of significance between Test and Control Group respondents who were ineligible for H&R Block’s Free Online product, but who believed they have a “simple return” yields a p-value of .0008. This p-value is less than .05, indicating there is a statistically significant difference between the two groups at the 95% confidence interval.

Table 13: Ineligible Respondents Belief Regarding "Simple Return"

Response	Test		Control		Net
	Count	Percent	Count	Percent	
Yes	118	34.8%	87	23.5%	11.4%
No	85	25.1%	106	28.6%	--
I would need more information	26	7.7%	19	5.1%	--
Don't know / unsure	5	1.5%	6	1.6%	--
Did not see anything about "simple return"	105	31.0%	153	41.2%	
Total Ineligible Respondents	339	100.0%	371	100.0%	

Q7. Based on these webpages, do you think you have a "simple return"?

Source: NERA Tax Filing Survey – March 2024

91. Respondents asked about free filing or simple returns could indicate that they would need more information to determine their qualification. It is noteworthy that the vast majority of respondents did not indicate, at either question, that they would need more information. In total, only 16.5 percent of Test Group respondents not eligible for H&R Block's Free Online product indicated that they would need more information. In other words, the vast majority of Test Group respondents (83.5 percent) indicated that the pages shown provided sufficient information to allow them to determine whether they qualified for the free product, and whether they had a simple return.

92. If respondents indicated that they would need more information to determine whether they could file for free online with H&R Block and/or indicated that they would need more information to determine whether they have a "simple return," they were asked to specify what, if anything, they would click on in the second webpage to get more information. Only 15 respondents in the Test Group indicated they would click on the filters at the top of the page (or, in the mobile version, "See options"), six respondents indicated they would click on "Compare filing options," and five respondents indicated they would click on "More forms for free." In total,

only 24 Test Group respondents clicked on any one of these sections of the webpage. I understand that these sections would potentially provide consumers with more clarifying information as to whether they qualify for H&R Block's Free Online product. Therefore, in total only 7.1 percent of the ineligible Test Group respondents would seek out additional information and would click on an area of the webpage that would potentially provide clarifying information.

D. Misperception for Ineligible Respondents

93. Using the Control Groups to net out guessing and survey noise, I can calculate the net rate of deception attributable to H&R Block's advertising for its Free Online product. As shown in **Table 14** below, in the Commercial Group, an incremental increase (or net rate) of 17.6 percentage points of respondents were deceived and believed they could file for free, when, in fact, they would not be eligible for H&R Block's Free Online product. In the Webpage Group, an incremental increase (or net rate) of 15.9 percentage points of respondents ineligible for H&R Block's Free Online product incorrectly believed that they would be able to file their taxes for free with H&R Block.¹¹⁵ Both sets of results are statistically significant and demonstrate an increased rate of misperception between 29.9 and 33.7 percent.

¹¹⁵ As noted above in Section IV.F., respondents assigned to see the Test or Control webpage stimuli were able to rereview the webpages at the key survey questions. My results show that respondents who clicked back to rereview at least one of the pages were more likely to be deceived. Net confusion amongst those who used the click-back feature is 23.1 percent. (See **Exhibit D**). Additionally, my survey results show that net confusion increases the more time respondents spend reviewing the webpages. (See **Exhibit D**).

Table 14: Overall Deception

Response	Commercial					Webpage				
	Test		Control		Net	Test		Control		Net
	Count	Percent	Count	Percent		Count	Percent	Count	Percent	
Believe they can file for free	215	69.8%	167	52.2%	17.6%	234	69.0%	197	53.1%	15.9%
Total Ineligible Respondents	308		320			339		371		

Q4. Based on what you [reviewed on these webpages / heard and saw in the commercial], do you think you can file your 2023 taxes for free online with H&R Block?

Source: NERA Tax Filing Survey – March 2024

VI. CONCLUSIONS

94. I conducted a survey of 1,725 respondents to determine whether consumers would be deceived by H&R Block's advertising for its Free Online product. A total of 77.6 percent (1,338) would, given their income type, having an HSA, or planned deductions or itemizations, be ineligible for H&R Block's Free Online product. A total of 628 ineligible respondents viewed an H&R Block commercial and 710 viewed the H&R Block webpages. Both the commercial and the webpages were statistically significantly likely to increase consumers' perceptions that they would be able to file for free using H&R Block's Free Online product, despite having tax situations which would prevent this. The advertising tested caused an increase in misperception between 29.9 and 33.7 percent. Additionally, the website caused respondents to be more likely to believe they had a "simple return." This impact was not observed for the commercial.

95. My opinions and conclusions as expressed in this report are to a reasonable degree of professional and scientific certainty. I may conduct additional analyses and offer additional tables or conclusions at trial based on my survey data. My conclusions have been reached through the proper application of survey methods, and using standard methodologies relied upon by experts in the field of survey and market and consumer research. My opinions will continue to be informed by any additional material that becomes available to me. I reserve the right to update and or supplement my opinions if provided additional information. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



Sarah Butler, Managing Director
August 15, 2024

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the matter of
H&R BLOCK INC.,
a corporation,
HRB DIGITAL LLC,
a limited liability company, and
HRB TAX GROUP, INC.,
a corporation

DOCKET NO. 9427

REBUTTAL REPORT OF SARAH BUTLER

REBUTTAL REPORT OF SARAH BUTLER

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I. QUALIFICATIONS

1. I am the same Sarah Butler who previously submitted an expert report in this case dated August 15, 2024.¹ A list of my testimony is included on my current resume, which is attached as **Exhibit A**.

2. NERA is being compensated for my services in this matter at my standard rate of \$825 per hour. Members of the staff at NERA have worked at my direction and under my supervision to assist me in this engagement. No part of my compensation or NERA's compensation depends on the outcome of this litigation. Throughout this report, I use the terms "I" and "my" to refer to work performed by me or others under my direction and under my supervision.

II. DOCUMENTS REVIEWED

3. As part of this assignment, I reviewed the expert report of Dr. Itamar Simonson.² A list of the specific materials I reviewed can be found in **Exhibit B**.

III. ASSIGNMENT AND SUMMARY OF OPINIONS

4. I conducted a survey in this matter to determine whether U.S. consumers would be deceived by H&R Block's advertising for its Free Online product.³ My survey demonstrated that between a net rate of 15.9 and 17.6 percent of consumers incorrectly believed that they could use H&R Block's Free Online product based on a single exposure to the at-issue advertising

¹ Expert Report of Sarah Butler, *In the matter of H&R BLOCK INC., HRB DIGITAL LLC, and HRB TAX GROUP, INC.*, United States of America Before the Federal Trade Commission, Docket No. 9427, dated August 15, 2024 (hereinafter, "*Butler Report*").

² Expert Report of Itamar Simonson, *In the matter of H&R BLOCK INC., HRB DIGITAL LLC, and HRB TAX GROUP, INC.*, United States of America Before the Federal Trade Commission, Docket No. 9427, dated August 30, 2024 (hereinafter, "*Simonson Report*").

³ *Butler Report*, ¶ 9.

statements.⁴ The differences in perceptions between the Test and Control Groups in my study were statistically significant.⁵

5. In response, H&R Block submitted a report from Dr. Itamar Simonson. Dr. Simonson conducted three surveys (Surveys A, B, and C) in August 2024 and offered critiques of my research.⁶ Based on the results of his surveys, Dr. Simonson draws the following conclusions:

- Based on Survey A, Dr. Simonson claims that “the ‘Free’ message is not communicated by H&R Block’s ads and is not associated with H&R Block more generally.”⁷
- Based on Survey B, Dr. Simonson asserts that “providing easy access to the list of forms that are considered ‘simple’ has no impact on consumers’ perceptions and expectations as to whether their personal returns are considered simple and can be filed for free” and that “the knowledge that most tax filers are not eligible to file for free and making it easy to find out which forms are regarded as simple does not affect consumers’ perceptions and personal expectations.”⁸
- Finally, based on Survey C, Dr. Simonson concludes that there is no statistically significant difference in the rate at which respondents indicated they would file their taxes for free, even when respondents are told they must re-enter their information and contact customer service.⁹ Further, Dr. Simonson concludes that respondents placed the lowest number of points to the feature of switching from paid to free and the points assigned to this feature

⁴ *Butler Report*, ¶ 17.

⁵ *Butler Report*, ¶ 17. When a result is statistically significant it means that the observed result is likely to reflect a real difference and is unlikely to be due to chance.

⁶ *Simonson Report*, ¶¶ 14, 16-17. Dr. Simonson also offered critiques of Dr. Youssef Benzarti and Dr. Harry Brignull. I understand these experts are responding to Dr. Simonson’s comments on their work.

⁷ *Simonson Report*, ¶ 65.

⁸ *Simonson Report*, ¶ 82.

⁹ *Simonson Report*, ¶ 104.

does not differ when respondents are told they must re-enter their information and contact customer service.¹⁰

6. Dr. Simonson also offers a response to my research and claims that my survey suffers from an “exceptional ‘noise’ level”¹¹ and includes “biased and leading” questions.¹² Dr. Simonson further alleges that my survey relies on what he terms, “excessively manipulated stimuli.”¹³

7. I have reviewed Dr. Simonson’s surveys, and find the following:

Survey A Data Do Not Support Dr. Simonson’s Conclusions

- Dr. Simonson cannot form conclusions about messaging communicated by H&R Block’s advertising because he does not ask respondents about messaging. Instead, Dr. Simonson asked respondents what they “remember seeing.”¹⁴ Unsurprisingly, respondents offer general descriptions of visual aspects of the advertising or report the type of advertisement seen (e.g., “I saw a television commercial”). These data do not support Dr. Simonson’s conclusions about messages related to “free,” as the question was imprecise and not directed towards the overall advertising message.¹⁵
- Dr. Simonson’s conclusions from Survey A are further unreliable because they are based only on data from open-ended, recall-based questions. It is widely recognized that open-ended questions do not elicit the complete range of relevant responses. Closed-ended

¹⁰ *Simonson Report*, ¶ 108.

¹¹ Survey noise includes other possible explanations for the observed result (e.g., guessing, pre-existing beliefs, yea-saying).

¹² *Simonson Report*, ¶ 118.

¹³ *Simonson Report*, p. 59.

¹⁴ *Simonson Report*, Exhibit A-1, QUESTION 225.

¹⁵ In another survey, Survey B, Dr. Simonson does ask respondents about the message(s) communicated by the advertising. See *Simonson Report*, Exhibit B-1, QUESTION 240.

questions, which Dr. Simonson does not ask in this part of the survey (but does use in his other surveys), are important when attempting to definitely rule out the possibility of particular messages being conveyed. Here, Dr. Simonson simply relies on the fact that respondents may not have offered a full accounting of their perceptions to inaccurately draw his conclusions.

- Dr. Simonson's reliance on open-ended questions is further problematic because of the known problems associated with response burden. A survey which asks respondents, entirely unaided, what they recall seeing from advertising viewed, at best, four months prior creates a high degree of response burden. Surveys with a significant respondent burden often have low quality or missing data because respondents have a known tendency to satisfice, e.g., give the minimum required response or struggle to formulate a comprehensive answer. Partial and/or incomplete answers cannot be used to determine that H&R Block's advertising related to its free online service had no impact.

Survey B Data Do Not Support Either of Dr. Simonson's Conclusions

- Dr. Simonson's first conclusion from Survey B is that most respondents believe, after seeing H&R Block advertising, only simple returns can be filed for free.¹⁶ This conclusion is unsupported by the data because:
 - The questions from which the conclusion was drawn did not have a Control Group to account for survey noise. Without a control, Dr. Simonson cannot determine what share of respondents are simply responding because the question is leading, or respondents are guessing or are responding to something other than the advertising shown. Dr. Simonson understands the importance of controls and

¹⁶ *Simonson Report*, ¶ 80.

implements this standard methodological technique in other questions and his other surveys, but here, draws conclusions based on data with no control.

- While many respondents purport to believe that only simple returns can be filed for free, it is noteworthy that over a quarter of Dr. Simonson's Survey B respondents mistakenly believe that *both* simple and non-simple returns can be filed for free after being shown an H&R Block advertisement featuring (visual and audible) statements that "Simple Returns File Free."
- Dr. Simonson also concludes that providing respondents in a Control Group with the percent of consumers who generally qualify to file for free and providing access to a list of forms that can be filed using the Free Online product does not impact perceptions about whether a respondent can personally file for free.¹⁷ While Dr. Simonson may have measured "perception," there is no way to determine whether and what share of his respondents were misled because:
 - Dr. Simonson does not have data to assess whether respondents would qualify for H&R Block's Free Online product and therefore, it is impossible to know which respondents were correct in their perception and which were misled by the advertising.
 - Additionally, the absence of a difference in perception between the Test and Control¹⁸ Groups may be the result of a number of factors aside from the additional information having no impact. For example, many respondents may have already known whether they qualified for free because they had filed their 2023 tax returns

¹⁷ *Simonson Report*, ¶ 82.

¹⁸ Here, Dr. Simonson does employ a Control.

(and again there is no way to determine which of the respondents was correct or misled about her filing status). Additionally, the information provided to the Control Group was vague and there are no data suggesting what share of the Control Group respondents, if any, used the link to understand which forms can be filed using the Free Online product. Dr. Simonson cannot rule out these competing explanations for the observed results.

Survey C Does Not Provide Evidence of Impact of Disclosure Regarding “Downgrading”

- The results from Dr. Simonson’s Survey C cannot be used to evaluate the “impact of a disclosure regarding the need to reenter information and contact customer service” on respondents’ decision to “downgrade,” because the hypothetical scenarios posed to respondents were vague, unclear, and unrealistic.¹⁹
- The “tradeoff” task in Survey C asked respondents to assume they chose an undefined “paid” package and then provided an ill-defined, ambiguous scenario that provided no details explaining how the actual downgrading process occurs.
- The lack of clarity in the “tradeoff” task is made clear in the open-ended responses in Dr. Simonson’s data which demonstrate respondent confusion. For example, respondents with tax situations that would render them *ineligible* for the free product (based on the product descriptions in the webpage presented in the survey) expressed confusion over how, in this hypothetical scenario, they would suddenly become eligible.
- The “tradeoff” task is also unrealistic, as the majority of respondents are presented with a scenario in which they are using a “paid” (not defined) product when they previously indicated in the survey that they would select the “free” product. Further, Dr. Simonson

¹⁹ *Simonson Report*, ¶ 89.

does not present respondents with information regarding what “re-entering information” and “contacting customer service” would entail. The data from the “tradeoff” task are wholly unreliable, as Dr. Simonson cannot establish that respondents understood the task due to the poorly worded, vague, and unrealistic descriptions provided.

- Dr. Simonson’s “constant-sum” task is similarly flawed. The vague and nonsensical scenario posed cannot be used to measure the relative importance of an accurate disclosure regarding “downgrading.” Dr. Simonson has no way of knowing what assumptions respondents made while evaluating the features in the constant-sum. As with the “tradeoff” task, Dr. Simonson does not provide details of how the downgrading process would occur and asks respondents who already indicated that they would use the free product to evaluate the importance of being able to switch from a paid product to a free product. Data from this illogical and flawed design cannot be used as evidence of the impact of a disclosure regarding the “downgrading” process on respondents’ decisions.

8. In addition to conducting his own surveys, Dr. Simonson offers criticisms of my research. Specifically, Dr. Simonson suggests that my survey demonstrates “exceptionally” high levels of “noise,” has biased questions, and has “excessively-manipulated stimuli.”²⁰

- Contrary to Dr. Simonson’s assertion, my survey is not flawed by measuring noise, but rather, properly accounts for factors such as pre-existing beliefs to ensure the measured difference between the Test and Control Groups is attributable to the single exposure of the advertising I tested in my survey. Even Dr. Simonson acknowledges that respondents may have reasons to believe they could file for free, including exposure to past advertising.²¹ My

²⁰ See, *Simonson Report*, ¶¶ 117-129.

²¹ Dr. Simonson attempts to suggest that Intuit’s TurboTax advertising may be the cause of consumer belief but this is not supported by his data. See, ¶ 118.

survey properly accounts for other reasons respondents may incorrectly believe they can file for free (e.g., past advertising exposure, a belief that one's income should qualify for free online services, etc.).

- My survey questions were not biased and leading as alleged by Dr. Simonson but rather were designed using standard techniques known to help avoid and account for potential biases (e.g., randomization/rotation of response options, the inclusion of a don't know / unsure response option, the use of filter questions, and the use of a Control Group).
- Finally, Dr. Simonson's characterization of "excessively manipulated" stimuli is only directed to the Control in the Webpage Group. In fact, the format of the page used for this survey comes directly from H&R Block's website and is a common format used by companies to compare tax software products. Moreover, the data from my survey demonstrate Dr. Simonson's complaint is wholly without merit. Despite his claim of "manipulation" of the webpage, the results from the Control Groups in the Webpage Group and the Commercial Group are essentially the same. In other words, there is no greater or lesser share of noise for the different forms of the Control stimuli in my survey.

9. In short, Dr. Simonson's criticisms of my survey are without merit. The conclusions he draws about my research are not supported by the literature, are not supported by his data or mine and are, in some cases, contradicted by his own results. My survey followed standard survey practices, including the use of randomization, filter questions, and the proper use of controls throughout.

10. The remainder of this report provides a detailed explanation of the flaws in Dr. Simonson's surveys, and a response to Dr. Simonson's critiques.

IV. SUMMARY OF SIMONSON SURVEYS

11. Dr. Simonson conducted three surveys. All surveys were conducted in August of 2024 and each used the same screening criteria.²² Respondents in Dr. Simonson's surveys needed to: 1) live in the United States; 2) be 18 years old or older; 3) indicate that they participated in filing their household's taxes in the last 12 months; 4) indicate that they already filed their 2023 tax return or are planning to file their 2023 tax return; 5) indicate they are the sole decision maker or have some influence on the decision on how to file their taxes / their household's taxes; and 6) indicate they used or expected to use an online tax preparation and filing service to file their 2023 tax return.²³

A. Survey A

12. Dr. Simonson claims he intended Survey A to test "whether the allegedly deceptive 'Free File/File for Free' advertising message is recalled by consumers who have been exposed to H&R Block's advertising."²⁴ A total of 320 respondents participated in Survey A.²⁵

1. Main Questionnaire

13. Respondents in Survey A were first asked to select from a list which tax preparation services (if any) they have used in the past five years.²⁶ Respondents were also asked to select from a list of tax preparation services, which (if any), they had seen ads/commercials for and for each tax preparation service selected, were asked, in an open-ended question, "what, if anything," they "remember seeing" in the ad for that company.²⁷

²² *Simonson Report*, ¶ 17.

²³ *Simonson Report*, ¶ 52.

²⁴ *Simonson Report*, ¶ 16.

²⁵ *Simonson Report*, ¶ 57.

²⁶ *Simonson Report*, Exhibit A-1.

²⁷ *Simonson Report*, Exhibit A-1.

14. Respondents were also asked to recall how many online tax preparation services they considered before deciding on the service they ultimately used, followed by an open-ended question which asked why they chose that service.²⁸

15. Respondents were then asked to indicate, in an open-ended format, what sources of information about online tax preparation services they relied on before deciding which service to use.²⁹ Respondents were also presented with a closed-ended question with a list of sources and were asked to indicate, which source(s) (if any) they used.³⁰ The list included response options such as “the websites of services I considered” and “advertisements and commercials for the services I considered,” as well as the option to select “none – I just used the same service I had used previously.”³¹

16. A final survey question asked, “whether consumers believe that it is their personal responsibility to confirm that their tax returns are accurate, it is the responsibility of the tax preparation service, or both the responsibility of both the tax filer and the tax preparation service.”³²

2. Survey A Results

17. Based on the data from Survey A, Dr. Simonson reports that 65 percent of respondents recall seeing an ad for H&R Block.³³ Dr. Simonson further indicates that “only about 1% of the 208 respondents who recalled H&R Block ads mentioned the allegedly deceptive “File

²⁸ *Simonson Report*, Exhibit A-1. Only respondents who indicated they considered more than one service were asked the open-ended follow-up question.

²⁹ *Simonson Report*, Exhibit A-1.

³⁰ *Simonson Report*, Exhibit A-1.

³¹ *Simonson Report*, Exhibit A-1.

³² *Simonson Report*, ¶ 56.

³³ *Simonson Report*, ¶ 59.

for Free/Free to File” message.”³⁴ Dr. Simonson also notes that other respondents mentioned “free tax preparation” or “free if you qualify,” but he does not include these respondents in his tabulation of the 1 percent.³⁵ Dr. Simonson reports that respondents did not mention “simple returns.”³⁶

18. According to Dr. Simonson, these survey results establish the “degree to which the ‘Free’ message is not communicated by H&R Block’s ads and is not associated with H&R Block more generally.”³⁷

B. Survey B

19. Dr. Simonson indicates Survey B was “designed to test the impact of explicitly and prominently (i) informing consumers about the percentage of all tax filers whose returns are classified as “simple” (i.e., those who are eligible to file for free), and (ii) presenting a link to the complete list of forms that fall in the “simple return” category.”³⁸ A total of 410 respondents completed Survey B, with 203 respondents assigned to his Test Group and 207 respondents assigned to his Control Group.³⁹

1. Main Questionnaire Survey B

20. All respondents in Survey B were first presented with a 15 second H&R Block TV commercial that included the terms “Free” and “simple returns” (“the Ad” or “The Football Ad”).⁴⁰ After viewing the ad, respondents were asked open-ended questions as to the main messages

³⁴ *Simonson Report*, ¶ 60.

³⁵ *Simonson Report*, ¶ 60.

³⁶ *Simonson Report*, ¶ 60.

³⁷ *Simonson Report*, ¶ 65.

³⁸ *Simonson Report*, ¶ 68. There is no record or variable in Dr. Simonson’s data to indicate if any respondents clicked on the link.

³⁹ *Simonson Report*, ¶ 78.

⁴⁰ *Simonson Report*, ¶ 71.

communicated by the commercial (questions which Dr. Simonson claimed were “not the focus of Survey B”).⁴¹

21. Dr. Simonson indicates that he then asked “a few questions that called the respondents’ attention to the message ‘Simple Returns File Free.’”⁴² Respondents were asked an open-ended question as to what kinds of tax returns can be filed for free using the tax preparation service shown in the commercial, followed by a closed-ended question which asked, “Based on the commercial you saw, can only simple tax returns be filed for free or can both simple and non-simple tax returns be filed for free?”⁴³ Respondents could indicate that only simple tax returns can be filed for free or that both simple and non-simple tax returns can be filed for free (or indicate “don’t know”).⁴⁴ Dr. Simonson asked only respondents who said both simple and non-simple tax returns can be filed for free what makes them say that.⁴⁵ While the data are reported separately for the Test Group and Control Group for this question, there was no difference between these two groups and there was no actual “control” for these responses.

22. Those assigned to the Control Group were then provided with the following information:⁴⁶

Please review the following information carefully:

Roughly 40% of US taxpayers can file for free using this online tax preparation service. In general, taxpayers who can file their tax returns using Form 1040, students, those with unemployment income, and W-2 employees with limited credits may qualify to file for free using this online tax preparation service. The link below includes a list of federal tax forms that can be filed using the free online product.

⁴¹ *Simonson Report*, ¶ 72.

⁴² *Simonson Report*, ¶ 74.

⁴³ *Simonson Report*, Exhibit B-1.

⁴⁴ *Simonson Report*, Exhibit B-1.

⁴⁵ *Simonson Report*, Exhibit B-1.

⁴⁶ *Simonson Report*, Exhibit B-1 (emphasis in original).

[Click here to view full list of forms: <https://www.hrblock.com/pdf/HRB-Online-Fed-Forms/free.pdf>]

23. Following this, Test and Control Group respondents were asked, “Based on your specific, personal situation and the commercial you just saw, in your assessment, how likely or unlikely is it that your tax return is considered “simple” and can be filed for free using this online tax preparation service?” with response options ranging from “You **Definitely Can** file your tax returns for free” to “You **Definitely Cannot** file your tax returns for free,” and the option to indicate “Don’t know/unsure.”⁴⁷ Respondents were then asked two open-ended questions “what makes you say that?” followed by a follow-up open-ended question “Any other reason?”⁴⁸

24. Respondents were then asked open-ended questions about where they would look for information if they wanted to know whether their tax return is classified as “simple,”⁴⁹ followed by a closed-ended question which asked them to select, from a list, which (if any) of the sources of information they would likely consider before deciding whether their tax return is “simple.”⁵⁰

25. Respondents in Survey B were asked the same final question as those in Survey A.⁵¹

2. Survey B Results

26. According to Dr. Simonson, his results suggest that respondents took away “multiple messages” from the commercial and that common answers referred to “ease of use, the good service of H&R Block, the advantage of switching to H&R Block, and the link to the

⁴⁷ *Simonson Report*, ¶ 75 (emphasis in original).

⁴⁸ *Simonson Report*, ¶ 75; Exhibit B-1. Respondents that selected “Don’t know/unsure” at QUESTION 330 were not asked QUESTION 335.

⁴⁹ *Simonson Report*, Exhibit B-1.

⁵⁰ *Simonson Report*, Exhibit B-1.

⁵¹ *Simonson Report*, Exhibit B-1, QUESTION 350; Exhibit A-1, QUESTION 260.

enjoyment of football” in addition to 38 percent of respondents who “referred to the cost or charges/fees,” the majority of which “linked the ‘Free’ offer to simple or basic returns.”⁵²

27. Dr. Simonson further reports that, when asked a “direct question” about the types of returns consumers can file for free, “the most common response was ‘simple returns,’” noting, however, that some portion of respondents indicated they did not notice or did not recall the “simple returns” qualification.⁵³ He notes that “27% of the respondents answered that both types could be filed for free, and another 10.7% were not sure.”⁵⁴ Dr. Simonson describes these results as a “halo effect” in which “respondents apparently assumed that the product for which they saw an ad as part of the survey must have advantages in all respects (similar to other ads that highlight the advantages of the advertised product).”⁵⁵

28. Based on the above results, Dr. Simonson concludes that, “the knowledge that most tax filers are not eligible to file for free and making it easy to find out which forms are regarded as simple does not affect consumers’ perceptions and personal expectations.”⁵⁶

29. Dr. Simonson also concludes that when asked what sources of information consumers would use to find out if their returns were considered “simple,” respondents “mentioned a wide range of information sources (e.g., search engines), with the company’s own website selected most often from the provided list, followed by government (IRS) and state sources.”⁵⁷

⁵² *Simonson Report*, ¶ 78.

⁵³ *Simonson Report*, ¶ 79.

⁵⁴ *Simonson Report*, ¶ 80.

⁵⁵ *Simonson Report*, ¶ 80.

⁵⁶ *Simonson Report*, ¶ 82.

⁵⁷ *Simonson Report*, ¶ 84.

C. Survey C

30. Dr. Simonson indicates Survey C was “designed to test directly the impact of an upfront disclosure regarding the need to reenter information and contact customer service in case one starts with a paid option and then switches to a Free option on the decision to file for free.”⁵⁸ A total of 415 respondents completed Survey C, with 204 respondents assigned to his Test Group and 211 respondents assigned to his Control Group.⁵⁹

1. Main Questionnaire Survey C

31. Respondents in Survey C were first shown a “product selection (lineup) webpage” with instructions indicating that they should assume they are considering using an online tax preparation service to file their tax return in the coming year.⁶⁰ After viewing the stimulus, respondents were asked an open-ended question as to what kinds of tax returns can be filed for free, based on the product selection page.⁶¹

32. Respondents were then asked which product they would be most likely to choose if they were going to use the advertised online tax preparation service to file their tax return in the coming year and were asked to assume “that you will be able to switch to another product if it turns out that the product you chose first is not suitable for you.”⁶² Respondents could indicate they would use the “Free Online” product, the “Deluxe” product, the “Premium” product, the “Self-Employed” product, or indicate “I will need more information” or “don’t know.”⁶³ Respondents who selected one of the products were asked follow-up questions about why they

⁵⁸ *Simonson Report*, ¶ 88.

⁵⁹ *Simonson Report*, Exhibit C-3.

⁶⁰ *Simonson Report*, ¶ 92.

⁶¹ *Simonson Report*, ¶ 93.

⁶² *Simonson Report*, Exhibit C-1.

⁶³ *Simonson Report*, Exhibit C-1.

selected that particular product.⁶⁴ Those who indicated they would need more information were asked where they would look for additional information.⁶⁵ Those who indicated they would need more information or who indicated “don’t know” were also asked to select, from a list, what sources of information (if any) they would likely consider in deciding which product they would use.⁶⁶ Response options included “the website of the advertised online tax preparation service,” and “advertisements and commercials for the online tax preparation service,” amongst others.⁶⁷

33. The next two parts of the survey purportedly “examined in different ways the impact of having to reenter information and contact customer service in case that, after starting with a paid option, the respondent finds out that s/he is eligible to file for free.”⁶⁸

34. According to Dr. Simonson, the first “test” focused on downgrading from a paid option to a free option “without considering other features of tax filing products.”⁶⁹ Both Test and Control Group respondents were told to imagine a hypothetical scenario (shown below in **Figure 1**), with the only difference between the groups being that Test Group respondents were “informed that they would need to reenter information and contact customer service” to downgrade from a paid option to the free option while those in the Control Group were not. Test Group respondents were never explicitly informed that a consequence of downgrading is that all previously entered tax information would be deleted by customer service.

⁶⁴ *Simonson Report*, Exhibit C-1.

⁶⁵ *Simonson Report*, Exhibit C-1.

⁶⁶ *Simonson Report*, Exhibit C-1.

⁶⁷ *Simonson Report*, Exhibit C-1.

⁶⁸ *Simonson Report*, ¶ 95.

⁶⁹ *Simonson Report*, ¶ 95.

Figure 1. Dr. Simonson’s Survey C “Tradeoff” Task

Test Group	Control Group
<p>Now, suppose that you decided to choose one of the paid products shown on the product selection webpage you just saw.</p> <p>After you enter your information, you learn that <u>you are eligible to file your tax return for free</u>, but that doing so will cause you to lose certain product features (such as auto-import of tax information) and require you to contact customer service and re-enter your tax information.</p> <p>So, you now have two options, which would you choose? (Select <u>one</u> response)</p> <p>1: <u>File your tax return for free, despite losing certain product features</u>, by re-entering the information and contacting customer service</p> <p>2: <u>Stay with the paid product</u> you initially chose</p> <p>3: Don’t know/unsure</p>	<p>Now, suppose that you decided to choose one of the paid products shown on the product selection webpage you just saw.</p> <p>After you enter your information, you learn that you are eligible to file your tax return for free, but that doing so will cause you to lose certain product features (such as auto-import of tax information).</p> <p>So, you now have two options, which would you choose? (Select <u>one</u> response)</p> <p>1: <u>File your tax return for free, despite losing certain product features</u></p> <p>2: <u>Stay with the paid product</u> you initially chose</p> <p>3: Don’t know/unsure</p>

35. After indicating whether they would file their tax return for free or stay with the paid product (or selecting “Don’t know/unsure”), respondents were asked open-ended follow-up questions as to why they selected this response.⁷⁰

36. Respondents were next presented with a “constant-sum task”⁷¹ which asked respondents to assume they were considering using a particular online tax preparation service with a list of features. Respondents were told the “overall value to you of the online tax preparation service is 100 points” and were tasked with allocating 100 points across the listed features.⁷² The list of features was identical between Test and Control Group respondents, with features such as

⁷⁰ *Simonson Report*, Exhibit C-1.

⁷¹ *Simonson Report*, ¶ 95.

⁷² *Simonson Report*, Exhibit C-1.

“the service is easy to use” and “the cost of the product you choose to use, which could range between free (\$0) and \$115 depending on the complexity of your tax situation,” amongst others.⁷³ The only difference in the listed features between the two groups was that the Test Group was shown a feature which stated “you can switch from a more expensive to a less expensive (or free) product by contacting customer service by phone and re-entering your information,” while those in the Control Group were shown “you can switch from a more expensive to a less expensive (or free) product by using the information you already entered.”⁷⁴

37. Those in Survey C were asked the same final question as those in Surveys A and B.⁷⁵

2. Survey C Results

38. Dr. Simonson reports that 54 percent of respondents indicated they would be most likely to choose the “Free Online” product if they were going to use the advertised online tax preparation service to file their tax return in the coming year.⁷⁶

39. Dr. Simonson reports the results of his “tradeoff” task by first stating that “some respondents mistakenly understood the reference to reentering information as indicating that, in case they do not switch to the Free option, they would not need to enter their information at all.”⁷⁷ Dr. Simonson states that “such a misinterpretation was likely to lead (Test group) respondents to prefer to stay with the paid option.”⁷⁸ Dr. Simonson nonetheless reports the results, stating that the difference in the rate at which Test and Control Group respondents indicated they would file

⁷³ *Simonson Report*, Exhibit C-1.

⁷⁴ *Simonson Report*, Exhibit C-1.

⁷⁵ *Simonson Report*, Exhibit B-1, QUESTION 350; Exhibit A-1, QUESTION 260; Exhibit C-1, QUESTION 320.

⁷⁶ *Simonson Report*, ¶ 100.

⁷⁷ *Simonson Report*, ¶ 102.

⁷⁸ *Simonson Report*, ¶ 102.

their taxes for free, despite losing certain product features (and re-entering the information and contacting customer service in the Test Group) is not statistically significant.⁷⁹

40. Finally, Dr. Simonson states that the results of his constant-sum task leads to the following conclusions: 1) “the feature pertaining to the switch from a paid option to a less expensive or free option (with or without mentioning the need to reenter/contact) received (across both groups) the lowest number of points out of the 100 value points that respondents allocated across the service features,” and, 2) “the difference between the Test and Control groups in terms of the mean number of points allocated to the feature at issue (7.3 points versus 5.8 points) was again statistically insignificant.”⁸⁰

V. RESPONSE TO DR. SIMONSON’S SURVEYS

A. Survey A Does Not Demonstrate Purported “Limited” Impact of H&R Block’s Free Messaging

41. Dr. Simonson’s conclusions that “H&R Block is not associated in consumers’ minds”⁸¹ with a message of “free,” and that H&R Block’s “‘Free’ message has had limited impact,”⁸² is based on the verbatim responses to two open-ended questions in Survey A.⁸³ The data from this survey do not, and cannot, be used to support these conclusions for numerous reasons.

42. First, as phrased, Dr. Simonson’s questions did not ask respondents what overall message or messages they recalled. Instead, respondents were prompted with a general question focused on the *visual* aspects of advertisements. Such framing, particularly when asked about a

⁷⁹ *Simonson Report*, ¶ 104.

⁸⁰ *Simonson Report*, ¶ 108.

⁸¹ *Simonson Report*, ¶ 19.

⁸² *Simonson Report*, ¶ 19.

⁸³ *Simonson Report*, ¶ 19; Exhibit A-1, QUESTION 225, 228.

number of companies' advertising likely focused respondents on the colors or characters which made the ads distinctive. Second, open-ended questions, while valuable for getting top of mind responses, cannot be used to determine the full range of messages consumers received from H&R Block's advertising. It is well known that open-ended questions have inherent limitations. Finally, the reliability of the data from Survey A is wholly undermined by recall bias and respondent burden, particularly given the timing of the data collection.

1. Respondents Were Not Asked About Advertising Messaging

43. Dr. Simonson cannot conclude that H&R Block's advertising did not communicate messages about "free" online filing because respondents were never asked this question. Respondents in Survey A were never asked what *messages* they recalled or what was communicated, but were asked more generally, what they "remember seeing."⁸⁴ Unsurprisingly then, many respondents described the type of ad/commercial they saw (e.g., tv commercial, billboard, social media ad, etc.)⁸⁵ or simply confirmed that they had seen some advertising.⁸⁶ Additionally, because the question asks about what was "seen in," as opposed to the message communicated, many respondents simply offered a visual characteristic to identify a specific H&R Block commercial they were thinking of (e.g., grocery store ad, ad with accountant, ad with Jon Hamm, etc.),⁸⁷ or provided a general recollection of some other "seen" element, such as the color green⁸⁸ or the brand name/logo.⁸⁹

⁸⁴ *Simonson Report*, Exhibit A-1 QUESTION 225.

⁸⁵ See e.g., *Simonson Report*, Exhibit D, Respondent IDs 52, 129, 140, 159, 437, 551 896, 917.

⁸⁶ See e.g., *Simonson Report*, Exhibit D, Respondent IDs 841, 850, 1243.

⁸⁷ See e.g., *Simonson Report*, Exhibit D, Respondent IDs 135, 524, 620, 731, 850, 851, 910, 1140, 1250.

⁸⁸ See e.g., *Simonson Report*, Exhibit D, Respondent IDs 30, 46, 270, 347, 353, 395, 441, 1114, 1186.

⁸⁹ See e.g., *Simonson Report*, Exhibit D, Respondent IDs 323, 333, 335, 390, 952, 974, 1161, 1252.

44. Such a generalized question cannot be used to demonstrate that respondents did not take away a message about filing for free. A respondent who simply says, for example, “TV COMMERCIAL,”⁹⁰ was not being prompted to recall the overall message communicated by that commercial. Dr. Simonson himself relies on a proper question as to messaging in his Survey B and in this survey asked respondents, “What, if any, is the main message communicated to you by this commercial?” and “Any other messages communicated to you by this commercial?”⁹¹ Instead, for Survey A, Dr. Simonson elects to ask what was “seen.”⁹² The top-of-mind responses to a question which likely directed respondents to the visually distinctive aspects of the advertisements are not reliable for determining whether consumers recalled or were affected by H&R Block’s messages related to its free online product.

2. **Open-Ended Data Do Not Represent Full Range of Responses**

45. Dr. Simonson’s conclusions as to the impact of H&R Block’s “free” messaging are entirely dependent on respondents’ ability to retrieve (from memory) and report all of the information “seen” in H&R Block’s advertising. Unlike his other surveys conducted for this matter, Dr. Simonson asks no closed-ended follow up questions. The reliance solely on open-ended questions, particularly those which require substantial recall, violates proper survey practice.

46. Survey literature widely acknowledges that open-ended questions are unreliable for eliciting a complete range of relevant responses. The usefulness of open-ended questions can be limited because the format relies on respondents’ individual abilities to articulate a complete and interpretable response.⁹³ This is not always the case, as open-ended questions rely on recall and

⁹⁰ *Simonson Report*, Exhibit D, Respondent ID 129.

⁹¹ *Simonson Report*, Exhibit B-1.

⁹² *Simonson Report*, Exhibit A-1 QUESTION 225.

⁹³ Jacoby, J. (2012). “Are Closed-Ended Questions Leading Questions?” *Trademark and Deceptive Advertising Surveys: Law, Science, and Design, First Edition*. Edited by S. Diamond, and J. Swann, pp. 261-285, (hereinafter, “Jacoby”) at pp. 270-271.

assess only the top-of-mind contents.⁹⁴ Moreover, when faced with open-ended questions, a respondent may “satisfice” and enter just enough information to answer the question with minimal effort.⁹⁵ Further, the analysis of open-ended data requires interpretation and subjective coding.⁹⁶

47. For this reason, many researchers use both open-ended and closed-ended questions, so that the survey data are not limited by the vulnerabilities of the different question formats. For example, Bernstein and Keller explain that,

Open-ended questions are appropriate to gauge consumers’ initial reaction to the general or primary message in an advertisement, but they may be insufficient to evaluate reactions to more specific or secondary messages, even if consumers generally perceive those messages. For that reason, open-ended questions are most often used in surveys as funneling questions designed to set the stage for more detailed closed-ended questions and to weed out guessing.⁹⁷

48. In this case, it would have been easy for Dr. Simonson to have included both open-ended questions, to evaluate the top-of-mind messages recalled, and closed-ended questions to ensure that the data gathered were complete. Indeed, Dr. Simonson utilized this approach later in Survey A when assessing the sources of information that consumers rely on when deciding which tax filing service to use.⁹⁸ However Dr. Simonson does not utilize this standard approach which would have been essential for definitively determining that a “free” message was not received. Without such a question, Dr. Simonson’s results may simply reflect the fact that respondents did

⁹⁴ *Jacoby*, p. 270. Compared to open-ended questions, “closed-ended recognition questions generally do a more thorough job of assessing what a person has stored in memory.”

⁹⁵ Neal, D. T. (2022). “Psychological Considerations in Designing Trademark and False Advertising Survey Questionnaires,” *Trademark and Deceptive Advertising Surveys: Law, Science, and Design, Second Edition*. Edited by S. Diamond, and J. Swann, pp. 273-290, (hereinafter, “*Neal*”) at p. 275.

⁹⁶ See, *Jacoby*, p. 264; *Neal*, p. 288.

⁹⁷ Bernstein, D. H., & Keller, B. P. (2022). “Survey Evidence in False Advertising Cases,” *Trademark and Deceptive Advertising Surveys: Law, Science, and Design, Second Edition*. Edited by S. Diamond, and J. Swann, pp. 187-235, (hereinafter, “*Bernstein*”), at p. 222.

⁹⁸ *Simonson Report*, Exhibit A-1, QUESTION 240, 245, 250. Supporting the types of advertising tested in my own surveys, consumers who did not use the same service they had previously used were most likely to rely on information from websites and advertisements/commercials. *Simonson Report*, ¶ 63, Table 15.

not mention “free” in their responses because (1) the question asked what they “saw,” (2) it was not the most salient (visual) message, (3) their response was incomplete, or (4) they did not sufficiently articulate their answer. As designed, Dr. Simonson simply cannot rule out any of these other explanations for the absence of “free” responses.

3. Reliability of Data Undermined by Respondent Burden

49. Before asking respondents what they recall seeing, Dr. Simonson provides respondents with a list of online tax service providers.⁹⁹ The provision of this list may have suggested to some respondents that they did or should recall seeing at least some advertising from some of these well-known brands. It is not surprising then that 40.4 percent of the respondents who indicated that they had seen ads/commercials for H&R Block were unable to recall anything about this advertising (i.e., they selected the box “don’t know / unsure” and did not type in any information in the open-ended questions).¹⁰⁰ Some respondents were likely to say they recalled seeing an H&R Block ad/commercial, even if they did not. Given that H&R Block is a well-known brand, and an immediately preceding question included H&R Block on a list, it is likely that some share of Dr. Simonson’s respondents were guessing or indicated that they had seen advertising as a result of demand effects. As one of Dr. Simonson’s respondents explained, “I mean everyone’s kinda hear [sic] of H&R Block, haven’t they?”¹⁰¹ Dr. Simonson could have introduced a control company/brand to determine which respondents may have been guessing or been answering because the question suggested a likelihood of seeing such advertising, but he did not.

⁹⁹ *Simonson Report*, Exhibit A-1, QUESTION 210, 220.

¹⁰⁰ This is not a phenomenon limited to recall for H&R Block. A total of 42.9 percent of respondents who said they recalled a TurboTax ad/commercial indicated that they didn’t know what they had seen in the ad. Also see, ¶ 118 of this report.

¹⁰¹ *Simonson Report*, Exhibit D, Respondent ID 1186.

50. The likelihood that respondents would guess and assume they must have seen some advertising for the larger brands of tax providers on the list is exacerbated by the fact that recall question is not limited to any specific time period. Thus, even if respondents could recall advertising, they may remember multiple ads, in multiple formats, over multiple years. This issue raises another fundamental flaw with Dr. Simonson's reliance on such broad, general, open-ended questions. These questions create extreme response burden, and it is methodologically unsound to expect that all respondents in this survey could answer with accuracy and detail as to all advertising seen.

51. Response burden is the term used for the effort a question requires from a survey participant to formulate and provide answers.¹⁰² A variety of factors can contribute to response burden, including the length of the questions and the difficulty of the task.¹⁰³ In Dr. Simonson's survey, respondents are presented with an unusually burdensome task; they are asked to recall the details of some (undefined) set of advertising from an undefined time period, for a set of products and services that the majority of respondents are not currently considering.¹⁰⁴ I understand that, at best, the most recent advertisements would have been seen four months prior to the survey (in April of 2024). Dr. Simonson doesn't even suggest to respondents that they think back to prior tax seasons or when they were considering which online tax provider to use, references which may have provided respondents with some context or assistance in recall. Surveys with significant response burden often have low quality or missing data because respondents have a known

¹⁰² Rolstad, S., Adler, J., & Rydén, A. (2011). "Response Burden and Questionnaire Length: Is Shorter Better? A Review and Meta-analysis," *Value in Health*, 14, pp. 1101-1108, at p. 1101. Yan, T., Fricker, S., & Tsai, S. (2020). "Response Burden: What Is It and What Predicts It?" *Advances in Questionnaire Design, Development, Evaluation and Testing, First Edition*. Edited by P. Beatty et al., pp. 193-212, (hereinafter, "*Yan et al.*"), at p. 193.

¹⁰³ *Yan et al.*, p. 196.

¹⁰⁴ 75.0 percent of Dr. Simonson's survey respondents had already completed their 2023 taxes.

tendency to satisfice (e.g., to give the minimum required response or struggle to formulate a comprehensive response).¹⁰⁵

52. Further, while Dr. Simonson claims that “it is well established that product/service attributes/features that are attended to and that influence decisions are recalled better,”¹⁰⁶ one of the articles cited¹⁰⁷ describes an experiment which evaluated consumers’ ability to recall within much shorter time periods. Specifically, Romberg, et al. (2020) employed a Test/Control experimental design to see if Test Group respondents recalled digital advertising shown at most 48 hours prior to the questions and 7 days prior for TV advertisements.¹⁰⁸ Another article cited by Dr. Simonson suggests that memory becomes generalized over time. Alba, Hutchinson & Lynch (1991) note that as time elapses from the point of exposure to advertising, consumers recall more generic product features that can be cued by general knowledge, and that beliefs about the product become stereotyped.¹⁰⁹ Therefore, respondents may not have mentioned seeing “free” messages because of the time that has elapsed since exposure to the advertising and the general tendency of memory to recall generalized information over time.

53. The literature (cited by Dr. Simonson) also indicates that there is a “salience effect” for recall tasks meaning that “salient information is given disproportionate amounts of attention and is recalled in disproportionate amounts. Thus, consumers will be biased in their use of

¹⁰⁵ Neal, p. 275; Yan et al., p. 193.

¹⁰⁶ Simonson Report, ¶ 54.

¹⁰⁷ See Simonson Report, footnote 14.

¹⁰⁸ Romberg, A. R., et al. (2020). “Validating Self-Reported Ad Recall as a Measure of Exposure to Digital Advertising: An Exploratory Analysis Using Ad Tracking Methodology,” *International Journal of Environmental Research and Public Health*, 17(2185), pp. 1-12, (hereinafter, “Romberg et al.”), at pp. 3-4.

¹⁰⁹ Simonson Report, footnote 14; Alba, J. W., Hutchinson, J. W., & Lynch J. G. (1991). “Memory and Decision Making,” *Handbook of Consumer Behavior*. Edited by T. Robertson, and H. Kassarian, pp. 1-49, (hereinafter, “Alba et al.”), at p. 20. Recall and recognition tests “are unequally affected by the salience effects and the consistency effects described here. Specifically, such effects occur most strongly on recall tests and may virtually disappear on recognition tests.” *Alba et al.*, p. 23.

information [in recall tasks] relative to stimulus-based situations,” such as a recognition test.¹¹⁰ Dr. Simonson did not ask Survey A respondents whether they filed for free or used a paid version. For respondents who did not use a free service, advertising about filing for free may not have been applicable or relevant. Therefore, some of the lack of recall as to seeing “free” messages may be because respondents who did not file for free would not have any cause to remember this information when asked a broad, open-ended question.

4. Summary of Butler Responses to Survey A

54. Dr. Simonson’s survey design does not support the conclusions that consumers do not associate H&R Block with a “free” message or that H&R Block’s “free” messaging has had a limited impact. Dr. Simonson did not ask the relevant question and instead asked respondents what was “seen.” Even if an appropriate open-ended question was asked, Dr. Simonson cannot rely solely on open-ended verbatim responses. Respondents may not have mentioned “free” at his open-ended question because (1) they believed the question was focused on visual cues, (2) they interpreted the question to be about the general format of what was seen, or (3) they were satisficing and only provided a brief response. Given well-established principles in survey research, there is no reason Dr. Simonson could not have included a closed-ended question, particularly given this question format was used elsewhere in his surveys. Finally, the recall question asked is extremely burdensome. Surveys with high degrees of respondent burden often have low quality or missing data. As a result of all these flaws, Dr. Simonson’s conclusions derived from these data that consumers do not associate H&R Block with free and that advertisements of free were not impactful to consumers, are wholly unreliable.

¹¹⁰ *Simonson Report*, footnote 14; *Alba et al.*, p. 20. Also see, “We seem to reconstruct the past by examining the present and projecting it backwards, implicitly assuming that the characteristic or behavior in question is stable,” Groves, R. M., et al. (2004). “Questions and Answers in Surveys,” *Survey Methodology*. Edited by R. Groves et al., pp. 201-240, at p. 217 (hereinafter, “*Groves et al.*”).

B. Survey B Has No Control for Key Question and Cannot Prove or Disprove Deception

55. Dr. Simonson draws two sets of conclusions from Survey B: (1) most respondents believe, after seeing H&R Block advertising, that only simple returns can be filed for free; and (2) providing information about the rate of qualifying for free and access to forms has no impact on perceptions about whether the respondent can personally file for free. As designed, Survey B does not provide reliable, unbiased data to inform Dr. Simonson's first conclusion. Moreover, while Dr. Simonson may have assessed respondent "perception," this measurement cannot be tied to the claims at issue and there is no way to determine what share of Dr. Simonson's Survey B respondents have accurate perceptions or have been misled.

1. Question to Assess "Simple Return" and Filing for Free Has No Control

56. Dr. Simonson asserts that Survey B demonstrates that "most" respondents believe, based on the advertisement shown, that only simple returns can be filed for free.¹¹¹ But, in violation of standard survey practice, Dr. Simonson has no control for this question and therefore cannot conclude that the advertisement shown is the cause of consumers' perceptions. Further, Dr. Simonson's question is leading, biased, and vague.

57. First, it is essential to note that while Dr. Simonson implemented a Test/Control design for portions of Survey B, there is no Control Group for the question about simple returns and free because the additional information provided to the Control Group was only presented *after* this question was answered.¹¹² As result, there is no way to measure the degree to which survey noise has impacted the results to this question. This is highly problematic as the question asked was

¹¹¹ *Simonson Report*, ¶ 80.

¹¹² *Simonson Report*, Exhibit B-1. See QUESTION 260A and 260B for the relevant simple returns and free question, and QUESTION 300 where the Control Group was presented with additional information.

closed-ended with only two substantive response options (i.e., only simple returns or simple and non-simple returns).¹¹³ There is no separate Control Group, control question, or response option at this question to measure the extent to which respondents were simply guessing, were led by the question, or were responding to something other than the advertisement shown.¹¹⁴ As Dr. Diamond states, even “a survey with an imperfect control group may provide better information than a survey with no control group at all.”¹¹⁵ Ultimately, the rate at which respondents believed only simple returns could file for free is wholly unreliable because there is no way to determine what share of this belief is informed by the advertising and what share is explained by survey “noise.”

58. Further, even if the results of this question were in any way reliable (which they are not), there is no evidence that respondents in Dr. Simonson’s survey, or consumers more generally, understand correctly what constitutes a “simple return.” Further, there is no evidence “non-simple” has any defined meaning for respondents and given the ambiguity of this term some respondents may have selected “only simple” because there was no definition provided as to “non-simple.” Dr. Simonson did not pretest Survey B (or any of his surveys) and has no way to know how respondents interpreted “simple” and “non-simple” tax returns.

59. Data from my survey (data made available to Dr. Simonson) demonstrated that “simple returns” and filing for free were not necessarily contiguous concepts. In other words, while some respondents may believe they can file for free, they may not think their return is simple and

¹¹³ These response options were “Only simple tax returns can be filed for free,” and “Both simple and non-simple tax returns can be filed for free.” See *Simonson Report*, Exhibit B-1, QUESTION 260A, 260B.

¹¹⁴ Diamond, S. S. (2011). “Reference Guide on Survey Research,” *Reference Manual on Scientific Evidence*, Committee on the Development of the Third Edition of the Reference Manual on Scientific Evidence; Federal Judicial Center; National Research Council, pp. 359-423 (hereinafter, “*Diamond*”), pp. 398-399. “Without the control group, it is not possible to determine how much of the 40% [deceived] is attributable to respondents’ preexisting beliefs or other background noise (e.g., respondents who misunderstand the question or misstate their response).”

¹¹⁵ *Diamond*, p. 399.

vice versa.¹¹⁶ Similarly, there are a data points in Dr. Simonson's survey that suggest respondents did not have a clear understanding of the phrase "simple return." For example, Respondent 988 explained "That simple returns are free....but no definition of what 'simple' means."¹¹⁷ Other respondents indicated that they didn't understand the criteria for a "simple return," for example, Respondent 45 stated "I am not sure if my return will be simple or not," Respondent 274 stated "I have a W-2 income which would be considered as simple taxes, but I am not sure if I can because I had multiple jobs, which would require more work," and Respondent 496 explained "I do not know offhand what qualifies as Simple and I would need to look into that."¹¹⁸ Additionally, Respondent 514 reported "My taxes are generally pretty simple, consisting of 1040 and W-2 forms. So I would imagine that more than likely I would be able to, unless there was a potential tax credit that I wasn't aware that I qualified for."¹¹⁹ These examples indicate that there was confusion among respondents as to the criteria for a "simple return." Again, without a Control Group, there is no way to determine what share of respondents may have simply been guessing given the lack of clarity in Dr. Simonson's question.

2. Data Demonstrate a Substantial Share of Respondents Believe Simple and Non-Simple Can File for Free

60. Dr. Simonson's data demonstrate that 27 percent of his respondents mistakenly believed, after being shown the H&R Block advertising, that both simple and non-simple returns can be filed for free.¹²⁰ In his attempt to explain why a substantial portion of his respondents appear to be misled, Dr. Simonson offers a number of unsupported explanations.

¹¹⁶ *Butler Report*, ¶¶ 80, 90.

¹¹⁷ *Simonson Report*, Exhibit E.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ *Simonson Report*, ¶ 80.

61. First, Dr. Simonson hypothesizes that the respondents did not notice or recall the simple return messaging.¹²¹ Here, Dr. Simonson's assessment that respondents cannot recall messaging viewed seconds prior to being asked the question is in direct tension with his opinion that respondents in Survey A should have been and were able to reliably recite all messages from a potentially broad range of advertising seen, at earliest, months prior.¹²² It is unclear why in Survey B unfavorable results can be explained by respondents' inability to recall when Survey A is wholly dependent on respondents' extraordinary powers of recall.

62. Second, Dr. Simonson attributes the 27 percent who indicated both simple and non-simple can be filed for free to "the common 'halo effect' whereby some survey respondents simply assume that the advertised product is positive on all dimensions."¹²³ If Dr. Simonson was concerned about a "halo effect," he could have implemented a Control for this key question. As it stands, there is no way to determine what share of his responses can be attributed to a purported "halo effect," guessing, inattentive responding, pre-existing beliefs, or some other form of survey noise.

3. Perception Question to Understand Personal Filing Provides No Information as to Whether Consumers Were Misled

63. Dr. Simonson did use a Control condition to evaluate consumer perceptions related to whether respondents would personally qualify to file for free. Prior to being asked about their personal returns, Control Group respondents were told that 40 percent of US taxpayers can file for free and were provided with a link to a full list of forms that qualify to file for free.¹²⁴ Dr. Simonson

¹²¹ *Ibid.*

¹²² *Simonson Report*, ¶ 65.

¹²³ *Simonson Report*, ¶ 74.

¹²⁴ *Simonson Report*, Exhibit B-1, QUESTION 300.

did not record and has no evidence to demonstrate that respondents clicked on the provided link.¹²⁵ All respondents were then asked how likely or unlikely it is that their tax return is simple/can be filed for free. Yet these responses provide **no** data or indication or information as to whether respondents are misled. In other words, there is no way to determine, given Dr. Simonson's survey design, whether or which consumers were wrongly led to believe they could file for free.

64. In fact, Dr. Simonson's survey results may simply be explained by the presence of a confounding variable. A confounding variable is a variable that allows for more than one explanation for the results and when a study is confounded, it is "impossible to reach an unambiguous conclusion" as to which variable is creating the observed effect.¹²⁶ In this case, some unknown number of respondents in both the Test and the Control may correctly indicate that they can file for free and be aware of this fact (this is particularly the case since Dr. Simonson has conducted his research in August, after most of his respondents have filed their 2023 taxes). To the extent that respondents in both the Test Group and the Control Group *can and have* filed for free and are providing answers on this basis, Dr. Simonson's data provides no insight as to whether consumers would be misled prior to purchase. Simply put, if respondents can file for free and believe this is the case because they have already filed their 2023 taxes, they are not misled, if respondents cannot file for free and believe they can, they are misled, Dr. Simonson has no way to determine which of these respondents are in his survey.

65. There is some anecdotal evidence in Dr. Simonson's data that respondents are aware of their circumstances given they have already filed their 2023 returns. For example, some

¹²⁵ In my Survey, respondents assigned to the Webpage Group were able to click on thumbnail images at the key survey questions to rereview either webpage. I recorded respondents' "click" behavior to determine how many respondents utilized the click-back feature. See, *Butler Report*, footnote 45. Because Dr. Simonson has not produced any such variables, I am unable to confirm whether any respondents actually clicked on the link provided.

¹²⁶ Gravetter, F. J., & Wallnau, L. B. (2014). "Data Structures, Research Methods, and Statistics," *Essentials of Statistics for the Behavioral Sciences, Eighth Edition*, p. 15.

Test Group participants provided responses such as: “mine are very simple and I already file free,”¹²⁷ “because ive done it,”¹²⁸ or “because i use HR Block.”¹²⁹ Control Group respondents provided similar reasoning (e.g., “I did this year,”¹³⁰ “I haven't been able to the last couple years,”¹³¹ and “i filed for free last year”¹³²). As illustrated by these open-ended responses, simply asking whether they can file for free after most consumers have filed their taxes does not demonstrate that consumers were not misled *prior* to filing their taxes. Thus, while Dr. Simonson may have measured “perception,” there is no way to evaluate what these perceptions mean in the context of this matter.

4. Control Condition is Vague and There is No Record Respondents Reviewed Additional Forms

66. Further, Dr. Simonson may have observed no differences between groups because the language used in his control is ambiguous and vague. In the Control Group, respondents were told that “roughly 40% of US taxpayers can file for free.”¹³³ It is unclear that any respondent understood how the “40%” estimate would or would not apply to them personally.

67. Additionally, while the description indicates who *may* qualify, it provides no information as to who does *not* qualify. As such, the information provided to the Control Group simply indicates that some may qualify but provides no information that the respondent could use to determine that they definitively do not qualify. And while Dr. Simonson provides a link in the survey to the full list of federal tax forms that can be filed using the free online product, there is

¹²⁷ *Simonson Report*, Exhibit E, Respondent ID 51.

¹²⁸ *Simonson Report*, Exhibit E, Respondent ID 117.

¹²⁹ *Simonson Report*, Exhibit E, Respondent ID 855.

¹³⁰ *Simonson Report*, Exhibit E, Respondent ID 1739.

¹³¹ *Simonson Report*, Exhibit E, Respondent ID 2014.

¹³² *Simonson Report*, Exhibit E, Respondent ID 2127.

¹³³ *Simonson Report*, Exhibit B-1, QUESTION 300.

no evidence or record that any of his respondents clicked on the link to view the additional forms. As such, Control Group respondents were simply exposed to vague generalities and estimations that would not provide definitive information about their ability to file for free.

5. Summary of Butler Responses to Survey B

68. Dr. Simonson attempts to draw two sets of conclusions from Survey B. First, he attempts to conclude that most respondents believe, after seeing H&R Block advertising, only simple returns can be filed for free. This conclusion is formed based on data that has no Control. Therefore, Dr. Simonson cannot conclude that the advertisement communicates a clear understanding of “simple” and “free” returns. Moreover, Dr. Simonson’s survey data demonstrates that 27 percent of his respondents mistakenly believed, after being shown the H&R Block advertising, that both simple and non-simple returns can be filed for free. Second, Dr. Simonson attempts to conclude that providing information about the rate of qualifying for free and providing access to forms has no impact on perceptions about whether the respondent can personally file for free. But this measurement of perception cannot be meaningfully tied to the relevant claims at issue. In other words, there is no way to determine, given Dr. Simonson’s survey design, whether or which consumers were wrongly led to believe they could file for free.

C. Survey C is a Vague, Incomplete, Hypothetical and Does Not Represent Real-World “Trade-Off”

69. Dr. Simonson states that his Survey C tested the “impact of a disclosure regarding the need to reenter information and contact customer service” in two ways.¹³⁴ The first “tradeoff” task¹³⁵ is a vague and unrealistic hypothetical scenario. Responses from Dr. Simonson’s own data suggest his survey participants did not understand the question and associated tasks. Dr.

¹³⁴ *Simonson Report*, ¶ 89.

¹³⁵ *Simonson Report*, ¶ 96. i.e., QUESTION 270, 275, 276.

Simonson's second test, using the "constant-sum technique," is supposedly "a more realistic task" in which consumers consider various criteria for selecting an online tax filing service.¹³⁶ However, this task too fails to replicate any semblance of how consumers would experience "downgrading" in the real world. Further, this task presents respondents with a nonsensical scenario, it is vague and unclear, and there is no way to know what assumptions respondents were making when evaluating the list of features. The results from Survey C, therefore, cannot provide a reliable measure as to the impact of the downgrading process.¹³⁷

1. First Task is a Vague and Incomplete Hypothetical

70. After answering a series of questions about what kinds of tax returns can be filed for free and which of the featured products they would likely choose, respondents in Survey C were presented with what Dr. Simonson calls a "tradeoff" task. In this task, respondents were presented with the choice between switching to a free option or staying with a paid option.¹³⁸ Test Group respondents were provided with the additional information that if they wish to switch from a paid option to a free option, they must do so by "re-entering the information and contacting customer service."¹³⁹

71. First, Dr. Simonson's tradeoff scenario only represents one possible scenario of the range I understand to be at issue. For example, I understand that some consumers who downgrade begin in "Free" before being upgraded and then seek to downgrade. The impressions and

¹³⁶ *Simonson Report*, ¶ 91.

¹³⁷ In Dr. Simonson's QUESTION 270, he describes the steps to downgrade as "contact customer service and re-enter your tax information," but in the response option provided at this question, the order of these steps is inverted to read "by re-entering the information and contacting customer service." See *Simonson Report*, Exhibit C-1, QUESTION 270T. I understand that in order to "downgrade" consumers must first contact customer service, who "wipe" a consumers' data, and only then can the consumer begin to re-enter information. See, Complaint (Nonpublic), *In the matter of H&R BLOCK INC., HRB DIGITAL LLC, and HRB TAX GROUP, INC.*, United States of America Before the Federal Trade Commission, Docket No. 9427, dated February 23, 2024 (hereinafter, "*Complaint*"), ¶¶ 16-23. Aside from failing to provide pertinent details regarding the downgrade process (described in Section C.3.), Dr. Simonson has therefore also failed to accurately describe the steps required to downgrade.

¹³⁸ *Simonson Report*, ¶ 96. i.e., QUESTION 270, 275, 276.

¹³⁹ *Simonson Report*, ¶ 96, QUESTION 270T.

preferences of consumers who intentionally started with the free product, who were upgraded, and then were provided with an option to downgrade (with restrictions) may differ from those who started with a paid product. Similarly, I understand there are also those who move from a more expensive product to a less expensive product. Dr. Simonson's "tradeoff" task provides no data as to the perceptions of consumers in either of these alternative scenarios.

72. Setting aside the above limitations, the scenario tested by Dr. Simonson is entirely vague, unclear, and incomplete. Even before being asked about what they would do upon learning they could file for free, the scenario presented lacks clarity and information. For example, respondents are told to imagine they "decided to choose one of the paid products shown on the product selection webpage."¹⁴⁰ But of course, the paid products range in price from \$55 to \$115.¹⁴¹ The ability to switch to a free product, and the willingness to undertake tasks or lose functionality, may vary depending on the initial price respondents assumed they were paying. If respondents assumed they were saving \$115 (even if that is not what they would have paid given their personal circumstances) their tolerance for switching may have been much higher than observed in the real world. Dr. Simonson provides no instruction as to what price respondents should have assumed at the outset and therefore there is no way to determine what "tradeoff" any respondent understood was being made.

73. Similarly, respondents were told that they learn they can file for free "after [they] enter [their] information."¹⁴² It is unclear what information respondents were supposed to assume they had entered before learning they could switch to a free product. This is of course key, because a respondent assuming they entered basic information (e.g., name, social security number) is

¹⁴⁰ *Simonson Report*, ¶ 96, QUESTION 270 (emphasis added).

¹⁴¹ *Simonson Report*, ¶ 96 QUESTION 270T, 270C. For price points, see *Simonson Report*, Exhibit C-1, QUESTION 220.

¹⁴² *Simonson Report*, ¶ 96, QUESTION 270.

envisioning a very different scenario than a respondent assuming they entered multiple fields of data across multiple screens. Dr. Simonson simply provides no context and there is no way to know what information his survey respondents believed they entered before understanding they could file for free. Nor does Dr. Simonson provide any information as to the amount of time a respondent may have spent entering such information (e.g., have they spent five minutes or two hours?).

74. Additionally, the “product features” respondents would supposedly “lose” if they chose to file their tax return for free were also vaguely defined.¹⁴³ The only example of a lost product “feature” was the “auto-import of tax information,” which was not explained or defined.¹⁴⁴ Dr. Simonson did not pretest his survey and has no data to demonstrate this feature was understood as intended. In fact, some respondents may have believed this feature related to the data just entered (as opposed to the importation of past years’ taxes).

75. There is evidence in Dr. Simonson’s data that respondents did not understand the hypothetical scenario posed in the “tradeoff” task. Dr. Simonson indicates in his report that respondents, indeed, “misinterpreted” the response options.¹⁴⁵ Dr. Simonson himself notes that, “some respondents mistakenly understood the reference to reentering information as indicating that, in case they do not switch to the Free option, they would not need to enter their information at all” and attempts to downplay this confusion by stating that “such a misinterpretation was likely to lead (Test group) respondents to prefer to stay with the paid option.”¹⁴⁶ Here it appears that Dr. Simonson attributes respondent confusion solely to the wording provided to Test Group

¹⁴³ “After you enter your information, you learn that you are eligible to file your tax return for free, but that doing so will cause you to lose certain product features (such as auto-import of tax information)...” See *Simonson Report* ¶ 96, QUESTION 270T, 270C.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Simonson Report*, ¶ 102.

¹⁴⁶ *Simonson Report*, ¶ 102.

respondents about the “re-entering of information” (i.e., arguing that the impact of this confusion would work against his hypothesis of no statistical significance). However, Dr. Simonson has no way of knowing how, and to what extent, the confusion stems from the vague language regarding the selection of the product, the incomplete description of “product features,” and/or the failure to clearly explain the scenario in which respondents would encounter this information in the real-world. Furthermore, additional data from his survey clearly suggests that the instances of confusion amongst respondents do not simply impact Test Group respondents in the direction he suggests.

76. For example, data from Dr. Simonson’s survey suggest that respondents in both the Test and Control Groups were confused as to how the “switch” to the free product would take place. Some respondents were under the assumption that if they switched to the free product, they would lose money already paid for one of the paid products. For example:¹⁴⁷

- Respondent 670 (Control Group) said “I paid for those options, so losing them wouldn't be worth it.”
- Respondent 735 (Control Group) “Because I would still like to use the options I paid for.”
- Respondent 1544 (Test Group) “Because I already paid for it and would have to do more work by starting over with the free version. i would just pick the free version next year.”
- Respondent 1625 (Control Group) “Because I would rather not lose \$115.”
- Respondent 1653 (Control Group) “Because I don't want to lose the features that I already paid.”

2. Hypothetical Scenario in Survey Violates Respondents’ Preferences and Circumstances

77. Further confusion was likely created as the hypothetical posed in the “trade-off” task did not align with respondents’ experiences. While Dr. Simonson asked respondents to assume they have purchased some undefined paid product, 54 percent of his respondents (223 of the total 415 respondents) indicated in a prior question that they would use the “Free Online” product.¹⁴⁸

¹⁴⁷ *Simonson Report*, Exhibit F.

¹⁴⁸ *Simonson Report*, ¶ 100; Exhibit C-3, p. 20 (Table 9).

Therefore, more than half of the respondents in Survey C are presented with an undefined hypothetical “paid” product despite indicating they would not be considering such a product. The failure to present respondents with a product they would consider further renders the vague hypothetical scenario even more unrealistic.

78. There is evidence in Dr. Simonson’s data demonstrating that moving to a free product (at least as presented in the survey) was not a realistic or intelligible scenario for respondents. When asked in the “tradeoff” task whether they would remain with the paid product or switch to free, many respondents indicated they would stay with the paid product due to confusion over how they would be qualified for the free version. For example:¹⁴⁹

- Respondent 545 (Control Group) noted that they would “stay with the paid product” because “I would have to upgrade to premium based on my needs.”
- Respondent 774 (Control Group) initially indicated they would be most likely to use the “Deluxe” product because it “would suit my needs” and then later stated at the “tradeoff” task that they would stay with the paid product, pointing out the “free version would lack the ability to do complex returns.”
- Respondent 1041 (Control Group) noted they would be most likely to use the “Deluxe” version because they “have 3 children” (i.e., the webpage indicates “Deluxe” version should be used if you have dependent children). They later note at the “tradeoff” task that they would stick with the paid version “because as a parent i have to include them on my return.”
- Respondent 1135 (Control Group) noted that they would stay with the paid version because “i have 1099 income to report so I have no choice but to use the self-employed menu.”
- Respondent 1285 (Test Group) would stay with the paid product because they “need to itemize and include investments.”
- Respondent 1629 (Control Group) indicated they would likely use “Deluxe” because “This is what matches what our family would need.” When asked the “tradeoff” question they indicated they would stay with the paid version because “I would think I still need the paid version.”
- Respondent 1683 (Control Group) said they would likely use “Deluxe” “to itemize my deductions,” and later noted they would stay with the paid product because their taxes “need to be itemized.”
- Respondent 1833 (Test Group) said they would stay with the paid version “because my taxes are more complex than the free offering supports.”
- Respondent 1961 (Control Group) indicated they would “stay with the paid option because I need the premium features to file my taxes correctly.”

¹⁴⁹ *Simonson Report*, Exhibit F.

- Respondent 2178 (Test Group) indicated they would use the “self-employed” product because “i have w2 income but also do tech on the side so i get 1099 SE” and later indicated they would stay with the paid product because “i have to use it for my situation.”

79. While Dr. Simonson attempts to characterize respondents’ confusion of the question wording as isolated to a handful of Test Group respondents, there is clear evidence of confusion regarding both of how the “switch” to the free product would occur, as well as how respondents with certain tax situations could even qualify for the “free” product. Any data resulting from question wording and hypotheticals that are unclear and misunderstood are unreliable.

3. Survey Makes No Effort to Represent Time / Effort Spent

80. The data related to tradeoffs in Dr. Simonson’s survey are further unreliable as there is no information provided to respondents as to the effort or time required to enter or re-enter “information” (again not defined) and what contacting customer service would entail. As noted in the Complaint, re-entering information requires the customer to “restart their tax returns from the beginning, including re-entering income information such as W-2 information.”¹⁵⁰ Respondents in Dr. Simonson’s Survey C are not informed that “re-entering information” actually means that the customer has to start over from the beginning because “almost all information entered by the consumer” would be deleted if they decide to downgrade.¹⁵¹

81. Examples of consumers’ customer service experiences are also cited in the Complaint but such real world information is not present in Dr. Simonson’s survey. One customer noted “HR Block is not allowing to downgrade the product without contacting service representative, I have been waiting for 45 minutes for the representative to respond to downgrade

¹⁵⁰ *Complaint*, ¶ 23.

¹⁵¹ *Complaint*, ¶ 23.

from deluxe to premium.”¹⁵² Other complaints by customers attempting to downgrade note “the wait time to downgrade is hours on the phone” and “I have to wait more than 30 minutes on the phone call and then the line was cut.”¹⁵³ In 2022, an FTC investigator made at least five attempts to contact customer service to downgrade, making two attempts through the online chat and three phone call attempts. The attempted chat contacts were successful, but took approximately 20 minutes to complete, but the attempts to downgrade via phone were unsuccessful, with the calls abruptly disconnecting after waiting approximately 10-15 minutes on hold.¹⁵⁴

82. While Dr. Simonson’s survey respondents are told that “after you enter your information you learn that you are eligible to file your tax return for free,”¹⁵⁵ they are offered no information as to what information they have entered, the extent to which they have progressed in completing their tax return, how long the initial data entry may have taken, how many screens they may have viewed prior to finding this out, etc. Respondents, therefore, are not provided with this pertinent information that would likely affect how they would evaluate having to re-enter information and having to contact customer service.

4. Constant-Sum Task is Nonsensical and Offers Vague Descriptions of “Switching”

83. Dr. Simonson’s second attempt to measure the “impact of a disclosure regarding the need to reenter information and contact customer service” similarly fails.¹⁵⁶ Dr. Simonson describes his second task as a “constant-sum” exercise which was supposedly a “more realistic task in which consumers consider various criteria for selecting an online tax filing service, without

¹⁵² *Complaint*, ¶ 20.

¹⁵³ *Complaint*, ¶ 20.

¹⁵⁴ *Complaint*, ¶ 21.

¹⁵⁵ See *Simonson Report* ¶ 96, QUESTION 270.

¹⁵⁶ *Simonson Report*, ¶ 89.

focusing on just one tradeoff under a hypothetical scenario.”¹⁵⁷ While a constant-sum exercise can be a useful method, here it does not make sense as a means to evaluate the types of “tradeoffs” Dr. Simonson purportedly intends to test.

84. The respondents in Survey C are presented with the constant-sum/point allocation exercise and are asked to determine how important the features are in determining which online tax preparation to use.¹⁵⁸ Within this context, Dr. Simonson provides respondents with a list of product features such as “easy to use,” “guaranteed to be accurate,” and “good reputation.” These features appear to represent the types of features consumers might evaluate when choosing a service.¹⁵⁹ But the difference between the two disclosures, “You can switch from a more expensive to a less expensive (or free) product by contacting customer service by phone and re-entering your information [TEST] / You can switch from a more expensive to a less expensive (or free) product by using the information you already entered [CONTROL]”¹⁶⁰ does not make sense within the context of this exercise for a number of reasons.

85. First, it is entirely unclear why, before even selecting a product, a consumer would be considering switching away from that same product or, why one would select a more expensive product to start when a less expensive or free product is available. Yet, this is the scenario Dr. Simonson seems to suggest that respondents should be considering. The lack of observed differences between the Test and Control disclosures may have occurred because respondents in both groups generally assumed that they would select the least expensive or free product to start and would have not needed to switch.

¹⁵⁷ *Simonson Report*, ¶ 47.

¹⁵⁸ *Simonson Report*, ¶ 97. QUESTION 300.

¹⁵⁹ Dr. Simonson provides no data or explanation as to how he determined these were the correct features to include in the allocation exercise.

¹⁶⁰ *Simonson Report*, ¶ 97. QUESTION 300.

86. Second, another feature in the list is described as “The cost of the product you choose to use, which could range between free (\$0) and \$115 depending on the complexity of your tax situation.”¹⁶¹ It is entirely unclear whether this feature is intended to overlap with the switching feature (which also describes a similar variability in price from more expensive to free). Again, respondents in both groups may simply be assuming they would not need to switch, especially given another feature seems to suggest they can choose a product that fits their tax situation at a range of prices.

87. Furthermore, because (as previously noted) over half of Dr. Simonson’s Survey C respondents already indicated they would use the “Free Online” product, when asked to “assume that [they] are considering using a particular online tax preparation service,”¹⁶² it is entirely possible these respondents were envisioning using a free product in the scenario presented. As such, the ability to “switch from a more expensive to a less expensive (or free) product” may be entirely irrelevant, as they would already be using the least expensive (i.e., “free”) option.

88. The data from the constant-sum task are also unreliable because the key switching terms presented are vague and unclear. Similar to the “tradeoff” task, respondents are not told in the constant-sum task what “contacting customer service” and “re-entering your information” would entail. And while the Control Group is told they could switch “by using the information you already entered,”¹⁶³ it is entirely unclear what information has been entered or what “using” the information means (e.g., Does the company use the information to find their account but they still have to fill out certain forms again? Does all of the information simply carry over?). It is also unclear if the switching here is intended to represent only switching to another product from the

¹⁶¹ *Ibid.*

¹⁶² *Simonson Report*, ¶ 100.

¹⁶³ *Simonson Report*, ¶ 97, QUESTION 300.

same provider or could include switching to a product from another provider, and whether a respondent was supposed to assume that the loss of product features (described in the prior task) should or should not apply in the constant-sum exercise. Dr. Simonson did not conduct any pretests so there is no way to be sure how any of the undefined terms in this survey were understood.

5. Summary of Butler Responses to Survey C

89. In sum, the data produced by Dr. Simonson's "tradeoff" and "constant-sum" tasks cannot produce reliable data as to the "impact of a disclosure regarding the need to reenter information and contact customer service," as respondents are simply presented with vague, undefined hypothetical scenarios which fail to represent the effort required to switch to a free or less expensive service.¹⁶⁴ Survey literature cautions against using vague and complex questions as these types of questions are known to introduce harmful noise or random error into the data and may prevent the researcher from observing an effect.¹⁶⁵ As Groves et al., explain, "[t]he problem with complicated questions like these is that it may be impossible for respondents to keep all the possibilities and requirements in mind; as a result, part of the meaning may end up being ignored."¹⁶⁶ In the case of Dr. Simonson's Survey C, the complexity of the scenario is compounded by the lack of clarity in the terms and steps (e.g., what information was entered or would have to be re-entered). To generate reliable results, it would have been essential for Dr. Simonson to undertake some effort to provide respondents with proper context and details as to the nature of the information being entered and the efforts associated with switching – he has done neither. Dr. Simonson's constant sum methodology presents respondents with illogical scenarios, asking them to consider downgrading from a product not yet purchased or asking respondents who already

¹⁶⁴ *Simonson Report*, ¶ 89.

¹⁶⁵ *Neal*, p. 286.

¹⁶⁶ *Groves et al.*, p. 212.

indicated that they select a free product to imagine some vaguely described effects of “switching” to free. As with the tradeoff task, aspects of the “switching” in Dr. Simonson’s constant-sum task are vague and unclear; there is no description of what information has been entered or the effort it may take to contact customer service. Neither of the exercises in Survey C present respondents with realistic scenarios that reflect the process of downgrading and neither present reliable data.

VI. RESPONSE TO DR. SIMONSON’S CRITIQUES

90. In addition to conducting three surveys (and attempting to use data from these surveys to respond to my work), Dr. Simonson offers some additional critiques of my research. Generally, Dr. Simonson suggests that my survey demonstrates “exceptionally” high levels of “noise,” has biased questions,¹⁶⁷ and has “excessively-manipulated stimuli.”¹⁶⁸ He further suggests that I “ignore”¹⁶⁹ the impact of Intuit’s advertising of free services. As I explain below, Dr. Simonson’s critiques are without merit, are not supported by the literature, and are not supported by his data (and in some cases are contradicted by his own research).

A. My Survey Properly Accounts for Pre-Existing Beliefs and Other Potential Sources of Survey Noise

91. In his description of survey “noise,” Dr. Simonson focuses on the types of responses that may be the result of the research design (such as leading or biased questions) or respondent error (such as guessing or misunderstanding the question).¹⁷⁰ But Dr. Simonson does not discuss another important potential source of survey noise, namely, pre-existing beliefs. Pre-existing

¹⁶⁷ *Simonson Report*, ¶ 118.

¹⁶⁸ *Simonson Report*, p. 59.

¹⁶⁹ *Simonson Report*, ¶ 133.

¹⁷⁰ *Simonson Report*, ¶¶ 117-118.

beliefs are the ideas and conceptions that respondents bring to the survey.¹⁷¹ In cases involving big brands or known services, respondents may come to the survey with a whole series of entrenched beliefs that cannot simply be put aside for the research. Therefore, it is essential in a false advertising study to appropriately control for, or have a measurement of, the extent to which previous beliefs inform respondents' answers so that the research has an accurate assessment of the impact of the single exposure to the advertising being tested.¹⁷²

92. Dr. Simonson claims that the noise level observed in my survey is “exceptional” and, as support, cites to a court case related to the likelihood of confusion between trademarks.¹⁷³ The survey in the matter cited by Dr. Simonson was designed to test potential confusion between online content to providers of wireless devices and a magazine targeted to men ages 20 to 45.¹⁷⁴ In that case, despite the fact that the at-issue products would not appear proximately for consumers, the survey expert simply showed respondents images of the two products at issue and asked if they were associated in any way.¹⁷⁵ Not surprisingly, the court criticized the design which showed only two products, side-by-side, even though they would not appear this way in the real world.¹⁷⁶ The court indicated that this side-by-side comparison improperly led respondents (including those in the Control Group) to believe the products were related.¹⁷⁷ This case is entirely unrelated and irrelevant to the present matter and the court's concerns in that matter do not apply here.

¹⁷¹ *Neal*, p. 280.

¹⁷² “For example, in *Procter & Gamble Co. v. Ultreo, Inc.*, the court rejected a survey that did not employ a control group to distinguish between, on the one hand, preexisting consumer beliefs about ultrasound toothbrushes and ‘bubbles,’ and, on the other hand, consumer beliefs resulting from of [sic] Ultreo’s advertising.” *Bernstein*, p. 213.

¹⁷³ Simonson Report, ¶ 117.

¹⁷⁴ <https://casetext.com/case/kargo-global-inc-v-advance-magazine-publishers>, last accessed September 6, 2024.

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.* A total of 80 percent of control group respondents indicated that the two products shown had some relationship.

93. In fact, Dr. Simonson's own data demonstrate that his "normal" rate of deception (i.e., below 20 percent)¹⁷⁸ is arbitrary. As explained above, in Dr. Simonson's Survey B, a total of 27 percent of respondents answered that both simple and non-simple returns could be filed for free.¹⁷⁹ Here, Dr. Simonson explains these findings by referencing a "halo effect" or what he characterizes as consumers bringing their assumptions about the product to the survey, assumptions they may have formulated on the basis of exposure to "other ads."¹⁸⁰ Here then, Dr. Simonson and I appear to agree, survey respondents may be basing their answers, at least in part, on exposures and beliefs formulated outside of the context of the survey.¹⁸¹

94. This is certainly likely in this particular matter as H&R Block is a well-known brand with many consumers who are aware of their services. As I discussed in my initial report, H&R Block has been advertising its free online services for many years.¹⁸² In fact, Dr. Simonson's own data from Survey A demonstrate that almost two thirds of consumers (65.0 percent) can recall seeing an H&R Block advertisement many months, or even years, after the tax season in which they aired.¹⁸³ While Dr. Simonson suggests that I have "baselessly presumed" that some share of the observed noise is likely attributable to prior exposure, this is contradicted by H&R Block's

¹⁷⁸ *Simonson Report*, ¶ 119.

¹⁷⁹ *Simonson Report*, ¶ 80.

¹⁸⁰ "As a result, consistent with a standard "halo effect" (discussed above), these respondents apparently assumed that the product for which they saw an ad as part of the survey must have advantages in all respects (similar to other ads that highlight the advantages of the advertised product)." *Simonson Report*, ¶ 80.

¹⁸¹ Interestingly, Dr. Simonson departs from accepted methodology and does not include any Control to account for the share of respondents indicating that "simple tax returns can be filed for free" as a result of guessing, preexisting beliefs, or biased and leading questions. See Section B.1. above.

¹⁸² See, *Butler Report*, Figure 2.

¹⁸³ As discussed above in Section A.1., Dr. Simonson's Survey A is not a measure of the extent to which consumers believe that H&R Block advertises free online tax services.

own internal research¹⁸⁴ and his survey results. Both H&R Block's research¹⁸⁵ and Dr. Simonson's research¹⁸⁶ suggest that many consumers report being aware of and exposed to H&R Block.

95. Further, it is important to recall that my research used two different forms of controls: in the survey evaluating the television commercial the misleading messages were removed but not replaced with corrective information;¹⁸⁷ in the Webpage Control Group the misleading information was replaced with corrective information.¹⁸⁸ In both cases, many consumers still mistakenly believed they can file for free. Respondents in both Control Groups provided a variety of reasons why they (incorrectly) believed they could file for free. The vast majority of respondents shown the commercial incorrectly believe that this message was in the ad, such as Respondent 1462 who stated "the ad is clearly telling us that we can," and Respondent 7539 who said "[t]hey tell you in the commercial that you can file for free."¹⁸⁹ Respondents shown the webpage incorrectly assumed that because free was an option, they would be eligible. For example, Respondent 2203 explained "One option allows a customer to file for free," Respondent 2845 stated "[t]here's an entire area showing if you sign up for H&R Block you can file for free," and Respondent 2962 said "it says do it yourself with no extra charges."¹⁹⁰ Other respondents drew upon personal experience with H&R Block, such as Respondent 10783 who stated they believe they can file free "they offered to file mine for free," Respondent 8480 who said "I have

¹⁸⁴ As noted in my expert report, H&R Block's in-market ad-tracking suggests that consumers recognize various H&R Block ads, with approximately one-third of respondents surveyed in 2024 indicating they recognize the thirty second "Breakroom Free File" commercial alone. See, *Butler Report*, ¶ 50 and HRBD_FTC_00149517 – HRBD_FTC_00149524 at 519.

¹⁸⁵ HRBD_FTC_00149517 – HRBD_FTC_00149524 at 519.

¹⁸⁶ *Simonson Report*, ¶ 59.

¹⁸⁷ *Butler Report*, ¶ 55.

¹⁸⁸ *Butler Report*, ¶ 61.

¹⁸⁹ *Butler Report*, Exhibit K. See also, Respondent 2503 "I'm almost positive that's what it said in the commercial," Respondent 4615 "the message was included in the ad," Respondent 10456 "because the ad said so," Respondent 9956 "it is in the commercial," Respondent 9150 "it says it in the ad, Respondent 10861 "it was mentioned in the commercial."

¹⁹⁰ *Butler Report*, Exhibit K.

filed with h&r block before and the commercial says so,” and Respondent 4773 who said “[t]hey have always had a free option.”¹⁹¹

96. There are many theories that explain the persistence of misperceptions even when presented with corrective information. For example, some research demonstrates that it can be difficult to correct misinformation if there has been a long-time delay between the misinformation and the correction or if the misinformation has been repeated.¹⁹² Another set of authors explains:

The retroactive nature of corrections presents a challenge because if a recipient has already formed a false belief based on the misinformation, undoing this belief requires cognitively challenging processes of memory updating or knowledge revision.¹⁹³

97. In this instance, survey respondents may have had many reasons to believe they could file for free including: past exposure to H&R Block’s advertising, the belief that their situation is not complicated or they have a modest income and therefore should qualify for free, the availability of free services elsewhere, or because doing it yourself should be or implies free. In fact, Dr. Simonson himself points out that other advertising may have had an impact on results.¹⁹⁴

98. For example, a number of my Webpage Control Group respondents¹⁹⁵ wrongly believe their income level or the simplicity of their return qualifies them to file for free (despite

¹⁹¹ *Butler Report*, Exhibit K.

¹⁹² Walter, N., & Tukachinsky, R. (2019). “A Meta-Analytic Examination of the Continued Influence of Misinformation in the Face of Correction: How Powerful Is It, Why Does It Happen, and How to Stop It?” *Communication Research*, pp. 1-35, at p. 18.

¹⁹³ Prike, T., & Ecker, U. K. H. (2023). “Effective correction of misinformation,” *Current Opinion in Psychology*, 54(101712), pp. 1-6, at p. 1.

¹⁹⁴ *Simonson Report*, ¶ 18.

¹⁹⁵ Note these respondents were ineligible for H&R Block’s Free Online product given their income type, having an HSA, or planned deductions or itemizations.

indicating that they have other circumstances that would prohibit them from filing for free using H&R Block):¹⁹⁶

- Respondent 2052: I know that I qualify for the free option because I fit that tax bracket [sic]. Also the web site tells me so.
- Respondent 2195: My taxes are very simple to do.
- Respondent 3114: I qualify to file taxes for free.
- Respondent 6168: Because for my filing purposes I fall under the category of free filing.
- Respondent 6211: I don't think my taxes are too complicated.
- Respondent 7546: For basic tax prep, I believe that is free
- Respondent 8841: I have filed before and my filing status allows me to file for free.
- Respondent 9788: I have a very simple tax return.
- Respondent 10054: My taxes are pretty simple so they are not difficult to do on my own. I always do my own taxes.
- Respondent 12136: I think my taxes are relatively simple.
- Respondent 12382: My taxes are pretty simple. They're just W-4. I don't have any dependents or businesses and I don't own anything.
- Respondent 12486: my taxes are not complicated and there's no reason I wouldn't be able to do it on my own
- Respondent 12901: Because I file a basic tax return

99. Moreover, some Control Group respondents (as well as those in the Test Group) may not have read or evaluated the webpages carefully. As I demonstrated in my original report, as Control Group respondents spent more time reviewing the webpage, their rates of deception decreased from 53.1 percent for those who viewed the page for only the mandatory period of time to 32.4 percent for those who spent almost 2 minutes reviewing the page.¹⁹⁷ In other words, some portion of the rates observed in the Control are likely related to less attentive respondents. This simply demonstrates again that the Control is performing as it should and provides a measure of the extent to which inattentive respondents or guessing may impact the observed results. Because

¹⁹⁶ *Butler Report*, Exhibit K.

¹⁹⁷ *Butler Report*, Exhibit D, p. 4.

I use the rates in the Control to subtract from the rates observed in the Test, my methodology properly accounts for these potentially less attentive respondents.

100. Dr. Simonson incorrectly asserts that I “failed” to take into account “the effect of Intuit’s voice in the free market, which far exceeded that of H&R Block.”¹⁹⁸ This assertion ignores that this effect (i.e., respondents who believe they can file for free with H&R Block because Intuit’s advertising has convinced them that all providers offer filing for free¹⁹⁹) is precisely the type of response which is accounted for by use of a Control Group. In fact, as noted in my original report, the Commercial Control removed not only the references to “file for free” and “free” but also removed references to TurboTax to ensure that Control Group respondents would provide responses unrelated to specific mentions to other companies (and therefore would provide a baseline measure of any preexisting exposure – to H&R Block or Intuit or any other companies).²⁰⁰

101. Dr. Simonson could have evaluated my data to assess whether the rates of being misled were meaningfully different for those who have used TurboTax. As shown in **Figure 2** below, the net rate of respondents being misled by the commercial is 16.6 percent for those who have filed with TurboTax compared to 29.1 percent for those who have filed using some other service. A net of 19.2 percent of TurboTax filers were misled by the webpages compared to 14.1 percent for those who filed using some other service. These data certainly do not demonstrate some consistent pattern that would support Dr. Simonson’s claim that the rates of being misled are inflated because I allegedly did not account for the impact of TurboTax’s free advertising (a criticism which, as explained, is completely unfounded).

¹⁹⁸ *Simonson Report*, ¶ 133.

¹⁹⁹ See e.g., Respondent 5843 who incorrectly believed he could file for free using H&R Block’s service and explained, “I’ve used other self service tax websites and I am looking for a change and knowing hr and r block offer this I will give them a try.”

²⁰⁰ *Butler Report*, ¶ 55.

Figure 2. Whether Ineligible Respondents Think They Can File Free by Use of TurboTax or Not to File 2021 and/or 2022 Taxes

Response	Commercial					Webpage				
	Test		Control		Net	Test		Control		Net
	Count	Percent	Count	Percent		Count	Percent	Count	Percent	
<i>Have Used TurboTax¹</i>										
Believe they can file for free	111	68.5%	94	51.9%	16.6%	125	72.7%	92	53.5%	19.2%
Total Ineligible Respondents	162		181			172		172		
<i>Have Not Used TurboTax²</i>										
Believe they can file for free	72	75.8%	43	46.7%	29.1%	70	63.1%	69	48.9%	14.1%
Total Ineligible Respondents	95		92			111		141		

Q4. Based on what you [reviewed on these webpages / heard and saw in the commercial], do you think you can file your 2023 taxes for free online with H&R Block?

S18. You indicated you filed your 2021 and/or 2022 taxes online. Have you used the free service/software offered by any of the following tax preparation companies to file your 2021 and/or 2022 taxes?

Notes: ¹ Only including respondents that selected "TurboTax" at S18.
² Including respondents who were asked S18 and did not select "TurboTax."

B. My Survey Questions Are Appropriately Designed

102. Despite acknowledging the impact of prior advertising exposure as an explanation for his own results, Dr. Simonson suggests that the “real” problem with my survey is biased and leading questions.²⁰¹

103. To support his allegations of leading and biased questions, Dr. Simonson asserts that the questions shown below (as shown to those in my Commercial Group) suggest the “correct answer,” are prone to “yea-saying bias,” and are subject to focalism bias.²⁰²

Q. Based on what you heard and saw in the commercial, do you think you can file your 2023 taxes for free online with H&R Block?

1. Yes
2. No
3. I would need more information
4. Don’t know / unsure

Q. Do you recall seeing anything about a “simple return” in the commercial?

1. Yes
2. No

²⁰¹ *Simonson Report*, ¶¶ 122-126. Here, as in other places in his report, Dr. Simonson ignores the differences between the surveys I conducted and seems to suggest that the “rather extreme Control” he takes issue with, i.e., the Webpage Control, is the same for the Commercial Group. As articulated in my initial report, and explained above in ¶ 95, the controls for these surveys were different.

²⁰² *Simonson Report*, ¶¶ 143-145.

3. I would need more information
4. Don't know / unsure

104. While Dr. Simonson describes the general concepts of demand effects, yea-saying, and focalism bias,²⁰³ he does not explain how or why such effects would be present in my survey. In fact, Dr. Simonson ignores the standard methods I employed to ensure that such biases, to the extent they occurred, if at all, had no impact on the overall results or my conclusions.

105. First, in both questions, the answer choices Yes/No were randomized such that half of all respondents would have seen the “No” response first.²⁰⁴ Additionally, when asking respondents whether they believed they could file for free, respondents were provided with three answers that would not be characterized as misled. Any respondent who said, “No,” “I would need more information,” or “Don't know / unsure,” was not counted as misled. In other words, 75 percent of the answer choices provided were not counted as misled, which hardly suggests that the question was designed to signal a “desired” response.²⁰⁵

106. Further, it is unclear in what manner Dr. Simonson believes the survey creates focalism bias. To the extent a respondent did not take away a message about filing for free, she could indicate she needed more information. The question also included a “Don't know / unsure” response option. Additionally, it is unclear how my question about filing for free (with four response options) and a filter question²⁰⁶ whether anything was seen about simple returns, creates

²⁰³ *Simonson Report*, ¶ 145.

²⁰⁴ See, *Butler Report*, Exhibit E.

²⁰⁵ In contrast, in Dr. Simonson's own survey, Survey B, when asking respondents a closed-ended question as to what types of returns can be filed for free, he had three answer choices: one indicating a correct understanding, one indicating a “misled” understanding, and one “don't know.” Respondents did not have the ability to indicate that they would need more information. *Simonson Report*, Exhibit B-1, QUESTION 260A, 260B.

²⁰⁶ Filter questions are a type of question used to ensure that the questions that follow are only asked of those consumers who noticed or have an opinion as to the specific issue. For a discussion on filter questions, see *Bernstein*, p. 219.

any greater focalism, acquiescence bias, or demand effects than would be found in Dr. Simonson's question which asked respondents:²⁰⁷

Q. Based on the commercial you saw, can only simple tax returns be filed for free or can both simple and non-simple tax returns be filed for free?

1. Only simple tax returns can be filed for free
2. Both simple and non-simple tax returns can be filed for free
3. Don't know/unsure

107. Indeed, Dr. Simonson suggests this question was intended to focus respondent attention: "I decided to ask a few questions that called the respondents' attention to the message 'Simple Returns File Free.'"²⁰⁸ While my question has an appropriate control, Dr. Simonson's does not.

108. Dr. Simonson also points to my question regarding whether any message was perceived about simple returns.²⁰⁹ While Dr. Simonson suggests this question "suffers from severe 'demand effects,'" ²¹⁰ he provides no support for why this would be the case and ignores the fact that this question was a standard filter question, using an accepted format, and was included in my survey to lessen or avoid bias.

109. Filters are a type of question used to ensure that following questions are only asked of those respondents who noticed or have an opinion as to the specific issue. In other words, a filter question typically first asks respondents whether they received *any* message (here did they get any message about "simple returns") before asking a more specific question about the message

²⁰⁷ *Simonson Report*, Exhibit B-1, QUESTION 260A. Half of Dr. Simonson's saw the question format shown here, and the other half saw response options 1 and 2 in inverse order, with the question stem "Based on the commercial you saw, can both simple and non-simple tax returns be filed for free or can only simple tax returns be filed for free?" See, *Simonson Report*, Exhibit B-1, QUESTION 260B.

²⁰⁸ *Simonson Report*, ¶ 74.

²⁰⁹ *Simonson Report*, ¶¶ 123-124. Specifically, respondents in my Webpage Group were asked: "Do you recall seeing anything about a 'simple return' on either of the webpages?" and respondents in the Commercial Group were asked: "Do you recall seeing or hearing the phrase 'simple return' in the commercial?" Respondents could select "Yes," "No," or "Don't know / unsure." The order of the Yes/No response options were rotated to avoid order effects. See, *Butler Report*, Exhibit E.

²¹⁰ *Simonson Report*, ¶ 124.

received. This is done to ensure that the researcher is not asking respondents to provide more specific opinions about messages they did not receive. As Professor Diamond explains:

...the survey can include full-filter questions, that is, questions that lay the groundwork for the substantive question by first asking the respondent if he or she has an opinion about the issue or happened to notice the feature that the interviewer is preparing to ask about (e.g., ‘Based on the commercial you just saw, do you have an opinion about how long Clover stated or implied that its guarantee lasts?’). The interviewer then asks the substantive question only of those respondents who have indicated that they have an opinion on the issue.²¹¹

110. This is the precise type of question asked in my survey, as respondents were first asked the filter question, “Do you recall seeing anything about a ‘simple return’ on either of the webpages?” (Webpage Group) or “Do you recall seeing or hearing the phrase ‘simple return’ in the commercial?” (Commercial Group).²¹² Respondents were provided with three answer choices, “Yes,” “No,” and “Don’t know/unsure,” with the “Yes,” and “No” response options randomized to avoid order effects.²¹³ Only respondents who affirmatively indicated that they recalled *anything* about a simple return were asked a follow-up question. Respondents who selected “No” or “Don’t know/unsure” were asked no further questions about “simple returns” to ensure that the research did not suggest they received messages that were not conveyed.

111. Dr. Simonson provides no explanation as to why or on what basis he believes the use of a standard filter question, with randomized response options, creates “severe” demand effects or creates “yea-saying” bias.²¹⁴ Of course, to the extent that asking whether any information about a simple return was communicated was suggestive to respondents, I have a Control Group to net out this potential impact. In other words, if any respondent simply guessed that she saw

²¹¹ *Diamond*, p. 390.

²¹² *Butler Report*, Exhibit E.

²¹³ *Butler Report*, Exhibit E.

²¹⁴ *Simonson Report*, ¶ 29.

something about a “simple return,” (or in fact recalled this messaging from earlier advertisements even when it was not shown in the survey) this would be accounted for in the Control Group and removed from the estimate in the Test Group.

112. Dr. Simonson suggests that the “number, severity, and one-sidedness” of these questions are “truly exceptional,”²¹⁵ yet he provides no explanation as to why this is a valid criticism for a total of two questions (similar to the number of questions in his Survey B), one of which is a standard filter question, with randomized answer choices, and 75 percent of the response options that would not characterize a respondent as misled. And while Dr. Simonson suggests that “by design,” the impact of these purported flaws is greater in the Test than in the Control²¹⁶ this is simply not supported by the data. As noted above and in my original report, the Webpage Control and the Commercial Control Groups exhibit similar rates of respondents who were misled, therefore the changes made to the webpage did not have a disproportionate effect on the results.

113. Dr. Simonson also critiques my question asking respondents to identify additional information on the webpages.²¹⁷ First, Dr. Simonson mischaracterizes the nature of this question. I did not ask respondents whether they would generally “be interested in additional information.”²¹⁸ Instead, this question was designed to determine whether those respondents who had indicated they needed more information to determine whether they could file for free, would click on areas that might provide clarity. The question was not intended to evaluate all possible sources of information a consumer might rely on, but instead evaluates whether consumers would seek out specific information on H&R Block’s website that might dispel potential confusion. As

²¹⁵ *Simonson Report*, ¶ 146.

²¹⁶ *Simonson Report*, ¶ 146.

²¹⁷ *Simonson Report*, ¶ 151.

²¹⁸ *Simonson Report*, ¶ 151.

the data demonstrate, very few misled respondents, in total only 7.1 percent of the ineligible Test Group respondents, would seek out additional information and would click on an area of the webpage that would potentially provide clarifying information.²¹⁹ While Dr. Simonson mentions a search he conducted on Google as evidence of other sources of information,²²⁰ he presents no evidence that this is a typical search conducted by consumers or that consumers typically navigate away from the H&R Block website and use other information sources to help them determine which H&R Block service is appropriate for them.²²¹

114. Somewhat unrelatedly, Dr. Simonson also takes issue with the calculation of the net percent increase.²²² It is unclear why Dr. Simonson believes this is an unreliable calculation – there is nothing incorrect with the calculation itself and I have presented all tabulations: the gross proportions, the net, and the increase, clearly, in my original report.²²³ I have not presented the proportionate increase in the share of consumers misled as an “alternative calculation,” as characterized by Dr. Simonson,²²⁴ but rather presented this as another way to understand the increase directly attributable to the stimulus being tested.

²¹⁹ *Butler Report*, ¶ 92.

²²⁰ *Simonson Report*, ¶ 152.

²²¹ In fact, results from Dr. Simonson’s own surveys show that the webpages for tax filing services are used as sources of information for consumers. In his Survey A, 27.5 percent of respondents indicated they used “the websites of the services I considered” before deciding which tax filing service to use. *Simonson Report*, Exhibit A-3, Table 15. In Survey B, 74.4 percent of all respondents indicated they would use “the website of the advertised online tax preparation service” to determine whether their tax return is “simple.” *Simonson Report*, Exhibit B-3, Table 16. And, in Dr. Simonson’s Survey C, of respondents who indicated they would need more information to determine which product they would be most likely to choose to file their tax return, or who indicated they did not know which product they would choose, 69.2 percent (9/13 = 69.2 percent) indicated they would use “the website of the advertised online tax preparation service” to determine which of the offered products they would choose. *Simonson Report*, Exhibit C-3, Table 13.

²²² *Simonson Report*, ¶¶ 127-128.

²²³ See, *Butler Report*, ¶¶ 76, 86 and footnotes 94 and 109.

²²⁴ *Simonson Report*, ¶ 129.

C. Stimuli in Survey are Appropriately Designed

115. While Dr. Simonson suggests that “both surveys rely on excessively manipulated stimuli” and there are “multiple biased stimuli,” it appears his concern is primarily with the modifications made to the Webpage Control.²²⁵

116. Dr. Simonson suggests that the modifications made to the Control were “detached from reality” and that the Control was “unlike any marketing stimuli consumers might actually see.”²²⁶ This allegation is entirely false - the checklist format used in my control stimulus is commonly used to compare tax software products and is simply a modified version of H&R Block’s own checklist provided on their website. For example, TaxSlayer provides a comparison chart which indicates which features each package includes (see **Figure 3**, below). Similarly, as shown in **Figure 4** below, TurboTax also provides a comparison chart for the features each package includes.

²²⁵ *Simonson Report*, ¶ 129. I do not see anywhere in his report where Dr. Simonson suggests that the changes made to the Commercial Control were inappropriate.

²²⁶ *Simonson Report*, ¶ 131.

Figure 3. Tax Slayer Software Comparison²²⁷


The screenshot displays the TaxSlayer website's pricing comparison page. At the top, there are navigation links for 'Products & Pricing', 'Compare', and 'Support & Tax Tools', along with 'START FOR FREE' and 'LOG IN' buttons. The main content is divided into four columns, each representing a different software plan:

- Simply Free:** Simple tax situations (basic 1040). Includes one free federal and one state return. Price: \$0. State included. Features include preparing, printing, and e-filing; including W-2 income; student loan interest and education expenses; and free phone and email support.
- Classic (Best Value):** All forms, deductions and credits. The best value for any tax situation. Price: \$37.95. State additional. Features include all credits like Earned Income Tax Credit and Child Tax Credit; all deductions and adjustments to income; all income types with no form or schedule restrictions; and fast info import with W-2 PDF upload.
- Premium:** Ask a Tax Pro and live chat, plus skip-the-line phone & email support. Price: \$57.95. State additional. Features include skip-the-line support; IRS Audit Assistance for 3 full years; asking a tax pro for difficult questions; live chat for technical support; and unlimited assistance.
- Self-Employed:** Personal and business income and expenses, 1099, and Schedule C. Price: \$67.95. State additional. Features include access to a tax pro with self-employed expertise; guidance with 1099 income; maximizing work expense deductions; quarterly tax payment reminders; personalized guides; and year-round tax tips.

Each plan has a 'START FOR FREE' button and a 'Learn more' link at the bottom.

²²⁷ <https://www.taxslayer.com/tax-tools/compare-tax-software>, last accessed September 5, 2024.

Figure 4. TurboTax Desktop Product Comparison²²⁸

 Compare Desktop product features	Basic Recommended for: Step-by-step guidance \$50* Includes 5 federal e-files State download and e-file additional Shop now ★★★★★ (4.2 862 reviews)	Deluxe Recommended for: Maximizing your deductions \$80* Includes 5 federal e-files 1 state download. State e-file additional Shop now ★★★★★ (4.1 31,082 reviews)	Premier Recommended for: Investments & rental property \$115* Includes 5 federal e-files 1 state download. State e-file additional Shop now ★★★★★ (4.0 14,341 reviews)	Home & Business Recommended for: Personal & Self-Employed \$130* Includes 5 federal e-files 1 state download. State e-file additional Shop now ★★★★★ (4.0 9,410 reviews)
Imports last year's data from TurboTax and other tax software	●	●	●	●
Includes 1 State via download (Print free or e-file for an additional fee*)		●	●	●
Guides you through 350+ tax deductions and credits to make sure you get your biggest refund		●	●	●
Audit Risk Meter™ checks your return for audit triggers and shows your risk level of a tax audit		●	●	●
Additional help for investment sales such as stocks, bonds, royalties, mutual funds, employee stock plans and other investment types			●	●
Understand your tax history and get tips to help maximize next year's tax refund			●	●
Extra guidance for rental property income, expenses, and refinancing			●	●
Retirement tax help and our IRA tool show you how to get more money back this year and when you retire			●	●

117. As discussed above in Section VI.A., there are many reasons consumers, even when provided with contrary information, may retain preexisting beliefs.

²²⁸ <https://turbotax.intuit.com/personal-taxes/cd-download/>, last accessed September 6, 2024.

D. Dr. Simonson's Critiques of Other "Flaws" are Without Merit

118. As noted above, somewhat strangely, Dr. Simonson suggests that TurboTax's advertising is the source of preexisting beliefs and points to "FTC's public admissions about the effect of Intuit's voice in the free market"²²⁹ and the results from his Survey A. Yet, the data from Dr. Simonson's Survey A demonstrate that many respondents who indicated that they had seen TurboTax advertising had no specific recollection of the content of their advertising either. In fact, a similar percent of respondents was unable to recall details from TurboTax's advertising as was unable to recall H&R Block's advertising, 42.9 percent and 40.4 percent, respectively.²³⁰ These data certainly do not suggest that, at least given the parameters of Dr. Simonson's Survey A, TurboTax's "free" advertising was any more memorable or impactful than H&R Block's.

119. At a minimum, Dr. Simonson's reference to TurboTax is a tacit admission that prior advertising likely has an impact on consumer perception. As noted above, my surveys account for preexisting beliefs regardless of which companies' advertising has contributed to those beliefs. Furthermore, I understand that H&R Block has made numerous comparisons or references to TurboTax's offerings, and to the extent that consumers associate TurboTax with filing for free, H&R Block's comparisons may exacerbate misperceptions related to H&R Block's free service.

120. Dr. Simonson claims that my open-ended survey questions were "ambiguous...because they did not clearly indicate whether the questions referred to messages communicated to consumers in general or to the individual respondents."²³¹ To support his criticism, Dr. Simonson identifies a single respondent who, when asked whether they can file their

²²⁹ *Simonson Report*, ¶ 133.

²³⁰ See ¶ 49 and footnote 100.

²³¹ *Simonson Report*, ¶ 136. In footnote 44 of his report, Dr. Simonson also suggests that my closed-ended question was also unclear, despite the fact that respondents were specifically asked, "Based on what **you** [reviewed on these webpages / heard and saw in the commercial], do you think **you** can file **your** 2023 taxes for free online with H&R Block?" See, *Butler Report*, Exhibit E (emphasis added).

taxes for free, says “no” and explains that they have investments that would preclude filing for free. This respondent does not indicate they are confused or is unsure, they simply explained they cannot file for free, but others may be able to, depending on their personal circumstances.²³²

121. Finally, Dr. Simonson suggests that relevant consumers should include those who filed or have yet to file their 2023 tax returns. Dr. Simonson provides no explanation as to why measuring the perceptions of consumers who have already filed their 2023 taxes would be a relevant or reliable population. It is unclear why Dr. Simonson believes individuals who have just recently filed would be appropriate to test whether materials viewed prior to purchase would misinform consumers. As articulated in the *Complaint*, the FTC plainly alleges:

H&R Block has known for many years that its failure to clearly and conspicuously disclose the material list of forms for each product makes it difficult for consumers to determine which product is right for them **before starting to work on their returns**, leading consumers to complain either about bait and switch pricing or filing using an Online Product that is more expensive than their tax situation required.²³³

122. It is obvious then that the appropriate population to survey are those who have not yet completed their tax returns. Dr. Simonson suggests that it would have been “proper” to explain why I included those who started the process but had not yet filed. Aside from the *Complaint*, I understand that beginning the process may include steps such as gathering the necessary paperwork, receipts, and documentation. To ensure that I did not exclude respondents who had not

²³² Dr. Simonson has similar answers in his data. For example, Respondent 1809 in Survey B indicated that they could probably file for free and stated, “Depending on my type of tax filing it could be free.” *Simonson Report*, Exhibit E.

²³³ *Complaint*, ¶ 52. Emphasis added. Also see “H&R Block’s advertisements about its Free Online product bring consumers to its website to begin filing their tax returns using Free Online. As described above, H&R Block’s Product Selector Page similarly omits material information (e.g., the tax forms and schedules included) for consumers to determine whether they qualify for the Free Online Product. Only after consumers are partway through preparing their tax returns does H&R Block disclose that many consumers do not qualify to use Free Online, and must upgrade and pay. This material information is provided to consumers only after they have spent significant time and energy and input sensitive personal and financial information into H&R Block’s user interface.” *Complaint*, ¶ 55.

filed but may have undertaken some preliminary efforts, I included those who “started but had not yet filed.”

VII. CONCLUSIONS

123. I designed and implemented a survey to determine whether consumers would be deceived by H&R Block’s advertising for its Free Online product.²³⁴ My survey demonstrated that between a net rate of 15.9 and 17.6 percent of consumers incorrectly believed that they could use H&R Block’s Free Online product, based on a single exposure to the at-issue advertising statements.²³⁵

124. Dr. Simonson put forth a series of surveys and critiques of my work. Dr. Simonson’s surveys and conclusions are not reliable because he asks irrelevant questions known to generate incomplete answers (Survey A), relies on a methodology that cannot establish causality (Survey B, Conclusion 1), presents no data to demonstrate whether respondents were misled and draws conclusions but fails to acknowledge the competing alternative explanations (Survey B, Conclusion 2), and relies on tasks too far removed from reality to provide any semblance of marketplace behavior (Survey C). Further, Dr. Simonson’s critiques of my survey are wholly without merit, are not supported by the literature, and are not supported by the data.

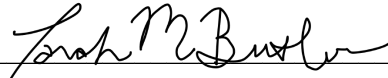
125. My opinions and conclusions as expressed in this report are to a reasonable degree of professional and scientific certainty. I may conduct additional analyses and offer additional tables or conclusions at trial based on my survey data. My conclusions have been reached through the proper application of survey methods, and using standard methodologies relied upon by experts in the field of survey and market and consumer research. My opinions will continue to be informed

²³⁴ *Butler Report*, ¶ 9.

²³⁵ *Butler Report*, ¶ 17.

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by any additional material that becomes available to me. I reserve the right to update and or supplement my opinions if provided additional information. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



Sarah Butler, Senior Managing Director

September 9, 2024