

# State Attorneys General settle with TurboTax Maker over Free Tax Preparation Services

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Earlier this week, 50 states and D.C. obtained a \$141 million [settlement with Intuit](#) related to its advertising of free and freemium TurboTax products. This settlement, which took the form of an Assurance of Voluntary Compliance (a special kind of settlement authorized by many state unfair and deceptive trade practice laws), concluded a three year investigation of the company, and is an example of a bipartisan and nearly unanimous effort among state AGs to address a consumer protection matter. However, it came as a precursor to several state AGs pulling out of the National Association of Attorneys General signaling [division within the State AG community](#).

The Attorneys General alleged facts similar to the FTC's [suit on March 29, 2022](#) in their findings. In that case, the FTC had filed an administrative action alleging FTC Act violations, while simultaneously filing a federal district court action seeking a temporary restraining order (TRO). The hearing on the TRO [didn't go so well](#) for the FTC, and the judge [denied](#) the FTC's request a day later – noting that the “emergency” need for relief (tax day) had passed; that Intuit had already halted some of the alleged violations; and that the administrative case could address any continuing violations. It is notable that the States have chosen to settle their case while the FTC continues its fight on its own, especially since the settlement could render some or all of the FTC's case moot. (And indeed, in a motion to the FTC filed just after the State settlement was announced, Intuit is [seeking withdrawal](#) of the FTC's administrative action on both procedural and mootness grounds.)

The settlement requires that when advertising a product as free, Intuit disclose the existence of material limitations and that not all taxpayers qualify, “clearly and conspicuously, and in close proximity to the representation that the product is free. . .” Demonstrating some flexibility, the States include special provisions for space-constrained ads, which must disclose that eligibility requirements apply and provide a link to the full disclosure online. Video ads require an audible disclosure in addition to written, unless shorter than 8 seconds. However, the States have enjoined altogether the use of certain ads repeating the word free.

Intuit also must intentionally design its software to determine at the earliest point possible that a person doesn't qualify to use a free product and make disclosures accordingly. The Attorneys General further required data portability, insuring data from any paid upgrade be transferable to the free product.

The \$141 million payment will be placed into a Settlement Fund, which will be run by a Fund Administrator and governed by an Oversight Committee made up of FL, IL, NJ, NY, NC, PA, TN, TX, WA. While the Settlement Fund will pay restitution to consumers, amounts for the cost of administration and for the attorneys' fees and costs for the States will come out of that Fund. And

while there is an initial allocation schedule attached, it is there for “informational purposes only” since the actual amount flowing to each State and its consumers is ultimately still subject to determination by the Oversight Committee.

Importantly, some key takeaways from the settlement for companies to consider include:

- Make sure “freemium” product advertising fully discloses offer limitations and eligibility requirements from the outset;
- Avoid “dark patterns” that may dissuade customers from taking an available free option;
- Don’t overuse the word free especially without accompanying disclosures in close proximity.