

The Legal Intelligencer

Tax Software Companies Face Proposed Class Action Over E-Filing

Gina Passarella

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A Philadelphia plaintiffs firm filed suit in federal court Monday in what it says is a billion-dollar class action against a group of income tax software companies for excessive fees charged for e-filing.

Feldman Shepherd Wohlgernter Tanner & Weinstock filed the suit in the U.S. District Court for the Eastern District of Pennsylvania on behalf of Philadelphia resident Stacie Byers against members of an income tax software group, Free File Alliance.

The suit, *Byers v. Intuit Inc.*, alleges that group members, such as H&R Block Inc. and Intuit Inc., illegally charged millions of U.S. taxpayers excessive e-filing fees.

The complaint was brought under the Federal User Charge Statute and alleges that the alliance members charged fees solely based on their private business interests and not on the value to the taxpayer and the public policy interest served. The sole count of the complaint was for restitution of fees charged for electronic tax filing in violation of the Independent Offices Appropriation Act.

In the complaint, Byers and the proposed class allege that the IRS contracted with Free File Alliance to collect e-filed federal tax returns on its behalf. The agreement the IRS made with the alliance was supposed to provide free e-filing of tax returns to 70 percent of Americans, the firm said.

Only 3.8 million taxpayers filed their returns for free in 2006, and, in 2007, only families with adjusted gross income of less than \$52,000 qualified for free filing, the firm alleged.

"The name 'Free File Alliance' is clearly misleading," Feldman Shepherd attorney Thomas More Marrone said in a statement. "Few taxpayers are actually eligible for free electronic filing. E-filing has become an enormous profit center for cartel members."

Marrone said in an interview that the class members would be e-filers who made over \$52,000, which has the potential for more than 70 million class members.

The suit is against Free File Alliance as a defendant class as well as some of its members - H&R Block Inc., Intuit Inc., and H&R Block Digital Tax Solutions.

Marrone said the government has encouraged taxpayers to file electronically for faster processing and returns, but there is no way to do so other than through a group member.

"This agreement wrongfully 'privatized' the IRS' quintessential government task of developing, receiving, collecting and processing tax returns, allowing [alliance] members to reap profits by charging taxpayers and tax preparers substantial and legally unauthorized fees to electronically filed returns with the IRS," the complaint alleges.

Marrone said the proposed class calls into question all fees associated with e-filing, including the fees to file and the cost of purchasing the software for tax return preparation.

The actual cost to the IRS for e-filing because of the savings from e-filers is "either nothing or next to nothing," Marrone said. Those who don't qualify for free filing have to purchase software to file. Although it is one fee, there are several services bundled into that purchase, he said, and the software is only good for that year's return.

Marrone said the alliance members can sell the software because it does have value, but they shouldn't be able to have a corner on the market and sell at whichever prices they want.

Byers and the proposed class are seeking a full refund of all fees paid for e-filing along with injunctive relief and treble damages.

In the statement, Marrone said the defendants control the "vast majority" of market share when it comes to tax return preparation software and e-filing services.

In remarks made before the U.S. House Committee on Ways and Means in April 2006, Free File Alliance Executive Director Timothy D. Hugo said the IRS' Free File Program was in its fourth year and had already saved taxpayers and the IRS millions of dollars.

He said there were then 20 member organizations in the voluntary alliance, and members came and went at will. Hugo said that in the four years, the alliance had donated more than 14 million free tax returns to the U.S. taxpayers.

"I estimate that each return has saved U.S. taxpayers approximately \$30 and a case can be made for an even greater number," Hugo said in the written remarks. "That would indicate U.S. taxpayers have directly saved over \$42 million."

Hugo had said at that time the alliance companies were currently expected to offer free filings for 93 million, or 70 percent, of U.S. taxpayers.

According to Free File Alliance's Web site, currently 15.4 million returns have been e-filed through the alliance since 2003 and 70 percent of all taxpayers are eligible.

Free File Alliance's general counsel, Stephen M. Ryan of McDermott Will & Emery, was out of the country and unavailable for comment.

A spokesman for the alliance, Patrick Dorton, said in a statement that the lawsuit was without merit.

"The Free File Alliance, which has been authorized and approved by the IRS and Congress, is a pro-consumer public-private partnership that has allowed more than 17 million taxpayers, most with low and moderate incomes, to file tax returns at no charge,"

Dorton said. "It has been a win for taxpayers and a win for consumers."

Alan Feldman of Feldman Shepherd and Kevin J. Handy of Cooley & Handy in Doylestown, Pa., are also listed as attorneys for the plaintiffs.