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# Virus Payments Pose Test For IRS Free File Private Partners

By **Alan K. Ota**

Law360 (April 14, 2020, 3:10 PM EDT) -- Lawmakers will be closely scrutinizing tax software companies in the IRS private-public Free File program as they take on a key role in helping moderate- and low-income taxpayers qualify for the coronavirus rescue law's economic impact payments.

Sen. Benjamin Cardin, D-Md., is among the lawmakers who want to see how the Internal Revenue Service's corporate partners in the Free File program deal with impact payments and outreach under the coronavirus rescue law. "It's an important test for them," he said. (AP)

Several Senate Finance Committee members said they want to see how the Internal Revenue Service's corporate partners in the Free File Alliance, such as H&R Block and TurboTax-maker Intuit, are handling the broader responsibilities. A 2019 **firefight ignited over allegations** that the companies steered users toward their own paid services even though many users qualified for free tax preparation under the program.

The blowback led to Congress striking a provision of the Taxpayer First Act last year that would have permanently continued the program and banned the IRS from developing its own competing free online tax return filing service. Now, as some are pushing for the IRS to develop such a program, both tax-writing committees are expected to review Free File's role in helping eligible taxpayers earning \$69,000 or less file tax returns and receive impact payments **under the rescue law**.

"It's an important test for them," Sen. Benjamin Cardin, D-Md., a senior Finance Committee member, told Law360.

Cardin said lawmakers wanted to see how the Free File program was dealing with impact payments and outreach after 2019 reports by ProPublica, a nonprofit journalism group, showed that several companies programmed their websites to prevent online users from finding corporate Free File web pages. That practice has since been banned.

Sen. Sherrod Brown, D-Ohio, a Free File critic, said he also was keeping an eye on the Free File program. He predicted the broadening of IRS responsibilities under the rescue law increased the agency's prospects for securing additional funding for a much-needed technology upgrade, which could include its own free online filing system.

“This may actually open up some opportunities to work together on some things,” Brown said.

House Ways and Means Chairman Richard Neal, D-Mass., has made clear that he and his panel also are watching participating companies to see if they can expand the program’s reach and services. Last week, Neal praised Free File companies for “stepping up in this challenging time” by helping the IRS develop procedures and tools to allow people who don't normally file tax returns, such as those below the income threshold for mandatory filing, to register to receive their economic impact payments from the agency.

The IRS has already caught some flak for its handling of the payments. After the agency initially said nonfilers would have to submit a simple tax return to get their payments, lawmakers balked, saying the IRS already had the necessary information for many of them.

In response, the IRS said Social Security recipients would automatically receive their tax rebates. Neal has asked the IRS and U.S. Department of the U.S. Department of the Treasury to do the same for Supplemental Security Income and Veterans Affairs recipients. If no waiver is granted, the IRS will need to rely on its own announcements and outreach efforts to ensure nonfilers submit their payment-processing data. IRS Commissioner Chuck Rettig has already **asked tax professionals** for help in connecting with such nonfilers so they can collect impact payments.

In recent weeks, some advocates for low-income taxpayers have voiced concerns about IRS efforts to team up with the Free File Alliance to reach nonfilers. For example, Dennis Ventry, a professor at University of California, Davis School of Law, noted that some Free File companies face lawsuits alleging they misled consumers eligible for free tax filing services.

Christine Speidel, a professor at Villanova University School of Law and Federal Tax Clinic director, said she wondered whether taxpayers using the Free File program “might be upsold to a paid product, or confused about how to access the service.”

A spokesman for the Free File Alliance was not available immediately to comment. Rick Heineman, an Intuit vice president for corporate communications, told Law360 in an email that such concerns were “misguided, given offerings through Free File do not include any marketing or upsells” as outlined in an agreement between the Free File companies and the IRS.

Heineman said Intuit volunteered to work without charge with the IRS and other alliance members to develop procedures including a tool to help nonfilers establish eligibility and arrange

for direct deposit of impact payments.

Such efforts by Intuit and other Free File participating companies to help the IRS reach nonfilers could earn them some goodwill as lawmakers weigh the future of the program and prospects for an IRS no-cost online filing alternative.

But Cardin said he and other lawmakers remain concerned about the relatively slow growth of the Free File program, which served only about 2.5 million, or 2.5%, of 104 million eligible taxpayers in 2019, according to a February audit by the Treasury Inspector General for Tax Administration.

The TIGTA report concluded that the Free File program had “low taxpayer participation,” which it blamed on complexity and insufficient oversight. Of eligible taxpayers, the report found about 34.5 million, or a third, used commercial software provided by Free File participating companies — including an estimated 14 million who may have paid a fee — while the remaining 67 million filed in other ways.

In an interim report on the 2020 filing season released Monday, TIGTA said that the program's usage had increased, with some 1.5 million Free File returns having been received by the agency as of the end of February, compared with 1.3 million for the same period last year.

In response to criticism of the program, representatives of the IRS Wage and Investment Division and the alliance last year signed an addendum to the program's governing agreement that prohibited participants from hiding free file options from online search engines and ended a ban on IRS development of tax software and e-filing services.

As part of the deal, the companies received a shield for their operations that barred any limits on marketing, advertising or promotion of their own services offered at no cost or for a fee.

Despite these changes, the Free File program will be in the spotlight in the coming months, and its fate ultimately may hinge on the outcome of the 2020 presidential election.

President Donald Trump's reelection likely would clear the way for Rettig to renew the Free File agreement before it expires in October 2021, and would derail lawmakers' calls for creation of a no-cost IRS filing option. That's because the IRS has been focused on improving the Free File program, rather than developing its own online filing system, since a **review of the program** by **MITRE Corp.**, a nonprofit research group, last year found that criticisms of the Free File program “don't tell the full story.”

But a victory by former Vice President Joseph Biden, the presumptive Democratic presidential nominee, and the election of Democratic Senate and House majorities likely would embolden lawmakers such as Sens. Elizabeth Warren, D-Mass., and Bernie Sanders, I-Vt., and Rep. Brad Sherman, D-Calif., who have backed a requirement for the IRS to develop its own cost-free online filing option.

With an eye on a potential showdown, allies and critics of the Free File program already have

begun to organize and plot strategy.

Sherman, an accountant, said he hoped to work with party leaders and a potential new Democratic president to move a mandate for the IRS to develop a no-cost automatic filing process with online returns automatically partly filled out with data from employers.

“There’s a better-than-even chance we could make it happen,” Sherman told Law360.

Warren and Sanders were not available to comment on their plans.

On the other side of the aisle, Rep. Mike Conaway, R-Texas, who also is an accountant, has pushed back against attacks on the Free File program. He has promoted a bipartisan resolution, H.Res. 810, to recognize vital contributions to the public by the Free File program, with 20 co-sponsors.

“I just think it’s better for the private citizens to do their own taxes as opposed to having the government decide what your tax bill should be,” Conaway told Law360.

--Editing by Tim Ruel and Neil Cohen.