

**FALL 2019**  
NEW YORK UNIVERSITY  
SCHOOL OF LAW

“Mr. Smith Gets an Education: Why it is so Hard to get Easy  
Tax Filing.”

**Joseph Bankman**  
Stanford Law School

**November 19, 2019**  
Vanderbilt Hall – 202  
Time: 4:00 – 5:50 p.m.  
Week 12

**SCHEDULE FOR FALL 2019 NYU TAX POLICY COLLOQUIUM**  
(All sessions meet from 4:00-5:50 pm in Vanderbilt 202, NYU Law School)

1. Tuesday, September 3 – Lily Batchelder, NYU Law School.
2. Tuesday, September 10 – Eric Zwick, University of Chicago Booth School of Business.
3. Tuesday, September 17 – Diane Schanzenbach, Northwestern University School of Education and Social Policy.
4. Tuesday, September 24 – Li Liu, International Monetary Fund.
5. Tuesday, October 1 – Daniel Shaviro, NYU Law School.
6. Tuesday, October 8 – Katherine Pratt, Loyola Law School Los Angeles.
7. Tuesday, October 15 – Zachary Liscow, Yale Law School.
8. Tuesday, October 22 – Diane Ring, Boston College Law School.
9. Tuesday, October 29 – John Friedman, Brown University Economics Department.
10. Tuesday, November 5 – Marc Fleurbaey, Princeton University, Woodrow Wilson School.
11. Tuesday, November 12 – Stacie LaPlante, University of Wisconsin-Madison, Wisconsin School of Business.
12. Tuesday, November 19 – Joseph Bankman, Stanford Law School.
13. Tuesday, November 26 – Deborah Paul, Wachtell, Lipton, Rosen, and Katz.
14. Tuesday, December 3 – Joshua Blank, University of California at Irvine Law School, and Ari Glogower, The Ohio State University, Moritz College of Law.

## **Mr. Smith Gets an Education: Why it is so Hard to get Easy Tax Filing**

**Joseph Bankman**

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Note to Readers – This is part of an as-yet unpublished manuscript. Comments (and contacts in the publishing world) welcome!

## [THE TURBOTAX TRAP](#)

### **Inside TurboTax's 20-Year Fight to Stop Americans From Filing Their Taxes for Free**

**Using lobbying, the revolving door and “dark pattern” customer tricks, Intuit fended off the government’s attempts to make tax filing free and easy, and created its multi-billion-dollar franchise.**

by [Justin Elliott](#) and [Paul Kiel](#)

Oct. 17, 5 a.m. EDT

Last fall, Intuit’s longtime CEO Brad Smith embarked on a farewell tour of the company’s offices around the world. Smith had presided over 11 years of explosive growth, a period when Intuit had secured its place in the Silicon Valley pantheon, and the tour was like a long party.

In Ontario, employees wore T-shirts with Smith’s quasi-spiritual sayings: “Do whatever makes your heart beat fastest” and “Repetition doesn’t ruin the prayer.” In Bangalore, India, workers put on Smith face masks as they posed for selfies with the man himself. Fittingly, the tour culminated in San Diego, the home of TurboTax, the software that transformed the company’s fortunes. There, Smith arrived at his party in a DeLorean, and as he walked a red carpet, cheering employees waved “Brad is Rad” signs. To Smith’s delight, his favorite rock star, Gene Simmons of Kiss, emerged. The two posed for pictures, Simmons clad in black and the beaming CEO flashing the “rock on” hand sign.

Intuit began in the 1980s as an accounting software company focused on helping people with their bookkeeping. Over time, the company, like the other giants of Big Tech, cultivated an image of being not just good at what it did, but good, period. In a recent Super Bowl ad, Intuit portrayed itself as a gentle robot that liberates small-business owners from paperwork. The company stresses values above all, urging employees to “deliver awesome” and pursue “integrity without compromise.”

Intuit’s QuickBooks accounting product remains a steady moneymaker, but in the past two decades TurboTax, its tax preparation product, has driven the company’s steadily growing profits and made it a Wall Street phenom. When Smith took over in 2008, TurboTax was a market leader, but only a small portion of Americans filed their taxes online. By 2019, nearly 40% of U.S. taxpayers filed online and some 40 million of them did so with TurboTax, far more than with any other product.

But the success of TurboTax rests on a shaky foundation, one that could collapse overnight if the U.S. government did what most wealthy countries did long ago and made tax filing simple and free for most citizens.

For more than 20 years, Intuit has waged a sophisticated, sometimes covert war to prevent the government from doing just that, according to internal company and IRS documents and interviews with insiders. The company unleashed a battalion of lobbyists and hired top officials from the agency that regulates it. From the beginning, Intuit recognized that its success depended on two parallel missions: stoking innovation in Silicon Valley while stifling it in Washington. Indeed, employees ruefully joke that the company’s motto should actually be “compromise without integrity.”

Internal presentations lay out company tactics for fighting “encroachment,” Intuit’s catchall term for any government initiative to make filing taxes easier — such as creating a free government filing system or pre-filing people’s returns with payroll or other data the IRS already has. “For a decade proposals have

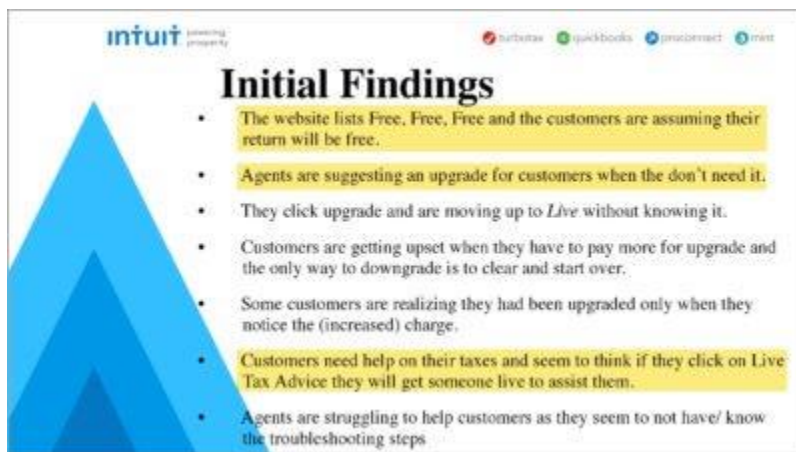
sought to create IRS tax software or a ReturnFree Tax System; All were stopped,” reads a [confidential 2007 PowerPoint](#) presentation from an Intuit board of directors meeting. The company’s 2014-15 plan included [manufacturing “3rd-party grass roots” support](#). “Buy ads for op-eds/editorials/stories in African American and Latino media,” one internal PowerPoint slide states.

The centerpiece of Intuit’s anti-encroachment strategy has been the Free File program, hatched 17 years ago in a moment of crisis for the company. Under the terms of an agreement with the federal government, Intuit and other commercial tax prep companies promised to provide free online filing to tens of millions of lower-income taxpayers. In exchange, the IRS pledged not to create a government-run system.

Since Free File’s launch, Intuit has done everything it could to limit the program’s reach while making sure the government stuck to its end of the deal. As ProPublica has [reported](#), Intuit added code to the Free File landing page of TurboTax that hid it from search engines like Google, making it harder for would-be users to find.

Twelve years ago, Intuit launched its own “free” product: the similarly named “Free Edition” of TurboTax. But unlike the government program, this one comes with traps that can push customers lured with the promise of “free” into paying, some more than \$200. Free Edition was a smash hit for Intuit and its pitch for “free” prep remains core to the company’s growth. Recently, it launched a “free, free free free” ad campaign for the Free Edition, including a [crossword](#) puzzle in The New York Times in which the answer to every clue was “f-r-e-e.”

Intuit knows it’s deceiving its customers, internal company documents obtained by ProPublica show. “The website lists Free, Free, Free and the customers are assuming their return will be free,” said a company PowerPoint presentation that reported the results of an analysis of customer calls this year. “Customers are getting upset.”



An internal Intuit analysis of customer calls this year shows widespread customer confusion about ads for “free” TurboTax. (Highlights added by ProPublica.)

Intuit also continues to use [“dark patterns”](#) — design tricks to get users of its website to do things they don’t necessarily mean to do — to ensure that as many customers as possible pay, former employees say. A marketing concept frequently invoked at Intuit, which goes by the acronym “FUD,” seeks to tap into Americans’ fear, uncertainty and doubt about the tax filing process.

An Intuit spokesman declined to answer ProPublica’s detailed questions about its efforts to fend off a government filing system, but he provided a statement.

“We empower our customers to take control of their financial lives, which includes being in charge of their own tax preparation,” he said, adding that a “government-run pre-filled tax preparation system that makes the tax collector (who is also the investigator, auditor and enforcer) the tax preparer is fraught with conflicts of interest.”

The IRS is seemingly the biggest threat to Intuit and other commercial tax prep businesses, but it has more frequently acted as the industry's ally, defending the Free File program even in the face of critical internal reviews. The IRS declined to comment for this article.

The consequences of Intuit's efforts affect a huge proportion of the taxpaying public. Americans spend an estimated 1.7 billion hours and \$31 billion doing their taxes each year. Just 2.8 million participated in the Free File program this year, down from 5.1 million at the program's peak in 2005.

Intuit's success has made the men who run the company rich. Smith, the CEO who stepped down last year and is now executive board chair, had a stake worth \$20 million when he became chief executive. It ballooned to \$220 million by last year. Co-founder Scott Cook is now among the country's wealthiest people, his fortune soaring to \$3.3 billion.

This year, Intuit was close to realizing a long-held goal: enshrining the Free File program in law, effectively closing the door on the IRS ever creating a free tax filing system. But an outcry followed ProPublica's reporting on the matter and Intuit's treatment of its customers, prompting the provision to be [dropped](#) and state and [federal investigations](#) into Intuit's practices. Yet even after this setback, the company remained steadfastly confident that its clout in Washington would win the day.

“What we're not gonna do is fight this publicly because that is exactly what they want us to do,” said Sasan Goodarzi, the new CEO, in a video released to staff this May and obtained by ProPublica. “We are actually working with the IRS and members of the Congress to ensure that the facts are very clear.”

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Intuit has dominated the tax software market since 1993, when for \$225 million, it bought Chipsoft, the San Diego-based company that had created TurboTax. Even then, TurboTax was the most popular option, but Intuit pursued a plan of aggressive growth. The product necessarily came on a disk, and by the end of the 1990s TurboTax boxes were nearly ubiquitous, on shelves in office supply stores across America.

As internet speeds increased and dot-com mania took hold, it became apparent that Intuit's future was not in a box on a shelf. It was online.

The prospect of TurboTax's growth was vast for another reason. As late as 2001, around 45 million Americans still filled out their tax forms on paper. For Intuit, those were all potential customers.

But Intuit wasn't alone in seeing possibilities in the spread of high-speed internet. In Washington, lawmakers began pushing the IRS to modernize and get more taxpayers to file electronically. It was a no-brainer: Filing taxes online would be easier, and the IRS would save staff costs on processing paper returns.

The danger to Intuit's growing business was obvious. If the government succeeded in creating a system that allowed the vast majority of taxpayers to file online for free, TurboTax profits would plummet. Intuit recognized that the notion of “return-free filing” was not going away on its own.

And so in 1998, the company hired Bernie McKay, a onetime Carter administration aide and a senior lobbyist at AT&T, to be its vice president for corporate affairs. Intuit executives like to talk about having a “customer obsession” in developing their products. McKay's obsession is stopping government

encroachment. Known to physically bang the table to drive home a point, McKay's style is "aggressive to the point of offense," said one fellow tax prep lobbyist. An Intuit spokesman said, "This mischaracterization of Mr. McKay is pure fiction."

McKay, for his part, when asked at a recent tax industry conference which Star Wars character he is, responded, "Darth Vader."

The year McKay was hired, Congress passed a major overhaul of the IRS. The bill, reflecting Intuit's lobbying, said that the IRS "should cooperate with and encourage the private sector" to increase electronic filing.

While McKay came through in his first big test, in 2002, the company found itself up against an unexpected foe, the George W. Bush administration. The threat came from a broad administration initiative to upgrade government technology. One of the proposals called for the IRS to develop "an easy, no-cost option for taxpayers to file their tax return online."

Without such an option, taxpayers were stuck either filing on paper or, to file electronically, paying a tax professional or software company like TurboTax. Providing an alternative would be an obvious improvement, said Mark Forman, an official at the Office of Management and Budget who led the "e-government" program. The technology wasn't all that complicated, and creating a free, automated filing system would help tens of millions of Americans. "This was seen as a low-cost, high-payoff initiative," Forman recalled in a recent interview with ProPublica. Standing in the way, he said, was an industry "that lives off the complexity of the tax code."

Intuit revved its new lobbying machine. Even before the OMB report was publicly released, a group of Republican lawmakers, led by TurboTax's hometown congressman, wrote to the agency arguing that there was no reason for the government to "compete" with the "well-established" private tax prep companies. Intuit's lobbyists also went above the OMB and pressed their case directly to the White House, Forman recalled.

At the IRS, "all hell broke loose," remembered Terry Lutes, who was then the head of electronic filing at the agency. Intuit's clout on the Hill meant that lawmakers were soon accusing the IRS of making "secret plans to undercut the industry," Lutes said. The agency ran the risk of seeing its funding cut if it were to pursue the Bush plan.

The IRS commissioner at the time, Charles Rossotti, also opposed the idea. The IRS' customer service staff, already too thin to respond adequately to Americans' questions about the tax code, would have to grow substantially to handle millions of software queries. Congress "will never give you sufficient funding," Rossotti told ProPublica.

So the IRS felt caught in the middle. The question became, Lutes said, "Is there some way to come out of this with something for taxpayers that addresses the administration's objective and at the same time is acceptable to industry?"

Intuit, it turned out, did have a way. Since 1999, as part of the company's strategy to head off encroachment, TurboTax had been offering free tax prep to the poorest filers. It was a program that served to bolster the company's arguments that government intervention was unnecessary.

This became the basis for a deal. The industry would offer free tax prep to a larger portion of taxpayers. In exchange, the IRS would promise not to develop its own system.

Intuit organized a coalition of tax prep companies under the name the Free File Alliance, and after negotiations with the IRS, the group agreed to provide free federal filing to 60% of taxpayers, or about 78 million people at the time. Government officials touted the solution as a marvel of public and private cooperation. Americans would get free tax prep, and it would cost the government almost nothing.

For Intuit, it was the culmination of years of lobbying. The IRS had signed a contract that said it “will not compete with the [Free File Alliance] in providing free, online tax return preparation and filing services to taxpayers.”

What’s more, “free” wasn’t as unprofitable as it sounded. The alliance, guided by a lawyer who was also an Intuit lobbyist, won a series of concessions that made the program palatable to industry. Free File only required the companies to offer free federal returns. They could charge for other products. The state return was the most common, but they could also pitch loans, “audit defense” or even products that had nothing to do with taxes.

Free File had another bright side: The companies could tailor their Free File offers so that they didn’t cut into their base of paying customers. The agreement said the industry had to offer free federal services to at least 60% of taxpayers, but each company individually only had to cover 10% of taxpayers. Intuit and the others were free to limit their offers of free tax prep by age, income or state.

There was little incentive for the companies to publicize a free alternative to their paid products, and the IRS agreed that the Free File offers need only be listed on a special page of the agency’s website.

For Intuit, it was a major victory in the war against encroachment. The company could now focus on turning whatever new customers it acquired through the program into paying users, both that year and in the future.

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The first year of Free File was 2003, and for Intuit, things went well. On paper, the Free File Alliance was a collection of 17 companies, all of them vying to serve the American taxpayer. But in reality, it was a group made up of two giants and a bunch of gnats. Intuit’s only significant competitor was H&R Block, and even it was a distant second. The rest of the alliance consisted mostly of tiny companies with names like Free1040TaxReturns.com. As a result, Intuit could tailor its Free File offer just the way it wanted.

But the next year, Intuit began to lose control of its creation. A scrappy competitor, TaxAct, decided to use Free File to stand out. The company decided it would try to pick up as many new customers as possible and then charge them for ancillary services. Instead of following Intuit’s lead and constraining its offer to a subset of low-income taxpayers, TaxAct went the opposite direction.

“Why not go for an offer that’s much simpler to understand?” is how Lance Dunn, the president of the maker of TaxAct, [described](#) the strategy in a later court hearing. It began advertising a pitch for “free federal online tax preparation and e-filing for all taxpayers. No restrictions. Everyone qualifies.” TurboTax’s offer on the Free File page, meanwhile, was more difficult to parse: “if you are eligible for EIC, are age 22 or younger, age 62 or older, or active Military with a W2.” (EIC stood for the Earned Income Tax Credit.)

TaxAct’s ploy was a smashing success. The company’s volume exploded.



Alarmed, Intuit tried to get the other companies not to offer their products for free to too many potential customers, [according](#) to Dunn. Such a request could be collusion, a violation of antitrust law, Dunn said. “Intuit asked the Free File Alliance members that we should restrict offers, which I believe is probably not legal for that group to restrain trade,” he said.

ProPublica asked Intuit about Dunn’s accusation, but the company did not respond.

Dunn, who declined to speak with ProPublica, made these remarks during sworn testimony in 2011. The hearing was part of an antitrust case by the Justice Department against H&R Block after it tried to buy TaxAct. The U.S. argued that, by eliminating a competitor, the merger would create a duopoly of Intuit and H&R Block. Although the Justice Department ultimately blocked that takeover, the market has grown even more consolidated in recent years. In 2019, according to a ProPublica analysis of IRS data, the two giants accounted for 81% of all individual returns filed using tax prep software.

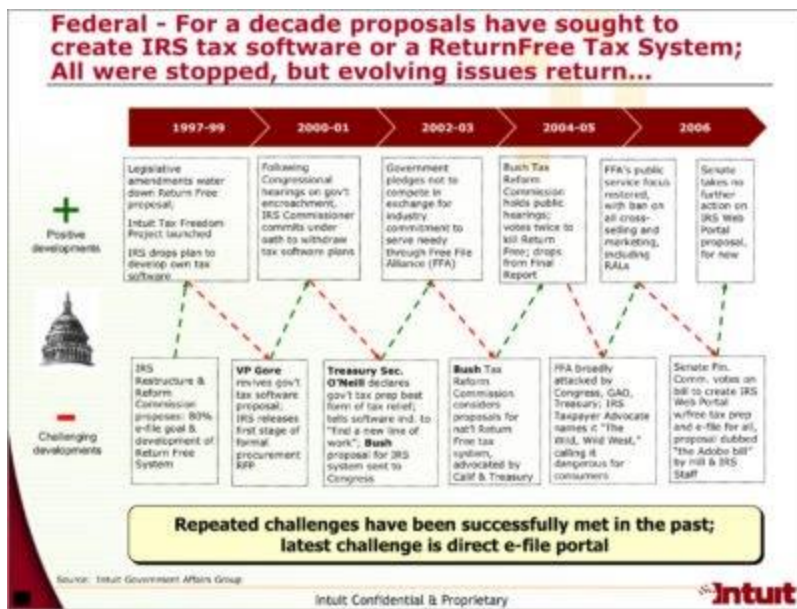
On the defensive, Intuit and H&R Block matched TaxAct’s “no restrictions” offer on Free File. Americans rushed to file for free, and in 2005, 5 million people filed their taxes through the program. Free File had become the most popular way to file taxes online.

Intuit viewed the popularity of Free File as a serious threat and took its case to Congress. That year, Brad Smith, then a senior vice president at the company and head of TurboTax, told a House committee that “the current Free File Alliance program has drifted very far from its original public service purpose and objective,” as he put it. The program wasn’t supposed to be for everyone, he said: It was for the “disadvantaged, underprivileged and underserved taxpayer populations.”

Intuit’s arguments quickly gained traction at the IRS. Already, in March 2005, the IRS had written to the Justice Department for legal advice on modifying the Free File program. The agency wanted to know: Would it run afoul of antitrust laws if the IRS barred companies in the Free File Alliance from offering a free product to everyone?

The Justice Department responded in a May 2005 [letter](#). Clearly, wrote Renata Hesse, an antitrust section chief at the department, “any agreement among Alliance members to restrict such free service is likely a form of price fixing” and thus illegal. But there was still a way for Intuit to get what it wanted. She wrote that if the IRS itself were to impose such a restriction, it would be legal.

The IRS swooped in to beat back Intuit’s competition, doing for Intuit what the company could not on its own. Despite just 5 million Americans using a program that was purportedly available to 80 million, the IRS agreed that Free File needed to be reined in.



A confidential presentation for Intuit's board showed how the company, over a decade, beat back attempts to make tax filing easier.

The agency made its reasoning clear in a previously unreported letter sent to the Free File Alliance the following year. Bert DuMars, then head of electronic filing at the IRS, [wrote](#) that there'd been a huge jump in people using Free File in 2005, but no corresponding boom in people paying for tax prep. "If this trend continued, the IRS was concerned that it could cause many vendors to go out of business," he wrote. Stock market analysts, he pointed out, had said Free File "represented a threat to future revenues and profits of the publicly traded company participants." The IRS decided to remove this threat. The new agreement, struck between the IRS and the alliance in 2005, gave Intuit what it had sought. Companies were now expressly barred from offering free tax prep to everyone through the program. Instead, only taxpayers under an income cap, then \$50,000 a year, would be eligible.

On paper, the program's eligibility had actually increased to 70% of taxpayers, or about 93 million households, up from the previous 78 million. But in practice, because broad, easy-to-understand offers were now barred, it was clear the program's use would decline.

Intuit had again bent the power of the federal government in its favor. After 2005, the Free File program was never again as popular, eventually falling to about half that year's level.

With the threat of government encroachment on ice and high-speed internet access proliferating in the mid-2000s, Intuit looked forward to steady growth and big profits. The upside of the online software business was huge, with the cost of producing each additional unit approaching zero. And TurboTax was hardly a niche product: Intuit executives still excitedly talk about the TAM, total available market, of TurboTax as every single tax filer in the country, now over 150 million households.

But TaxAct's Free File gambit had forever transformed the industry. Advertising "free" was a great lure, so TaxAct took the battle to a different venue. Barred from making a free offer to everyone through Free File on the IRS' website, TaxAct decided to make the offer on its own website in 2006. Intuit recognized

a credible challenge from the upstart and countered the next year, launching TurboTax Free Edition on its website.

Confusingly, there were now two distinct options: the government-sponsored Free File and the commercial free editions.

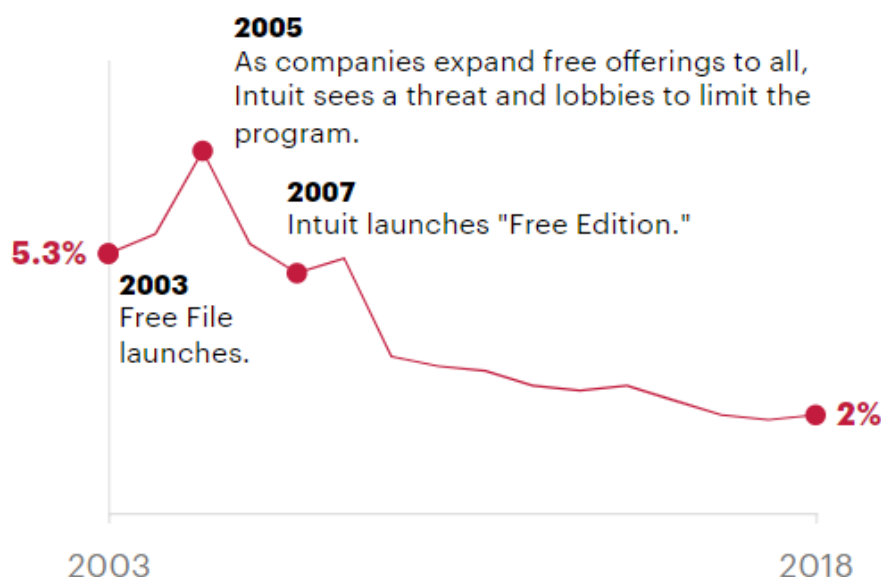
For customers who managed to qualify, the new commercial options offered by these companies were similar to what they could get on the IRS' Free File website: The underlying software was the same, only the federal return was free, and the companies expected to make money on each customer through charging for a state tax return or other services.

But for the companies, there was a clear benefit to winning customers directly, rather than through the IRS program. The companies had complete control over how they handled customers from start to finish.

Intuit poured ad dollars into its Free Edition. Not only did the new product effectively meet TaxAct's challenge, it quickly became the major driver of TurboTax's customer growth.

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### How Intuit Stopped Free File From Spreading



**Note:** Data reflects what percentage of electronically filed individual tax returns were done via the government-sponsored Free File program.

**Source:** IRS

That growth posed a challenge: how to, as internal company documents put it, “monetize free.” Over successive tax seasons, Intuit unleashed teams of designers, engineers, marketers and data scientists on that problem, working at its headquarters in Mountain View and TurboTax's main offices in San Diego.

Part of the solution was to pitch users side products like loans or “Audit Defense.” But it also meant misleading customers. Frequently “free” didn't mean free at all. Many who started in TurboTax Free Edition found that if their return required certain commonplace tax forms, they would have to upgrade to a paid edition in order to file.

The company came to a key insight: Americans' anxiety around tax filing is so powerful that it usually trumps any frustration with the TurboTax product, according to three former Intuit staffers. So even if customers click on "free" and are ultimately asked to pay, they will usually do it rather than start the entire process anew. Intuit capitalized on this tendency by making sure the paywall popped up only when the taxpayer was deep into the filing process.

"There's a lot of desperation — people will agree, will click, will do anything to file," said a former longtime software developer.

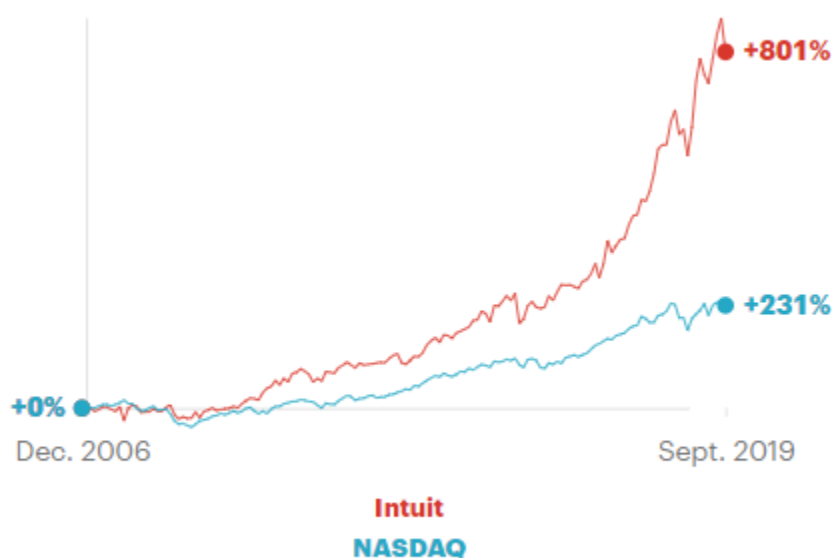
Every fall before tax season, the company puts every aspect of the TurboTax homepage and filing process through rigorous user testing. Design decisions down to color, word choice and other features are picked to maximize how many customers pay, regardless if they are eligible for the free product. "Dark patterns are something that are spoken of with pride and encouraged in design all hands" meetings, said one former designer. In the design world, "[dark patterns](#)" are tactics to get users to do something they don't necessarily mean to do. (ProPublica [previously documented](#) dark patterns encountered by people trying to file their taxes for free.)

On TurboTax's homepage, for example, the company carefully chooses how it describes the different editions. Prominently featured next to Deluxe Edition, which costs around \$100, is the phrase "maximize your deductions."

If users initially click on the Deluxe software, they are never offered the choice to go to the Free Edition even if the no-cost option would produce the same return. "Maximize your deductions" was legendary at Intuit for its effectiveness in steering customers eligible for free filing to buy the paid product, according to a former marketing staffer.

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### Intuit's Share Price Has Shot Up in Recent Years



Source: Bloomberg

Another celebrated feature, former staffers said, were the animations that appear as TurboTax users prepare their returns. One shows icons representing different tax deductions scrolling by, while another, at the end of the process, shows paper tax forms being scanned line-by-line and the phrase "Let's comb through your returns." What users are not told is that these cartoons reflect no actual processing or calculations; rather, Intuit's designers deliberately added these delays to both reinforce and ease users'

“Fear, Uncertainty, and Doubt.” The animations emphasize that taxes are complicated but also reassure users that the technological wizardry of TurboTax will protect them from mistakes.

In a [statement](#), the Intuit spokesman said, “The process of completing a tax return often has at least some level of stress and anxiety associated with it. ... To offset these feelings, we use a variety of design elements — content, animation, movement, etc. — to ensure our customers’ peace of mind.”

The 2007 launch of Free Edition started a period of rapid growth for TurboTax. Within two years, use of its web products had almost doubled, and over the past decade, its website has grown each year by an average of 2 million more customers. The company reported this year that TurboTax online had handled 32 million returns. In a statement, it said around a third of that number used Free Edition.

The government’s Free File program, meanwhile, has mostly faded into the background, drowned out by Intuit’s and other companies’ “free” offers. The IRS did try advertising campaigns, spending around \$2 million some years to spread the word. But compared with the reach of Intuit, this was a pittance: The company reported this year that it spent \$800 million on advertising. With its budget [slashed](#) by Congress, the IRS has spent no money at all to advertise the program in recent years.

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Amid its success, Intuit has sometimes had to put down insurgents bent on reforming the tax filing system. In 2007, the same year Intuit launched its Free Edition, Barack Obama, then a candidate for president, took aim at the tax prep industry. In a speech to an audience of tax wonks in Washington, he promised that the IRS would establish a simple return system. “This means no more worry, no more waste of time, no more extra expense for a tax preparer,” he declared.

But the Obama administration, as Bush’s had before, found that it was no match for Intuit.

Again, Bernie McKay, the lobbyist who had joined Intuit in the late 1990s and outlasted multiple CEOs, led the company’s campaign. In response to the Obama threat, McKay and Intuit’s small army of outside lobbyists turned to Congress, where lawmakers friendly to the company introduced a series of bills that would elevate Free File from a temporary deal with the IRS to the law of the land.

Republicans have historically been the company’s most reliable supporters, but some Democrats joined them. [Rep. Zoe Lofgren](#), the California Democrat whose district includes part of Silicon Valley, has introduced or co-sponsored five bills over the years that would codify the Free File program, with names like the Free File Permanence Act. Lofgren’s spokesperson told ProPublica that the congresswoman believes the IRS, because of its role as tax collector, should not also be the tax preparer.

Hedging its bets, the company also sought to make sure the IRS could not spend a single dollar creating a public filing system. One internal document says Intuit would “advance legislative language in House Appropriations for ‘No Funds’ restriction on IRS spending” on such a system. It worked. Within a few years, Congress passed a 3,000-page appropriations bill that included a single sentence crucial to Intuit’s financial future: “[No funds](#),” the law decreed, could be used “to provide to any person a proposed final return or statement.”

Another important aspect of Intuit’s influence strategy during the Obama years was covertly [enlisting](#) minority and women’s groups to press its case.

The [internal 2014-15 “encroachment strategy” document](#) discloses plans to “leverage trade groups to support House/Senate Free File bills.” It goes on to list the groups Women Impacting Public Policy, The Latino Coalition and the National Black Chamber of Commerce.

Intuit has given money to all of those groups over the years. All have signed letters urging Congress to make the Free File deal permanent. “The Free File program has been a clear success,” said one [letter](#) signed by The Latino Coalition and the Hispanic Leadership Fund.

A spokesperson for Women Impacting Public Policy said it has received \$70,000 from Intuit. The amounts given to the other groups are unknown, and they did not respond to requests for comment.

Company documents also outline plans to “mobilize” a “coalition” that included think tanks and academics, who published op-eds.

Will Marshall, president of the pro-business Progressive Policy Institute, opposed return-free filing in an [op-ed](#) in The Hill because doing one’s taxes is “a teachable moment [that] prompts us to review our financial circumstances.”

Anti-tax activist Grover Norquist, the most consistent champion of Intuit’s policy positions, [warned](#) that “big spenders in Washington, D.C. want to socialize all tax preparation in America.”

It is unclear whether they were paid by Intuit or the Free File Alliance. Norquist didn’t respond to a request for comment, and a Progressive Policy Institute spokesman declined to say whether Intuit gave the group money.

Whatever external challenges to the status quo Intuit has faced, the company has been able to rely on the IRS’ continuing enthusiastic support of the Free File program. Every few years, the IRS and the industry got together to renew the deal.

In part, that was due to the relationships Intuit had developed with high-ranking IRS officials. One, Dave Williams, served as the agency’s top negotiator on the Free File program for several years and “was very commercially sensitive,” said Mark Ernst, the CEO of H&R Block until 2007. Ernst, who later held a senior role at the IRS, told ProPublica that Williams “didn’t want to offend the industry,” noting that “he was particularly open to having sidebar conversations with key people where he could imagine himself landing some day.”

Today, Williams works at Intuit, where he’s held the title of chief tax officer since 2013. He is one of several former IRS employees who have gone on to work there. In a statement, Williams told ProPublica he did not have discussions about future employment with Intuit or other companies until after he left the IRS. He added that his career in government was focused on “what is best for the taxpayer” and that he “joined Intuit for the same reason: to help the American taxpayer.”

Despite Free File’s declining use, the IRS often claimed that the program was nevertheless meeting one of its original goals: driving more people to file electronically instead of on paper. Ernst, who served as a senior official at the IRS from 2009 to 2010, didn’t believe that a program used by so few people was having any such effect. “It was a talking point that got trotted out all the time to justify the Free File Alliance,” he said.

Internally, IRS managers have also argued that the program is, in a way, a success, because it created “a free marketplace,” as one internal management report in 2017 put it. Apparently, customers weren’t the only ones taken in by the word “free.”

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In 2018, Intuit faced rare scrutiny from inside the IRS. The agency asked its Advisory Council, a group of outside experts, to take stock of Free File. To the company's alarm, it soon became apparent that the council's report might be sharply critical.

That July, council chair and University of California, Davis, law professor Dennis Ventry wrote two pieces criticizing an Intuit-backed bill in Congress that would make the program permanent. His [op-ed](#) in The Hill was called, "Free File providers scam taxpayers; Congress shouldn't be fooled."

In response, the IRS again rose to Intuit's aid. It rushed to assure the company that Ventry's power to affect the program was limited, according to [emails](#) to the Free File Alliance obtained through a public records request.

"The Commissioner has met directly with Mr. Ventry," IRS official Ken Corbin wrote to Steve Ryan, a lobbyist for Intuit who also represented the alliance. "Mr. Ventry will recuse himself from participating or contributing to the topic of Free File."

Corbin heads the IRS division that processes most Americans' tax returns and negotiates the Free File deal with Intuit and the industry.

A few days later, Ryan arrived at the IRS' Constitution Avenue headquarters in Washington to mount a defense of the program. A former Democratic Senate aide turned lawyer-lobbyist, Ryan is known on Capitol Hill for taking on politically fraught clients, including Trump attorney Michael Cohen and the government of Qatar. He helped create Free File in the early 2000s, and it was now his job to secure its future.

Ryan's [PowerPoint](#) presentation at the IRS rehashed arguments that the company had been making for the past 15 years. It also highlighted a 2013 study by Brown University professor [John Friedman](#), a former Obama National Economic Council official, to make the point that the program had been successful in generating "Free Tax Returns **Outside** of Free File." The presentation did not mention that Friedman's study was paid for by the Free File companies and was not published in an academic journal. Friedman declined to say what he was paid but told ProPublica he "wrote the piece based on my analysis of the issues, which I stand by."

Ventry, who attended the meeting, got a call the next day alerting him that a California public records request had been filed for his emails — they were subject to such a request because he's an employee of a state university. It came from the Free File Alliance, as The New York Times later [reported](#). The request, Ventry believes, was designed to "freak me out."

In early October, the council sent a version of its final report, which included a harsh appraisal of the Free File program, to the IRS to seek responses before releasing it publicly the following month.

But in mid-October, just weeks before the report saw the light of day, the Free File industry group fired off an "[urgent](#)" request to meet with IRS officials. The goal was to re-sign and "improve" the memorandum of understanding that governed the Free File program, according to the emails. The current agreement wasn't expiring for another two years, but Ryan cited the "time urgency to make changes that will benefit taxpayers" in the coming tax season, adding, "I have not darkened your door in 2018 and need your ... attention to this opportunity."

The IRS' Corbin signed the new deal on Oct. 31. Two weeks later, the Advisory Council report was released, with a damning indictment of the program: "The IRS's [deficient oversight](#) and performance standards for the Free File program put vulnerable taxpayers at risk," the report found.

The expert body recommended that the IRS negotiate a series of new provisions designed to increase the use and oversight of the program, including mandating advertising by the companies. But it was too late. A new deal had already been signed with modest changes. As it had in the past, Intuit and the alliance had effectively insulated the program from reform. Members of the council, Ventry said, were "pissed off."

A spokesman for the Free File Alliance said the group had pushed to renegotiate the deal in 2018 because of the looming 2020 presidential campaign. “The reason for the timing of the extension of the agreement was the political season,” he said. The group had not seen the report before its release, he added.

(In August, ProPublica sued the IRS to get more correspondence between the agency and Intuit’s lobbyists. In response to our Freedom of Information Act requests, the agency has withheld over 100 pages. The case is ongoing.)

The new deal included rules that barred Free File companies from offering extra products to the relatively small number of users who access the program. This makes it much more difficult to convert those users into paying customers.

At around the same time, the industry took steps to make the program more difficult to find. Both Intuit and H&R Block added code to their Free File websites that shielded them from search engines such as Google. The Intuit spokesman said the company increased paid search advertising for Free File “by nearly 80 percent” over the last year and has data showing more people found the program through online search this year than last year, but he declined to provide specific figures.

What is clear is that Intuit’s business relies on keeping the use of Free File low. The company has repeatedly declined to say how many of its paying customers are eligible for the program, which is currently open to anyone who makes under \$66,000. But based on publicly available data and statements by Intuit executives, ProPublica estimates that roughly 15 million paying TurboTax customers could have filed for free if they found Free File. That represents more than \$1.5 billion in estimated revenue, or more than half the total that TurboTax generates. Those [affected](#) include retirees, students, people on disability and minimum-wage workers.

Customers, meanwhile, remain confused by Intuit’s myriad uses of “free,” and internal documents show the company knows it. Over just a two-week period this past filing season, Intuit received nearly 7,000 TurboTax customer calls in which the phrase “supposed to be free” was uttered, according to a company analysis. One customer complained that Intuit charged him even though “it says ‘free free free’ on the commercial.” The TurboTax representative responded: “That ad has been the bane of my existence.”

Even as TurboTax’s business thrived, 2019 has been a rocky year for Intuit’s long-running war against government encroachment. In April, the company was close to finally succeeding in its long-held goal to make Free File permanent. A bill called the Taxpayer First Act was sailing toward almost unanimous approval in Congress. But after ProPublica published a [series](#) of stories about the program, including a story showing that [military families](#) and [students](#) were particularly affected by Intuit’s business tactics, the bill stalled. Congress ultimately [removed](#) the provision that would have enshrined Free File in law. After having enabled Intuit for so long, the IRS finally responded to the pressure. It hired a contractor to review the Free File program. But the contractor had [previously argued](#) against the IRS offering its own tax prep option, and the review did not recommend major changes. The agency has not yet announced its plans for the future of the program.

The agency’s inspector general also launched an audit, which is ongoing. Other investigations and litigation followed, ranging from class-action complaints, alleging that consumers had been deceived by Intuit’s tactics, to investigations and lawsuits by regulators and prosecutors in New York and California. Intuit has denied wrongdoing, saying it “has at all times been clear and fair with its customers.”

Despite the scrutiny, Wall Street has continued to embrace the company’s business model. The company recently announced it made \$1.5 billion in profits for its fiscal year. It expects its TurboTax unit to grow by 10% next year. Last year the CEO was paid \$20 million. The share price hit an all-time record.



The company has returned to its old strategy: stay the course and take its case directly to the IRS and Congress. Its allies in the Senate have again advanced an appropriations bill that would bar the IRS from developing its own tax filing system. In the spring, Sasan Goodarzi, a former head of the TurboTax unit who took over as CEO of the entire company in January, sought to reassure employees.

“Our view is this will be in the press until there is a resolution with the IRS,” he said, according to the video obtained by ProPublica. “And we’re working with them and we feel very good about where this will end.”

## I Introduction

Now you've been living in a boy's world, Jeff, and for heaven's sakes, stay there! This is a man's world. It's a brutal world Jeff, and you've no place in it.

Claude Rains (as Senator Joseph Paine) in *Mr. Smith Goes to Washington*

Imagine that one day, you get a note in the mail from Visa saying that starting next month, Visa will no longer be sending itemized bills (or indeed, any bills at all) to its cardholders. Instead, it will be the responsibility of every Visa cardholder to keep a record of all purchases, and refunds charged or credited to their account during the month, along with late payments and late fees, interest accruing on unpaid balances, and then tote it all up at the end of the month to figure out how much they owe Visa. If cardholders inadvertently omit some charges and pay Visa too little, you're informed, Visa will assess interest and penalties on the underpayment.

Why on earth would Visa do such a thing?, you wonder. After all, Visa already has all that information in its computers, which can automatically calculate from that information the net amount you owe. Why should individual cardholders duplicate that effort, at considerable annoyance and expense to themselves, and with the dead certainty of errors?

Why, indeed. And yet, that is exactly what the government asks taxpayers to do each year, in computing their tax liability and filing their returns. The tax year starts with the receipt, in the mail, of information returns: slips of paper showing wages, interest income, mortgage interest paid, and so on. These information returns are followed by tax forms. The forms, the instructions, and indeed the whole tax law can leave someone with a Ph.D. in English feeling utterly defeated. Imagine how the average American, who reads at a sixth grade level, feels about the experience. Taxpayers can and do rely on paid preparers, but that process is expensive for many, and still leaves taxpayers with the burden of collecting all the relevant data to give to the preparers. Economists estimate the costs of administering the individual income tax at about 10% of the amount raised. Most of these costs are associated with filing. These estimates dramatically understate actual costs, since they do not include the anxiety with which Americans approach the task of filing tax returns.

For the three-quarters of taxpayers who do not itemize and show only wage and interest income, these costs are unnecessary. We can do it the Visa way. Like Visa, the government already has the wage and interest income on which the return is based. It uses that information to do its own calculations of tax liability, against which it checks the numbers on the taxpayer's return. If there is a discrepancy, the government sends out a correction. If the government already has information it needs, why not start the ball rolling by sending out a tentative tax return? Taxpayers could check the return and show it to their preparer if they wanted. If it is

accurate, they could file it. They could change it and file the amended copy. Or they could just throw it away and file their taxes the old-fashioned way. Since the government has the information already, the costs of providing it to taxpayers, and letting them choose what they want to do with it, is minuscule – on the order of a dollar a return. Indeed, the government might save money by cutting down on the notices of correction it now mails out.

Doing things the Visa way is already the rule for some taxes. Most Americans pay vehicle registration fees. Taxpayers might be required to list their vehicle identification number, find out the fair market value of their car and multiply that by some statutory rate. Instead, they get a bill from the state. It has long been the practice in Scandinavian countries to send taxpayers tentative, pro-forma, income tax returns each year.

That was the pitch made to me three years ago over lunch by an official then with the California agency that administers the income tax, the FTB (Franchise Tax Board). I nodded, with some sympathy and a lot of skepticism. Our tax system has always been thought to be too complex to support pro-forma returns. I'm a tax professor at Stanford Law School, and, at the time of the lunch, had just read an IRS study that came to that conclusion.

“If it's so doable, why haven't you done it?” I asked.

The response was that the FTB could do it but had run into resistance from the tax software industry and, in particular, from Intuit, which made the popular Turbo Tax software.

That answer only heightened by skepticism. “Why don't you send me some studies,” I replied, and changed the subject.

A few days later, the studies arrived, rich enough in detail to convince me that, in a digital age, the State had enough information soon enough to implement its plan. I also received a mass of press clippings detailing the FTB's prior run-in with Intuit.

The State, it seems, had put up a website on which residents could file their tax returns. Essentially, the web site consisted of a blank tax return that could be filled out on-line. Intuit had sued, alleging that the State had not properly put the contract for the internet connection it used out to bid. The next year, according to press reports, Intuit had gotten a legislator to introduce a bill that would have banned the website, on the grounds in competed with private industry. Press coverage led that bill to be dropped, but, as a compromise measure, for a year or so the State had agreed to disable existing features of the website that made it user-friendly. Tax forms require one line to be added to or subtracted from another. The original web-site performed that addition. The disabled web site did not. Also disabled was a lookup function, that translated taxable income to taxes owed. Taxpayers who used that site now needed a tax table to find that figure. Intuit's site for Turbo Tax, of course, had the functions that had been disabled in the State's site.

After I finished reading the press clippings, I decided I'd devote the next year to pushing for filing simplification. I had a leave coming up, and would spend it talking to state officials.

Tax reform does not have the romance, or importance, of some other tasks. It's not cancer research, for example. But, then, I can't cure cancer. I could, possibly, help simplify filing. And that would do more, I felt, than just save money and anxiety. Anger at the filing requirements colors Americans attitudes toward the tax system, and toward government. Simplify filing and you change, a little bit, the way Americans view the government.

The FTB was a California agency and its plan would only cover state taxes owed to that state. But the California tax law and form is nearly identical to the many other state laws and forms, and, more importantly, to the federal tax law and form. What would work in California ought to work everywhere else.

Moreover, due to peculiar circumstances, there was a chance I actually could sell the plan. I had spent my first ten years as an academic an happily writing the kind of scholarship that no one reads except other academics. I had gotten the Stanford job, for example, by writing an article entitled *Original Issue Discount and the Term Structure of Interest*. In the mid 1990's, though, I began writing about a wave of hyperaggressive corporate tax shelters were being marketed to corporate America. The shelters were complicated transactions that played upon hitherto unexploited (and in some cases, unknown) loopholes in the tax law. Many lawyers and accountants thought these deals stank but couldn't take a public stand on the matter: they'd lose clients. After my first article appeared, I began calls from some of these lawyers, disclosing the details of the latest shelter. I quickly became an authority on the subject. Eventually, I was asked to help write anti-tax shelter legislation for the State of California. The legislation, which had passed in 2003, contained stiff penalties, with an amnesty for taxpayers who voluntarily gave back shelter losses. Faced for the first time with significant penalties, California taxpayers amended past returns to give up an astonishing \$15 billion dollars worth of false losses. The amnesty, which was expected to raise less than \$200 million, in fact raised \$1.4 billion – this at a time when the state was experience a budget deficit. The legislation made me and others connected with it local heroes – at least to some state officials. For the first and possibly only time in my life, I was someone who could get an audience with a decision-maker.

I wasn't that worried about Intuit. I had worked for a corporate law firm, and occasionally consulted for corporations. My students would embark on that same career path. I didn't think corporations were evil or scary. The face of corporate America, for me, was that of my clients, former students, or the executives, attorneys and accountants whom I met while giving speeches before professional bodies. I was aware, of course, that business and other interests often thwart tax reform. The deduction for mortgage interest, for example, channels investment toward housing and away from manufacturing. The real estate lobby makes sure the deduction remains in place. But the real estate lobby represents millions of workers and its interest are aligned with tens of millions of homeowners. Politicians *should* take these interests into account. Intuit had its headquarters here, but had only a few thousand employees or shareholders in the state. There were millions of California taxpayers and voters (and tens of millions of federal taxpayers) who would benefit by simplified filing. Faced with that disparity in numbers, and the support reform would have among academics and professionals and editorial writers, how powerful could Intuit be? I concluded privately that the real reason for Intuit's success was that the FTB just wasn't very good at getting the facts out.

## II The First Test

I began my new project by meeting with California Controller Steve Westly. Under California law, the Controller, who is elected for a four year term, is head of the three-person board that controls the FTB. Westly had gotten an M.B.A. from Stanford and then taken a job as head of business affairs for a five person start-up: E-Bay. He'd retired from the company and ran for Controller as a business-savvy, centrist Democrat. Westly had complimented me on a speech he'd heard me give on corporate tax shelters. He was relieved, I think (and he as much as said) to find someone who would speak out against aggressive corporate behavior, but who at the same time understood and worked with corporations. He'd been an earlier supporter of the anti-tax shelter bill I'd worked on, and had (appropriately) taken and gotten a lot of the credit for the bill's success.

Westly seemed distracted and unenthusiastic, as I outlined the advantages of sending out the pro-forma return. Friends at the FTB suggested that he might be too close to Intuit. Intuit's founder, Scott Cook, had been on the E-Bay Board and had hosted fundraisers for Westly's run for Controller. As it turns out, they were half right. Westly was close to folks at Intuit and had run some version of my pre-meeting memo by them. They had hit the roof. Nonetheless, he had decided to support ReadyReturn. What I took for a lack of enthusiasm was probably better described as depression, as he realized (correctly) he was about to embark on a project that would cost him campaign funds he would need to run for governor in the Democratic primary.

My next meeting was with Donna Arduin, the California Finance Director. The Finance Director is the Governor's representative on the three-person board that governs the tax agency. The Governor, in this case, was Republican Arnold Schwarzenegger. By the time I met with Arduin, the plan had crystalized: the FTB would begin with a pilot study. Fifty thousand taxpayers chosen at random from among the 4 million taxpayers with the simplest returns would be sent a tentative return for the tax year about to end. We'd see how many took advantage of the program, what they thought of the program and how smoothly the program worked. "It's just common sense," she said, after hearing me describe the program and the need for a pilot study.

I left the meeting with Arduin elated, and was still smiling when I bumped into folks from the FTB. They were not smiling. They handed me a fax they had received from Intuit's lobbyist. The text described pro-forma returns as an invasion of privacy, claimed the FTB lacked the authority to carry out a pilot program, and threatened retaliation if the agency went ahead with the pilot study. The fax was not signed by the lobbyist or the company: it was signed by twenty-five California legislators.

My heart sank when I read the fax. So much for my hopes that Intuit might not oppose a program designed (at least initially) for low income-taxpayers were dashed. And, I realized with dismay, in the same time it had taken me to get two elected officials on my side, Intuit had gotten 25. I had wondered what line of attack the opposition would take, and now I knew: having the government issue pro forma returns violated taxpayers' privacy. I knew the argument was

ridiculous. Pro forma returns didn't require the government to collect any new information. They just gave taxpayers access to information about them that the government already had. Since the program empowered taxpayers and made the process more transparent, we assumed it would be strongly supported by consumer protection groups, and it was. But the fact that an argument is ridiculous, I now realized, doesn't guarantee it will have no legs. I'd lost the opportunity to get to these 25 legislators before they signed the fax, to explain why the privacy argument made no sense. Human nature being what it is, I knew it was going to be hard to change their minds now that they had staked out a public position.

My real worry, though, was the FTB Board meeting the next day. Intuit had gotten 25 legislators on their side. What made me think they wouldn't get to the Board Members I was counting on?

The FTB meets each month in an office building a mile or so away from the State Capital. A typical agenda item might be the allocation of interest expense associated with software development. That may sound pretty dull when you read about it in print, but believe me, it is even duller when you have to listen to it in person. "I'd have to be paid hundreds of dollars an hour to listen to that stuff," you might be thinking, and you'd be right. No one from the general public would ever be found in the two hundred person auditorium in which the board meetings are held. The seats are nonetheless all taken - by folks paid hundreds of dollars an hour to push their clients' interests. California takes in a hundred billion dollars or so each year in taxes, and a particular issue decided upon in the meetings might be worth billions of dollars to an industry group. Not surprisingly, industry sends in well paid representatives to make sure its interests get a fair hearing.

This is hardly unique to tax regulatory hearings. The same industry representatives show up at environmental hearings, hearings on workplace safety, and all other areas in which industry has a stake in the outcome. What's different about tax is who you don't see there. When important environmental regulations or legislation are at stake, environmental protection groups like the Sierra Club and the National Resource Defense Council can be counted on to be there as well. A job with these organizations is highly sought after by some of the brightest and most committed lawyers around, including some of the top students at my institution. At tax regulatory hearings, industry has the floor to itself.

Well, almost to itself. In California, among the two hundred lobbyists who can be counted on to weigh in on tax matters, there is one man on the other side: Lenny Goldberg. Lenny is the founder and executive director (and quite possibly the only full-time employee) of a liberal tax watchdog organization, California Tax Reform Association. A smart, sweet teddy bear of a person, and an indefatigable optimist, Lenny pops up to oppose special interest legislation, which he sees everywhere (and in fact is pretty much everywhere).

This was my first board meeting, and my presence doubled to the number of folks who weren't on the industry payroll. Lenny could hardly believe he had company. I sat with the folks from the FTB, who were not optimistic about our chances. They reasoned that the Governor's representative, Arduin, would follow the wishes of the many Republican signatories

of the industry fax. They'd never had a close relationship with her, and were politely skeptical when I told them how well I thought my meeting had gone with her.

The staff described the measure, lobbyists for more tax software preparation companies that I ever imagined existed took over. Intuit's spokesman raised their invasion of privacy argument, but spent most of his time on what (I imagine) was the only argument they really cared about: ReadyReturn unfairly put government in competition with private industry. If that's what's really bothering Intuit, I said, maybe we can fix it. The real value of ReadyReturn was in getting the government's data to the relevant taxpayers. Who should get it to them was secondary. It would cost the state a dollar or so per taxpayer to transmit that information. If a private company could do the job for less, I said, the state should contract out the job to that company. Of course that argument didn't really cheer up Intuit. They were worried that taxpayers would decide they could make do with the \$1 product, and forgo TurboTax, which cost \$40.

Lenny, of course, spoke up in favor of the pilot program. Then Cal-Tax's representative spoke out against it. Cal-Tax is a conservative organization whose stated goal is to protect the taxpayer against unnecessary taxes. Cal-Tax was represented by George W., a sort of bizarre Lenny, and Cal-Tax itself was sort of a bizarre California Tax Reform Association. The organizations were ideologically balanced, perhaps, but in one respect not at all alike. Lenny and his group subsisted on a few hundred thousand dollars a year, which went to support Lenny, an aide, and some mailings. CalTax received millions in donations each year, all from business. It was money well spent, at least from the point of view of its contributors. As far as I could tell, Cal-Tax had not supported a proposal any business interested opposed, or opposed any proposal they wanted.

The matter went to the Board for open discussion and vote. Before industry, which had heavily supported the Governor, Arduin was just as plain spoken as she had been in our office meeting. "It sounds like a good idea," she said. Westly agreed and the we had our votes. The pilot program had passed, astonishing both the FTB and industry. .

I was unbelievably relieved and happy. Only one thing had gone wrong at the meeting. The third vote belonged to an elected official, Donna Namel. Namel was one of the state's most liberal politicians, who had supported virtual every consumer protection measure ever proposed. I assumed we would have her vote, but I had gone over the program ahead of time with her aide, who would be voting for her at the meeting, just to be sure. To my surprise, at the meeting the aide abstained rather than voting yes. I couldn't figure out what had happened. Why didn't Namel support this? I got one answer from a veteran staffer. Namel had changed her vote in response to a request from my local Congresswoman, Anna Eshoo. Again, I was baffled. Anna Eshoo was a liberal Democrat who, in her first race for Congress, had distributed posters of herself in cowgirl costume, swinging a lariat. "Eshoo will rope in special interests," the posters promised. Why would she get involved in a state issue just to carry water for a private company?

### III The Best Thing in the World

For an academic, getting a pilot program through is itself a great victory. Hundreds of tax measures are proposed each year and a few pass. We raise the rates on one sector and reduce the rates on another; increase enforcement over here and (implicitly, since enforcement resources are more or less fixed) reduce audit coverage over there, and so on. What we don't do is test these measures beforehand. It takes us years to determine whether today's changes were worth making and even then the evidence is clouded, since the changes are not made against a control group. For example, economists might study the savings rate after a tax cut and find it has risen. But they can't tell us whether that increase was due to that tax cut, or to the fear of future cuts in social security, or to a host of other changes that occurred in the period following the tax cut. If the government were run by academics, there would be hundreds of pilot projects or controlled experiments each year. The cost of the projects would be an infinitesimal percentage of the trillion plus dollars tax take. The same would be true, by the way, if government were run by private industry. Intel doesn't bet the company's future on a production method without tests; McDonalds doesn't roll out a new sandwich without trying it out in some sample markets. The California pilot would be one of the largest, and maybe the largest, ever controlled study done on filing, and maybe the largest controlled study ever done in any aspect of the tax system.

While I was thrilled to have gotten the pilot project through, I was hardly ambivalent about its outcome. A lot of folks thought that in focusing on filing, I was making a mountain out of a molehill. I was pretty confident that for the average American, it was a lot harder than people thought, but maybe I was wrong. Perhaps taxpayers would ignore the opportunity to use the state's return, or report in surveys that the return saved them little in time, money or anxiety. There were other problems that might doom the pilot program. The data the state needed might not come in on time, or the state might find itself unable to administer the program.

In February, 2005, 50,000 taxpayers received a pro-forma return, which we had renamed ReadyReturn. Taxpayers also received an explanatory letter that described the project. They were told to review the ReadyReturn and correct any inaccuracies. They could sign the ReadyReturn (as corrected if necessary) and send it back to the state. They could go on-line, find the same return, and file (and correct if necessary) the on-line return. They were assured that filing the ReadyReturn was voluntary – if they wished they “could throw the ReadyReturn away and file taxes the old-fashioned way.”

There was no statewide publicity for the ReadyReturn and we assumed that most taxpayers would be reluctant to try a new program. In the end, about a quarter of taxpayers filed the ReadyReturn. Of course, many other taxpayers may have found it useful – it might have served as a basis for a preparer-filed return, for example.



Taxpayers loved the program. They gave off-the-charts responses to the various survey questions. The bottom line: Ninety-eight percent of taxpayers who'd filed on line said they wanted to use the program next year. (Surprisingly, nearly half the taxpayers who used the program did so on-line). Ninety-seven percent of paper filers said the same. Taxpayers reported saving a half an hour or so of time and an average of \$30 in preparation fees. Users gave the program high marks on all other questions: they reported that the program made filing more convenient and less anxiety-provoking and that the program met their security concerns.

What was most remarkable, though, were the thousands of comments taxpayers wrote on the surveys. About ten percent of the comments dealt with easily-corrected flaws in the beta version of the program. For example, the on-line instructions used but did not define the term PIN. The rest of the comments were out of this world. The comments are listed, on-line, at . A representative sample from one page taken at random includes the following:

*Wow...Government doing something to make our lives easier for a change. The Feds should take notice.*

*This has made my life a lot easier. Thank you.*

*Wow. What a pleasant surprise.*

*This was an incredible experience....*

*[S]omeone is finally thinking about us. Thanks again.*

*ReadyReturn is the best thing in the world....*

I was overwhelmed by the comments. Later, when I'd discuss the program with a legislator or reporter, I'd hand out only one document – the forty or so single-spaced pages with taxpayer comments. “Pick a page at random,” I'd say, “and read the comments. Then let's talk.” I'd make the same suggestion to those reading this essay. Put down the paper and skim the comments on-line at the website listed above.

The comments supported my prior belief that the problem with filing wasn't just the time and money involved. Taxpayers don't write those kinds of comments because they save \$40, or a half an hour. They write them because filing fills them with anxiety. Once a year they are made to feel stupid, and frustrated, and this makes them angry and perhaps a little paranoid. Most Americans don't want to hate their government, but having to contend with even the simplest income tax returns pushes a lot them in that direction.

The results and comments are all the more striking because ReadyReturn helped taxpayers with California taxes. Pilot participants still had federal taxes to do, and for most taxpayers, it is the federal tax preparation that is most burdensome. (While the federal return is similar to the state return, it is not identical, so the receipt of a ReadyReturn by itself probably did not make federal filing much easier). The results suggested that extension of ReadyReturn to the federal return would generate savings in time and money measured at over a billion dollars a year, in addition to the hard-to-quantify, but in my opinion more important, reduction in taxpayer anxiety and frustration. By reducing the unpleasantness of one of the most salient interactions citizens have each year with their government, perhaps we could also change their attitudes toward the tax system and toward government. Many of their comments suggested that was not a ridiculous hope. “Thank you so much, FTB,” one taxpayer wrote, “You’re great.” Another said “Whoever thought of this deserves a big, fat RAISE.” Another praised Schwarzenegger whose representative, had, in fact, been a big supporter: “Go Governor!” As it happens, this same thought occurred to folks on the far right of American politics – making the program more controversial than I would have ever imagined.

## IV Grover Norquist and Me

The success of the pilot program did not silence the opposition. To the contrary, it produced new opposition, led by Grover Norquist and various libertarian and right-leaning organizations. Norquist is perhaps best known for a comment he once made on NPR. While being interviewed on his role in rolling back the estate tax, the reporter asked him about his broader agenda. His goal, he replied, was to shrink government to the size where it could fit in the bathtub, where he could drown it. He is generally regarded as the single most influential voice in conservative tax policy and for that reason has considerable power in Republican circles. In many ways, he is to taxes what Karl Rove is to elections.

To my astonishment, Norquist was to play an important role in the debate over ReadyReturn, galvanizing libertarian organizations and the committed, and giving ideological cover to politicians who, one suspects, were following the money rather than principle in opposing the program. After jousting at long distance in print and on radio, I finally met Norquist in person, at a meeting of a national panel on tax reform organized by President Bush. We were invited to debate the merits of ReadyReturn.

In person, Norquist was far different from the articulate, focused commentator I expected. He rambled from one topic to another, dropping comments here and there that anyone might find inappropriate. His speech was reminiscent of a recurrent skit on Saturday Night Live in its early years. John Belushi played a news commentator, who began with an editorial about subject x, only to switch to subject y, and then z, getting angrier and angrier until he ended the monologue by throwing the office furniture around. Norquist began talking about ReadyReturn, and then suddenly he was off on the estate tax, arguing that if left to its own devices, the federal government would be pulling the teeth out of the still warm body of your grandfather, to get the gold out of his fillings. I was amazed at the obvious reference to the Holocaust and expected that it, along with the general loopiness of the speech, would get picked up by the many media at the event. It didn't, though. Reporters had come to expect this sort of thing from Norquist and didn't find it newsworthy. "That's just the way he is," one reporter told me afterwards. Instead, reporters cleaned up the speech for him, putting the arguments in logical order and omitting any mention of irrelevant or offensive comments. I wondered how many other times he had gotten a free pass from the press.

I went first, and explained the program to the panel. Then it was Norquist's turn to go on the attack. He started in with the standard privacy objections, ignoring the fact— pointed out in my presentation— that the program didn't require new information, gave the taxpayer access to information already collected by the government, and was voluntary to boot. He then raised the possibility — certainty, in his mind — that the program was a ruse, designed to lull the taxpayers into accepted the government's statement of tax liability, which would be wrong. Taxpayers would be tricked into paying more taxes than they owed. This argument would be raised repeatedly by opponents. "Why on earth would the FTB support this program if not to

raise taxes?” asked Connie Mack, a former Republican Senator from Florida who was one of the nine members of the President’s Advisory Board on Tax Reform, which had staged the hearings. “Are you telling me they did it out of the goodness of their hearts?” he asked sarcastically.

Norquist’s paranoia and, even more so, Mack’s snide question, infuriated me. They were talking about a group of middle-level government employees who had come up with a plan to make life easier for taxpayers with modest incomes – a group that included many of their neighbors, their kids’ teachers, clerks at their pharmacy or supermarket, and their kids as well as they made their way in the world. Why was it so hard to believe that those employees, who were stuck at a job 40 hours a week whatever they did with it, might want to spend that time doing something to improve the lives of those they cared about?

Of course, Mack didn’t for a moment really believe that all government employees are out to cheat the taxpayers. How could he? He’d spent most of his professional life as a government employee himself, and was now working as a lobbyist, working with other public employees whom he undoubtedly regarded as decent people. But, as I knew only too well by now, proclaiming something publicly was 90 percent of the battle. It didn’t actually have to be true.

Norquist’s’ final argument was, I suspect, the one he cared most deeply about – perhaps the only argument he really believed. The ReadyReturn, he stated, was not true tax reform. To the extent it made paying taxes less painful, it would make true tax reform less likely. This argument, like his other arguments, was one we were to hear frequently from opponents of the program, including the California Republican Senate Caucus.

## V The Left and the Right of it All

The objections that Norquist had raised – that ReadyReturn invaded privacy, was secretly designed to trick taxpayers and was not real tax reform - were, together with Intuit’s “competing with private enterprise” arguments, just about the only arguments ever publicly raised against the program. But privately, thoughtful conservatives raised another argument against the program: it would make paying taxes less painful, and reduce the hostility with which citizens should view the government, or at least government programs. “Thank God we don’t get the government we pay for,” Milton Friedman had once said. A conservative tax scholar at the Hoover Institution, who had served in the Reagan and Bush I administrations, repeated that line, explaining that government inefficiency, and the perception of inefficiency, acted as a constraint against big government. ReadyReturn would reduce that constraint. The problem, from this point of view, was not that the program didn’t work well, it was that it worked too well.

There was an even more *realpolitik* version of the same argument which the scholar didn’t say, but I knew. The Republican party had great success in recent years attacking the tax system. Their attacks understandably worked well with high income conservatives, who would benefit from their stated goal of reducing the rates on the wealthiest citizens. But the attacks had also resonated with so-called Reagan Democrats. These were working stiffers whose economic interests seemed more close aligned with Democratic policies. The Republican goal of reducing the tax on savings wasn’t going to help them, at least in the short run: they didn’t save much and the savings they did was already tax-favored. They nonetheless liked the Republican tax message. Poll after poll showed a substantial number of these folks favored ditching the income tax for a sales tax – a move that would have increased their share of the tax burden considerably. As I suggested earlier, my own suspicion was that this seemingly irrational position might be explainable in part by how much the average working-class American hates the filing requirements associated with the income tax.

That said, ReadyReturn reflects some core Republican values. ReadyReturn can be accurately described as a taxpayer right’s measure: it lets taxpayers know what information the government has collected on them, and the net amount the government thinks they owe. The program also reduces the inefficiency of big government. Perhaps for those reasons, government-supplied estimated tax returns (the generic term for ReadyReturn) *was* a Republican proposal in the late 1990’s, suggested by then-Congressman Bob Portman.

Politically, a dysfunctional income tax might slightly favor the Republican Party, but much of the benefit goes to its fringe members, making life harder for those in the center. A moderate Republican who helped get the federal government to adopt ReadyReturn would have the gratitude of millions of taxpayers.

Republicans who had been appointed to high positions in tax uniformly supported the program, as did conservative members of the academy. The program was backed by California’s Republican Governor. I knew there were many moderate and conservative Republicans who

wanted a smaller government, but one that worked. They were a natural constituency for ReadyReturn. Unfortunately, support for the program was starting to split among party lines and that was a problem in itself. Republicans would become more and more suspicious of the program once it became thought of as a Democratic initiative.

The program had a different set of problems with Democrats, particularly those who I knew best: current and former Democratic IRS and Treasury employees and appointees. These were almost without exception very bright individuals. They'd gotten great grades at great schools; the kind of kids who had been in the upper 1% in both reading and math. They'd then spent their lives working with the tax code. They were quick to concede that the system was too complex – but too complex for folks who had only the so-called “1040 EZ?” That couldn't be.

“The entire form is only a few lines long,” one former Clinton official told me. “How hard is that to deal with?”

The truth of the matter, of course, was that it wasn't just the form – it was the form, the instructions, worrying about whether you were filing the right form, and so on. But those who had held high positions in the IRS couldn't imagine what it was like to be functionally illiterate, or how feelings of frustration and inadequacy might lead taxpayers to become suspicious of, perhaps even paranoid about, the tax system and government..

Washington Democratic tax officials and insiders also had a political reason to be wary of ReadyReturn. In most of the country, the program would tilt Democratic. But in Washington, filing simplification, and pro forma returns in particular, was associated with Republicans. In the waning years of the Clinton Administration, the Republican-controlled Senate Oversight and Finance Committees had held hearings on IRS incompetence and abuse. The hearings featured taxpayers with blood curdling stories of IRS harassment – stories which were taken at face value by committee members, who had of course selected witnesses to testify. The hearings, which generated great press, led to the enactment of a spate of laws concerning IRS administration. One relatively unpublicized focus of the hearings was the charge that the IRS hadn't done enough to simplify filing. The act that reorganized the IRS also required that agency to present Congress with a report discussing the feasibility of pro forma returns and other forms of simplified filing.

Democratic tax insiders hated the legislation. They regarded the hearings as show trials, full of false testimony, and with good reason. Later investigation by a watchdog agency, created as part of the reorganization bill, absolved the IRS of even a single instance of taxpayer abuse. It was inevitable that hatred of the legislation, and the legislators who had put on the hearings, would taint the IRS examination of the filing reform proposal that grew out of the hearings. The IRS dutifully produced the required report, which concluded that the government simply could not send out a pro forma return. It just didn't have the data in time for the April 15 filing deadline. Employers sent out wage data to employees at the in early January, but were not required to send it to the government until January 31. The data sent on that date went to the Social Security Administration and was not given to the IRS in usable form until mid-year. The

report did not examine the possibility that employers might be required to send wage data to the government at the same time they sent it to employees; or that there might be other sources from which to get wage data. The State of California had in fact found another data source: wages reports required by the agency that doled out payments under the unemployment and worker's compensation acts.

The IRS Report had been issued in 2003 as a response to legislation in 1999. Whatever the merits of that report when issued, the analysis had now changed. California had had great success doing what the IRS said could not be done. The IRS could now just free ride on the California experience. It could set up a pilot program in California and use the California wage data. That, at any rate, was my proposal to the President's Advisory Panel. Unfortunately, folks in this Democratic-leaning group were slow to change their attitudes. (This of course is true of people generally. How often do you or I change our position? ).

"It would cost \$100 per taxpayer to run that program through the IRS," said Charles Rossatti, the Commissioner whose term recently ended and who, alas, had been appointed to the President's Panel on Tax Reform. The statement was nonsense - the marginal cost to California was only that of postage and the state and federal tax systems were quite similar. In fact, California had once done a back of the envelope calculation showing that it could do the federal returns for its own residents for a dollar or so a return. But what politician would want to override such a strong statement?

Incredibly, some Democratic administrators had convinced themselves that the filing requirement was a good thing. Filing was presented as a way to participate in American democracy and to learn something about the tax law. Filing offered Americans an opportunity, it was argued, to plan their finances. The truth of the matter was that filing was mostly an exercise in reading comprehension and arithmetic. It was, moreover, an unpleasant exercise that most Americans had long since handed over to an accountant. There was more than a little bit of condescension inherent in the notion that filing requirement, which had been offloaded by the wealthy, was good for the poor.

I never knew (or know) how much time to devote to the filing-is-good-for-you claim. Most folks find it absurd, as do I. On the other hand, it was (and is) often cited by folks in this group as a justification for the present system. At my appearance before the President's Panel on Tax Reform, a version of the argument was made by the former Assistant Secretary for Tax Policy (a gentle, sweet man whose other positions I often agreed with).

"If we want to educate the taxpayer about the tax system," I responded, "we'd be better off sending a ReadyReturn, and including with it a statement of the taxpayer's relative tax burden and a pie chart showing how federal funds are spent."

I believed that in time, most of the Washington tax crowd would support ReadyReturn, convinced by the data from the pilot program, and perhaps swayed even more by the fact that it was opposed by Grover Norquist. Their enemy's enemy must be their friend. Indeed, by the time I left DC, I thought the momentum had shifted in my direction. But I hadn't been able to jump-start the program nationally, and that was a disappointment.



## VI One Step Forward and Five Steps Back

Back in California, the FTB staff and I were really optimistic about the future. They had been as pleased as I with the results of the pilot program and had put forth a proposal to expand the program for the next tax year. What else would one do with a successful pilot? Under the proposal, ReadyReturns would be available the next tax year to nearly a million Californians. The year after that, the number would increase still further. The ReadyReturns would not, however, be sent through the mail. Instead, taxpayers would be given instructions on how to access the returns on-line. Hard copies of the returns would be mailed out only to those taxpayers who requested them.

Moving from a hard copy and on-line program to an almost exclusively on-line program was in many respects unfortunate. It meant that the folks who needed the returns the most would be least likely to get them. It also deprived taxpayers of the opportunity to see what a ReadyReturn looked like. It's one thing to have the program described, and quite another to see a finished return in front of you. In my experience, taxpayers that saw the ReadyReturn loved the program; taxpayers who didn't merely found it attractive.

There were, however, good reasons for moving to an on-line program. Part of the privacy argument that Norquist and Intuit had made was that ReadyReturns could get lost in the mail and sensitive information could be read by strangers. In fact, the information that went into the ReadyReturn (wage data) had already traveled through the mail and the taxpayers return – if a hard copy were filed – would again travel through the mail. That said, there was a chance that a ReadyReturn might get sent to a wrong address. Moreover it was expensive to send out the hard copies: paper and postage were the biggest single costs of the program. The program had already been attacked (again, by Norquist and industry) as too expensive; eliminating mailings would allow the FTB to expand the program fifty-fold without increasing costs. Finally, nearly half of the taxpayers who had used the ReadyReturn had done so on-line. In future years, the percentage of on-line filers was certain to rise. The digital divide was less of a factor than anyone expected.

The FTB Board, which would vote on the expanded program, had changed since the pilot program had been approved a year earlier. Donna Namel was gone, replaced by John Chiang, and Donna Arduin, who had surprised everyone by supporting the program, was also gone, replaced by Tom Campbell. Those changes were not necessarily bad. Namel advised it was said by my local Congresswoman, had abstained rather than support the program. Chiang was a liberal Democrat, an accountant and a lawyer. I had met Chiang briefly, when giving a talk before the Board on a different topic (tax evasion) and had come away impressed.

Prior to his appointment as Schwarzenegger's Finance Director, Tom Campbell had been a two-term liberal Republican Congressman from Silicon Valley, and had run in his party's primary for the Senate seat now held by Barbara Boxer. Campbell lost to arch conservative Bruce Herschenson, largely due to the late entry in that race of Sonny Bono, who split the moderate vote. Had Bono not entered, Campbell would have probably won the primary and

general election. Campbell was not wealthy, but for most of the past two decades had a secure job from which to launch and relaunch his political career: he was a tenured member of the Stanford Law faculty.

Campbell had been on leave for most of the time I was at Stanford. Our private contact consisted of a half dozen conversations in the halls. Tom was smart, idealistic, sincere, and sincere. Tom was so sincere that when I first met him, I doubted his sincerity. I had never seen a politician up close before and I thought the sincerity was an act. It wasn't, though. He understood issues, meant what he said and said what he meant. If an issue was complex, he'd describe its complexities and give the answer he thought was right – a great quality in an elected politician but perhaps not an instrumentally useful quality for a politician who wanted to get elected. He'd hit the wall, politically – a victim of the right tilt of his own party and his unwillingness or inability to hew a populist line.

I knew the prospect of campaign contributions, or political power in general, would mean nothing to Tom. He didn't have a corrupt bone in his body. I was a bit worried about his quirkiness, though. In faculty meetings, he often took positions no one else took: positions that weren't stupid, or conservative, or dogmatic in any way – just different. I was once given the task of rationalizing our joint degree program. I came up with a sensible, bland plan which passed 22 to 1 – Campbell being the lone dissenter. I no longer remember the basis of dissent.

The FTB meeting at which the proposal was voted upon proceeded in the same fashion as last year's meeting. The FTB staff went through the proposal; Intuit, industry and CalTax opposed the proposal, Lenny and I supported it. Steve Westly spoke in favor of the proposal – he was the Board member most connected to it – but took pains to show he heard industry opposition, and thought we might phase in the plan more gradually. Chiang said only that he supported the proposal. Campbell then took the floor, praised the plan, urged that the Board adopt it in toto, and then went on to explain why a true conservative ought to reject the unfair competition argument industry had made.

“It's not competition,” said Campbell, “when government cleans up its own mess.” The industry position, Campbell continued, would make it impossible for government to do so even in those instances where the mess ought to be cleaned up and government was in the best position to do that.

In a classroom, Campbell's comments would have been commonplace. The law-and-economics movement had swept through the academy, and the efficient role of government was something that its practitioners routinely discussed with students. Here, the comments were stunning, even shocking. Industry was used to being catered to, or at worst ignored, by Democrats, and being catered to by Republicans. In either event, the assertions and assumptions of industry positions were allowed to go unchallenged. Here, industry was being lectured to like a slow schoolboy – and by a Republican, to boot. It was a lecture I'd have loved to give, and now Tom had given it for me.

The vote – unanimous this time – to expand the ReadyReturn program was a tremendous victory, made even sweeter by Campbell’s speech. In six months, ReadyReturns would go out to a million Californians. In the end, the hypothetical arguments of Norquist, the defensiveness of the IRS, even industry opposition, would all be irrelevant. A million Californians – even the small percentage of those who would actually use the program – would be enough to determine its fate. And we – like industry - already knew what their reaction would be. They’d love it. We knew this because the pilot group had been chosen to statistically mimic the larger group that was now to receive the program. Once the return went out, there would be nothing industry could do to misdescribe the program. The cat would be out of the bag. We’d won. Unbelievably enough, we’d won.

Or so I thought. Two weeks later I got a call from Tom Campbell, and then, a few minutes later, from the FTB, and then from Westly’s office: a budget subcommittee had inserted language that would kill ReadyReturn. It wasn’t a disaster – it was a rogue subcommittee, and we could put the issue to bed by meeting with and convincing Jim Laird, a liberal Santa Cruz Assemblyman who was heading the committee itself. I rushed to Sacramento and, luckily, got a meeting the next day.

Laird nodded sympathetically as I described the program. The problem, he explained, was that some folks thought the program ought to go the legislature for approval, and it hadn’t. But he supposed we could be given another year to see the expanded program through. The subcommittee had limited the next year’s program to the same budget as this year’s. “Could we live with that?” Laird asked.

I answered that we could, and the meeting was over.

I left feeling bad I hadn’t taken issue with the basic supposition that the program needed legislative approval. The constitution gave authority over the operation of the FTB to the FTB Board, and the program required virtually no funds – a few hundred thousand out of a budget over one hundred million. But the main thing was the expansion was still on. Budget language that limited the program to last year’s funds was no problem.

It wouldn’t have been a problem, either, had the budget language stayed as it was outlined to me in the meeting. But after the meeting, Intuit’s lobbyist, working with a sympathetic legislator, had gotten the language changed to limit the program to the same amount of money, used in the same fashion. We’d have to send out forms; with printing and mailing costs now in the picture, expansion of the program would be impossible.

Normally, a move like that would have been easily caught in time to stop it. In California, a tax measure becomes law only after going through a separate (Revenue and Tax) committee in the Assembly, an Appropriations Committee, the Assembly floor, and then through the same committees in the Senate, and then to the Governor for signing. A mistake in one committee is easily corrected in the next.

Unfortunately, this was not an ordinary bill; this was a reconciliation process of budget bills that had already gone through committees. The bill was done – all that remained was to get it passed by both legislative bodies. And there wasn't going to be time for any corrections. The bill was late; the fiscal year that the budget covered had already begun. The bill went to the legislature a few days after I met with Laird. A legislator who read the bill, with its thousands of provisions, would have found only a single sentence on an unknown program called ReadyReturn, with a seemingly inoffensive statement: that the program should be continued in the same fashion in the next year as the prior year. In reality, of course, no legislator would have time to read the bill anew – he or she would instead be kept up to date on changes by comments from leadership or stakeholders.

The governor's office was the first to notice the restrictive language. For a brief period of time it seemed as if the language might be subject to a line item veto, and that the Governor was prepared to make that veto. But Intuit had done its job well; Only by vetoing the entire budget could the Governor eliminate the provision. With an agreement finally reached, and the press full of stories of unpaid workers, the Governor was unwilling to send the budget back and start over.

ReadyReturn – as a program not a pilot – was dead. A five person subcommittee, with input from one company and with no contact with anyone else, had put in the deadly language and miscommunication had prevented the necessary correction. All we could now do was repeat a pilot that had already proved successful.

There is a riveting, if depressing, literature on the history of mechanical failures and disasters. A plane crashes at the end of the runway. The crash would not have happened but for the fact the control tower had switched the takeoff to a new runway and not told the pilot the runway was shorter; the pilot had thought to check runway lengths after the switch; the pilot had correctly calculated the weight; the headwinds had been 5 knots as predicted instead of 25 knots. If, if, if...

It would have been an easy matter to monitor the bill, with Laird's help, to check the final mark-up. True, at the time I knew nothing of the intricacies of the California legislative process. But I knew staffers in the building with whom I had worked on the anti-tax shelter bill a few years earlier. A single conversation with them on my way out of the building, and they would have monitored the bill for me. A conversation with them in the prior three months would have revealed the danger we were in: I would have learned that Intuit's lobbyist had been in every single legislator's office, that the modus operandi of the lobbyist was to look for relief in an overdue budget bill, and that we needed to schedule meetings with legislators involved in the drafting of that bill.

Of course, the task of safeguarding against a legislative end-run around the Board decision might not have been left to a naive academic who had a full time job 120 miles away. The FTB had a full-time legislative affairs staffer, as did the Controller's Office. Lenny's office was in Sacramento. If we had gotten together a few months earlier to focus on the issue...

## VII Starting Over

Even at my most depressed, I didn't see the trailer language Intuit had put in as the end of ReadyReturn. It was a great program that ought to be supported by all Democrats and had already gotten the support of the most powerful Republican in the state – Arnold Schwarzenegger. True, Norquist opposed it, but California was a liberal state and voters who agreed with Norquist were rare here. Intuit had convinced a few legislators to write language to kill the program, but these were legislators we hadn't talked to. The solution seemed obvious: write a new bill that would formally enact the program. The bill could be explained to legislators, who wouldn't just hear one side of the story; it would get support from experts and the press.

My optimism was influenced, of course, by my earlier success in getting the pilot program adopted. I had managed to convince the FTB Board to override Intuit's arguments and adopt an untested plan. Now I had a much easier sell – a program that thousands of Californians praised to the moon, and in their own language. Finally, I had what I thought was an ideal legislator to carry the bill: Dario Frommer, who had sponsored the anti-tax shelter legislation I had worked on a few years earlier.

Dario was smart, handsome, principled and ambitious. Latino and Jewish – an ideal combination for someone from Southern California, he was already the Assembly Majority Leader, and was gearing up to run for Controller when the current occupant of that office, Westly, ran for Governor. While I respected Dario, I didn't really know him and didn't come to know him well in the months ahead. My contact instead had been, and would be, with his chief of staff, Dan Reeves, and his other staff member, Dan Okenfuss. It was really Reeves who had picked me out of the crowd and asked me to write the anti-tax shelter legislation, and when I suggested we compromise in that legislation, it was Reeves who without hesitation supported my position.

I drove to Sacramento and met with the two Dans, and then with folks from Westly's office. The meetings were fun, actually, and within a few hours I'd gotten Frommer to author the bill, and the Controller's office to sponsor it. What I didn't have yet was a bill – the agreement was one in principal, to support and work on something that would give Californians the opportunity to use the ReadyReturn.

In practice, I had disliked drafting contracts and agreements. It was tedious, exacting work, and I always worried, at the end, whether I had made a mistake that would lead to disaster later on. As the partner I worked with at the law firm put it, "Someday, the sky will be black with chickens coming home to roost." A statute is sort of a mega-contract, but this statute, at least, was fun to write. The primary reason for this was that the exercise presented an opportunity for us all to think about what we might do to make filing easier. We ended up with a statute that included, but went far beyond, the proposed expansion of ReadyReturn.

Broadly speaking, there were three overlapping sets of taxpayers that would not qualify for the ReadyReturn. The first and largest set consisted of taxpayers who did not itemize but

received income other than wages subject to third-party reporting, such as interest from a bank account. As noted earlier, interest income was reported to the government until the end of January; making it difficult to incorporate in a ReadyReturn by the mid-February date the returns went out to taxpayers. There was really no good reason for the late filing of reporting returns to the State. Banks sent information out to taxpayers in early January – a more sensible rule would require the same information be sent contemporaneously to the government. For now, though, we were stuck with the law as it existed. Twenty percent of all taxpayers were excluded from the ReadyReturn program for this reason.

The second group consisted of those whose tax liability depended on information the government would never receive. Charitable donations, for example, are not generally subject to third-party reporting, so the ReadyReturn would not work for itemizers who take a charitable deduction.

The third group consisted of folks with complex returns. It was a big responsibility to come up with a bottom line number for taxpayers. If the government got things wrong, some taxpayers would pay too much. More taxpayers would pay too little, since human nature being what it is, taxpayers who noticed errors would tend to correct only those errors made in the government's favor. The government could not estimate liability for this group at an acceptable level of accuracy.

Even if the first of these three groups – those with interest income – could be brought into the fold, ReadyReturn could never cover more than about half the population.

The animating spirit behind ReadyReturn, though, could be incorporated in a plan to simplify filing for all taxpayers. The key to the ReadyReturn is the information already reported to the government. The ReadyReturn simplifies filing by making that information, and the tax liability that follows, available to the taxpayer. More affluent taxpayers have even more information reported to the government. It would be impossible to come up with a bottom-line number of tax due for those taxpayers. But it would be possible to give those taxpayers access to the information reported in their name.

Imagine the polar opposite of the typical ReadyReturn recipient: an executive with a salary of \$250,000, income from partnerships, trusts, savings, checking and brokerage accounts; itemized deductions for charitable deductions, state taxes paid and mortgage interest and a credit for taxes withheld. The taxpayer almost certainly hires a preparer. Even still, there is a considerable filing burden, which consists mostly of keeping track of the information returns showing wages, interest and so on. Replacing a lost return is a hassle, and waiting for the replacement can delay filing. If the taxpayer loses a return and doesn't realize it, the government will eventually catch the error, and send the taxpayer a notice of deficiency for the additional tax due, plus interest and (sometimes) penalty. Taxpayers must then decode the notice, double check their records, or contact their preparers. It's expensive and anxiety-provoking.

It's also unnecessary. The government already has the information contained in the lost forms. Why can't the taxpayer, or his preparer, go on-line and double check his records against

the records the government has kept in his name? That would dramatically reduce the record-keeping burden for the taxpayer. It would save the government money, too. The costs of opening a correspondence file on a taxpayer are considerable. Each year, though, California does just that for hundreds of thousands of taxpayers. The leading cause – omitted income or deductions due to lost information forms.

It is obvious that allowing individuals to access the government's file on them would reduce the record-keeping burden. It is not so obvious, but nonetheless true, that such a plan would simplify filing more generally. The executive described above has a return that almost anyone would think beyond the capacity of a layperson to file. Suppose, however, the information returns were made available in user friendly form, in the correct column of a tax return. Suppose, further, the on-line return had the functionality now found in the free State tax websites, or in products such as Turbo Tax. The executive would log on and find a return with every column filled in except one – there would be no entry for charitable donations. He could type in the amount of his donation, and press the calculate key and get his taxes due. If he approved of the figure, he could send it electronically to the government.

Of course, with so much at stake, the executive might want to save and print the return but not send it in. He might want the return vetted, or perhaps redone, by his preparer. Perhaps there are some extra deductions he might claim. But he would start the process with a tentative return, already saved in electronic form, rather than with a basket of information returns. It stands to reason that the market price people would pay preparers, and hence that preparers would charge, would fall.

Most of the readers of this book will fall somewhere in between the ReadyReturn recipient and the executive. Starting off with a return with all but a line or two filled in would reduce the costs and anxiety of filing, and, to some extent, change the way the tax system and perhaps even the government is viewed.

The notion of giving taxpayers access to data collected on them by the government was not new. The FTB had explored that earlier; I had come up with it independently; I am sure that over the years it had occurred to hundreds of folks. But we were almost certainly the first folks to try to incorporate that in a workable tax system.

From an operational standpoint, the biggest problem would be lack of timely data – the same problem that made it impossible to send out ReadyReturns to folks with interest income. In order to get full benefits of the data retrieval system, the reporting dates for data providers would need to be moved up. Financial institutions, for example, would need to be required to send data to the government the same time it was sent to the taxpayer. This would not be a major change, as taxes go, but it was something that we could not do in this bill.

In the short term, data retrieval would be useful even if it were not complete. Taxpayers who lost an information return could check to see if the same information had already arrived and could be retrieved from the government's computer. A high proportion of the time, it would be. All taxpayers could check at the time of filing to see whether the government had

information they didn't have. Some data – such as wage income, withholding and estimated tax payments, would always be available.

Politically, including data retrieval was a wildcard. Our main interest was the low income taxpayers. Data retrieval would apt to be politically popular and might gain us enough support to push the entire bill through. But it also might deflect attention away from ReadyReturn. It might lead to a compromise, where we would get data retrieval and lose ReadyReturn.

Ultimately, we decided to include data retrieval, but to draft the bill so as to not bind the FTB to any particular timetable on the program. A dozen or so emails, raising doubts about wording, correcting wording and coming to agreement, and we were done. We had a bill. Now all we had to do was sell it.



## VIII On the Road with Rebecca

“It would be really useful to get the unions on board,” one sympathetic staffer told me.

“How about MALDEF (Mexican-American Legal Defense Fund)?” asked another staffer.

“You know, this is something that the right foundation would love,” said another. “How about the one started by Omidyar (head of E-Bay).”

All good suggestions, but hard to execute, at least for me. I had spent twenty adult years as a relatively apolitical academic and tax lawyer. I hadn’t been exactly paling around with the folks I was to call. Union leaders? I didn’t even know the names of the big California unions, or where to find their leaders. What was I to do – hang around the waterfront and look for the guys giving orders?

I decided to play the only hand I really knew how to play. I’d schedule meetings with legislators, and try to convince them of the sensibility (and political gain) of the bill. That’s what I’d done with Westly and Arduin, and it had worked fine. I wouldn’t be the only one talking – the ten or so of us who worked on the bill would all talk it up. Hopefully, the thing would mushroom – we’d excite others, and they’d talk it up, and so on. I knew, though, most of the initial heavy lifting would fall on my shoulders. I knew the measure better than the staffers, and my title gave me some credibility. The FTB folks were constrained from actively lobbying, and were viewed with suspicion by many legislators. The numbers gave me pause – The bill would start off in the Assembly, which had 80 members. It would then go to the 40 person Senate. That’s a lot of folks to start a conversation with. But then, I had six months. And – I I like to talk. Explaining complicated things is what I am good at, what I do before students, practicing lawyers, and so on. I had a leave coming and would spend it in Sacramento. It would be an interesting experience.

To start out, though, I really wanted someone along who had experience doing this sort of thing. The only person I knew who had that experience, and who would take the time to help, was an old friend, Rebecca. Rebecca had been a Sixtie’s radical: she’d spent the last part of the decade on what was called The Law Commune, working within the legal system to fight the Vietnam War, aiding draft resisters, raising money for S.D.S. radicals and so on. [Rebecca now helped ran Stanford’s computer system. She was still politically active, though. She knew all the local Democratic politicians, hand campaigned for some of them, and was forever handing us petitions to sign. She had volunteered to help me organize my efforts, to come with me to speak with folks she knew, and had even gone so far as to arrange our first set of meetings in Sacramento.

It’s a 120 mile drive from Palo Alto to Sacramento – up the Peninsula, through San Francisco, and east into the Central Valley. As we passed Candlestick Park, and then AT&T

Park, we talked about my older son's infatuation with the Giants. "What about you," I asked. "Are you a fan?"

"I used to listen to every Yankees game," she replied. "I really wasn't a fan, but my father was and he *loved* Mickey Mantle. So I'd listen to the games in my room and I had a little notebook and I wrote down all of Mickey Mantle's at bats and hits for the year. After every game, I'd recalculate his batting average. I'd then tell my father what it was. 'Guess what, Daddy,' I'd say. 'Mantle is now batting .339.'

"My father was a simple man. He wasn't very bright. He loved the fact that I liked the Yankees, which I did, sort of, though mostly for him, and that I could do this math. He couldn't get over it. He would wait after every game for my announcement of Mickey Mantle's batting average."

And now I got the benefit of Rebecca's notebook.

When we got to Sacramento, we found out that the Assemblyman we had come to see couldn't see us: something had come up. We were relegated to an aide. This was fine with me – I was so out of my element that I didn't know that a meeting with an aide meant almost nothing. Rebecca knew it, though, and was livid. "Professor Bankman has come all the way to Sacramento just to see the Assemblyman. This is an opportunity for the Assemblyman," she said. Actually she said more than that, pointing out my earlier work on shelters that the Assemblyman had voted for, throwing my weight around in a manner that, while I am sure was instrumentally useful, made me uncomfortable and makes me too uncomfortable to recount here. It was all to no avail. We met with the aide – a twenty-two year old kid Rebecca already knew.

Fortunately, the next time we scheduled a meeting, the Assemblyman showed up, and agreed to co-sponsor the measure. The same thing happened at the following meeting - and then we were stood up again.

Rebecca didn't schedule or go with me to most of my meetings. I scheduled some, staffers I worked with scheduled some, sometimes I went alone, sometimes with staffers. We got a few legislators to sign on without my doing anything. Fifteen hundred miles of driving to and from Sacramento later, I had gotten four co-sponsors, and all the votes I needed to get through the first committee, Assembly Revenue and Tax. But time was running out. Nearly a month had passed, and I had met with only ten of the one hundred-twenty legislators. The figure was even less impressive than it sounded, since I had begun with the legislators I thought were most likely to support the measure. The real problem wasn't that legislators cancelled on us – it was that we couldn't get the meetings to begin with. We were lucky to get a meeting with a staffer after four or five calls – meetings with the legislators were nearly impossible to get.

"You need to get someone, maybe a student, maybe even someone you can pay a little," Rebecca suggested, "to work on getting us meetings. We could probably raise a little money."

I had another idea. "How about a lobbyist?"

Rebecca's face fell. "Oh, I don't know. You shouldn't have to do that."

I got the same reaction from staffers – it probably wasn't necessary, and I shouldn't have to pay for access.

I pressed ahead. "Suppose I hired a lobbyist. Would it be easier to get meetings? Would they help work the bill through committees?"

The staffers nodded.

"Are there good lobbyists I should talk to? Find out how much it costs?"

Pursuing this further brought a new round of grimaces. "There are some that are good," one staffer finally said.

"Do you think we could get some names, start this process," I asked.

"You could do that," said one, but she didn't offer any names.

I understood their reluctance. Lobbyists cost \$70,000 or so a year. It was obvious, if we hired one, that I would pay, and obvious I wasn't wealthy. My job wouldn't give me that kind of money to throw around, and in any event, no one with money would drive the beat up Honda Accord they had seen me in. It was enough that I was giving up a semester to work on a good government bill. It seemed wrong that I should have to drain my family's savings account to pay for it.

It was more than that, though. They all felt uneasy about fixing me up with a lobbyist. It was unseemly. It was as if I lacked a date for the dance and asked for the numbers of the town's most well known prostitutes. Big business, of course, routinely took paid escorts to the ball. But a professor shouldn't – at least one advised by good government staffers.

Eventually, though, I coaxed the names of a few lobbyists from the group and, after taking a deep breath, typed an email and hit the send button. Ten minutes after the email went out, the phone starting rang. My (potential) lobbyist! I was so elated that I had found someone in Sacramento who would return my call that I almost forgot that it was their business.

In truth, I was a big hit with the lobbyists. It sounds absurd, I know, to think that the welcoming voices I was hearing reflected interest and affection. But no one grows up wanting to be a lobbyist. The profession is made up of politicians who got termed out, or turned out, or staffers who worked for those politicians. Smart, idealistic kids who now found themselves hired guns. In time, most of them would internalize at least some of their clients' points of view. Those who represented Yahoo or Amazon would feel that states should not levy a tax on internet sales, but that states should regulate the cable companies that brought the internet to homes: otherwise the cable companies might charge their clients for the flow of traffic carried over the

internet “pipes.” Those who represented big oil would believe that high profits would lead to a market solution to the energy crisis, or global warming. (Lawyers adopt the same sort of protective but instrumental set of beliefs. The ability and willingness to do so is probably a necessary characteristic of any good advocate.)

But from what I could see, lobbyists never completely got over the interest in good government that had originally impelled them into politics. And now I came knocking at their door – a paying client that meshed with those interests. And a professor to boot – that might be interesting, or at least be the stuff of a story later on. For whatever reason, they all jumped at the chance to represent me. They showed me their interest in the most direct and unambiguous way possible: they all offered me a deal. Half-price, to be exact. They’d represent me for the rest of the legislative year (four months) for only \$30,000.

## IX A Lobbyist of My Own

On the basis of phone conversations and references, I chose David and Jack as my lobbyists. They were described to me as the hardest working guys in the city and both seemed sweet over the phone. I stopped by to meet them in person, for the first time, right before an appointment with a legislator, Johan Klehs.

Immediately, there was a problem. “You’re going to see Johan?” asked Alan. “I’ll come with you.”

I froze. Klehs was a good government legislator whose vote we had counted on. He was one of us. I’d hired David and Jack to get me meetings with conservatives, who weren’t returning our calls, or those members with a reputation for wheeling and dealing. I wasn’t sure I wanted Klehs to see me with lobbyists. It seemed like bringing the prostitute you had hired home to meet, if not your parents, then your friend’s parents. But David was all smiles and enthusiasm – there was no way to get out of this gracefully. “Okay,” I said, trying to smile through my anxiety.

I needn’t have worried. Klehs didn’t seem at all bothered by the fact that David was with me. In fact, he seemed relieved, and not just because, as David had promised, they had a history together. My guess is that bringing David along convinced him of the seriousness of the quest, or perhaps reassured him that if problems arose, he’d know who to call.

On the way out, we bumped into Jack, who was to be my primary lobbyist. Jack was a smart, no-nonsense 30 something who looked a bit like a slimmed down James Gandolfini. “We had a nice meeting with Klehs,” said David. “Who don’t you take Professor Bankman around and see who else he can talk to today?”

Jack looked down the hall. “How about Miller? He’s on Appropriations, which is a committee you’ll need to go through.”

“Sure, I said.” I didn’t tell Jack I had put four calls into Miller’s office, and hadn’t gotten one returned, let alone a meeting set up.

Jack and I went into Miller’s office and he leaned over to the receptionist. “Suzie,” he said, “I have Professor Bankman from Stanford University. He wrote a tax bill Miller will be voting on in Approps. Can you squeeze us in, like, right now?”

“I got Greg and Kim waiting, and then Hazel at 1” Suzie replied. “How about in an hour?”

“Cool,” Mike replied.

“Who were those guys,” I asked Mike, as we idled away the time across the street at a coffee shop. “Greg, Kim, and Hazel.”

“Lobbyists,” Mike replied.

Later we ducked our head into another antechamber, and again Mike got me a meeting on the spot. As we left, another lobbyist was working the receptionist.

I was in a daze as I started on the long drive home. I had been frustrated at my inability to get meetings in Sacramento. I imagined that legislators got inundated with kooks - constituents who thought they had solved the energy crisis or had discovered a conspiracy among local schoolteachers.. It made sense to avoid them. But I had drafted a bill that was sponsored by a number of their colleagues, that would make permanent a program that had been adopted by the state tax agency. I had a title, references from staffers and so on. Why hadn't they been willing to meet with me? Until today, I had guessed they were too busy in hearings, or working on issues they themselves favored. Now I knew better. They were too busy meeting with lobbyists. Any one of the regular lobbyists who stuck his head in the door on any measure immediately jumped to the top of the queue, displacing people like me.

Now that I had a lobbyist of my own, I wasn't so much outraged as mystified. Every staffer I met with must have known that lobbyists held the key to the members door. Why hadn't they told me? Perhaps they thought I knew. And how was it that I – someone who had drafted federal and state legislation, testified before Congress, etc. – didn't know? How could I have spent twenty years teaching students tax policy, opining here and there on how the system works, and have been so clueless? Did my colleagues know that you had to have a lobbyist to get anywhere? That you could have the best credentials in the world and spend a month getting a meeting on an issue that was to come up for a vote – or hire a lobbyist and getting a meeting on the spot? Did everyone know that? And what accounted for the power lobbyists wielded?

## X Money, Information and Term Limits

The most obvious source of lobbyist power was, of course, money. It costs a fortune to run for office nowadays. A year earlier, in my district, one candidate had spent \$1 million dollars on a race to be one of 120 State Assembly members – and lost. That was an extreme example – a millionaire many times over running in an affluent district – but no one could mount a serious campaign for statewide office without spending hundreds of thousands of dollars. Lobbyists could be counted on to make significant contribution to any serious office-holders campaign. There were a lot of lobbyists around, so that a powerful politician could raise \_\_\_\_\_ directly from lobbyists.

The real money, though, was not raised from lobbyists so much as through lobbyists. This was money contributed by the lobbyists' clients. A big in-state oil company might contribute over a million dollars each year to state politicians; an out of state oil company might contribute a tenth that. Both companies would employ lobbying firms and the decision of whom to give money to was one that was often discussed with those firms. A firm with ten lobbyists might have control over millions in client's contributions – enough to make the difference in a score of close races. (The role of lobbyists in raising or directing clients' contributions is discussed in Chapter XIX.)

But it wasn't just money that lobbyists offered. It was information. There are 2,500 bills offered each year in the California legislature. It would be impossible for any legislature or her two person staff to really understand more than a small percentage of those bills. Some bills dealt with disputes between two well-financed interests – unions v. industry, or agriculture v. development. There, both sides would be represented by lobbyists. Hearing them out gave the legislator a good grasp of the issues. This was true in many clean air/clean water issues as well, since, as noted earlier, environmental groups had lobbyists to counter industry lobbyists.

Most of the time, though, there would be lobbyists on only one side of the issue. Legislators were presented a choice: biased information or no information. Legislators understandably chose the former, and hoped or assumed that they would be smart enough to ferret out misstatements.

The problem of money and information was multiplied by the new-found public desire for term limits. In California, legislators are limited to three terms (of two year's each) in the Assembly, and two terms in the Senate. There is really no such thing as a "safe" assembly seat. A first-time assembly member can run as an incumbent twice, and then must run as a challenger for another office. This, of course, is not an unintended consequence of term limits – the whole point of term limits is to eliminate safe seats. But one unintended consequence of eliminating safe seats is to increase the importance of money in politics – and in so doing, increase the importance of lobbyists. Before term limits, Assembly races were cheaper. Most races were won by incumbents, who faced on token opposition. An incumbent without ambition for higher office need only hold a sporadic fundraiser to keep his position. Now every single member faced an uphill battle

as a challenger for another office in just a few years. The biggest determinant of success in that coming race would be campaign contributions, and the biggest source of contributions were lobbyists and their clients. In the old days, an established legislator didn't need to curry favor with lobbyists; nowadays, no one could afford to lose lobbyist money.

Term limits also made legislators more dependent upon lobbyists to provide information. In the past, over many years, a legislator could acquire a feel for all the big issues in state politics. A legislator didn't need an expert to explain the issues – he or she was the expert. Term limits put the average tenure at 3 years. A legislator who spent all that time studying the tax system might understand the tax system – but know nothing about transit, or education, or prisons. New members needed lobbyists more than long-term members, and now there were only new members. Term limits also made it harder for a member to find trustworthy sources of information. In the past, a lobbyist who got caught lying might lose a member's trust for many years. Lobbyists and legislators were repeat players, and it behooved the former to (within the confines of their position as advocate) gain the long-term trust of the latter. Now, all that mattered was that a lie not get discovered for the remainder of the member's term. Predictably, there were aggressive lobbyists who took advantage of that fact and adopted a “say anything that works today” attitude toward the legislator.

Ironically, the rise of the lobbyist did not please or even financially benefit all lobbyists. David had grown up in the old system and bemoaned the loss of integrity in his profession and the loss of expertise in the legislature.



## XI Intuit Was Here

The Assembly was majority Democratic, so Jack started us off, sensibly enough, with meetings with Democrats. All our initial authors and co-authors were Democratic, and the issue tilted Democratic, so these were, or should have been, easy votes and pleasant meetings. We did end up getting some votes, but I found the meetings profoundly disturbing.

“Jack, you never come see me anymore,” said Sandy L, an assemblywoman of a certain age who many, many years earlier had been a schoolteacher.

“Oh, Sandy,” said Jack, as we sat down in her office. “You know I love to come by.”

“Well, you don’t, much,” said Sandy playfully and (perhaps) a bit petulantly.

“I’ll come more often,” said Jack gallantly. A silence followed, and then Jack continued: “Sandy, the reason I am here is that I am representing Professor Joe Bankman from Stanford, who has worked with the Franchise Tax Board to simplify taxes. He’s got a bill you’ll be voting on.”

“I always like to see you,” Sandy said, looking at Jack, “and I’ve heard about Professor Bankman and his tax plan. She shifted her gaze to me. “Sue has warned me about you, Professor. Is this the kind of thing we ought to be spending taxpayer’s money on?”

I was taken aback. Sue, I knew by now, was Sue Sable, a former \_\_\_ who headed one of the largest and (reputedly) most aggressive lobbying firms, \_\_\_\_\_. In the 2005-06 election cycle, Intuit was their largest client, paying the lobbyist over \$400,000 in fees. I quickly tried to collect my wits and respond to what I regarded as a frontal assault.

“Your constituents loved the program,” I said, “Ninety-eight percent of them wanted to use it again the next year. And ReadyReady has no long-term cost to the State.” I handed Sandy the forty-page single spaced set of comments. “Take a look at any of the comments,” I said.

Sandy took the paper from me and looked back at Jack. “Who is that nice woman who is with Sue these days,” she asks. “The one who dresses so well?”

“Oh, that’s Marleen,” Jack answered, and the conversation went off on Marlene’s dress.

A discreet interval later, Jack brought up ReadyReturn. “We don’t know what Intuit told you,” he said, “but it really is a great program.”

Sandy grimaced. “What’s Barbara gonna do?” she asked.

Barbara was Barbara Tsai, a good government Democrat who headed a key committee.

“Barbara’s a co-author of this bill,” Jack replied.

“Well, I guess I’m gonna go with you on it, then” Sandy replied. “But you never come see me, Jack.”

“Oh, Sandy,” Jack said, his eyes twinkling.

Now that my role was done I relaxed, and realized what was familiar about this scene. Jack no longer reminded me of a mini Tony Soprano; he was now Zero Mostel, or Nathan Lane, playing producer Max Bialistock, trying to convince woman of a certain age to invest in the play.

I was a little disturbed by Sandy’s lack of interest in the particulars of the bill. On the other hand, Sandy’s ultimate method of making the decision wasn’t so silly. Barbara Tsai was a smart, hardworking Democrat whose opinion she respected. With another 2,499 bills to review, why not just play follow the leader on a bill Barbara had co-sponsored? The fact that Sandy got a kick out of Jack – well, why not put a little spice in an otherwise tedious day?

Quite a bit more disturbing to me was the fact that Intuit had beaten us to the punch. They’d been able to shape the issue in the legislator’s mind. I knew that once legislators formed an opinion on the issue, it would be hard to change their mind. More creepy still was the fact that Intuit had gone so far as to identify me personally as a source of trouble, and to warn legislators about me. I felt like Sean Connery sneaking into a darkened room only to find the bad guy sitting in a chair, with a smile on his face and a gun in his lap. “Mr. Bond, we’ve been expecting you....” Only unlike the real James Bond, and didn’t have a clue as what to do next.

It wasn’t just that Intuit had beaten me to the punch. They’d come bearing gifts. I was obviously aware that a company like Intuit would make campaign contributions. Until now, they hadn’t had ReadyReturn to worry about, but they were peculiarly dependent on maintaining the present tax system. They were also a California-based corporation. I assumed that they would have made contributions to their local representatives, the chair of key committees and party leaders. In this, as in so many other areas, I was naive. Intuit would make significant contributions to roughly half of the 120 state legislators.

The saving grace, I thought, was that the maximum campaign contributions for corporations was only \$3,500 a year. That was real money – but not so much money that it would mean the difference between winning and losing an election. It was hard to believe than anyone would sell out for so little. It turned out they didn’t have to. But that was next month’s lesson.

## XII No Way on God's Green Earth

After even a few meetings, it became apparent that it would be difficult to get anything through the legislature without landing at least a few Republicans. I knew going in that this would be tough sledding: anti-tax anger contributed votes to the party and ReadyReturn reduced anti-tax anger. I am sure that Republican leadership would have accepted a happy electorate, tax-wise, if it were accompanied by the adoption of the Republican tax agenda: a decline in progressivity, elimination of the estate tax, substitution of consumption for income tax, and so on. But ReadyReturn might make it harder, rather than easier, to get the rest of the Republican tax agenda through. With ReadyReturn in place, bluecollar and pinkcollar workers might be less likely to support the Republican platform on, say, the estate tax.

Campaign contributions also made it tougher to get Republican support for the measure. Most of the company's contributions to individual candidates were to Republicans (Intuit generally gave only to Democrats who represented its home district or who held positions of power in the legislature). The company was also a significant contributor to the Republican Party in the State. The previous year, when the party backed a special election (designed in large part to limit the power of unions), Intuit had stepped up to the plate with substantial contributions.

My first task was to talk to the staffers on the Republican Tax Caucus. They'd undoubtedly take a position on the matter. A positive recommendation would be terrific, but a neutral recommendation might be all we needed.

"I'd be happy to talk with you," said Cheryl, the staffer who had been assigned to the measure. "But I should tell you that we don't think ReadyReturn is a good thing and there is no way on God's green earth that you are going to change our mind on the issue."

"Let's talk," I said, forcing a chipper smile.

I started by giving some background – how the program did no more than give the taxpayer the figures the government already had; the program's Republican origin; its support from the Governor's representatives; its support among virtually all former national Republican tax appointees; and of course the results of the pilot program.

Cheryl remained obdurate. "I'm not one of those people who think we ought to get rid of Social Security," she said. "But this," – and in lieu of completing the sentence she just shook her head.

I pressed ahead. "How about taxpayer choice? Look at the pilot program results. Taxpayers love it. Ninety-eight percent of taxpayers who used it want to use it again. About half of those taxpayers were Republicans. Why not respect their decisions?"

Cheryl seemed to be troubled, or at least momentarily derailed, by this train of thought.

I continued. “The Republican Party prides itself as being the champion of individual choice, but by opposing this measure, aren’t you substituting your judgment in for the judgment of taxpayers.”

Cheryl looked a bit uncertain. “Well,” she said finally, “that’s – that, that is – that’s...”

A silence followed as Cheryl looked for the right word.

“A paradox?” I suggested.

“Yes,” she said brightening noticeably. “That’s a paradox.”

Cheryl’s report could not have been worse. It repeated every single argument that had been raised against the program – big government, uncertain effects on tax revenue, competition with private industry – and said not a word about the enthusiastic response of taxpayers. The bill received three stars – the most negative rating possible. Getting more than a few Republicans on board would now take the Governor’s active support, or some sort of breakthrough we couldn’t imagine.

### XIII One Step Short of a Felony

Republicans could justify their opposition on political and ideological grounds. I use the term “could justify” because I believe what I had told Cheryl: that Republicans should have supported the program because it simplified filing and armed taxpayers against the government. But the litany of reasons offered for opposing the program had surface plausibility and with Cheryl’s report, the party had taken a sort of official position against the program. The opposition of most Republican legislators was assumed and there was no way of guessing whether, in any individual case, considerations as crass as campaign contributions might have played a role.

The Democrats were another matter, since, as noted earlier, the program fit with both ideology and party self-interest. Most Democrats supported the program. Those who did not generally fell into one of three overlapping groups. The first group was comprised of legislators who were about to be termed out of the Assembly and who would run as a challenger for another office in the upcoming primary. These members faced an uphill battle. To avoid running against an incumbent, they tried to find open seats and the seat that most often came open was in the Senate, whose members were also subject to term limits. However, there were only half as many Senate seats as Assembly seats, and the Senate term was 4 years (as opposed to 2 in the Assembly) so an open seat came up only half again as often. It was not uncommon for two or even three termed out Assembly members to run against each other in a primary for an open Senate seat.

Not all of the legislators in this position opposed ReadyReturn and the relative unpopularity of the program with these legislators may be a coincidence. From a statistical standpoint, we are dealing with a small population, and a single test. It is possible, too, that the act of running distracted these members: they opposed the program because they did not have time to confirm that it fit with their vision of good government. A more depressing possibility, voiced by many staffers, is that members in this position were desperate for contributions. ReadyReturn had not made it as a campaign issue with the voters, but it still had potential to affect campaign contributions. The contributions, of course, would come only from opponents of the program. A thirty thousand dollar contribution from a business friendly PAC could make a difference in the race, and with Intuit contributing to PACs and Intuit and its lobbyist lobbying the business world, that contribution was not out of the question. (See chapter \_\_)

The second group was comprised of members who represented the State’s poorest districts. These were districts with the highest percentage of eligible taxpayers – taxpayers who would find filing hardest, who would be most anxious about getting into trouble with the government; and for whom \$50 saved would mean the most. In short, the districts that would benefit the most from the bill. Why, then, did their representatives not favor the measure?

Again, not all members in this group opposed ReadyReturn; many, perhaps even a bare majority, supported it. But opposition to the program was relatively greater in these districts than in wealthier districts. It is possible that ReadyReturn simply did not

resonate with some of these representatives – a possibility explored below with respect to all dissenting Democrats. But I think part of the answer has to do with constituents in these districts found it harder to monitor their representatives. Voters in affluent districts were more likely to read newspaper editorials, subscribe to magazines that covered politics, read about politics on the web, and become active in political organizations. A representative from, say, Santa Monica, who opposed ReadyReturn would have to worry about getting bad press, or a negative rating from consumer organizations – either of which would cost him or votes. Representatives in poorer districts did not feel their constituents were looking over their shoulder so much – at least not on this issue.

In this respect, political life in the poor, minority districts seemed little changed from Tammany Hall, of a century earlier. Provided representatives delivered on a few high profile, bread and butter issues, and took the right stands on certain hot button ideological issues, they could do pretty much whatever they wanted on anything else.

The third group of naysayers consisted representatives that were, by reputation, a bit – there is no way to say this gently – ethically challenged. These were representatives for whom it was thought, as one staffer put it, “money talks.” I of course was in no position to evaluate the truth of this or any other allegation. I would meet a member once and get his reaction to only a single issue. But I was surprised at the near uniformity of opinion among staffers as to which of the members fell into this group. Staffers regaled themselves (and me) with stories (all unverifiable) and sobriquets for members in this group. One opponent was described by one insider as “one step short of a felony.”

Meeting with someone in these groups was a surreal experience. Most often, as soon as I got done with a brief summary of the program, the legislator would thank me, and signal that the meeting was over. “We heard about the bill,” said one legislator who fell into two of the groups, as I walked into his office. I launched into my spiel, which I had cut down to five minutes. I ended by showing him the pilot program comments and talking about how this was a program that taxpayers loved.

“That’s one way to put it,” he replied smiling broadly.

“Anything in particular that worries you, that Intuit might have mentioned, that I can address,” I asked.

“No,” he replied, and that was that.

Occasionally, a Democrats who was negative or leaning negative would (half-heartedly) raise one of the arguments Intuit had come up with to oppose the bill. But one had the feeling they were just going through the motions. They rarely seemed interested in my reply.

David Barton represented a Latino and African American community in Southern California. He was termed out and facing an uphill battle in a race for another office.

He greeted me as the “genius” who had come up with the plan and asked me, as we entered, why I didn’t just take the plan private myself. “You could be rich,” he said.

“Listen,” he said a minute later, when we got down to real conversation. “I just don’t know if I think this is the kind of activity government should get involved in.” I was taken aback. Here was a Democrat who represented one of the poorest districts in the State and who had probably never seen a government program he didn’t like. It seemed inconceivable that the problem, for him, was one of big government.

It is likely, of course, that at least some of the uncommitted and no-leaning Democrats who fell into these groups had a principled objection to the measure and that I wasn’t told those objections because the legislator didn’t think I could have an adequate response. I am sure that everyone who cares deeply about a cause overestimates the degree to which untoward factors are responsible for its opposition. But I am left with the conviction, shared by other insiders, that if campaign contributions were equalized most uncommitted and opposing Democrats would have found this an easy yes vote.

## XIV Fair and Balanced

The other day, my son showed me an interesting web site: [thechurchoftheflyingspaghetti monster.com](http://thechurchoftheflyingspaghettimonster.com). The site offers what purports to be a religious belief: that the earth and its creatures were created 2,000 years ago by a flying spaghetti monster. The site gives some details about the creator -- he is all powerful, has a noodly appendage, and so on -- and goes on to demand that its theory of creation be taught, on equal terms, with Biblical creationism and Darwinist evolution.

The site is designed, of course, to parody creationism. There is a larger message as well: that not all theories deserve equal respect. One of the painful lessons of that spring was how hard it is for most of us to internalize that, when confronted with new ideas. We have no trouble rejecting Uncle Sid's paranoid visions, or the advice of the office crackpot. But as cognitive psychologists have shown us in a myriad of ways, when we try to evaluate arguments in unfamiliar contexts, we resort to various rules of thumb that can steer us very wrong. Our impulse is to give equal credit, initially, to any two opposing positions, and therefore assume that the truth must lie somewhere in between. We are also unable to fully discount for bias. If someone sounds sincere, we tend to believe them, even if we are told beforehand that they are paid actors or have an incentive to lie. If we hear the same thing over and over we tend to believe it. That's the secret behind the testimonials one hears on TV commercials, and that's why a good defense lawyer can get a jury to acquit on an open and shut case. We confuse advocates with sincere believers, so if each side has an advocate we tend to think that each side has about the same number of believers. The list of decision-making failures goes on and on, and is the subject of a burgeoning (and interesting) literature in behavioral economics and cognitive psychology.

As I slowly began to realize, these biases and cognitive errors play a big role in politics, and they weren't exactly helping our cause. The legislators I spoke with saw folks on both sides of the ReadyReturn, and therefore figured there had to be two weighty sides to the issue. Unfortunately for us, the folks they saw the most often were not us; they were Intuit's paid lobbyists, who-- like most lobbyists-- have unfettered access to legislators. While the legislators I spoke with knew intellectually that the folks they were hearing from were paid to push Intuit's position, like all of us, they found it difficult to fully discount the message for those biases. If they heard the same argument enough times, intoned with enough conviction, then (like belief in the Flying Spaghetti Monster or Biblical creationism) they were bound to think there must be something to it.

The ability to hammer its message home would have given Intuit an advantage even without money greasing the wheels (assuming, of course, that its lobbyists still could have gotten unlimited access to legislators without money greasing the wheels). But in the real world, access and money were completely entwined. Campaign contributions led legislators to give Intuit a sympathetic hearing, and-- having heard the pitch-- cognitive bias made it easier for legislators, sincerely, to believe that what was good for Intuit (and hence their campaign coffers) was also good for California.



With limited ability to persuade legislators one-on-one, we naturally thought about turning to the press to get our message out to voters, with the hope they would in turn put pressure on their representatives. Here, too, I was in for an education, up close and personal, about what all those clichés about the importance of a free press to democracy really mean. I met a lot of heroes that spring, but probably none more than among the reporters on the Sacramento beat. People like Evan Halper of the LA Times worked tirelessly, day after day, to figure out what was really going on in the thousands of bills wending their way through the legislature, and to report it straight as stewards of the public interest. But even the press, I soon discovered, was subject to its own version of the Flying Spaghetti Monster. Privately, every reporter I spoke with told me how absurd they found Intuit's objections, and how transparently self-serving they were. But reporters too often interpreted their professional obligation of objectivity to require them to give equal time to all sides of a story, whatever their merits, and appear neutral between them. Thus, the typical "balanced" news story on ReadyReturn that appeared in local and national papers introduced the issue as a "controversial tax plan," gave a quote to one side, a quote to the other, and did no reportorial follow-up or fact checking about the claims from either side. Near the end, the reporter might get around to noting the overwhelmingly enthusiastic taxpayer response to the pilot program, or the fact that almost all of the "controversy" had been stirred up by a single for-profit company whose self-interest was at stake. Unfortunately, most readers won't get beyond the first two sentences – at least not when the topic is tax filing– so the take-home message of many of these articles was, this is a "controversial" program and hence must have some real downsides as well as upsides for the public. .

If many reporters felt they had to appear neutral, editorial staff of course felt no similar constraints. We were blessed with a series of editorials that money (it turned out) could not buy. The San Jose Mercury came out with the first favorable editorial ("State Should Ignore Industry Objections to Simple Filing") and wrote four similar editorials as the issue developed. The L.A. Times ran an editorial and an op-ed in support of the program. The Central Valley Bee papers (Sacramento, Fresno and Bakersfield) – unknown outside the state but influential in Sacramento -- ran two editorials in support of the program ("ReadyReturn Works – Why Kill It?" and "Bully for Westly – He Ignored Intuit's Lobbying"). Editorials supporting the program ran in a number of smaller California papers as well. On the national level, op-eds in support of the program ran in the The New York Times and Newark Star Ledger.

We were thrilled when the first few editorials came out, as they offered a "reality check" for folks in Sacramento in a way that we– perceived as partisans– couldn't seem to do. Intuit's lobbyist, often in their office once a week on behalf of one client or another, might seem the height of reasonableness. The editorials reminded legislators that there was a big world out there, and many of the people there, whose support was bought by nobody, were on the other side.

The editorials probably meant more to me than anyone else. A year earlier, I had concluded that ReadyReturn was a straightforward winner in the public interest.

Everyone in my field agreed with me – it was the rare issue that was supported, for example, by the top tax officials of the past four Administrations in Washington. Devoting a year of my professional life to the idea was an easy call. Once inside the political arena, everything got turned upside down. For a year, I had spent my days going from office to office, listening to legislators repeat Intuit’s litany of makeweight objections to the program, and trying to respond politely and thoughtfully to them, as the rules of engagement required. After a while, I started to worry if maybe I was missing something here. Might there really be something to Intuit’s position beyond obvious financial self-interest? The resounding answer from all the editorials was, “no.” That’s really all there was to it.

## XV The Long Drive to Sacramento

Though the editorials may have played an important role in bucking up my spirit, they seemed to have little effect on legislative reaction to ReadyReturn. I had naively thought that legislative endorsement would sway at least the Democrats who were opposing the program, and the centrist Republicans as well. It would have counteracted the bias introduced by their close contact with lobbyists. Legislators would look at the issue anew, and realize how commonsensical the plan was. That assumption, like so many assumptions before it, proved hopelessly naive.

To begin with, no legislator was going to be confronted by the dozen or so editorials in support of ReadyReturn. Instead, he would read the editorial in his local paper, and perhaps glance at others if they were handed to him by our lobbyist. It was a one-time thing, unlike the repeated interactions with Intuit's lobbyist. Perhaps if we had gotten to the legislators first, before they had mentally committed themselves to oppose the plan, things might have been different.

More to the point, the opposition was about money, not merits. Legislators who opposed ReadyReturn knew that every editorial writer (or outside expert) would support the program. The editorials didn't tell them anything they didn't already know.

The editorials did increase the likelihood that papers would follow individual legislators votes on the issue and that a no vote would cost editorial support and produce public outcry. However, the Democratic legislators who were lining up in opposition didn't seem worried about that. They thought the issue was too abstract for their constituents to follow and, in that assumption, they were probably right.

People loved ReadyReturn when they got it in the mail. It took them only a few moments to see that the return had been already filled out, and to learn that they didn't have to file it, that they could change it and file the changed copy, give it to their preparer and so on. The comments tell the story. But, sadly enough, in my experience people are merely intrigued when they hear a brief description of the program. It sounds a bit abstract or confusing. Taxpayers might worry that the return itself will be incorrect, or that some aspect of the return will be hard to understand. ReadyReturn, it turned out, is a product most people had to have in front of them to fully appreciate. In this respect, ReadyReturn is the youtube of the tax world.

With the good news of the editorials behind me, and our support in the 80-person Assembly moving up, if at all, slowly from 30 toward the magic number of 41, the trips to Sacramento got more and more unpleasant. I had started out driving up midday for a single meeting – and with a friend in the car at that. Now I was trying to schedule meetings all day, beginning at 9. I'd get on road by 6 and still be held hostage to traffic, frantically changing lanes and freeways to avoid tie-ups. Sometimes I'd leave for Sacramento after I put the kids to bed, getting to a Travel Lodge off the highway, ten

miles west of Sacramento, by midnight. Law schools reimburse faculty for travel costs related to law reform. The previous year I'd testified before the Senate Finance Committee and had billed my trip to Stanford. But with the issue politicized by Intuit and Norquist, I was paying my own expenses now. Tax exempt institutions such as Stanford can't take political stands on issues not related to their core function. The last thing I wanted was to get a call from someone in the central university saying they had gotten a call from some conservative organization threatening to challenge our exempt status. Annoyingly, while I was paying and bearing expenses myself, I still had to keep receipts. As a "lobbyist-employer" I had to file quarterly reports with the California Fair Political Practices Commission. I had to list the \$30,000 I paid for David and Jack and was required as well to list all travel expenses: gas, lodging, tolls, and the like.

By now I had talked to all the easy yes votes, and most of the undecided votes, and was meeting only legislators who had already told David and Jack they were leaning no. I started off each meeting knowing I faced an uphill battle and ended the meeting, more often than not, still looking uphill. It was a psychologically exhausting process. I've never been good with rejection, and now I was setting myself up for nothing but. I'd try to leave myself some time between meetings, which I'd use to call home for support and distraction.

David and Jack never seemed to get discouraged, though. I know what you're thinking – it wasn't their bill that was narrowly losing. They got paid anyway. I think they did care, though. But they were made of stronger stuff. They could argue, argue, lose and enjoy the process. How could that be? It occurred to me that they might have other bills that were going surprisingly well. If so, I hoped that luck continued. I needed them to exude confidence. I tried not to think of the parties on the other side of those other bills – elderly whose hopes for a negotiated decline in drug prices were being squashed by their lobbying, asthmatics hurt by a decline in air standards, and the like.

David and Jack exuded so much confidence, and had so much enthusiasm for the process I now found godawful that they couldn't get enough of it. After an unsuccessful meeting with, say, a Democrat from Southern California reputed to be swayed by contributions, they'd look down the hall and spot an elderly gentleman hobbling into the bathroom. "Let's talk to Mel," they'd say, "he's a very conservative old coot from the Central Valley," but I think he just might be independent enough to listen."

"Sure," I'd say, forcing a smile, and think to myself "Oh God I just can't deal with another meeting, let him be busy, stay in that bathroom forever." But he'd come out, and as often as not, I'd find myself making another unsuccessful attempt to sell the program that all his constituents in the pilot program liked.

"What's on the docket tomorrow?" my wife asked one night as I set out my suit for another 6 a.m. trip to Sacramento.

"An assemblyman from Fresno who has a perfect rating from the Christian Coalition and the NRA," I replied. "Someone who has probably never voted yes on a program you'd like."

“Why is he agreeing to meet with you?” she asked.

“I think he just wants to see a Jew,” I replied. “A rootless, cosmopolite, effete, intellectual Jew.”

## XVI My Luck Turns

Actually, though, the meeting that morning went well. The Assemblyman was a sweet guy with a lot of common sense. He thought it was a shame that poor folks with only wage income returns paid so much for tax advice, and could see that the state wasn't exercising any power when it calculated their tax return. It was just saving them anxiety and money. The problem was, he said, that he couldn't support the program alone – that went against some combination of his style or the Republican way. But maybe I could talk to Chuck DeVore and convince him. DeVore might go it alone. He was brilliant, too. If DeVore supported it, then folks like him could support it.

I'd seen DeVore in a committee hearing and wasn't surprised his colleagues thought him brilliant. He had a terrific analytic mind, and that was something I was peculiarly able to spot and appreciate. Law schools sift out for precisely that ability. Stanford Law School takes the top few percent of entering law students and we (like other elite law schools) look for signs of that ability in test scores and college record. We look (and test) for, and try to strengthen, the same qualities once students are admitted. In class, we ask a student whether one case is like another; or whether one would expect the holding in one case to be applied to a slightly different fact pattern. After only a moment's hesitation, some students can spot and explain the five salient differences between one fact pattern and another; other students get distracted by extraneous details; still other students can spot the issues but not organize their thoughts well enough to coherently explain what they know. We spend a lot of time trying to get all students to fall into that first group. In an ideal world, we'd look and try to develop other qualities you'd want in your lawyer: diligence, wisdom, and the form of thoughtfulness that produces results after mulling an issue over for some time. We don't, though. We concentrate on analytic ability and communication skills and, believe me, after twenty years of teaching and sorting students on these qualities, you get good at it. It took me about one minute to see that DeVore, who had been trained as an aeronautical engineer, had what it took in this regard

DeVore was not, however, a moderate Republican. He was deeply conservative. His office was a shrine to Ronald Reagan. The great communicator smiled at you as you entered: a picture of Reagan so lifelike that it was eerie faced the front door. There were pictures of Reagan and the young DeVore together, a picture of Reagan, inscribed with a message of thanks to DeVore, and signed by the President, and so on. On a whim, Jack had pulled me into DeVore's office a few weeks earlier. He wasn't in, but we had gotten an audience with his chief of staff. The visit went surprisingly well. I gave the Republican history behind the idea, and suggested she go to my website to see my support for two other Republican ideas: a consumption tax, and a system in which the government reimbursed individual taxpayers for audit costs (taxpayers who significantly understated tax liability would not get reimbursed). I gave the names of prominent national Republican tax leaders she might speak to. The staffer promised to relay this all to DeVore and get me an audience sometime soon.

Now, with a good meeting with Johns under our belt, we tried DeVore again. Mirabile dictu! His chief of staff came out, told us she'd given him a report on our last meeting, that he'd been interested, and that he'd see us in a few minutes. We sat down to wait. When we meet with the chief of staff, I'd focused on the Reagan memorabilia, which seemed to cover every square inch of the office. Now I saw that wasn't quite true. On one wall hung a large poster: a drawing of muscled young men operating heavy machinery. At the bottom of the poster was the inscription: "Build it. Build it strong. Build it now." DeVore had obviously put the poster up as a retort, as it were, to the environmental namby pambie's who objected to the construction of dams, freeways and development in general. The poster itself, though, had a Soviet Realist look to it. I wondered if its creator intended that. I imagined a gay art director getting the freelance assignment, and adding the subversive touch. I saw a touch of red at the bottom and began excitedly looking for hidden clues – perhaps the barest outline of a hammer and sickle somewhere? A minute later, I heard a door open, and looked to see DeVore beckon us into his office.

Halfway through the meeting, we seemed on the verge of convincing DeVore to support the bill. David and Jack later attributed this to my credibility, performance, and so on. I was good, but I was good in part because I knew DeVore was one smart cookie. I didn't have to start out slow; I knew he could digest all the information I fed him. I felt there was another difference between De Vore and other likely opponents: he seemed honest. He distrusted government and loved free enterprise, but was smart enough to understand that sometimes a company might be feeding out of the government's trough. One of the seminal contributions of conservative political theorists was to predict that big government would become dominated by private rent seekers. I mentioned this literature to DeVore and he nodded, indicating that he'd read it, or at least found this prospect intuitively reasonable.

"It sounds like a good idea," he said after a while. "Let's see what the leg staff says about it."

"They hate it," Jack said, "but they're just wrong."

De Vore read the report, thought a minute and then turned toward me.

"Tell you what," he said. "I know you've already spent money on these guys." nodding at my lobbyists "You let them off the hook this year, and just drop the bill. Next year you come to me, after things quiet down, and I'll be able to change some Republican minds."

I was tempted to say yes on the spot. I'd grown increasingly pessimistic about our chances. With DeVore on our side we'd definitely get it through. The problem was, the bill wasn't mine to drop. It had six legislative sponsors, the Controller, and staffs who'd been working on it. Plus, it wasn't clear that De Vore would support the entire bill. He loved the part where we gave everyone their tax data but seemed less sure about ReadyReturn.

“It’s not mine to drop,” I replied. “But suppose we change the bill to address your concerns. You’re worried that folks will get a completed return in the mail and think they have to file it. Suppose we just tell them about the program and give them a web address. Once they’re on the web, we put in big bold letters that this is an optional program, that they don’t have to proceed, and that they can look at a completed return on-line and decide not to file it without any negative inference. We’ll make them click on of those “I understand” buttons before we even show them their return.”

“That would go a long way to solving my objections,” De Vore conceded.

Jack spoke up quickly. “Why don’t we redraft the legislation and get it back to you by Monday. We understand you are not committing yourself.”

Devore agreed. We were in business. We’d spend the next four days frantically rewriting the bill and working with the FTB on the details of the website. It was harder work than I imagined, mostly because in making a deal with DeVore on our own, we’d pissed off the Controller’s office. I no sooner began the task than I learned I had stepped on some other staffer’s toes; I’d apologize profusely, fume inside, work on some operational detail, and then learn that another staffer was upset. But by Monday we’d finished. The new bill was waiting for DeVore when he got back in town, an hour before he have to vote on the measure.



## XVII Our First Vote in the Legislature

The noon hearing, in Assembly Revenue and Tax, was the first time the bill would come up for legislative discussion or vote. The seven-person committee had five Democrats, four of whom had already committed to the bill. The fifth, Manges, was up for grabs. On the Republican side, there was DeVore and Mimi Waters, an Orange Country Republican who'd vote no unless we got DeVore. We were already assured of making it through the committee, but if we picked up Manges we'd be odds-on favorites to get through the Assembly, both because of his particular vote and because it would suggest we'd get almost all Democrats. If we got De Vore, he'd bring along enough other Republicans to assure the bill's passage. The testimony would be less relevant than the votes but still important. This would be the first time I'd get to hear Intuit's arguments, face to face, since the FTB Board meeting a year earlier.

At 11:30, we dispatched Jack to try to find DeVore and gathered up the group to head over to the hearing room. Absurdly enough, I was buoyed by the size of our group: we had six or seven folks from the FTB, 8 or nine staffers, Dario Frommer, the bill's sponsor, and, of course, Lenny Goldberg. We passed the LA Times and San Jose Mercury reporters and a few photographers. Ten yards away from the hearing room, though, our path was blocked by the largest group of suits I'd seen in this part of the Capital in four months. It was the lobbyists on the other side. Intuit had brought along friends.

As we waited to enter, one of the suits and Jack began talking. "You've already won this round," the suit said. "We're just here to observe."

The hearing started and I went to the front table, alongside Frommer and the Franchise Tax Board; Intuit's lobbyists sat at the other table. Frommer was asked to introduce the bill, and as he did, in walked Jack and DeVore. I couldn't read their expressions. Intuit got the next opportunity to testify: they brought up cost, and competition with the private sector. Intuit was followed by very brief presentations by lobbyists for Cal-Tax, TechNet and the Consumer Electronics Association, all of whom opposed the bill.

I have described Cal-Tax earlier – a sort of doppelganger to Lenny Goldberg's Citizens for Tax Justice, it was run by a Grover Norquist acolyte. With few exceptions, the organization opposed every tax increase and supported every tax decrease. It opposed ReadyReturn for the same reason Norquist did: it interfered with the revolution to come. Tech Net, though, was different. It was comprised of the heavy weights of Silicon Valley: Intel, H-P, Apple and so on. I had found out about Tech Net's opposition earlier that week, and immediately called Jack.

"I don't get it," I said. "Intel doesn't benefit from complicated tax filing. If anything, they'd slightly benefit from ReadyReturn, since it would make life easier for

their employees, and save their HR folks from having to send out so many duplicate W-2's. Can I appeal this position? Give a presentation to their board?

“Forget it, Joe,” Jack replied. I got the same advice from a friend at Intel. Business groups, I was told, had interrelationships that led to this kind of mutual support. It might (barely) have been possible to change minds ahead of time – had I been able to find folks at the individual companies who comprise Tech Net and brief them on the issue. Unfortunately, I had no way of knowing which of the countless business associations were considering ReadyReturn. It wasn't as if these groups were required to give public notice before taking action – or any norm that would give an outside an opportunity for hearing.

To be fair, some of our endorsements had come about the same way. ReadyReturn had been endorsed by many of the state's big unions, and I doubt very much that the unions asked Intuit to give a presentation prior to their endorsements. Still, there seemed to be a difference. Our program did benefit rank-and-file workers. Unions weren't endorsing the program because they got an endorsement from us in some other context. Besides, we had gotten the endorsement of one group that insisted upon hearing both sides and in the normal course of events, never endorsed anything: the California State Bar Association.

I gave essentially the same talk I'd given a year earlier at the FTB Board meeting: how taxpayers loved the program, and why the program enhanced privacy values. The program, I said, was all about taxpayer choice. No taxpayer would have to use the program, and the changes in the bill would prevent any taxpayer from thinking, erroneously, that he would be penalized for not using the program. I looked at DeVore as I ended on this note, hoping to find a smile.

What I found was a sort of desperate grimace. The program, he said a few minutes later, had come a long way toward addressing some of his concerns. It was a much better program than we had earlier. He applauded the changes. If this passed, it would really change the tax system. But he just wasn't sure government ought to be in that role. He was going to abstain on the vote.

Under the legislature's voting rules, bills needed majorities, not pluralities, to pass. There were 80 votes in the Assembly, so 41 yes votes were needed. An abstention carried with it a different symbolic weight than a no vote, perhaps, but otherwise it was the same. A bill that got 39 yes votes and 41 no votes would lose; but so would a bill that got 39 yes votes, zero no votes, and 41 abstentions.

Supporters said a few words, there was some interchange between the members and the FTB staff, and a moderate democrat whom we had met with earlier and who had listened to us in silence asked an innocuous informational question. The vote was taken: the measure passed 4-0-3. The Democrat had joined the two Republican members and abstained, effectively voting against the measure.

Supporters congratulated me after the hearing – we’d gotten through our first hurdle. They honestly seemed happy. I was anything but. It was not only that we’d gotten the low end of our expectations, and that the deal with DeVore, which would have clinched the measure, hadn’t panned out. It was that we didn’t seem to have quite enough support to make it through the Assembly. If we continued in this fashion, losing every Republican vote and one-fifth of the Democratic votes, we’d end up a few votes short of the 40 the bill would need to pass.

## XVIII Campaign Contribution Limits and Independent Expenditures

The vote in Assembly Revenue and Tax came in late April, a few months before the June 2006 primary. “It’s too bad this is coming up before an election,” one staffer told me.

“The elections are really hurting you,” said another.

Elections, I was told, made it less rather than more likely that the issue would get covered in the press. There was a lot going on in Sacramento during election time, and the reporters who covered that beat had no trouble finding stories. The Sacramento-based reporters would not have the time or get the space to really follow the story.

Worse yet, while ReadyReturn was not going to get enough publicity to directly swing votes in the primary, it still had the potential to generate campaign contributions, and those contributions could be used to swing votes. As noted in Chapter XIII, the contributions, and the votes they would bring, were particularly important to those members who were termed out and running as challengers.

During the first few months of my political sojourn I had found the subject of campaign contributions quite confusing. Insiders told me contributions were important, and that the imbalance of contributions – hundreds of thousands on one side, none from ours – would hurt us. But the hundreds of thousands given on the other side in the previous year had been doled out in small increments of a thousand or so per legislator. The limits were only a few times that. How much attention could that small sum get?

With the election approaching, contributions increased dramatically. ReadyReturn would still be an issue in the November general election, and will it will be useful to illustrate the dynamics of contributions by focusing on the race for Controller in that election. The Controller is the chair of the three-person FTB Board and the person most responsible for the everyday operation of the FTB. Steve Westly was the incumbent Controller, but had vacated that position, effective next January, to run for Governor. The Democratic candidate for that position was John Chiang (pronounced Chung). Chiang was trying to move up from his current office, as member of the State Board of Equalization, or BOE. The BOE was closely connected with the FTB. The BOE administered the sales and property tax and was the first step in taxpayer appeals from the FTB. An elected member of the BOE, serves as one of the three-person members of the FTB Board. Chiang had in fact served in that role, and had voted in favor of ReadyReturn. Chiang’s opponent was a conservative Republican, Tony Strickland. .

Westly’s departure presented an opportunity for Intuit and other foes of ReadyReturn. The program had been supported by the Controller and killed in the legislature. If the new Controller opposed the program, it could be killed at the administrative level, and never even reach the legislature. In early October, Intuit put \$1,000,000 in the Controller’s race in support of Strickland.

One million dollars was about 166 times the stated campaign contribution limit for statewide offices (other than Governor) of \$6,000. The contribution was not illegal, however, because it was not, technically, a contribution. It was an “independent expenditure.” Under state law, a “contribution” is given to the candidate’s campaign; an independent expenditure is spent for the candidate but not controlled by or coordinated with the candidate’s campaign staff. A party making an independent expenditure hires and supports a campaign manager who makes his or her own decisions as how to best help the candidate. Not surprisingly, there are campaign managers who specialize in this sort of thing. As compared to a run-of-the-mill campaign contribution, an independent expenditure involves some duplicative staffing and suffers a bit from lack of coordination, but is otherwise identical. As the amounts at stake rise, the relative expense of duplicative staffing falls and the independent expenditure more or less approximates in result a super-sized campaign contribution.

The right of persons to be able to run their own campaign and spend their own money without restrictions has obvious appeal – at least in some cases. If oil producer X is faced with a ballot initiative that promises to raise \$1 billion from an excise tax on its products, it seems absurd to think that X should be able to spend only a few thousand dollars fighting the measure. In a run of the mill election, however, our intuitions may point in a different direction. The right of X to spend an unlimited amount of money to defeat a candidate who promises greater environmental regulation does not seem so obvious. We can distinguish these cases by noting that in the case of the ballot initiative, what’s at stake is apparent and voters will generally know (or correctly suspect) where the money is coming from. In the case of a two person race, this may not be as true. Following a money trail through lobbyists, pacs and the like can be hard even for the veteran staffer. One might, therefore, distinguish spending a million dollars running one’s own campaign on a referendum, and hiring someone to spend the same amount in a two person race. Fundamentally, though, campaign limits are unavoidably in tension with unlimited campaign expenditures of any kind, and with the exception for independent expenditures in particular. If it is good policy to level the playing field by limiting contributions or overall spending, it makes no sense to exclude from those limits independent expenditures.

The cost of duplicative staffing might at first seem to limit independent expenditure exception to those willing to throw a lot of money into a race. As noted above, the cost of another campaign manager for a three month campaign is a small percentage of a million dollars but an overwhelming percentage of a smaller expenditure. Someone who wanted to make a \$25,000 contribution to the Controller’s race would not be able to afford to hire a campaign manager and would appear to be stuck with the \$6,000 limit. In fact, though, through political action committees, or PACs, the \$25,000 contribution can be aggregated with other contributions to an amount sufficient to hire the campaign manager. The \$1,000,000 Inuit put in the race was given into a PAC called Alliance for California’s Tomorrow. Other companies put amounts into that same PAC that were larger than the campaign limits but not large enough, considered individually, to hire a campaign manager. The PAC then hired the campaign manager and spend substantially all of its funds on the Controller race. A more typical PAC might

spend money across a number of races. The Jobs Creation for California PAC, for example, raised millions of dollars and made substantial independent expenditures for ReadyReturn opponents. Here the funds raised were significant enough to hire staff, but the staff did not devote itself to any one campaign.

## XIX Lobbyists and Contributions

In Sacramento, staffers sometimes described Intuit's lobbyists, rather than the company, as the party on the other side. This was a backhanded tribute to the effectiveness of their lobbyists, and reflected, in part, the understandable tendency to conflate the individual with the force behind the individual. But it also reflected the importance of the lobbyist in making deals and in attracting contributions. The lobbyist was the client's agent, but legislators had relationships with lobbyists that transcended that relationship. A legislator might, for example, feel indebted to a lobbyist for work on a particular bill or for putting him in touch with contributors. The long-term relationship with the lobbyist unavoidably carries over into a particular interaction. At one point, for example, we were told that Intuit's lobbyist had asked legislators for a special favor on ReadyReturn. Presumably, this favor was based on the longstanding relationship between the lobbyist and the legislator, rather than the legislator and Intuit.

One role in which lobbyists can help legislators is to introduce them to clients. A lobbyist may organize a fundraiser on behalf of a legislator at his or her home, and invite clients to that fundraiser. If the out-of-pocket costs of the fundraiser are reimbursed, neither the lobbyist nor the legislator need to report this favor.

Circumstantial evidence of the importance of the lobbyist on fundraising and contributions can be found in the Alliance for California's Tomorrow PAC. As mentioned in Chapter XVIII, the PAC spent substantially all of its funds on the Republican candidate for Controller, Tony Strickland. Intuit had contributed \$1 million to the PAC; other contributors put in almost another million. Intuit's motive for the contribution was obvious: the Democrat in the race supported ReadyReturn. The Republican had refused to take a position on the matter and was presumably thought to oppose the program. There were fourteen other persons who contributed more than \$10,000 to the PAC and who, together, were responsible for about another \$800,000 in contributions. Eight of these fourteen contributors were clients of Intuit's lobbyist and they contributed well over half of the \$800,000. The lobbyist itself, while well respected, held only a tiny share of the lobbying market.

The link between Intuit's lobbyist and the PAC can also be seen by looking at the relative ratio of lobbyists' clients who contributed to that PAC. Over 25% of Intuit's lobbyists' largest clients contributed to the PAC; less than 1% of the clients of the largest 20 lobbyists contributed to the PAC. The clients of Intuit's lobbyist who contributed to the PAC were in a number of different industries: finance, gaming, oil production, supermarkets, tobacco and banking. In a number of cases, they were the only significant contributor from those industries.

How do we explain the relationship between lobbyist and contributors? Why did the tobacco company that used Intuit's lobbyist contribute and no other tobacco company contribute? It is possible that Intuit's lobbyist knew how important the Controller's race was for the tobacco industry and managed to convince its client in that industry of that

importance. Or perhaps the company itself came to that conclusion with no help from the lobbyists. Other lobbyists and companies in that industry were unaware of the importance of the race and could not be convinced to contribute. Similar explanations might be given for the contributions made by clients in other industries.

Another, perhaps more realistic, possibility is that Intuit's lobbyist advised its clients on contributions to pro-business candidates; and that client's understood that while, in the long run, the contributions to recommended candidates would enhance all clients' interest, in the short term contributions would benefit some clients more than others. Indeed, since the importance of legislation may vary from great to zero in a given year, it might be impossible to come up with a list of recommended donations that benefits each client each year. Intuit, for example, may have only one or two important issues, which come up before the legislature at irregular intervals. Through recommendations, contributions may be aggregated at the lobbyist level, in much the same way contributions are aggregated by political parties or certain PACs.

The aggregation of contributions through lobbyist recommendations is one sense in tension with both the campaign disclosure and campaign contribution limits. Company Y may follow its lobbyists recommendations and make contributions to many other candidates for five years and require no significant help on any legislation. Presumably, its funds are going to help other clients of that lobbyist. In the sixth year, it may have an important piece of legislation it needs adopted, or strongly favor a candidate in a given race. Its lobbyist may recommend its other clients now contribute to meet that need. The net effect is the same as having the money all come from Y in the sixth year. But if that happened, the expenditures would be more effectively exposed to public scrutiny and might exceed campaign limits (requiring the extra expense of hiring someone to manage an independent expenditure).

A final possibility – in other cases if not in this one – is that the lobbyist is trying extra hard to appeal to one client, at the expense of another client. There is no indication that this would be the case with Intuit's lobbyist, which was highly regarded. But clients often worry about whether their lobbyist is giving their interests adequate attention, and whether they ought to follow their lobbyist's recommendations as to contributions.

To an academic, the relationship between companies, lobbyists and legislators raises lots of interesting questions. The lobbyists are the company's agents – but their activities are hard to monitor. Companies don't follow the lobbyist into legislator's office to see whose bill they are pushing, and how hard. Nor do companies have any easy way to know whether their contributions are going to a legislator in return for a vote on their bill, or another bill. How, then, does a company know it is getting its monies worth? Here, presumably, companies must rely on the reputation of the lobbyist for fair dealing. Agent-principal issues are raised in other aspects of the money trail. If we put our sense of morality aside, we can view the lobbyist or company that gives campaign contribution as the principal and the legislator is the agent – the lobbyist/company hopes it gets a vote in return for its money. How is that bargain enforced? How does the contributor assure itself that it has found an “honest” agent – who gives good value for



the money? There are other agent-principal issues as well: the voters are the principal and the legislator is (supposedly) an honest agent. How does the public monitor whether the agent is corrupt? Indeed, there is even an agent-principal relationship with the corporation: shareholders are the principal and management (supposedly) the honest agent. How aggressive would shareholders want their management to push against the campaign contribution laws? Studying agent-principal behavior is a mainstay in political science, economics, and law. We need to understand how those relationships work before taking action to (hopefully) improve the system. There is an extensive scholarly literature on the agent-principal relationships between voters and legislators and shareholders and management. There is even a literature that explores the relationship between contributors and legislators. But no one, to my knowledge, has studied the relationship between lobbyists and clients.

To any of the real-world actors, of course, academic study is beside the point. They only need to know the combination of norms and incentives that drive the system. For legislators, that is the knowledge that doing a special favor for a big lobbying firm leads to contributions from the firm's clients, and that the link between a vote and contributions will be hidden to all but the most knowledgeable insiders.

## XX The Free File Debate

The debate over ReadyReturn often slipped over into a debate over a related subject: whether the government ought to have websites in which taxpayers can e-file, or whether governments ought to take down (or never put up) websites and join the (inaptly) named “Free File Alliance.” California has chosen the first approach, and maintains a “Calfile” website that is free to all taxpayers. Taxpayers can go to that website and bring up a blank tax return, fill in the tax return and file on-line. For taxpayers, on-line filing differs from paper and ink filing in two ways. First, and most importantly, for those on the “right” side of the digital divide, on-line filing is more convenient. Second, on-line filing has some arithmetic and look-up functions that paper filing lacks. The California individual tax and tax form is nearly identical to the federal tax and tax form. Taxpayers list different sources of income (wage, interest and the like) on different lines. There is a separate line that asks taxpayers to sum all these forms of income. Paper filers must do the addition themselves. The website does that addition automatically. The website also contains a look-up function. After determining their taxable income, paper filers must look up their tax liability in tax tables. The on-line site automatically translates taxable income into tax liability.

The state benefits from the free website as well. It helps migrate taxpayers to on-line filing, and that eliminates the expense of printing and mailing out forms. It also reduces math errors – which require another round of correspondence with taxpayers, generating more printing and mailing costs – not to mention taxpayer anxiety. These benefits more than offset the cost of maintaining the website.

The federal government does not offer on-line filing. Instead, it refers taxpayers to industry websites, such as the one maintained by Intuit. As a quid pro quo for the federal government not accepting on-line filing, Intuit and a consortium of other companies offer a bare bones version of their products for free to taxpayers with low incomes. The free version of Turbo Tax, for example, is available for taxpayers with adjusted gross income below \$28,500.

The “free” web sites offered by industry as their part of the bargain were the subject of an exhaustive 2006 report by the Taxpayer Advocate, a position created by Congress in the late 1990's to, well, advocate for taxpayers. The report documents inaccuracies in the free software provided to low-income taxpayers. More troubling, it documents a history of upselling in the program. Upgrades offered by Intuit site included \$20 for a more complete (and presumably more accurate) product, \$50 for a professional review and \$35 for an “audit defense” which covers only the cost of representation, not the cost of amounts due on audit, and for which the profit margin must be astronomical. There were additional costs for “processing fees,” which were really just disguised forms of high interest refund anticipation loans.

Intuit, for example, offered to convert a refund to a gift card from a participating merchant, such as Lows -- less a \$14.95 processing fee. Thus a taxpayer who decided to

convert a \$200 refund to a Lowe's gift card got a card worth about \$185. This represents a disguised interest rate a loan-shark would jump at. In contrast, a taxpayer who used California's free web site would get the full \$200 refund within one week (with direct deposit) or 10 days (paper refund through mail). She could then use her \$200 to buy a \$200 Lowe's gift card. So under the Intuit alternative the taxpayer has paid \$15 to get that \$200 card a week or two earlier. That's 7.5% simple interest with an APR of at least 800%. (Never mind the fact that Intuit makes money from Lowe's for putting their cards on line, or that we might not want taxpayers to impulsively convert cash that could go into a bank for merchandise) Intuit offered the taxpayers the option of paying for another \$20 add-on product out of their refund – plus a “processing fee” of \$29! Again, the processing fee is a form of disguised interest. Here, the taxpayer is paying 145% simple interest for getting the add-on a week or two early. The APR for that is between 1.5 million percent (assuming the taxpayer would have otherwise had to wait two weeks to get her refund and purchase the product) and a number so large I'll give it just in exponential form –  $2.45^{52}$ .

The abuses described in the report were too much for even legislators sympathetic to industry. Iowa Senator Charles Grassley, then chair of the Senate Finance Committee, suggested that the IRS abandon Free File and put up its own web site. Industry responded by agreeing to drop refund anticipation loans and certain other forms of upselling. Time will tell how far industry is willing to go to make good on that promise. What is clear, though, is that so far, Free File has been much *worse* for low-income taxpayers than the government-maintained websites. In the future, programs provided by industry are unlikely to be significantly better than those websites, which offer any feature a low income taxpayer is likely to need.

What I've described so far is the “benefits” of the free-file alliance to government and its citizens: the web-based programs provided free of charge to low-income taxpayers. For taxpayers who make above the \$28,500 gross income cut-off (for Intuit), there are no benefits, only costs. Those taxpayers cannot e-file without buying a service they may not need.

The issues here can be seen most clearly by comparing the two primary ways of filing a return – electronically, and through the mail. Suppose the IRS treated paper returns the same way they treat electronic returns. Taxpayers who earned over \$30,000 or so a year would be able to mail in their returns only if they bought the services of H&R Block or some other preparer. Otherwise, the government wouldn't accept the envelope. No one would dare propose such a rule. It is surely the right of every taxpayer to decide whether or not to hire a preparer, and if so, whom to hire. “Why do I have to pay H&R Block just to use the mails?” taxpayers would ask. But that same rule exists now for electronic filing. There millions of taxpayers who earn above the \$30,000 or so free file program cut-off and who have simple returns. These taxpayers (and others) might well decide to file on-line without paying anybody anything. But they can't, because the government won't accept their return unless it comes through a tax preparation company.

The refusal to accept any but industry-prepared returns might be justified if it were prohibitively expensive for the government to accept electronic returns. But, as described above, the opposite is true. It is much cheaper for government to accept electronic returns than paper returns. The government could offer taxpayers that option at a gross cost of pennies per taxpayer. On a net basis, offering taxpayers that option would save the government money, by helping to migrate cost sensitive taxpayers away from paper.

The scope of industry's victory here is staggering. Filing a tax return is, of course, required by law. Taxpayers who do not file can and sometimes are sentence to jail terms. Taxpayers find it easier, faster and more convenient to e-file than paper file. More taxpayers who do not hire a paid preparer (such as an accountant or H&R Block) e-file today than paper file and the disparity in future years is sure to grow. But e-filing only works if it is bundled with the purchase of industry software.

I use the term "industry" but virtually all of the gross sales and profits in the industry come from one company – Intuit. Imagine if the founder of Intuit had made the following sales pitch to his initial investors: "In twenty years, no taxpayer will have a convenient option of filing his or her own return. Every return must come through a company in an industry we will start and dominate. The requirement that returns come through industry won't have anything to do with economic advantage – an advantage that may wax or wane as technology changes. Instead, it will require only that we aggressively court and finance the nation's politicians."

No one would have believed a pitch like that. But here, as elsewhere, truth turns out to be stranger than fiction.

Free file was widely regarded as an outrage by tax policymakers, including those who were generally sympathetic to business and concerned about big government. "It's a good thing that the tax preparation industry wasn't around in 1913 [when the income tax was first adopted]," said one former top Republican official to me, when the subject came up at a conference. "Otherwise, they'd have made it illegal for the government to print forms."

I shared (and obviously) share this view of free file, but did not bring up free file when debating ReadyReturn. The reason for this is that the relationship between the two programs is complicated. It is possible to have ReadyReturn sent to low-income taxpayers and still maintain the Free File "bargain." ReadyReturn by itself tells us nothing about whether or not high income taxpayers ought to be able to e-file without buying an industry product. Conversely, the federal government could reject Free File and accept e-filings but still not adopt ReadyReturn. Indeed, this is the situation today in states that have not joined the free file alliance. Folks in New Jersey or Pennsylvania, for example, can e-file their state taxes but cannot take advantage of ReadyReturn. Most folks find tax issues hard to follow and quit listening when things get too complex. I tried to stay on point and not stray into the related debate over e-filing.

Intuit's lobbyists, by contrast, always brought up Free File when debating or lobbying against ReadyReturn. California had not signed onto the program, so that its taxpayers could e-file their returns on the state site free of charge. It's possible that Intuit's constant invocation of Free File in the ReadyReturn debate simply showed they regarded it as a winnable issue and were using every opportunity to push it. Notwithstanding the devastating case that (in my opinion) could be made against Free File, industry had gotten it through the federal government, and through many states. Maybe Intuit believed it was only a matter of time until they got it through California, too. Intuit might have felt Free File was a useful threat against ReadyReturn advocates. Responding to ReadyReturn by raising Free File was a little bit like being sued for patent infringement and filing a countersuit. It raised the stakes for one's opponents. There is some evidence for this later point of view: Intuit had reportedly told officials sympathetic to ReadyReturn that it planned to try to convince the legislature and governor to join the Free File Alliance, and in so doing, shut down the state's truly free e-file site.

My real guess though, is that Intuit brought up Free File because it helped deflect attention away from ReadyReturn. The fact that Free File clouded the debate was good for Intuit, just as it was bad for me. Intuit knew that over the years it would have scores of face to face contacts with California legislators for every contact I had. In other states, and at the national level, it would have all of the contacts. Intuit could and would take out full page ads to argue its case in California and it could afford to that in every other state as well. Intuit wouldn't have to win any face-to-face encounters: it would just have to avoid losing them. Bringing up Free File was likely to confuse listeners. But it put me in an awkward position. There were great responses to both arguments. But that response would take 10 minutes – substantially all the time I would ever have to discuss ReadyReturn. I could win on Free File but leave listeners confused as to the merits of ReadyReturn. Or I could ignore Free File, and leave listeners with the thought that perhaps there was some relevance there they didn't see

Our hearing before Assembly Revenue and Tax took place just after the Taxpayer Advocate's report on free file. This didn't stop Intuit from bringing the program up as an alternative to ReadyReturn. They acknowledged that the program had been imperfect but stated that any flaws were easily remedied.

Intuit also brought up Free File in its one-on-one meetings with legislators. Legislators would come away with the impression that ReadyReturn was about Free File, and that Free File sounded pretty good.

## XIX ReadyReturn Goes to Back to Washington (and to New Jersey)

[rest of manuscript omitted]



