



STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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April 23, 2024

The Honorable Janet Yellen  
Secretary of the Treasury  
U.S. Department of Treasury  
1500 Pennsylvania Avenue  
Room 3330  
Washington, DC 20220

The Honorable Daniel I. Werfel  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue  
Washington, DC 20224

Dear Secretary Yellen and Commissioner Werfel:

We are writing to you today in our capacity as the chief legal officers of our respective states and as legal counsel to our state departments of revenue regarding the IRS Direct File pilot project that the agency launched last month. We have serious concerns about the project's implications for our taxpayers, our state budgets, and the departments of revenue that we represent. We agreed with the assessment of the 21 state financial officers, who wrote to you on March 25, 2024, that Direct File remains a solution in search of a problem.<sup>i</sup> What was an informed supposition in March proved true in April—Americans are simply not clamoring for a system that gives the IRS power, as *The Wall Street Journal* recently put it, to “present taxpayers with nonnegotiable tax bills.”<sup>ii</sup>

News reports indicate that only around 100,000 Americans—out of nearly twenty million eligible filers in participating states—used the Direct File pilot program that was launched in twelve states earlier this year.<sup>iii</sup> Whether due to the program's late launch, an ineffective education campaign, or simply a lack of interest from potential consumers, this unimpressive turnout further underscores the predicted needlessness of this costly and onerous undertaking. The recent report of the Government Accountability Office (GAO) calls into question your agency's broad cost estimates (previously said to range anywhere from \$64 million to \$249 million), noting that even these inexact numbers were likely understated as the

agency failed to document the full costs of developing and operating the system.<sup>iv</sup> The GAO went on to state the obvious: that the IRS should use the cost-benefit data collected from the pilot program to inform “future decisions” about the system.<sup>v</sup> We believe that the exorbitant costs contrasted with the low consumer interest is reason enough for the IRS to halt any further spending on this program. But there are other reasons, too.

It is not just federal tax dollars that will be wasted on additional advertising and development of this program. States that choose to partner with the IRS in this endeavor will have to expend significant resources to integrate their existing state tax-filing system with the IRS Direct File platform. Alternatively, the IRS would need to expend additional federal monies to create state tax-filing platforms that integrate with the new IRS Direct File system. As former Acting IRS Commissioner David Kautter recently (and we believe correctly) stated in an interview:

“There are only two ways to get this [federal-state integration] done that I can see: The states build Direct File programs, or the IRS builds 43 [state] programs. Building a federal Direct File program is one thing. Building 43 state Direct File programs is a completely different magnitude.”<sup>vi</sup>

As you might expect, our respective states have not budgeted to build systems that would integrate with IRS Direct File, and it is unlikely that our states would have the capacity, resources, or interest to do so when the system does not provide for state filing (typically offered by tax-filing software programs). Furthermore, because the IRS Direct File system fails to offer a simultaneous state tax filing option to taxpayers (as is typically offered in tax-filing software) this raises a very significant problem for states – that is, the specter of increased tax return fraud. Not only will this confuse taxpayers and likely cost the state tax revenue from those who believe that they have completed their annual tax filings, but it will also make consumers more susceptible to fraudulent state tax filings.

As you are aware, many states require that an electronically filed state tax return be “linked” to a federal tax return. When a taxpayer’s federal tax return is accepted by the IRS, this acts as a *de facto* fraud filter for the taxpayer’s simultaneously filed state tax return because it indicates to the states that the IRS has validated the taxpayer’s crucial identifying information (e.g., name, Social Security number, address). Absent this linkage, states will have to expend additional resources to validate the identity of the Direct File participants. Additionally, “unlinked” state tax returns will prohibit taxpayers from electronically filing their state return, requiring them to file their state tax return on paper – a more expensive proposition for states and one that the IRS itself is appropriately trying to address through increased use of digitalization.

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Several of our state departments of revenue have also informed us of that some taxpayers with state tax-filing obligations will simply not file their state tax returns if they use an IRS Direct File system that fails to offer them a simultaneous state tax return. And many of our revenue commissioners assure us that this particular concern is not mere speculation but based on their experience of observing taxpayer behavior. The failure to file a required state tax return will not only cost the states tax revenue that is due, but also will deprive taxpayers of their state income tax refunds and other tax benefits to which they may legally be entitled.

Finally, as has been previously communicated by state attorneys general,<sup>vii</sup> we have closely examined the Treasury's statutory authority in this regard and see no clear and evident authority that would permit the IRS to create and maintain a "tax preparation" system. If the IRS has authority from Congress to create this Direct File system, the agency should publish in written form the statutory authority upon which it is relying.

We are aware that representatives of the IRS have been communicating with the Federation of Tax Administrators regarding the complex issues noted above. As the chief law enforcement officers of our states, we would ask the Department of the Treasury and the IRS to begin consulting with us on this matter as well, due to the myriad of legal issues and practical concerns that are raised by this IRS action.

Thank you very much for your consideration.

Sincerely,



Steve Marshall  
Alabama Attorney General



Christopher M. Carr  
Georgia Attorney General



Raúl R. Labrador  
Idaho Attorney General



Brenna Bird  
Iowa Attorney General



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Mississippi Attorney General



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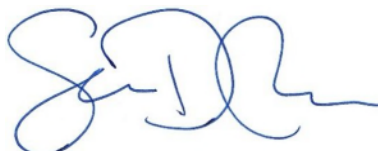
Mike Hilgers  
Nebraska Attorney General



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Utah Attorney General



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<sup>i</sup> Erin Slowey, *IRS Direct File Draws Criticism From State Financial Officers*, BLOOMBERG TAX (March 26, 2024), <https://news.bloombergtax.com/daily-tax-report/irs-direct-file-draws-criticism-from-state-financial-officers>.

<sup>ii</sup> Editorial, *The IRS is Here to Help with Direct File, Oh No*, WALL STREET JOURNAL, April 12, 2024.

<sup>iii</sup> Tobias Burns, *Tax Day Deadline: What You Need to Know to File Your Returns*, THE HILL (April 15, 2024), <https://thehill.com/business/4595214-irs-tax-deadline-direct-file/>.

<sup>iv</sup> U.S. GOV'T ACCOUNTABILITY OFF., GAO-24-107236, IRS DIRECT FILE: ACTIONS NEEDED DURING PILOT TO IMPROVE INFORMATION ON COSTS AND BENEFITS (2024).

<sup>v</sup> Id. at 8.

<sup>vi</sup> FORBES, *We're Free Filin'? Assessing The IRS's Direct-File Report* (May 31, 2023), <https://www.forbes.com/sites/taxnotes/2023/05/31/were-free-filin-assessing-the-irss-direct-file-report/?sh=3583ba45fc14>.

<sup>vii</sup> Letter from Attorney General Knudsen, et. al, to Secretary Janet Yellen (January 30, 2024), *available at*: <https://dojmt.gov/wp-content/uploads/IRS-Direct-File-Letter-Final.pdf>.