

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Civil Division**

<p><b>DISTRICT OF COLUMBIA</b></p> <p style="text-align: center;"><b>PLAINTIFF,</b></p> <p style="text-align: center;">v.</p> <p><b>JTH TAX LLC</b></p> <p style="text-align: center;"><b>DEFENDANT.</b></p>	<p>Case No.: 2022 CA 004285</p> <p>Judge: Juliet McKenna</p>
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**CONSENT JUDGMENT AND ORDER**

1. Plaintiff District of Columbia, by and through its Office of Attorney General’s (“OAG”) Office of Consumer Protection (the “District”), brought this action for violations of the District of Columbia Consumer Protection Procedures Act, D.C. Code § 28-3901, et seq. (“CPPA”). The District and Defendant JTH Tax, LLC, formerly known as JTH Tax, Inc., doing business as Liberty Tax Service (“Liberty Tax”), stipulate to the entry of this Consent Judgment and Order (“Consent Order”) to resolve all matters in dispute in this action between them.

**THE PARTIES**

2. Plaintiff the District of Columbia, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The

Attorney General is specifically authorized to enforce the District’s consumer protection laws, including the CPPA, pursuant to D.C. Code § 28-3909.

3. Defendant Liberty Tax is a Delaware limited liability company and the franchisor of Liberty Tax Service, which offers tax preparation services to consumers through franchised and company owned brick-and-mortar stores as well as online.

### **DEFINITIONS**

4. “Consumer” shall mean all persons who utilized the tax preparation services of Liberty Tax in the District of Columbia and shall incorporate the definition of the term “consumer” in D.C. Code § 28-3901(a)(2).

5. “Cash in a Flash” (“CIF”) shall mean the promotion that was utilized by Liberty Tax from tax year 2014 through tax year 2021 (“Relevant Time Period”) in which customers were offered \$50 cash if they filed their tax returns through Liberty Tax’s franchise locations.

6. “CIF Consumer” means a Consumer who received CIF based on Liberty Tax Corporate’s records but does not include any Consumer who was not charged a fee for tax returns in the year in which the Consumer received CIF.

7. “Days” shall mean calendar days and not business days.

8. “Liberty Tax Corporate” shall refer to JTH Tax LLC, and any tax preparation store owned and operated by JTH Tax, LLC or any of its subsidiaries.

9. “Payment card” shall mean any payment system issued by a financial institution, including but not limited to credit cards, debit cards, charge cards, prepaid cards, and smart cards, through which a consumer can access funds and make payments.

### **FACTS**

10. This Court has jurisdiction over this matter.

11. The District filed its Complaint in *District of Columbia v. JTH Tax LLC* in the Superior Court for the District of Columbia.

12. The District's Complaint alleges that Liberty Tax engaged in deceptive practices in violation of the District's CPPA, including as set forth in D.C. Code § 28-3904 (e), (f), and (f-1), in its offer and provision of CIF to encourage consumers to engage Liberty Tax for tax preparation services.

13. Specifically, the District alleges that Liberty Tax enticed thousands of District consumers to do business with it by offering \$50 in cash (CIF) "just" for filing tax returns through Liberty Tax.

14. The District further alleges that Liberty Tax advertised CIF as a "perk" with no catch, yet consumers who received CIF cash ended up paying more for their tax returns than consumers who did not. Depending upon the forms used by the tax filers, some consumers who received CIF paid over \$200 more for their tax preparation by Liberty Tax than similar Liberty Tax consumers who did not receive the CIF cash.

15. Liberty Tax denies the allegations in the Complaint and denies that it has violated any law or engaged in any deceptive or unfair practices.

16. The Parties have agreed to the relief set forth in this Consent Order in order to fully resolve this matter.

### **INJUNCTION**

17. Liberty Tax Corporate shall not engage in any act or practice in violation of the CPPA in connection with the offer or provision of tax preparation services to District of Columbia consumers.

18. Liberty Tax Corporate will, upon the Effective Date of this Consent Order, permanently cease and refrain from offering CIF payments, or Similar Incentive Programs, to customers or potential customers of Liberty Tax throughout the United States. “Similar Incentive Program” means a program through which Liberty Tax Corporate directly or indirectly encourages its franchisees to offer financial incentives to customers or potential customers for obtaining tax preparation services through Liberty Tax and either:

- a. directly or indirectly offsets those financial incentives by charging additional tax preparation fees to those customers who receive such financial incentives, or
- b. decreases tax preparation fees for customers who decline such financial incentives.

19. Similar Incentive Programs include any compensation provided, regardless of whether the compensation is provided as cash, credit, or other fungible monetary payment.

20. Notwithstanding the above, Liberty Tax Corporate’s use of a seasonal pricing curve shall not be deemed a violation of this Consent Order.

### **MONETARY TERMS**

21. Liberty Tax will pay up to \$750,000 in settlement of the District’s claims. Up to \$550,000 of that amount will be paid as restitution by Liberty Tax directly to Consumers who received CIF payments from Liberty Tax. \$200,000 of that amount shall be paid directly to the District to be used for any lawful purpose.

22. Within 30 days of the Effective Date, Liberty Tax will reserve at least \$150,000 for the payments due under this Consent Order. Liberty Tax will place these reserved funds in a third-party vendor’s account/subaccount that will be designated only for use towards payments due under this Consent Order. As funds are depleted while Liberty Tax makes the payments due

under this Consent Order, Liberty Tax will replenish the account to the \$150,000 level (within 10 days after the account falls below \$50,000) until it makes its last payment within 730 days of entry by the Court of this Consent Order. In no instance shall Liberty Tax be required to exceed the maximum total amount in aggregate of \$550,000 for restitution payments. Insufficient funding of this account shall at no point excuse Liberty Tax's obligations to make payments per the deadlines under this Consent Order.

23. The restitution due to a Consumer will equal \$41.91 multiplied by the number of CIF payments that the CIF Consumer received from Liberty Tax during the Relevant Time Period.

24. As described in further detail below, Liberty Tax will deliver the restitution to Consumers in four equivalent sets of disbursements based upon the year in which the Consumer received CIF, starting with Consumers who received CIF in 2014 and ending with Consumers who received CIF in 2021. Nonetheless, Liberty Tax will provide a consolidated payment of Restitution to Consumers who received more than one CIF payment between 2014 and 2021, which Liberty Tax will disburse based upon the Consumer's earliest year of receipt of CIF.

25. Payments to CIF Consumers shall be made through the following mechanisms, in the following priority: first, via the Consumer's bank account or payment card on record with Liberty Tax; second, by bank account if the Consumer provides updated bank account information; and third, by mailing a paper check to the CIF Consumer's address.

26. Liberty Tax will make the first set of payments to CIF Consumers within 165 days of the Effective Date of this Consent Order, the second set of payments within 338 days of the Effective Date, the third set of payments within 511 days of the Effective Date, and the fourth set of payments within 685 Days of the Effective Date. Liberty Tax will make payments

on a rolling basis in chronological order by year, followed by alphabetical order based upon the Consumer's last name, in order to effectuate an approximately even split in the four sets of payments.

27. Within 45 days of the Effective Date of this Consent Order, Liberty Tax will send the communication set forth in Exhibit A by both email, if Liberty Tax has an email address for the Consumer, and by letter via first-class U.S. mail to each CIF Consumer based on the most recent contact information in Liberty Tax's possession. Liberty Tax will send the emails in such a manner that it can ascertain whether the email has been opened by the Consumer. Liberty Tax will send the communication in the body of the email and not as an attachment. The Subject Line in the email shall read: Claim Your Funds from the Liberty Tax Settlement. The District will be copied on the communications to CIF Consumers by email through [consumer.protection.libertytax@dc.gov](mailto:consumer.protection.libertytax@dc.gov).

28. If within 90 days of the Effective Date of this Consent Order Liberty Tax receives the letter back as undelivered, Liberty Tax shall within 130 days of the Effective Date of this Consent Order make reasonable attempts to obtain both current postal and email addresses using standard address-search methodologies and to promptly (within 150 days of the Effective Date of this Consent Order) re-mail and re-email the above communication. If Liberty Tax receives any letters back as undelivered after 90 days of the Effective Date, but before 355 days of the Effective Date, Liberty Tax will email the name and address of the Consumer(s) to OAG, and OAG may send updated information for that Consumer to Liberty Tax at any time before 355 days of the Effective Date.

29. Within 175 days of the Effective Date of this Consent Order, for any Consumer for whom Liberty Tax has still been unable through reasonable attempts to obtain current postal

or email addresses, Liberty Tax will send OAG a spreadsheet listing for each such CIF Consumer the following: the Consumer's name, mailing addresses utilized by Liberty Tax to contact the Consumer, email addresses (if available) utilized by Liberty Tax to contact the Consumer, and the amount due to the Consumer in restitution. Within 355 days of the Effective Date of this Consent Order, OAG will provide Liberty Tax with a spreadsheet including updated addresses for any CIF Consumers whom Liberty Tax was unable to reach and for whom OAG has located an updated address.

30. If OAG is successful in reaching a CIF Consumer, Liberty Tax will make a restitution payment to that Consumer within 14 business days of receiving updated information from OAG. Within 730 days of the Effective Date of this Consent Order, any remaining funds in the third-party vendor's account funded by Liberty Tax and designated for restitution pursuant to this Consent Order will revert to Liberty Tax.

31. Within 730 days of the Effective Date of this Consent Order, Liberty Tax will make a wire payment to the District in the amount of \$200,000 consistent with instructions from OAG. The District may use any portion of the funds that it receives for any lawful purposes, including, but not limited to, restitution, attorneys' fees, and other costs of investigation and litigation; placement of this payment in, or application of the payment to, the District's restitution fund or litigation support fund; defrayal of the costs of the inquiry leading hereto; or for other uses permitted by state law, at the sole discretion of the Attorney General for the District of Columbia. Defendant agrees to cooperate with the District in obtaining any modification to the language of this paragraph needed to facilitate the administration of the District's payment under this paragraph.

32. In agreeing to the payment amounts set forth in paragraph 21, the District has relied upon Liberty Tax's representations that as of the time of this Consent Order they operate at a financial deficit. The Parties agree that if that representation is proven untrue, it shall constitute a violation of this Consent Order and the District may seek an additional amount in monetary relief from Liberty Tax.

33. A default in Liberty Tax's payment obligations under this Consent Order that is not cured within ten business days of when the payment is due will constitute a violation of this Consent Order. Additionally, if Liberty Tax fails to make any of the payments due under Paragraph 26 herein within three days of the date due, all remaining payments owed under this Consent Order shall immediately come due and the Restitution payments that would have reverted to Liberty Tax under Paragraph 30 will revert to the District.

### **MONITORING**

34. For each tax season 2023 through 2027 (tax seasons run from January 1 through April 15 of each year), Liberty Tax shall submit by August 1st of each year (beginning in calendar year 2024) to OAG a report with the following information based on the nationwide tax filings for the prior tax season:

- a. The total number of customers nationwide who participated in each Similar Incentive Program;
- b. The total number of customers nationwide who filed tax returns through Liberty Tax but did not participate in any Similar Incentive Programs;
- c. The form types filed;
- d. Liberty Tax's suggested billing schedules and pricing curves for the entire tax season;



e. A summary analysis comparing the total amount paid by customers who participated in each Similar Incentive Program and the total amount paid by customers who did not participate in the Similar Incentive Programs. The analysis shall be based on a statistically significant and geographically variable sample of customers.

i. “Statistically significant” means a minimum of 15% of the customers, randomly drawn and unique, who participated in each Similar Incentive Program, or 5000 of such customers, whichever is greater, plus an equal number of customers, randomly drawn and unique, who did not participate in any Similar Incentive Program.

1. The maximum number of customers for each group used for this analysis will be capped at 20,000.

2. If the total number of customers who participated in the Similar Incentive Program is fewer than 5000 customers, then the sample will consist of all customers who participated in the Similar Incentive Program, and an equal number, randomly drawn and unique, who did not.

ii. “Geographically variable” means customers in the sample shall be drawn from all nine U.S. Census Bureau divisions (New England, Mid-Atlantic, East North Central, West North Central, South Atlantic, East South Central, West South Central, Mountain, and Pacific). The total number of customers selected from each region

shall be proportional to the percentage of Liberty Tax's total customers represented in each region (e.g., if 20% of Liberty Tax's total customers for that tax season are in the Mid-Atlantic, then 20% of the sample population used for the analysis should include customers from Liberty Tax's Mid-Atlantic locations).

- iii. The sample of customers shall also be representative of the income distribution of Liberty Tax's customer base. The income distribution shall be divided into quintiles of income, and the total number of customers selected from each quintile shall be proportional to the percentage of Liberty Tax's total customers represented in each quintile.
- iv. The analysis shall include comparisons of total amounts paid based on the top ten combinations of tax forms customers filed, such that total amounts paid by customers who participated in Similar Incentive Programs are compared to customers who filed the same combination of forms but did not participate in any incentive programs.
- v. If more than one Similar Incentive Program is provided in a tax season, then for each Similar Incentive Program, the analysis should include comparisons between customers who participated in that Similar Incentive Program and customers who did not participate in any Similar Incentive Programs.

35. Concurrent with the summary report, Liberty Tax shall provide OAG the underlying data used in conducting the nationwide analysis. This data shall be provided in an editable excel spreadsheet and include the following information:

- a. The Liberty Tax Corporate or Franchisee location (state or territory);
- b. A unique, anonymized identifier for the customer;
- c. The income quintile in which the customer falls;
- d. The customer's refund amount;
- e. Whether the customer obtained a NetSpend card, Deep Blue card, or other payment card;
- f. A list of all specific tax forms completed for the customer, including but not limited to Forms 1040, 1040A, 1040 EZ, and all Schedules completed;
- g. The type, amount, and date of payment for all fees paid by the Consumer, including but not limited to fees for:
  - i. Tax preparation,
  - ii. Efiling,
  - iii. Establishing an RT,
  - iv. Direct2Cash,
  - v. Check processing, and
  - vi. Account handling.
- h. The type, amount, and date of any amounts (whether or not they are called "discounts" or "credits" or another similar term) credited towards the fees owed by the customer to Liberty Tax Corporate or the Franchisee;

- i. Whether the customer participated in a Similar Incentive Program, and if so, which Similar Incentive Program(s) the customer participated in.

36. Concurrently with the annual report, Liberty Tax shall also provide documentation to OAG for the computer code - including the SQL query and company codebook or data schema that describes the table(s) and variables used in the query - that shows how the samples used in the analysis were produced. Liberty Tax shall also provide documentation to OAG that describes any incentive program, fees, and credits in the analysis.

37. For each tax season 2023 through 2027 (tax seasons run from January 1 through April 15 of each year), by June 1st of each year (beginning in calendar year 2024), before providing the analysis and data described in Paragraphs 34 through 36, Liberty Tax shall provide OAG a list of the incentive programs that Liberty Tax Corporate utilized in the preceding calendar year and a summary of how the programs operated. In addition to the names of each incentive program Liberty Tax shall furnish to OAG any marketing and training materials used in the roll-out of any Similar Incentive Programs. If OAG believes that any of the incentive programs qualifies as a Similar Incentive Program, OAG may request, and Liberty Tax shall, within 21 business days of such request, furnish to OAG any marketing and training materials used in the roll out of such program.

### **GENERAL PROVISIONS**

38. The “Effective Date” shall be the date on which the Court enters this Consent Order.

39. When a deadline falls on a weekend or a holiday, the deadline shall be moved to the next business day.

40. The Parties may apply to the Court to modify this Consent Order by agreement at any time. Any party may apply to the Court, without the other party's agreement, to modify this Consent Order for good cause shown based on a substantial change in law or fact occurring after the date this Consent Order is entered.

41. Unless otherwise set forth above, Liberty Tax shall implement all changes required by this Consent Order within thirty (30) days of the Effective Date of this Consent Order.

42. Liberty Tax shall not cause, encourage, or knowingly permit third parties acting on its behalf to engage in practices from which Liberty Tax is prohibited by this Consent Order.

43. This Consent Order represents the full and complete terms of the settlement entered by the Parties. In any action undertaken by the Parties, neither prior versions of this Consent Order nor prior versions of any of its terms that were not entered by the Court in this Consent Order may be introduced for any purpose whatsoever.

44. In entering into this Consent Order, the Parties are neither extinguishing any rights otherwise available to Consumers, nor creating any right not otherwise available under the laws of the District of Columbia.

45. This Court retains jurisdiction of this Consent Order and the Parties for the purpose of enforcing this Consent Order and for the purpose of granting such additional relief as may be necessary and appropriate. The Parties may agree in writing, through their counsel, to an extension of any time period in this Consent Order without a court order.

46. This Consent Order may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

47. All notices sent pursuant to this Consent Order shall be provided to the following address via first class U.S. mail and electronic mail, unless a different address is specified in writing by the party changing such address:

Wendy J. Weinberg  
Senior Assistant Attorney General  
Office of the Attorney General  
400 Sixth Street, N.W., 10th Floor  
Washington, D.C. 20001  
Wendy.weinberg@dc.gov

For the Plaintiff District of Columbia

Ashley L. Taylor, Jr.  
Stephen C. Piepgrass  
Ryan J. Strasser  
Partner  
Troutman Pepper Hamilton Sanders LLP  
1001 Haxall Point, 15th Floor  
Richmond, VA 23221

For the Defendant Liberty Tax

48. Any failure by any party to this Consent Order to insist upon the strict performance by any other party of any of the provisions of this Consent Order shall not be deemed a waiver of any of the provisions of this Consent Order, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Consent Order.

49. Nothing in this Consent Order shall be construed as relieving Liberty Tax of the obligation to comply with all state and federal laws, regulations, or rules, nor shall any of the provisions of this Consent Order be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

50. Liberty Tax shall deliver a copy of this Consent Order to each of its current and future principals, officers, directors, and managers having decision-making authority with respect to the subject matter of this Consent Order.

51. Liberty Tax shall within 30 days of the Effective Date of this Consent Order deliver a copy of this Consent Order to any franchisee through which it provides or offers its services.

52. Liberty Tax shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part that are prohibited in this Consent Order or for any other purpose that would otherwise circumvent any part of this Consent Order or the spirit or purposes of this Consent Order.

53. This Consent Order finally disposes of all claims by the Parties and the District shall release Liberty Tax from all claims that the Attorney General asserted or could have asserted under the D.C. Consumer Protection Procedures Act, D.C. Code §§ 28-3901 et seq., based on the facts alleged in the Complaint.

BRIAN L. SCHWALB  
Attorney General for the District of Columbia

JENNIFER JONES  
Deputy Attorney General  
Public Advocacy Division

\_\_\_\_\_/s/\_\_\_\_\_  
ADAM TEITELBAUM  
Director, Office of Consumer Protection

Date: January 10, 2024

\_\_\_\_\_/s/\_\_\_\_\_  
WENDY J. WEINBERG  
Senior Assistant Attorney General  
Office of the Attorney General  
400 Sixth Street, N.W., 10<sup>th</sup> Floor  
Washington, D.C. 20001

Date: January 10, 2024

Nicole Hill  
Assistant Attorney General

**For Plaintiff District of Columbia**

\_\_\_\_\_ Date:

**For the Defendant Liberty Tax**

DocuSigned by:  
*Scott Terrell*

\_\_\_\_\_

**Scott Terrell, Chief Executive Officer**

Date: January 9, 2024

*Asari S. Hill*

\_\_\_\_\_

**Counsel to Defendant Liberty Tax**

Date: January 9, 2024

**IT IS SO ORDERED, ADJUDGED, AND DECREED.**

\_\_\_\_\_ **Date**

\_\_\_\_\_ **Judge Juliet McKenna**



## Exhibit A

“Liberty Tax has recently entered into a settlement agreement with the Attorney General for the District of Columbia under which you are entitled to receive \$41.91 for each Cash in a Flash payment you received based on Liberty Tax’s records. Payments will be made in four groups, starting on **DATE** and ending on **DATE**, with the people who received the earliest Cash in a Flash payments getting their funds first.

The funds that you are eligible to receive as a result of this settlement agreement will be deposited into the bank account or payment card that you have on record with Liberty Tax. If you do not have a bank account or payment card on record with Liberty Tax and would like your payment deposited into your current bank account or payment card, please contact Liberty Tax **at phone or email** with your updated bank account or payment card information.

If Liberty Tax does not hear from you within fourteen days of your receipt of this email/letter, Liberty Tax will mail you a check at **ADDRESS**, which is the last address that Liberty Tax has on record for you.

If you have a new address, please contact Liberty Tax **at phone or email** in order to receive your funds.

**Under the settlement with DC Office of the Attorney General, if Liberty Tax is unable to deliver your funds **within 60 days** of the date of your receipt of this email (or letter), you may be unable to receive your settlement funds.**

If you have any questions about this settlement, you may reach the DC Office of the Attorney General Consumer Hotline at (202.442.9828) or [consumer.protection@dc.gov](mailto:consumer.protection@dc.gov).