

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Adam Steele, Brittany Montrois, and)	
Joseph Henchman, on behalf of)	
themselves and all others similarly)	
situated,)	
<i>Plaintiffs,</i>)	
)	
v.)	Civil Action No.: 1:14-cv-01523-RCL
)	
United States of America,)	
<i>Defendant.</i>)	
_____)	

NOTICE

On January 24, 2023, this Court remanded this matter “to the IRS to determine an appropriate refund for the class.” ECF No. 222 at 2 (“Order”). The Order further stated that “[w]hen the IRS has completed this review on remand, the government shall file a notice in this Court informing plaintiffs and the Court of the refund it has estimated to be appropriate.” *Id.* at 2. Pursuant to the Court’s Order, the IRS utilized the 2010 cost model to calculate the incremental refund for fiscal years 2011–2015 and the 2015 Cost Model to calculate the incremental refund for fiscal years 2016–2017. Using these Cost Models, the IRS has completed its review on remand and hereby gives Notice that its estimate of the Court ordered incremental (*i.e.*, in addition to the United States’ prior concessions) refund is **\$57,444,051**. Including the United States’ prior concessions, the Court ordered incremental refund increases the United States’ liability for fiscal years 2011–2017 to a total of **\$167,766,068**:

	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	Total
Prior concessions by the United States	\$26,576,661	\$26,623,420	\$25,685,247	\$8,737,123	\$9,010,460	\$6,904,343	\$6,784,763	\$110,322,017
Court Ordered additional IRS portion refund	\$320,835	\$321,399	\$310,074	\$17,214,969	\$17,753,533	\$7,621,637	\$7,489,633	\$51,032,080
Court Ordered additional Vendor portion refund	\$717,402	\$718,664	\$693,339	\$692,186	\$713,841	\$1,450,833	\$1,425,706	\$6,411,971
Total Court Ordered additional Refund (IRS + Vendor portions)	\$1,038,237	\$1,040,063	\$1,003,413	\$17,907,155	\$18,467,374	\$9,072,470	\$8,915,339	\$57,444,051
Total Liability (Concessions + Court Ordered Refund)	\$27,614,898	\$27,663,483	\$26,688,660	\$26,644,278	\$27,477,834	\$15,976,813	\$15,700,102	\$167,766,068

However, while the Court's Order requires the Government to use the 2010 Cost Model to calculate the incremental refund for fiscal years 2014–2015, the Government believes that using the 2013 Cost Model to calculate the incremental refund for fiscal years 2014–2015 would be a more correct approach.¹

¹ If the 2013 Model and other contemporaneous documents were instead used as guidance for a more “granular breakdown of the various RPO departments’ activities” (see *Steele v. United States*, 657 F. Supp. 3d 23, 39 n.9 (D.D.C. 2023)) projected for FY2014–2015, then the calculated total refund liability is reduced by \$16,162,059; that is, reduced from \$167,766,068 to \$151,614,009.

Nothing reported in this Notice shall be deemed an admission of any kind or waiver of any appeal right, including that the United States objects to, and asserts as error, any refund liability in excess of “[a]ll activities already conceded by the government in this case” with total cost \$110,322,017, and also the denial of Defendant’s offset affirmative defense relating to fiscal years 2018–2020.² The United States also respectfully objects, and preserves the right to appeal, being required to follow the 2010 Model to determine the additional IRS refund owed for fiscal years 2014–2015.

Dated: January 22, 2024

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² In the avoidance of doubt, Defendant’s offset affirmative defense relating to FY2018–2020 reduces any refund liability by \$88,195,377.

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2024, I electronically filed the foregoing Notice in the CM/ECF system. I understand that notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Emily K. McClure
Emily K. McClure
Trial Attorney, Tax Division
U.S. Department of Justice