

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADAM STEELE, et al,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES)
OF AMERICA,)
)
Defendant.)
)
_____)

Civil Action No.: 1:14-cv-01523-
RCL

DECLARATION OF KIMBERLY D. ROGERS

I, Kimberly D. Rogers, pursuant to the provisions of 28 U.S.C. § 1746, declare as follows:

1. On November 6, 2022, I became the Director of the Return Preparer Office (RPO) of the IRS and my post of duty is Orland Park, Illinois.

2. Previously, at the request of the Department of Justice, on July 22, 2021, I executed a declaration to provide an overview of the RPO Suitability, including its purpose, its operations, its involvement with the Preparer Tax Identification Number (PTIN), and the amount of time spent on each activity conducted by the RPO Suitability personnel. See ECF No. 174 (Ex. 41) (filed under seal).

3. My prior declaration includes a summary of my experience with the IRS, including with the RPO. *Id.*

4. As the Director RPO, I am aware of the above captioned lawsuit and in my capacity as the Director I have been involved with the ongoing litigation being

handled by the Department of Justice in its representation of the United States on behalf of the IRS.

5. As part of my duties, I am making this declaration at the request of the Department of Justice to provide a breakdown of the costs ordered to be refunded by the Court in its Memorandum Opinion and Order, *see* ECF No. 226; ECF No. 222, as explained below.

6. I am informed and understand that the United States has already conceded some amounts relating to the IRS's portion of the PTIN fee. The IRS's calculation of the costs relating to the activities already conceded by the United States in this case is provided in the previously filed Declaration of Carol A. Campbell (ECF No. 183-2, Campbell First Declaration) and Second Declaration of Carol A. Campbell (ECF No. 203-1, Campbell Second Declaration) that are incorporated and attached hereto as Exhibits A and B, respectively.

7. As shown by Exhibits A and B hereto, the United States has already conceded the following amounts for fiscal years 2011–2017:

FY2011	26,576,661
FY2012	26,623,420
FY2013	25,685,247
FY2014	8,737,123
FY2015	9,010,460
FY2016	6,904,343
FY2017	6,784,763
TOTAL	\$110,322,017

8. I am informed and understand that the Memorandum Opinion states that the IRS portion and the Vendor portion (Accenture) of the PTIN fees for FY 2011 through 2017 were excessive to the extent that they were charged for:

- a. All activities already conceded by the government in this case.
- b. Any Compliance Department activities other than (1) investigating ghost preparers; (2) handling complaints regarding improper use of a PTIN, use of a compromised PTIN, or use of a PTIN obtained through identity theft; and (3) composing the data to refer those specific types of complaints to other IRS business units.
- c. All Suitability Department activities.
- d. The portion of support activities that facilitated provision of an independent benefit to the agency and the public.
- e. The portion of Accenture's activities as a vendor that facilitated provision of an independent benefit to the agency and the public.

Steele v. United States, 657 F. Supp. 3d 23, 50 (D.D.C. 2023).

9. As stated above, the IRS's calculation of the refund owed for "[a]ll activities already conceded by the government in this case" as ordered by the Court, *id.*, totals \$110,322,017, and that calculation is explained in Ms. Campbell's two declarations attached as Exhibits A and B.

10. The remainder of this declaration explains the Service's estimate of the incremental Court ordered refund that is in addition to the United States' prior concessions.

11. In addition to the previous United States' concessions, the IRS has estimated, including rounding, the following incremental refund amounts required under the Court's Memorandum Opinion:

	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	Total
Court Ordered IRS Compliance, Suitability, & agency/public benefit refund	\$320,835	\$321,399	\$310,074	\$17,214,969	\$17,753,533	\$7,621,637	\$7,489,633	\$51,032,080
Court Ordered Accenture agency/public benefit refund	\$717,402	\$718,664	\$693,339	\$692,186	\$713,841	\$1,450,833	\$1,425,706	\$6,411,971
Total Court Ordered IRS + Accenture refunds	\$1,038,237	\$1,040,063	\$1,003,413	\$17,907,155	\$18,467,374	\$9,072,470	\$8,915,339	\$57,444,051

12. In order to estimate the above Court ordered additional refund amounts, the IRS used the actual paid PTIN counts (including both PTIN registrations and renewals) for fiscal years 2011–2017:

FY2011	739,318
FY2012	740,619
FY2013	714,521
FY2014	713,332
FY2015	735,649
FY2016	749,139
FY2017	736,165

13. This declaration will first address the Court ordered additional refund for the IRS portion of the PTIN fee. It will then address the Court ordered additional refund for the Vendor portion (Accenture) of the PTIN fee.

I. Court Ordered Additional Refund for the IRS Portion of the PTIN fee

A. Fiscal Years 2011–2013

14. As stated in Exhibit B, for fiscal years 2011 through 2013, the IRS portion of the PTIN user fee was \$50 based on the costs considered and calculated in the 2010 Cost Model (“2010 Model”). Exhibit B then identifies conceded costs for (1) Communications, (2) Return Preparer Program Compliance, and (3) OPR/PMO Ops Support, as those three categories of costs are defined and projected in the 2010 Model. *See* Exhibit B at 1. The United States’ total concession for FY2011 through 2013 totals over \$78 million, as explained by Exhibit B. *See* Exhibit B, at 2–3; *supra* ¶ 7.

15. In order to comply with the Court’s Memorandum Opinion and Order, the RPO identified additional activities in the 2010 Model that the Memorandum Opinion orders to be refunded. The IRS then estimated the amount to be refunded for those activities (again, as defined and projected in the 2010 Model) by using the actual number of actual PTINs issued/renewed in fiscal years 2011, 2012, and 2013, as stated in Paragraph 12 above, thereby resulting in the following additional refund amounts ordered by the Court:

2010 Model activity category	FY2011	FY2012	FY2013	Description of Court ordered additional refund
Return Preparer Program Compliance	\$314,320	\$314,873	\$303,777	In order to comply with the Court's Memorandum Opinion, additional refunds were calculated for "Verify claimed Professional Designation for CPAs, Attorneys Etc." and for "Clerical handling and prioritization of workloads driven by self-reported criminal backgrounds."
IT/Contract Costs	\$6,515	\$6,527	\$6,297	In order to comply with the Court's Memorandum opinion, additional refunds were calculated for "Develop interfaces with vendor and IRS's Masterfile" and for "Develop/maintain interface for Tax Compliance Checks."
Total	\$320,835	\$321,400	\$310,074	

16. The IRS's estimate of the additional Court ordered refund for the IRS portion of the PTIN fee for fiscal years 2011, 2012, and 2013 is therefore \$320,835, \$321,400, and \$310,074, respectively.

B. Fiscal Years 2014–2015

1. Using the 2010 Model

17. In order to comply with the Court's Memorandum Opinion that requires using the 2010 Model to define the activities and their projected costs, not only for fiscal years 2011–2013, but also for fiscal years 2014–2015, the IRS summed the costs of the same activities in the 2010 Model that are (1) included in the United States' prior concession for fiscal years 2011–2013 as explained in Exhibit B; plus (2) the additional activities identified above to calculate the Court ordered incremental refund explained above in Paragraph 15 for fiscal years 2011–2013.

18. The cost of those aggregated activities for fiscal years 2014–2015, as defined and projected by the 2010 Model, are then estimated by using the actual number of PTINs issued for those two later fiscal years (i.e., for FY2014-2015) stated in Paragraph 12:

2010 Model activity category	FY2014	FY2015	Description of total Court ordered refund using the 2010 Model
Communications	\$554,556	\$571,905	<p>The 2010 Model allocates 75% of all Communications and Customer Support activities to the IRS portion of the PTIN user fee.</p> <p>The Court ordered refund reduces the allocation for certain activities based upon an estimate of the proportion of the activity that would have been PTIN-related. The reduction is attributable to costs related to the development of commercials, advertising, and a webinar related to other RPO programs that are not PTIN-related.</p>
Return Preparer Program Compliance	\$24,363,787	\$25,125,997	<p>The 2010 Model allocates 100% of all Return Preparer Program Compliance activities to the IRS portion of the PTIN user fee.</p> <p>The Court ordered calculation refunds certain activities that related to other RPO programs or are not PTIN-related activities, including criminal background checks, personal tax compliance checks, and continuing education checks.</p> <p>In addition, as explained at Paragraph 16 for FY2011-2013, additional refunds were calculated for “Verify claimed Professional Designation for CPAs, Attorneys Etc.” and for “Clerical handling and prioritization of workloads driven by self-reported criminal backgrounds.”</p>

OPR/PMO Ops Support	\$1,027,464	\$1,059,607	The 2010 Model allocates 75% of OPR/PMO Ops Support to the IRS portion of the PTIN user fee. The Court ordered refund reduces the allocation for certain activities based on an estimate of the proportion of the activity that was a PTIN-related activity. The reduction is attributable to costs for oversight and support for other RPO programs that are not PTIN-related activities.
Contract/IT	\$6,286	\$6,483	In addition, as explained in Paragraph [15] for FY2011-2013, additional refunds were calculated for "Develop interfaces with vendor and IRS's Masterfile" and for "Develop/maintain interface for Tax Compliance Checks."
Total	\$25,952,093	\$26,763,993	

19. Using the 2010 Model to define the expected activities and their projected costs, not only for fiscal years 2011–2013 but also for fiscal years 2014–2015, again results in estimated total liability for those two later fiscal years of about \$26 million per year. *Compare* Paragraphs 7, 15 *with* 18 above.

20. In order to calculate the Court ordered additional refund for the IRS portion of the fee for fiscal years 2014–2015, the amounts previously conceded by the United States for fiscal years 2014–2015 (see Paragraph 7) are subtracted:

	FY2014	FY2015
Court ordered total refund using 2010 Model	\$25,952,093	\$26,763,993
Less prior United States Concession using 2013 Model	\$8,737,123	\$9,010,460
Additional Court ordered refund for IRS portion using 2010 Model	\$17,214,969	\$17,753,533

21. Accordingly, the IRS's estimates of the Court ordered additional refund liability for fiscal years 2014 and 2015 using the 2010 Model are \$17,214,969 and \$17,753,533, respectively.

2. Using the 2013 Model

22. If the additional refund ordered by the Court were instead determined by using the 2013 Model, using the actual PTINs issued in fiscal years 2014–2015 (see Paragraph 12 above), the IRS estimates that the incremental Court ordered refund would be:

2013 Model activity category	FY2014	FY2015	Description of Court ordered additional refund
Office of the Director	\$973,734	\$1,004,197	In order to comply with the Court's Memorandum Opinion, the additional refund was calculated by reducing the PTIN-related allocation to 41%
Strategy and Finance	\$714,316	\$736,663	In order to comply with the Court's Memorandum Opinion, the additional refund was calculated by reducing the PTIN-related allocation to 41%
Suitability	\$3,396,027	\$3,502,270	In order to comply with the Court's Memorandum Opinion, the additional refund was calculated by reducing the PTIN-related allocation to 0%
Compliance/Complaint Referrals	\$1,728,763	\$1,782,847	In order to comply with the Court's Memorandum Opinion, the additional refund was calculated by reducing the PTIN-related allocation (arising from PTIN misuse or nonuse) to 72%
VPBR	\$825,952	\$851,792	In order to comply with the Court's Memorandum Opinion, the additional refund was calculated by reducing the PTIN-related allocation to 62%

IT/Contract Costs	\$1,619,607	\$1,670,276	In order to comply with the Court's Memorandum Opinion, the additional refund was calculated by refunding certain MITS costs ("Develop interfaces with vendor and IRS's Masterfile" and "Develop/maintain interface for Tax Compliance Checks"), certain RPO 360 (Design Thru Deployment), Accenture Releases 2, 3, 4, 5, & 6, and Accenture Hardware and Software Enhancement costs.
Total	\$9,258,399	9,548,045	

23. Accordingly, if the 2013 Model were used for fiscal years 2014 and 2015, the IRS estimates additional refund liability ordered by the Court is \$9,258,399 and \$9,548,045, respectively.

C. Fiscal Years 2016–2017

24. As stated in Exhibit A, for fiscal years 2016 and 2017, the IRS portion of the PTIN user fee was \$33 based on the costs considered and calculated in the 2015 Cost Model ("2015 Model"). Exhibit A then identifies conceded costs for (1) Office of the Director; (2) Strategy and Finance; (3) Communications; (4) Suitability; (5) OPR; (6) Compliance/Complaint Referrals; (7) VPBR; and (8) EA/ERPA User Fee Cross-Subsidization (EAP&M), as those eight categories are defined and projected in the 2015 Model. *See* Exhibit A at 5–7.

25. In order to comply with the Court's Memorandum Opinion and Order, the IRS identified additional activities in the 2015 Model that the Memorandum Opinion orders to be refunded, and then estimated the amount charged for those

activities (as defined and projected in the 2015 Model) using the actual number of paid PTINs issued/renewed in fiscal years 2016 and 2017 (see Paragraph 12 above):

2015 Model activity category	FY2016	FY2017	Description of Court ordered additional refund
Office of the Director	\$899,706	\$884,124	In order to comply with the Court's Memorandum Opinion, additional refunds were calculated by adjusting the allocation to 40% of PTIN-related oversight activities.
Strategy and Finance	\$187,074	\$183,834	In order to comply with the Court's Memorandum Opinion, additional refunds were calculated by adjusting the allocation to 40% of PTIN-related support activities.
Suitability	\$3,755,489	\$3,690,445	In order to comply with the Court's Memorandum Opinion, additional refunds were calculated by adjusting the allocation to 0% of Suitability activities.
Compliance/Complaint Referrals	\$1,562,777	\$1,535,710	In order to comply with the Court's Memorandum Opinion, additional refunds were calculated by adjusting the allocation to 72% of Court allowed PTIN-related activities for PTIN misuse or nonuse.
VPBR	\$909,940	\$894,180	In order to comply with the Court's Memorandum Opinion, additional refunds were calculated by adjusting the allocation to 62%.
IT/Contract Costs	\$306,651	\$301,340	In order to comply with the Court's Memorandum Opinion, additional refunds were calculated for "JOFOC LOE 2" and "Misc: IT Case Management System."
Total	\$7,621,637	\$7,489,633	

26. Accordingly, the IRS's estimate of the Court ordered additional refund owed for fiscal years 2016–2017 is \$7,621,637 and \$7,489,633, respectively.

27. As shown in the Table in Paragraph 11, the IRS's estimate of the total Court ordered additional refund for the IRS portion of the PTIN fee is:

FY2011	320,835
FY2012	321,399
FY2013	310,074
FY2014	17,214,969
FY2015	17,753,533
FY2016	7,621,637
FY2017	7,489,633
TOTAL	\$51,032,080

II. Court Ordered Additional Refund for the Accenture Portion of the PTIN fee

28. The Accenture contract that covered fiscal years 2011–2015 was TIRNO-10-C-00022 and is attached as Exhibit C. Accenture charged \$14.25 for PTIN registrations and \$13.00 for subsequent PTIN renewals under this contract.

29. The second Accenture contract that covered fiscal years 2016–2017 was TIRNO-11-D-00007 and is attached as Exhibit D. Accenture charged return preparers \$17 for both initial PTIN registrations and subsequent renewals under this contract.

30. Although IRS does not have access to Accenture's exact costs, I am informed and understand that Accenture provided a declaration from Michael P. Miller, Managing Director for Accenture Federal Services' LLC ("Accenture Declaration") that provides some Accenture internal cost information. ECF No. 176-25 (filed under seal). A copy of the Accenture Declaration is attached as Exhibit E.

31. The IRS also has some *ex post* Accenture provided Call Center data shown in Exhibit F.

A. Fiscal Years 2011–2015

1. \$1.25 difference between Accenture’s charge for PTIN registrations versus renewals

32. Under the first Accenture contract (Exhibit C) there is a \$1.25 difference between the amount charged to return preparers for initial PTIN registration (\$14.25) and PTIN renewals (\$13.00) during this five-year period.

33. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

34. Based upon the above sworn statement, the IRS determined that this \$1.25 incremental charge is appropriate under the Court’s Memorandum Opinion.

35. Consequently, the IRS has not estimated any additional refund relating to this \$1.25 incremental charge for PTIN registrations for fiscal years 2011–2015.

2. Accenture's \$13 fee to return preparers for both PTIN initial registrations and subsequent renewals

a. Accenture Call Center costs

36. [REDACTED]

[REDACTED]

[REDACTED]

37. This Accenture *ex post* Call Center data regarding the broad categories of substantive content of return preparer calls handled by Accenture's Call Center for fiscal years 2013–2015 is summarized at Exhibit F (Call Log Data Summary).

38. The IRS analyzed Accenture's Call Center services as a portion of the \$13 Accenture fee to return preparers.

39. [REDACTED]

[REDACTED]

[REDACTED]

40. About 97% of return preparer calls, as categorized in Accenture's call log data, represent categories that are allowable under the Memorandum Opinion, *e.g.*, "Account Assist and Change," "General Questions," and "Online Login Assist." See Exhibit F.

41. About 2.69% of return preparer calls are categorized in Accenture's call log data as: (1) Continuing Education and Annual Filing Season Program calls; (2) Escalation (Deceased Preparer and Tax Conviction/Felony) calls; or (3) Non-PTIN calls.

The IRS determined that the costs associated with these three categories should be excluded from the Accenture portion of the PTIN fee under the Memorandum Opinion.

42. [REDACTED]

b. Accenture remaining costs

43. [REDACTED]

44. In order to estimate what amount of that remaining charge should be refunded under the Court's Memorandum Opinion, the IRS took the following steps:

a. listed all Contract Line Item Numbers (CLINs) in the first Accenture contract attached as Exhibit C (374 total CLINs)

b. [REDACTED]

c. [REDACTED]

d. [REDACTED]

e. [REDACTED]

f. [REDACTED]

[REDACTED]

45. With respect to the non-Call Center CLINs, the IRS used the ratio of those non-chargeable CLINs to total CLINs – an equal weighting method – because the IRS does not have internal Accenture data regarding its exact pricing to return preparers of the various CLINs. The IRS judged an equal weighting method to be the most reasonable basis upon which to base its estimate.

46. [REDACTED]

[REDACTED]

[REDACTED]

47. Adding the non-chargeable Call Center services amount of \$0.09 plus the remaining non-chargeable amount of \$0.88 equals a total non-chargeable amount of \$0.97 per PTIN per year.

48. Multiplying the respective Call Center and other non-chargeable amounts by the number of actual PTINs actually issued each year (see Paragraph 12) results in the estimated Accenture fee refund required by the Memorandum Opinion:

Category	Court Ordered Refund Amount					Total	Explanation
	FY2011	FY2012	FY2013	FY2014	FY2015		
Customer Service Calls	\$69,759	\$69,882	\$67,419	\$67,307	\$69,413	\$343,780	This includes restitution for the portion of customer service call center calls related to continuing education requirements under the RTRP program.

Continuing Education	\$431,762	\$432,521	\$417,280	\$416,586	\$429,619	\$2,127,768	This includes restitution for contractual requirements related to continuing education activities. These requirements include CE hours and test result recordation, account management, automated notice issuance, and PTIN issuance and renewal.
Suitability	\$215,881	\$216,261	\$208,640	\$208,293	\$214,809	\$1,063,884	This includes restitution for contractual requirements related to suitability activities. These requirements include suitability communications with return preparers as well as various system requirements.
Total	\$717,402	\$718,664	\$693,339	\$692,186	\$713,841	\$3,535,432	

49. Accordingly, the IRS’s estimate of the Court ordered refund of the Accenture portion of the fee is \$3,535,432 for FY2011–2015.

B. Fiscal Years 2016–2017

50. Under the Accenture contract (Exhibit D) that applied to fiscal years 2016–2017, return preparers paid Accenture \$17 both for the initial PTIN registration and subsequent renewal.

1. Accenture Call Center costs

51. [REDACTED]

[REDACTED]

[REDACTED]

52. [REDACTED]

[REDACTED]

53. No refund is required under the Memorandum Opinion relating to the Accenture Call Center services for fiscal years 2016–2017 because for these later years the Government (and not return preparers via the \$17 vendor fee) paid Accenture for return preparer telephone calls relating to Suitability, Continuing Education, Annual Filing Season Program, and other activities deemed non-chargeable under the Court’s Memorandum Opinion.

2. Accenture remaining costs

54. [REDACTED]

[REDACTED]

55. The IRS then followed the same steps as in Paragraph 44 above, except now it used information from Accenture’s contract (Exhibit D) that applies to fiscal years 2016–2017.

56. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

57. [REDACTED]

[REDACTED]

[REDACTED]

58. [REDACTED]

[REDACTED]

59. Multiplying the amounts (\$1.94 per PTIN per year) by the number of actual PTINs actually issued each year (see Paragraph 12) results in the estimated Accenture fee refund required by the Memorandum Opinion.

Category	Court Ordered Refund amount		Total	Explanation
	FY2016	FY2017		
Continuing Education	\$518,155	\$509,181	\$1,027,336	This includes restitution for contractual requirements related to continuing education activities. These requirements include CE hours and test result recordation, account management, automated notice issuance, and PTIN issuance and renewal.
Suitability	\$932,679	\$916,525	\$1,849,204	This includes restitution for contractual requirements related to suitability activities. These requirements include suitability communications with return preparers, case management functions, as well as various system requirements.
Total	\$1,450,834	\$1,425,706	\$2,876,539	

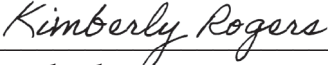
60. Summing the \$3,535,432 estimated Accenture refund for fiscal years 2011–2015 plus the \$2,876,539 estimated Accenture refund for fiscal years 2016–2017, equals the total estimated Accenture refund of \$6,411,972, as shown in the Table in Paragraph 11.

III. Total Court Ordered Additional Refund

61. Summing the IRS estimated Court ordered refunds for (1) the IRS portion of the PTIN fee (including using the 2010 Model for fiscal years 2014 and 2015, as ordered by the Court) plus (2) the Accenture portion of the PTIN fee equals the total estimated additional ordered refund of \$57,444,051, again as shown in the Table in Paragraph 11.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 22nd day of January 2024 in Washington, DC.



Kimberly D. Rogers
Director
IRS, Return Preparer Office