

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADAM STEELE, et al.,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Civil Action No.: 1:14-cv-01523-RCL
)	
UNITED STATES OF AMERICA,)	
)	
<i>Defendant.</i>)	
)	
_____)	

**NOTICE OF FILING
SUPPLEMENTAL DECLARATION OF KIMBERLY D. ROGERS**

On February 21, 2023, the Court issued an unsealed version of its January 23rd opinion granting in part and denying in part both parties’ motions for summary judgment. The Court determined that:

[T]he PTIN and vendor fees for FY 2011 through 2017 were excessive to the extent that they were based on the following activities:

- All activities already conceded by the government in this case.
- 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.
- All Suitability Department activities.
- The portion of support activities that facilitated provision of an independent benefit to the agency and the public.
- The portion of Accenture's activities as a vendor that facilitated provision of an independent benefit to the agency and the public.

ECF No. 226 at 38–39.

The Court also remanded the case to the Internal Revenue Service to “determine an appropriate refund by recalculating those fees, using the 2010 Cost Model as a benchmark for the FY 2011 through 2015 PTIN fees and the 2015 Cost Model as a benchmark for the FY 2016 and 2017 PTIN fees, and excising a reasonable estimate of the portions of those fees that the Court has held unlawful” *Id.* at 39. Finally, the Order 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.

In accordance with the Court’s Order, the IRS determined the amount of the refund in accordance with the parameters set by the Court of what activities could and could not be included in the calculation. On January 22, 2024, the United States filed a Notice informing the Court 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 \$167,766,068.¹ On the same day, the United States filed the Declaration of Kimberly D. Rogers to explain the

¹ This number was calculated using the 2010 Cost Model to calculate the incremental refund for fiscal years 2014–2015. If the 2013 Cost Model was used to calculate the incremental refund for fiscal years 2014–2015, which the government believes is a more correct approach 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.

methodology underlying the numbers provided in the notice. ECF No. 257 (redacted); 258-2 (Sealed).

Plaintiffs' counsel reached out to the United States's counsel with specific concerns related to the declaration and the need for more information. After a lengthy discussion, the United States agreed to file the attached supplemental declaration to address Plaintiffs' concerns. And while this supplemental declaration will not change the amount of the refund or numbers included in the Notice, the new declaration is meant to provide more detailed information to assist plaintiffs replicate the numbers contained in the Notice.

Dated: March 5, 2024

DAVID A. HUBBERT
Deputy Assistant Attorney General

/s/ Emily K. McClure
EMILY K. McCLURE
STEPHANIE A. SASARAK
JOSEPH E. HUNSADER
BENTON T. MORTON
Trial Attorneys, Tax Division
JOSEPH A. SERGI
Senior Litigation Counsel
U.S. Department of Justice
Post Office Box 227
Ben Franklin Station
Washington, DC 20044
Telephone: (202) 307-2250
Facsimile: (202) 514-6866
Joseph.A.Sergi@usdoj.gov
Joseph.E.Hunsader@usdoj.gov
Stephanie.A.Sasarak@usdoj.gov
Emily.K.McClure@usdoj.gov
Benton.T.Morton@usdoj.gov
Counsel for the United States of America

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed with the Court's ECF system on March 5, 2024, which system serves electronically all filed documents on the same day of filing to all counsel of record.

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