

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,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 1:14-cv-1523-RCL

ORDER

In January 2023, the Court granted in part and denied in part each party's motion for summary judgment. *See Steele v. United States* ("Steele MSJ Op."), 657 F. Supp. 3d 23 (D.D.C. 2023). The Court held "the PTIN and vendor fees for FY 2011 through 2017 were excessive to the extent that they were based on" certain specified activities. *Id.* at 48. The Court ruled that it would "remand to the IRS to determine an appropriate refund for the class that is consistent with this Opinion and the accompanying Order." *Id.* at 49. Specifically, the Court ordered the IRS to

determine in a manner consistent with the accompanying Memorandum Opinion the amount of the FY 2011 through 2017 PTIN and vendor fees it lawfully charged return preparers by subtracting from the fees it actually charged a reasonable estimate of the cost of the activities identified [by the Court] as being invalid bases for an IOAA fee.

Remand Order 2, ECF No. 222. The Remand Order required the IRS to "use the 2010 Cost Model and fee amount of \$50 as the baseline for the FY 2011 through 2015 PTIN fees and the 2015 Cost Model and fee amount of \$33 as the baseline for the FY 2016 and 2017 PTIN fees." *Id.* It also directed the IRS to "use its initial contract with Accenture and fee amounts of \$14.25 for new

registrations and \$13 for renewals as the baseline for the FY 2011 through 2016 vendor fees and the subsequent contract (to the extent it contemplates different activities) and fee amount of \$17 for the FY 2017 vendor fee.” *Id.*

After the Court issued this order, however, the parties jointly moved under Fed. R. Civ. P. 60(a) for the order to be amended. Amend Mot., ECF No. 232. The parties requested two changes.

First, they asked the Court to amend the Remand Order to “to reflect the actual effective dates of the government portion of the PTIN fees at issue in the litigation.” *Id.* at 2. Specifically, they asked the Court to direct the IRS to “use the 2010 Cost Model and fee amount of \$50 as the baseline for the *October 1, 2010 to October 31, 2015* PTIN fees and the 2015 Cost Model and fee amount of \$33 as the baseline for the *November 1, 2015 to July 10, 2017* PTIN fees.” Proposed Order 1, ECF No. 232-2 (emphasis added). The parties explained that the \$50 PTIN fee was in effect until October 31, 2015, one month beyond FY 2015. Amend Mot. 2. And the \$33 PTIN fee was not in effect for the first month of FY 2016. *Id.* In addition, the IRS stopped charging PTIN fees on July 10, 2017, before the end of FY 2017. *Id.*

Second, the parties asked for similar changes concerning the effective dates of the vendor portion of the PTIN fees. *Id.* They requested that the Court order the IRS to “use its initial contract with Accenture and fee amounts of \$14.25 for new registrations and \$13 for renewals as the baseline for the *October 1, 2010 to October 31, 2015* vendor fees and the subsequent contract (to the extent it contemplates different activities) and fee amount of \$17 for the *November 1, 2015 to July 10, 2017* vendor fee.” Proposed Order 2, ECF No. 232-2 (emphasis added).

The Court obliged, granting the motion and issuing an Amended Remand Order with the parties’ requested changes. *See* Amend. Remand Order, ECF No. 236.

Since then, the IRS has completed its calculations, estimating the amount of the Court-ordered refund to be \$167,766,068. Notice, ECF No. 256. To explain the methodology behind the IRS's estimate, the IRS has submitted two declarations from Kimberly D. Rogers, Director of the Return Preparer Office of the IRS. *See* 1st Rogers Dec., ECF No. 257; 2d Rogers Dec., ECF No. 270. Plaintiffs have moved to "vacate" the IRS's estimate, Mot. to Vacate, ECF No 276, which the government has opposed, Opp'n, ECF No. 280. The parties have briefed several issues relating to the IRS's work on remand.

Yet the Court sees no indication that the IRS's estimate complied with the changes in the Amended Remand Order. The First Rogers Declaration cites the Court's Memorandum Opinion and initial Remand Order, but not the Amended Remand Order. 1st Rogers Dec. ¶ 5. In explaining the agency's calculations, the declaration appears to proceed on the basis of the initial Remand Order, not the amended version, as Rogers states that: the IRS used the 2010 Cost Model to estimate the refund amount for FY 2011 to 2015 (not October 1, 2010 to October 31, 2015), *id.* ¶ 17; the IRS used the 2015 Cost Model and fee amount of \$33 for FY 2016 to 2017 (not November 1, 2015 to July 10, 2017), ¶ 24; the IRS used the initial contract with Accenture and fee amounts of \$14.25 for new registrations and \$13 for renewals for FY 2011 to 2015 (not October 1, 2010 to October 31, 2015), *id.* ¶¶ 28, 32; and the IRS used the fee amount of \$17 for FY 2016 to 2017 (not November 1, 2015 to July 10, 2017), *id.* ¶ 50. The use of the wrong dates is echoed in the government's statement that the case was remanded to the IRS 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." Opp'n 4 (quoting *Steele* MSJ Op., 657 F. Supp. 3d at 39). Plaintiffs have not argued that the IRS's

estimate fails to rely on the actual effective dates of the fees. Indeed, neither party's briefing acknowledges the change made by the Amended Remand Order.


As far as the Court can tell, the IRS calculated its estimate as if the Court had never amended the Remand Order. If so, the proper course would seem to be remanding this matter back to the IRS to provide an estimate consistent with the Court's Amended Remand Order. Nonetheless, the Court hesitates to find fault in the IRS's estimate on a basis not briefed by the parties.

Accordingly, it is hereby **ORDERED** that, within ten (10) days, the defendant shall show cause as to why this matter should not be remanded back to the IRS for failure to comply with the Court's Amended Remand Order. In particular, the defendant shall address whether the IRS arrived at its estimate based on the dates in the initial Remand Order or the Amended Remand Order. If the former, the defendant shall explain the appropriate corrective action.

Plaintiffs may respond within seven (7) days of the IRS's submission.

It is **SO ORDERED**.

Date: 2-2-24



Royce C. Lamberth
United States District Judge