

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,)	Civil Action No.: 1:14-cv-01523-RCL
<i>Plaintiffs,</i>)	
)	
v.)	
)	
United States of America,)	
<i>Defendant.</i>)	
_____)	

THE UNITED STATES’ MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant, the United States of America, moves for partial summary judgment.

This case stems from a challenge to the IRS’s authority to charge a fee for the issuance and renewal of PTINs. In 2017, the Court of Appeals for the D.C. Circuit held that the IRS may charge a fee for the issuance and renewal of a PTIN. *Montrois v. United States*, 916 F.3d 1056, 1067–68 (D.C. Cir. 2019). The Court Appeals remanded the case to answer only whether “the amount of the fee is reasonable and consistent with the [IOAA].” *Id.* at 1068.

Under the IOAA agencies can recoup costs for goods and services they provide through a fee. 31 U.S.C. § 9701. Agency fee schedules are entitled to “more than mere deference.” *Cent. & S. Motor Freight Tariff Ass’n, Inc.*, 777 F.2d at 729. The IOAA does not require “exact calculations,” “just reasonable approximations.” *Nat’l Ass’n of Broadcasters v. F.C.C.*, 554 F.2d 1094, 1130 n. 28 (D.C. Cir. 1976). Courts should not “sit as

a board of accountancy” or “second-guess” the Service’s determination of the fee needed to fully recover its cost. *Cent. & S. Motor Freight Tariff Ass'n, Inc.*, 777 F.2d at 724.

The cost models used to set the fees were based on information available and reasonable estimates looking forward and, thus, in accordance with the IOAA and OMB Circular A-25. Therefore, partial summary judgment should be entered for the United States for the PTIN user fees established by the IRS (not to include costs associated with the Registered Return Preparer Program at issue in *Loving v. Internal Revenue Serv.*, 917 F. Supp. 2d 67 (D.D.C. 2013) *aff'd*, 742 F.3d 1013 (D.C. Cir. 2014)). .

In addition, the United States is entitled to an offset against its total liability for the *Loving* costs included in the PTIN fees because it was enjoined from charging fees from June 2017 through August 2020. During this time, the IRS paid the vendor for administering PTIN registration and renewals. Also during this time, the IRS did not collect PTIN user fees to cover its costs of administering the PTIN Program. The IRS is entitled to offset any liability to the plaintiffs for these amounts.

In support of this motion, the United States is submitting a memorandum of law, a statement of undisputed material facts, and an appendix with exhibits 1-50.

Signature block on the following page.

Dated: March 23, 2022

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Deputy Assistant Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION was filed with the Court's ECF system on March 23, 2022, which system serves electronically all filed documents on the same day of filing to all counsel of record.

/s/ Stephanie A. Sasarak _____
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