

Court Strikes Down IRS PTIN Fees; Agency Could Owe Millions

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By William Hoffman

The IRS may owe hundreds of millions of dollars in refunds to tax return preparers who paid to register and renew their preparer tax identification numbers, after a district court held June 1 that the agency did not have legal or regulatory authority to charge PTIN fees.

In *Steele v. United States*, [No. 1:14-cv-01523 \(D.D.C. 2017\)](#), Judge Royce C. Lamberth of the U.S. District Court for the District of Columbia wrote, “If tax return preparers were regulated entities required to obtain licenses, this case would be very different,” allowing the government to cite precedent that it is authorized to charge the fees. “However, *Loving* makes clear that the IRS may not regulate in this area or require that tax return preparers obtain an occupational license,” he said.

The D.C. Circuit’s 2014 decision in *Loving v. IRS*, [742 F.3d 1013 \(D.C. Cir. 2014\)](#), knocked down an IRS plan to regulate return preparers, after the court held neither the Treasury Department nor the IRS had authority to do so because tax return preparation did not constitute practice under Circular 230. The IRS declined to appeal the *Loving* decision.

Allen Buckley, an attorney and CPA who represented the plaintiffs in *Steele*, said of that decision, “The judge had the courage to do the right thing despite the fact that the federal government has serious financial problems.” A solo practitioner in Atlanta, Buckley took up the cause against PTIN fees starting in 2010.

Buckley said the decision means the IRS could be on the hook for all PTIN registration and renewal fees paid as far back as 2010. He said his unofficial calculation suggests the agency may have to pony up between \$200 million and \$300 million. The IRS [as of June 2](#) counted 710,553 current PTIN holders and over 1.3 million cumulative PTINs issued since September 2010.

Buckley emphasized that *Steele* did not challenge the right of the IRS to require that tax return preparers acquire PTINs — just whether the agency can charge for them.

Dan Alban, an attorney at the Institute for Justice, which represented the plaintiffs in *Loving*, praised the *Steele* decision. He said his back-of-the-envelope calculation of the decision’s cost was \$275 million to \$300 million.

“This is a very significant ruling, because it shows that even an agency like the IRS cannot charge user fees . . . without statutory authority or licensing authority,” Alban said. He added that he found at least 19 references to the *Loving* decision in *Steele*.

Alban said the Institute for Justice had no role in the *Steele* case, though because he and a

paralegal registered for a PTIN in 2013, he figures they're owed \$128.50 if the latest decision is made final.

Neither Buckley nor Alban predicted whether the IRS would appeal *Steele*, though both said Lamberth's holding is "strong" on both statutory and regulatory grounds. "I feel good about it," Buckley said. "I think justice was served."

The IRS did not have any immediate comment, said agency spokesman Dean Patterson.