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by Allen Buckley

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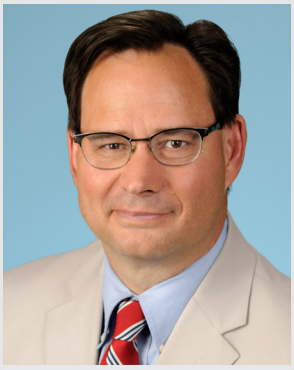

Allen Buckley

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In this article, Buckley examines the history of litigation challenging the IRS's transformation of preparer tax identification numbers from simple identification numbers into licenses.

Introduction

Before 2010, a preparer tax identification number was simply an identification number. The IRS did not charge any fees for it. Because a PTIN did not change once it was issued, the matter was done. But in 2010, the IRS converted the PTIN into a license. Although the IRS's licensing authority was later shut down, the agency continues to take the position that this simple identification number magically supplies it with licensing powers. The IRS has abused its power in doing so. To this day, once issued, a PTIN does not change.

In 2009 the IRS examined the tax return preparer industry for potential licensing purposes. Probably not surprisingly, the IRS decided it had licensing power,[1] despite the fact that many prior legislative attempts to create licensing power in the agency had failed. For its authority to do this, the IRS relied mainly on 31 U.S.C. section 330. But it used the PTIN statute, IRC section 6109(a)(4), as well. Fees would apply using 31 U.S.C. section 9701.

31 U.S.C. section 330 provides:

> Subject to section 500 of title 5, the Secretary of the Treasury may — (1) regulate the practice of representatives of persons before Treasury; and (2) before admitting a representative to practice, require that the representative demonstrate — (A) good character; (B) good reputation; (C) necessary qualifications to enable the representative to provide persons valuable service; and (D) competency to advise and assist persons in presenting their cases.

Under section 500 of title 5, attorneys and CPAs are authorized to represent their clients before the IRS. The IRS used this 1884 (pre-income-tax) statute to attempt to regulate return preparers.

IRC section 6109(a)(4), the PTIN statute, provides:

> a. Supplying of Identifying Numbers — When required by regulations prescribed by the Secretary:
>
> (4) Furnishing identifying number of tax return preparer. Any return or claim for refund prepared by a tax return preparer shall bear such identifying number for securing the proper identification of such preparer, his employer, or both, as may be prescribed.

Subsection (c) of section 6109 provides:

> Requirement for Information. — For purposes of this section, the Secretary is authorized to require such information as may be necessary to assign an identifying number to any person.

The limiting language of subsection (c) is important. The Supreme Court has ruled against

[1] IRS Publication 4832, "Return Preparer Review" (Dec. 2009).

agencies when a power not authorized by statute is granted by the agency, to the agency.[2] Federal statutes must be interpreted by giving words their ordinary meanings, with words, phrases, and sentences examined in context.[3] So, by law, any information request beyond that necessary to issue a PTIN is unlawful.

Section 6109(a)(4) was enacted as part of the Tax Reform Act of 1976. And its legislative history provides that "the requirement that the preparer place his identification number on the return itself, is to enable the IRS [to] identify all returns prepared by a specific individual in cases where the IRS has discovered some returns improperly prepared by that individual."[4] Originally, the statute required the preparer's Social Security number to be placed on prepared returns. When identity theft became a problem, Congress amended the statute via the IRS Restructuring and Reform Act of 1998 to permit (but not require) an alternative number — a PTIN — at no cost. Some preparers acquired a PTIN; others did not. Form W-7P, "Application for IRS Individual Taxpayer Identification Number," was used to apply for a PTIN. Given that all that is necessary to identify someone in the United States is name and SSN, the 2003 version of this form (like other versions) logically required name, SSN, date of birth, and address. Once issued, a PTIN did not change. The system worked.

31 U.S.C. section 9701 is the user fee statute. It was used to supply fees and charges in accordance with the licensing system created using 31 U.S.C. section 330 and IRC section 6109(a)(4). It provides through the regulations that an agency may charge for a service or thing of value it provides. The charges must be fair and based on (1) the cost to the government; (2) the value of the service or thing of value to the recipient; (3) the public policy or interest served; and (4) other relevant facts.

In 2010 and 2011 the IRS used 31 U.S.C. section 330 and IRC section 6109(a)(4) to create a licensing scheme for return preparers. A PTIN became a license, and it would need to be annually renewed. Instead of Form W-7P, Form W-12, "IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal," or its online equivalent would be used to apply for and renew a PTIN. In addition to the Form W-7P information (name, SSN, date of birth, and address), Form W-12 would require: business address and phone number, business identification, email address, past felony convictions record, address used on the preparer's last filed tax return, filing status for the last individual return filed, a statement to the effect of the preparer being current on all federal taxes, and a list of professional credentials. These additional information requirements are consistent with a licensing regime. But they are not consistent with section 6109 and its limited purpose.

Licensing fees came with this licensing power. Beginning in 2010, the fees were set at $64.25 for PTIN issuance and $63 for PTIN renewal. Of these amounts, $50 would go to the IRS, and the balance would go to Accenture Federal Services LLC. Accenture was responsible for issuing and renewing PTINs, and helping the IRS with licensing activities. Many return preparers already had a PTIN, and that number would not change. But consistent with a licensing scheme, they would have to annually renew it. As discussed later, to charge fees, an agency must supply a special benefit to the person being charged, and the person being charged must voluntarily act to receive the service or good. Generally, a special benefit is something of value to the recipient that is not available to the public. Thus, through the regulations issued on September 30, 2010, the IRS said it was granting a special benefit through PTIN issuance. The final regulation issued under section 6109(a)(4) provided: "By limiting the individuals who may prepare all or substantially all of a tax return or claim for refund to individuals who have a PTIN, the IRS is providing a special benefit to individuals who obtain a PTIN."[5] It also said: "Having a PTIN is a special benefit that allows specified tax return preparers to prepare all or

[2] *City of Arlington v. FCC*, 569 U.S. 290 (2013); *FDA v. Brown & Williamson Tobacco*, 529 U.S. 120, 124 (2000).

[3] *Id.*; *Southwest Airlines Co. v. Saxon*, 596 U.S. __ (2022); *MCI Telecommunications Corp. v. American Telephone, Telegraph Co.*, 512 U.S. 218 (1994).

[4] S. Rep. No. 94-938, at 349-356 (1976).

[5] T.D. 9503.

substantially all of a tax return or claim for refund for compensation." So the IRS created a licensing power in itself.

In 2013 in *Loving*,[6] the U.S. District Court for the District of Columbia struck down the licensing regime in a case brought by three undocumented return preparers (that is, return preparers who were not attorneys, CPAs, or enrolled agents). The plaintiffs targeted the testing and continuing education requirements of the new licensing scheme that were applicable only to uncredentialed return preparers. They did not challenge PTIN fees or the PTIN requirement. The IRS appealed and lost. Importantly, the D.C. Circuit said the following when upholding the return preparers' victory: "We agree with the District Court that the IRS's authority under section 330 [of title 31] cannot be stretched so broadly as to encompass authority to regulate tax-return preparers."[7] So 31 U.S.C. section 330 was effectively eliminated from the licensing scheme, and the only authority left was the PTIN requirement.

Given all this, it should be apparent that the IRS only has the lawful authority to issue PTINs. There is no lawful basis for the IRS to require the renewal of PTINs or to charge fees. There is no licensing power. Now, let's turn to the litigation that has been undertaken in an attempt to get to the lawful result.

Brannen

I recall what I said in the fall of 2010 when my former attorney and CPA partner Murray Saylor told me, after we had both been preparing returns for decades, that the IRS was going to soon start charging us annual fees to be able to do so. "What?" At a State Bar of Georgia seminar in December 2010 I gave a speech on Roth IRA conversions. Many in the audience were both attorneys and CPAs. As part of the speech, I noted the federal government was broke and thus, in the long-term, major changes would need to be made. But in the short-term, we could expect to be nickeled and dimed on things like the PTIN fee. I said I'd research the legality in January. They were glad I said so. At the seminar I met Jesse E. Brannen III.

In 2011 I was retained by Brannen to bring a class action lawsuit challenging PTIN fees. Because Brannen was both an attorney and a CPA, he could not attack the testing and continuing education requirements (because they did not pertain to him). His case was dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim on which relief could be granted. In other words, the law did not permit a suit. An appeal was filed, and oral argument was held in May 2012. I recall conversing with only one judge on the panel. (Combined, the two other judges said little.) I recall telling him that Congress could have statutorily permitted the licensing of return preparers, but it never did so. (Our briefs noted the many unsuccessful legislative attempts.) The court affirmed the dismissal, taking the position that a PTIN was a license. The Eleventh Circuit's opinion said that since section 6109(a)(4) authorizes the IRS to assign PTINs, "a person cannot prepare tax returns for another for compensation unless that person obtains from the [IRS] the required identifying number."[8] So, an identification requirement was deemed to provide licensing power. A petition for certiorari was filed with the Supreme Court and denied.

The 2012 *Tax Notes* Article

In a 2012 *Tax Notes* article, I summarized *Brannen* and explained why the entire licensing scheme, except the PTIN requirement, was unlawful.[9] I noted that the *Loving* case had recently been filed.

The article summarized the IRS's licensing scheme, which had been created without statutory authority, and noted the statutes it relied on. It explained that 31 U.S.C. section 330 was enacted long before the income tax existed, and that it allows the Treasury secretary to regulate the "practice of representatives of persons before the Treasury Department" and require that they meet ethical standards. It said that return

[6] *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013).

[7] *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014).

[8] *Brannen v. United States*, 682 F.3d 1316, 1319 (11th Cir. 2012).

[9] Allen Buckley, "Is Treasury's New Reg Scheme for Return Preparers Lawful?" *Tax Notes*, Oct. 15, 2012, p. 285.

preparation was not "representation" of someone before the IRS. It noted that IRC section 6109(a)(4) was never intended to grant Treasury a licensing power. It summarized how the user fee statute, 31 U.S.C. section 9701, was applied to charge fees. The article also explained that under Supreme Court precedent, for a fee to be charged, a "special benefit" must be supplied incident to a voluntary act.[10]

The article explained that IRC section 6109(a)(4) does not do anything other than permit the IRS to require return preparers to acquire an identification number and place it on returns. It noted, in contrast, that section 7001(a) provides: "All persons undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Secretary." Interestingly, the regulations issued incident to the licensing scheme never use the term "license." Instead, they state a PTIN confers the right to prepare tax returns. That's a distinction without a difference. Only Congress can grant licensing power.[11] As I said during oral argument in *Brannen*, Congress could have granted licensing power to the IRS, but never did. Concerning annual renewal, note the difference between the language of section 6109(a)(4) and that of section 5112, which reads: "On first engaging in business and thereafter on or before the first day of July of each year, each importer, manufacturer, and dealer in firearms shall register with the Secretary." Other code provisions requiring annual filing exist. There is no statutory basis for renewal of a PTIN. Lacking a statutory basis for renewal, a regulation cannot require it.[12]

The article concluded by saying: "There is no statutory basis for any of the new regulatory scheme except for the requirement that a PTIN be acquired. Thus, with the PTIN acquisition requirement exception, the scheme is unlawful."[13] Acquiring a PTIN is not done through a voluntary act, and the Supreme Court defines a fee as a charge for something voluntarily requested. A charge that is not a fee is a tax, and agencies do not have taxing power. To this day, based on statutory law and Supreme Court precedent, I'm certain this conclusion is still correct. But the litigation results to date skew from that correct determination.

Loving

Loving was filed in March 2012. A decision was handed down in favor of the three uncredentialed return preparers in early 2013. (The judge, James E. Boasberg, was appointed by President Obama, and the licensing scheme was created during his administration.) As noted, the plaintiffs targeted the IRS's licensing activities, not the PTIN requirement or PTIN fees. They successfully contested the testing requirement and fees and the continuing education requirements and fees. They did so by taking the position that 31 U.S.C. section 330 does not apply to return preparation. The court agreed. The IRS appealed.

In February 2014 the D.C. Circuit affirmed the district court's ruling in favor of the three uncredentialed return preparers. It said: "In the first 125 years after the statute's enactment, the Executive Branch never interpreted the statute to authorize regulation of tax-return preparers." This sentence is close to the following sentence from my 2012 *Tax Notes* article: "Thus, it should be readily understandable why, in the more than 125-year history of the law, it had never been applied to tax compliance work." The 2014 *Loving* decision is largely like the recent Supreme Court decision of *West Virginia v. EPA*.[14]

The IRS did not file a petition for certiorari in *Loving*. Note where things were left after *Loving* became final: The only remaining statutory authority for the licensing scheme was and remains section 6109(a)(4) — an identification requirement. Surely, the IRS wouldn't try to continue with its licensing activities with only an identification statute to rely on. But that's exactly what it did. It continued using the same Form W-12 with all the licensing questions, and it reduced

[10] *National Cable Television Association Inc. v. United States*, 415 U.S. 336 (1974).

[11] *Cf. Brown & Williamson Tobacco*, 529 U.S. at 120, 124.

[12] *West Virginia v. EPA*, No. 20-1530 (U.S. June 30, 2022); *City of Arlington*, 569 U.S. 290 at 298; *Brown & Williamson Tobacco*, 529 U.S. at 120, 124.

[13] Buckley, *supra* note 9.

[14] *West Virginia v. EPA*, No. 20-1530 (2022).

the $63 renewal fee by a mere 20.6 percent, to $50. It also created the Annual Filing Season Program, a voluntary system in which return preparers could take an IRS test and — once passed and accompanied by the completion of IRS-approved continuing education courses — receive essentially an IRS seal of approval regarding the ability to prepare returns. No one must participate in the program. To this day, Form W-12 continues to have the same licensing questions that existed pre-*Loving*. And the IRS has continued to require PTINs (lawful) and the annual renewal of PTINs (unlawful).

The litigation in *Brannen* tried to do two things: (1) strike down the IRS's licensing power, and (2) recoup licensing fees. *Loving* is important because it broke the logjam by eliminating the first of these two hurdles. After *Loving*, what should have been left to litigate was the recovery of licensing fees when no licensing power existed — designated by the IRS as PTIN fees. Because the IRS's licensing power was gone, that should have been easy. It hasn't been.[15]

Buckley

Believing firmly that the *Brannen* case was incorrectly decided, I brought my own action in January 2013, attempting to strike down the IRS's licensing power and PTIN fees. After researching the matter, I concluded the federal government could be sued in any U.S. district court. I filed suit in Chattanooga, Tennessee, within the jurisdiction of the Sixth Circuit. The Department of Justice immediately sought removal to the Northern District of Georgia, which is in the Eleventh Circuit (where the *Brannen* precedent was looming). Over my objection, it succeeded.[16] The government did not file a motion to dismiss but instead won on summary judgment based on the *Brannen* decision. In 2014 I appealed to the Eleventh Circuit. By the time of the oral argument, the D.C. Circuit's *Loving* decision was final. At oral argument, one judge said many of the fees could no longer be charged considering *Loving*. The government's lawyer agreed. But because co-counsel and I had filed a similar case several months earlier (*Steele*), at the urging of my co-counsel, I withdrew my appeal and left the issues for the U.S. District Court for the District of Columbia in *Steele*.

Steele

In February 2014 Minnesota CPA Adam Steele retained my firm's services to challenge PTIN fees and related matters. He was referred to me by the Institute for Justice, which had successfully litigated *Loving* with my pro bono help. I recommended to Steele that he file a refund claim using Form 843, "Claim for Refund and Request for Abatement," and wait six months to see if the IRS would accept its loss and refund his PTIN fees. (The six-month waiting period applies to tax refund claims under section 7422. Although I did not think it applied, I recommended he try it, just to be on the safe side.) He did so. The six-month period went without a response from the IRS, although he received an odd rejection letter afterward in December 2014.

On September 8, 2014 (after both the time for the IRS to file a petition for certiorari in *Loving* and Steele's six-month refund claim period had passed), a class action lawsuit was filed against the United States for PTIN fees and related matters, including virtually everything not kicked out by *Loving* except the requirement that return preparers file for and receive (that is, one time) a PTIN. Also on September 8, 2014, *Forbes* ran an article about the case, summarizing why the IRS was wrong for holding on to licensing fees after it had lost licensing power in *Loving*.[17] Thereafter, some class action law firms became interested.

Most of the remainder of this article will examine the *Steele* case, known in the D.C. Circuit as *Montrois*,[18] after Brittany Montrois, a representative in the class action along with Steele and a third class representative, Joseph Henchman.

[15] After the 2014 decision in *Loving*, the IRS refunded testing fees charged to uncredentialed return preparers.

[16] *Buckley v. United States*, No. 1:13-cv-01701 (N.D. Ga. 2013).

[17] Kelly Phillips Erb, "IRS Announces PTIN Renewals, Registration for Voluntary Certification," *Forbes*, Sept. 8, 2014.

[18] *Montrois v. United States*, 916 F.3d 1056 (D.C. Cir. 2019).

Steele — 2014 and 2015

In late 2014, I worked with co-counsel on *Steele*. A motion for class certification was prepared. The Justice Department declined my request to bifurcate the case between the pure issue of whether anything could be charged for a PTIN and the alternative issue of what could be charged if something could be charged. The motion seeking that relief was denied by the court and discovery began.

On December 31, 2014, a group of attorneys filed a parallel action with a different (single) class representative. They attempted to have their case consolidated with *Steele* and to have their group of attorneys handle the consolidated case. A legal fight ensued. (In November 2014 I had ceased my affiliation with my co-counsel, and the next month brought on a firm with significant class action experience to help with the case.) On June 30, 2015, after five months of briefing, our group of attorneys was chosen to handle the case. Experience with PTIN matters helped us win.

Discovery continued until the government decided it no longer wanted to produce documents or deal with discovery. It essentially said: "Maybe bifurcation is not such a bad idea." An agreement was reached that bifurcation would take place, with the issue of whether anything could be charged proceeding for potential summary judgment. A revised class certification motion filing took place in 2015. Also, an amended complaint was filed, removing some of the relief originally sought.

The IRS's 2015 Actions Regarding Fees

In 2015, after *Loving* eliminated 31 U.S.C. section 330 from the equation — leaving only the identification requirement of IRC section 6109(a)(4) — the IRS issued a regulation listing the following activities chargeable as PTIN fees:

> The PTIN user fee is based on direct costs of the PTIN program, which include staffing and contract-related costs for activities, processes, and procedures related to the electronic and paper registration and renewal submissions; tax compliance and background checks; professional designation checks; foreign preparer processing; compliance and IRS complaint activities; information technology and contract-related expenses; and communications. . . . The determination of the user fee no longer includes expenses for personnel who perform functions primarily related to continuing education and testing for registered tax return preparers.[19]

The new fee was $50, of which $17 would go to Accenture and $33 would go to the IRS. So, after a complete loss of licensing power, the PTIN fee was reduced by only 20.6 percent for renewals (that is, from $63 to $50). And charges remained to cover licensing activities other than testing and continuing education of uncredentialed preparers. I submit: This action was grossly unreasonable and not done in good faith. This is not a difference of opinion matter; no reasonable person could interpret section 6109 as granting these powers.

The IRS (in regulations) and the Department of Justice (in its briefs) have consistently interpreted the *Loving* opinion as meaning only the costs of IRS testing and the continuing education of uncredentialed preparers cannot be charged. They disregard the important and previously noted sentence in *Loving* that says: "We agree with the District Court that the IRS's authority under section 330 [of title 31] cannot be stretched so broadly as to encompass authority to regulate tax-return preparers." How can one possibly get the power to perform tax compliance and background checks, professional designation checks, foreign preparer processing, compliance, and IRS complaint activities from an identification statute — IRC section 6109(a)(4) — that says: "Any return or claim for refund prepared by a tax return preparer shall bear such identifying number for securing the proper identification of such preparer, his employer, or both, as may be prescribed"? As noted, agencies can only draw their power from a delegation from Congress. The IRS can and will do whatever it wishes, but it cannot charge people for anything unless the people act voluntarily and receive a special benefit in exchange for their payment.

[19] T.D. 9742.

Steele — 2016

In 2016 the court issued an order certifying the class. The court initially denied the plaintiffs' restitution claim — the legal basis for recovering overpayments. After additional briefing, full class certification was granted, including the potential right to recover fees via restitution. (It is difficult to bring a class action against the federal government or an agency thereof. Many things need to line up.) Also in 2016, a summary judgment motion was filed, and related briefing was done on the issue of whether fees could be charged.

Steele — 2017

On June 1, 2017, the court issued an order granting plaintiffs' motion for summary judgment regarding PTIN fee charges, thereby ordering all fee charges to cease and for all fees charged to date (then, approximately $270 million) to be refunded. (After the IRS lost *Loving* in 2014, it voluntarily refunded the testing fees.) Although neither the original complaint nor the amended complaint challenged the PTIN requirement, the opinion included a section stating the IRS could require return preparers to get and use a PTIN. But it said nothing about renewals of PTINs. (Like *Steele*, neither *Brannen* nor *Buckley* challenged the PTIN requirement because, as noted above and in the 2012 *Tax Notes* article, I've always believed the requirement was and is lawful.) In any event, regarding fees, a complete turnaround had been experienced from *Brannen* — from a loss (not even being allowed to bring an action) to complete victory.

The June 1, 2017, memorandum opinion of the district court cited Supreme Court precedent that: "Fees are 'incident to a voluntary act' and connote a benefit."[20] It noted anyone could acquire a PTIN. It ruled that a PTIN did not "pass muster as a 'service or thing of value'" for which fees could be charged under the Independent Offices Appropriations Act of 1952. (As codified, the statute of the act under which fees could be required is 31 U.S.C. section 9701.) Based on *Loving*, the court substantively rejected the pre-*Loving* decisions in *Brannen* and *Buckley*. The court found no evidence in the administrative record of identity theft protection that the government had claimed provided the necessary "special benefit" required for fees to be charged under 31 U.S.C. section 9701.

The government then unsuccessfully sought a stay of the injunctive relief prohibiting the charging of PTIN fees. In the brief it filed arguing for a stay, it continued to take the position that a PTIN is a license, by stating: "The Service must continue to allow tax return preparers to obtain and renew PTINs during the pendency of any appeal because a PTIN is required to be a tax return preparer and applicants continue to seek that status." That's incorrect. A PTIN is an identification number the IRS can require people to get and use on prepared returns, but it is not a license. People could be penalized for not following the requirement, as is the case for many other requirements under the code and other U.S. statutory law. Given the huge number of requirements in the U.S. Code and federal regulations, if requirements equate to licenses, then the federal government has a huge untapped source of revenue at its disposal.

The district court's 2017 decision in *Steele* was examined in a 2017 *Tax Notes* article by professor Donald T. Williamson of American University.[21] While Williamson urged Congress to enact legislation to permit the IRS to charge fees and otherwise regulate return preparers, the article nevertheless said: "This article examines the court's reasoning in *Steele* and concedes that the decision is, in fact, correct." (I agree the decision was correct, but I'm against pressing Congress to permit charging fees and allowing the IRS to regulate return preparers. A better focus would be on tax simplification.) Regarding the probability of the government winning on appeal, Williamson said: "The government may be able to convince a panel of judges from the D.C. Circuit that in fact, PTINs are things of value entitling the IRS to charge a fee for their issuance because they offer confidentiality of SSNs. However, that's a fairly slender thread on which to base an

[20] *Steele v. United States*, 260 F. Supp. 3d 52, 62 (D.D.C. 2017), citing *National Cable Television Association*, 415 U.S. at 336, 340-341.

[21] Williamson, "The End of PTINs? — Not for Now at Least," *Tax Notes*, Sept. 4, 2017, p. 1263.

argument that the district court summarily dismissed."

Steele/Montrois — 2018

Not surprisingly, the government appealed the district court's 2017 summary judgment ruling to the D.C. Circuit. Briefing and oral argument took place in 2018. I was second chair at the oral argument. Four arguments were scheduled for that day. Of course, ours was last. A rather large crowd showed up. It's not often (I can't recall ever) that the IRS is ordered to return a large amount of money and stop doing something via a class action. Three judges handled the matter. Two (Patricia Millett and Sri Srinivasan) were appointed by Obama. The third, Merrick Garland, was appointed by President Clinton. Of the panel, Garland did the most talking — by far. And he had few questions for the government's lawyer. He did not wish to hear anything about a voluntary act being necessary for a fee to potentially be chargeable. Query the odds of drawing an all Democrat-appointed panel including Garland. (I think most lawyers who litigate against the federal government, myself included, think Democrat-appointed judges generally are more apt to favor the government than are Republican-appointed judges.)

Steele/Montrois — 2019

On March 1, 2019, the D.C. Circuit issued its ruling.[22] The three judges found the "fairly slender thread" Williamson contemplated in his *Tax Notes* article. The court ruled that the costs of issuing and renewing PTINs (and maintaining PTINs in a database) could be charged. It did not mention the Supreme Court's requirement that a fee can exist only via a voluntary act by the person paying the fee. Rather, it mentioned only the "special benefit" requirement and said the necessary special benefit existed in the form of identity theft protection. Specifically, a PTIN eliminates the possibility of an SSN being reported. It did not accept the preparers' argument that the regulations permit the preparer's identification number to be removed from the copy of the return supplied to the taxpayer. *Brannen* was not mentioned in the opinion. (In April 2018 I had filed a supplemental brief in *Montrois*, noting the incredible implications of deeming requirements giving rise to licensing powers, as *Brannen* had done.) The case was remanded to the district court to figure out the costs of issuing and renewing PTINs.

Approximately the first third of the analytical text of the *Montrois* opinion is dedicated to IRC section 7422 and the issue of whether one or more refund claims had to be filed. The government had agreed none needed to be filed. The court ruled none were required.

Like Williamson, I think the district court got it right in 2017. Thus, I think the D.C. Circuit got it wrong. There should be no fees. Under the licensing scheme, a return preparer was (and still is) required to acquire and use a PTIN. As *Loving* provides, the IRS does not have regulatory power under 31 U.S.C. section 330, leaving only the PTIN requirement. Because people have the right to prepare tax returns and acquiring a PTIN became mandatory, getting a PTIN became an involuntary act. As the district court noted, *National Cable Television Association* provides that a fee is "incident to a voluntary act."[23] There is no fee, rather, a charge from the IRS. *Montrois* disregarded the voluntary act requirement, but it remains part of the law. And it makes sense. It supplies a means of discerning a special benefit for which a fee can be charged from a requirement for which fees cannot lawfully be charged. There would be tremendously less need for Congress if agencies could simply pass their costs on to the public. (Requiring people and organizations to do or not do things is what agencies do.) Anyone can prepare tax returns because "whatever is not forbidden on our blessed shores is permitted."[24] Absent a (very rare) prohibiting injunction under section 7407, anyone can prepare tax returns. Renewals began in 2011 via the licensing system because a PTIN (that is, a simple, permanent identification number) became a license. An agency will almost always be able to come up with some sort of benefit to the persons or companies being regulated to satisfy the "special

[22] *Montrois*, 916 F.3d at 1056.

[23] *National Cable Television Association*, 415 U.S. at 336, 240.

[24] *Thorne v. Jones*, 765 F.2d 1270, 1274 (5th Cir. 1985).

benefit" requirement. So, unless the voluntariness requirement is applied, agencies can largely pass their costs on to the public without needing to get approval from Congress. That's a major problem — the power of the executive branch is greatly increased, while the power of Congress is greatly decreased. The Supreme Court's recent decision in *West Virginia v. EPA* attempts to pull back the reins of agencies for major questions, but what question is major?

Upon remand to the district court to determine the costs incurred to generate and maintain a database of PTINs, you would assume the IRS would act in good faith and interpret this language properly going forward. You would be wrong. It has done nothing of the sort. As explained below, the Department of Justice has continued the line of unreasonableness in the 2022 summary judgment briefing process, perhaps taking direction from the IRS.

Montrois says the following regarding the preamble to the 2015 user fee regulations described earlier:

> It is true that the IRS's accounting in the regulatory materials of the services paid for by the PTIN fee generally describes certain functions that, depending on their precise scope, could be seen to raise questions about whether they range beyond the IRS's authority after *Loving* — for example, "background checks," "professional designation checks," and "compliance and IRS complaint activities." 80 *Fed. Reg*. at 66794. But the IRS also explained that the fee is "based on direct costs of the PTIN program, which include staffing and contract-related costs for activities, processes, and procedures related to the electronic and paper registration and renewal submissions." *Id*. That explanation survives *Loving* because, as the district court held, the IRS's requirement that preparers obtain and renew a PTIN survives *Loving*.[25]

I read and have argued that this language supports kicking out all licensing activities while permitting costs for the issuance and renewal of PTINs. Also, the district court did *not* rule the IRS could require renewal of PTINs. I filed a petition for certiorari regarding *Montrois*; it was denied.

Also in 2019, a motion to compel was filed regarding Accenture, seeking the production of documents concerning its services incident to issuing and renewing PTINs. By a contract executed in 2010 and a subsequent contract executed in 2015, Accenture was responsible for issuing and renewing PTINs (and maintaining a database of PTINs). It did many other things under the contracts. In discovery, the government admitted Accenture had done its job. Subject to some confidentiality provisions, disclosure was later generally required by the district court.

Steele — 2020

Realizing PTIN renewal charges would not apply going forward if PTIN renewals stopped, I filed a motion seeking to enjoin renewal activities. In this regard, a PTIN is a permanent number, and the pertinent statute does not provide for renewal activities. In my filing, I explained how the D.C. Circuit was wrong when it said the district court had ruled PTIN issuance *and renewal* activities were lawful and noted that instead the district court had said PTINs could be required. I have never contested the PTIN requirement, and all litigation to date has not challenged the requirement. But renewal is a different matter. The government vigorously opposed the motion. It was and is hanging onto its licensing power through the PTIN requirement.

An attempt was made to amend the complaint to prohibit renewals as the original complaint had sought and to require the cost method ultimately to be determined by the court for historical costs from 2010-2017 to apply prospectively (that is, after the litigation ceased). The court ruled in favor of the government regarding both the injunction and the renewal aspect of the amendment (the government contested only the renewal cessation part of the amended complaint), ruling that amendment of the complaint at such a late time to challenge renewals would be prejudicial to the government. Query, how could that be possible? It also said factual allegations supporting the challenge were not provided in the amended complaint. But this

[25] *Montrois*, 916 F.3d at 1056.

was a pleading that included the entire pertinent history, not a brief. The injunction was denied based on the lack of a prayer for relief. The court approved the other aspects of the amended complaint, including the provision that the court's ultimate future ruling about costs would apply prospectively, thus preventing the need for a future class action or other lawsuit regarding PTIN subject matters (or at least concerning fees). The parties also agreed to only seek determination of 2010-2017 costs, and then to apply the court-approved method going forward.

2020 Fee Regulations

Also in 2020, the IRS issued regulations setting the PTIN user fee at $35.95, with $21 going to the IRS and $14.95 going to Accenture. So fees continued to head in the right direction. But logically, these fees must be much more than the cost of issuing or renewing a permanent nine-digit identification number — they certainly would be if the private sector were handling the matter. The preamble to the proposed new fee regulations[26] continued to take the position that a PTIN confers the right to prepare returns.

Steele — 2021

The year 2021 was dominated by discovery. The goal was to determine the "costs which the agency actually incurred" in "generating and maintaining a database of PTINs."[27] Both the government and Accenture made much of it difficult. Between 2021 and 2022, several motions to compel, etc. were filed.

To begin discovery, at the plaintiffs' request, the Justice Department supplied declarations from nine high-ranking employees in the IRS's Return Preparer Office. This office oversaw the licensing program and the issuance and renewal of PTINs. The first declaration was supplied by a former communications employee of the RPO. It supplied a breakdown of activities between PTIN-related matters and other matters, then further broken down between pre-*Loving* and post-*Loving* time frames. The declaration was supplied in December 2020. While I found some of the breakdowns unreasonable, the declaration was at least supplied as we had requested. After this declaration, we requested subsequent declarations supply more detail. Instead, they supplied less, and generally much less, detail. Not a single declaration after the initial declaration broke down time in a pre-*Loving* and post-*Loving* fashion, and most did not supply any breakdown of time between PTIN-related matters and other matters as had been requested. It seems a light bulb went off in someone's head at the Justice Department that not supplying that information would make getting the numbers difficult or impossible (and that was beneficial to the government).

Some of the declarations included statements that were hard to fathom. One person said that since 2011, all direct oversight work related to the Accenture contract involved the annual registration and renewal of PTINs. But contracts the IRS has had with Accenture at all times called for Accenture to do many more things than issue and renew PTINs. A claim that all the work done by IRS employees who worked with Accenture was PTIN-related is difficult to swallow.

Depositions followed the declarations. Getting the PTIN cost information in depositions also proved difficult. IRS employees and former employees were deposed throughout 2021. The only other deposition sought was from Accenture. It was scheduled to take place in late 2021 but did not take place until January 2022.

Late in 2021, I recognized that we did not have the necessary information to calculate the IRS's employee costs related to PTIN issuance and renewal. So I drafted interrogatories (plaintiffs' third set) to try to get the information. They targeted contract officer representatives (CORs) of the IRS, their superiors, communications personnel, and a few other groups. It appeared these people were the only ones who could have been involved in the issuance and renewal of PTINs. (A COR is an IRS employee who works with a government contractor to make sure the contract obligations are met.) For CORs, the interrogatories asked, by year, what percentage of time was spent working with Accenture versus doing other things. For the CORs' supervisors, the question was what percent of time was spent overseeing the CORs.

[26] REG-117138-17.

[27] *Montrois*, 916 F.3d at 1066-1067.

Steele — 2022

To date, 2022 has been dominated by summary judgment filings. But in February, after the Justice Department did not fully and adequately respond to the third set of interrogatories (at least not in my mind), I filed a motion to compel them to answer. In the motion, I explained why the information was needed. The following language is from the February 22 brief filed in support of the motion to compel:

> An analysis of the percent of Accenture fees relating to issuance and renewal of PTINs is currently ongoing. *For purposes of supplying an example here only*, if forty percent of Accenture services under its contract related to PTINs issuance and renewal and the rest related to other activities, and Accenture's profit margin was reasonable and could lawfully be charged, then the Accenture ratio is 0.40. If two CORs spent 50 percent of their time during a year working on the Accenture contract, then 20 percent of each COR's salary, benefits and overhead (that is, 0.40 * 0.50) could potentially be valid costs under *Montrois*. Defendant has disclosed annual salaries, benefits and overhead for all or virtually all [Return Preparer Office] RPO employees. So, once the Accenture ratio is calculated, *hard and fast final costs* of the CORs can be calculated for each year *if the percentages sought in the third set of interrogatories are produced*. [Emphasis in original.]

Continuing the earlier example, if the supervisor of CORs spent 10 percent of their time overseeing one of the two CORs in charge of the Accenture contract and 5 percent of their time overseeing the second COR overseeing the Accenture contract, then 3 percent of their salary, benefits, and overhead (that is, 0.4 * 0.5 * 0.15) for the year could be a valid cost under *Montrois*. So, once the Accenture ratio is calculated, hard and fast final costs of the supervisor of the CORs can be calculated for each year if the percentages sought in the third set of interrogatories are produced.

The Department of Justice contested the motion to compel, claiming the IRS didn't have the information.

On July 19, the court ruled in favor of the government, stating: "Although the information requested by plaintiffs in their third set of interrogatories is relevant, the court cannot compel the government to produce materials it does not possess or information it does not have." Citing *Montrois*,[28] the court noted that the third set of interrogatories related to "determining whether the amount of the PTIN fee 'unreasonably exceeds the costs to the IRS to issue and maintain PTINs.'" So, as of now, much of the information needed to figure out the government's PTIN costs is missing. A brief I filed on July 20 said:

> On July 19, 2022, the Court ruled Defendant does not need to supply the work percentage responses to Plaintiffs' Third Set of Interrogatories because the information does not exist. Thus, IRS employee costs can be calculated only if the Court rules only the costs of Contracting Officer Technical Representatives (COTRs or Contracting Officer Representatives — CORs), or CORs costs and possibly some communications costs, are chargeable. Otherwise, it is difficult to discern how IRS employee costs of issuing and renewing PTINs can be determined. If those costs cannot be determined, it is difficult to see how a determination can be made whether PTIN fees charged 'unreasonably exceed the costs of the IRS to issue and maintain PTINs.' *Montrois* at 1058.

The brief also noted we did not have IRS employees' actual salaries and benefits for all years, thereby correcting a statement made in the February 22 brief. (Concerning COR costs, testimony exists that is conflicting and unclear. As noted, an IRS employee supplied her take on PTIN-related activities for the communications employees of the Return Preparer Office.)

[28] *Montrois*, 916 F.3d at 1058.

The first summary judgment briefs were due and filed on March 23. The Department of Justice continued to follow the IRS's position that *Loving* struck down only the continuing education and testing activities for uncredentialed preparers. To our tremendous surprise, the Justice Department took the position that the Accenture fees were not in issue because plaintiffs lacked standing to challenge the fees because they were not an interested party in the bidding process. This was the first time in the eight years of litigation the Department of Justice had taken this position. It also made major concessions (a little over $103 million, based on our calculations) regarding fees, but then cautioned that the concessions need approval by IRS higher-ups. It then took the position that the IRS was entitled to an $88 million offset after the 2017 injunction was issued because of the need for it to pay Accenture and for forgone fees it should have received. It argued the IRS had a contract with Accenture to provide the services, and it had to supply Accenture the money because PTIN fees had been cut off. The Department of Justice also argued the IRS was entitled to a deferential standard of review for PTIN fees, and thus whatever it did in terms of fee charges had to be accepted by the court unless arbitrary or capricious.

Our March 23 summary judgment brief spelled out the activities we believed gave rise to valid fees, while reserving the Accenture breakdown for trial. It also asked the court to order the IRS to stop mandating licensing questions on the PTIN application form (Form W-12), and instead to follow the pertinent statute (section 6109(c)) and require only that name, address, SSN, date of birth, and phone number (and perhaps email address) be included on the form. A recent article I wrote notes that the licensing questions asked on Form W-12 are answered under penalties of perjury.[29] Section 6109 does not permit the questions.

The $103 million of IRS cost concessions came from the following: $33 of the $50 fee for 2011-2013; $12.25 of the $50 fee for 2014-2015; and $9 of the $33 fee for 2016-2017. The Department of Justice said the IRS used its post-*Montrois* 2019 cost model to produce these lower fees and, according to them, now accurate fees. No concessions were made regarding Accenture's fees. Total PTIN fees collected to date exceed $300 million.

The Department of Justice's May 12 response brief continued to press the deferential standard of review argument, except now applying it to the reduced amounts specified in its opening brief. The authorities the Justice Department had relied on related to fees determined via the regulatory process, thus subject to notice and comment by the public. In a supplemental brief, I noted plaintiffs knew of no authority granting a deferential standard of review to a position taken by government counsel in a brief. I also noted in a later brief that, unlike the deferential standard of review cases cited by the Department of Justice, the IRS never attempted to determine PTIN issuance and renewal costs. Rather, for all years, it simply determined the entire set of licensing costs without attempting to determine the subset of costs incident to issuing and renewing PTINs. This distinction made the authorities cited by the Justice Department inapplicable.

In our May 12 brief, we responded to the government's arguments in several ways. As argued by plaintiffs in 2017 concerning the stay the Department of Justice then sought, one of the arguments about the offset (brought by me in a supplemental brief) was that the IRS was at fault for the problem. It knew, or should have known, its fees were on thin ice after *Loving*, given our ongoing lawsuit. I noted that prepared compensated returns provided to the IRS supply the IRS with all the information it needs regarding return preparers. Offset is an equitable remedy, and one must come into it with clean hands. The government's hands were dirty. We also vigorously opposed the argument that Accenture fees were not in issue. My co-counsel found authority for there being absolutely no basis for fee charges by Accenture in any amount because, unlike the fees the IRS charged that were thoroughly laid out in the proposed and later final regulations, the Accenture fees were never laid out in any regulations. Rather, the section 6109(a)(4) final regulations issued in 2010 merely said: "These regulations do not include any fees charged by the vendor, which vendor fee is now

[29] Buckley, "Penalties of Perjury Everywhere," *Tax Notes Federal*, Apr. 25, 2022, p. 579.

calculated to be $14.25."[30] Similarly, the final regulations under 31 U.S.C. section 330, issued on June 3, 2011, provided: "The fee charged by the vendor is $14.25. The $14.25 fee reflects the costs incurred by the vendor in processing a PTIN application or renewal."[31] The same applied to the 2015 fee update. (As noted, the Accenture contracts provide that Accenture would do much more than simply process PTIN applications and renewals.) The 31 U.S.C. section 330 regulations laid out in thorough detail all the IRS would do for its $50 fee. Like the IRC section 6109(a)(4) final regulations issued in 2010, the 31 U.S.C. section 330 regulations stated: "A PTIN confers a special benefit because without a PTIN, a tax return preparer could not receive compensation for preparing all or substantially all of a Federal tax return or claim for refund."[32]

My co-counsel did not wish to cover some of the things I wanted to cover in the May 12 reply brief. I thus filed a short supplemental brief addressing the points I thought needed to be made, which included an analysis of the 2019 cost model method. I believed it had to be analyzed and addressed because the Department of Justice said it provided the means of calculating its more than $100 million of concessions (or proposed concessions). The reply brief included a four-page attachment that analyzed the 2019 cost method. It noted the things in it that were incorrect, including the fact that most of the costs were licensing costs. It also noted that if the cost method were valid, the costs would be relatively small (because Accenture issued and renewed PTINs), and there would be relatively little variance over the years. Instead, the fees jumped 122 percent from $17 for 2011-2013 to $37.75 for 2014-2015, dropped to $24 for 2016-2017, and then dropped again to $21 for 2019. These results don't pass the smell test.

The Department of Justice motioned for and received a four-week extension to file its reply brief by July 8. The Justice Department reasoned it needed the time to seek final approval for the concessions it had listed in its opening brief, and to determine if additional concessions were necessary. In its July 8 brief, the Department of Justice conceded an additional $2.95 for 2011-2013, thus knocking the IRS fee for those years down to $14.05 (from the original fee of $50). The Justice Department did not change the prior concessions it had made for other years and continued to take the position that its conceded amounts, as specified in its briefs, were entitled to a deferential standard of review.

In our reply brief in the summary judgment process, we noted the information a compensated preparer must include for themselves on a compensated prepared return, be it an individual, corporation, S corporation, partnership, or estate and trust income tax return: name, PTIN, firm name, firm address, phone number, firm employer identification number, and employment status (that is, whether self-employed). Thus, for people continuing to prepare returns for compensation, the IRS gets all the information it needs, updated in real time with each prepared return. So there is no logical need for renewal of a PTIN or for the Form W-12 requested information.

An important case cited by counsel for plaintiffs in the briefing process is *Seafarers*.[33] Unlike *Steele*, the case involved an unquestioned licensing power. But the Coast Guard went way beyond exercising its lawful licensing powers. The court scolded it, stating:

> At oral argument, in response to a hypothetical question, government counsel asserted that the agency should be permitted to charge a fee for any procedures, such as inspection of boats, so long as those procedures are conducted as part of the requirements for obtaining a license. The Government's contention is absurd, for the Supreme Court in *NCTA* and *NEPCO* made it clear that an agency cannot load on expenses in the guise of collecting licensing fees.[34]

Seafarers went on to say: "In short, the measure of fees is the cost to the government of providing

[30] T.D. 9503.

[31] T.D. 9527.

[32] *Id.*

[33] *Seafarers International Union of North America v. U.S. Coast Guard*, 81 F.3d 179 (D.C. Cir. 1996).

[34] *Id.* at 186.

the service, not the intrinsic value of service to the recipient."[35] (This sentence is important because the user fee statute calls for consideration of the value to the recipient, which would be very difficult or impossible to quantify.) In *Steele*, the IRS loaded licensing costs on top of PTIN issuance and renewal costs when it lacked licensing power.

Going Forward

A few years ago, one of the Justice Department lawyers said he anticipated the case would take 10 years to resolve. He said that was pretty much standard for a case of this nature. If he's right, there are approximately two years left.

The district court will likely issue a summary judgment ruling in late 2022 or early 2023. Hopefully, it will resolve much of the case. However, at one point, the Justice Department told us it plans on appealing whatever comes out of the district court on summary judgment. I believe it thinks it will get its best possible treatment from the D.C. Circuit. Could the case settle? Given that there have been no settlement discussions to date, it seems unlikely. Our view of what can be charged is grossly different than the Justice Department's view. Contrast the situation with what would exist if the government were a private party. The case would likely have settled years ago.

Assuming there won't be a settlement, there will need to be a trial to resolve unknown facts. Because Accenture issued and renewed PTINs (and maintained the PTINs in a database) and did other things, some sort of apportionment needs to be applied (that is, post-determination) to split Accenture fees between those related to the issuance and renewal of PTINs and those that are unrelated. Regarding maintenance of a database, any computer could house 1 million to 2 million PTINs for virtually no incremental cost. Allocating Accenture fees would require things like determining what percentage of call center calls related to PTINs. And assuming plaintiffs succeed in paring back the information necessary to be supplied to acquire or renew a PTIN, the question then becomes how many calls would have taken place if the original Form W-7P system (requiring only name, address, SSN, date of birth, and phone number) had been in place for all years. This information would have produced much less need for calls than information related to felony convictions and so on. As noted earlier, we have argued that no Accenture costs can be charged. I think there is a good chance we will prevail on that position. If we don't, the issue of whether Accenture charges were excessive could come into play. In any event, an Accenture PTIN activities percentage is needed to determine lawful IRS costs.

Then, you have the IRS costs of overseeing Accenture to make sure it did its job correctly. Do these costs include only CORs costs? What about COR supervisors? What about communications related to informing people they must acquire and renew a PTIN? It would seem the line would be drawn there for IRS employees. These matters will need to be resolved at trial. It is hard to see how the information requested in the plaintiffs' third set of interrogatories is not necessary to compute valid IRS costs. And, as noted in the motion to compel the third set of interrogatories, if the IRS couldn't come up with the information when it had months to think about it, how will its employees and former employees do so on the witness stand? Once these things are determined, they can be inserted into an Excel spreadsheet for determining overpayments by return preparer, by year.

Some Interesting Points

There are some interesting points worth noting. First, the legislative history of IRC section 6109(a)(4) shows it was originally enacted to help the IRS locate bad actors in the return preparer population. The 1998 amendment to section 6109(a)(4) to provide for the possibility of PTINs was enacted to combat identity theft. After it, return preparers could get a PTIN for free if they so desired, by supplying their name, address, SSN, date of birth, and phone number. Or they could continue using their SSN on prepared returns. Ironically, because acquiring a PTIN was then a voluntary act that arguably produced a special benefit (helping with identity theft protection; although, a return preparer has been allowed to take their identification number off the taxpayers' copy of the returns for decades), a user

[35] *Id.* at 185.

fee likely could have been lawfully charged to issue a PTIN before PTINs became mandatory.

Second, both the IRS and the Department of Justice take the position that, post-*Loving* and *Montrois*, user fees can be charged for all the licensing activities that existed pre-*Loving* except testing and continuing education for uncredentialed preparers. They take this position even though *Loving* nixed the licensing statute (31 U.S.C. section 330) from applicability, leaving only IRC section 6109(a)(4) standing. You simply cannot, in good faith, draw any sort of licensing power from it. Yet the IRS continues to take the position (and the Justice Department continues to follow) that the costs of the following activities, listed in the 2015 preamble in the user fee regulations, can be charged to return preparers: "tax compliance and background checks; professional designation checks; foreign preparer processing; compliance and IRS complaint activities; information technology and contract-related expenses; and communications."

The Department of Justice states that its mission is:

> To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.[36]

How is taking a grossly unreasonable position to the detriment of Americans (that is, return preparers, the vast majority of whom are Americans) consistent with ensuring "fair and impartial justice for all Americans"? I submit it is not. The Department of Justice is talking out of one side of its mouth and acting out of the other, to the detriment of many Americans, inconsistent with its professed goals.

Third, note the hypocrisy of the IRS. Without any legal authority, the agency created regulations that granted it licensing power, in large part to assure return preparers are people of good character. When the D.C. Circuit said the IRS didn't have licensing power, the agency continued on as if it did. The IRS stretched the meaning of 31 U.S.C. section 330 beyond reason to interpret it to grant licensing power. When that self-granted stretch of authority was struck down by *Loving*, the IRS made an even larger stretch to IRC section 6109(a)(4) to deem it to possess all the licensing powers of 31 U.S.C. section 330 except the ability to require uncredentialed preparers to take tests and get continuing education. So, the IRS and the Department of Justice disregarded a key sentence in *Loving* to continue charging for licensing activities, and the D.C. Circuit disregarded a requirement set forth by the Supreme Court for user fees to be charged (that is, a voluntary act) in order for user fees to be charged. *Res ipsa loquitur*.

Generally, our federal government grows. It is supposed to grow only by an act of Congress or by a regulatory act authorized by Congress. Here, it has grown via an abuse of power by the IRS and a failure of our legal system (that is, the Department of Justice and the court system) to completely overturn that abuse of power. Our federal justice system is completely dependent on the integrity of Justice Department employees, federal judges, and their clerks. The federal government has huge financial problems. According to the 2021 financial statements of the federal government, assets equal approximately $5 trillion while liabilities total approximately $35 trillion. The financial problems won't be solved to any significant degree by user fees if, unlike in this case, existing Supreme Court precedents are followed.

Patriotic Americans like to think the U.S. government is good. The IRS tries to promote itself as doing good for taxpayers and the country. There is little good about what has gone on here — a lot of effort to get partial justice — and partial justice is injustice.

A final note to the Department of Justice and the IRS: I've just begun to fight! ■

[36] U.S. Department of Justice, Department of Justice Equity Action Plan (2022).