



**Kelly Phillips Erb** (<http://www.forbes.com/sites/kellyphillipserb/>) Contributor

*I cover tax: paying tax is painful but reading about it shouldn't be.*

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# IRS Hit With Class Action Suit Over Tax Preparer User Fees

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700,000. That's the number of potential plaintiffs in a class action suit filed today in the United States District Court for the District of Columbia. The suit, [Adam Steele, Brittany Montrois et al versus United States of America](http://www.scribd.com/doc/239085100/Adam-Steele-Brittany-Montrois-et-al-versus-United-States-of-America) (<http://www.scribd.com/doc/239085100/Adam-Steele-Brittany-Montrois-et-al-versus-United-States-of-America>) (complaint opens in Scribd), challenges the Internal Revenue Service (IRS) attempts to regulate tax preparers.

The two plaintiffs who are named in the suit are Adam Steele and Brittany Montrois. Steele is a certified public accountant (CPA) licensed by the State of Minnesota. Montrois is also a CPA, though she is licensed by the State of Georgia. Both Steele and Montrois are in good standing as CPAs in their respective states.

The remaining plaintiffs, as part of the class, are paid tax preparers who have paid the initial preparer tax identification number ("PTIN") issuance user fee or have paid the initial PTIN issuance user fee and one or more PTIN renewal user fees. Those fees are the result of final regulations issued by the IRS [in 2010](http://www.taxgirl.com/online-ptin-registration-opens/) (<http://www.taxgirl.com/online-ptin-registration-opens/>) requiring paid tax return preparers to register with the IRS and pay a user fee to obtain a PTIN. To keep the PTIN, preparers must re-register each year and pay an additional fee; failure to pay the fee results in a loss of the PTIN. Paid preparers may not prepare federal income tax returns without a valid PTIN.

In 2012, a group of tax preparers (Sabina Loving of Chicago, Illinois; John Gambino of Hoboken, N.J.; and Elmer Kilian of Eagle, Wisconsin) filed suit (<http://www.forbes.com/sites/kellyphillipserb/2012/03/13/tax-preparers-speak-out-against-new-regs-file-suit-against-irs/>) against the government, challenging those initial regulations. In the case, *Loving v. Commissioner*, the plaintiffs accused the IRS, among other things, of lacking the authority to license tax preparers. The courts ultimately sided with the plaintiffs, ruling in 2012 (<http://www.forbes.com/sites/kellyphillipserb/2013/01/19/irs-stopped-dead-in-its-tracks-in-efforts-to-regulate-tax-preparers/>) that the IRS could not regulate tax preparers according to the proposed scheme. An appellate court affirmed that ruling (<http://www.forbes.com/sites/kellyphillipserb/2014/02/12/appellate-court-to-irs-youve-lost-that-loving-tax-case-again/>) in 2014.

The maneuverings in *Loving* did not, however, exempt tax preparers from the requirement to obtain a PTIN and pay the user fee. Fees range from \$63.25 for a PTIN renewal to \$64 for a first time PTIN registration. The IRS has indicated that the actual cost of the user fees to the agency is \$13 for a PTIN renewal and \$14.25 for first time PTIN registration. Those are costs paid by IRS to a third party vendor.



20 Dollars art3 (Photo credit: Wikipedia)

According to the final regulations, the Department of the Treasury anticipated that between 800,000 to 1,200,000 PTINs would be issued or renewed each year, bringing in between \$51 million to \$77 million. Anticipated expenses “to administer the PTIN application and renewal process” were pegged at between \$11 million and \$17 million. The remaining funds were to be retained by IRS for:

1. costs of administering registration cards or certificates for each registered preparer;
2. costs associated with prescribing forms, instructions, or other guidance with respect to registered preparers; and
3. tax compliance and suitability checks.

Only, er, there are no registration cards or certificates: your PTIN is issued via letter or email. And according to the complaint, “historically, the IRS has never charged for issuing tax instructions, issuing guidance to taxpayers or tax return preparers, or for creation (or dissemination) of tax forms.” That’s because – let’s face it – IRS loves forms. And those tax compliance and suitability checks? They haven’t happened.

In fact, after *Loving*, a great deal of what IRS anticipated would happen when it issued those regulations in 2010 didn’t happen at all. And yet, the fees keep rolling in. The IRS has admitted collection of more than \$105 million in PTIN and competency testing user fees through 2012. To date, fees paid out by tax preparers are estimated to be more \$150 million.

Tax preparers say that’s not fair. And they want their money back.

By statute, certain user fees have to be “fair and based on: (a) costs to the government; (b) the value of the service or thing to the recipient; (c) public policy or interest served; and (d) other relevant facts.” The plaintiffs claim that’s not what’s happening here. Further, the plaintiffs claim that the under 31 U.S.C. § 9701, user fees may not “be charged with respect to fulfillment of a requirement that is subject to a penalty enforcement scheme because no special benefit is granted and the thing that is done is done involuntarily.” That, the plaintiffs assert, means that the user fees are unlawful from the start.

Lawyers being lawyers, there is also a backup plan: if the courts find that charging a user fee for the issuance or renewal of a PTIN is allowable, they argue that the overage (the \$50 which exceeds the actual cost of the fee) is not allowable.

The plaintiffs ultimately want a refund of what they claim are improperly collected user fees. And they want to put a stop to further collections. They also want IRS to scale back the information requested on the form W-12, claiming that additional information beyond basic identification is not necessary.

The suit was filed on behalf of the plaintiffs by Allen Buckley of [Allen Buckley Law](http://www.allenbuckleylaw.com/) (<http://www.allenbuckleylaw.com/>) in Atlanta, GA, and Stuart Bassin of [The Bassin Law Firm](http://www.bassinlawfirm.com) (<http://www.bassinlawfirm.com>) in [Washington](http://www.forbes.com/washington/) (<http://www.forbes.com/washington/>), D.C.

The lawsuit is the second high-profile challenge to IRS attempts to regulate the tax preparer industry filed this year. In July, the American Institute of CPAs (AICPA) [filed suit](#)

[\(http://www.forbes.com/sites/kellyphillipserb/2014/07/15/aicpa-files-lawsuit-against-irs-to-stop-new-tax-preparer-program/\)](http://www.forbes.com/sites/kellyphillipserb/2014/07/15/aicpa-files-lawsuit-against-irs-to-stop-new-tax-preparer-program/) to stop the new Annual Filing Season program (AFS), a voluntary program to regulate tax return preparers. That suit is currently pending.

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