

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG-139343-08]

RIN 1545-B171

User Fees Relating to Enrollment and Preparer Tax Identification Numbers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations relating to the imposition of certain user fees on certain tax practitioners. The proposed regulations establish a new user fee for individuals who apply for or renew a preparer tax identification number (PTIN). The proposed regulations affect individuals who apply for or renew a PTIN. The charging of user fees is authorized by the Independent Offices Appropriations Act of 1952.

DATES: Written or electronic comments must be received by August 23, 2010.

Outlines of topics to be discussed at the public hearing scheduled for Tuesday, August 24, 2010, at 10 a.m. must be received by Monday, August 23, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-139343-08), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-139343-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C., or sent

electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-139343-08). The public hearing will be held in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Emily M. Lesniak at (202) 622-4940; concerning cost methodology, Eva J. Williams at (202) 435-5514; concerning submission of comments, the public hearing, or to be placed on the building access list to attend the public hearing, Richard A. Hurst at Richard.A.Hurst@irsounsel.treas.gov or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. Pursuant to section 330 of title 31, the Secretary has published regulations governing practice before the IRS in 31 CFR part 10 and reprinted the regulations as Treasury Department Circular No. 230 (Circular 230). Circular 230 is administered by the IRS Office of Professional Responsibility (OPR).

User Fee for PTINs

Section 6109 of the Internal Revenue Code (Code) authorizes the Secretary to prescribe regulations for the inclusion of a tax return preparer's identifying number on a return, statement, or other document required to be filed with the IRS. Section 6109(c) further authorizes the Secretary "to require such information as may be necessary to assign an identifying number to any person." As currently prescribed in regulations, the

identifying number of a tax return preparer who is an individual is the tax return preparer's social security number (SSN) or alternative number as prescribed by the IRS.

Proposed regulations under section 6109 (REG-134235-08) were published in the **Federal Register** (75 FR 14539) on March 26, 2010, and provide that, for returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual's PTIN or such other number prescribed by the IRS in forms, instructions, or other appropriate guidance. The proposed regulations under section 6109 require a tax return preparer who prepares all or substantially all of a return or claim for refund of tax after December 31, 2010 to have a PTIN. The proposed regulations also state that the IRS will provide through other guidance (including forms and instructions) guidance regarding how to apply for a PTIN or other prescribed preparer identifying number, for the regular renewal of a PTIN or other prescribed preparer identifying number, and for the payment of a user fee. Only attorneys, certified public accountants, enrolled agents, and registered tax return preparers will be eligible to apply for a PTIN. The requirements to become a registered tax return preparer will be provided in future Circular 230 guidance.

A third party vendor will administer the PTIN application and renewal process and will charge a reasonable fee that is independent of the user fee charged by the government. The vendor will develop a web-based database that individuals will use to apply for or renew a PTIN and will process paper PTIN applications. The database also will be used for applications to become registered tax return preparers, to renew the registered tax return preparers' status, to self-certify continuing professional education credits for registered tax return preparers, and to pay applicable user fees.

Proposed §300.9 establishes a \$50 user fee to apply for or renew a PTIN. The \$50 user fee is based on an annual PTIN renewal period, and the procedures for renewing a PTIN will be provided in other guidance, including forms and instructions. The user fee is nonrefundable regardless of whether the applicant receives a PTIN.

PTINs were previously issued to tax return preparers solely for the convenience of the tax return preparers, providing an alternative to using the tax return preparers' social security numbers. Requiring registration through the use of PTINs will enable the IRS to better collect and track data on tax return preparers. This data will allow the IRS to track the number of persons who prepare returns, track the qualifications of those who prepare returns, track the number of returns each person prepares, and more easily locate and review returns prepared by a tax return preparer when instances of misconduct are detected.

The user fee to apply for or renew a PTIN recovers the costs that the government incurs to administer the PTIN application process. These costs include the development and maintenance of the IRS information technology system that interfaces with the vendor and the development and maintenance of internal applications that will have the capacity to process and administer the anticipated increase in applications for a PTIN. It is anticipated that the number of individuals requesting PTINs will increase to as many as 1.2 million individuals, and all individuals who receive PTINs will be required to renew their PTINs. The anticipated increase in demand for PTINs will require the IRS to expend more resources. The user fee will recover the cost of IRS customer service support activities, which include website development and maintenance and call center staffing to respond to questions regarding PTIN usage and renewal. The user fee also

will recover costs for personnel, administrative, and management support needed to evaluate and address tax compliance issues of individuals applying for and renewing a PTIN, to investigate and address conduct and suitability issues, and otherwise support and enforce the programs that require an individual to apply for and renew a PTIN.

The IRS currently issues PTINs to tax return preparers without charging a user fee. The PTIN application, issuance, and renewal process, however, will become significantly more expansive and intricate with the implementation of the registered tax return preparer program. Federal tax compliance checks will be performed on all individuals who apply for or renew a PTIN. Suitability checks will be performed. The IRS will further investigate individuals when the compliance or suitability check suggests that the individual may be unfit to practice before the IRS. These checks were not previously performed as a prerequisite to obtaining a PTIN.

Additionally, the IRS will establish and implement a reconsideration process for individuals who apply to become a registered tax return preparer and are denied a PTIN upon initial application or renewal. The IRS will incur costs to apply existing Circular 230 procedures when those individuals who are certified public accountants, attorneys, enrolled agents, or registered tax return preparers are denied renewal of a PTIN.

Coordination With Other User Fees

Additional user fees related to the programs for regulating enrolled agents, enrolled retirement plan agents, and registered tax return preparers will be established in future regulations as those programs are implemented. These future regulations will address user fees associated with taking the registered tax return preparer examination and providing continuing education programs. The user fee for taking a registered tax

return preparer examination will recover the costs to the government for creating, administering, and reviewing the examination. The user fee for providing continuing education programs will recover the costs to the government for the review, approval, and oversight of continuing education providers to ensure their compliance with program requirements for continuing education programs. The vendor also will charge a reasonable fee to take the registered tax return preparer examination.

Future regulations also will coordinate the enrollment and renewal user fees imposed on enrolled agents and enrolled retirement plan agents with the PTIN user fees because the costs to the government to process an enrollment application are substantially the same as the costs to the government to process a PTIN application. For example, the IRS generally may conduct only a single background check and compliance check for an individual who applies to become an enrolled agent and applies to obtain a PTIN, and therefore the enrollment application fee and the PTIN application fee must be coordinated to prevent the collection of excessive fees. It is currently anticipated that future regulations will require enrolled agents to obtain a PTIN and pay the associated application or renewal fee, in which case the enrollment and renewal fees for enrolled agents will be substantially reduced.

Effective/Applicability Dates

These regulations reorganize the effective dates for the user fees found in Treasury Regulations part 300. Currently, all of the user fee effective dates are contained in §300.0 paragraph (c). This reorganization relocates the effective date sections to the appropriate regulation implementing each user fee. This relocation will simplify the process for updating the effective dates as the user fee regulations are

revised.

Authority

The charging of user fees is authorized by the Independent Offices Appropriations Act (IOAA) of 1952, which is codified at 31 U.S.C. 9701. The IOAA authorizes agencies to prescribe regulations that establish charges for services provided by the agency. The charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President; these policies are currently set forth in the Office of Management and Budget Circular A-25, 58 FR 38142 (July 15, 1993) (the OMB Circular).

The OMB Circular encourages user fees for government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services. In general, a user fee should be set at an amount that allows the agency to recover the full cost of providing the special service, unless the Office of Management and Budget grants an exception.

Pursuant to the guidelines in the OMB Circular, the IRS has calculated its cost of providing services under the PTIN application and renewal process. The government will charge the full cost of administering these programs and will implement the proposed user fees under the authority of the IOAA and the OMB Circular.

Proposed Effective/Applicability Date

The Administrative Procedure Act provides that substantive rules will not be effective until thirty days after the final regulations are published in the **Federal Register** (5 U.S.C. 553(d)). Final regulations may be effective prior to thirty days after publication if the publishing agency finds that there is good cause for an earlier effective date.

The IRS is implementing the recommendations in Publication 4832, "Return Preparer Review", which was published on January 4, 2010, to be effective for the 2011 Federal tax filing season (January-April 2011). The IRS and the Treasury Department find that there is good cause for these regulations to be effective upon the publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is a significant regulatory action as defined in Executive Order 12866.

It has been determined that an initial regulatory flexibility analysis is required for this notice of proposed rulemaking under 5 U.S.C. 603. This analysis is set forth under the heading "Initial Regulatory Flexibility Analysis."

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Initial Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency "to prepare and make available for public comment an initial regulatory flexibility analysis" that will "describe the impact of the

proposed rule on small entities.” See 5 U.S.C. 603(a). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. See 5 U.S.C. 601(3) through (6). The IRS and the Treasury Department conclude that the proposed rule, if promulgated, will have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is required.

Description of the reasons why action by the agency is being considered

The IRS and the Treasury Department are implementing regulatory changes that increase the oversight of the tax return preparer industry based upon findings and recommendations made by the IRS in Publication 4832, “Return Preparer Review,” which was published on January 4, 2010. These regulatory changes include implementing a registered tax return preparer program and requiring all individuals who prepare all or substantially all of a tax return or claim for refund to use a PTIN as an identifying number. Except as provided in any transitional period, only attorneys, certified public accountants, enrolled agents, or registered tax return preparers may apply for a PTIN. Thus, only attorneys, certified public accountants, enrolled agents, and registered tax return preparers will be eligible to prepare all or substantially all of a tax return or claim for refund. 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 the individuals who obtain a PTIN. There are costs

to the IRS that are associated with processing a PTIN application and providing the special benefits associated with the PTIN.

Future regulations will establish additional user fees related to the enrolled agent and enrolled retirement plan agent program, and registered tax return preparer program. The additional user fees will recover the costs to the government that result from providing the special benefits associated with taking the registered tax return preparer examination and providing continuing education programs. The cost to the government for administering and reviewing the registered tax return preparer examination will be recovered in a user fee for taking the registered tax return preparer examination. The cost to the government to verify compliance with requirements for continuing education programs will be recovered in a user fee for qualifying continuing education programs. Each continuing education provider may charge a fee to attend a qualified continuing education program. The third party vendor also will charge a reasonable fee to take a registered tax return preparer examination.

A succinct statement of the objectives of, and legal basis for, the proposed rule

The objective of the proposed regulations is to recover the costs to the government associated with providing the special benefits that an individual receives upon applying for or renewing a PTIN. These costs include the development and maintenance of the IRS information technology system that interfaces with the vendor; the development and maintenance of internal applications; IRS customer service support activities, which include development and maintenance of an IRS website and call center staffing; and personnel, administrative, and management support needed to evaluate and address tax compliance issues, investigate and address conduct and

suitability issues, and otherwise support and enforce the programs that require individuals to apply for or renew a PTIN. The OMB Circular encourages user fees when special benefits are conferred on identifiable recipients. Individuals who obtain a PTIN receive the ability to prepare all or substantially all of a tax return or claim for refund. The ability to prepare all or substantially all of a tax return or claim for refund is a special benefit.

The legal basis for these requirements is contained in section 9701 of title 31.

A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply

The proposed regulations affect all individuals who want to become a registered tax return preparer under the new oversight rules in Circular 230. Only individuals, not businesses, can practice before the IRS or become a registered tax return preparer. Thus, the economic impact of these regulations on any small entity generally will be a result of applicants and registered tax return preparers owning a small business or a small entity employing applicants or registered tax return preparers.

The proposed regulations further affect all individual tax return preparers who are required to apply for or renew a PTIN. Only individuals, not businesses, can apply for or renew a PTIN. Thus, the economic impact of these regulations on any small entity generally will be a result of an individual tax return preparer who is required to apply for or renew a PTIN owning a small business or a small business otherwise employing an individual tax return preparer who is required to apply for or renew a PTIN to prepare all or substantially all of a tax return or claim for refund.

The appropriate NAICS codes for the registered tax return preparer program and PTINs are those that relate to tax preparation services (NAICS code 541213), other

accounting services (NAICS code 541219), offices of lawyers (NAICS code 541110), and offices of certified public accountants (NAICS code 541211). Entities identified as tax preparation services and offices of lawyers are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than \$7 million. Entities identified as other accounting services and offices of certified public accountants are considered small under the Small Business Administration size standards if their annual revenue is less than \$8.5 million. The IRS estimates that approximately 70 to 80 percent of the individuals subject to these proposed regulations are tax return preparers operating as or employed by small entities.

A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record

No reporting or recordkeeping requirements are projected to be associated with this proposed regulation.

An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule

The IRS is not aware of any Federal rules that duplicate, overlap, or conflict with the proposed rule.

A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities

The IOAA authorizes the charging of user fees for agency services, subject to policies designated by the President. The OMB Circular implements presidential policies regarding user fees and encourages user fees when a government agency provides a special benefit to a member of the public. As Congress has not appropriated

funds to the registered tax return preparer program or PTIN application process, there are no viable alternatives to the imposition of user fees.

While the IRS previously issued PTINs to tax return preparers without charging a user fee, the registered tax return preparer program and the issuance of the new regulations under section 6109 will increase the number of PTIN applications to as many as 1.2 million applications and significantly increase the intricacy of the application process. Additionally, PTINs were previously issued solely for the convenience of tax return preparers to provide an alternative to using the tax return preparers' social security numbers as an identifying number on prepared returns. PTINs will now be used to collect and track data on tax return preparers. This data will provide important benefits to the IRS, such as allowing the IRS to track the number of persons who prepare returns, track the qualifications of those persons who prepare returns, track the number of returns each person prepares, and, when instances of misconduct are detected, locate and review returns prepared by a specific tax return preparer.

This anticipated increase in PTIN applications and the revised purpose of a PTIN will require the IRS to develop and maintain a website and train call center staff to respond to PTIN-related questions. Further, the IRS will now perform Federal tax compliance checks and perform suitability checks prior to the issuance of a PTIN. Previously, neither of these checks was performed before a PTIN was issued. When the initial compliance and suitability checks suggest that the individual applying for a PTIN may not be fit to practice before the IRS, the IRS will conduct an investigation. For individuals who are found unfit to receive a PTIN, the IRS will develop and

implement a reconsideration process. Similarly, the IRS will provide due process procedures for those individuals who are certified public accountants, attorneys, enrolled agents, or registered tax return preparers and are denied renewal of their PTIN.

Thus, due to the increased costs to the government to process the application for a PTIN, the anticipated increase in PTIN applications, and the lack of appropriated funds, there is no viable alternative to imposing a user fee.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments that are submitted by the public will be made available for public inspection and copying.

A public hearing has been scheduled for Tuesday, August 24, 2010, beginning at 10:00 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, D.C. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the FOR FURTHER INFORMATION CONTACT section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and

an outline of the topics to be discussed and the time to be devoted to each topic by Monday, August 23, 2010. A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Emily M. Lesniak, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Proposed Amendments to the Regulations

Paragraph 1. The authority citation for part 300 continues to read in part as follows:

Authority: 31 U.S.C. 9701.

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

Par. 2. Section 300.0 is amended by

1. Adding paragraph (b)(9).
2. Removing paragraph (c).

The additions read as follows:

§300.0 User fees; in general.

* * * * *

(b) * * *

- (9) Applying for a preparer tax identification number.

Par. 3. Section 300.1 is amended by adding paragraph (d) to read as follows:

§300.1 Installment agreement fee.

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(d) Effective/applicability date. This section is applicable beginning March 16, 1995, except that the user fee for entering into installment agreements on or after January 1, 2007, is applicable January 1, 2007.

Par. 4. Section 300.2 is amended by adding paragraph (d) to read as follows:

§300.2 Restructuring or reinstatement of installment agreement fee.

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(d) Effective/applicability date. This section is applicable beginning March 16, 1995, except that the user fee for restructuring or reinstatement of an installment agreement on or after January 1, 2007, is applicable January 1, 2007.

Par. 5. Section 300.3 is amended by adding paragraph (d) to read as follows:

§300.3 Offer to compromise fee.

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(d) Effective/applicability date. This section is applicable beginning November 1, 2003.

Par. 6. Section 300.4 is amended by adding paragraph (d) to read as follows:

§300.4 Special enrollment examination fee.

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(d) Effective/applicability date. This section is applicable beginning November 6, 2006.

Par. 7. Section 300.5 is amended by adding paragraph (d) to read as follows:

§300.5 Enrollment of enrolled agent fee.

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(d) Effective/applicability date. This section is applicable beginning November 6, 2006.

Par. 8. Section 300.6 is amended by adding paragraph (d) to read as follows:

§300.6 Renewal of enrollment of enrolled agent fee.

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(d) Effective/applicability date. This section is applicable beginning November 6, 2006.

Par. 9. Section 300.7 is amended by adding paragraph (d) to read as follows:

§300.7 Enrollment of enrolled actuary fee.

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(d) Effective/applicability date. This section is applicable beginning January 22, 2008.

Par. 10. Section 300.8 is amended by adding paragraph (d) to read as follows:

§300.8 Renewal of enrollment of enrolled actuary fee.

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(d) Effective/applicability date. This section is applicable beginning January 22, 2008.

Par. 11. Section 300.9 is added to read as follows:

§300.9 Fee for obtaining a preparer tax identification number.

(a) Applicability. This section applies to the application for and renewal of a preparer tax identification number pursuant to 26 CFR 1.6109-2(d).

(b) Fee. The fee to apply for or renew a preparer tax identification number is \$50 per year, which is the cost to the government for processing the application for a preparer tax identification number and does not include any fees charged by the vendor.

(c) Person liable for the fee. The individual liable for the application or renewal fee is the individual applying for and renewing a preparer tax identification number from the IRS.

(d) Effective/applicability date. This section will be applicable on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Steven T. Miller

Deputy Commissioner for Services and Enforcement.