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## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[T.D. 9742]

RIN 1545-BN03

Preparer Tax Identification Number (PTIN) User Fee Update

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the imposition of certain user fees on tax return preparers. The temporary regulations reduce the user fee to apply for or renew a preparer tax identification number (PTIN) and affect individuals who apply for or renew a PTIN. The Independent Offices Appropriations Act of 1952 authorizes the charging of user fees. The text of the temporary regulations also serves as the text of the proposed regulations (REG-121496-15) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability Date: For date of applicability, see paragraph (d) of these temporary regulations.

FOR FURTHER INFORMATION CONTACT: Concerning the temporary regulations, Hollie M. Marx at (202) 317-6844; concerning cost methodology, Eva J. Williams at (202) 803-9728.

SUPPLEMENTARY INFORMATION:

**Background**

The Independent Offices Appropriations Act of 1952 (IOAA), which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations that establish user fees 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 set forth in the Office of Management and Budget Circular A-25, 58 FR 38142 (July 15, 1993) (OMB Circular A-25).

Under OMB Circular A-25, federal agencies that provide services that confer benefits on identifiable recipients are to establish user fees that recover the full cost of providing the special benefit. 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 direct and indirect costs of providing the service, unless the Office of Management and Budget grants an exception. OMB Circular A-25 provides that agencies are to review user fees biennially and update them as necessary.

PTIN Requirement

Section 6109(a)(4) of the Internal Revenue 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. On September 30, 2010, the Treasury Department and IRS published final regulations under section 6109 (REG-134235-08) in the **Federal Register** (TD 9501) (75 FR 60315) (PTIN regulations) to 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 PTIN regulations require a tax return preparer who prepares or who assists in preparing all or substantially all of a tax return or claim for refund after December 31, 2010 to have a PTIN. The PTIN regulations also state that the IRS will set forth in forms, instructions or other appropriate guidance PTIN application and renewal procedures, including the payment of a user fee. The PTIN regulations further state that the IRS may conduct a Federal tax compliance check on an individual who applies for or renews a PTIN.

In accordance with section 1.6109-2(d) of the PTIN regulations, the IRS has set forth application and renewal procedures in Form W-12, *IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal*, and the Form W-12 Instructions. Individuals may also apply for or renew a PTIN and pay the user fee online at [irs.gov/ptin](http://irs.gov/ptin). The annual PTIN application and renewal period generally begins in the fall (on October 15 in previous years) of the year preceding the filing season to which the PTIN relates. A third-party vendor processes applications to obtain or renew a PTIN

and charges a reasonable fee that is separate from the user fee charged by the government.

Requiring the use of PTINs improves tax administration and tax compliance and benefits tax return preparers by allowing them to provide an identifying number on the return that is not an SSN. Requiring the use of PTINs enables the IRS to better collect and track data on tax return preparers, including the number of persons who prepare returns, the qualifications of those who prepare returns, and the number of returns each person prepares. PTIN use allows the IRS to more easily identify and communicate with tax return preparers who make errors on returns, which benefits tax return preparers by improving compliance and therefore reducing the number of client returns that are examined. The PTIN also enables the IRS to more easily locate and review returns prepared by a tax return preparer when instances of misconduct or potential misconduct are detected, which aids tax administration and compliance. These aids to tax administration and compliance in turn benefit taxpayers and tax return preparers by working to reduce preparer error and misconduct.

Section 1.6109-2(d) states that only individuals authorized to practice before the IRS under 31 U.S.C. 330 are eligible to obtain a PTIN. Under section 1.6109-2(h), the IRS may prescribe in forms, instructions, or other appropriate guidance exceptions to the requirements of the PTIN regulations, including the requirement that an individual must be authorized to practice before the IRS to be eligible to receive a PTIN. On December 30, 2010, the IRS released Notice 2011-6 (2011-3 IRB 315 (Jan. 17, 2011)), which stated that, until December 31, 2013, a provisional PTIN could be renewed upon proper application and payment of the applicable user fee, even if the individual holding

the provisional PTIN was not authorized to practice before the IRS.

On June 3, 2011, the Treasury Department and the IRS published in the **Federal Register** (76 FR 32286) amendments to Treasury Department Circular No. 230 (31 CFR part 10), to regulate all tax return preparers under 31 U.S.C. 330. In Loving v. IRS, 917 F.Supp.2d 67 (D.D.C. 2013), the district court concluded that the IRS and Treasury Department lacked statutory authority to regulate tax return preparation as practice before the IRS under 31 U.S.C. 330 and enjoined the IRS and Treasury from enforcing the regulation of registered tax return preparers. The district court subsequently modified its order to clarify that the IRS's authority to require that tax return preparers obtain a PTIN is unaffected by the injunction. Loving v. IRS, 920 F.Supp.2d 108, 109 (D.D.C. 2013) (stating "Congress has specifically authorized the PTIN scheme by statute . . . [and that] scheme, therefore, does not fall within the scope of the injunction and may proceed as promulgated."). The United States Court of Appeals for the District of Columbia Circuit affirmed the district court's decision and order for injunction. Loving v. IRS, 742 F.3d 1013 (D.C. Cir. 2014).

#### PTIN User Fee

Final regulations (REG-139343-08) published in the **Federal Register** (TD 9503) (75 FR 60316) (PTIN user fee regulations) on September 30, 2010, established a \$50 user fee to apply for or renew a PTIN. The \$50 user fee was based on an annual PTIN renewal period and an estimate that 1.2 million individuals would be applying for or renewing a PTIN each year.

The IRS and Treasury Department determined that a \$50 user fee to apply for or renew a PTIN would recover the full direct and indirect costs that the government incurs

to administer the PTIN application and renewal process. The initial determination of a \$50 annual fee took into account certain costs that the IRS ascertained it would incur to provide the special benefit associated with the provision of PTINs. As explained in the PTIN user fee regulations, the initial projected costs included the development and maintenance of the IRS information technology system that would interface with a third-party vendor, the development and maintenance of internal applications that would have the capacity to process and administer the anticipated increase in PTIN applications, customer service support activities, which included website development and maintenance and call center staffing to respond to questions regarding PTIN usage and renewal. The \$50 user fee was also determined to 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 required an individual to apply for and renew a PTIN.

The vendor's fee, currently set at \$14.25 for new applications and \$13 for renewal applications, is paid directly to the vendor and covers the costs incurred by the vendor to process applications and renewals. The agency user fee and the vendor fee pay for different aspects of the PTIN program, each of which is essential to the program.

### **Explanation of Provisions**

Pursuant to the guidelines in OMB Circular A-25, the IRS has re-calculated its cost of providing services under the PTIN application and renewal process. The IRS has determined that the full cost of administering the PTIN program going forward has been reduced from \$50 to \$33 per application or renewal. Individuals who prepare or

assist in preparing all or substantially all of a tax return or claim for refund for compensation are required to have a PTIN. The ability to prepare tax returns and claims for refund for compensation is a special benefit, for which the IRS may charge a user fee to recover the full costs of providing the special benefit.

The amount of the user fee is \$33 for both initial PTIN applications and renewals because the activities the IRS is required to perform to issue a new PTIN or renew an existing PTIN are the same. Pursuant to the authority granted in section 6109(c), the IRS has determined that it requires certain information to assign (or, in the case of a renewal, re-assign) a PTIN to an individual. The required information is set forth in the Form W-12 and Form W-12 Instructions.

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 PTIN user fee also takes into account various indirect program costs, including management and support costs.

The reduction in the fee amount is attributable to several factors, which include the reduced number of PTIN holders (approximately 700,000) from the number originally projected (1.2 million) in 2010, which reduced associated costs; the absorption of certain development costs in the early years of the program; and the fact that certain activities that would have been required to regulate registered tax return preparers will not be performed. In particular, 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. Additionally, expenses related to personnel who perform continuing education and testing for enrolled agents and enrolled retirement plan agents were also removed from the user fee.

Individuals who apply for or renew a PTIN will continue to pay a fee directly to a third-party vendor, which is separate from the user fee described in this Treasury decision. The vendor fee is increasing from \$14.25 for original applications and \$13 for renewal applications to \$17 for original applications and \$17 for renewal applications.

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563.

Historically, the annual PTIN application and renewal period has begun on October 15. For 2015, the date has been postponed to November 1. There is insufficient time before November 1 to provide an opportunity for notice and public comment and issue a final regulation prior to that date. To enable the reduced fee amount to be in effect for PTINs issued or renewed by tax return preparers preparing returns in 2016, the IRS and Treasury find that there is good cause to dispense with (1) notice and public comment pursuant to 5 U.S.C. 553(b) and (c) and (2) a delayed effective date pursuant to 5 U.S.C. 553(d). It would be impracticable, unnecessary, and contrary to the public interest to continue to charge the current fee when the IRS has determined pursuant to the biennial review conducted under OMB Circular A-25 that the fee should be reduced going forward. The IRS and Treasury Department will consider

public comments submitted in response to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register** and will promulgate a final rule after considering those comments.

For applicability of the Regulatory Flexibility Act, please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f), this Treasury decision has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Drafting Information**

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

### **List of Subjects in 26 CFR Part 300**

Reporting and recordkeeping requirements, User fees.

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 300 is amended as follows:

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

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.13 is amended by removing and reserving paragraph (b) to read as follows:

§300.13 Fee for obtaining a preparer tax identification number.

\* \* \* \* \*

(b) Fee. [Reserved]

\* \* \* \* \*

Par. 3. Section 300.13T is added to read as follows:

§300.13T Fee for obtaining a preparer tax identification number.

(a) [Reserved]

(b) Fee. The fee to apply for or renew a preparer tax identification number is \$33 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) [Reserved]

(d) Effective/applicability date. This section will be applicable for all PTIN applications filed on or after November 1, 2015.

Karen M. Schiller

Acting Deputy Commissioner for Services and Enforcement.

Approved: October 16, 2015.

Mark J. Mazur

Assistant Secretary of the Treasury (Tax Policy).