



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[TD 9903]

RIN 1545-BP43

Preparer Tax Identification Number (PTIN) User Fee Update

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: These final regulations amend existing regulations relating to the imposition of certain user fees on tax return preparers. The final regulations reduce the amount of 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.

DATES: Effective date: These regulations are effective **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: For the date of applicability, see §300.13(d).

FOR FURTHER INFORMATION CONTACT: Michael Franklin at (202) 317-6844 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 300 regarding user fees. On April 16, 2020, a notice of proposed rulemaking (REG-117138-17) proposing to

amend the regulations relating to imposing a user fee to apply for or renew a PTIN was published in the **Federal Register** (85 FR 21126). The notice proposed decreasing the amount of the user fee to apply for or renew a PTIN from \$33, plus \$17 payable to a third-party contractor, to \$21, plus \$14.95 payable to a third-party contractor. The notice contains a detailed explanation regarding the amendments to these regulations.

Eighteen comments responding to the notice and two requests for a public hearing were received. A public hearing on the notice was held on May 26, 2020. Two commenters testified at the public hearing. After consideration of the written comments and testimony, the Department of the Treasury (Treasury Department) and the IRS have decided to adopt without modification the regulations proposed by the notice.

Summary of Comments

The eighteen comments submitted in response to the notice of proposed rulemaking are available at www.regulations.gov or upon request.

Some of the comments that were submitted did not seek modification or clarification of the user fee as set forth in the proposed regulations. Two made no reference to the proposed regulations and their content was unrelated to a PTIN user fee. Another comment supported a fee but encouraged the IRS to take enforcement actions against return preparers who do not comply with PTIN requirements. The summary of comments below addresses those comments that seek modification or clarification of the user fee as set forth in the proposed regulations.

A. Charging a User Fee and the Amount of the User Fee

Some commenters objected to the IRS imposing a user fee at all or in the amount charged by the IRS. Some supported the imposition of a fee, while others

stated that the user fee was too high or too low. The IRS also received comments that requested lower user fees for certain classes of return preparers. Two comments stated that individuals with credentials should pay a reduced fee for obtaining or renewing a PTIN and two comments stated that low-volume return preparers should pay a reduced fee or no fee for obtaining or renewing a PTIN. Similarly, some commenters requested the renewal fee be lower than the amount of the initial application fee or that the IRS adopt a longer renewal period. One commenter suggested that certain return preparers with existing PTINs should not be charged for PTIN renewal.

The United States Court of Appeals for the District of Columbia Circuit has ruled that the IRS is authorized to charge a PTIN user fee because providing a PTIN (and the “associated functions”) is a service that provides a specific benefit to identifiable recipients. *Montrois v. United States*, 916 F.3d 1056 (D.C. Cir. 2019).

Under Office of Management and Budget (OMB) Circular A-25, 58 FR 38142 (July 15, 1993) (OMB Circular A-25), Federal agencies that provide services that confer benefits on identifiable recipients are to establish user fees that recover for the government the full cost of providing the service. An agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services. Under OMB Circular A-25, a user fee should be set at an amount that recovers the full cost of providing a service, unless the OMB grants an exception. The full cost of providing a service includes both the direct and indirect costs of providing the service.

As required by OMB Circular A-25, the IRS conducted a biennial review of the PTIN user fee and determined that the full cost to the IRS to administer the PTIN

program going forward was reduced to \$21 per application or renewal. These costs include all costs related to administering the PTIN program, including costs relating to PTIN misuse and maintaining the integrity of the PTIN program. A description of the categories of activities included in the PTIN user fee and specific examples of the activities included within those categories is discussed below in section *E. Costing Methodology*. The user fee to apply for or renew a PTIN does not recover costs associated with other programs.

The IRS does not incur lower costs to provide PTINs to credentialed preparers or low-volume preparers than it incurs to provide PTINs to uncredentialed preparers or high-volume preparers. Similarly, the costs to the IRS to renew a PTIN are the same as the costs to issue a new PTIN. Accordingly, the amount of the user fee should be the same regardless of the return preparer's status and regardless of whether the application is an original or a renewal. The Treasury Department and the IRS have determined that the annual renewal of a PTIN is the most effective renewal period. An annual renewal period ensures the IRS has up-to-date identifying information about each return preparer, which benefits return preparers, their clients, and the IRS in ensuring the timely communication of important information. Further, the annual renewal period allows the IRS to better administer the PTIN program, effectively identify and contact return preparers, and prevent the unauthorized use of PTINs, thereby benefiting return preparers and protecting taxpayers.

B. Use of a Third-Party Contractor

Several commenters objected to paying a separate fee to the third-party contractor, and some objected to the amount of the fee paid to the third-party contractor.

The third-party contractor was chosen through a competitive bidding process, and the amount of the third-party contractor's fee is reviewed and approved by the IRS. The third-party contractor's costs include more than the discrete costs of generating a number and are separate from the costs to the IRS for administering the PTIN application and renewal program. The two portions of the fee pay for different aspects of administering the PTIN program, each of which is essential to providing PTINs to tax return preparers. As discussed in the preamble to the proposed regulations, the third-party contractor performs a number of valuable functions, including processing applications to obtain or renew a PTIN and operating a call center. The IRS has determined that it is appropriate to use a third-party contractor to perform these functions.

C. Re-instituting User Fee During *Steele* Litigation

Three commenters objected to re-instituting the PTIN user fee during the pendency of the *Steele v. United States* litigation in the United States District Court for the District of Columbia.

In *Steele v. United States*, 260 F. Supp. 3d 52 (D.D.C. 2017), the United States District Court for the District of Columbia concluded that the Treasury Department and the IRS lacked the statutory authority to charge a PTIN user fee and enjoined the IRS from charging a PTIN user fee. On March 1, 2019, the United States Court of Appeals

for the District of Columbia Circuit reversed the district court's decision and lifted the injunction against charging the PTIN user fee. See *Montrois v. United States*, 916 F.3d 1056 (D.C. Cir. 2019) (holding that a PTIN provides tax return preparers a specific benefit by allowing them to provide an identifying number that is not a social security number on returns they prepare and stating that the permissible amount of the fee would be the same regardless of whether the specific benefit was instead the ability to prepare tax returns for compensation). In accordance with the opinion of the United States Court of Appeals for the District of Columbia Circuit, the IRS is authorized to charge a PTIN user fee for the service of providing return preparers a PTIN. Despite the ongoing litigation with respect to the amount of the user fee, the IRS is authorized to resume charging a fee because the district court's injunction was vacated. After the injunction was lifted, and in accordance with the biennial review requirement in OMB Circular A-25, the IRS has re-determined costs that the government continues to incur for providing PTINs and administering the PTIN program and re-calculated the amount of the user fee. OMB Circular A-25 states that user fees should be collected in advance of or simultaneously with the provision of a service. The PTIN user fee is collected when return preparers apply for or renew their PTINs during the application season, which begins annually in October.

D. COVID-19 Pandemic

Two commenters objected to re-instituting the fee during the COVID-19 pandemic. The demand and need for tax return preparation services should continue despite the pandemic. As return preparers continue to prepare returns, they must continue to use current PTINs to do so, and the government continues to incur costs for

providing PTINs and administering the PTIN program, which should be recovered by charging a fee. In the absence of charging a fee to return preparers, taxpayers would bear the costs the IRS incurs of providing PTINs and associated functions.

E. Costing Methodology

One commenter made a number of other objections broadly relating to the IRS's costing methodology detailed in the proposed regulations. The same commenter and one other commenter questioned the direct costs incurred by the IRS in administering the PTIN program. The IRS properly follows generally accepted accounting principles (GAAP) in calculating the full cost of administering the PTIN program in accordance with *Statement of Federal Financial Accounting Standards (SFFAS) No. 4*, which establishes internal costing standards to accurately measure and manage the full cost of Federal programs. The preamble to the proposed regulations provides the methodology by which the IRS determined the full cost of the PTIN program. It details the use of cost centers, which are the lowest organizational unit in the IRS's cost-accounting system, the implementation of various cost-measurement techniques to estimate the direct costs attributable to the PTIN program, and overhead allocation.

As described in the preamble to the proposed regulations, the IRS uses various cost-measurement techniques to estimate the direct costs attributable to the program. These techniques include using various timekeeping systems to measure the time required to accomplish activities, or using information provided by subject-matter experts on the time devoted to a program. To determine the labor and benefits cost incurred to administer the PTIN program, the IRS estimated the number of full-time employees required to conduct activities related to the PTIN program. The number of

full-time employees is based on both current employment numbers and future hiring estimates. Other direct costs associated with administering the PTIN program include contract costs and travel, training, supplies, printing, and other miscellaneous costs.

The preamble to the proposed regulations also describes the staffing and other costs incurred in administering the PTIN program. Staffing costs are incurred by the Return Preparer Office (RPO) in the IRS and relate to conducting certain suitability checks, foreign preparer processing, handling compliance and complaint activities, information technology and contract-related support, communications, budgeting and finance, and program oversight and support. Examples of the specific activities that are included within those categories include, but are not limited to, the following activities. Suitability checks include work involving specially designated nationals,¹ incarcerated return preparers, enjoined return preparers, and professional designation checks on certain individuals. Foreign preparer processing includes the IRS processing of PTIN applications for foreign persons who are not eligible to obtain a social security number and have a permanent non-U.S. address. Compliance and complaint activities include work involving compromised and misused PTINs and identity theft related PTINs, expired PTINs, legacy PTINs, ghost return preparers (returns prepared without a PTIN), processing complaints, and penalty referrals. Information technology and contract-related support activities include contract oversight, background investigations and training for contractor personnel, contractor performance reviews, records management, peak season planning and implementation, off-season system enhancements, program metrics reporting and data extracts, managing system changes, addressing system

¹ <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

defects and data anomalies, system training materials, cloud service provider hosting, customer contact center hosting, system capacity monitoring and performance, IT coordination and remote server platform issues for e-authentication, registration system and database refinements, enterprise life cycle documentation, site visits and contractor assessments, specialized IT security training, identity theft protection, and work related to the PTIN call center. Communications activities include correspondence with return preparers, including renewal notifications, development of system generated messaging, website messaging, FOIA posting of PTIN holder list, and stakeholder communications. Budget and finance activities include user fee review and cost modeling, payment tracking and accountability, requisitions and obligations of funds, operational budgeting and funding based on actual and projected PTIN user fee receipts, third-party contacts related to PTIN matters (requests from Congress, Treasury Inspector General for Tax Administration, and Government Accountability Office), developing and updating Internal Revenue Manual content, and certain human resources activities. Program oversight and support includes oversight and support in the RPO over these PTIN functions.

OMB Circular A-25 does not require the IRS to account for and describe activities unrelated to providing PTINs and administering the PTIN program that are not included in the costs recovered in the PTIN user fee. The IRS has accounted for all activities properly included in the PTIN user fee.

The preamble to the proposed regulations also describes how the IRS calculated the overhead rate and overhead costs. Overhead is an indirect cost of operating an organization that is not specifically identifiable with an activity. Overhead includes costs

of resources that are jointly or commonly consumed by one or more organizational unit's activities but are not specifically identifiable to a single activity.

Accordingly, the proposed regulations are adopted without change.

Special Analyses

The OMB's Office of Information and Regulatory Analysis has determined that these regulations are significant and subject to review under section 6(b) of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. The final regulations affect all individuals who prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation. Only individuals, not businesses, can have 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 have a PTIN owning a small business or a small business otherwise employing an individual tax return preparer who is required to have a PTIN. The Treasury Department and the IRS estimate that approximately 800,000 individuals will apply annually for an initial or renewal PTIN. Although the final regulations will likely affect a substantial number of small entities, the economic impact on those entities is not significant. The final regulations will establish a \$21 fee per application or renewal (plus \$14.95 payable to the contractor), which is a reduction from the previously established fee of \$33 (plus \$17 payable to the contractor) per application or renewal and will not have a significant economic impact on a small entity.

Accordingly, the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f), the notice of proposed rulemaking was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business (85 FR 21126). No comments on the notice were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

Drafting Information

The principal author of these regulations is Michael A. Franklin, Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

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:

PART 300 – USER FEES

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

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.12 is amended by revising paragraphs (b) and (d) to read as follows:

§300.13 Fee for obtaining a preparer tax identification number.

* * * * *

(b) Fee. The fee to apply for or renew a preparer tax identification number is \$21 per year and is in addition to the fee charged by the contractor.

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(d) Applicability date. This section applies to applications for or renewal of a preparer tax identification number filed on or after **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

Sunita Lough,
Deputy Commissioner for Services and Enforcement.

Approved:

David J. Kautter,
Assistant Secretary of the Treasury (Tax Policy).

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