

IRS Sticks to Plan in Final PTIN Fee Regs

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The IRS has issued final regulations on return preparer tax identification numbers and associated user fees, despite ongoing questions related to its authority to impose such fees.

The final regs ([T.D. 9903](#)), released July 15, adopt the same fee structure as the proposed regs ([REG-117138-17](#)), but do so at a time when matters related to the fees are still being litigated in federal court.

The regs cement the decrease in the user fee from \$33 to \$21, and a separate charge for third-party processing and call center services was reduced from \$17 to \$14.95. The PTIN fee rose as high as \$64 before the IRS suspended the program in June 2017 in response to federal litigation over the fee's legality.

The question of how much the IRS can charge for a user fee is being litigated in the U.S. District Court for the District of Columbia in *Montrois v. United States*, [916 F.3d 1056](#) (D.C. Cir. 2019). The district court had found that the IRS lacked authority to charge a PTIN fee, but an appeals court vacated that decision and remanded it to the district court for clarification and justification of the current fee structure.

The PTIN program is intended to provide the IRS with up-to-date information about paid return preparers and facilitate the timely communication of information to them, according to the agency. The IRS estimates that more than 800,000 return preparers will apply for or renew PTINs in 2020.

What's the Rush?

The IRS sought to [assuage concerns](#) about both the timing of the regs and the legal underpinning for the fee in the final regs, but some observers weren't satisfied.

"I just think it's really inappropriate for them to do this right smack in the middle of the litigation to determine how much they can charge," Frank Colella of the Pace University Lubin School of Business told *Tax Notes*.

The IRS justified the timing of the final regs by contending that it had the right to do so because the injunction against the PTIN fees had been lifted.

"That's really a non-answer, but it's the IRS, I guess," Colella said, adding that it's "probably going to annoy the judge" in *Montrois*. He said that while he has no quibble with the IRS's authority to impose a PTIN fee, he questioned why the agency would need to impose a separate fee for itself when the third-party provider is "doing all the work."

The IRS justified its own fee by citing costs of supervising the program.

The regs devote a section to explaining the method used to determine the fee amounts, including listing various types of activities by IRS employees and the third-party contractors, but Stuart Bassin of the Bassin Law Firm PLLC noted that the regs don't include any of the math used to come up with its costs. "They've created an unreviewable explanation of how they came up with their number," he said. "Courts tend not to like that."

Bassin was similarly perplexed by the timing, arguing that the regs seem to have been fast-tracked. "I've never seen the IRS, Treasury move so fast to get something finished," he said.

Bassin said he had requested and was initially scheduled for a meeting to discuss the regs while they were under review by the Office of Information and Regulatory Affairs, but was then informed that his meeting had been canceled and that the regs had been released back to Treasury and the IRS. [OIRA completed its review](#) by July 10.

"Someone was in a hurry to get this done," he said.